

BOROUGH OF HIGHLAND PARK

ORDINANCE NO. 22-2066

**AN ORDINANCE BY THE BOROUGH OF HIGHLAND PARK
CONCERNING RENT CONTROL REGULATIONS AND AMENDING
CHAPTER 321 OF THE “CODE OF THE BOROUGH OF HIGHLAND
PARK”**

BE IT ORDAINED by the Borough Council of the Borough of Highland Park, County of Middlesex as follows:

1. Chapter 321 of the “Code of the Borough of Highland Park” which establishes Rent Leveling Regulations is repealed and replaced with the following:

Chapter 321

RENT CONTROL REGULATIONS

ARTICLE I

General Provisions

Section 1. § 321-1. Definitions.

As used in this Chapter, the following terms shall have the meaning indicated:

APARTMENT – All or a portion of a building or structure which is available for rent to tenants, as a single unit, for living and dwelling purposes together with all privileges, services, furnishings, furniture, equipment, facilities and improvement connected with the use or occupancy of this portion of the property.

AVAILABLE FOR RENT TO TENANTS – Fit for habitation as defined by state and local housing and health codes, whether occupied or unoccupied, and offered for rent to tenants.

BASE RENT – The rent paid upon initial occupancy plus any percentage increases based on the Consumer Price Index as specified in this Chapter.

CAPITAL IMPROVEMENT – Any improvement, addition or alteration of housing space or equipment that provides a new benefit to a tenant, as well as any improvements mandated by law, and that must not be upkeep, maintenance, repairs, rehabilitation of items or services.

COMPLEX – A group of adjoining dwellings under common ownership with centralized management.

CONSUMER PRICE INDEX – The Consumer Price Index for All Items for New York Region/Northeastern New Jersey and Philadelphia Metro for All Urban Consumers, as issued by the United States Department of Labor, Bureau of Labor Statistics.

DWELLING – Any building or structure, all or part of which consists of apartments.

GROSS RENTAL INCOME – The total rental income derived by the landlord from the rental of all rental units, which shall also include, but not be limited to rents, garage rentals, commissions, vending machines and laundromats.

HARDSHIP INCREASE – A situation wherein a landlord’s net operating income shall have decreased below a Just and Fair Return. A Just and Fair Return Formula is set forth in Article VIII of this Chapter.

LANDLORD – The owner of the dwelling or complex, whether individual or organization including but not limited to partnership, corporation, or limited liability company.

NET OPERATING INCOME – The difference between the gross rental income and the necessary and reasonable operating expenses.

OPERATING EXPENSES – Expenses incurred during the period which were necessary for the efficient operation of a residential rental property. The rent control board will review these expenses to determine the reasonableness under the circumstances. Debt service cost, depreciation and amortization are excluded from necessary and reasonable operating expenses.

RENT – The consideration demanded or received in connection with the use or occupancy of housing space including, but not limited to, parking, pets, facilities, privileged services, equipment, furnishings, or any charge, no matter how set forth, paid by the tenant in connection with the housing space.

SUBSTANTIAL COMPLIANCE – That the housing space and dwelling are free from all heat, hot water, elevator and all health, safety and fire hazards as well as 90% qualitatively free of all other violations of the current Borough Housing Code, and the International Property Maintenance Code, where applicable.

SURCHARGE – Charge in addition to base rent, as specified by this chapter, payable by the tenant to the landlord. Surcharges are not to be considered part of the base rent when calculating percentage increases based on the Consumer Price Index.

TENANT – Anyone who rents or is a subtenant, lessee, or sublessee of a rental unit, or successor to a renter’s interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

§ 321-2. Applicability; Exemptions

This Chapter applies to all rental dwellings in the Borough, including single-, two-, three- and four-family dwelling units.

The following classes and types of property are exempt from the provisions of this Chapter:

- A. Motels, hotels, and those parts of buildings or structures which primarily serve transient guests or are rented for commercial uses and purposes; that part of the building or structure

which remains after any exempted sections are deleted is referred to as the dwelling or complex.

