

BRACH EICHLER LLC

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Attorneys for Plaintiff

UNION CITY PROPERTY HOUSING
INITIATIVE,

Plaintiff,

v.

CITY OF UNION CITY, MAYOR
AND BOARD OF COMMISSIONERS
OF THE CITY OF UNION CITY,
RENT LEVELING BOARD OF THE
CITY OF UNION CITY,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-

Civil Action

**VERIFIED COMPLAINT FOR
TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF AND IN LIEU OF
PREROGATIVE WRIT**

PRELIMINARY STATEMENT

This action is a facial constitutional challenge to two recently enacted ordinances that broadly and impermissibly violate the Plaintiff's constitutional rights in the guise of addressing the public interest.

Union City has for many years enforced strict rent control laws that are applicable to some rental properties in the city. This rent control ordinance ("RCO") controls the amount and timing of rent increases that can be charged to an existing tenant. Thus, Union City tenants who enter into lease agreements with their landlords, are protected from both frequent and unexpected rent increases, as well as improper increases because the RCO mandates this result. The RCO makes charging rent increases not sanctioned by the ordinance illegal, and any agreement between the landlord and tenant to the contrary is deemed void. As a result of the long history of rent control in Union City, all rent controlled tenants receive protection against frequent, unexpected and

improperly high rent increases, and the rent controlled landlords' agreements with their rent controlled tenants must comply with the requirements of the RCO in order to be entitled to charge and collect any rent increases.

While the guaranteed protection against frequent and improper rent increases extends to many tenants in Union City, many other tenants do not live in rent controlled properties because their dwelling space is excluded from the application of the RCO. For example, tenants residing in property that was constructed after 1987 (new construction), see N.J.S.A. 2A:42.84.1, tenants in properties operated by the cities' housing authorities, see, e.g., Union City Code, Ch. 334-2(B); tenants in properties in which the owner also resides (owner occupied), id.; tenants who rent a condominium unit from the owner, id., – are all excluded from the regulations that are applicable to rent controlled property. Thus, while there are many tenants who enjoy the protection of the RCO in Union City, there are thousands of landlord/tenant relationships that are not governed in any way by the RCO in Union City.

In the midst of a global pandemic that has visited economic hardship on both tenants and landlords, Union City has enacted an ordinance to retroactively freeze the rents *in rent controlled properties only*. This ordinance (the “Freeze Ordinance”) is arbitrary, capricious and unreasonable and violates the constitutional right of equal protection of laws, impairs the right of contract and constitutes an unconstitutional taking without just compensation. Union City has also enacted a freeze on evictions, which re-writes the state statute that governs landlord tenant relationships. This ordinance (the “Eviction Freeze”) violates the carefully crafted balance of landlord and tenant rights that are exclusively governed by the state and, thus, is an excessive use of the police power granted to the municipality. This Complaint seeks temporary and permanent injunctive relief to protect against Union City's Freeze Ordinance and Eviction Freeze.

PARTIES

1. Plaintiff, Union City Property Housing Initiative (“UCPHI” or “Plaintiff”) is a non-profit association of property owners organized to vindicate the common rights and grievances of its members, who individually own more than 2000 rental properties within the City of Union City.

2. Defendant, City of Union City ("Union City"), is a municipal corporation, duly organized and existing pursuant to and in accordance with the laws of the State of New Jersey.

3. Defendants, the Mayor of the City of Union City and the City of Union City Board of Commissioners, are charged with the duty to control, oversee and regulate the administration and functions of Union City

4. Defendant, Rent Leveling Board of the City of Union City, is charged with the enforcement of Chapter 334 of the Code of the City of Union City.

5. Defendants, Union City, Mayor, Board and Rent Leveling Board (collectively “Union City” or “Defendant”) adopted and promulgated a Rent Control Ordinance as well as certain administrative regulations that affect the enforcement and interpretation of the Ordinance.

RENT CONTROL GENERALLY IN UNION CITY

6. Rent control is commonplace in New Jersey’s largest cities, and these ordinances control the frequency of and the rate of increases that a landlord can charge to a rent controlled tenant.

7. RCO has been in place for decades in Union City. See, City of Union City Code Chapter 334 attached hereto as **Exhibit “A.”**

8. Union City’s RCO does not fix the rent to be charged based on the tenant household income. Renting a dwelling unit that is subject to rent control is not subject to any economic means testing for the tenant; contains a requirement that increases in rent can only occur

on annual anniversaries of the tenancy; mandates that the rate of annual increase cannot exceed a specific percentage derived with reference to the Consumer Price Index; and mandates that landlords can only charge increases after compliance with the notice requirement of the RCO and state law.

9. Plaintiff's members who own and operate rent controlled property in Union City, have vested contractual rights to charge and collect rents that are in compliance with the RCO from its tenants.

10. Plaintiff's members who own and operate rent controlled property in Union City have reasonable contractual expectations that so long as they comply with the requirements of the RCO that they can increase those rents pursuant to the requirements of the RCO that amounts to a protectable contractual and property right of the Plaintiff members.

11. Recently, the worldwide COVID-19 pandemic has created financial havoc for landlords and tenants alike, and by Executive Order 103, dated March 9, 2020 Governor Phil Murphy has declared a State of Emergency and a Public Health Emergency in New Jersey to contain the spread of Covid-19.

12. Since that Executive Order, Governor Murphy has issued several executive orders designed to protect the health, safety and welfare of New Jersey residents during the state of emergency. Among his orders, Governor Murphy has stayed eviction actions to recover possession from a tenant. By virtue of these emergency orders, as of the filing of this action landlords may not secure the removal of a tenant that is not paying rent that is legally due and owing. Attached hereto as **Exhibit "B"** is a true and accurate copy of Executive Order No. 106

13. Thus, no tenant is currently under a risk of loss of their dwelling space if they fail to pay the legal rent that is due and owing to the landlord or any scheduled increase of their monthly

rental that is authorized by the RCO.

14. Governor Murphy also provided specific relief to tenants who occupy subsidized housing which housing ---where the rent is established with reference to household income. In those properties the tenant must demonstrate financial need in order to reside in the subsidized housing. The Governor deferred – but did not eliminate – rent increases for these government subsidized rental properties which are applicable only to those tenants who satisfy the income limitations in order to reside in those properties.

15. Notably absent from the list of the Governor’s orders has been any freeze on rental increases for either non RCO properties or RCO properties.¹

16. Tenants who reside in rent controlled properties located in Union City are protected from unexpected and unreasonable rent increases by the RCO.

17. The operation of rent controlled property by the Plaintiff’s members did not cause or contribute to the current emergency.

**UNION CITY ADOPTS RENT FREEZE ORDINANCES TARGETING ONLY
RENT CONTROLLED LANDLORDS**

18. Despite the protection of their own RCO and Governor Murphy’s orders, Union City has recently passed the Freeze Ordinance freezing rent increases *for RCO properties only* in their cities.

19. In the Freeze Ordinance, Union City cites the current Covid-19 pandemic as the basis for them to enact the rent freeze.

20. Specifically, on April 16, 2020, Union City enacted Ordinance 2020-07 “An

¹ Indeed, Governor Murphy understands that freeze impairs the private right of contract, and has stated “There are thousands, maybe hundreds of thousands, if not millions of contracts between landlords and renters ... Putting a freeze in place is, I believe, impractical [as] a legal matter... We have said that you can’t be thrown out of your house or evicted...” See Transcript, April 11, 2020 Coronavirus Briefing, <https://www.nj.gov/governor/news/news/562020/20200411c.shtml> (last visited April 23, 2020).

Ordinance Amending Chapter 334 to Place a Moratorium on Rent Increases.” Attached hereto as **Exhibit “C”** is a true and accurate copy of the Ordinance. The Ordinance reads in pertinent part:

A moratorium shall be effectuated to prevent any rent increases as set forth in Section 334-10, and remain in effect for no longer than two (2) months following the end of the State of Emergency due to the COVID-19 pandemic. The moratorium shall commence immediately and apply for the month of March 2020.

21. The Freeze Ordinance not only freezes rents going forward², but also applies retroactively to March 1, 2020. Accordingly, notices of rents increases timely sent to RCO tenants for increases on March 1, 2020 are also frozen.

22. Subsequent to its adoption, the Defendant has provided conflicting directions to the Plaintiff regarding the rent freeze but has specifically directed that landlords notify tenants that the tenant does not have to pay any rent increase as of March 1 even if those increases were implemented by the landlord prior to the ordinance.

23. When advised by the Plaintiff that litigation was going to be commenced regarding this Rent Freeze, the Defendants are currently considering amending the Freeze Ordinance in a manner that does not address its constitutional infirmities. While the amendment has not been adopted we have attached it hereto as **“Exhibit E”** since it demonstrates that the Defendant will not cure its constitutional defects without the court’s intervention.

UNION CITY ADOPTS ORDINANCE DECLARING MORATORIUM ON EVICTIONS

24. New Jersey’s Anti-Eviction Act, N.J.S.A. 2A:18-61.1, enumerates specific grounds for eviction, outlines the jurisdictional and procedural requirements for eviction of a residential tenant for non-payment of rent, grants landlords the statutory right to bring a summary

² The Defendants, in their haste to pander to the tenant interests, EVEN BEFORE THE ORDINANCE WAS ADOPTED, hand delivered notices to each rent controlled tenant on March 24, 2020 indicating that scheduled rent increases would be stopped by the Ordinance. See Exhibit D attached hereto.

dispossession action to evict a tenant for non-payment of rent and specifies defenses available to tenants in a summary dispossession action.

25. The New Jersey Legislature has intended the Anti-Eviction Act to preempt local ordinances that set forth grounds for or defenses to eviction.

26. By Executive Order No. 106, Governor Murphy ordered that no lessee, tenant or homeowner shall be removed from a residential property by eviction or foreclosure during the current state of emergency. Nothing in his order bars a landlord from filing a summary dispossession action during the pandemic for unpaid rent, but during the emergency, evictions cannot occur for non-payment.

27. Despite the legislature's intent to preempt this area of law and Governor Murphy's protections to stay evictions pending the pandemic, Union City has recently passed the Eviction Freeze declaring a moratorium on evictions in Union City, which also create new and impermissible defenses available to Union City residents facing an eviction action.

28. Specifically, on April 28, 2020, Union City enacted Ordinance No. 2020-07 "An Ordinance To Prevent Evictions For Non-Payment of Rent Resulting From The Coronavirus Emergency." (the "Eviction Freeze.") Attached hereto as **Exhibit "F"** is a true and accurate copy of the Ordinance.

29. The Eviction Freeze reads in pertinent part:

Residential Eviction Moratorium. ... [I]t shall be an absolute defense to any such eviction action that the notice or complaint were filed or served during the State of Emergency.

SECTION FIVE

No Residential Eviction for Nonpayment of Rent that Became Due During the State of Emergency. In any action for eviction for non-payment of rent, it shall be a presumption and absolute defense that the unpaid rent which became due during the State of Emergency, was unpaid because of a substantial reduction in household income or substantial increase

in expenses resulting from the Coronavirus pandemic. Nothing in this subsection shall relieve the tenant of liability for the unpaid rent which the Landlord may pursue against the tenant pursuant to Section Seven of this ordinance.

SECTION SEVEN

No Relief from Liability for Rent. Nothing in this Ordinance shall relieve any tenant, whether commercial or residential, of liability for unpaid rent that became due during the State of Emergency. The rent shall become a debt and may be collected as any other debt in the Superior Court of New Jersey, Law Division, but such unpaid rent shall not form the basis of a non-payment proceeding in which a judgment of possession and warrant of eviction may result.

30. The Eviction Freeze improperly attempts to create a defense not enumerated in the Anti-Eviction Act and conflicts with state law.

31. The Ordinance mandates that a Union City landlord cannot bring a statutory summary dispossession action against a Union City tenant who fails to pay rent because of the pandemic. Instead, a landlord may only file a Complaint in Law Division seeking to collect this unpaid debt, but not exercise its statutory right of eviction for unpaid rent.

32. The Eviction Freeze directly conflicts with state law; conflicts and modifies the landlords contracts with its tenants; impermissibly applies to dates before its enactment; deprives the Plaintiff of remedies provided under state law and is an impermissible exercise of the police power.

COUNT I

TEMPORARY AND PERMANENT INJUNCTIVE RELIEF RELATED TO THE FREEZE ORDINANCE

33. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

34. Plaintiff's members have vested, enforceable contractual rights and reasonable contractual expectations to obtain rents from its tenants and to request to increase those rents pursuant to the requirements of local rent control ordinances. This relationship is a protectable contractual interest and property right held by Plaintiff and its members.

35. The Freeze Ordinance impair Plaintiff's pre-existing contractual rights with its tenants and its reasonable contractual expectancy so long as they comply with the RCO requirements.

36. The Freeze Ordinance will interfere with and eliminate these substantial contractual rights since approximately 40% of the Plaintiff's members' tenancies will come up for annual rent increase anniversaries in the next 90 days and the enactment deprives the Plaintiff of these rights.

37. The Freeze Ordinance eliminates Plaintiff's ability to collect authorized rent increases and surcharges permitted by the RCO and wrongfully impose substantial losses on Plaintiff including, but not limited to, the loss of income, loss of property value, and the inability to realize their reasonable expectations from operating the properties. This loss causes an irreparable harm and risks the potential destruction to Plaintiff's 'members' business.

38. The Freeze Ordinance is overbroad, arbitrary and capricious and irrational because it only applies to tenants who are already protected by rent control and not in need of further protection.

39. The Freeze Ordinance is specifically intended to favor the private economic interest of one class of resident---rent controlled tenant---and is not rationally related to the general public interest.

40. The Freeze Ordinance violates equal protection since the Freeze Ordinances do not apply to all rental property, just rent controlled property that are already subject to regulation and protected from unreasonable increases.

41. The Freeze Ordinance is irrational because its retroactive application impairs Plaintiffs' contractual relationship with its tenants by forcing Plaintiffs to forgo properly noticed rental increases due and owing March 1, 2020. Rent increases in March had to be noticed to the

tenant on or before January 31, 2020; and increases effective April 1 had to be noticed to the tenant on or before February 29, 2020.

42. The Freeze Ordinance has a wide confiscatory effect and operates as a regulatory taking of property without the payment of just compensation, and the regulatory taking set forth in the Freeze Ordinances cannot withstand even a lower level of scrutiny required because it bears no rational basis to a legitimate governmental interest. Rather it is a government mandated private subsidy to the benefit of another individual---not in the general public interest.

43. The Freeze Ordinance is impermissible because its retroactive application impairs Plaintiffs' vested rights and is manifestly unjust because it forces Plaintiffs to forgo properly noticed rental increases due and owing March 1, 2020.

44. Because of Union City's unconstitutional Freeze Ordinance, Plaintiff has and will continue to suffer irreparable harm as a result.

45. Plaintiff lacks an adequate remedy at law and can never recover any rentals that the Freeze Ordinance prevents them from charging and collecting.³

COUNT II

TEMPORARY AND PERMANENT INJUNCTIVE RELIEF RELATED TO THE EVICTON FREEZE

46. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

47. Pursuant to the Anti-Eviction Act, N.J.S.A. 2A:18-61.1, Plaintiff's members have an enforceable statutory right to seek eviction of a tenant who fails to pay rent timely and to do so by the process of a summary dispossession action.

³ It bears noting that the Plaintiff members are all engaging directly with their tenants to address the economic consequences of the pandemic. Since no evictions for nonpayment of rent can occur, and the tenant is already protected from unreasonable rent increases, they should be permitted to do so without interference from the government. This action is specifically directed to the excessive government interference with the relationship between the landlord and tenant.

48. The Eviction Freeze conflicts with provisions of state law, impairs rights and remedies provided under state law and creates a new defense for Union City tenants not available in the Anti-Eviction Act.

49. The New Jersey Legislature has intended the Anti-Eviction Act to preempt local ordinances that set forth grounds for or defenses to eviction and the enactment is thus an improper exercise of the police power.

50. Because of the Union City's efforts to override state law, Plaintiff has and will continue to suffer irreparable harm as a result.

51. Plaintiff lacks an adequate remedy at law.

COUNT III

SUBSTANTIVE DUE PROCESS

52. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

53. By adoption of the Freeze Ordinance, Union City has acted in an arbitrary, capricious and unreasonable manner in violation of the United States and New Jersey Constitutions

54. Although Union City is authorized to pass rent control ordinances pursuant to the general grant of police power under N.J.S.A. 40:48-2 to act in the public interest, this grant of legislative authority must not be exercised in a manner that is arbitrary, capricious or irrational.

55. Pursuant to the Union City RCO, tenants subject to rent control are protected by law against unscheduled and unreasonable rent increases.

56. The Freeze Ordinance imposes a freeze on otherwise rent controlled compliant rent increases for tenants subject to rent control and interferes with or eliminates Plaintiff's right to increase these rents pursuant to the requirements of local rent control ordinance.

57. There is no legitimate governmental interest or general public interest that warrants

providing a freeze to tenants subject to rent control and interfering with and eliminating Plaintiff's right to increase these rents pursuant to the requirements of local rent control ordinances.

58. The enactment and enforcement of Freeze Ordinance is arbitrary and capricious and unconstitutional.

59. Plaintiff and its members have wrongfully sustained and continue to sustain substantial losses including loss of rental income, loss of property value and the inability to maximize the value of the subject property, which is subject to the Freeze Ordinance all in violation of the rights guaranteed under law.

60. As a result of these action, Plaintiffs and its members have and will continue to be irreparably harmed and have suffered damage.

COUNT IV

EQUAL PROTECTION

61. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

62. By adoption of the Freeze Ordinance, Union City has violated the equal protection rights established in the United States and New Jersey Constitutions.

63. All landlords and tenants located in the Union City are equally impacted by the current pandemic and its economic consequences and are thus similarly situated within Union City.

64. Rent controlled tenants have legislative and actual protection against frequent and unreasonable rent increases since they are protected by Union City's RCO.

65. The Freeze Ordinance only applies to rent controlled dwelling spaces owned by the Plaintiff members.

66. The Freeze Ordinance does not apply to properties that are not controlled, whose owners may continue to seek rent increases and associated revenue during the Covid-19 pandemic.

