

EXHIBIT A

**Ordinance No. _____
Rent Stabilization Ordinance
City of Asbury Park, Monmouth County**

Sponsored by _____
Seconded by _____

AN ORDINANCE ESTABLISHING A RENT LEVELING AND STABILIZATION BOARD AS WELL AS RULES THAT REGULATE THE PRICE OF RENT AND RATE OF RENT INCREASE FOR CERTAIN RENTAL HOUSING WITHIN THE CITY OF ASBURY PARK.

WHEREAS, the City of Asbury Park’s Planning Board adopted a Master Plan & Master Plan Reexamination Report in December 2017 that includes Housing Objectives and recommendations; and

WHEREAS, the Master Plan and Master Plan Reexamination Report state that an affordable rental market will support local economic development efforts; and

WHEREAS, the City’s 2018 Economic Conditions Assessment states that the City is primarily comprised of renters, with only 15 percent of households being owner occupied; and

WHEREAS, rents in Asbury Park and throughout New Jersey have risen substantially in recent years; and

WHEREAS, the City’s 2018 Economic Conditions Assessment found that relatively low household incomes in the City, as compared to Monmouth County as a whole, emphasize the importance of ensuring an affordable rental market; and

WHEREAS, the City’s 2018 Economic Conditions Assessment found that residents of Asbury Park spend over 50% more on housing expenditures as compared to the national average; and

WHEREAS, the United States Census Bureau estimates that based on median income and median rent in the City, the typical Asbury Park household spends more than 37% of its income on rent; and

WHEREAS, rent stabilization has been adopted in several New Jersey jurisdictions recently, including Neptune Township and Ocean Grove, and has long been upheld as constitutional; and

WHEREAS, Asbury Park is concerned that rising rents will exacerbate housing cost burdens faced by renters in the City and threaten their displacement in the future;

NOW, THEREFORE, BE IT ORDAINED, by the City of Asbury Park as follows:

The following Rent Stabilization Ordinance is hereby enacted and incorporated into the Asbury Park Municipal Code. This ordinance shall take effect upon enactment and as provided by law, and all ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency, and any provision of this ordinance held to be invalid shall be severable and shall not affect the validity of the remaining provisions.

ARTICLE I

Definitions; Applicability

Section 1. Definitions

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

“Available for rent to tenants” means buildings or dwellings fit for habitation as defined by statutes, codes and ordinances in full force and effect in the State of New Jersey, County of Monmouth and City of Asbury Park and occupied or unoccupied and offered for rent.

“Base rent” means the legal rent charged or actually received by the landlord for the rental of housing space on January 1, 2021, or if not occupied at that date, the “base rent” shall be that actually charged to and received from the previous tenant, plus any increases under Article II of this chapter. The “base rent” may be changed only with the approval of the Rent Leveling and Stabilization Board. The “base rent” for dwelling units under Section 2.1B and F shall be the first rental upon the exemptions set forth in said subsections. Upon vacancy and/or change in tenant, the “base rent” for all dwelling units shall be the new rent agreed upon by the new tenant, provided that the same is in accordance with the provisions of this chapter. When dwellings make the transition from rent regulation by a governmental agency that acts pursuant to federal or state law to regulate rents to rent regulation by this chapter as defined in Section 2.1, the initial base rent following the transition shall be as set forth in Section 2.1.

“Board” means the Rent Leveling and Stabilization Board.

“Capital improvement” means a physical addition or change to the dwelling, which provides all tenants in the dwelling with something not previously provided that improves the quality of life in the dwelling. A replacement of an existing physical element, such as a roof, is not a capital improvement, whether that element was necessary for habitability or provided an amenity not required for habitability. Such a replacement is considered a maintenance expense. A physical addition or change which does provide something new that benefits the tenants but is required by law to meet minimum standards of health, safety, security or habitability, is also not a capital improvement. A capital improvement must be something new that benefits the tenants and is not otherwise required by law.

“Consumer Price Index” or “CPI” measures changes in the price level of a weighted average market basket of consumer goods and services purchased by households. A CPI is a statistical estimate constructed using the prices of a sample of representative items whose prices are collected periodically. CPI in this ordinance refers to all items base year 1967-100 for the region of the United States of which Asbury Park is a part, published periodically by the United States Department of Labor, Bureau of Labor Statistics.

“Dwelling” means any building or structure, including condos and co-ops, trailers or land used as a trailer park, rented or offered for rent to one (1) or more tenants or family units. A dwelling shall also mean one (1) or more buildings, structures or trailers with a common owner and operated as a single complex, and which are situated on a common lot or an adjacent lot as described in the Tax Map of the Tax Assessor of the City of Asbury Park.

“Equity in real property investment” means the actual cash contribution of the purchaser at the time of closing of title and any principal payments to outstanding mortgages less any cash withdrawal.

“Fair rate of return” shall mean a return of five percent (5%) on the landlord's investment in the property, which investment shall be considered herein as the landlord's equity.

“Housing space” includes that portion of a dwelling rented or offered for rent for living and dwelling purposes, with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the real property.

“Landlord” means an owner, lessor, sub-lessor or any other person entitled to receive rent for the use and occupancy of any housing space, or an agent or successor of any of the foregoing.

“Living areas” means the amount of total rentable space applicable to any given housing space, measured either in terms of rooms or square footage.

“Newly constructed dwelling” means a dwelling located in a building, which the building is new in all respects; that is, from the ground up, and the exterior structure, the exterior and interior walls and all systems are new.

“Notice” means written notice to a tenant or landlord, which is mailed to the tenant's residence or the landlord's residence or offices by regular mail, of any proceedings or determinations of the Board unless another method of notice is specified in this chapter.

“Not vacant through unlawful means” means the tenant has not vacated or been forced to vacate the dwelling involuntarily; that is, due to harassment, duress, wrongful acts or unreasonable pressure from the landlord or his agents. A legal eviction is not an involuntary vacation under this definition. A bona fide written release of the landlord by the tenant with respect to this issue shall be evidence of a voluntary vacancy which may be considered in determinations under this chapter.

“Officer” means the Rent Regulation Officer.

“Registration statement” means the statement filed by the landlord pursuant to Section 28.

