

Mr. Harmon offered the following ordinance and moved its adoption

ORDINANCE #12-98

**AN ORDINANCE SUPERSEDING ORDINANCES NUMBERED 819-83,  
999-91 AND 44-94 OF THE BOROUGH OF ATLANTIC HIGHLANDS  
AND CONTINUING RENT CONTROL AND PROTECTED TENANCY.**

BE IT ORDAINED, by the Mayor and Council of the Borough of Atlantic Highlands, County of Monmouth, State of New Jersey, as follows:

*Extended until 12/31/02 Ord 8-99, 12/31/2005 Ord 10-2002*

**1. RENT LEVELING BOARD**

**1.1 RENT LEVELING BOARD ESTABLISHED.** There is hereby continued the Rent Leveling Board within the Borough of Atlantic Highlands. The Board shall consist of five (5) members, one shall be a tenant of a multiple dwelling in Atlantic Highlands and one shall be a landlord of a multiple dwelling in Atlantic Highlands. The existing members of the Board shall continue in office. Replacements shall be appointed by the governing body and their terms of office shall be for a period of three (3) years each, with each member serving without compensation. Terms shall be staggered so that the terms of no more than two members expire in any year. The term of a member appointed to fill a vacancy shall be for the remaining unexpired term.

**1.2 RENT LEVELING BOARD; POWERS.** The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:

**1.2.1** To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this Ordinance, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of discretion, providing that such rules are filed with the Borough Clerk.

**1.2.2** To supply information and assistance to landlords and tenants to help them comply with the provisions of this Ordinance.

**1.2.3** To hold hearings and adjudicate applications from landlords for hardship increases and surcharges.

**1.2.4** To hold hearings and adjudicate applications and complaints from tenants for reduced or improper rentals. The Board shall give both landlord and tenant reasonable opportunity to be heard before making any determination.

1.3 APPEAL. Both landlord and tenant may appeal in writing the findings of the Board to the governing body within (20) days from the date of the determination. The Council shall hold a hearing on the record before the Board.

## 2. RENT CONTROL

### 2.1 DEFINITIONS. As used in this Ordinance:

*Base rent* shall mean the actual legal monthly rental a tenant is paying for his apartment (or the contract rent if applicable in Section 2.6, excluding any hardship increase or improvement surcharge.

*Current rent* shall mean the actual legal monthly rental a tenant is paying for his apartment, including any hardship increase or improvement surcharge.

*CPI* shall mean the "Consumer Price Index for all urban consumers" for the region of the United States, of which Atlantic Highlands, New Jersey is a part (i.e., the New York-Northeast-New Jersey region) published periodically by the Bureau of Labor Statistics, United States Department of Labor.

*Date that the lease is entered into* in the case of the renewal of leases shall mean the starting date of the last renewal term.

*Housing space, dwelling or apartment* shall mean and include the portion of a structure 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, parking and garage facilities (whether optional or mandatory), and improvements connected with the use or occupancy of such portions of the property. Included are any building, structure, trailer, or land used as a trailer park, rented or offered for rent to one or more tenants or family units. Exempt from this Ordinance are: commercial buildings containing two (2) or less housing units; and housing structures of four (4) units or less. Also exempt are condominiums, motels, hotels, and similar type buildings except any portion thereof that is owned or controlled by a person or entity owning or controlling five (5) or more of those apartments or units that are rented or offered for rent.

*Notify or notification* shall mean either certified mail or hand delivery acknowledged by written receipt; or if the party refuses to claim or acknowledge delivery, by regular mail.

Real estate tax shall mean all real estate or property taxes paid to the Borough of Atlantic Highlands, including, but not limited to, municipal, county and school taxes, and any other taxes or fees listed on the annual property tax bill.

Substantial compliance shall mean that the housing space and dwelling are free from all heat, hot water, elevator and all health, safety and fire violations as well as ninety (90%) percent qualitatively free of all other violations of the Atlantic Highlands Property Maintenance Code.

2.2 ESTABLISHMENT OF RENT. Establishment of rents between a landlord and a tenant in any dwelling shall hereafter be determined by the provisions of this Ordinance. Any rental in excess of that authorized by the provisions of this Ordinance shall be void.

2.3 RENTAL INCREASES ALLOWED. At the expiration of a lease or periodic tenancy a landlord may increase a tenant's base rent up to ninety (90) percent of the percentage increase in the CPI plus or minus the Tax Pass-Through. The rent resulting from the imposition of any increase provided hereunder shall be rounded to the nearest dollar. No landlord shall request or receive more than one CPI/Tax increase per year per housing space.