67. The Freeze Ordinance arbitrarily discriminates between persons similarly situated, and lay the burden of a rent freeze solely on Plaintiff and its members. Specifically, the Freeze Ordinance impermissibly favors a class of landlords---non rent controlled landlords---over the rent controlled landlord without any rational basis only imposes the burdens of the Rent Freeze upon the rent controlled landlord. Both classes of landlords rent property to tenants and are all equally impacted by the current conditions brought on by the pandemic and there is no rational basis to justify this classification and the burdens imposed upon one, and the benefits provided to the other.

68. By passing and promulgating the Freeze Ordinance, Union City has violated Plaintiff's and its members equal protection rights under the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of New Jersey.

69. As a result of these actions, Plaintiff and its members have been irreparably harmed and have suffered damage.

COUNT V

IMPAIRMENT OF CONTRACT

70. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

71. By adoption of the Freeze Ordinance, Union City has impaired Plaintiff's and its members vested contractual rights in violation of the United States and New Jersey Constitutions.

72. Article I, Section 10 of the United States Constitution provides that "No state ... shall ... pass any ... law impairing the obligation of contracts...."

73. Pursuant to Article IV, Section VII, Paragraph 3 of the Constitution of the State of New Jersey, Union City is prohibited from passing any law that "impair(s) the obligation of contracts, or deprive(s) any remedy for enforcing a contract that existed when the law was made."

74. Plaintiff has a contractual entitlement and expectancy to payment of reasonable

rents from its tenants.

75. Due to the constraints imposed by the Freeze Ordinance, Plaintiff and its members is not permitted to notify or receive scheduled rent increases pursuant to their contracts and the local rent control law. Plaintiffs will never be permitted to collect any increase that is otherwise permitted due to this government action.

76. The Freeze Ordinance impairs Plaintiff's contractual right to the receive benefit of its contract with tenants and violates Article I of the United States Constitution and Article IV of the New Jersey Constitution.

77. As a result of these actions, Plaintiff and its members have been irreparably harmed and have suffered damage.

COUNT VI

TAKING WITHOUT JUST COMPENSATION

78. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

79. By adoption of the Freeze Ordinance, Plaintiff and its members have been deprived of their vested contractual and property rights without due process of law or adequate compensation in violation of the United States and New Jersey Constitutions.

80. Union City's action is a taking of property (contract rights, reasonable expectations) through an impermissible regulation (Freeze Ordinance) without compensation, and Union City must demonstrate that the enactment serves a legitimate state interest in order to be sustained.

81. Plaintiff's contractual right to obtain rents from its tenants and to serve notice of permissible rent increases pursuant to the requirements of local rent control ordinances is a contractual and property right held by Plaintiff and its members.

82. The Freeze Ordinance revokes this right without providing compensation to Plaintiff. The Freeze Ordinance includes no mechanism to compensate the Plaintiff's rent increase

revenue lost during its applicability.

83. The Freeze Ordinance substantially and improperly impairs the value of the rental properties and interferes with Plaintiff's investment-backed and contractual expectations without providing just compensation. Plaintiff and its members, through adoption of the Freeze Ordinance, have been substantially deprived of the beneficial use of their property without just compensation.

As a result of these action, Plaintiff and its members have been irreparably harmed and have suffered damage.

COUNT IV

RETROACTIVE APPLICATION

84. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

85. The Freeze Ordinance was specifically intended to apply retroactively to rents due and owing on March 1, 2020.

86. Pursuant to the RCO, Plaintiffs' members properly notified RCO tenants by January 31, 2020 of appropriate rent increases effective March 1, 2020.

87. The retroactive application of the Freeze Ordinance unconstitutionally interferes with Plaintiffs' vested right to RCO rent increases due and owing on March 1, 2020 from their RCO tenants and is manifestly unjust.

88. There is no legitimate governmental interest that warrants retroactively depriving Plaintiff of properly noticed RCO rents due and owing on March 1, 2020.

89. As a result of these Freeze Ordinance's unconstitutional retroactive application, Plaintiff and its members have been irreparably harmed and have suffered damage.

90. As a direct and proximate result of the Freeze Ordinance's impermissible retroactive effect it is null and void.

COUNT VII

PREEMPTION

91. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

92. The Eviction Freeze makes the failure to pay rent during the Covid-19 pandemic by Union City tenants an absolute defense to a summary dispossession action and deprives Plaintiffs of its statutory right to evict a tenant for non-payment of rent under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1.

93. The Eviction Freeze conflicts with the policies and operational effect of the Anti-Eviction Act because it creates a presumptive defense not enumerated in the Anti-Eviction Act.

94. The Anti-Eviction Act is expressly and impliedly intended to be exclusive in the field, and there is a need for uniformity with regard to the basis for and the defenses to a summary dispossession action.

95. The Anti-Eviction Act is so comprehensive and pervasive that it precludes the co-existence of the Eviction Freeze.

96. The Eviction Freeze stands as an obstacle to the accomplishment and the execution of the full purpose of the Anti-Eviction Act⁴.

97. The Eviction Freeze violates the Anti-Eviction Act and deprives Plaintiff of its statutory right to file a summary dispossession action under the Anti-Eviction for non-payment of rights caused Plaintiff immediate and irreparable harm and damages.

98. As a direct and proximate result of these defects in the Eviction Freeze, it is preempted by the Anti-Eviction Act and must be declared null and void.

⁴ **Exhibit G** annexed hereto summarizes the conflicts between state law and the Ordinance.

COUNT VII

VIOLATION OF NEW JERSEY CIVIL RIGHTS ACT

99. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

100. By adoption of the Freeze Ordinance and the Eviction Freeze, Union City has violated the New Jersey Civil Rights Act. N.J.S.A. 10:6-1, et seq. and the Plaintiffs substantive rights under law.

101. Plaintiff has been forced to institute this action to protect and enforce its substantive due process, equal protection, contractual and property rights granted to them under the constitutions of the State of New Jersey and the United States.

102. The New Jersey Civil Rights Act provides that :

- e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.
- f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

103. By adopting the Freeze Ordinance and the Eviction Freeze, Union City knew that acting in such a manner would prevent Plaintiff and its members from exercising its substantive rights and violated those substantive rights

104. Union City was acting under color of law, and is liable to Plaintiff and its members for a violation of the New Jersey Civil Rights Act.

105. As a result of Union City's actions, Plaintiff has been and will continue to be damaged.

WHEREFORE, Plaintiff and its members demand judgment against Defendants, jointly and severally, for following relief:

A. As to the Freeze Ordinance:

1. Temporarily and preliminarily enjoining Union City from further implementation and enforcement of the Freeze Ordinance;

2. Entering a *status quo* injunction that pending a final determination by the Court, Plaintiff and its members be permitted to provide required notices to tenants and to obtain rent increases permitted by local rent control ordinances and that in the event any increased rents are collected they will be segregated from the total rent paid and be held in an interest bearing account pending adjudication of this matter;

3. Entering a *status quo* injunction that pending a final determination by the Court, Union City is restrained and enjoined from retroactively applying the Freeze Ordinance to properly noticed rent increases due and owing March 1, 2020 and allowing Plaintiff and its members to collect these rent increases;

4. Declaring that the Freeze Ordinance is not supported by a rational basis, violates equal protection and is unconstitutional;

5. Declaring that Freeze Ordinance is void and that the Union City's actions are arbitrary, capricious and unreasonable and therefore unconstitutional;

6. Declaring that the Freeze Ordinance is an unconstitutional impairment of Plaintiff's and its members' right of contract;

7. Declaring that the Freeze Ordinance is an unconstitutional taking without just compensation;

8. Declaring that the Freeze Ordinance is impermissibly retroactive and;

9. Declaring the Freeze Ordinance void and of no purpose and effect;

10. Awarding compensatory damages pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.

11. Awarding all reasonable attorneys' fees and costs in accordance with the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; and

B. *As to the Eviction Freeze:*

1. Temporarily and preliminarily enjoining Union City from further implementation and enforcement of the Eviction Freeze;

2. Declaring the Eviction Freeze to be preempted by New Jersey's Anti-Eviction Act, N.J.S.A. 2A:18-61.1, void and of no purpose and effect.

3. Awarding compensatory damages pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.

4. Awarding all reasonable attorneys' fees and costs in accordance with the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, et seq.; and

5. Such other relief as the Court deems just and equitable.

BRACH EICHLER LLC

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: May 11, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Plaintiff designates Charles X. Gormally, Esq. as trial counsel.

BRACH EICHLER LLC

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: May 11, 2020

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that, pursuant to R. 4:5-1: (1) the within matter in controversy is not the subject of any other action pending in any other court or arbitration; (2) no other action or arbitration proceeding is contemplated; and (3) no other necessary party to be joined in the subject litigation is presently known.

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BRACH EICHLER LLC

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: May 11, 2020

CERTIFICATION PURSUANT TO R. 4:5-1(3)

In addition, I certify that confidential personal identifiers have been redacted from the documents now submitted to the Court and will be redacted from all documents submitted in the

future in accordance with R. 1:38-7(b).

BRACH EICHLER LLC

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

Dated: May 11, 2020

CERTIFICATION PURSUANT TO 4:69-4

Pursuant to R. 4:69-4, I hereby certify that all necessary transcripts of the local agency proceeding will be ordered as necessary.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment

BRACH EICHLER LLC

Attorneys for Plaintiff

By: s/Charles X. Gormally, Esq.
Charles X. Gormally, Esq.

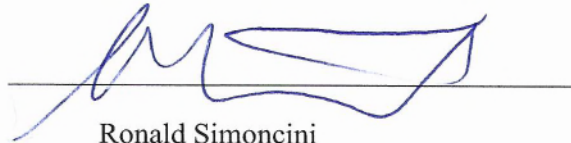
Dated: May 11, 2020

VERIFICATION OF COMPLAINT

The undersigned, a Director of Union City Property Housing Initiative, has read the allegations contained in the Verified Complaint and certify that those allegations are true.

I certify that each of the foregoing statements made by me are true. We understand that if any of the statements made are willfully false, I am subject to punishment.

Dated: May 10, 2020

A handwritten signature in blue ink, appearing to read 'R. Simoncini', is written over a horizontal line.

Ronald Simoncini

Director Union City Housing Initiative

EXHIBIT A

Chapter 334

RENT STABILIZATION

GENERAL REFERENCES

Fees — See Ch. 155.

Rental property — See Ch. 329.

Relocation assistance — See Ch. 323.

Income from pay phones — See Ch. 391, Art. II, § 391-11.

§ 334-1. Findings.

- A. The character of the City of Union City has changed over the years; the governing body has revised and amended the Rent Leveling Ordinance to reflect those changes;
- B. The original Rent Control Ordinance was enacted in response to a housing emergency crisis which existed in the early 1970s;
- C. Hudson County has lost \$1,000,000,000 in tax ratables since 1992 as a result of successful residential and commercial tax appeals. Since 1994, Union City has lost \$40,000,000 as a result of successful residential and commercial tax appeals;
- D. Housing conditions in the City have changed since the enactment of the original Rent Control Ordinance; and
- E. In light of the current economic conditions in the existing housing market in the City, it is no longer in the public interest to maintain rent control on all types of residential units.

§ 334-2. Applicability; exceptions.

- A. Applicability. The terms of this chapter apply to individual dwelling units within a building, including condominium or cooperative units in the process of being converted, or having been converted, rather than to an individual tenant occupying a dwelling unit. An agreement for occupancy of the dwelling unit shall not circumvent the application of this chapter by titling the agreement as other than a lease, such as, but not limited to a “use and occupancy agreement.” **[Amended 1-5-2016]**
- B. Exceptions. This chapter shall not apply to:
 - (1) Units in one-, two- and three-family buildings.
 - (2) Units in four- , five- and six-family buildings that are owner-occupied. Owners of four- , five- and six-family buildings, as part of their registration, must file an affidavit, stating that they reside in the building and comply with the regulations established by the Rent Stabilization Board, which regulations shall set forth criteria

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to establish proof of residency. The affidavit shall be in a form provided by the office of the Rent Board Administrator. The burden remains on the owner to demonstrate residency. **[Amended 3-1-2016]**

- (3) Motels, hotels and similar type building and buildings intended for transient use, floor space used strictly for commercial purposes in any type building, including state-licensed rooming houses. Dwelling units rented for the first time after the adoption of this chapter are exempt, and the initial rent may be determined by the landlord, but all subsequent rents shall be subject to the provisions of this chapter.
- (4) New construction, consistent with state law, shall be exempt from this chapter.
- C. Existing tenants; establishment of basic rent. Existing tenants will continue to be protected by rent control while they remain in their units. For these tenants, a landlord must still comply with the requirements of this chapter. All rents established by landlords and tenants on March 1, 1973, and any subsequent increase shall represent the base rent from which permitted increases are calculated.
- D. Tenure of rent stabilization. This chapter shall remain in effect until the Board of Commissioners determines, by ordinance, that rent control is no longer necessary in the City of Union City and that it is in the public interest to permit the unrestrained operation of the competitive rental market.

§ 334-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AVAILABLE FOR RENT TO TENANTS — A dwelling unit is fit for habitation as defined by the statutes, codes and ordinances in full force and effect in the City, and is occupied, or unoccupied and being offered for rent.

BOARD — The Rent Stabilization Board.

CODE COMPLIANCE — That the housing space and dwelling are free from all heat, hot water, elevator and all health, safety and fire code violations as well as free of all other violations of the chapter, the Property Maintenance Code and other applicable federal, state, county or local laws or regulations.

CONVERTER — The owner, or representative of the owner, of property containing dwelling units covered by this chapter, who proposes to or takes any action for the purpose of effecting a conversion of such property or dwelling units, from some other form of ownership into a cooperative or condominium form of ownership.

COOPERATIVE and COOPERATIVE CORPORATION — A cooperative housing association or corporation which entitles the holder of a

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membership interest therein to possess and occupy a unit of dwelling space owned and leased by such association or corporation.

DIVISION — The Division of Housing and Urban Renewal of the New Jersey State Department of Community Affairs.

DWELLING — Any building or structure, including land, cooperative apartments and condominium apartments, or trailer, or land used as a trailer park, rented or offered for rent to one or more tenants or family units. Furnished rooms are subject to the terms of this chapter notwithstanding the fact that furniture is provided by the landlord and/or rent is paid on a weekly or biweekly basis.

DWELLING UNIT — Any unit used for residential purposes, including both rental, cooperatively owned and condominium units.

EQUALIZED ASSESSED VALUATION — The value of the residential portion of real property, calculated by dividing the assessed value of the property for municipal tax purposes, by the equalization ratio published by the Director of the Division of Taxation of the State of New Jersey, and multiplying the result by the fraction of the square footage of the floor area of the building and the area of the adjacent lot used for residential purposes, including corridors, storage space, stairwells and other such uses required in residential space, over the total square footage of the floor area of the building and the area of the adjacent lot, with areas used in common being allocated according to the same proportion.

GROUPS or ASSOCIATIONS — Combinations of building units or tenants which shall be recognized and permitted to proceed jointly if the Board finds a sufficient common basis of interest, facts or related connection; but such representation shall be established by appropriate landlord, tenants or others with such direct interest in the premises. Persons without such direct interests shall not represent a landlord, tenants or others, nor shall the unauthorized practice of law or other profession be authorized or permitted.

HOUSING SPACE —

- A. That portion of a dwelling rented or offered for rent for living and dwelling purposes to one individual or family unit, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property.
- B. Includes a garage, carport or parking space, which garage, carport or parking space is included in the agreement for the rental of housing space.

JUST CAUSE FOR EVICTION — That the landlord recovered possession of a housing space or dwelling for one of the reasons outlined in N.J.S.A. 2A:18-61.1, as amended. Removal of a tenant due to a change in ownership is not permissible unless said removal is done in accordance with N.J.S.A. 2A:18-61.1.

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LANDLORD — As used in this chapter, the person who owns or purports to own any building, structure or complex of buildings or structures in which there is rented or offered for rent housing space for living or dwelling purposes under either a written or an oral lease, provided that this definition shall not include owner-occupied two- and three-family dwelling premises.

LIVING AREA — The amount of total rentable space applicable to any given housing space, measured either in terms of rooms or square footage.

MAINTENANCE COSTS — Maintenance costs include real estate taxes, utility expenses, expenses for repairs, upkeep and maintenance respecting a dwelling unit, but shall not include principal or interest payments on any blanket encumbrance or other mortgage or encumbrance.

MAJOR CAPITAL IMPROVEMENT — A permanent improvement that is reasonably expected to last more than three years. The improvement must benefit the dwelling and must be subject to an allowance for depreciation under federal income tax provisions, but the Rent Stabilization Board, taking all factors into consideration, will make the ultimate determination.

MONTHLY MAINTENANCE CHARGE — The annual maintenance costs divided by 12.

PERIODIC TENANT — All tenants, including monthly tenants, who do not have a written lease.

RENT INCREASE, DECREASE OR ADJUSTMENT — The notice forwarded by the landlord to the tenant, or by the tenant to the landlord, by letter or in any other form, setting forth the proposed amount of rent increase, rent decrease or other rent adjustment. Each such notice shall state in detail the reasons justifying or requiring the rent increase, rent decrease or other rent adjustment.

RENTAL STATEMENT — The statement which the landlord shall be required to sign and deliver to the tenant, when requested by the tenant, and vice versa, describing the housing space rented, the related services and equipment involved, whether such include the use of the basement, garage, clotheslines, washing utilities, heat, hot water, garbage removal, repairs, maintenance and the like, and the base rent and charge as of March 1, 1973, or other applicable date.

RESALE — Resale of a dwelling unit means any sale subsequent to the original sale thereof.

SECRETARY — The Rent Stabilization Board Secretary.

SERVICES — The provision of light, heat, hot water, maintenance, painting, elevator service, air conditioning, storm windows, screens, superintendent service and any other benefit, privilege or facility connected with the use or occupancy of any dwelling or housing space.

UNINHABITABLE BUILDING — A structure which is completely vacant and unfit for human habitation as defined by the statutes, codes and ordinances

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in full force and effect in the State of New Jersey, County of Hudson and City of Union City.

§ 334-4. Rent Stabilization Board.