“Rent” means any price for the use of a housing space. It includes any charge, no matter how set forth, paid by the tenant for the use of any service in connection with the housing space. Security deposits and charges for accessories, such as boats, mobile homes and automobiles not used in connection with the housing space, shall not be construed as “rent.”

“Rent increase, rent decrease, and rent adjustment” means the intent and policy of the governing body to interfere in landlord-tenant relations and legitimate operation ownerships, occupancy and development of real estate, only when necessary to protect the public interest. “Rent increase,” “Rent decrease” and “rent adjustments” shall consist in the first instances of the notice sent by the landlord to the tenant, or by the tenant to the landlord, in letter or other form, setting forth the proposed notice of “rent increase,” “rent decrease” or other “rent adjustment.” Each notice shall set forth in detail the reasons justifying or requiring such increase, decrease or adjustment.

“Rent Leveling and Stabilization Board” means the body created to administer this ordinance under the direction and supervision of the Department of Finance of the City of Asbury Park, and which consists of seven (7) members, four (4) tenant members and three (3) landlord members, appointed by the Mayor with the consent of the Municipal Council.

“Rent Regulation Officer” means the person appointed by the City Manager to oversee day to day operations of the policies enacted by this ordinance, as well as any other duties as directed by the Rent Leveling and Stabilization Board.

“Rent Roll” means an account or schedule of rents, the amount due from each tenant, and the total received.

“Service” means 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.

“Substantial compliance” means that the housing space and dwelling are free from all violations of State and Asbury Park health, safety, building, property maintenance, fire safety codes, statutes, regulations, and ordinances, and that air conditioning equipment provided by the landlord is in good working order. Compliance is to be determined by submission by the landlord of copies of all applicable code inspection reports which shall not be more than six (6) months old at the time of the initial hearing for all applications requesting or objecting to any type of increase or surcharge, and submission by the landlord of evidence that air conditioning equipment supplied by the landlord is in good working order at the time of the initial hearing. To be in compliance, the reports must show the housing space and dwelling to be free of violations, and any evidence submitted of properly functioning air conditioning equipment is acceptable to the Board. If one (1) or more violations appear on the inspection report, a follow-up inspection report showing abatement of the violations will establish compliance. Testimony by appropriate city and state code officials may also be used to supplement and clarify the inspection reports if needed. If a tenant alleges that a condition exists in violation of any of the above codes in a housing space or in the dwelling subject to an application for any type of increase or surcharge, which does not appear on the last inspection report, then a new inspection, limited to the allegation only, shall be made to determine compliance.

“Tenant/subtenant” means the regulations that apply to the landlord and tenant under this chapter shall also apply, wherever appropriate, to the “tenant/subtenant” relationship and any other rental tenancy unless otherwise expressly excluded.

Section 2.1 Limitation of applicability

This chapter shall apply to all dwelling units as defined in Section 1 above, except that the following shall be exempt:

- A. Motels and hotels.
- B. In accordance with N.J.S.A. 2A:42-84.1 et seq., the provisions of this chapter shall not apply to a new multiple dwelling which is not constructed for occupation by senior citizens, for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the dwelling, or for thirty (30) years following completion of construction, whichever is less. This exemption applies only where an owner has complied with all requirements contained in N.J.S.A. 2A:42-84.1 et seq., including the filing with the municipal construction official required by N.J.S.A. 2A:42-84.4 and the service of a written statement upon the tenant required by N.J.S.A. 2A:42-84.3. This exemption shall not apply to rehabilitated buildings that during their rehabilitation maintained at least two rigid walls and a secured roof. In order to qualify for the exemption, the newly constructed dwelling must be registered by an applicant, on forms provided by the Rent Regulation Officer, with said Officer before the first rental for said dwelling.
- C. Nonresidential and commercial property. If the dwelling has an apartment unit(s), plus a commercial unit(s), the apartment unit(s) is covered by this chapter, but the commercial unit(s) is exempt.
- D. Housing provided for students by a school, college or similar accredited institution which owns or controls that housing.
- E. Owner-occupied dwellings containing two (2) or fewer units.
- F. A building completely vacant on or before and since January 1, 2021, provided that said building did not become vacant through unlawful means which can be attributed to the applicant for this exemption. In order to qualify for this exemption, the building vacant since January 1, 2021, must be registered by an applicant with the Rent Regulation Officer, on forms provided by said Officer, before the renting of dwelling units within the vacant building. After the first rental, such dwelling units shall be exempt from initial rent

or lease agreement, but all subsequent rents shall be subject to the provisions of this chapter.

- G. Dwellings which a government unit, agency or authority owns, operates, manages only if applicable federal or state law specifically exempts such units from municipal rent stabilization.
- H. Dwellings in any hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged.
- I. Any dwelling for which a landlord has successfully obtained a short-term rental permit pursuant to the City of Asbury Park's Short-Term Rental (STR) Ordinance (City Code § 13-1300).

Section 2.2. Transition from rent regulation by preempting governmental agency to regulation of this chapter

If a contract between a landlord and a governmental agency duly provides for that governmental agency to regulate the amount of rent received by that landlord, and if the authority of that governmental agency supersedes the authority of the City of Asbury Park to regulate such rents, then the application of this chapter shall be preempted during the period of governmental agency regulation specified in the contract. Until such a contract begins, and immediately after the contract terminates, this chapter shall continue to regulate such rents. Upon termination of such a contract, the "base rent" for dwelling units under this section shall be the last rent level received by the landlord prior to the termination of the preemptive governmental agency regulation reduced by an amount equal to the sum of all applicable tax, water, sewer, capital improvement, and any other surcharges as defined by this chapter, and calculated by the Rent Regulation Officer under this chapter.

ARTICLE II General Regulations

Section 3. Establishment of rents

Establishment of rents between landlord and tenant in housing space in dwellings to which this chapter is applicable shall hereafter be determined by the provisions of this chapter.

At the expiration of a lease or at the termination of the lease of a periodic tenant, no landlord may request or receive an increase greater than the percentage increase in the Consumer Price Index (CPI) from the CPI fifteen (15) months prior to the month of the proposed rent increase to the CPI three (3) months prior to the month of the proposed rent increase. In no case shall the allowable rent increase exceed four percent (4%). For example, if the CPI increase for the applicable period is two percent (2%), the rent increase may not exceed 2%. If the CPI increase for the applicable period is five percent (5%), the rent increase may not exceed four percent (4%) because in no case shall the allowable rent increase exceed four percent (4%).