2.3.1 The CPI figures to be used are those published in the fourth month prior to the month in which the lease or periodic tenancy terminates, over the CPI published in the sixteenth month prior to the month of termination. By way of example, a CPI base rent increase computed in accordance with the provisions of this section shall be computed as follows:

#### EXAMPLE

Assuming a lease or periodic tenancy expires in April of 1991, and the base rent is \$700 per month.

- a) 141.6 CPI for December of 1990, the fourth month preceding the month of termination
- b) -133.3 CPI for December of 1989, the sixteenth preceding the month of termination
- c) 8.3 Difference in the CPI, subtract b. from a.
- d) 6.23% Percentage change in the CPI, take c. and divide by b.
- e) 5.61% Permissible CPI percentage increase, multiply d. by 90%
- f) \$39.27 Permissible CPI increase, multiply the base rent by e. (\$700 x 5.61% = \$39.27), round to the nearest dollar after including any tax increase/decrease from Section 2.3.2.

2.3.2 Whenever the base rent is increased as provided in Section 2.3, a Tax Pass-Through for any real estate tax reduction shall be, or any real estate tax increase may be, included in the increase calculations. A tax pass-through is calculated by taking the real estate taxes billed by the Borough for the upcoming twelve months and subtracting the amount billed for the prior twelve months (based upon the most recent and prior annual tax bills), divided by twelve months, divided by the total square footage of the building(s) and multiplied by the square footage occupied by the tenant.

2.3.3 No rental increase shall be allowed during any period when the apartment or dwelling occupied by the tenant is not in substantial compliance with the Multi-family Dwelling Inspector and the landlord is not current on all real estate taxes billed by the Borough.

2.3.4 Any landlord seeking a rent increase, lease renewal or agreement to extend or renew a lease shall provide notice of said action in writing to the tenant at least sixty (60) days prior to the effective date of increase, renewal, extension or other action. This notice shall include all of the CPI/Tax calculations involved in computing the increase. No tenant shall be required to sign any such lease, rent increase notice, renewal or agreement to extend or renew a lease until such tenant has had the opportunity to review the documents for a period of five (5) business days. Failure to comply with this provision shall result in the rental continuing at the old rent until proper notice is given.

#### 2.4 ACCUMULATION OF CPI/TAX INCREASES NOT CHARGED TO TENANT.

2.4.1 Any landlord who does not raise the rent the amount permitted by the CPI/Tax increase in Section 2.3, shall have the right to accumulate this increase, by tenant, provided the landlord notifies the tenant, in writing, of the calculations involved in computing the current uncharged increase and the total accumulated increase not charged to the tenant. At a later expiration of a lease or periodic tenancy, the landlord may increase the rent on the housing space to the full amount that would have been permitted if the full annual CPI/Tax increase(s) had been implemented.

2.4.2 Increases under Section 2.4.1 shall be limited so that the full annual increase in current rent shall not exceed the greater of 1.5 times the CPI/Tax increase for the year.

2.5 TAX APPEAL; TENANT CREDIT. In the event a real estate tax appeal is taken by the landlord and the tax is reduced, after deducting all expenses incurred by the landlord in prosecuting the appeal, the landlord shall remit and tenant shall receive fifty (50) percent of the reduction.

2.5.1 Within forty-five (45) days of receipt by the landlord of the monies, or the crediting of such monies against the landlord's outstanding taxes, the landlord shall notify each tenant of such tax reduction and of the calculations involved in computing the tenant's credit, including the property tax for the dwelling place before the appeal, the reduced property tax for the dwelling place after the appeal, the number of square feet of all housing space in the dwelling, the tax decrease per square foot of housing space, the number of square feet occupied by the tenant, the credit to which the tenant is entitled and how it is being credited. The landlord shall provide the Board in writing with a detailed list of the items of expense incurred by him in prosecuting the tax appeal. If the above tax reduction is partially based upon property changes or alterations, the allocation of the percentage of the reduction remitted to tenants shall be determined by the Board.

2.5.1.1 A tenant who has resided in housing space for less than the entire tax year to which a reduction pertains (hereinafter "tax year") shall be entitled to receive a percentage of the tax refund pertaining to his housing space which percentage shall be equal to the percentage of the tax year the tenant resided in the housing space.