- B. Any apartment or building or complex and/or a part thereof which is a stock cooperative or a condominium where the charges to all residents are fixed by a board elected by the residents. Any remaining portion shall be subject to this Chapter as provided herein.
- C. Newly constructed units and units rented for the first time; the rent in such units shall be determined by the landlord. "Newly constructed units" as used herein shall mean any original new construction requesting and receiving exemption pursuant to N.J.S.A. 2A:42-84.2 subject to the requirements in subsection H hereinbelow and any reconstruction or substantial renovation of nonresidential property for residential use.
- D. All multiple dwelling may claim an exemption from this Chapter for a period of time not exceeding the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for thirty (30) years following completion of construction, whichever is less. In the event that there is no initial mortgage financing, the period of exemption from this Chapter shall be thirty (30) years.
 - 1. The owner of the multiple dwelling may claim an exemption pursuant to N.J.S.A. 2A:42-84.4 by filing with the Department of Code Enforcement, at least thirty (30) days prior to the issuance of a Certificate of Occupancy for newly constructed multiple dwellings, a written statement of the owner's claim of exemption from this Chapter, including therein a statement of the date upon which the exemption period so claimed shall commence, the address of the property, the block and lot number of the property and the number of rental units in the multiple dwelling for which the exemption is being claimed. Further, the owner shall at least thirty (30) days prior to the termination of the exemption period granted by the Borough file with the Department of Code Enforcement a notice of termination of the exemption period for the effected multiple dwelling.
 - 2. The owner of any of any multiple dwelling exempt from this Chapter pursuant to N.J.S.A. 2A:42-84.2 shall, prior to entering into any lease with a person for tenancy of any rental unit located in the multiple dwelling, furnish the prospective tenant with a written statement that the multiple dwelling in which the rental unit is located is exempt from this Chapter for such time as may remain in the exemption period. Each lease offered to a prospective tenant for any rental unit therein during the period of the multiple dwelling is so exempt and shall contain a provision notifying the tenant of the exemption and that the unit being rented is not subject to the Borough of Highland Park Rent Leveling Ordinance.

§ 321-3. Annual Rent Increases.

Establishments of rents between landlords and tenants for dwellings and rental units as defined in this Chapter shall hereafter be determined by the provisions of this Chapter.

- A. The allowable annual rent increase shall be published by the Borough and posted on the Borough website and in Borough Hall in a public location by October 15 of each year for the upcoming calendar year. No landlord shall request or receive a percentage increase in rent from an existing tenant that is greater than the lesser of the following:
- (1) the average of the Consumer Price Index (CPI) for All Urban Consumers over the previous 12-month period; or
 - (2) five percent (5%) of the rent in effect under such lease at the expiration thereof.
- B. All prospective tenants shall be furnished by the landlord with a written statement that the rental unit is subject to the terms and conditions of the Borough of Highland Park Rent Control Ordinance. Said statement shall further provide that a copy of said ordinance may be obtained from the Clerk of the Borough of Highland Park, 221 South 5th Avenue, Highland Park, New Jersey 08904-2600, or by calling (732) 572-3400. Said notice shall also be prominently posted on the premise wherein the rental unit is located.

§ 321-4. General provisions governing increases and adjustments.