The allowable annual increase will not be permitted if the dwelling is not in substantial compliance and/or if the landlord has not met the registration requirements as specified in this chapter.

No more than one (1) such cost-of-living rental increase in any one twelve-month period shall be permitted irrespective of the number of different tenants occupying said housing space during said twelve-month period.

Any rental increase at a time other than at the expiration of a lease or termination of the periodic lease shall be void. Any rental increase in excess of that authorized by the provisions of this chapter shall be void. Determinations under this section shall be made by the Board.

Section 4. Controls; increase restrictions; disclosure statement

All rents for rental of housing space and services in dwellings to which this act is applicable are hereby controlled at the base rent level received by the landlord as of January 1, 2021, and no rental increases shall be hereinafter demanded, paid or accepted, except as provided in this chapter.

Any rent increases imposed after January 1, 2021, to the extent that such increases are in excess of the rent increases allowed under this ordinance, are hereby declared to be null and void, and subject to the limitations and repose period set forth herein, such excess rents shall be refunded or credited to the tenant by the landlord forthwith.

All rents may be rounded up or down to the nearest dollar after making the computations.

Landlords shall report all increases of rents imposed after January 1, 2021, to the Rent Leveling and Stabilization Board. Any landlord seeking an increase shall notify the tenant, in writing, at

least sixty (60) days prior to the effective date of the increase and explain, in detail, the reason for the increase.

A. Disclosure statement

- a. Every landlord subject to the provisions of this chapter shall be required to provide to each tenant a disclosure statement, on Board-approved forms, available through the Rent Regulation Officer or by download from the City's website. The disclosure statement shall include a detailed description of the tenant's rights under this chapter, including but not limited to the right to request a legal rent calculation to determine the legal base rent; notice that a failure to request a legal rent calculation within six (6) years of service of the disclosure statement will result in a bar of a refund and/or credit of an excess or overpayment of rents; notice that a copy of the landlord's registration statement will be on file with the Rent Regulation Officer and available to a tenant upon request; and an acknowledgement by the landlord advising the tenant of the Truth-in-Renting Act, N.J.S.A. 46:8-43 et seq., and the statement/ booklet prepared therein, which can be obtained from the New Jersey Department of Community Affairs Division of Codes and Standards, Landlord-Tenant Information Service, P.O. Box 805 Trenton, New Jersey 08625;
 - b. The disclosure statement is to be signed and dated by the tenant and filed by the landlord with the Rent Regulation Officer. In the absence of a disclosure statement that is signed and dated by the tenant, a landlord may also establish proof of service of the disclosure statement by filing both a copy of the disclosure statement and a receipt indicating that the disclosure statement was delivered and received by the tenant via certified mail.
 - c. The Rent Regulation Officer shall be authorized to prepare and revise the disclosure statement as needed in an effort to comply with the intention and purpose of this section.
- B. Six-year statute of limitations. A refund and/or credit of excess rents shall be barred if the tenant's request for a legal rent calculation is not made within six (6) years from service of the disclosure statement upon the tenant. The statute of limitations commences only upon proper service of the disclosure statement in compliance with Section 4. Nothing in this provision shall bar a tenant from requesting a legal rent calculation, nor prohibit the Rent Regulation Officer or Board from rendering a determination as to whether the rent of the dwelling is in excess of those permitted under this chapter.
- C. Six-year period of repose. In no instance shall a tenant be allowed to collect rental overcharges for a period in excess of six (6) years as determined by the Rent Leveling Officer or the Board. Nothing in this provision shall bar a tenant from requesting a legal rent calculation, nor prohibit the Rent Regulation Officer or Board from rendering a determination as to whether the rent of the dwelling is in excess of those permitted under this chapter.

Alternative proofs of rents and vacancies. For the purpose of calculating the earliest date of a verifiable rent and determining the legal rent of the dwelling, and in the absence of a filed and timely submitted registration statement, a landlord shall be permitted to submit credible alternative proofs for consideration by the Rent Regulation Officer and/or the Rent Leveling and Stabilization Board to determine the earliest date of a verifiable rent and the legal rent of the dwelling. These alternative proofs may consist of, but are not limited to, leases and/or statements under oath from reliable sources. The Rent Regulation Officer and/or the Rent Leveling and Stabilization Board shall have absolute discretion to determine the reliability of any such alternative proofs.

Section 5 Tax Surcharge

Section 5.1 Formula for Surcharge

A landlord may seek a tax surcharge from a tenant because of an increase in municipal property taxes. The tax surcharge shall not exceed that amount authorized by the following provision: The landlord shall divide one-twelfth (1/12) of the annual increase in the present property tax over the property tax of the previous year by the total monthly rent roll, and that product shall be multiplied by the monthly rent paid by each tenant to establish the amount of surcharge that each

tenant may be required to pay. The tenant shall not be liable for a tax surcharge exceeding the tenant's percentage of the entire rent roll for the dwelling.

Section 5.2 Petition for Surcharge

- a. Any landlord seeking a surcharge shall petition the Board for approval and shall give notice to the tenant and the Board, at least thirty (30) days prior to the increase sought, of the calculations involved in computing the tax surcharge, including the present property tax for the dwelling; the property tax for the dwelling for the previous year; total rent rolls for all units, occupied or unoccupied in the dwelling; the percentage of the increase over the total rent roll; the rent of the tenant; and the percentage of his/her present rent compared to the total rent roll.
- b. Prior to making a determination on a landlord's petition for a tax surcharge, the Board shall obtain a report from the Department of Code Enforcement to determine whether there are any outstanding code violations on the subject property. In the event that the report reveals outstanding code violations, the Board shall deny the landlord's application or defer action on the application until the landlord has abated the violations and proof of the same has been submitted to the Board.

Section 5.3 Payment of Surcharge

The tax surcharge each tenant is liable for shall be paid in equal monthly payments only after the landlord gives the tenant at least one (1) month prior notice of the increase as required by statute.

