

Asbury Park Tenant Protection

Referendum Summary

A small group of Asbury Park residents have proposed that the City Council enact a rent control ordinance. The proposed ordinance, if adopted, would be one of the most severe rent control schemes in the history of the entire state. If the Council does not accept it as presented, the proposed ordinance will appear on a special election ballot for consideration by all of the registered voters of Asbury Park.

Among the many negative impacts from this Ordinance, it will:

- 1) Not reduce any tenant's current rent by one dollar;
- 2) Not create or protect one unit of housing as affordable or create rentals based on the income in the household of the tenant.
- 3) Not provide any housing assistance money for use by tenants.
- 4) It will depress the tax value of multifamily property and shift that tax burden to Homeowners and business owners who will face a greater proportional and actual tax burden.
- 5) The Municipality will incur significant administrative costs during a time of decreased revenue in the City will burden the City with this unplanned expense as well as the costs to administer and defend the unenforceable and unconstitutional aspects of the law.
- 6) Property Owners, facing impinged revenues, will cease renovating their properties and reevaluate planned improvement programs to the detriment of the housing stock.
- 7) CPI as the sole basis for rent increases is not representative of actual costs of operations of the properties being regulated. Property taxes, utilities, waste collection insurance, fuel, wages and other costs, are not passed through despite that they are consumed by the tenant as other residents in Asbury Park bear these same expenses with no regulatory relief.
- 8) People who do not currently live in Asbury Park will gain unwarranted and unneeded economic benefit to regulated and below market apartment rents despite that they are not in need of protections or subsidies.
- 9) Conversion of existing rental housing stock to condominium, and other reductions to the current rental inventory will be encouraged, putting further pressure on rental housing supply and pricing.
- 10) Recently constructed properties that did not anticipate rent control and therefore did not exempt themselves during the application for the Certificate of Occupancy do not have a mechanism or exemption under this Ordinance based on DCA rules and therefore will fall under rent control despite the intention that they be exempted, which will make the universe of properties that fall under rent control much larger, with these properties typically not even housing the people in the community who are most in need of assistance.

The owners of the multi family properties in Asbury Park understand that tenants feel vulnerable to the impact of economic growth in the City. Both owners and tenants have been adversely impacted by the pandemic as well. During this period of stress, no tenants are being evicted from their apartments even if they have not paid the rent, and property owners are experiencing huge losses in revenues from unpaid rent. While there is a great deal of compassion for tenant vulnerability to rising market rents, the proposed rent control ordinance is one-sided, extreme, poorly crafted and potentially unenforceable. Most importantly it does not reduce rent for any existing tenant or provide any direct economic assistance to tenants having difficulty in meeting their rent obligation. We fully expect that Council will reject this proposal and the Ordinance will move into a period where it can be withdrawn by the Petitioners; or can be reconstituted as a law which the Council can adopt and the Referendum be withdrawn.

Rational Policy

During the Reconsideration period, the stakeholders and Petitioners of the proposed Rent Control ordinance will be encouraged to develop a new Ordinance that would be acceptable to the City Council. Failing a modified ordinance which is mutually acceptable to all parties, it behooves the Council to consider how it might adopt a tenant protection act of its own in the event that Rent Control Referendum fails, as rent control would be unavailable for three years following the outcome of the Referendum.

Providing Needed Protections The Asbury Park Property Owner's Coalition is proposing to secure the needed protections against unfair rent increases for existing Asbury Park residents who are here now and rent property in periodic, non-short term tenancy arrangements and who are in need of protections : The Asbury Park Tenant Protection Act (the "APTPA"). Under the APTPA, any annual increase in rent for any existing tenant of greater than 6% of the base rent will be considered a Possibly Unconscionable Rental Increase (PURI). Such an increase will trigger a process that may result in the proposed rent increase being disallowed or reduced and the property owner being required to renew the tenancy for an additional term at the existing rent being paid by the tenant. This will result in no automatic increases of more than 6% unless there is a mutual written agreement between tenant and property owner to allow a 6% or greater increase. This mechanism preserves affordability and provides protection against unfairly high (6% or greater) increases in annual rents in a more direct and efficient way than rent control does. (Currently the Monmouth County Courts deem increases of more than 10% unconscionable. 6% is far less than 10%.)

PURI Rent Increases--- When the owner has notified a tenant renewing their lease and proposed an increase greater than 6% in the renewal term base rent it can be challenged by a tenant or accepted by the tenant. If accepted by the tenant it must be done in writing with a specific statement included that the tenant has waived any objection to the amount of the increase by its agreement with the property owner. If the tenant objects to the PURI it does so by sending to the Clerk and the property owner a certified request for review on the proposed

form accessible on the City Website. The property owner would have an opportunity to explain the basis for asking the tenant to pay an increase greater than 6% of the base rent gross lease contract rent rate. Should the clerk determine that further evaluation of the request should be made, the matter will be referred to a five-member Rent Increase Board, which will determine if the increase was justified or if the rent increase should be disallowed. The factors to be considered would include: cost of the space to the tenant from the inception of the tenancy, the conditions of the unit, any improvements or investment in the space provided by the landlord, whether the tenant had complied with the lease terms during the prior period, the price of comparable rental housing in the area, and any other information to evaluate the reasonableness of the proposed increase.

Workings of the Rent Increase Board. The Sole function of the Board will be to conduct a hearing to determine if a PURI justified under the specific circumstances. The Board will schedule monthly meetings if there are pending applications. The hearing process will be overseen by a Chairman, designated by the Mayor, among a Board consisting of two tenants, two homeowners and one multi-family property owner. The hearing process will include:

- A Statement by the tenant supporting the PURI Challenge
- A Statement by the landlord defending the PURI Challenge
- A Counter by the tenant.
- Questions by the Board under the direction of the Chair.

After the process, the Board will vote as to whether to allow the rental increase or disallow it. If disallowed the tenant will be permitted to renew their lease at the same monthly rental for an additional term. The Board will issue the finding in writing, allowing the tenant to have a proof of its rental obligation that could be used to defend any proceedings between the owner and the tenant. Either the tenant or the property owner can appeal the Boards decision to the Superior Court under existing court rules. The standard to be applied is whether the decision of the Board was arbitrary or capricious.

Context. This proposal should be presented by the Council after the period of Reconsideration expires. This also will allow the voters the security of knowing that tenants will be protected for the three years of after the Referendum fails, if it does. The APTPA would have a specific provision that if the Rent Control Ordinance currently proposed becomes effective that the APTPA would expire immediately.

Advantages over proposed Rent Control Ordinance.

- Immediate impact to address claim of unfair rent increases;
- Lower administrative costs for City;
- Maintains incentives for property owners to improve their property;

Protects all existing Asbury Park tenants from unfair rent increases.