- A. Established. The Rent Stabilization Board, consisting of five members as hereinafter established, is hereby continued in existence and maintained as the Rent Stabilization Board of Union City.
- B. Composition; terms.
 - (1) The Board shall consist of five members who shall be appointed by the Board of Commissioners by resolution adopted by a majority vote of the Commissioners. For reasons of continuity and in the best interests of the public the terms of the first members appointed pursuant to this subsection shall be staggered terms of one- , two- , three- , four- , and five-year term appointments.
 - (2) Thereafter the term of office of the members of the Board shall be for five years each. Each member shall serve without compensation, but each shall receive such expenses and per diem allowances as the Board of Commissioners, from time to time, may deem appropriate.
- C. Alternate members. In addition to the five members of the Rent Stabilization Board, the Board of Commissioners, as it deems necessary, may appoint two alternate members to the Rent Stabilization Board, by resolution adopted by a majority vote of the Commissioners. The term of an alternate member shall be for one year. If any vacancy should occur among the regular members, then the Board of Commissioners may appoint either of the alternate members to fill the unexpired term. An alternate member shall be entitled to sit with, and participate as a member, in any meeting of or hearing before the Board. An alternate member who has attended the full hearing or hearings on a specific matter may participate in, and may vote upon, any determination made during the absence or disqualification of any regular member.
- D. Disqualification of member. No member or alternate member of the Rent Stabilization Board shall be permitted to act on any matter in which that individual has, either directly or indirectly, any personal or financial interest.
- E. Powers of Board. The Rent Stabilization Board is hereby granted and shall have and exercise all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including, but not limited to, the following:
 - (1) To issue and promulgate such rules and regulations as it deems necessary to implement the purpose of this chapter, including, but not limited to, the use of subpoenas, which rules and regulations shall have the force of law until revised, repealed or amended, in its description, providing that such rules are filed with the City Clerk.

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- (2) To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
 - (3) To hold hearings and adjudicate applications from landlords for adjustments or additional rental, as herein provided.
 - (4) To hold hearings and adjudicate applications from tenants for adjustment or reduced rental, as herein provided.
 - (5) To approve and accept a settlement or other agreement on the subject matter of a dispute between a landlord and tenant.
 - (6) To require a landlord to produce for examination his/her books, records, tax returns, balance sheets, profit and loss statements and such other records as the Board may require in connection with any application, hearing, proceeding or purpose, as set forth herein.
 - (7) The Rent Stabilization Board, upon an application by a landlord or tenant or upon its own motion, may set a date for a hearing, consider proofs and grant, deny, modify or otherwise adjust all rentals, by increasing or decreasing same, and the Board may make such determinations as to conditions, services, equipment, terms and related matters pertaining to rentals and controlled premises as may be warranted within the intent and purview of this chapter and applicable state laws.
- F. Quorums. A quorum for hearing shall consist of three members or alternate members, and a majority shall be authorized to issue orders relating to the powers and functions of the Board.

§ 334-5. Board staff.**A. Rent Regulation Officer; duties.**

- (1) Position created. There is hereby created the position of Rent Regulation Officer in the Department of Revenue and Finance.
- (2) Qualifications. The Rent Regulation Officer shall be appointed by and under the direction of the Director of the Department of Revenue and Finance.
- (3) Duties. The duties of the Rent Regulation Officer shall be as follows:
 - (a) To obtain, keep and maintain all relevant records and other data and information.
 - (b) To supply information and assistance to landlords and tenants and to bring together tenants and landlords in formal conferences and suggest resolutions of conflicts between them in order to assist them in complying with the provisions of this chapter.

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- (c) To notify landlords that there is no record of compliance by the landlord with the provisions of this chapter.
 - (d) To remedy violations of this chapter by ordering rebates and increases and bring appropriate legal charges as provided by this chapter.
 - (e) To accept and process complaints from tenants of illegal rental increases and to investigate such complaints prior to any decision being rendered.
 - (f) To accept, process, review and investigate applications from landlords for rental increases or surcharges under the hardship increase or capital improvement recovery sections of this chapter.
 - (g) To coordinate and supervise all staff associated with the operation of this chapter.
 - (h) To attend all meetings of the Rent Stabilization Board.
 - (i) To perform such other duties as the Rent Stabilization Board may specifically direct and as allowed by this chapter.
 - (j) To process all complaints regarding the withholding of certain residential units from the rental housing market with the City and forward them to the Construction Code Official or his/her duly appointed designee, whose responsibility shall be to conduct an investigation in accordance with law. Upon completion of such investigation, a report shall be issued to the Rent Regulation Officer, who shall be authorized to issue a complaint in accordance with the above section.
 - (k) With respect to any application that the Rent Regulation Officer receives from a tenant for a legal rent calculation complaint pursuant to §§ 334-4 and 334-5 above, a tenant shall in no case be entitled to a rent rebate for an illegally collected rent which accrues between the date of the filing of the legal rent complaint and the date of the final determination, which shall not be computed as part of the three-year rebate limitation.
- (4) Compensation. The Rent Regulation Officer shall receive such compensation as established by the Board of Commissioners.
 - (5) Term. The term of the Rent Regulation Officer shall be one year and thereafter until a successor is chosen and qualifies.
 - (6) Determination. Any determination of the Rent Regulation Officer under this section or such duties as may be delegated to him/her by the Rent Stabilization Board, by regulation, will be rendered by the officer, in writing.

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(7) Appeal.

- (a) In the event an affected party wishes to appeal that determination, that party shall have 30 calendar days from the date of that decision to file a formal appeal of the determination with a fee as set forth in Chapter 155, Fees, of the Code of the City of Union City for each unit which is the subject of the appeal. The notice of appeal shall be forwarded to the Rent Leveling Office by ordinary and certified mail within that thirty-day period.
- (b) Upon receipt of the notice of appeal setting forth in detail the grounds for the appeal and the required fee, the matter shall be placed upon the Rent Stabilization Board agenda at the earliest convenient date for determination. During the pendency of the appeal, the rent for the subject unit shall be the rent as established by the Rent Regulation Officer.

B. Assistant Rent Regulation Officer.

- (1) Position created. There is hereby created the position of Assistant Rent Regulation Officer in the Department of Revenue and Finance.
- (2) Qualifications. The Assistant Rent Regulation Officer shall be appointed by and under the direction of the Director of the Department of Revenue and Finance.
- (3) Duties. The duties of the Assistant Rent Regulation Officer shall be to assist the Rent Regulation Officer in any and all matters which may be required of him/her or delegated to him/her by the Rent Regulation Officer, including those duties performed by the Rent Regulation Officer.

C. Bilingual Principal Account Clerk/Typist, English and Spanish.

- (1) Position created. There is hereby created the office or position of Bilingual Principal Account Clerk/Typist, English and Spanish, in the Department of Revenue and Finance.
- (2) Appointment and salary. The appointment of the Bilingual Principal Account Clerk/Typist, English and Spanish, shall be made by the Director of the Department of Revenue and Finance. The person so appointed shall be under the direction of the Director of the Department of Revenue and Finance. The salary for this position shall be as set forth by ordinance.
- (3) Qualifications. The qualifications of the Bilingual Principal Account Clerk/Typist, English and Spanish, shall be as follows:
 - (a) Have the ability to communicate in both English and Spanish and be able to type reasonably well.

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- (b) Have been a resident of the City for at least one year prior to the date of appointment.
- (4) Duties. The duties of the Bilingual Principal Account Clerk/Typist, English and Spanish, shall be:
 - (a) To receive and categorize rent inquiries from tenants and landlords.
 - (b) To prepare an agenda for Rent Stabilization Board meetings.
 - (c) To schedule Rent Stabilization Board meetings and forward notification of the dates and times of the meetings to the appointed members of the Board and the Board's attorney.
 - (d) To prepare and distribute legally required notification of the meetings, such as newspaper advertisements, and the posting on designated buildings involved in rent matters to be reviewed by the Board.
 - (e) To calculate the proposed rent increases or reductions approved by the Board.
 - (f) To maintain files on all registered buildings covered under the present Rent Stabilization Ordinance.
 - (g) To assist tenants and landlords on the method and categories for which rent increases or reductions may be applied for and coordinate such request with the Rent Stabilization Board attorney.
 - (h) To interpret the provisions of the present Rent Stabilization Ordinance with the aid and assistance of the Rent Stabilization Board attorney.

§ 334-6. Professional services.

- A. Retention of professional services. In the event the Rent Stabilization Board determines that a landlord or tenant's application for relief contains calculations of a complex nature, then the Board, in the interest of fairness and efficiency, may determine that the services of professional experts are required to assist the Board in evaluating and processing the application.
- B. Estimate of fee. Should the Board determine that professional assistance is required, then the Board shall forthwith send a copy of the application and supporting documents to any professional expert retained to assist the Board in evaluating and processing the application. Within five days of receipt thereof, the professional expert shall submit to the Board and to the applicant an estimate of funds necessary to undertake the professional services to be rendered.

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- C. Escrow funds. The applicant shall forthwith deposit such funds in an escrow account maintained by the City. The professional expert 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 40A:5-18 and the ordinances of the City of Union City. The professional expert, at the time of submission of any such voucher, shall forward a copy of same to the applicant.
- D. Appeal of fee. In the event that the applicant questions the reasonableness of any such voucher, the applicant may make written protest of such voucher to the Board. In no event shall the Board authorize the payment of any voucher submitted pursuant to this section sooner than 10 days after its submission. Any of the aforesaid moneys which are left in the escrow account upon completion of the application shall be returned to the applicant after the Board reaches its decision. Should additional funds be required after the original funds are exhausted, such funds as shall be necessary in the judgment of the Board shall be paid by the applicant to the City and placed in the escrow account.
- E. Action upon application. The Board shall take no formal action on any application unless and until all escrow funds have been deposited with the City, and any time limitations set forth in this chapter shall be extended until all such escrow funds are deposited with the City.

§ 334-7. Hearings.

- A. Opportunity to be heard. All interested persons shall be given the opportunity to be heard, with or without counsel, except that the Board, in its discretion, may limit repetitious testimony or ask that a spokesperson for the tenants be appointed.
- B. The Rent Regulation Officer shall advise the appealing party of the date of the initial hearing on an appeal of his or her determination. The appealing party shall serve notice of the hearing date to the nonappealing party by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing.
- C. Oral decision by Board. In the event the Board renders its decision orally, immediately following the hearing the landlord shall notify the tenants of the Board's decision if that decision affects the rent or term of any tenancy. The notice shall be by regular and certified mail, return receipt requested. Within 30 days thereof, the landlord shall provide the Board with a copy of any notice served upon any tenant. The Rent Stabilization Board shall not be required to render its decision in writing unless requested to by the landlord within 30 days of the hearing.
- D. Reserved decision. In the event the Board reserves decision, the Board shall render a written decision within 45 days of the hearing unless the

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Board, in its discretion, determines that an additional hearing is necessary.

- E. Additional hearings. If an additional hearing is necessary, the Board shall so notify the landlord within 20 days of the initial hearing. A copy of the notice of hearing shall be posted conspicuously in the lobby of the building. The landlord shall serve notice of the hearing date to the tenant, by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing.

§ 334-8. Appeals.

Either the landlord or a tenant may appeal the decision of the Rent Stabilization Board. All decisions of the Board are final. Any landlord or tenant wishing to appeal the decisions of the Board may do so in the Superior Court of New Jersey pursuant to its rules and procedures.

§ 334-9. Tenants' Advocacy Attorney.

- A. Established; appointment.

- (1) There is hereby established within the Department of Public Affairs the Office of Tenants' Advocacy Attorney. The Tenants' Advocacy Attorney shall be appointed by the governing body for the term of one year or until a successor is appointed and qualified.
- (2) The Attorney shall be a duly licensed attorney at law and shall be compensated by the Mayor and Board of Commissioners.

- B. Duties. The Tenants' Advocacy Attorney, among other duties, shall:

- (1) Provide and distribute information to tenants regarding federal, state and municipal laws affecting the rights and duties of landlords and tenants.
- (2) Distribute information specifically dealing with tenants' legal rights.
- (3) Write and publish information, pamphlets, leaflets or booklets providing information on tenant/landlord rights and duties.
- (4) Operate a hotline to provide advice to tenants.
- (5) Promote, sponsor and organize tenants rights workshops to disseminate information between tenants and tenant groups in organizing to protect tenants' rights.
- (6) Receive and forward to appropriate agencies of the City complaints from tenants relating to the administrative action or inaction of any department.
- (7) Give free advice and assistance to apartment dwellers in their dealings with the City Rent Stabilization Board and/or before any

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court or administrative tribunal as may be assigned by the appropriate official of the City.

§ 334-10. Permitted increases.

- A. Rent control established. All units, unless otherwise specifically exempted, shall be subject to the provisions of this chapter. Any and all increases not in accordance with the provisions of this chapter shall be refunded or credited to the tenant.
- B. Annual increases for covered units.
 - (1) The maximum permissible annual rent increase is 3.5%.
 - (2) Exception for qualified senior tenants. The maximum annual permissible rent increase for a senior tenant who satisfies each of the following requirements is 2%:
 - (a) Sixty-five years of age or older; and
 - (b) Eligible to receive benefits under the Pharmaceutical Assistance to the Aged and Disabled (PAAD);¹ and
 - (c) Whose annual income combined with the annual income of all other occupants of the unit does not exceed the combined annual income of an applicant and spouse to be eligible for PAAD except for a caregiver employed to provide care or services to the senior tenant.
 - (3) A landlord may apply for a hardship increase under Subsection C of this section in the event that the maximum annual rent increase for covered units does not allow the landlord a reasonable return on his investment.
- C. Hardship increase. This subsection applies where the annual operating expenses for any one building exceed at least 75% of the total annual gross income. Operating expenses shall include all reasonable expenses necessary to carry out the proper operation and maintenance of the property, including property taxes allocated to the year. Operating expenses shall exclude mortgage amortization, mortgage interest, interest or costs of financing, attorney's, expert's or engineer's fees related to the filing of hardship or capital improvement applications, depreciation or expenditures for capital improvements. In reviewing operating expenses, the Board shall consider normal and recurring expenses and may make adjustments for extraordinarily high or low operating expenses in any given year. Annual gross income shall include all income realized in connection with the operation of the premises including rentals from all residential and commercial units, as well as fees collected for parking, rental from machines, concessions

1. Note: Chapter 83, Pharmaceutical Assistance to the Aged, New Jersey Administrative Code 8:83-1.1 et seq.

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and garages or other services. As to cooperatives and condominiums, the rent charges shall be at least equivalent to the maintenance costs charged by the association. This figure becomes the new base rent and may be increased by 10% after the first year.

- (1) In considering a hardship application, the Board shall give due consideration to any and all relevant factors, including, but not limited to the following:
 - (a) The level and quality of service rendered by the landlord in maintaining and operating the building.
 - (b) The presence or absence of reasonable, efficient and economic management. Total management fees may not exceed 6%.
- (2) An applicant for hardship relief shall submit to the Board 10 copies of the following:
 - (a) A statement for three prior twelve-month periods of gross rentals and actual expenses incurred for that time in connection with the operation of the building to be adjusted to reflect the actual period of time the applicant has owned the building if owned for less than three years.
 - (b) A list of all present owners of the property.
- (3) A landlord shall not be entitled to apply for a hardship increase until (s)he has owned the property for at least 18 months.
- (4) The Board's decision shall become effective after full 30 days' statutory notice to tenants.
- (5) The Board shall promulgate rules, regulations and necessary forms to be utilized, notice to tenants of hardship applications and notice to tenants and landlords regarding hearings and general procedure. Those rules and regulations shall have the force of the law and shall be filed with the City Clerk.
- (6) With the filing of a hardship increase application, the landlord shall simultaneously deliver notice thereof to each affected tenant. At a minimum, a landlord seeking a hardship increase shall notify tenants, in writing, by regular and certified mail, return receipt requested, and provide tenants with a summary of the application and state the increase sought. Any tenant who receives such notice shall have 30 days to file any written comments with the Board regarding the application.
- (7) Within 30 days of receipt of a complete application, the Board shall notify the landlord, in writing, of the time and place for the hearing. The hearing shall be held not more than 90 days nor less than 30 days, from the date of receipt of a complete application. The landlord shall immediately, upon receipt of such notification of hearing, serve such notice upon each affected tenant. The landlord

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shall serve notice of the hearing date to the tenant by regular and certified mail, return receipt requested, at least 20 days in advance of the hearing. Prior to any hearing on such application, the landlord shall present the Board with proof of service of notice to affected tenant.

- (8) No hardship application shall be considered or granted by the Board for a period of time more than one year after the expiration of applicant's last tax reporting year.
- (9) The Board shall render a decision on a hardship application within 45 days of the conclusion of the hearing before the Board. Failure of the Board to render its decision within the time period, absent consent of the landlord, shall result in the application being deemed granted.
- (10) A hardship increase shall become part of the base rent.

D. Capital improvement surcharge.

- (1) Application; notice.
 - (a) A landlord may apply for a capital improvement surcharge or for a surcharge for major additional services not formerly provided to the tenants of units of housing space in the affected dwelling. The landlord shall make written application to the Board upon forms adopted by the Board for these purposes. Simultaneously with filing of a capital improvement application, the landlord shall serve notice upon each affected tenant. The landlord shall submit with its application a letter of code compliance from the Union City Building Department.
 - (b) The Board shall promulgate rules, regulations, forms to be utilized and notice procedures to the tenant. At a minimum, a landlord seeking a capital improvement surcharge shall notify tenants, in writing, by certified mail and provide tenants with a summary of the application and state the increase sought.
- (2) Nature and cost of improvement. A landlord shall submit a detailed contract or proposal and proof of payment as to each improvement.
- (3) Amortization of cost. The cost for a capital improvement shall be amortized over the useful life of such capital improvement as determined by the Rent Stabilization Board and the Rent Stabilization Board's accountant.
- (4) Notice of hearing. Within 30 days from receipt of all required application forms, the Board shall notify the landlord, in writing, of the time and place of the hearing. The landlord shall immediately, upon receipt of such notification of hearing, serve notice thereof upon each affected tenant. Prior to any hearing on this application,

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the landlord shall present the Board with proof of service of notice of the hearing upon each affected tenant.