- A. The landlord shall notify the tenant of any increase in total rent at least 30 days before the increase takes effect. The notification to the tenant shall include a copy of the landlord's notification required by Subsection B below. In the event a proposed increase is not effective because of a landlord's failure to comply with the requirements of this Section, new notice shall be given prior to the increase becoming effective.
- B. The copy of the notification shall have attached thereto the certification of the landlord that the apartment and dwelling are in substantial compliance with the Borough Property Maintenance Code in Chapters 303 and 135, as amended, and/or the New Jersey State Housing Code.
- C. A tenant who believes that any increase under §321-3 sought to be imposed by his or her landlord is not authorized, is not accurately calculated or is otherwise improper under the provisions of this Chapter or that the certification required by Subsection B of this section is materially false may challenge such increase in base rent before the Borough Administrator, or his or her designee, by filing a written challenge with the Borough Administrator, or his or her designee, and serving a copy thereof on the landlord or his agent, attorney or employee in person or by registered or certified mail to the usual place of business of the landlord or his agent or to the address to which rent has been mailed during the preceding six months. Such written challenge shall set forth, in reasonable detail, the basis for the challenge and shall identify the provisions of the Chapter with which the landlord has failed to comply. During the pendency of any challenge authorized by this chapter, the increase in rent shall continue to be paid as a part of total rent.

- D. In the event the Borough Administrator, or his or her designee, finds that any increase in rent is improper under the terms of the Chapter, they may order a refund of excess rent paid during the period commencing six months prior to the filing of the written challenge to any tenant who challenged such increase or adjustment. Any refund so ordered shall be promptly made by the landlord, failing which the tenant may deduct the amount of the refund from the rent in the month or months due on and after 45 days from the decision of the Borough Administrator, or his or her designee, until the refund is paid in full; provided, however, that the tenant may deduct from total rent only the amount of the increase in rent or such part thereof as is found to be improper by the Borough Administrator, or his or her designee, for each month's rent due on and after the decision of the Borough Administrator, or his or her designee.
- E. Only one increase in rent based on § 321-3 may be allowed to the landlord during any twelve-month period, the increase to be determined as provided in § 321-3.
- F. All increases and adjustments to the total rent of an apartment in the Borough must be in compliance with the provisions of this Chapter.
- G. Any increase or adjustment in total rent in excess of that authorized by the provisions of this Chapter shall be void.

ARTICLE II
Vacancy Decontrol

§ 321-5. Decontrol generally.

- A. In compliance with this article, Article II of this Chapter shall not apply in the case of a vacancy of a dwelling unit and its re-rental to a new tenant except:
 - (1) To a complex or apartment which has been vacated by virtue of fire, flood, wind damage or damage occurring as a result of a similar natural or human hazard unless the landlord complies with the provisions of § 321-8 of this Chapter; or
- B. A landlord shall not unreasonably deny a request by a tenant to transfer to a different unit in the complex. Should a tenant request and should the landlord approve a move by tenant from one apartment in the complex to another apartment in the complex, the apartment vacated by the tenant shall no longer be subject to the application of Article II, whereas the apartment to which the tenant moves shall remain subject to the application of Article II.
- C. Upon the vacancy and rental of an apartment in a dwelling in accordance with the procedures set forth in Subsections A and B above, the apartment shall be removed from the application of Articles II and XI of this Chapter. Upon re-rental of the apartment, hardship increases and/or capital improvement surcharges shall expire.

§ 321-6. Decontrol; additional requirements; violations and penalties.

A. Upon vacancy and re-rental of an apartment:

(1) The property shall be subject to Article II of this Chapter at the beginning of the month or rental period commencing at the start of the new lease;

B. It shall be unlawful for any landlord or his agents to willfully harass, annoy, intimidate or take any similar action designed to induce a tenant to quit the premises, provided that this provision shall not limit a landlord or his agents from any act specifically authorized under the laws of the State of New Jersey.

C. It shall be a disorderly persons offense for a landlord to willfully do or commit or cause to be done or committed any of the following: any harassment to a tenant with the intent to have the tenant vacate the housing unit, any reduction by the landlord in services which causes the tenant to vacate the premises, any vacation of the premises which is coerced, or any failure to file certifications and/or affidavits when required under this article, unless excused for good cause. Conviction of any of the foregoing violations of this section shall subject the violator to penalties provided in § 321-30. The Borough Administrator, or his or her designee, shall have the power, in addition to the other powers granted in this Chapter, to file a complaint in the Municipal Court of the Borough for any violation of this Chapter. A landlord violating this section in respect to a specific unit shall forfeit the right to have that unit decontrolled for a period of one year from the date of the determination of the violation by the Municipal Court and until the property is again eligible for vacancy decontrol as provided herein.