2.5.1.2 With respect to any tenant who is entitled to a tax refund but whose whereabouts are unknown, the landlord shall, within forty-five (45) days after receipt by him of his tax refund or the crediting of such refund against outstanding taxes, deposit the tenant's portion in a bank account maintained by the landlord.

2.5.1.3 With respect to a tenant whose whereabouts are unknown, the landlord shall make a reasonable effort to ascertain such tenant's whereabouts, and refund to him any amounts to which he is entitled. If, after, two (2) months from the date of the landlord's receipt of his tax refund or the crediting of such refund against outstanding taxes, he has been unable to ascertain the whereabouts of any tenant entitled to a refund, the landlord shall apply such tenant's portion of the tax refund for general maintenance purposes and/or making improvements to the common elements of the dwelling.

2.5.1.4 Within two (2) months after the expiration of the two (2) month period during which a landlord must attempt to locate a tenant whose whereabouts are unknown, the landlord shall expend, and shall provide details to the Board pertaining to the expenditure of, funds for general maintenance purposes and/or for making improvements to the common elements.

**2.6 FIRST TIME RENTAL, VACANT HOUSING DECONTROLLED, RECONTROLLED.** The owner of housing space or a dwelling being rented for the first time, or which is presently vacant or which will become vacant during or at the end of any lease term, shall not be restricted in the initial rent charged. Any subsequent rental increases, however, shall be subject to the provisions of this Ordinance, excepting that if the landlord and tenant agree upon any incentive, rebate or other inducement that causes the rent paid to be less than the contract rent, the contract rent shall be considered the base rent only if the incentive, rebate or other inducement, and the method of its termination are agreed to and stated in a written lease signed by the Landlord and Tenant prior to the initial occupancy by the Tenant. Any subsequent rental increases following the initial term shall be excepted from the provisions of this Ordinance if, and only if, such future increases are clearly set forth in a written lease signed by the Landlord and Tenant prior to the initial occupancy by the Tenant.

**2.7 APPEAL BY LANDLORD.**

**2.7.1** In the event that a landlord cannot receive a fair return after having received the increase provided in Subsection 2.3, he may appeal to the Rent Leveling Board for increased rental for up to five (5) years. The Board may grant a hardship rent increase to meet this requirement. For the period of the requested increase, and two years before and after, or other period as determined by the Board, The landlord must provide evidence according to the standards recognized at law for determining fair return. The Board will rely upon the recognized standard that a landlord should receive a net operating income of at least forty (40%) percent of the gross annual income after deducting reasonable and necessary operating expenses, in the absence of an adequate showing that utilization of this standard will result in an unfair return to the landlord. Gross annual income will be calculated using the occupancy for the past twelve months, the average occupancy rate for the county or region, or 90%, whichever is greater. Operating expenses shall not include mortgage principal or interest payments, depreciation or amortization. Any hardship increase granted by the Board will be in addition to the annual CPI/Tax increase and shall be equally prorated to all units within the structure thirty (30) days after the decision of the Rent Leveling Board, provided that no increase shall take effect with regard to any tenant who has a written lease until the expiration of the lease unless the lease provides otherwise.

**2.7.2** A landlord may seek surcharges for major capital improvements or services proposed or completed within the past three years. To qualify for a major improvement surcharge, a claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security, and that the improvement satisfies the IRS standards for capital

improvements. Expenditures classified as capital by the IRS for items requiring periodic repair or replacement, such as heating systems, roofs, etc., are to be considered operational expenses unless there is a significant benefit to tenants. The landlord must notify each tenant of the total costs of the completed capital improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square feet occupied by the tenant and the capital improvement surcharge he is seeking from each tenant. The landlord seeking a capital improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board who shall determine if the improvement is a qualified major improvement and if so, may permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the capital improvement. If the increase is granted it shall not be considered part of the base rental nor calculated in future CPI increases, in any event, no increase authorized by this section shall exceed fifteen (15%) percent of the tenant's base rent. No surcharge shall begin until the capital improvement or service is completed; no surcharge shall be allowed during any period that the improvement or service is not maintained or provided.