- (5) Time for application. No capital improvement application shall be considered or granted by the Board for work completed more than one year before the date of filing of a request for a letter of code compliance from the Building Department.
- (6) Finding of improvement; apportionment of surcharge. Upon determination that the proposed improvement is a capital improvement that the proposed service is a major additional service not formerly provided to the affected tenant or tenants, the Board may grant a surcharge based upon the cost of the capital improvement or major addition service. These costs shall include reasonable interest thereon. Any surcharge granted by the Board shall be fairly apportioned among the affected units based on the size of the units and the benefit of the improvement by each unit. If any such surcharge is granted, it shall not be considered a part of base rent and shall not be included in calculating the rent increases allowable under § 334-2.
- (7) Notice of decision. The Board shall notify the landlord, in writing, of its determination under this subsection, and the landlord shall forthwith deliver a copy of the determination by certified mail to each affected tenant, to become effective upon thirty-day notice.
- (8) Protected tenancy status.
 - (a) No capital improvement surcharge shall be imposed upon any tenant who has been granted protected tenant status pursuant to N.J.S.A. 2A:18-61.22 or 2A:18-61.40.
 - (b) Any capital improvement surcharge awarded within two years prior to the date of notice to the municipal administrative officer required by N.J.S.A. 2A:18-61.27 or 2A:18-40 shall immediately become null and void upon the grant of protected tenancy status. The protected tenant's rent shall be recalculated and reduced accordingly; however, no rebate of previously paid surcharge shall be granted.
- (9) Compliance with codes. Permits, as required by law, are to be secured from all agencies having control and jurisdiction for alterations, repairs, replacements, extensions and new buildings. All work done shall adhere to appropriate code standards and shall be inspected by any agency having control and jurisdiction, and their approval obtained. Copies of such permits shall accompany the capital improvement application.²

2. Editor's Note: Original Section 14-10.5, Tax Surcharges; Section 14-10.6, Sewerage Utility Pass Along Charges; and Section 14-10.7, Agreements for Additional Services, were repealed 4-5-2005.

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- E. Maximum annual increase. The maximum annual increase from all sources listed under this § 334-10, Permitted increases, shall not exceed 15% unless an efficient landlord cannot meet operation expenses or make a fair return on his/her investment. A tenant shall not receive an aggregate increase from all sources of more than 15% any twelve-month period.
- F. Compliance with housing and building codes. Any landlord seeking an increase under this section must file, with its application, a letter from the Building Department that the building and grounds are in code compliance with City building and housing codes.
- G. Applicability of Consumer Fraud Act.
 - (1) In addition to the rights conferred on a tenant herein, a tenant may seek redress against a landlord for reasonable attorneys' fees and damages pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.
 - (2) The Consumer Fraud Act shall act as an enforcement mechanism to an individual tenant who may seek redress by an award of attorneys' fees for a successful suit against a landlord for overcharging of rent. Therefore, tenants who successfully bring an action against a landlord for overcharging of rent may be awarded attorneys' fees pursuant to the Consumer Fraud Act.

§ 334-11. (Reserved)³

§ 334-12. Rental dwelling rehabilitation program.

- A. A landlord of any dwelling in full compliance with this chapter that is participating in a complete rehabilitation program of the United States Department of Housing and Urban Development (HUD) shall be permitted, upon approval by the Rent Stabilization Board, to place a minimum of 20% of the units in the dwelling into the rental rehabilitation program. The base rent and all subsequent increases for all units that are placed in the rental rehabilitation program shall be the rent or increase allowed by the program of the Department of Housing and Urban Development in which the landlord is enrolled.
- B. Prerehabilitation application.
 - (1) A prerehabilitation application shall be filed prior to the commencement of the work which shall contain the following information and any other information deemed relevant by the Rent Stabilization Board:
 - (a) Photographs of each room of the apartment unit within the dwelling which that is vacant and is the subject of the

3. Editor's Note: Former § 344-11, Rental unit renovation allowance, as amended, was repealed 6-17-2014.

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application. A dwelling will only be eligible for the rental rehabilitation program if it is at least 50% vacant at the time the preapplication is filed. Additionally, the application must provide satisfactory proof that the landlord will relocate the tenants that are living in the building, at the landlord's cost, to a suitable apartment during the rehabilitation, and will return the tenants to the dwelling, at the landlord's cost, upon the conclusion of the rehabilitation. A suitable apartment shall include an apartment of a similar size, including number of bedrooms, and at the same rent, during the rehabilitation time period.

- (b) The preapplication shall explain the need for rehabilitation, spelling out in detail the work that the landlord intends to perform, the estimated costs.
- (c) The preapplication shall also include proof of enrollment and acceptance by HUD, or the governmental entity selected by HUD, of the rehabilitation program the landlord is receiving assistance by way of a grant, subsidized loan, or insured mortgage, for the complete rehabilitation of the dwelling.
- (d) The Rent Regulation Officer in his discretion may require an inspection of the dwelling prior to the commencement of the work by the Community Development Agency or the Building Department of Union City. The Rent Regulation Officer may inquire as to the circumstances under which any unit became vacant and reject the application if the Officer finds that the landlord was engaged in harassing conduct in violation of § 334-13 of this chapter of any tenant for the three-year period prior to the filing of the preapplication. The prerehabilitation inspection and determination by the Rent Regulation Officer shall ensure that the proposed renovations will meet the criteria set forth in Subsection D. Cosmetic and ordinary repair-type work shall not generally qualify for approval under this section. Upon approval of the prerehabilitation application, the landlord may proceed with the rehabilitation and may file a final application for approval.

C. Final application procedure.

- (1) Upon completion of the rehabilitation of the dwelling, the landlord shall file a final application for approval by the Rent Stabilization Board and acceptance into the rental dwelling rehabilitation program. The application shall contain the following information and any other information deemed relevant by the Rent Stabilization Board:
 - (a) A copy of the rent for each unit in the dwelling that has been approved by HUD or the governmental agency administering the rehabilitation program for HUD.

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- (b) A series of photographs which show the condition of the dwelling after the improvements.
 - (c) A copy of all bills, building permits, invoices and canceled checks associated with the renovation work.
 - (d) A copy of the certificate of approval issued by the Building Department.
 - (e) Documents to be filed.
 - [1] The landlord shall file with its final application a certificate of code compliance issued by the Building Department. The Building Department shall inspect the subject apartment and the common areas to certify to the Rent Stabilization Board that the apartments in the dwelling to be rented and the common areas and facade are in compliance with the appropriate housing inspection codes and all applicable federal, state, county or local laws or regulations.
 - [2] The landlord shall also file with its application a inspection performed by the Community Development Agency after work has been completed which will certify that the proposed work set forth in the prerrehabilitation application have been performed in a good and workmanlike manner.
 - (f) The landlord shall file a certificate with the final application stating that he has agreed to maintain and preserve the dwelling as rental housing for a period of five years from the commencement of any rental increase granted pursuant to this section and has, prior to the application being submitted hereunder, withdrawn, canceled, dismissed, vacated or otherwise repudiated all notices to quit, dispossess actions, and judgments pursuant to N.J.S.A. 2A:18-61.1(k) and has further agreed not to commence any actions under N.J.S.A. 2A:18-61.1(k).
 - (g) The application for approval shall be filed by the landlord with the Rent Stabilization Board not later than 20 days of the tenant taking occupancy of the apartment.
- D. Criteria for reviewing application. In reviewing said application, the Rent Stabilization Board shall consider but not be limited to the following factors:
- (1) Whether the landlord has made a complete rehabilitation of the dwelling which has improved the living conditions of the tenants living in the dwelling. The requirements of HUD or the governmental entity administering the rehabilitation for HUD shall

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be considered by the Board in determining the appropriateness of the rehabilitation;

- (2) The amount of the increase, with the general policy that no increase should be approved which is unconscionable in relation to the prior approved base rent. The rent that is allowed by HUD or the governmental entity administering the rehabilitation program shall be considered an acceptable new base rent, provided that the landlord has provided proof to the Board that the landlord has complied with all the requirements of this chapter and HUD in obtaining the new rent, including notifications to the tenant. Upon proof that the landlord is in compliance with the regulations of the governmental rehabilitation program and this chapter, the landlord shall be required to use the governmental approved rent as the base rent, and for all subsequent rent increases the landlord shall be required to use the rent increase approved by the governmental entity. In the event a rent increase is allowed by the governmental entity and the landlord fails to notify the tenants of the increase, the landlord shall be considered to have waived the rent increase for the year in question. If the governmental rehabilitation program in question does not govern future rental increases and only establishes the initial base rent after a complete rehabilitation of a dwelling has occurred, then all increases shall be governed by § 334-10 of this chapter;
 - (3) In the event the governmental rehabilitation program in which the landlord is enrolled contains tenant qualification guidelines and the tenant does not qualify pursuant to these regulations, the initial base rent after the complete rehabilitation has occurred will be the maximum base rent established by the governmental program, and each subsequent increase shall be governed by § 334-10 of this chapter; and
 - (4) That the landlord or its agents, employees or contractors have not engaged in any harassment, provocation, retaliation of the previous tenants of the subject unit or the new tenant to occupy the renovated space and other conduct more specifically set forth in § 334-13 of the chapter.
- E. Notification procedures. The landlord shall serve a copy of the final application on each tenant by personal service or certified mail, return receipt requested, at least 15 days before any hearing thereon, and the landlord shall be required to file a proof of service with the Rent Stabilization Board. Upon receipt of a complete application and proof of service of same upon the tenant, the Rent Regulation Officer shall schedule a hearing before the Rent Stabilization Board, and the landlord shall serve upon each tenant, personally or by certified mail, return receipt requested, at least 10 days in advance of said hearings, a second notice advising the tenants that the final application for approval previously served upon the tenant would be heard by the

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Board on that date. Said notice shall also advise the tenants that any objection to the proposed rental agreement will be heard on that date.

- F. Filing fees. The prerrehabilitation application shall be accompanied by the fees as set forth in Chapter 155, Fees. Inspection fees required under this section performed by the Building Department shall be billed by the Building Department.

§ 334-13. Anti-harassment provisions.

- A. Harassment; reduction of services prohibited. Any tenants desiring to remain in their units may do so without provocation or retaliation from landlords. For the purposes of this section, harassment of tenants shall mean conduct, whether direct or indirect, committed intentionally or negligently by a landlord, or anyone acting on his/her behalf. These actions include, but are not limited to:
- (1) A reduction in the quality of basic services necessary to the health safety and welfare of the tenants.
 - (2) Heat, hot water.
 - (3) Adequate security.
 - (4) Intermittent failures.
 - (5) Bothersome telephone calls or letters.
 - (6) Frivolous eviction threats or legal proceedings.
 - (7) Actions which would cause a reasonable person of like age and physical condition of a tenant to fear for his/her life, limb, property or home.
- B. Investigation/prosecution of harassment complaints. The City shall assign one of its municipal prosecutors to investigate and/or prosecute complaints involving harassment filed by either tenants or landlords.

§ 334-14. Certificates of continuing occupancy.

- A. Required. No person shall occupy or use any residential unit after such unit has been vacated or sold or where there has been a change in occupancy until the landlord has applied for and secured a certificate of continuing occupancy. Upon receipt by the enforcement officer of an application for a certificate of continuing occupancy and payment of the required fee, an inspection of the premises shall take place. The inspection shall ensure compliance with all applicable building, health, safety and fire codes, regulations, ordinances and statutes of the City of Union City.
- B. Criteria and standards for certificates of occupancy.

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- (1) Criteria for buildings with more than 50 units. The inspection shall focus on the habitability of the apartment itself and only health and safety standards will be applied to the common areas.
 - (2) Criteria in cooperatives and condominiums of more than 100 units. An inspection shall be conducted of the premises to ensure compliance with all applicable building, health, safety and fire codes, regulations, ordinances and statutes of the City of Union City. As to common area inspections, the inspection shall focus on the habitability of the apartment itself. The health and safety standard shall be applied to the common areas. Rent freezes shall only be applied to those violations related to fire and safety code violations. However, rent freezes shall not be applied to common area violations except for those endangering the health and safety of the occupants such as uninterrupted elevator service, emergency lighting, fire and smoke alarms and other items outlined in all applicable federal, state, county or local laws or regulations. However, all other remedies promulgated by state and municipal statutes, rules and regulations or those adopted by the Board of Directors remain in place.
- C. Failure to obtain certificate. A landlord who fails to obtain a certificate of continuing occupancy shall be subject to any one or a combination of the penalties listed in § 334-21. Any fines shall be payable to the City of Union City.
 - D. Upon receipt by the enforcement officer of an application for a certificate of continuing occupancy and fee, an inspection of the premises shall take place. The inspection shall ensure compliance with all applicable building, health, safety and fire codes, regulations, ordinances and statutes of the City of Union City.

§ 334-15. Maintenance of services.

- A. Continuation of services. During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space and dwelling as required under the lease or otherwise mandated by law.
- B. Decline in services. When services, care or maintenance, or when the standards of service, maintenance, furniture, furnishings and equipment in the housing space or dwelling are not substantially maintained as specified above, any tenant may apply to the Board for a decrease in rent. A copy of such application shall be served upon the landlord setting forth, in detail, the reasons for the application.
- C. Applicability to parking spaces. The provisions of this section shall also apply to any on-site parking or garage space occupied by the tenant in conjunction with rental and occupancy of housing space. If it is determined, after a hearing of the Board, as described in § 334-15, that

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the parking was a previously provided service, then the rent shall be decreased by 25% of the current monthly rent. **[Amended 1-6-2015]**

- D. Hearing notice procedure. Upon receipt of the application by the Rent Regulation Officer, the Rent Regulation Officer shall schedule a hearing on the application and shall notify both landlord and tenant of the date, time and place of the hearing.
- E. Maintenance of services. During a tenant's occupancy of a unit in which the landlord provides utilities to the units of the building, the landlord will be prohibited from constructing a separate apartment unit meter and billing for any utility service previously provided by the landlord as part of the services to the building, including but not limited to heat, hot water, water and sewerage.
- F. Violation and penalties. A first violation of § 334-15E of this chapter shall be punishable by a fine of not more than \$2,000 for each unit in violation. Subsequent violations shall be punishable by a fine of not less than \$2,000 for each unit. Each day during which an owner is in violation of § 334-15E of this chapter shall constitute a separate violation.

§ 334-16. Registration requirement.

- A. Registration information; fee.
 - (1) All landlords of units governed by this chapter must file a registration statement with the Board in a manner and at a time prescribed by the Board. Any such statement shall include at least the following:
 - (a) The name of each tenant and the apartment number.
 - (b) The number of rooms for each apartment.
 - (c) The current rent for each apartment.
 - (d) The amount of the last increase for each apartment unit.
 - (e) The date of the last increase for each apartment unit.
 - (f) If applicable, the services provided to the building and the telephone number.
 - (g) If applicable, the superintendent's name, address and telephone number.
 - (2) This annual registration statement shall be filed with the Rent Regulation Officer once every 12 months on the anniversary date that the landlord may file for a permitted increase pursuant to § 334-10B. The Board shall establish a schedule of fees for the filing of said registration statement. Failure to register or the filing of

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false registrations shall be punishable pursuant to § 334-21 of this chapter.

- (3) A landlord who shall fail to file the required annual rent registration statement shall not be entitled to file any application for a permitted increase under § 334-10 of this chapter. In addition, in the event a landlord or a prior property owner for the same property has not filed an annual registration statement the Rent Regulation Officer in determining a legal rent calculation and the Board upon any review of that determination shall be permitted to disallow any increase related to a rise in the consumer price index pursuant to § 334-10B for that year that the landlord or prior landlord failed to file a rent registration statement.
 - (4) This section shall be applied to any rent calculation made by the Rent Regulation Officer or the Rent Stabilization Board to any determination that comes before it subsequent to the adoption of this section. In addition, the Officer and the Board shall also have the authority to disallow a rent increase a landlord is otherwise entitled to under this chapter for any year that a landlord has failed to file a rent registration statement prior to the effective date of the adoption of this section.
- B. Public document. For the purpose of disclosure, the registration statement shall be considered a public document which shall be made available for inspection pursuant to reasonable regulations established by the City Clerk.

§ 334-17. Compliance with housing and building codes.

- A. Compliance required prior to granting increase.
- (1) Any landlord who seeks a hardship or major capital improvement increase under § 334-10 shall file with an application a certification from the office of the Building Department to the effect that the building and grounds are in substantial compliance with City building and housing codes, which certification shall be based on an application made by the landlord to the Building Department not more than one month before the filing of his/her application with the Board. No such increase may be granted until such certification had been filed and, if a tenant contests the accuracy of such certification, until the Board has determined that there is substantial compliance.
 - (2) The Board shall deny the application until there has been such compliance.
- B. Assistance of Board in obtaining certificate of code compliance. Whenever a party who is seeking a certificate regarding code compliance from the office of the Building Department notifies the Board that the party seeks the assistance of the Board in expediting

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that Department's inspection, then the Board shall utilize its best efforts to have the office of the Building Department expedite such inspection. Nothing contained in this section shall prevent the Rent Stabilization Board from considering testimony by the landlord and tenants as to the condition of the property.

C. Tenant's right to return to premises rehabilitated after a fire.

- (1) Repair of fire-damaged building. Whenever any building or buildings which contain residential units leased to tenants shall be injured or damaged by fire, the landlord shall repair same as speedily as possible.
- (2) Tenant's right to return. In the event, as the result of injury or damage to the residential leased premises as a result of fire, a tenant is displaced, the tenant who is displaced shall have the right to return to his/her unit as soon as the building is in complete repair and has been approved for occupancy by the Construction Code Official of the City pursuant to the usual procedures for occupancy under applicable law.
- (3) Rent.
 - (a) During the period of time that the tenant is displaced from the building, the tenant shall have no obligation to pay rent for his/her unit.
 - (b) In the event that the residential building is subject to rent stabilization, the tenant shall return to his/her unit upon its complete repair at the legal rent existing at the time of his/her vacation of the unit.
- (4) Exception. The above provisions, which must be liberally construed in favor of tenants, shall not apply to any tenant whose fault caused the fire which resulted in the displacement of tenants.
- (5) Violations and penalties.
 - (a) Any person found guilty of violating any part of this subsection shall be subject to a penalty existing of a fine not exceeding \$1,000 or imprisonment not exceeding 90 days, or both, subject to the discretion of a court of competent jurisdiction.
 - (b) In the event of any continuing violation, which shall include each day a landlord prevents a former tenant from reoccupying the premises after those premises have been repaired and are ready for occupancy, each day shall constitute a separate offense for the purposes of the imposition of a fine and/or imprisonment.