ARTICLE III
Apartment Registry

§ 321-7. Establishment.

There is hereby continued a modified apartment registry which shall contain apartment information for each apartment in the Borough subject to this Chapter as set forth hereinbelow.

§ 321-8. Initial Registration.

All landlords in the Borough subject to this Chapter shall file with the Department of Code Enforcement an apartment registry form that is available on the Borough website and available in hardcopy in the Department of Code Enforcement. No dwelling unit shall have a rent increase or hardship award unless the landlord has registered that unit with the Department of Code Enforcement.

§ 321-9. Registration information required.

The landlord shall file the following information on a form provided by the Borough:

A. The address of the dwelling or complex.

- B. The name and address of the landlord.
- C. The name, address and phone number of the superintendent and/or the agent in charge of the dwelling or complex.
- D. The number of apartments in the dwelling or complex and the numerical and/or alphabetical designation of each individual unit subject to this Chapter.
- E. The total number of rooms in the dwelling or complex.
- F. Contact Information for Emergency Contact for the Unit.
- G. Department of Code Enforcement. If fuel oil is used to heat the dwelling or complex, the name, address and contact information of the fuel oil dealer serving the dwelling or complex and the grade of fuel used.

§ 321-10. Copies of decisions.

Copies of decisions of the Borough Administrator, or his or her designee, regarding a dwelling or complex shall be included in the apartment registry.

§ 321-11. Maintenance.

The apartment registry shall be maintained by the Department of Code Enforcement.

ARTICLE IV
Tax Appeals and Refunds

§ 321-12. Tax appeals by landlord.

- A. In the event a tax appeal is successful and the municipal property tax is reduced, any tenant in a multiple-dwelling property, except those units exempted in § 321-2A, B and C, the tenants shall receive 100% of the tax refund after deducting the share of all reasonable expenses incurred by the landlord in prosecuting the appeal, upon the submission of certification and proof of expense upon request of the Borough.
- B. The proportionate share of each individual tenant is to be determined as follows: The property tax reduction for the property for the year shall be divided by the total annual rent for all dwelling units, occupied or unoccupied, on such property for the said year to determine the property tax rebate or credit as a fixed percentage of rent for each tenant. The annual rent of each residential unit shall be multiplied by such fixed percentage to determine the annual amount of property tax rebate or credit for each such unit.

- C. The landlord shall, within 30 days of receipt of this tax refund, identify for each tenant, in writing, the total tax refund, each of the expenses incurred in the tax appeal, the tenants' share of the refund and the individual tenant's proportionate share of the tax refund. A copy of the writing indicating the total tax refund, the expenses incurred in the tax appeal and the tenant's share of the refund shall be filed with the Department of Code Enforcement.
- D. If the tenant is still residing in the dwelling or complex, then the tenant's proportionate share of the refund shall, at the option of the landlord, be deducted from his next rent payment or paid directly to the tenant within 60 days of receipt of this refund. A tenant who is no longer residing in the dwelling or complex is entitled to the proportionate share of the tax refund; the landlord shall so inform the tenant by sending a notice to the forwarding address. A copy of this notice shall be sent to the Department of Code Enforcement. Money unclaimed after 60 days following receipt by the landlord of tax refund shall be delivered to the State of New Jersey in accordance with N.J.S.A. 46:30B-1.
- E. Upon receipt of a judgment resulting in a tax reduction for a landlord and upon payment or credit of such reduction to a landlord, the Borough Tax Collector and Assessor shall notify the Borough Administrator, or his or her designee, and the Department of Code Enforcement.
- F. Upon receipt of information that a landlord has received payment or credit in connection with a successful tax appeal as provided in Subsection C above, the Department of Code Enforcement shall notify landlord by certified mail, return receipt requested, of his obligations as provided in Subsections B, C and D of this section.
- G. Within 75 days of receipt or credit in connection with a successful tax appeal, the landlord shall file with the Department of Code Enforcement a certification of compliance with Subsections B, C and D and shall specify as to each tenant whether compliance was achieved by credit, payment to the tenant or payment to the Borough. A copy of the certification shall be posted by the landlord in a conspicuous place in each dwelling.
- H. The Department of Code Enforcement shall monitor compliance with this article by appropriate sampling of tenants to verify that tenants have received refund or credit in connection with tax refunds.
- I. The Municipal Court may enforce the provisions of this article by proceeding pursuant to § 321-30 and/or by appropriate order to comply with the provisions of this article and any fine permitted by these general regulations set forth in Section 1-17 et seq. of this Code.

