

ORDINANCE NO. 3380
INTRODUCED BY: MAYOR JOSEPH P. SCARPELLI
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AN ORDINANCE TO AMEND AN ORDINANCE CODIFIED IN THE CODE OF THE TOWNSHIP OF NUTLEY, CHAPTER 532, ENTITLED “RENT CONTROL”, PARTICULARLY ARTICLE I (RENT CONTROL PROCEDURES), SECTIONS 5 AND 6

§ 532-5 Hardship rent increase or Capital Improvement surcharge.

A. Grant of hardship rent increase.

(1) An owner or landlord may make an application to the Rent Leveling Board (the “Board”) for increased rents in a building based on economic hardship relating to that building if the landlord is qualified under Subsection A(2) below wherein the landlord is unable to realize a seven-percent return on investment.

(2) For purposes of this section, a return on investment shall be calculated on 7% of the total equalized value of land and improvements (as per the county equalization ratio) after accounting for income and allowable expenses.

(3) In computing a rental increase or rebate as provided under this article, the amount so computed shall be rounded off to the nearest dollar.

(4) A landlord shall be limited to allowance of one hardship rental increase within any twelve-month period.

(5) The Board shall consider the following expenses in determining whether a hardship increase is warranted:

- (a) Heating.
- (b) Insurance.
- (c) Taxes.
- (d) Water.
- (e) Repairs.

- (f) Reasonable management fees not to exceed 5%.
- (g) Miscellaneous any and all other expenses deemed by the Board to be reasonable and appropriate.
- (6) Financing shall not be considered an expense for the purpose of calculating a hardship.
- (7) Any hardship increase granted pursuant to this section shall be included and become part of the base rent for any future changes or rent increases.
- (8) No increase in rent, including any increase permitted under § 532-2C shall exceed 15% of the present rent at one time. A hardship increase in excess of 15% shall be held in abeyance and implemented in six-month increments until such times as the entire hardship increase is fully established.

B. Application for hardship relief.

- (1) An original application plus 11 additional copies and all attachments for a hardship rent increase pursuant to this section and which shall be on a form specified by the Board must be filed with the Municipal Clerk no less than 30 days prior to a scheduled Rent Leveling Board meeting.
- (2) The following information must be filed along with the application:
 - (a) A current rent roll which lists the gross rental income for each unit in the building for the current year and for each of the two prior years.
 - (b) A detailed operating statement, prepared by a licensed accountant and certified to be true and accurate for each of the two prior years.
 - (c) A report detailing the anticipated income for the period of relief, taking into account all automatic or discretionary rental increases. Anticipated income shall include, but not be limited to, income from residential rents, garage rents, parking fees, pet fees, and fees for additional facilities such as laundry and vending income.
 - (d) Any and all other documents and evidence that the applicant intends to rely upon and that will assist the Board in evaluating the landlord's application.
 - (e) Proof that all federal and state taxes are paid.

- (f) Certification by the Township's Code Official that the premises are in compliance with all construction, dwelling and maintenance codes.
- (g) Certification by the Township's Tax Collector that all property taxes and municipal utility charges and fees are paid and current.
- (h) Application fee of \$100 payable to the Township of Nutley.

(3) Wherever practicable, the Board may require professionally prepared documentation of any or all pertinent financial data offered in support of an application under this section, except that the Board may exercise its reasonable discretion to waive this requirement if the cost to the applicant, or other considerations, are deemed to outweigh the need and/or probative value of such professional services.

(4) If the applicant meets all of the requirements of this section, the application will be deemed complete, and the landlord shall be notified in writing by regular mail of a scheduled date for a hearing which shall be held no later than 60 days (unless further extension is consented to by the applicant) after the application is deemed complete by the Chairman of the Board or his/her designee.

(5) Notification of hearing.

(a) The landlord shall notify all affected tenants in writing of the hearing date no less than 10 days prior to the scheduled hearing in order for the notice to be deemed adequate, it must specify the following:

- (1) The date, time and location of the hearing.
- (2) The purpose of the hearing, the amount of the increase sought and, if approved, the amount apportioned to each tenant.
- (3) The tenant's right to be heard.
- (4) Notice that the application and all attendant documents are available for review at the Municipal Clerk's office during regular business hours.