Section 5.4 Appeals

Any party dissatisfied with the ruling of the Board on a Tax Surcharge Application may appeal the matter as prescribed by New Jersey law to the County Board of Taxation. Judgements of that Board may be appealed to the Tax Court of New Jersey

Section 6. Tax Decreases

Section 6.1 Apportionment

If the municipal property taxes are decreased in a given year due to either a decrease in the property tax rate or a lowering of the assessed evaluation of the property by the municipality, then the tenants are entitled to a tax surcharge decrease. Apportionment of such decrease shall be in the same manner as apportionment of tax surcharge under Section 5. The landlord shall be responsible for abiding by this requirement.

Section 6.2 Tax Appeal, Reduction

In the event a tax appeal is taken by the landlord and the landlord is successful in the appeal and the taxes reduced, the tenant shall receive eighty percent (80%) of the reductions as applied to its tax portion, after deducting all reasonable expenses incurred by the landlord in prosecuting the appeal.

Section 6.3 Rebates

The landlord shall be deemed to have received his/her rebate upon his/her receipt thereof from the receiver of taxes, or upon the execution of any agreement between such receiver and the landlord. The tenant must receive notice within fourteen (14) days from when the landlord receives his/her notice of successful appeal. The landlord must notify the tenants within thirty (30) days of the time the landlord receives his/her rebate of the amount he/she has received with the computations on how much the tenant is entitled to. The amount due the tenant shall be forwarded to the tenant within the same thirty (30) day period.

Section 7. Water and sewerage surcharge from tenants

- A. The landlord may seek a water and sewerage surcharge from a tenant because of an increase in the municipal water and sewer charges in excess of those assessed for the prior year. The rental increase permitted for water and sewer surcharge is determined by the Rent Regulation Officer pursuant to a formula approved by the Rent Leveling and Stabilization Board. The rent increase for water and sewer that each tenant is liable to pay shall be paid in twelve (12) equal monthly payments, 1/12 each month. The surcharge shall not be considered rent for purposes of computing cost-of-living rental increases. Determinations under this section shall be made by the Rent Regulation Officer. Tenants shall be given at least thirty (30) days notice before being asked to pay a water and sewerage surcharge hereunder.
- B. Notice on standardized form
 - a. The landlord shall, upon approval by the Officer of its water and sewer surcharge application, notify its tenants, by personal service, on standardized forms, setting forth:

- Explanation of water and sewer surcharge.
- Base rent
- Water and sewer surcharge (total and apportioned)
- Effective date

b. This notice shall be filed with the Officer.

Section 8.1 Condo Fees

Any condo fees charged from tenants shall be considered rent as defined in Section 1 and shall be subject to stabilization under this ordinance.

Section 8.2 Parking Fees

The landlord shall report and register all on-site parking fees with the Rent Leveling and Stabilization Board. Parking fees are considered rent as defined in Section 1 and shall be subject to stabilization under this ordinance.

Section 8.3 Exterior Spaces

Exterior spaces such as yards and pools shall be considered living areas and therefore covered by this ordinance.

Section 9.1 Application to Rent Leveling and Stabilization Board for Rental Surcharge

- A. Upon no less than sixty (60) days notice to its tenants, a landlord may apply to the Rent Leveling and Stabilization Board for a rental surcharge for capital improvement to the building and/or demised premises. Such application and supporting materials shall set forth the improvement, the cost thereof and its useful life. The landlord shall propose to apportion the cost of the improvement over its useful life among the tenants in the building in accordance with one of the following methods:
 - a. If the capital improvement benefits certain housing spaces only, then the cost of these improvements shall be surcharged to only these units.
 - b. If the capital improvement benefits all housing spaces but in varying degrees according to the amount of living area of each housing space, then the cost for the improvements shall be surcharged according to either the number of rooms or the number of square feet in the housing space in proportion to the total rentable area in the dwelling.
 - c. If the capital improvement is equally beneficial to all housing spaces, regardless of the living area within any housing space, then the cost of the improvements shall be surcharged according to the number of housing spaces within the dwelling.
- B. 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 must adhere to appropriate code standards and must be inspected by all agencies having control and jurisdiction and their approval obtained. A certificate of occupancy must be secured, if required by law.
- C. Any applications under the provisions of this Article of the chapter must prove, prior to the application acceptance, that the dwelling is:
 - a. In compliance with the housing maintenance, building, fire and other applicable City codes.
 - b. Not subject to a City-held title lien for the nonpayment of real estate taxes, water charges or sewer charges.

Section 9.2 Notice to tenants

Prior to any application under this section, the landlord shall serve notice upon each tenant at least sixty (60) days prior to said application, by registered or certified mail or personal service of a notice of application filing setting forth the basis for said application, the amount of rental increase or surcharge applied for with respect to that tenant and the calculations involved. A sample copy of such notice shall be filed with the application of the landlord, together with an affidavit or certification of service of notice of application upon each tenant. Copies of bills and

invoices in support of the landlord's application shall be made available to the tenant by the landlord.

Section 10. Determination

The landlord may seek additional rent (surcharge) for a capital improvement(s) made by him/her in the dwelling or attributable to the dwelling. The landlord shall compute the average cost of the capital improvement(s) per year of useful life by dividing the cost of the completed capital improvement(s) by the number of years of useful life of the improvement(s) provided that the period shall not be less than five (5) years. The useful life is the actual number of years that the capital improvement(s) is expected to last before needing replacement. The burden of proof is on the landlord to establish the useful life of the improvement(s). If the capital improvement(s) lowers the landlord's operating costs, the annual cost savings must be subtracted from the annual capital improvement(s) surcharge. The landlord is required to disclose all expected cost savings that will result from the capital improvement(s). No increase shall be permitted for capital improvement(s) affecting more than ten (10) rental units, unless the total cost per thereof exceeds three thousand dollars (\$3,000.00).

No increase shall be permitted for capital improvement(s) completed more than twenty-four (24) months prior to the date upon which notice to the Board of the improvements has been provided by the landlord. In no case will a capital improvement(s) rent increase be granted if the dwelling is not in substantial compliance and/or if the landlord has not met the registration requirements as specified in Section 28.