ARTICLE V
Disposition of Tax Refunds

§ 321-13. Introduction.

A tenant or tenants may apply to the Borough Administrator, or his or her designee, in the event that the landlord has received a tax refund but has not distributed it to the tenant or tenants in compliance with the provisions of Article IV, Tax Appeals and Refunds, or in the event the tenant or tenants believe that the expenses incurred by the landlord in connection with an appeal are not reasonable.

§ 321-14. Application.

The tenant or tenants shall bring their complaints to the attention of the Borough Administrator, or his or her designee. The application shall include the information listed in Article V, Tax Appeals and Refunds, which is available to the tenants.

§ 321-15. Notice.

The tenant or tenants shall provide a copy of the application to the landlord at the time of the application.

§ 321-16. Hearing.

- A. The Borough Administrator, or his or her designee, shall convene the Rent Control Board to hold a hearing on the application, giving the tenant or tenants and the landlord, or their representatives, the opportunity to testify and to present witnesses on their behalf. Each party will be permitted reasonable cross-examination of opposing witnesses.
- B. Prior to the hearing, the Borough Administrator, or his or her designee, shall obtain from the landlord, using his subpoena power as necessary, information as to the total tax refund, expenses incurred in the case of a tax appeal, and each tenant's proportionate share of the refund.

§ 321-17. Decision.

- A. The Rent Control Board shall make a determination as to what refund the landlord shall make to each tenant.
- B. The decision of the Rent Control Board shall be in writing and shall state the factual findings on which it is based.
- C. In rendering a decision requiring a landlord to make a refund, the Rent Control Board, also may order the payment of interest if required in the interest of justice. Interest, if ordered, shall be computed at the rate allowed on judgments pursuant to New Jersey Court Rules from the date the landlord received the tax refund.

§ 321-18. Compliance.

- A. If the Rent Control Board finds that the landlord is required to provide refunds for tenants in accordance with Article V, Tax Appeals and Refunds, then he shall order him or her to do so.
- B. If the landlord does not comply with the order of the Rent Control Board, then the Borough Administrator, or his or her designee, shall declare the landlord to be in violation of this chapter and subject to such penalties as are specified in § 321-30, Violations and penalties.

ARTICLE VI
Rent Control Board

§ 321-19. Membership and Jurisdiction.

- A. The Rent Control Board of the Borough of Highland Park shall consist of three (3) members, who shall all be residents of the Borough and appointed by the Mayor with the advice and consent of Council. The membership of the Board shall consist of one (1) landlord owning property in the Borough of Highland Park or their representative, one (1) tenant residing in the Borough of Highland Park and one (1) person owning and occupying their home in the Borough of Highland Park.
- B. There shall also be three (3) alternate members, one of whom shall be a landlord, one of whom shall be a tenant and one of whom shall be a homeowner as defined above. The alternate members of the Board are required to attend all meetings. In the event a regular member does not attend a meeting, the alternate member for that category shall have all of the powers of a regular member for that meeting.
- C. Their terms of office shall be for a period of three (3) years, which terms shall be staggered upon the original appointment of Board members. A member of Council shall serve as liaison to the Board. All members shall serve without compensation. At the first meeting of each year, by majority vote, the Board shall choose one of its members as a chairperson and another as vice chairperson to act in the absence or unavailability of the chairperson. The term of each member shall run through December 31 of such year.
- D. The Rent Control Board shall have and exercise all powers necessary and appropriate to carry out and execute the purposes of this Chapter including the following:
 - (1) Certifying the annual rent increase established by this Chapter.
 - (2) Hearing of hardship and fair rate of return increases.
 - (3) Hearing of tenant applications for disposition of tax refunds.
 - (4) Hearing of challenges to decisions of the Borough Administrator, or his or her designee regarding tenant challenges to annual rent increase.