(b) If the Board deems, in its sound discretion, that the affected tenants were not provided with adequate notice, the Board may postpone the hearing and direct the landlord to provide proper notice before proceeding on the application or dismiss the application without prejudice. The landlord shall file with

the Board, no later than the hearing date, a copy of the notice provided to the tenants along with proof of service. Proof of service can be made by affidavit of a process server, the submission of the green cards to the Board shall suffice.

C. Hearing Requirements; preponderance of evidence

(1) At a hearing, the landlord shall be required to prove the following elements by a preponderance of the evidence:

- (a) Compliance with all notice requirements.
- (b) That accounting practices employed by the landlord to calculate operating expenses and that any and all financial statements or documents submitted for evidentiary purposes are in accordance with standard accounting practices and consistent with Internal Revenue Service codes and regulations.
- (c) That all reasonable attempts have been made by the landlord to reduce or eliminate, where possible, any source of hardship giving rise to the application.

(2) The Board shall receive and consider any and all proofs that in its sound discretion it deems relevant to its deliberations. The Board shall hear and judge each application impartially and on its own merits without deference to separate and unrelated cases that have no bearing on the equality of treatment for each and every applicant.

(3) The Board may require the testimony of any witness it deems necessary to properly conduct its deliberations in order to reach a decision. Those witnesses may include but are not limited to the landlord, accountants, lawyers, financial advisors, managing agents and/or insurance professionals.

(4) The Board shall hear and consider affected tenants who may wish to appear and give testimony in support or opposition to the application or those who submit written letters of support or opposition as they pertain to the application.

D. Grant of Capital Improvement

In conjunction with any other provisions for rent increases herein, a landlord may make application to the Rent Leveling Board (the “Board”) to increase rents up to a total maximum of 10% for capital improvements plus any and all other rent increase(s) which may have been granted by the Board pursuant to this Ordinance in the aggregate not to exceed 15%. The amortization of costs and expenses incurred by the landlord shall be up to the limits set as per guidelines published by the Internal Revenue Service and which guidelines are current as of the date of the application, for Capital Improvements herein

at §532-1, provided such application is made within one year from completion of the improvement.

1. Any Capital Improvement rent increase granted pursuant to this section shall not be imposed for any more than the length of the useful life of the improvement for which an increase is sought on any single application. The landlord may apply for another Capital Improvement rent increase at the expiration of the prior increase pursuant to this section.
2. Any Capital Improvement rent increase granted pursuant to this section shall not be included in the base rent for the calculation of any annual charges or rent increases.
3. All affected tenants shall be notified by the landlord in writing of any Capital Improvement rent increase which the landlord is seeking, the duration thereof and the amount of the increase in rent apportioned to them, the basis of the apportionment, and proof of such written notice must be presented to the Board in the manner required by the Board as conditions precedent and subsequent to any rent increase pursuant to this section.
4. Wherever practicable, the Board may require the applicant to obtain and present the Board professionally prepared documentation of any or all pertinent financial data offered in support of an application under this section, except the Board may exercise its reasonable discretion to waive this requirement if the cost to the applicant, of other considerations, are deemed to outweigh the need and/or the probative value, for such professionally prepared documents.
5. No increase granted pursuant to this section shall take effect unless and until the Township's construction official or his/her designated representative, after a reasonable inspection of the premises, notifies the Board in writing said premises is in substantial compliance with all of the Township's construction, dwelling and/or maintenance code(s) and any and all, county, state and federal codes, rules, standards or regulations. It shall be the obligation of the landlord to address this issue with the applicable authorities and to obtain the aforesaid writing confirming substantial compliance and to provide confirmation of same to the Board.
6. No increase granted pursuant to this section shall take effect unless and until the Township's Tax Collector notifies the Board in writing all property taxes are current, except for arrearages authorized by law, and any tax rebates due have been paid. It shall be the obligation of the landlord to address this issue with the applicable authorities and to obtain the aforesaid writing confirming all property taxes are current and paid in full and to provide confirmation of same to the Board.