D. Tenant's right to return to premises after abatement of UCC and Building Code violations.

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- (1) Abatement of UCC and Building Code violations. Whenever any building or buildings which contain residential units leased to tenants shall require the completion of work in order to abate UCC and/or Building Code violations, the landlord shall repair same as speedily as possible.
- (2) Tenant's right to return. In the event, as the result of the need to abate UCC and/or Building Code violations, a tenant is displaced, the tenant who is displaced shall have the right to return to his/her unit as soon as the building is in complete repair and has been approved for occupancy by the Construction Code Official of the City pursuant to the usual procedures for occupancy under applicable law.
- (3) Rent. During the period of time that the tenant is displaced from the building pursuant to this subsection, the provisions of § 334-17C(3)(a) and (b) herein shall apply.
- (4) Exception. The above provisions, which must be liberally construed in favor of tenants, shall not apply to any tenant whose fault caused the need for the completion of work to abate UCC and/or Building Code violations which resulted in the displacement of tenants.
- (5) Violations and penalties. The provisions of § 334-17C(5)(a) and (b) herein shall apply to violations of this subsection.

§ 334-18. Fees.

There is hereby established a schedule of fees for applications to the Rent Stabilization Board, which fees shall be as set forth in Chapter 155, Fees, and payable to the City of Union City.

§ 334-19. Alternate service of notice.

Personal service or service by certified mail that is either refused or uncalled for may be remailed by ordinary mail and shall be effective as though personal service or notice by certified mail had been accepted.

§ 334-20. Anti-warehousing rules and regulations.**A. Obligation to register vacant apartments.**

- (1) Owners of multifamily structures of five or more units shall report any vacancy or unrented apartment to the Rent Stabilization Board office if the vacancy or nonrental continues for 90 continuous days.
- (2) Owners shall report the rental of the unit to the Rent Stabilization Board office within 90 days of the date of the new rental. The rental report shall include a copy of the inspection approval certificate issued by the Union City Community Development Office, address of building, date of rental, rent charged, name of new tenant, date of move-in by the new tenant.

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- B. Exempt structure or structure or units. The following are exempt from the provisions of this chapter:
- (1) Units in owner-occupied structures where there are six units or fewer and one of the units is owner-occupied.
 - (2) Units in newly constructed buildings which have complied with N.J.S.A. 2A:42-84.2.
 - (3) Units in hotels or motels that have been duly licensed by the City and the State of New Jersey.
 - (4) When owner has filed for and been preapproved for a rental unit restoration allowance (RURA).
- C. Requirements. All such units shall be rented and occupied by a tenant within 90 days after the end of the preceding tenancy, which shall be defined as the last day of occupancy by the preceding tenant(s), except where an extension has been granted by the Rent Stabilization Board under the provisions of § 334-20D(4) below, in which event the unit shall be rented and occupied within the time period specified in the extension. Failure to comply with the requirements of this Subsection C shall be considered a violation of this section and subject the owner to the penalties set forth herein.
- D. Extension of time period.
- (1) An owner may apply for an extension of the time period set forth in § 334-20C where the condition of the structure or unit or other special circumstances make rental within such time period impossible. In order to obtain an extension, the owner must submit an application in writing to the Rent Stabilization Board within 90 days or less from the date the preceding tenancy ended, setting forth with specificity:
 - (a) The reasons that the structure or unit cannot be rented within such time period;
 - (b) The steps the owner shall take to remedy the conditions that make it impossible to rent the structure or unit; and
 - (c) The date by which the structure or unit shall be rented and occupied.
 - (2) The owner shall provide the Rent Stabilization Board with all documentation necessary to support the application, including but not limited to code violation reports, engineering or inspection reports, copies of advertisements, etc.
 - (3) Any extension granted by the Rent Stabilization Board shall specify the date by which the structure or unit must be rented and occupied. Additional extensions may be sought by the owner, but

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the total extension permitted in the aggregate shall not extend beyond six months from the date the previous tenancy ended.

- (4) The following circumstances shall constitute grounds for the granting of an extension pursuant to this § 334-20D by the Rent Stabilization Board:
 - (a) An owner wishes to reserve a vacant unit for a family member. The owner shall provide in the time extension application full documentation including the name of the future tenant, the family relationship and the date of occupancy.
 - (b) An owner desires to maintain a unit vacant in order to improve the conditions of said structure or unit. The owner shall provide full documentation in the application, including up-to-date building and housing inspection reports, improvement plans, all related required permits and the date by which the structure or unit shall be rented and occupied.
 - (c) An owner maintains a vacant structure or unit in order to correct code violations in said structure or unit. The owner shall provide in the application full documentation such as code violation reports, correction plans, permits and the date by which the structure or unit shall be rented and occupied.
- (5) Extension of the time period provided in Subsection C above beyond the maximum time prescribed by § 334-20D shall be only granted upon a clear and convincing showing by the owner that a good faith effort has been made to rent the structure or unit at the legal rent, and that no tenant can be found. In this circumstance, the maximum extension granted beyond the maximum time provided in this Subsection D shall be 60 days, renewable upon a new showing by the owner.

E. City to inspect vacant structure or units and buildings.

- (1) If a structure or unit is not rented within 90 days, or filed for an extension, the recording agency will notify the Building Department, Health Department, Fire Official and Northwest Regional Fire and Rescue, which currently provides fire related services to Union City. The above departments shall send inspectors to the building to inspect the entire building and the unrented structure or unit in particular to assure compliance with all applicable codes. If violations are found or if a dangerous or unsafe condition exists, proper measures are to be taken.
- (2) The above departments will continue to inspect both the building and the individual unrented structure or unit on a regular basis. The building and unrented structure or unit shall be inspected at least once every 10 business days until the structure or unit is rented and occupied.

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- F. Violations and penalties. A first violation of § 334-20A of this chapter or the conditions upon which a waiver has been granted by the Rent Stabilization Board shall be punishable by a fine of not more than \$500 for each unit in violation. Subsequent violations shall be punishable by a fine of not less than \$100 nor more than \$500. Each day during which an owner is in violation of Subsection A of this section or the conditions upon which a waiver has been granted shall constitute a separate violation.
- G. Vacancies upon effective date. Any landlord of any unit which has been vacant 30 days or more from the end of the preceding tenancy as of the effective date of this chapter shall be required to file the notifications required under § 334-20A of this chapter within 15 days of the effective date of this chapter.

§ 334-21. Violation and penalties.

A violation of any of the provisions of this chapter, including, but not limited to, the filing with the Rent Stabilization Board or Regulation Officer of any material or statement of facts, shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding 30 days, or both. A violation affecting more than one leasehold or tenancy shall be considered a separate violation as to each leasehold or tenancy.

EXHIBIT B

EXECUTIVE ORDER NO. 106

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, as of March 18, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 191,000 confirmed cases of COVID-19 worldwide, with over 7,800 of those cases having resulted in death; and

WHEREAS, as of March 18, 2020, there were more than 7,000 confirmed cases of COVID-19 in the United States, with at least 97 of those cases having resulted in death; and

WHEREAS, as of March 18, 2020, there were 427 positive cases of COVID-19 in New Jersey, spread across numerous counties; and

WHEREAS, the economic impacts of COVID-19 are significant, and pose a growing threat to the housing security of many New Jerseyans; and

WHEREAS, many New Jerseyans are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and

WHEREAS, housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and

WHEREAS, removals of residents pursuant to evictions or foreclosure proceedings can increase the risk to those residents of contracting COVID-19, which in turn increases the risks to the rest of society and endangers public health; and

WHEREAS, in recognition of this danger, the U.S. Department of Housing and Urban Development, Fannie Mae, and Freddie Mac announced the suspension of all evictions and foreclosures for the next 60 days; and

WHEREAS, Assemblymembers Angela McKnight, Holly Schepisi, and Benjie Wimberly and Senators Joseph Cryan and Nellie Pou have rapidly responded to these concerns by sponsoring Assembly Bill No. 3859 and Senate Bill No. 2276, which address this issue by explicitly providing that during a Public Health Emergency or State of Emergency, the Governor shall have the authority to issue an executive order declaring a moratorium on removing individuals from residential property as a result of an eviction or foreclosure proceeding; and

WHEREAS, the Administrative Office of the Courts also provided helpful guidance as the bill moved through the legislative process; and

WHEREAS, the swift action by the Legislature to pass Assembly Bill No. 3859 and Senate Bill No. 2276, working in collaboration with the Administrative Office of the Courts and my Administration, exemplifies the critical importance of effective coordination among all three branches of government in addressing emergency situations; and

WHEREAS, earlier today, I immediately signed the residential eviction and foreclosure moratorium legislation into law as soon as it passed both Houses of the Legislature, to exercise as

expeditiously as possible the authority provided by the Legislature to protect our residents in this critical time;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Any lessee, tenant, homeowner or any other person shall not be removed from a residential property as the result of an eviction or foreclosure proceeding.

2. While eviction and foreclosure proceedings may be initiated or continued during the time this Order is in effect, enforcement of all judgments for possession, warrants of removal, and writs of possession shall be stayed while this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. This Order does not affect any schedule of rent that is due.

3. Sheriffs, court officers, and their agents shall refrain from acting to remove individuals from residential properties through the eviction or foreclosure processes during the time this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice.

4. For the purpose of this Order, "residential property" means any property rented or owned for residential purposes, including, but not limited to, any house, building, mobile home or land in a mobile home park, or tenement leased for residential purposes, but shall not include any hotel, motel, or other guest house, or part thereof, rented to a transient guest or seasonal tenant, or a residential health care facility. The State Director

of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to these lists.

5. This Order shall take effect immediately and remain in effect for no longer than two months following the end of the Public Health Emergency or State of Emergency established by Executive Order No. 103 (2020), whichever ends later, unless this Order is first revoked or modified by the Governor in a subsequent executive order.

GIVEN, under my hand and seal this
19th day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

EXHIBIT C

**CITY OF UNION CITY
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE NO. 2020-07

**AN ORDINANCE AMENDING CHAPTER 334
TO PLACE A MORATORIUM ON RENT INCREASES**

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may amend ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the City of Union City (the “City”) is a municipality as defined by Title 40 of the New Jersey Statutes; and

WHEREAS, the City has a comprehensive rent control ordinance under Chapter 334 of the Code of the City of Union City; and

WHEREAS, Chapter 334 was enacted in order to regulate, control and stabilize rents under the police powers granted to the City and in order to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, the Governor of the State of New Jersey declared a Public Health Emergency and State of Emergency in the State of New Jersey on March 9, 2020 due to the spread of the Coronavirus, a highly contagious and potentially fatal respiratory disease caused by SARS-CoV-2; and

WHEREAS, many citizens of New Jersey are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and

WHEREAS, housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and

WHEREAS, removals of residents pursuant to evictions or foreclosure proceedings can increase the risk to those residents of contracting COVID-19, which in turn increases the risks to the rest of society and endangers public health; and

WHEREAS, in recognition of this danger, the U.S. Department of Housing and Urban Development, Fannie Mae, and Freddie Mac announced the suspension of all evictions and foreclosures for 60 days; and

WHEREAS, On March 19, 2020, Governor Murphy signed the residential eviction and foreclosure moratorium legislation into law to protect New Jersey residents in this critical time; and

WHEREAS, on March 21, 2020, the Governor of the State of New Jersey issued Executive Order No. 107 requiring New Jersey residents to remain home or at their place of residence subject to limited exceptions; and

WHEREAS, Executive Order No. 107 further required the closing of all non-essential business establishments; and

WHEREAS, the economic impacts of COVID-19 are significant, and pose a growing threat to the housing security of many New Jersey residents; and

WHEREAS, the City has declared a State of Emergency via resolution dated March 24, 2020; and

WHEREAS, pursuant to N.J.S.A. 40:41A-101 this ordinance will take effect immediately upon adoption as it is necessary to ensure the safety of the public; and

WHEREAS, in light of these financial hardships and moratorium on eviction proceedings, the City has determined that the regulation, control and stability of rents is best served by placing an immediate, temporary moratorium on all rent increases until no later than two (2) months following the end of the state of emergency.

NOW, THEREFORE, BE IT ORDAINED as follows:

SECTION ONE

A moratorium shall be effectuated to prevent any rent increases as set forth in Section 334-10, and remain in effect for no longer than two (2) months following the end of the State of Emergency due to the COVID-19 pandemic. The moratorium shall commence immediately and apply for the month of March 2020.

SECTION TWO:

Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION THREE:

Repealer. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION FOUR:

This Ordinance shall take effect upon passage and publication as required by law.

SECTION FIVE:

This Ordinance shall take effect upon passage and publication as required by law.

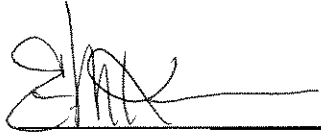
Commissioners	Yea	Nay	Abstain/Present	Absent
Lucio P. Fernandez	x			
Wendy A. Grullon	x			
Celin J. Valdivia	x			
Maryury A. Martinetti	x			
Mayor Brian P. Stack	x			

I HEREBY CERTIFY this to be a true and correct Ordinance of the City of Union City Board of Commissioners, introduced on March 24, 2020 and was further considered and adopted after a Public Hearing held on April 16, 2020.

INTRODUCED: March 24, 2020

ADOPTION: April 16, 2020

ATTEST:



Erin Knoedler
City Clerk

April 16, 2020
DATE

EXHIBIT D



City of Union City

Rent Leveling Board

3715 Palisade Avenue

Union City, New Jersey 07087

Phone: (201)348-5734 Fax: (201)865-9087

Brian P. Stack
Mayor

Kennedy Ng
Administrator

RECEIVED MAY 05 2020
THIS WAS INSIDE \$142
WITH REJT \$1462
FOR 4505 \$BPS

March 24, 2020

Re: MORATORIUM ON RENT INCREASES – COVID 19

Dear Tenant:

The Union City Rent Control Office, empowered by our Rent Control Ordinance **and with steadfast support from our Mayor Brian P. Stack and his administration**, provides assistance to tenants in all buildings that fall within its protections.

Union City, New Jersey, the United States and the World are going through an unprecedented time right now. Your safety and ability to care for yourselves and your families, is of extreme importance to us! Due to the current COVID-19 pandemic, we understand that you may be experiencing extreme financial hardship. It is necessary to provide stability to the extent possible at this trying time. For that reason, the City is adopting an Ordinance placing a Moratorium on rent increases beginning March 1, 2020 and continuing until further notice.

Thank you for taking the time to read this important letter. We will continue to advise you about Rent Control matters in the future. If you have any questions, or require additional information you can contact me at (201) 348-5734.

Very truly yours,

Kennedy Ng
Kennedy Ng

CC: Mayor Brian P. Stack
Board of Commissioners

RECEIVED
MAY 12 2020

EXHIBIT E

**CITY OF UNION CITY
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 2020-07 ENTITLED
“AN ORDINANCE AMENDING CHAPTER 334 TO PLACE A MORATORIUM ON RENT
INCREASES”**

Recitals. The Union City Board of Commissioners incorporates by reference the recitals set forth in Ordinance No. 2020-07 and continues to find them to be true and correct.

Purpose and Intent. The purpose of this ordinance is to clarify the implementation of Ordinance No. 2020-07.

NOW, THEREFORE, BE IT ORDAINED, as follows:

SECTION ONE.

Section One of Ordinance No. 2020-07 is amended to read as follows:

- 1. A moratorium shall be effectuated to prohibit and stay any permitted rent increases otherwise allowable under §334-10 for the duration of the New Jersey Public Health Emergency and State of Emergency, declared in Executive Order No. 103 (2020) on March 9, 2020, any subsequent Executive Order, and any extension thereof, due to the pandemic caused by COVID-19, and remain in effect for no longer than two (2) months following the end of the Public Health Emergency and/or State of Emergency. The moratorium shall commence immediately and apply for the month of March 2020 and thereafter until the two (2) month period has expired.**
- 2. Nothing in Paragraph 1. of this Section shall bar the property owner from serving a lawful NOTICE of increase upon the tenant effective March 1, 2020 or thereafter, but the increase in rent shall be stayed and not collected by the landlord nor shall the tenant be responsible for said increase at any time. After the moratorium imposed hereunder ends, landlord shall be entitled to and tenant shall pay any permitted rent increases for the period going forward, but in no event, for the period covered by the moratorium.**
- 3. The NOTICE of increase that the Landlord serves upon the tenant in Paragraph 2. shall contain at least a 12 point in bold, capitalized and underlined statement which indicates as follows:**

**"SPECIAL NOTICE OF UNION CITY'S MORATORIUM OF RENT INCREASE
DURING COVID-19 STATE OF EMERGENCY**

Any rent increase set forth in this notice is NOT to be paid by the tenant and shall be stayed and not collected by the landlord during the COVID-19 State of Emergency and for two (2) months after the State of Emergency has ended. You will only pay the increase in rent going forward from that date."

4. Any Landlord who has served a rent increase notice at the time of the adoption of this ordinance, without the Special Notice set forth in Paragraph 3., shall within 14 days of the adoption of this ordinance, serve a written copy of this Special Notice, referencing the previous Notice of Rent Increase, by hand delivery or Certified Mail RRR.

SECTION TWO.

Severability. The provisions of this Ordinance are declared to be severable and, if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION THREE.