Permitted increases for improvements shall not exceed fifteen percent (15%) per rental unit unless an efficient landlord cannot meet operation expenses or make a fair return on his/her investment. In such a case, any further increase shall be dependent on the approval of a hardship rental increase pursuant to Section 13.1.

Section 11. Effective date

Rent surcharges under this article should become effective contemporaneously with the next scheduled change in the base rent whenever practicable, except with regard to a tax surcharge as provided in Section 5 above.

Section 12.1 Notification of capital improvement surcharge approval

- A. The landlord shall, upon approval by the Board of its capital improvement surcharge application, notify its tenants with fourteen (14) days by personal service, on a standardized form, setting forth:
 - a. An explanation of capital improvement surcharge.
 - b. The base rent.
 - c. The surcharge, total and apportioned.
 - d. The effective date and termination.
 - e. The total rent.
- B. This notice shall be filed with the Board and the Officer.

Section 12.2 Appeals

Either landlord or tenant may appeal the findings or order of the Rent Leveling and Stabilization Board regarding a capital improvement application to either the Law Division of the Superior Court in accordance with New Jersey Court Rules or the Municipal Council by filing a notice of appeal with the City Clerk within forty-five (45) days of being informed of the findings or order of the Board. Either party dissatisfied with the decision by the Municipal Council may appeal the matter to the Law Division of the Superior Court in accordance with New Jersey Court Rules.

Section 13.1 Appeal by landlord for a hardship rental increase

- A. In the event that a landlord cannot meet its operating expenses or does not make a fair return on his investment, it may appeal to the Rent Leveling and Stabilization Board for a hardship rental increase.

- B. No landlord shall impose upon any tenant an increase in rent under this Article without first obtaining approval with the Board. It shall be within the discretion of the Board to fix the effective date of any approved rental increase to be at any reasonable time as determined by the Board. Prior to any such appeal to the Board, however, the landlord shall serve on each tenant a notice of appeal setting forth in detail the basis for said appeal, and said notice shall be served at least thirty (30) days before hearing thereon. In considering hardship applications, the Rent Leveling and Stabilization Board shall give due consideration to any and all relevant factors, including but not limited to the following:
- a. Level and quality of service rendered by the landlord in maintaining and operating the building.
 - b. The presence or absence of reasonably efficient and economical management.
 - c. Whether the landlord made a reasonably prudent investment in purchasing the property and arranging financing on said property. In considering this factor, the Board may consider the purchase price, the fair market value of the property and the existing rentals at the time of the purchase to determine, if the debt servicing expenses are excessive. The Board may also consider the amount of cash invested in the property in relation to said fair market value and purchase price, the interest rate of the mortgage and whether the mortgage instrument was arrived at and executed in an arms-length transaction. It is presumed that a prospective purchaser of real property in Asbury Park shall be familiar with the terms of this chapter. It is not the intention of this chapter to permit a hardship rental increase when the landlord has not made a reasonably prudent investment.
 - d. Whether the operating expenses are reasonably incurred and the income statement is accurate. Operating expenses shall not include depreciation, amortization of debt service or capital expenditures but may include the interest debt service for allowable capital improvement surcharges subject to the Board's approval. Upon the Board's determination that the landlord made a reasonable prudent investment, operating expenses shall include an amount allocable for the average annual payment of mortgage interest when the mortgage arises from the purchase of the property. Said average annual payment of mortgage interest shall be arrived at by taking the total amount of mortgage interest to be paid over the life of the mortgage and dividing it by the number of years under the term of the mortgage. Mortgage interest which arises as a result of a refinancing of the property shall not be considered an operating expense, unless the funds which arise from the refinance are invested in the property in which case the Board may allow an amount allocable to mortgage interest as an operating expense.
 - e. Any other factor that the Board finds relevant to considering whether an increase in rent is justified.
 - f. Whether property is substantially in compliance with the Asbury Park Property Maintenance Code.
- C. The Board in considering all of the above factors may grant an increase for hardship.

Section 13.2. Submission of Records and Proofs

- A. Proofs. The landlord shall submit proof of expenses for operation, maintenance and repairs, including, but not limited to taxes, employees' salaries, all contracted expenses, insurance, fuel, utilities, maintenance and repairs, and reasonable superintendent and/or management fees, as well as expenses for vacancies, which have been held available for rental, to substantiate any hardship increase application.

The landlord shall also submit proof of mortgage principal payments, which are to be considered additional equity investment, and mortgage interest payments. Only interest payments shall be considered an expense, mortgage principle shall not. The landlord shall also supply the details of any refinancing, specifying any change in the amount of principal to be repaid and the amount of any cash withdrawn from the property.

The landlord shall submit the terms of all mortgages held by the landlord, or an equivalent entity, from the date of purchase to the date of application, including cash down payment,

cash withdrawal, mortgage interest rate(s), and schedule of principal and interest payments.

Expenses which recur periodically where the average period between occurrences is greater than one year must be identified. Only the portion attributable to the current year, calculated by dividing the total expense by the number of years in the average period between occurrences, may be listed as an expense, and the calculation must be submitted along with the expense.

Amounts allowed for vacancies and for management costs shall be fully documented, and in no event shall allowable expenses in either category exceed five percent (5%) of the landlord's gross income. Management costs shall include all administrative and supervisory costs. The Board shall only allow a vacancy loss for housing spaces that are cleaned, repaired, and offered on the market within two months. Landlords must submit proofs of the same in the form of receipts, contracts, advertisements and lease offers.

All expenses defined as capital improvements by the Internal Revenue Service must be submitted and itemized, along with calculations dividing the total expense by the number of years depreciated for Income Tax purposes. One year's depreciation shall be counted during the 12-month hardship period.

- B. Affidavits. Such proof shall be supported by affidavits that the expenses are complete, reasonable and necessary. The following affidavits are required: 1) An affidavit describing any business, family or social relationship between the parties financing the purchase of the building and the landlord and 2) an affidavit signed by a Certified Public Accountant (CPA) stating that the CPA has reviewed and approved of the calculations based on the proofs submitted.
- C. Age of Proofs. The Board shall consider the proofs and expenses for a period not to exceed sixty (60) months, but not less than twelve (12) months prior to the date of the landlord's application.