- (5) All duties and responsibilities of the local agency concerning protecting certain senior citizens and disabled persons from eviction resulting from a condominium conversion pursuant to N.J.S.A. 2A:18-61.22.
 - (6) Review and approval of costs for which a capital improvement surcharge is sought.
- E. The Borough Administrator, or his or her designee, shall serve as Administrator for the Rent Control Board and shall provide staff support to implement the purposes of this Chapter, as follows:
- (1) Supply information and assistance to landlords and tenants to help them comply with the provisions of this Chapter.
 - (2) Calculate the annual rent increase and present it to the Rent Control Board for certification.
 - (3) Hear and decide upon tenant challenges to annual rent increase.
 - (4) Convene the Rent Control Board for hearings and adjudicate applications by tenants and landlords. The Borough Administrator, or his or her designee, shall give 10 days' notice of a hearing to all concerned parties.
 - (5) To request inspections of rental property by the Department of Code Enforcement and to receive written reports from the inspectors of these inspections.
 - (6) To issue subpoenas for the attendance of witnesses or concerned parties and for the protection of records. The failure to attend when a subpoena has been issued or the failure to produce records when so demanded shall constitute a violation of this Chapter and shall be subject to the penalties described in § 321-30, violations and penalties.

§ 321- 20. Protection of tenant from retaliation.

No landlord nor anyone acting on his/her behalf shall use any tactic of harassment, coercion or threat or bring any action of reprisal against any tenant or group of tenants. No landlord shall engage in any course of conduct, the object of which is to retaliate against a tenant who exercises any rights conferred to him by this Chapter. The Borough Administrator or designee does not have the jurisdiction to accept or make any determinations on any retaliation complaints. Any tenant subject to retaliation may file an action in the Municipal or State Court.

§ 321- 21. Protection of senior citizens and disabled persons in connection with condominium conversions.

A. Administrative agency.

- (1) The Borough Administrator, or his or her designee, is hereby designated as the Administrative Agent of the Borough for purposes of Senior Citizens and Disabled

Protected Tenancy Act and shall coordinate enforcement of the Act with the Rent Control Board as provided for in Section 19.D(5) hereinabove.

- (2) The Borough Administrator, or his or her designee, shall perform all duties required of the Administrative Agent by the Senior Citizens and Disabled Protected Tenancy Act, and any amendments and supplements thereto.

B. Fees.

- (1) At the time the owner of any building or structure, who seeks to convert any premises subject to the provisions of the Senior Citizens and Disabled Protected Tenancy Act, provides notification to the Borough Administrator, or his or her designee, of his intention to file an application for registration of conversion with the Department of Community Affairs, as required by Section 6 of the Senior Citizens and Disabled Protected Tenancy Act, the owner shall pay a fee of \$20 for each dwelling unit, and an additional fee of \$10 for each tenant in excess of one residing in a single dwelling unit, to the Borough Administrator, or his or her designee. No action shall be taken by the Borough Administrator, or his or her designee, pursuant to the terms of the Act until the required fees are paid in full.
- (2) In the event any tenant, determined to be ineligible for protected tenancy status, brings an action in a court of competent jurisdiction to challenge the determination of ineligibility, and names as a party defendant the Borough or any of its officers, agents or employees, or the Borough Administrator, or his or her designee, the owner seeking the conversion shall pay an additional fee in the amount to cover the cost of defending such an action.