7. The application for Capital Improvement rental increase pursuant to this section shall include a flat fee of \$100.00 payable to the Township of Nutley without regard to the number of rental units for which an increase is sought.

8. As a prerequisite to any Capital Improvement rent increase granted pursuant to this section, the landlord shall provide proof of the service of the application and any and all attachments thereto upon each tenant for whom an increase is sought, within ten (10) days of the filing of the application notifying each tenant an application for a Capital Improvement rent increase has been filed and the application and all books and records attendant thereto are available for review at the Township hall and a copy of the application and all documents attendant thereto will be provided by the landlord at the landlord's expense to any tenant upon the tenant's request. The proof of service must be in the form of either an executed Affidavit of Service made by a process server (not the landlord) or if by certified mail, the execution return receipt (or so-called "green card"). Upon a failure of the landlord to provide proof of service to the good faith satisfaction of the Board, the Board shall deny application without prejudice upon the completion of the necessary requirements.

9. The application for a Capital Improvement rent increase pursuant to this section shall be on a form specified by the Board and shall be filed with the Board. The following information must be filed along with the application form:

- (1) Any and all documents or evidence the applicant intends to rely upon,
- (2) Twelve (12) copies of the application and any and all accompanying documents or papers incident thereto shall be filed by the applicant,
- (3) Proof of all federal, state, and local taxes having been paid up to date, and
- (4) The application fee of \$100.00.

10. If the applicant meets all of the requirements of this section, the Board shall schedule a public hearing on the application no earlier than thirty (30) days and no later than sixty (60) days (unless further extension is consented to by the applicant) after the Board deems the application to be complete. The landlord applicant shall notify all tenants in writing affected thereby of the hearing date no later than ten (10) days after the date is set. The proof of service must be in the form of either an executed Affidavit of Service made by a process server (not the landlord) or if by certified mail, the executed return receipt (or so-called "green card"). Upon a failure of the landlord to provide proof of service to the good faith satisfaction of the Board, the Board shall deny application without prejudice upon the completion of the necessary requirements.

11. At the hearing, the landlord applicant will be required to prove the following by a preponderance of the evidence:

- (a) Compliance with all notice requirements.

- (b) That the accounting practices used in the preparation of the application are consistent with all current and applicable Internal Revenue Service Codes and Regulations.
- (c) That the landlord is in full compliance with any and all federal, state, county, and/or municipal laws, regulations, building codes and/or standards.
- (d) Any and all additional or further issues the Board may deem appropriate under the circumstances of any given application for a Capital Improvement rent increase, each application to be judged on the individual merits thereof.
- (e) The Board may establish other and further criteria in the execution of its duties as it may deem appropriate from time to time in any given case.
- (f) The Board may require testimony from the landlord and/or from the landlord's professionals (such as but not limited to lawyers, accountants, managing agents and/or insurance professionals).
- (g) The Board shall hear and consider affected tenants who may wish to present writings to the Board as to the application and shall hear and consider affected tenants who may wish to appear and give testimony as to the application.
- (h) That the landlord has fully paid up to date any and all federal, state, county and/or municipal taxes, assessments and/or surcharges.

E. Escrow Fees.

(1) If the Board in its sound discretion deems it necessary, the landlord shall deposit with the Township Tax Collector such escrow funds as the Board in its judgment determines to be sufficient to pay all reasonable and necessary costs and fees of any expert(s) the Board deems appropriate to hear an application. In no event shall the required deposit for such escrow funds exceed \$1,500. The landlord shall also be required to sign an acknowledgement and acceptance of possible escrow funds at the time the application for hardship relief is filed with the Township Clerk.

(2) Any expert employed by the Board shall be required to sign a retainer agreement with the Board wherein it shall agree to provide all such expert services for either a set fee or hourly fee to be established by the Board. The retainer agreement must include a cap on all charges to be submitted which shall not exceed the amount of money that the landlord is required to pay into escrow.

(3) The professional expert(s) shall submit vouchers for all reasonable and necessary fees for the professional services rendered, which fees shall be paid from the escrow account in the manner prescribed by N.J.S.A. 40A:5-16 through N.J.S.A. 40A:5-18.