Section 13.3. Fees Not Applicable

No attorney's fees, expert fees, permit fees, parking fees, accountant's fees nor application fees incurred by a landlord in connection with any application to the Board shall be included in determining whether a landlord is entitled to any rent increases.

Section 14. Application for rental decrease by tenants

When services, care or maintenance decline in any dwelling, any tenant may apply to the Rent Leveling and Stabilization Board for a decrease in rent with notice to the landlord. Said notice shall be served on the landlord setting forth the reason for such application. At least twenty (20) days shall elapse before a hearing thereon can be set.

Section 15. Consideration in making determinations of vacancy

In making determinations of vacancy, the Board shall proceed as follows:

- A. Review the registration proposal and supporting documentation within sixty (60) days, or as soon as practicable, of their submission to the Officer. Said proposal must assert that:
 - a. The building is completely vacant and will have been completely vacant for at least six (6) months prior to the exemption granted under this Article and that said vacancy did not occur through unlawful means attributable to the applicant.
 - b. The building is in a deteriorated condition and requires major reconstruction.
 - c. The major reconstruction shall include, by way of example, the repair and improvement of the exterior walls; the reconstruction of the interior walls; all new systems for plumbing, heating and electric; new roof; new windows; sprinkler systems; enunciated panels and electric smoke alarms; all permits and approvals as required by the applicable codes.
- B. The Board shall, in its initial review, determine that the building is vacant and deteriorated and requires major reconstruction. It is the intention of this chapter that a building that is in good condition shall not be granted an exemption under this Article. If the building

complies with the requirements of this Article, the Board shall issue a preliminary approval to the applicants to proceed accordingly.

- C. Upon completion of the major reconstruction, the applicant shall submit a certificate of major reconstruction, indicating compliance with and performance of the proposal for which was issued a preliminary approval. The applicant shall also submit a certificate of vacancy, indicating that the building is and has been completely vacant for at least six months and that said vacancy did not occur through unlawful means attributable to the applicant.
- D. Upon a determination that the applicant satisfies the requirements of this Article, the Board shall grant the exemption as the same as defined in Section 2F.

ARTICLE III

Rent Leveling and Stabilization Board and Officer

Section 16.1 Creation; compensation; terms; alternate members

There is hereby created a Rent Leveling and Stabilization Board to administer this chapter under the direction and supervision of the Department of Finance of the City of Asbury Park.

The Board shall consist of seven (7) members appointed by the Mayor with the consent of the Municipal Council. The members of the Board shall consist of four (4) tenants and three (3) landlords.

Said members of said Rent Leveling and Stabilization Board shall serve during the term of the Mayor appointing them and shall serve without compensation but shall be allowed reasonable expenses.

A quorum for a hearing shall consist of at least four (4) members (a majority) of the whole Board, so long as the number of landlord members does not outnumber tenant members present, and shall be authorized to issue orders relating to the powers and functions of the Rent Leveling and Stabilization Board.

Decisions of the Board may be rendered by a majority of members present, so long as the Board has a quorum.

Section 16.2. Rent Regulation Officer

There is also hereby created the position of Rent Regulation Officer, in the Department of Finance, to be appointed by the City Manager and compensated based on existing salary controls and provisions within that department.

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.
- c. To ensure compliance by the landlord and tenants 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, process, investigate and determine complaints from tenants of illegal rental increases.
- 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 ordinance.
- h. To attend all meetings of the Rent Leveling and Stabilization Board.
- i. To perform such other duties as the Rent Leveling and Stabilization Board may specifically direct and as allowed by this chapter.

Any determination of the Rent Regulation Officer under this section or such duties as may be delegated to him/her by the Rent Leveling and Stabilization Board or his/her designee, by regulation, will be rendered by the officer or designee, in writing.

Any person aggrieved by a determination of the Rent Regulation Officer may appeal to the Rent Leveling and Stabilization Board, which may sustain, vacate, modify or reverse said determination. An appeal shall be filed no later than forty-five (45) calendar days after the date that the determination is issued. The appeal shall be in the form detailed herein, and shall be accompanied by the fee as set forth in this Chapter.

Upon receipt of the appeal setting forth in detail the grounds for the appeal and the required fee, the matter shall be placed upon the Rent Leveling and Stabilization Board agenda at the earliest convenient date for determination, but no more than sixty (60) days after receipt. During the pendency of the appeal, the rent for the subject unit shall be the rent as established by the Rent Regulation Officer.

Section 16.3. Attendance

Whenever a member of the Rent Leveling and Stabilization Board has not been present at four (4) consecutive meetings of the Board, then the remaining members of the Board shall determine by a majority vote whether the absence of the member shall be excused pursuant to N.J.S.A. 40A:9-12.1(g). If the failure to attend is due to a legitimate illness, the member's absence shall be excused. However, if the Board determines that the illness is so serious that it may affect the member's continued ability to participate at meetings, then the Board shall request the appointing authority to determine whether the member is physically or mentally incapable of service pursuant to N.J.S.A. 40A:9-12.1(d).

Report of Vacancy. In those cases wherein a majority of the Rent Leveling and Stabilization Board has failed to confirm that the absence of any member at four (4) consecutive meetings is excusable, the Board shall report the determination to the appointing authority and shall advise the appointing authority that a vacancy exists. The member in question who has been absent for four (4) consecutive meetings may appear as a witness but may not vote on the issue as to whether the Board will excuse his or her absence.

Section 16.4. Conflicts of Interest

Candidates for the positions of Rent Leveling and Stabilization Board member and Rent Regulation Officer shall submit a verified statement listing all of their interests and dealings in real property, including, but not limited to, the ownership, sale or management thereof, and their investment in, membership in or association with partnerships, corporations, joint ventures and syndicates engaged in the ownership, sale, or management of real property during the previous three (3) years.

Section 16.5. Meetings and Dockets

The Rent Leveling and Stabilization Board shall determine the schedule of meetings and hearings as is necessary to carry out the provisions of this ordinance. At minimum, a meeting shall be held within every sixty (60) day period. Special meetings may be called upon the request of at least two (2) board members.