Repealer. All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only, however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

EXHIBIT F

**CITY OF UNION CITY
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE NO. 2020-010

**AN ORDINANCE TO PREVENT EVICTIONS FOR NON-PAYMENT OF RENT
RESULTING FROM THE CORONAVIRUS EMERGENCY**

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may amend ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the City of Union City (the “City”) is a municipality as defined by Title 40 of the New Jersey Statutes; and

WHEREAS, the Governor of the State of New Jersey declared a Public Health Emergency and State of Emergency in the State of New Jersey on March 9, 2020 due to the spread of the Coronavirus, a highly contagious and potentially fatal respiratory disease caused by SARS-CoV-2; and

WHEREAS, many citizens of New Jersey are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and

WHEREAS, housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and

WHEREAS, removals of residents pursuant to evictions or foreclosure proceedings can increase the risk to those residents of contracting COVID-19, which in turn increases the risks to the rest of society and endangers public health; and

WHEREAS, in recognition of this danger, the federal government has passed legislation known as the CARES Act, which suspends foreclosures on all federally-funded mortgages for a minimum of 60 days, grants mortgage relief on such mortgages for six months to one year, and prohibits commencement of eviction proceedings for 120 days; and

WHEREAS, On March 19, 2020, Governor Murphy signed the residential eviction and foreclosure moratorium legislation into law to protect New Jersey residents in this critical time; and

WHEREAS, on March 21, 2020, the Governor of the State of New Jersey issued Executive Order No. 107 requiring New Jersey residents to remain home or at their place of residence subject to limited exceptions; and

WHEREAS, Executive Order No. 107 further required the closing of all non-essential business establishments; and

WHEREAS, the economic impacts of COVID-19 are significant, and pose a growing threat to the housing security of many New Jersey residents; and

WHEREAS, pursuant to the U.S. Census Bureau, the median household income from 2014-2018 for the residents of the City was \$45,636 with a per capita income of \$22,741, which results in a percentage rate of 21.3% for persons in poverty; and

WHEREAS, the County of Hudson residents' median household income from 2014-2018 was \$66,289 with a per capita income of \$38,147 and a percentage rate of 14.3% for persons in poverty; and

WHEREAS, the State of New Jersey residents' median household income from 2014-2018 was \$79,363 with a per capita income of \$40,895 and a percentage rate of 9.5% for persons in poverty; and

WHEREAS, the City has a population density of 51,796.6 residents per square mile as of 2010, which makes it one of the most densely populated cities in the entire country; and

WHEREAS, the County of Hudson has a much lower population density of 13,731.4 residents per square mile as of 2010; and

WHEREAS, the State of New Jersey has an even lower population density of 1,195.5 residents per square mile as of 2010; and

WHEREAS, according to the U.S. Census Bureau data, the City of Union City is one of the most densely populated cities in the United States with a large percentage of low, and moderate-income residents; and

WHEREAS, the City has declared a State of Emergency via resolution dated March 24, 2020; and

WHEREAS, on March 24, 2020, the City introduced an ordinance to place a moratorium on rent increases during the State of Emergency to ensure the safety of the public by avoiding mass evictions for non-payment of rent; and

WHEREAS, in light of these unprecedented regulations which have resulted in financial hardships, the City seeks to further prevent displacement of tenants and reduce transmission of the novel Coronavirus (COVID-19) by prohibiting evictions for non-payment of rent during the State of Emergency; and

WHEREAS, a city's business community is an acknowledged life blood of a municipality in that it provides employment, goods and services and a tax base, all of which are

part of the municipality's public health, safety and welfare affecting all aspects of the society; and

WHEREAS, Union City's vibrant business community is primarily comprised of small businesses which are suffering from the effects of COVID-19 so that many of them will be unable to pay their rent during this time, which may in turn cause them to fail; and

WHEREAS, the loss of the City's business community would have a devastating impact, not only on the lives of those directly affected, but upon the City's tax base and the very nature of the community; and

WHEREAS, pursuant to N.J.S.A. 40:41A-101 this ordinance will take effect immediately upon adoption as it is necessary to ensure the safety of the public.

NOW, THEREFORE, BE IT ORDAINED as follows:

SECTION ONE.

Recitals. The Union City Board of Commissioners finds the foregoing recitals to be true and correct and hereby incorporates such findings into this ordinance.

SECTION TWO.

Purpose and Intent. The purpose and intent of this ordinance is to prevent displacement, reduce transmission of the novel Coronavirus (COVID-19), and promote the stability and the health and safety of the residents and businesses of Union City during the State of Emergency declared by the Mayor on March 24, 2020, in response to the COVID-19 pandemic (hereinafter, "State of Emergency").

SECTION THREE.

Residential Eviction Moratorium. Except when the tenant poses an imminent threat to the health or safety of other occupants of the property, and such threat is stated in the notice as the "good cause" grounds for the eviction, it shall be an absolute defense to any such eviction action that the notice or complaint were filed or served during the State of Emergency. Any notice served pursuant to the Anti-Eviction Act on a tenant during the State of Emergency shall include the following statement in bold underlined 12-point font: **"Except to protect the health and safety of other occupants of the property, you may not be evicted during the State of Emergency declared by the City of Union City and the State of New Jersey in response to the COVID-19 pandemic for any reason including non payment of rent."** This does not relieve you of the obligation to pay back rent in the future." This section shall remain in effect until the expiration of emergency set forth in Governor Murphy's Executive order 106 dated March 24, 2020, unless extended.

SECTION FOUR.

Late Fee Moratorium. Notwithstanding any lease provision to the contrary, for residential tenancies, no late fees may be imposed for rent that became due during the State of Emergency if the rent was late for reasons resulting from the COVID-19 pandemic. This includes, but is not limited to (1) the tenant was sick or incapacitated due to COVID-19, or was complying with a recommendation from a governmental agency to self-quarantine, (2) the tenant suffered a substantial reduction in household income because of a loss of employment or a reduction in hours, or because they were unable to work because they were caring for their child(ren) who were out of school, or a day care facility, or a household or family member who was sick with COVID-19, or because they were complying with a recommendation from a government agency to self-quarantine; and (3) the tenant incurred substantial out-of-pocket medical expenses caused by COVID-19. Any notice demanding late fees for rent that became due during the State of Emergency shall include the following statement in bold underlined 12-point font: **“You are not required to pay late fees for rent that became due during the State of Emergency declared by the City of Union City and the State of New Jersey in response to the COVID-19 pandemic if the rent was late for reasons related to the pandemic.”**

SECTION FIVE.

No Residential Eviction for Nonpayment of Rent that Became Due During the State of Emergency. In any action for eviction for non-payment of rent, it shall be a presumption and absolute defense that the unpaid rent which became due during the State of Emergency, was unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the Coronavirus pandemic. Nothing in this subsection shall relieve the tenant of liability for the unpaid rent which the Landlord may pursue against the tenant pursuant to Section Seven of this ordinance.

SECTION SIX.

Commercial Eviction Moratorium. In any action for eviction of a commercial tenant based on non-payment of rent, it shall be an absolute defense if the failure to pay rent during the State of Emergency is the result of a substantial decrease in income (including but not limited to a decrease caused by a reduction in hours or consumer demand) and the decrease in income was caused by the COVID-19 pandemic or by any State of, state, or federal government response to COVID-19, and is documented. In addition, the commercial tenants proofs shall include any application filed with the appropriate agency or institution for loans pursuant to Federal Law including but not limited to the Paycheck Protection Act and that application has not been acted upon or has been rejected which would have allowed the commercial tenant to render current the outstanding rent that accrued during the COVID-19 pandemic. Any notice to a commercial tenant demanding rent shall include the following statement in bold underlined 12-point font: **“If you are a small business or a non-profit organization, you may not be evicted for failure to pay rent if the failure was due to a substantial decrease in income caused by the COVID-19 pandemic, or by any municipal, state, or federal government response to COVID-19, and is documented. This does not relieve you of your obligation to pay rent in the future.”** This section shall remain in effect until the expiration of emergency set forth in Governor Murphy’s Executive order 106 dated March 24, 2020, unless extended.

SECTION SEVEN.

No Relief from Liability for Rent. Nothing in this Ordinance shall relieve any tenant, whether commercial or residential, of liability for unpaid rent that became due during the State of Emergency. The rent shall become a debt and may be collected as any other debt in the Superior Court of New Jersey, Law Division, but such unpaid rent shall not form the basis of a non-payment proceeding in which a judgment of possession and warrant of eviction may result.

SECTION EIGHT.

Severability. The provisions of this Ordinance are declared to be severable and, if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION NINE.

Repealer. All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only, however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION TEN:

In order to avoid accidental repeal of existing provisions, the City Clerk and the Corporation Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

SECTION ELEVEN:

This Ordinance shall take effect upon passage and publication as required by law.

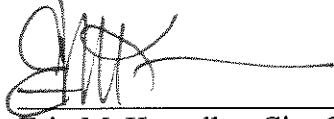
Commissioners	Yea	Nay	Abstain/Present	Absent
Lucio P. Fernandez	X			
Wendy Grullon	X			
Celin J. Valdivia	X			
Maryury A. Martinetti	X			
Mayor Brian P. Stack	X			

I HEREBY CERTIFY this to be a true and correct Ordinance of the City of Union City Board of Commissioners, introduced on April 16, 2020 and was further considered and adopted after a Public Hearing held on April 28, 2020.

INTRODUCED: April 16, 2020

ADOPTION: April 28, 2020

ATTEST:

A handwritten signature in black ink, appearing to read 'EMK', followed by a horizontal line.

Erin M. Knoedler, City Clerk

April 28, 2020
Date

EXHIBIT G

Ordinance 2020-101	Anti-Eviction Act, <u>N.J.S.A. 2A:18-61.1</u>
<p>Any notice served on a tenant under Anti-Eviction Act during the State of Emergency must contain the following:</p> <p>“Except to protect the health and safety of the other occupants of the property, you may not be evicted during the State of Emergency declared by the City of Union City and the State of New Jersey in response to the COVID-19 pandemic for any reason including the non-payment of rent.”</p>	<p>Notices to tenants under the Anti-Eviction Act do not require a separate notice related to a state of emergency or a public health emergency.</p>
<p>Any notice served on a tenant under Anti-Eviction Act during the State of Emergency demanding late fees must contain the following:</p> <p>“You are not required to pay late fees for rent that became due during the State of Emergency declared by the City of Union City and the State of New Jersey in response to the COVID-10 pandemic if the rent was late for reasons related to the pandemic.”</p>	<p>Notices to tenants under the Anti-Eviction Act do not require a separate notice related to a state of emergency or a public health emergency.</p>
<p>No late fees may be imposed for rent that is late due to the COVID-19 pandemic</p>	<p>Late fees included in a lease agreement are collectable as rent.</p>
<p>No residential eviction for non-payment of rent that became due during the State of Emergency</p>	<p>Residential evictions are permitted for non-payment of rent and there is no qualification related to a state of emergency or public health emergency</p>
<p>In any action for unpaid rent, it shall be a presumption and absolute defense that unpaid rent which became due during the State of Emergency was unpaid because of the COVID-19 pandemic</p>	<p>No absolute defense for failure to pay rent during a state of emergency or public health emergency</p>
<p>Unpaid rent is <u>not</u> a basis for a non-payment proceeding in which a judgment of possession and warrant of eviction may result</p>	<p>Unpaid rent <u>is</u> a basis for a non-payment proceeding in which a judgment of possession and a warrant of eviction may result</p>

BRACH EICHLER LLC

Charles X. Gormally, Esq. (023581979)

Paul M. Bishop (024462005)

101 Eisenhower Parkway

Roseland, New Jersey 07068

Phone: 973-228-5700

Attorneys for Plaintiff

UNION CITY PROPERTY HOUSING
INITIATIVE;

Plaintiff,

v.

CITY OF UNION CITY, MAYOR
AND BOARD OF COMMISSIONERS
OF THE CITY OF UNION CITY,
RENT LEVELING BOARD OF THE
CITY OF UNION CITY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-

Civil Action

**ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS**

THIS MATTER, having been opened to the court by Brach Eichler, L.L.C., attorneys for Plaintiff, Union City Property Housing Initiative (“Plaintiff”), by way of Order to Show Cause seeking temporary and permanent injunctive relief pursuant to R. 4:52; and the Court having reviewed Plaintiff’s Verified Complaint and Brief in Support of Order to Show Cause; and the Court having found that immediate, irreparable and substantial harm may occur before the return date of this Order to Show Cause; and for good cause shown;

IT IS on this _____ day of May 2020;

HEREBY ORDERED that Defendants, the City of Union City, Mayor and Board of Commissioners of the City of Union City and the Rent Leveling Board of the City of Union City (collectively “Defendants”), shall appear and show cause before the above named court at _____ o'clock in the _____ noon or as soon thereafter as counsel can be heard, on the _____ day of _____ 2020, why a preliminary injunction order should not be issued:

A. **As to Ordinance No. 2020-07**

1. Enjoining Defendants from further implementation and enforcement of Ordinance 2020-07 “An Ordinance Amending Chapter 334 to Place a Moratorium on Rent Increases” (the “Freeze Ordinance”);

2. Declaring that Freeze Ordinance is void and that the Defendants' actions are arbitrary, capricious and unreasonable and therefore unconstitutional;

3. Declaring that the Freeze Ordinance is not supported by a rational basis, violates equal protection and is unconstitutional;

4. Declaring that the Freeze Ordinance is an unconstitutional impairment of Plaintiff's right of contract;

5. Declaring that the Freeze Ordinance is an unconstitutional taking without just compensation

6. Declaring that the Freeze Ordinance is impermissibly retroactive and;

7. Declaring that the Freeze Ordinance is void and is of no purpose and effect.

B. **As to Ordinance No. 2020-010**

1. Enjoining Defendants from further implementation and enforcement of Ordinance No. 2020-10 “An Ordinance To Prevent Evictions For Non-Payment of Rent Resulting From The Coronavirus Emergency.” (the “Eviction Freeze.”);

2. Declaring the Eviction Freeze is preempted by New Jersey's Anti-Eviction Act, N.J.S.A. 2A:18-61.1, is void and is of no purpose and effect.

And it is further **ORDERED** that pending the return date of this application the Court is hereby:

1. Temporarily restraining and enjoining Defendants from further

implementing or enforcing the Freeze Ordinance so as to allow Plaintiff and its members to provide required notices to tenants and obtain rent increases permitted by local rent control ordinances and that in the event any increased rents are collected they will be segregated from the total rent paid and be held in an interest bearing account pending adjudication of this matter;

2. Temporarily restraining and enjoining Defendants from retroactively applying the Freeze Ordinance to properly noticed rent increases due and owing March 1, 2020 and allowing Plaintiffs to collect these rent increases;

3. Temporarily restraining and enjoining Defendants from further implementing or enforcing the Eviction Freeze ordinance.

And it is further **ORDERED** that:

1. Defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to Plaintiff's counsel.

2. A copy of this Order to Show Cause, Verified Complaint, and Brief submitted in support of this application, shall be served upon Defendants personally within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this Order being the original process.

3. Plaintiff must file with the Court its proof of service of the pleadings and this Order on the Defendants no later than three (3) days before the return date of this Order to Show Cause.

4. Defendants shall file and serve a written response to this Order to Show Cause and proof of service by _____. 2020. The original document must be filed with the Clerk of the Superior Court in Hudson County, Law Division. Defendants must also send a copy of its opposition papers directly to the Honorable _____, whose chambers are located at the Hudson County Superior Court in Jersey City, New Jersey. Defendants must also send a copy of its opposition papers to the Plaintiff's attorney whose name and address

appear above. A telephone call will not protect Defendants' rights. Defendants must file its opposition and pay the required fee of \$_____ and serve its opposition on Plaintiff's counsel if it wants the Court to hear opposition to the injunctive relief the Plaintiff is seeking.

5. Plaintiff must file and serve any written reply to Defendants' Order to Show Cause opposition by _____. 2020. The reply papers must be filed with the Clerk of the Superior Court, Hudson County, Law Division and a copy of the reply papers must be sent directly to the chambers of the Honorable _____.

6. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

7. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date of this Order to Show Cause.

8. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court, Hudson County, Law Division in the county listed above. Include a \$_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve

your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at njcourts.gov/forms/10153_deptyclerklawref.pdf. 10.

10. The court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than days before the return date.

HON.

BRACH EICHLER LLC

Charles X. Gormally, Esq. (023581979)

Paul M. Bishop (024462005)

101 Eisenhower Parkway

Roseland, New Jersey 07068

Phone: 973-228-5700

Attorneys for Plaintiff

UNION CITY PROPERTY HOUSING
INITIATIVE;

Plaintiff,

v.

CITY OF UNION CITY, MAYOR
AND BOARD OF COMMISSIONERS
OF THE CITY OF UNION CITY,
RENT LEVELING BOARD OF THE
CITY OF UNION CITY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-

Civil Action

ORDER

THIS MATTER, having been opened to the court by Brach Eichler, L.L.C., attorneys for Plaintiff, Union City Property Housing Initiative (“Plaintiff”), by way of Order to Show Cause seeking temporary and permanent injunctive relief pursuant to R. 4:52; and the Court having reviewed Plaintiff’s Verified Complaint and Brief in Support of Order to Show Cause filed therewith and any opposition papers filed by Defendants; having heard arguments of counsel; and the Court having found that immediate, irreparable and substantial harm unless injunctive relief is entered against Defendants in this matter; and for good cause shown;

IT IS on this _____ day of _____ 2020;

ORDERED that:

A. **As to Ordinance No. 2020-07**

1. The Defendants are permanently restrained and enjoined from enforcing or implementing the provisions of Ordinance 2020-07 “An Ordinance Amending Chapter 334 to

Place a Moratorium on Rent Increases” (the “Freeze Ordinance”);

2. The Freeze Ordinance violates Plaintiff’s rights under the United States and New Jersey Constitutions and is invalid, void and of no purpose and effect.

B. **As to Ordinance No. 2020-07**

3. The Defendants are permanently restrained and enjoined from enforcing or implementing the provisions of Ordinance No. 2020-07 “An Ordinance To Prevent Evictions For Non-Payment of Rent Resulting From The Coronavirus Emergency.” (the “Eviction Freeze.”);

4. The Eviction Freeze is preempted by New Jersey’s Anti-Eviction Act, N.J.S.A. 2A:18-61.1, is void and is of no purpose and effect.

5. A copy of this Order shall be served upon all interested parties within _____ days of its receipt.

HON.

BRACH EICHLER L.L.C.

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UNION CITY PROPERTY HOUSING
INITIATIVE,

Plaintiffs,

v.