2.7.3 Prior to any such appeal to the Board provided for in subsections 2.7.1 and 2.7.2, a landlord must post in the lobby of each building, or if no lobby is present, in a conspicuous place in and about the premises, a notice of the appeal setting forth, in detail, the basis for the appeal. This notice must be posted for at least fifteen (15) days prior to the proposed date of appeal. The landlord shall also send a copy of this notice by mail to each tenant at least fifteen (15) days prior to the proposed date of the appeal. The landlord must also submit to the Board a certification from the Zone Code Officer of Atlantic Highlands that the building and grounds are in substantial compliance with the Multi-family Dwelling Inspector.

2.8 STANDARDS OF SERVICE. During the term of this Ordinance, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in 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. If a landlord fails to provide the above standards of service for more than 30 days, or for a shorter period considering the circumstances, a tenant may appeal to the Rent Leveling Board for a rent reduction. The Board may order the landlord to reduce the tenant's monthly rent beginning the month the change or defect(s) began, and until the month after all changes or defects are corrected, as confirmed by the Multiple Family Dwelling Housing Inspector. In determining any appropriate reduction the Board may consider the loss of use of the

affected area as well as the overall impact upon the tenant. Any rent reduction is in addition to any other penalties provided for in this Ordinance.

**2.9 POSTING REQUIRED.** All landlords shall be required to have at all times a copy of the Rent Leveling Ordinance posted in the lobby or other conspicuous place in the premises.

**2.10 REQUEST FOR INFORMATION.** When the Rent Leveling Board shall request of any landlord any information with respect to any rental unit or the landlord's property or operation, such information shall be provided to the Rent Leveling Board within ten (10) days of such request.

**2.11 COMPLAINT AGAINST LANDLORD.** Any tenant filing a complaint with the Rent Leveling Board against the landlord shall be required to sign a complaint and appear before the Board to give testimony as requested by the Board. The landlord and/or his representative upon due notice shall be required to appear and give testimony.

**2.12 PRECEDENCE OF ORDINANCE.** Should a lease entered into between the landlord and tenant prove to be in conflict with the Rent Leveling Ordinance, the Ordinance shall take precedence.

### **3. SENIOR CITIZENS AND DISABLED PROTECTED TENANCY ACT**

**3.1 ESTABLISHED.** The Rent Leveling Board has been authorized and instructed to administer the provisions of the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61.22, et seq. The Rent Leveling Board will periodically report to the Mayor and Council its recommendations as to the fees which should be charged to owners seeking to convert properties to condominiums or cooperatives as provided in N.J.S.A. 2A:18-61.35.

**3.2 FEES.** The following fee structure is provided to cover the costs of the services to be provided by the Borough under the provisions of the Senior Citizens and Disabled Protected Tenancy Act and are to be paid by the owners of properties sought to be converted to condominiums or cooperatives at the time such owners take steps to invoke the services of the Borough under the Senior Citizens and Disabled Protected Tenancy Act:

**3.2.1** Two thousand (\$2,000.00) dollars for the application for conversion of structures, and

**3.2.2** Two hundred (\$200.00) dollars for each unit.



#### 4. VIOLATIONS AND PENALTIES

##### 4.1 VIOLATION; COMPLAINT.

4.1.1 A willful violation of this Ordinance including, but not limited to, the willful filing with the Rent Leveling Board of any material misstatement of fact, or the failure to comply with a final administrative determination of the Board and/or the Mayor and Council shall be subject to complaint in Municipal Court and shall be punishable by a fine of not more than five hundred (\$500.00) dollars and shall be considered a separate violation as to each leasehold. A complaint may be signed by an affected tenant or by appropriate Borough official.

#### 5. GENERAL

5.1 PURPOSE. This Ordinance being necessary for the welfare of the Borough and its inhabitants shall be liberally construed to effectuate the purposes thereof.

5.2 TERMINATION OF ORDINANCE. This Ordinance shall remain in full force and effect thru December 31, 1999 and shall automatically terminate, cease and be of no force and effect unless specifically extended by the governing body by a further amendatory ordinance.

5.3 SEVERABILITY. If any section, subsection, paragraph, sentence or other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this ordinance directly involved in the controversy in which said judgment shall have been rendered.

5.4 EFFECTIVE DATE: This Ordinance supersedes Ordinances 819-83, 999-91 and 44-94 and shall take effect immediately upon its final passage and publication as required by law.

Seconded by Mrs. Abby

Introduction Date: 8-28-96

Approved By: Abby, PHAIR, Duda, Murray, Harmon, O'Brien

Adoption Date: 9-11-96

Adopted By: Abby, Phair, Duda, Murray, Harmon, O'Brien