The Rent Leveling and Stabilization Board shall maintain and keep in its office rent adjustment hearing dockets. The dockets shall list the time, date, place of hearing, the names of the parties involved, the addresses of the dwellings involved, the issues involved and positions taken, and the final disposition of the petitions heard by the Board.

Section 16.6. Language

All rules, notices, orders, rulings and regulations of the Rent Leveling and Stabilization Board shall be printed in English and Spanish. Information disseminated to the public by the Board shall be disseminated in English and Spanish. At the request of a Board member, participant or observer, provision shall be made for concurrent oral translation into Spanish of any hearings or meetings of the Board.

Section 17. Rights and authority of the Board

The Rent Leveling and Stabilization Board shall have the right to exercise, in addition to other powers herein granted, all powers necessary and appropriate to carry out and execute the purpose of this entire chapter, including the right to the exercise of equitable authority to depart from the strict interpretation of the provisions of this chapter in instances where justice and fairness requires equitable intervention. Equitable authority should only be exercised in truly exceptional circumstances where justice and fairness so demand.

These powers of equity do not permit the Rent Leveling and Stabilization Board to act in contradiction to the purposes of this chapter nor in an arbitrary, capricious or unreasonable manner. Notwithstanding this general power of equity, the Rent Leveling and Stabilization Board shall also have the following powers:

- A. To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended from time to time by the Board in the exercise of its discretion, provided that such rules are filed with the Municipal Clerk.
- B. To supply information and assistance to landlords and tenants to help them comply with the provision of this chapter.
- C. To hold hearings and adjudicate applications from landlord/tenants pursuant to this chapter.
- D. Said Board shall give both landlord and tenant reasonable opportunity to be heard before making any determination, with or without counsel. All determinations shall be in writing with copies to any parties of record.
- E. Both landlord and tenant may appeal the findings of the Board to a court of competent jurisdiction according to law.
- F. To issue subpoenas for the production of information which the Rent Leveling and Stabilization Board deems necessary and proper to determine the application.
- G. To require the production of books, records, tax returns, balance sheets, profit and loss statements and such other records as the Board may require and deem necessary for its determination.

Section 18. Fees for application and proceedings

- A. The following fees shall apply to all applications or other proceedings of the Rent Leveling and Stabilization Board and Rent Regulation Officer:
 - a. Capital improvement surcharge: \$75.
 - b. Completely vacant and deteriorated buildings: \$75.
 - c. All requests for updating legal base rents; applications contesting imposition of rent increases under Section 4 or applications for reduction in rent pursuant to Section 14 shall have a fee of \$10 per unit.
 - d. Registration and reregistration of dwellings: \$25 per building (Section 28).
 - e. Inspection and/or issuance of certificates of substantial compliance by the Construction Department (per apartment unit): \$10.
 - f. Building vacant since January 1, 2021: \$20.
 - g. Hardship increase application: \$50.
 - h. Appeal from Rent Regulation Officer to Board: \$20.
- B. A single application may be filed for several apartments in the same building for which similar or substantially identical facts are involved. Fees shall be paid only by check or money order, payable to the City of Asbury Park. No cash shall be accepted.

Section 19. Violations and penalties

A violation of any provisions of this chapter, including but not limited to filing with the Rent Leveling and Stabilization Board or Officer any material misstatement of fact or a determination by the Rent Leveling and Stabilization Board that a landlord has within sixty (60) days of the enactment of this ordinance, caused by harassment or otherwise a dwelling unit to become vacant, unconscionably raised a tenant's rent, or rented to a tenant without filing a registration statement for the unit pursuant to Section 28, shall result in the violator being subject to a fine not to exceed three thousand dollars (\$3,000) per dwelling unit.

Section 20. Enforcement authority

The Rent Regulation Officer is hereby granted and shall have the right to exercise, in addition to other powers herein granted, all powers set forth under Section 17, except the power to promulgate rules and regulations.

Section 21. Determinations appealable

All determinations made by the Rent Regulation Officer are appealable to the Board. The burden of said appeal is on the appellant who must demonstrate that the Officer's determination was in error or arbitrary, capricious and unreasonable. Said appeal must be filed with the Board within forty-five (45) calendar days of the Rent Regulation Officer's decision

ARTICLE IV
Maintenance of Standards

Section 22.1 Duty of landlord to maintain standards

During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture furnishings and equipment on the housing space and dwelling as he provided or was required to do by law or lease at the date the lease was entered into.

Section 22.2 Reduction in Rent Allowed.

Failure of a landlord to maintain a dwelling as described above may result in their tenant qualifying for a rent decrease. Justification for a rent decrease shall include any cessation or inadequate provision of the vital services listed herein, due to deterioration or improper maintenance of the services, where it is the responsibility of the landlord to provide the services. For the following decreases in services, a petitioner or petitioners rents shall be decreased in accordance with the following percentages of the total rent or rents collected during the period of the decrease in services:

- a. No heat 45%
- b. No water 35%
- c. No hot water (When provision of hot water is the responsibility of the landlord) 20-30%
- d. Roof leaks (Such as to make the apartment, or dwelling unit fully or partially uninhabitable) 25- 75%
- e. Nonfunctioning stoves or refrigerators (where supplied by landlord) 15-25%
- f. Faulty electrical fixtures (Such as to constitute a dangerous condition, or threat to the health and safety of the tenants) 10-50%
- g. Faulty plumbing (Defined as inoperable "fixtures" i.e., tub, sink, toilet, kitchen sink) 15% (15% per fixture, but not to exceed a maximum of 75% of the total rent of all petitioners)
- h. Inoperable elevator (Shall only apply in buildings over four stories, when inoperability is due to the neglect of the landlord; reduction shall only be applied to tenants of the building living on the third floor or above) 15%

No petition for a rent decrease, due to a decrease in services, shall be considered under this section, unless the potential decrease in rent for each petitioner, or each tenant in a group petition, shall be greater than forty percent (40%) of their rent for the period of the decrease in services, as determined by the Rent Leveling and Stabilization Board.

Section 22.3. Time Periods

Evidence of the existence of any alleged decrease in services shall only be considered by the Rent Leveling and Stabilization Board for a period of seventy-five (75) days prior to the filing of the petition, and no rent decrease shall be imposed by the Board for any period prior to the seventy-five (75) days.