CITY OF UNION CITY, MAYOR
AND BOARD OF COMMISSIONERS
OF THE CITY OF UNION CITY,
RENT LEVELING BOARD OF THE
CITY OF UNION CITY,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-

Civil Action

**BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF**

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PRELIMINARY STATEMENT

The true measure of a Republic is how its government reacts in time of crisis. Sadly, Union City has determined to engage in rank political opportunism using the cover of the pandemic emergency affecting all the people as an excuse to target rent controlled landlords. This emergent action is necessary to protect the constitutional rights of the Plaintiff members against unnecessary, misguided, arbitrary and excessive government action. In this case, Union City and its officials have decided to pander to their electorate – rent controlled tenants – by imposing a rent increase freeze; despite the fact that these tenants have long standing protection from unscheduled and unreasonable changes in their annual rent; and an eviction freeze, even though tenants are already protected.

Plaintiff, Union City Property Housing Initiative (“Plaintiff”), brings this application against Defendant, the City of Union City and its involved officials and agencies (“Defendant” or “Union City”) seeking temporary and preliminary injunctive relief to prevent irreparable harm and to protect their reasonable contractual rights and expectations to receive scheduled annual increases from rent controlled tenants in their properties.¹

Rent control in Union City protects tenants who reside there from unpredictable and unreasonable rent increases. At the same time, Plaintiff’s members who own and operate rent controlled property in Union City have vested contract rights and reasonable contractual expectations that so long as they comply with the requirements of the rent control ordinance (“RCO”) that they can increase rents pursuant to the requirements of the RCO, which amounts to a protectable contractual and property right of the Plaintiff members.

Now, despite the established protections for rent controlled tenants, Defendant has eliminated

¹ Even before the adoption of the challenged rent increase freeze ordinances, the Plaintiff members are actively engaging with their tenants to evaluate their needs on a case-by-case basis and are making mutually agreeable arrangements with their tenants. Landlords are voluntarily doing this knowing that everyone is experiencing economic disruption as a result of the Covid-19 pandemic. This action is directed at the excessive and capricious government action and not the tenants.

Plaintiff's contractual and property right to obtain a rent increase – sanctioned by the very provisions of the existing rent control regime – by enacting ordinances to freeze rent increases on *rent controlled properties only* (“Freeze Ordinance”) during the current state of emergency and for a period of time thereafter. The Freeze Ordinance deprives Plaintiff of the right to ever collect any increase. These arbitrary and capricious enactments violate Plaintiff's well-settled constitutional rights of due process and equal protection, impair Plaintiff's reasonable contractual expectancy with their tenants and constitute an unconstitutional taking of Plaintiff's property without just compensation. More importantly, this short-sighted action during the unprecedented global pandemic operates to irreparably harm Plaintiffs' business, destroys their ability to a fair and reasonable return on their investment and suppresses their properties value – unless the *status quo* is preserved².

Defendants have passed an ordinance that re-writes state law, places a freeze on all evictions in Union City and creates an unauthorized and automatic defense to eviction if a tenant fails to pay rent due and owing during the pandemic (“Eviction Freeze”). Tenants are already protected from eviction during the pandemic by Executive Order, but this Eviction Freeze changes state law and is preempted by the Anti-Eviction Act, N.J.S.A. 2A:18-61.1.

Therefore, Plaintiffs respectfully requests that this Court preserve the *status quo* and temporarily and preliminarily enjoin Defendants from further implementing and enforcing the Freeze Ordinance or the Eviction Freeze pending this litigation.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

As for its Statement of Facts, the Plaintiff incorporates by reference as if fully set forth herein the accompanying Verified Complaint (“Verified Complaint”).

² Defendants were notified of our intention to challenge the Rent Freeze Ordinance and may be considering a form of amendment attached to the Complaint as Exhibit E. This possible amendment does not cure the constitutional defects and confirms that the government is intent upon depriving the Plaintiff of its scheduled increases permanently.

LEGAL ARGUMENT

I. STANDARD FOR INJUNCTIVE RELIEF

A court should grant a preliminary injunction pursuant to R. 4:52 and R. 4:67-2 where it appears from the facts that irreparable harm will likely result if the relief sought is not granted. Crowe v. DeGioia, 98 N.J. 126, 132 (1982). Additionally, a temporary restraining order should be granted where the threatened harm may have immediate consequences which cannot be averted prior to the ultimate disposition of a legal action. The purpose of such relief is to maintain the *status quo* and preserve the rights between the parties pending final disposition of their dispute. Magna Manufacturing Company, Inc., v. Aetna Casualty & Surety Company, 129 N.J. Eq. 142, 152 (Ch. Div. 1941); Peters v. Public Service Corp. of New Jersey, 132 N.J. Eq. 500, 511 (Ch. Div. 1942), aff'd 133 N.J. Eq. 283 (1943).

It is well-settled that a preliminary injunction should be granted when the movant demonstrates that: (1) irreparable harm will be suffered if the requested relief is not granted; (2) the right to relief is settled; (3) the material facts are not controverted and the movant has demonstrated more than a reasonable probability of ultimate success on the merits; and (4) the balance of the equities favors relief, *i.e.*, the movant will suffer greater hardship if the requested relief is not granted than the defendant will if the relief is granted. Crowe, 90 N.J. at 132-34; Dolan v. DeCaprio, 16 N.J. 599, 614 (1954); Beckman v. New Jersey Voice, Inc., 302 N.J. Super. 169, 175 (App. Div. 1996).

A “court may issue an interlocutory injunction on a less than exacting showing if necessary to prevent the subject matter of the litigation from being ‘destroyed or substantially impaired.’” Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008) (quoting General Electric Co., v. Gem Vacuum Stores, Inc., 36 N.J. Super. 234, 237 (App. Div. 1955)). Thus, in instances where the proposed injunction is to maintain the “*status quo*”, the Crowe factors “are not to be looked upon as hard and fast and sharply defined in scope; rather, they are but

factors, among others, which must be weighed with one another, all going to the exercise of exacting judicial discretion as to whether or not to issue a preliminary injunction.” Waste Mgmt., 399 N.J. Super. at 520 (quoting General Electric, 36 N.J. Super. at 237); see also McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007) (while all four factors must weigh in favor of injunctive relief, courts may take a less rigid view in consideration of the factors where the interlocutory relief sought is designed to preserve the *status quo*.)

As set forth in detail below, Plaintiff is entitled to injunctive relief.

II. PLAINTIFF SATISFIES THE STANDARD FOR INJUNCTIVE RELIEF

A. An Injunction Is Necessary To Prevent Imminent And Irreparable Harm.

Under New Jersey law, harm is considered “irreparable” if it cannot be adequately addressed by money damages due to the nature of the claimed injury and the right affected. Crowe, 90 N.J. at 133-34; Outdoor Sports Corp. v. A.F. of L. Local 23131, 6 N.J. 217, 229-230 (1951); Bd. of Ed. of Union Beach v. N.J. Ed. Ass’n et al, 96 N.J. Super. 371, 391 (Ch. Div. 1967); Coach Company v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E & A. 1878). However, the general rule for issuing an injunction “is not inflexible, and ... the power of a court of equity to grant such a remedy depends upon the factual situation involved and the need for that type of remedy in a particular case.” American Assn. of Univ. Professors v. Bloomfield College, 136 N.J. Super 442, 448 (App. Div. 1975).

Here, the harm to Plaintiff and its business is immediate and irreparable as the Freeze Ordinance strips Plaintiff of its enforceable contractual right and expectation to obtain rents from its tenants and to increase those rents pursuant to the requirements of local rent control ordinances. The Freeze Ordinance irreparably harms Plaintiff’s business – the business of renting property – by eliminating Plaintiff’s ability to collect authorized rent increases and surcharges permitted by the Defendant rent control ordinances and wrongfully imposing substantial losses on Plaintiff. Importantly, the rent increases “frozen” by this ordinance, can never be collected from the tenant

which makes injunction the only appropriate remedy.

It is well-settled that injury to or destruction of a business constitutes irreparable harm for which preliminary and permanent injunctive relief is appropriate. See Hollander & Sons, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 249 (1949); Ferraiuolo v. Manno, 1 N.J. 105, 108; The Community Hospital Group v. Blume Goldfaden, 384 N.J. Super. 251, 255 (App. Div. 2006). In Ferraiuolo, 1 N.J. at 108 (citations omitted), the Court endorsed the well-settled proposition that “[a]cts destroying a complainant's business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction.”

Moreover, the irreparable harm does not stop upon the conclusion of the state of emergency. The Freeze Ordinance stops rent increases during the current state of emergency, but there is no mechanism for Plaintiff to seek a rent increase permitted under law upon conclusion of the state of emergency. Therefore, Plaintiff's contractual right and expectancy to seek a rental increase permitted by law and the associated reasonable rate of return is eliminated in Union City for at least year.

The Eviction Freeze will also cause immediate and irreparable harm³. The Anti-Eviction Act provides Landlords with certain substantive rights, *i.e.*, the right to a swift and summary dispossession of a tenant if he fails to pay rent. The Eviction Freeze, however, deprives Plaintiff of this right as it related to any tenant that fails to pay rent during the pandemic. Although these tenants are already protected from eviction during the pandemic by Governor Murphy's executive order, these tenants will never be subject to eviction for failure to pay rent during the pandemic. The Eviction Freeze Ordinance also irreparably alters the contractual provisions in place between the landlord and tenant by granting the tenant additional contractual benefits to the detriment of the landlord. Thus, Plaintiff is irreparably harmed because it will never be able to reclaim its right to evict these tenants for failure

³ The plaintiffs became aware that even before the Freeze was adopted that the Defendants were notifying tenants that increases should not be paid and that they delivered notices to each tenant. See Exhibit D to the Complaint.

to pay rent during the pandemic.

Accordingly, absent injunctive relief, Plaintiffs will suffer irreparable harm to its business, custom and profits from the Freeze Ordinance and the Eviction Freeze.

B. The Material Facts Are Not Controverted and Plaintiff Will Likely Prevail On The Merits.

To obtain a preliminary injunction, the moving party must demonstrate a reasonable likelihood of ultimate success on the merits. Crowe, 90 N.J. at 133; Zoning Bd. of Adjustment v. Service Elec. Cable T.V., 198 N.J. Super. 370, 379 (App. Div. 1985). However, mere doubt as to the validity of the claim is not an adequate basis for denying interim relief. Crowe, 90 N.J. at 133-34; (citing Naylor v. Harkins, 11 N.J. 435, 446-47 (1953) (holding doubts about plaintiffs' ability to ultimately prevail should not prevent court from entering preliminary injunction, without which the subject matter of the litigation will be destroyed or lost); Poff v. Caro, 228 N.J. Super. 370, 375 (Law Div. 1987). As set forth below, Plaintiff is likely to prevail on its claims.

1. The Freeze Ordinance Violates Exceeds Police Powers and Violates Substantive Due Process

Although it is well settled that townships have the power to implement rent control ordinances, the power is not absolute and it certainly cannot be exercised in an arbitrary and capricious manner. See Inganamort v. Bor. of Ft. Lee, 62 N.J. 521 (1973); Leone Management Corp. v. Bd. of Comm'n of the Town of West New York, 130 N.J. Super. 569 (Law Div. 1974). Thus, "despite the fact that a municipal ordinance may be within the permissible objectives of the police power, all police power legislation is subject to constitutional limitation that it not be unreasonable, arbitrary or capricious, and that means selected via such legislation shall have real and substantial relation to the object sought to be attained." Bonito v. Mayor and Council of Twp. of Bloomfield, 197 N.J. Super. 390, 398 (Law Div. 1984) (citations omitted); see also Mogelesky v. Schoem, 90 N.J. Super. 49, 57 (App. Div. 1966), modified

sub nom. 50 N.J. 588 (1967) (“The municipal police power can be exercised only in those areas where regulation is needful for the common good, *i.e.*, public health, safety, morals or general welfare, and then only by reasonable means substantially connected with the public interest designed to be advanced.”)

Here, the Freeze Ordinance is a substantively irrational regulation that bear no relationship to the underlying emergency it seeks to address. The Freeze Ordinance applies only to tenants who are subject to rent control. But, by operation of rent control already enforced by Union City for many years, these same tenants are already protected from unscheduled and unreasonable rent increases. Thus, Union City has irrationally placed freezes applicable to already protected tenants – **against presumptively reasonable rent increases.** For decades the RCO has dictated and limited increases to what it deems is reasonable. Now, because of temporary circumstances not caused by the Plaintiffs, the government is targeting this class of landlords and mandating that they cannot raise rents in a **reasonable** manner. A reasonable rent increase permitted in January pursuant the RCO, does not become unreasonable in March when it is implemented. It is always reasonable. If the recipient has a personal economic circumstance that prevent them from paying the reasonable rent increase, this is the subject for a discussion between private parties – not an invitation for irrational government regulation.

This heavy-handed, government transfer of assets from one private person to another is without a rational basis and precisely the type of arbitrary and capricious government action that our system of laws is designed to prevent. As important, it is not a government action that can be defended because it is taken to protect the general public interest. By its own terms the ordinance is not providing a general public interest benefit; rather it is one private party being compelled to forgo its reasonable contract rights for the benefit of another private party. While the notion may be well intended, it bears no relationship to the emergency used to justify it; any tenants need; any landlords ability to withstand a

rent freeze while continuing to operate a property; and most of all, is applicable only to tenants that are already protected from unscheduled and unreasonable rent increases. In fact, the Freeze Ordinance is not justified based upon what is considered to be in the “general public interest.” As the New Jersey Supreme Court held in Reingold v. Harper, 6 N.J. 182, 192 (1951):

“[T]he police power is exercisable only to serve a basic interest of society; it is not invocable for the economic protection alone of particular individuals or groups of individuals. The relief sought must come within the range of a reasonable requirement for the common good and welfare; and a measure that, in the purported service of that end, goes beyond the public need is not effective to curtail the personal and private property rights secured by the cited constitutional guaranties. If the dominant purpose be the advancement of private interests under the guise of the general welfare, there is a perversion of the power. Police regulation denotes such restraints upon property, trade or business as may be fairly imposed for the good of all. The power may not be exerted to serve private interests in contravention of common rights.”

It bears noting that the leasing of a rent controlled property does not require the tenant to demonstrate any economic need whatsoever. Unlike affordable housing, subsidized housing⁴ or public housing facilities that set the rent with reference to household income, a tenant can occupy a rent controlled apartment without regard to income limitations imposed on them as a condition of their occupancy. In fact, tenants in the Plaintiff members properties must demonstrate that they have sufficient financial resources to be able to pay the required security and monthly rental in order to enter into a lease agreement. Thus, the rent controlled tenant population is presumptively able to meet their financial obligations under their lease agreement for a rent controlled dwelling space. Once becoming a rent controlled tenant they are protected from unexpected increases since the RCO limits those increases to once per year and at a presumptively reasonable level. Once becoming a rent controlled tenant, they are protected against any increase that is not permitted by the RCO – in all cases based on either the lesser of a fixed percentage or the CPI; or the CPI increase only.

⁴ In addition to protections noted above, Governor Murphy imposed a rent freeze applicable only to state subsidized housing facilities which is rationally related and targeted to a population in need.

In addition to the protections afforded to rent controlled tenants in normal times, during this state of emergency caused by the Covid-19 pandemic, Governor Murphy has issued several executive orders that protect tenants in New Jersey. Specifically, on March 19, 2020, Governor Murphy issued Executive Order No. 106, which ordered that no lessee, tenant or homeowner shall be removed from a residential property by eviction or foreclosure during the current state of emergency. Also, by Executive Order 128, issued by the Governor on April 28, 2020, landlords are required upon request of the tenant to accept security deposit monies as rent during the state of emergency. Noticeably absent from these orders is a freeze on either RCO or non-RCO properties.

Indeed, Governor Murphy noted that rent freeze impairs the private right of contract, and has stated “There are thousands, maybe hundreds of thousands, if not millions of contracts between landlords and renters ... Putting a freeze in place is, I believe, impractical [as] a legal matter...We have said that you can’t be thrown out of your house or evicted...” See Transcript, April 11, 2020 Coronavirus Briefing, <https://www.nj.gov/governor/news/news/562020/20200411c.shtml> (last visited April 23, 2020).

So what is the actual object of the Freeze Ordinance? Since the only tenants that it applies to are already protected by the RCO and cannot be evicted for nonpayment of rent, what is the legitimate interest that Union City is seeking to protect by adopting the Freeze Ordinance? The emergency cited is the global Covid-19 pandemic and the resulting economic disruption – something not caused by or related to the operation of rent controlled property by the Plaintiff members. The fact the 26,000,000 people have been forced to file unemployment insurance claims due to the disruption of their employment is indeed an economic calamity of enormous proportions. However, the personal economic consequences likely being experienced by both landlords and tenants in Union City were not caused or worsened by a landlord noticing and billing a reasonable rent increase to the tenant. Nor will these

consequences be addressed by prohibiting a compliant rent controlled landlord from notifying tenants of scheduled and permissible reasonable rent increase. These consequences are best addressed by the government providing a broad range of assistance to landlords, tenants, homeowners and business, not by legislating that one private party must forgo its contractual rights in order to provide some perceived assistance to the other⁵.

In addition to the excessive and heavy handed government-imposed Freeze Ordinance justified based on an emergency, the rent freeze it provides is of little consequence to individual tenants and therefore amounts to government action that provides nothing in return. The scheduled reasonable annual increase to most tenants will amount to approximately twenty to thirty dollars per month. In light of the ban on evictions during the emergency by the order of the Governor, no tenant will lose its dwelling space for failure to pay rent, let alone their failure to pay the scheduled reasonable rent increase that the Plaintiff members are entitled to, and, if necessary, tenants can apply their security deposit to such an increase. Taken collectively, however, the Freeze Ordinance is a transfer of assets and contract rights of enormous proportions.

The only thing achieved by the Freeze Ordinance is putting money in one private party's pocket at the direct expense of another private party without any positive result; which is not related in any way to addressing a valid or legitimate government interest. The Rent Freeze Ordinance will not abate the pandemic or its economic consequences

2. The Freeze Ordinance Violates Equal Protection

Equal protection claims under the Fourteenth Amendment are evaluated under one of three analytical tiers, depending on the level of scrutiny required by the interest at stake. Matter of C.V.S. Pharmacy Wayne, 116 N.J. 490, 501, 502 (1989); Brown v. City of Newark, 113 N.J. 565, 573 (1989).

⁵ Prior to filing this suit, the Plaintiff suggested that Union City should consider direct relief to tenants by providing tax reduction relief to the property owners who would then credit each of their tenants with their proportionate share of 100% of every dollar of government provided relief. No response was received.