(4) The expert(s) shall, at the time of submission of any such voucher, forward a copy of same to the applicant and to the Board. In the event that the applicant objects or disputes the reasonableness of any such charges, the applicant shall, not later than five days after receipt of a copy of the voucher, submit a written objection to the Board. In no event shall the Board authorize payment of any such voucher without written notice to the landlord. If the Board determines that such payment is warranted, the Board shall advise the landlord of same and invite the landlord to appear at the next regularly scheduled meeting to discuss the voucher. The Board shall also invite the expert who submitted the voucher to offer testimony in support of the voucher. If the Board, at that time, determines the payment to be reasonable and fair, it shall authorize and direct the payment to be made to the expert.

(5) Any remaining money held in escrow shall be returned to the applicant as soon as practicably possible after completion of the application.

(6) Should any additional funds be required so that the Board may properly complete its deliberations, it may in its discretion require said additional funds to be paid by the landlord to the Tax Collector to be deposited in the escrow account, provided the sum total of the deposits do not exceed the amount set forth in Subsection D(1) above.

(7) If, in the discretion of the Board, the aforementioned escrow account is deemed necessary for the consideration of any such application(s), the Board shall take no formal action on any application unless and until all escrow funds have been deposited with the Tax Collector of the Township in the amount determined by the Board, and any time limitations set forth in this chapter shall be tolled until such funds are deposited.

F. Capital Improvement Increase.

In conjunction with but not in addition to any other provisions for rent increases herein, a landlord may make application to the Board to increase rents up to a total annual maximum of ten percent (10%) per unit to amortize the costs and expenses incurred by the landlord for Capital Improvements as that term is defined herein at § 532-1.

G. Maximum increase allowable.

In no event may rents be increased more than ten percent (10%) in any twelve-month period for a Hardship Increase pursuant to §532-5A plus a Capital Improvement Increase pursuant to §532-5D. Outside of rent increases for these purposes, yearly rents may be increased by either 5% or 4% (where tenant pay for heat) as provided in §532-2c.

§ 532-6. Termination of occupancy by tenant; increase in basic rent.

A. Vacancy Increase. Upon the voluntary uncoerced vacancy of a rental unit by a tenant, which vacancy shall include a legal eviction, the landlord shall have the right to fix the rent for such vacated rental unit at such sum as he/she deems appropriate. Once such a rental unit has been rented, it shall immediately be subject to all of the other terms and provisions of this article, including but not limited to maximum amounts of increases or rent thereafter, unless and until it shall again become vacant as provided in this section.

B. Filing of information.

(1) The landlord of a multiple dwelling subject to the provisions of this article shall file with the Rent Leveling Board and the Construction Code Office not later than December 31, a statement which shall set forth the following:

- (a) The name and business address of the landlord.
- (b) The street address of the multiple dwelling.
- (c) The apartment number, floor designation or other information adequate to identify the dwelling as to which the report is submitted.
- (d) The rent in effect as of December 1, and the effective date thereof.

(2) The landlord of a multiple dwelling subject to the provisions of this article shall file with the Rent Leveling Board not later than 30 days after an increase in rent after December 31, shall become effective or the initial rent for a dwelling unit shall be established a statement which shall set forth the following:

- (a) The name and business address of the landlord.
- (b) The street address of the multiple dwelling.
- (c) The apartment number, floor designation or other information adequate to identify the dwelling unit as to which the report is submitted.
- (d) The old rent.
- (e) The new rent.
- (f) The effective date of the increase.
- (g) The termination date of any written lease covering the dwelling unit as of the effective date of the increase.

Those exempted from the rent control requirements subject to N.J.S.A. 2A:42-84.2 must still provide the information in (a) – (g) in accordance with this subsection.

(3) The Rent Leveling Board shall file with the Board of Commissioners and the Township Attorney no later than February 15 of the subsequent calendar year, a summary report showing the level of compliance with Subsection B(1), what actions are being taken against any landlord not in compliance with Subsection B(1), and any other statistics that the Rent Leveling Board deems significant (e.g. vacancy rates).