Section 22.4. Conditional Decrease; Correction

If a rent decrease is made conditional upon the landlord's performing whatever repairs are deemed necessary to correct a decrease in services, the landlord may petition, upon completion of seventy-five percent (75%) or more of the repairs ordered, for a reinstatement of all or part of the decreased rents. The petition and any determination made by the Rent Control Board thereon, shall conform to the procedure of the Board.

Section 23 Rent Rebate

The landlord shall rebate to the tenant any amount of rent collected in excess of that permissible pursuant to the terms of this chapter by crediting the tenant over a period not to exceed twelve (12) months with the amount of excess rent paid, or in the event the tenant is no longer in occupancy, by refunding within a one (1) month period. This provision is not intended to preclude a tenant from seeking judicial remedies under statutory or common law. If a landlord fails to return any excess collected rent to their tenant within the aforementioned relevant time periods, they will be liable to their tenant for double the unreturned balance plus attorney's fees and costs.

Section 24. Certificate of compliance to accompany applications for increase

Any landlord seeking a regular increase in rent pursuant to Section 4 of this chapter must include in the notice of said increase a certification signed by either the landlord or a qualified inspector within the Division of Health to the effect that the dwelling is in substantial compliance with the Asbury Park Building Code, Asbury Park Housing Code, the Asbury Park Fire Prevention Code and 2015 International Property Maintenance Code of the City of Asbury Park.

The landlord may not charge or collect such rental increase if he has failed to provide any such certification, and, in such instance, the tenant may refuse to pay such rental increase without Board proceedings, though the tenant may file the notice with the Board for information. If a notice of rental increase should be served without a certificate of substantial compliance, then that notice shall be invalid. The landlord may serve a second notice of rental increase containing a certificate of substantial compliance, and the rental increase shall be effective no earlier than the date of increase contained in said second notice. If the tenant is served with a certificate of substantial compliance, as part of a notice of increase, and he wishes to challenge the accuracy of that certificate, he may file a complaint with the Rent Leveling and Stabilization Board, and said increase shall be paid by the tenant during the pendency of case. If the Board should determine, at hearing regarding the accuracy of such a certificate, that the dwelling is not in substantial compliance with the aforesaid codes, then the Board may order that the rental increase be rescinded and order that amounts previously paid towards said increase be withheld from future rent.

Section 25. Capital improvement or hardship increase

Any landlord who seeks a capital improvement or hardship increase from the Board, pursuant to Section 9 through Section 13 must file with his application a certification from a qualified inspector within the Division of Health to the effect that the building and grounds are in substantial compliance with the aforesaid codes, which certification shall be based on an application made by the landlord not more than one month before the filing of his application with the Rent Leveling and Stabilization Board. No such increase may be granted until said certification has been filed. If a tenant contests the accuracy of said certification, he may file a complaint with the Board. If the Board determines that the certification is not accurate, then the Board may deny the application and rescind any increase granted thereunder. If the landlord fails to file a certificate of substantial compliance with his application for hardship or capital improvement increase, but he later does so, then the Board may process the application, but any increase granted by this Board shall be retroactive to the date of the certificate.

Section 26. Determination of compliance

Whenever there is an issue as to whether or not a landlord is in substantial compliance, that issue shall be determined by the Rent Leveling and Stabilization Board based on the evidence adduced at hearing. At that hearing, any certification or inspection from a qualified inspector within the Division of Health regarding substantial compliance shall be evidential but shall not be determinative.

ARTICLE V Construction

Section 27. Construal provisions

This ordinance, being necessary for the welfare of the City and its inhabitants, shall be liberally construed to effectuate the purposes thereof as set forth in its preamble.

ARTICLE VI
Registration Requirements

Section 28. Registration statement; fee

- A. All dwellings which are subject to the provisions of this chapter shall file, within sixty (60) days of the final adoption of this section, a registration statement and a filing fee of \$25 with the Rent Leveling and Stabilization Board. This registration statement shall include the following information to be provided on a form provided by the Rent Leveling and Stabilization Board; the name of each tenant and the apartment number; the number of rooms for each apartment; the current rent for each apartment; the amount of the last increase for each apartment unit; the date of the last increase for each apartment unit; the date of lease expiration for each apartment unit; if applicable, services provided to the building and telephone number; the address of the owner of the building and his or her telephone number; and the superintendent's name, address and phone number, if applicable.
- B. If the building is owned by an LLC, any members with at least a 24 percent share in the property must provide their names and mailing addresses. If no members of the LLC own at least a twenty-four percent (24%) share, then the four members with the largest shares shall provide that information.
- C. This statement must be maintained on a yearly basis by filing with the Rent Leveling and Stabilization Board, with a filing fee of \$25 as set forth under Section 18, an annual registration statement on January 1, 2021, and each anniversary date thereafter. Failure to register or reregister or false registrations shall be punishable by a fine pursuant to Section 19. Furthermore, any rent charged by a landlord who is non-compliant with this section shall be void and returnable to their tenants pursuant to Sections 4 and 23. A copy of the annual registration statement shall be presented to any tenant upon demand.
- D. 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 Rent Leveling and Stabilization Board.
- E. A violation of any provision of Section 18A(a) through (h) inclusive shall be subject to a penalty of \$500.

ARTICLE VII
Vacancy Decontrol and Limitation on Rent Increases

Section 29. No Vacancy Decontrol

No dwelling unit shall be decontrolled pursuant to this article.

Section 30. Limitation on Increases

Since an immediate rent increase of more than twenty percent (20%) above the prior monthly rent may be considered unconscionable and imposes a hardship on a tenant, the Rent Leveling and Stabilization Board shall not grant increases exceeding twenty percent (20%) in any one (1) year for any tenant.

For the purpose of determining whether the rent increase exceeds twenty percent (20%) of the monthly rent, all increases pursuant to Section 4, Expiration or termination of lease, Section 9, Application to Rent Leveling and Stabilization Board for Rental Surcharge and Section 13, Appeal by landlord for a hardship rental increase, occurring within twelve (12) months prior to the effective date of the increase shall be added to determine if that amount exceeds twenty percent (20%) of the prior monthly rent.