Classifications which impair “fundamental rights” or which create “suspect” categories are subject to “strict scrutiny”: The legislation must further a compelling state interest and there must be no less restrictive means of fulfilling that objective. Brown, 113 N.J. at 573. An enactment which creates “semi-suspect” classes receives “intermediate scrutiny,” which tests whether the classification is “substantially related to the achievement of an important governmental objective.” Ibid. All others need only meet the “rational basis” test—that the classification bears some rational relationship to a legitimate state interest. Ibid.

Where equal protection is claimed under the New Jersey Constitutional analogue (Art. I, par. 1), our Supreme Court rejects the “tiered” analysis and adopts a “more flexible balancing test.” Barone v. Department of Human Services, 107 N.J. 355, 367–368, (1987). This test asks “whether there is an appropriate governmental interest suitably furthered by the differential treatment.” Id. at 368, quoting Bor. of Collingswood v. Ringgold, 66 N.J. 350, 370 (1975), app. dism. 426 U.S. 901 (1976). Weighed in the balance are (1) the nature of the affected right, (2) the extent of the intrusion on it, and (3) the public need for the intrusion. Barone, supra, 107 N.J. at 368. In all cases, New Jersey requires that there be “a real and substantial relationship between the classification and the governmental purpose which it purportedly serves.” Barone, supra, 107 N.J. at 368, quoting Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp., 80 N.J. 6, 43 (1976), app. dism. and cert. den. 430 U.S. 977(1977).⁶

The Freeze Ordinance is blatantly in violation of Plaintiff’s equal protection rights under the United States and New Jersey Constitutions and create an unconstitutional classification between two types of property owners in Union City without advancing the objective of reducing economic disruption during the Covid-19 pandemic.

Specifically, the Freeze Ordinance applies only to rent controlled properties in Union City, while

⁶ The Freeze Ordinances do not involve suspect or semi-suspect classification, thus rational basis review is appropriate here. See Pennell v. City of San Jose, 485 U.S. 1, 14 (1988) (rational basis review is applied to a rent control ordinance).

the remaining landlords retain the ability to increase rents during the Covid-19 pandemic. Thus, the public as a whole is not protected from rent increases in Union City during the pandemic – just those in rent controlled property. Likewise the burden of this irrational classification falls solely on the rent controlled landlord. Moreover, the Freeze Ordinance eliminates Plaintiff's contractual right and expectancy of a rent increase pursuant to the RCO, while the remaining owner's rights are not affected in this regard.

In order for this differential treatment to survive scrutiny the Freeze Ordinance must have a substantial relationship to the Union City's objective in enacting the Freeze Ordinance, *i.e.*, limiting the economic impact of the Covid-19 pandemic. The equal protection safeguard is offended "if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." McCann v. Clerk, City of Jersey City, 338 N.J. Super. 509, 527 (App. Div.), aff'd sub nom., 168 N.J. 285 (2001). McGowan v. State of Maryland, 366 U.S. 420, 425 (1961).

Here, there is no relationship between rent controlled properties and the economic consequences presented by the Covid-19 pandemic. While Union City's efforts may be well intended, there is no need during the pandemic that requires Defendant to freeze rents on RCO properties, which are already protected from improper rent increase both during this emergency and after. Union City has instead used the pandemic as an opportunity to pander to their electorate and take advantage of the politically popular term "rent freeze." The politically opportunistic move, however, only treats Plaintiffs and non-RCO tenants differently than their similarly situated counterparts without addressing the economic impact of the Covid-19 pandemic which effects all landlords and tenants. It is a fundamental proposition that the equal protection clause directs that all persons similarly situated should be treated alike. Salem Blue Collar Workers Ass'n v. City of Salem, 33 F.3d 265 (3rd Cir. 1994); Palagonia v. Newark, 142 N.J. Super. 363, 365 (1976). The Freeze Ordinance, however, fails this constitutional requirement.

Accordingly, as the Freeze Ordinance arbitrarily discriminates between persons similarly situated without a rational basis, *i.e.*, landlords in Union City, this ordinance violates equal protection.

3. The Freeze Ordinance Is an Unconstitutional Impairment of Contract

The United States Constitution, art. I, § 10, provides that “[n]o State shall ... pass any ... Law impairing the Obligation of Contracts....” The New Jersey Constitution, art. IV, § 7, ¶ 3, has a parallel prohibition.⁷ Contractual “rights and obligations are binding under the law,” and a state (or municipality) may not impose “a sudden, unanticipated, and substantial retroactive obligation” on private parties. Allied Structural Steel C. v. Spannaus, 438 U.S. 234, 245 (1978). Our federal and state courts apply a three-prong test to determine whether legislation has unconstitutionally impaired a contract. State Farm Mut. Auto. Ins. Co. v. State, 124 N.J. 32, 64 (1991) (citing Energy Reserves Group, Inc. v. The Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983)). Legislation unconstitutionally impairs a contract when it (1) “substantially impair[s] a contractual relationship,” (2) “lack[s] a significant and legitimate public purpose,” and (3) is “based upon unreasonable conditions and ... unrelated to appropriate governmental objectives.” State Farm, 124 N.J. at 64.

The threshold inquiry is whether the law has operated as a “substantial impairment of a contractual relationship.” In re Deborah Heart & Lung Ctr. SFY 2009 Charity Care Subsidy Allocation, 417 N.J. Super. 25, 33 (App. Div. 2010) (quoting Energy Reserves, 459 U.S. at 411). Courts will consider “the extent to which the law undermines the contractual bargain, interferes with a party’s reasonable expectations, and prevents the party from safeguarding or reinstating this rights,” Sveen v. Melin, 138 S. Ct. 1815, 1821–22 (2018), as well as whether “the industry the complaining party has entered has been regulated in the past,” Energy Reserves, 459 U.S. at 411. If the law is found to impose a substantial impairment, the second step is to determine whether the government entity, by way of

⁷ Despite the difference in language, the federal and state Contract Clauses are applied coextensively and provide the same protection. Fidelity Union Trust Co. v. New Jersey Highway Auth., 85 N.J. 277, 299–300, appeal dismissed, 454 U.S. 804 (1981).

justification, had “a significant and legitimate public purpose” underlying the challenged statute. Edgewater Inv. Assocs. v. Borough of Edgewater, 201 N.J. Super. 267, 278 (App. Div. 1985), aff’d, 103 N.J. 227 (1986) (citing Energy Reserves, 459 U.S. at 411). Once a legitimate public purpose has been identified, the inquiry is to focus upon “whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions” and is sufficiently related to the appropriate governmental objective. Edgewater, 201 N.J. Super at 278 (App. Div. 1985) (citing Energy Reserves, 459 U.S. at 411).

As to this first step, there can be little dispute that totally depriving Plaintiffs of its right to seek a rent increase pursuant to the RCO – a right bargained for in the contract with the tenant – substantially interferes with Plaintiff’s expectations under these contracts. Although the contracts are regulated by RCO, Defendants cannot totally upend Plaintiffs expectancy by going so far as to retroactively re-write core terms of the contract with the tenant and delete this bargained-for right. As to the second step, Covid-19 undoubtedly presents a formidable economic challenge for the public, but shifting losses to one group of landlords while leaving non-RCO landlords out of the mix is not a general solution to the economic challenges currently faced by renters in Union City. Finally, as to the third step, which requires a comparison of means and ends more demanding than ordinary rational basis review, after-the-fact rewriting of the RCO to remove the right to seek an appropriate increase, is not reasonably tailored to the character of the problem. Putting a few dollars more in certain tenants pockets while completely eliminating a contractual and property right for certain landlords does not move the needle towards a comprehensive response to the economic consequences of the pandemic.

4. The Freeze Ordinance Is an Unconstitutional Regulatory Taking

The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that property shall not “be taken for public

use, without just compensation.” Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 536 (2005). The New Jersey Constitution, article I, paragraph 20, and article IV, section 6, paragraph 3, likewise provide protections against governmental takings of private property without just compensation. Klumpp v. Borough of Avalon, 202 N.J. 390, 404–05 (2010).⁸

While early jurisprudence interpreted the Takings Clause as reaching only a direct appropriation of property, Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1014 (1992), evolving case law recognized that “government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster—and that such ‘regulatory takings’ may be compensable under the Fifth Amendment.” Lingle, *supra*, 544 U.S. at 537 (citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)); accord Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency, 535 U.S. 302, 325 (2002). As Justice Holmes explained, “*while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.*” Mahon, *supra*, 260 U.S. at 415. (emphasis added). A law may be invalid as a regulatory taking when it creates a substantial economic impact, interferes with “distinct investment-backed expectations” and does more than simply “adjust[] the benefits and burdens of economic life to promote the common good.” Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978).

For the purposes of a regulatory taking, there should be no doubt that the Freeze Ordinances impose a significant – indeed, potentially ruinous – financial burden on Plaintiffs and its members, one that could total in the millions of dollars. And, by definition, Plaintiff’s investment-backed expectations will be diminished if they are unable to obtain their RCO increases as they will nonetheless be required to handle their own mortgages and upkeep of their property without the necessary and budgeted increase in revenue. This economic impact is too high, particularly in light of the fact, as noted above, there is no

⁸ Again, New Jersey constitutional protections have been found to be coextensive with the federal Takings Clause. *Id.* at 405; OFP, L.L.C. v. State, 395 N.J. Super. 571, 581 (App. Div. 2007), *aff’d*, 197 N.J. 418 (2008).

relationship between the operation of rent controlled properties and the economic consequences presented by the Covid-19 pandemic. Moreover, just compensation is wanting. Although the Freeze Ordinances allow Plaintiff and its members to seek their RCO increase after the state of emergency, the interim increase and the resulting revenue will be forever lost during the state of emergency – a cost that does not increase the public’s ability to deal with the pandemic’s economic consequences, and a cost that is not reimbursed in the Freeze Ordinance.

Taking jurisprudence holds clearly that the takings clause prohibits legislation aimed at “forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” Armstrong v. United States, 364 U.S. 40, 49 (1960). By acting as it has, Union City has singled out Plaintiff and its members – landlords of RCO properties – and forced them to forego their contractual expectancy of RCO permitted rental increases. Non-RCO landlords, however, are not required to forego rental increases or the attendant revenue. Thus, the economic burden on renters in the Union City is placed disproportionately on the shoulders of Plaintiff and its members, as opposed to all landlords, or the public at large. Union City has numerous other alternatives for protecting tenants and keeping rent money in their pocket than legislating that one private party must forgo its contractual rights in order to provide some perceived assistance to the other.

Accordingly, the Freeze Ordinance “goes too far” because it has a significant economic impact on Plaintiff, it interferes with their investment-backed expectations without any rational basis and the character of the government action disproportionately impact Plaintiff and its members, all without just compensation.

5. The Freeze Ordinance is Impermissibly Retroactive

The unconstitutional retroactive destruction of a valid rent increase was discussed in Woodcliff Management v. Twp of North Bergen, 127 N.J. Super. 123, 126 (Law Div. 1974). In that case, the trial

court reviewed and invalidated a rent control ordinance's retroactive provision requiring a refund of excess rents placed into a rent control ordinance because it improperly declared void rental amounts previously increased. Id. In so doing, the trial court analyzed the decision of Pennsylvania Greyhound Lines, Inc. v. Rosenthal, 14 N.J. 372 (1954). In that decision, Justice Heher defined the term of “vested right” as a concept of a “present fixed interest in which right reason and natural justice should be protected against arbitrary state action – an innately just and imperative right that an enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny”. Id. at 384. Ultimately, in Woodcliff Management, the Court determined that the retroactive provisions in the rent control ordinance requiring refunds of monies paid improperly destroyed a property owner's “vested property interest” and that an ordinance compelling divestiture of this vested interest is arbitrary and violative of the due process clause of the constitution. Id.

Here, the Freeze Ordinance applies retroactively to rents due and owing on March 1, 2020. Pursuant to the RCO, Plaintiffs’ members properly notified RCO tenants by January 31, 2020 of appropriate rent increases effective March 1, 2020. Plaintiffs and its members have a vested right in the increases paid prior to the adoption of the Freeze Ordinance. Accordingly, the Freeze Ordinance is an impermissible retroactive attempt to deprive Plaintiff and its members of this vested rights and is void.

6. The Eviction Freeze is Preempted by the Anti-Eviction Act.

Municipalities are authorized by the Legislature to enact and enforce ordinances for specified enumerated purposes, N.J.S.A. 40:48-1, and, as long as not contrary to New Jersey or federal law, for any other purpose for the preservation of the health, safety and welfare of the municipality and its inhabitants. N.J.S.A. 40:48-2. However, while a municipality's powers are broad, they are not without limitations.

Even without a direct conflict, a municipality may not exercise a power where the Legislature

has clearly intended to preempt the field. Summer v. Twp. of Teaneck, 53 N.J. 548, 554 (1969). There is a limitation on the power of municipalities to enact ordinances on matters that are otherwise under their jurisdiction in situations where the State has preempted the field. State v. Crawley, 90 N.J. 241, 248, (1982). When the State reserves the right to legislate on a particular matter, municipalities are prohibited from legislating in that area. Id. at 250.

In Overlook Terrace Management Corp. v. Rent Control Board of West New York, 71 N.J. 451, 461-62, (1976) (citations and internal quotation marks omitted), the Supreme Court set forth five factors to consider in determining whether the Legislature intended preemption:

1. Does the ordinance conflict with state law, either because of conflicting policies or operational effect (that is, does the ordinance forbid what the Legislature has permitted or does the ordinance permit what the Legislature has forbidden)?
2. Was the state law intended, expressly or impliedly, to be exclusive in the field?
3. Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation?
4. Does the ordinance stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the Legislature?
5. Does the subject matter reflect a need for uniformity?.

Here, under the Overlook analysis, the Eviction Freeze is pre-empted by the Anti-Eviction Act.

The Eviction Freeze conflicts with the Anti-Eviction Act because it deprives a landlord of its statutory right to seek eviction for non-payment of rent established in the Anti-Eviction Act (*i.e.*, forbids what the legislature has permitted), and it establishes non-payment of rent during the pandemic as a defense not available in the Act (*i.e.*, permits what the legislature has forbidden). This conflict cannot stand because the Anti-Eviction Act is intended to be exclusive in the field and so pervasive or

comprehensive that it precludes coexistence of municipal regulation. In Brunetti v. Borough of New Milford, 68 N.J. 576, 601-604 (1975), the New Jersey Supreme Court struck down a New Milford Ordinance that limited the grounds for eviction and wrote:

With the enactment of N.J.S.A. 2A:18-61.1 in 1974, which sets forth specific enumerated grounds of eviction, there can no longer be any doubt that the Legislature intended to preempt this area of law. Consequently, we hold that provision of municipal ordinances which set forth grounds for eviction or dispossession are invalid as having been preempted by state enactments.

See also Claridge House One, Inc. v. Borough of Verona, 490 F. Supp. 706, 711 (D.N.J.), aff'd, 633 F.2d 209 (3d Cir. 1980) (“It is equally clear that under New Jersey law a municipality may not enact an ordinance which is inconsistent with N.J.S.A. 2A:18-61.1 et seq.) If a court determines that the Legislature intended “its own actions, whether it exhausts the field or touches only part of it, to be exclusive,” then it will conclude that the State has preempted the field, thereby barring any municipal legislation. Mack Paramus Co. v. Mayor & Council of Borough of Paramus, 103 N.J. 564, 573 (1986).

Accordingly, as the Eviction Freeze conflicts with the Anti-Eviction Act, which controls this area of law, *i.e.*, residential landlord-tenant eviction, it is preempted and void.

C. Plaintiff Has Asserted A Settled Legal Right Supporting Its Claim.

To obtain a preliminary injunction, the moving party must demonstrate that its right to relief is settled. Crowe, 90 N.J. at 132-133; Zoning Bd. of Adjustment, 198 N.J. Super. at 379. However, mere doubt as to the validity of the claim is not an adequate basis for denying interim relief. See Naylor, 11 N.J. at 446-47; Poff, 228 N.J. Super. at 375. The legal rights asserted by Plaintiff are supported by and permitted under the relevant caselaw, and the New Jersey State and Federal Constitutions. Thus, Plaintiff has demonstrated a well settled legal right to its claim, satisfying this prong for a grant of injunctive relief.

D. The Balancing Of The Equities Favors The Grant Of Injunctive Relief.

Under these circumstances, the balancing of the equities undeniably favors granting Plaintiff's request for a preliminary injunction. In the within matter, there is an immediate and overwhelming threat of injury to Plaintiff if the requested *status quo* injunction is not granted. Whereas, Defendants will suffer no harm if injunctive relief is allowed, inasmuch as the decades old *status quo* will continue until the Court issues a decision. Moreover, the public, *i.e.*, rent controlled tenants, will not be harmed as they remain subject to the rent control ordinances already in effect and are by definition only receiving reasonable rent increases as they have been for decades. Similarly, Union City tenants are currently protected from eviction by Governor Murphy's executive order.

Plaintiff is seeking to maintain the *status quo* as has existed under the Defendants' rent control ordinances for decades. It is entirely proper to maintain the *status quo* in this case as the "purpose of a preliminary injunction is to allow the court to investigate and deliberate the merits of the matter while maintaining the *status quo*." Subcarrier Comms., Inc. v. Day, 299 N.J. Super. 634, 638-39 (App. Div. 1997). Plaintiff respectfully requests that this Court grant a temporary and, on the return date, a preliminary injunction, preserving the *status quo* and enjoining the application of the Freeze Ordinances and the Eviction Freeze pending the determination of their validity.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that the Court grant Plaintiff's application for a temporary restraining order and a preliminary injunction.

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/s/ Charles X. Gormally
Charles X. Gormally, Esq.

Dated: May 11, 2020

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-001772-20

Case Caption: UNION CITY PROPERTY HOUSING VS
CITY OF UNION CI

Case Initiation Date: 05/11/2020

Attorney Name: CHARLES X GORMALLY

Firm Name: BRACH EICHLER LLC

Address: 101 EISENHOWER PKWY

ROSELAND NJ 07068

Phone: 9732285700

Name of Party: PLAINTIFF : Union City Property Housing

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

05/11/2020

Dated

/s/ CHARLES X GORMALLY

Signed