ARTICLE VII
Compliance with Rent Limits

§ 32122 Introduction.

A tenant or group of tenants may apply to the Borough Administrator, or his or her designee, for a reduction in the amount of rent charged by the landlord when the rent exceeds that permitted by this Chapter.

§ 32123 Application.

The tenant or tenants shall bring a complaint to the attention of the Borough Administrator, or his or her designee. The application shall include both components of the current rent and the rent previously charged.

§ 321-24 Notice.

The tenant or tenants shall provide a copy of the application to the landlord at the time of the application.

§ 321-25 Decision.

Prior to making a decision, the Borough Administrator, or his or her designee, shall obtain from the landlord information about rents charged and any other pertinent information, in order to determine compliance with this Chapter. The Borough Administrator, or his or her designee, shall make findings of fact based on the evidence presented and shall determine on the basis thereof the rent to be permitted under the terms of this Chapter. The decision and findings of fact shall be in writing.

The Rent Control Board shall hear landlord appeals to the decision of the Borough Administrator, or his or her designee.

§ 321-26 Compliance.

- A. If the Borough Administrator, or his or her designee, finds that the landlord has been charging rent in excess of the rent permitted by this Chapter, then he shall order him to return to the tenant any excess rent paid during the period commencing six months prior to the filing of the written complaint.
- B. In rendering a decision requiring a landlord to make a refund, the Borough Administrator, or his or her designee, also may order the payment of interest if required in the interest of justice. Interest, if ordered, shall be computed at the rate allowed on judgments pursuant to New Jersey Court Rules from the date the landlord received each excess rent payment.

**ARTICLE VIII
Hardship and Fair Rate of Return Increases**

§ 321-27 Introduction.

The Borough Administrator, or his or her designee, is hereby designated to accept all hardship applications filed by a landlord as set forth under this article. A landlord who is unable to meet his mortgage payments, expenses and maintenance costs or is operating at a loss shall be entitled to apply for a hardship increase to the Borough Administrator, or his or her designee. The the Borough Administrator, or his or her designee, shall supply forms for this purpose and require the landlord to notify the tenants of the pendency of this hardship increase application.

§ 321-28 Notice.

At the time of application, the landlord shall notify each tenant in writing by certified mail or personal service, post a copy of the application in each building affected, and supply the Borough Administrator, or his or her designee with three copies.

§ 321-29 Fees.

The applicant shall, at the time of filing an application under this article, enclose with the application the fee determined by the following schedule. The fee shall be payable to the Borough of Highland Park:

Basic fee for all applications \$50

Additional fee for each unit \$25

§ 32130 Determination criteria.

The Rent Control Board shall make the determination for all hardship applications.

- A.** In determining any hardship application, the Rent Control Board shall consider financial factors which are to be submitted by the landlord. The landlord shall submit a Profit and Loss Statement reflecting information for three (3) years prior to the year of the application. A landlord seeking an increase in rent shall provide a minimum of financial factors as indicated on a standardized form provided by the Borough Clerk as well as any other information pertinent as required under this Chapter.

- B.** The services of a financial consultant shall be provided for to assist the Rent Control Board in evaluating complicated accounting information. The financial consulting fees shall be funded through an escrow account required of landlords making hardship appeals. The escrow shall be no more than \$500 for a landlord of more than 100 rental units and \$250 for landlords of less than 50 units. Any of the escrow funds not required for consulting fees shall be refunded to the landlord at the end of the rent control board's consideration of the hardship increase request.

- C.** Hardship appeals will be based on a Fair Rate of Return formula which allows, with just cause, for the maintenance of a Dollar Net Operating Income (NOI) with a cost-of-living increase on that portion of the NOI which is the profit. Only valid cause for the loss of return of NOI shall be permitted as the basis for a hardship application hereunder.

- D.** The landlord shall be required to send by certified mail or hand deliver to each tenant affected by the application, at least ten (10) days prior to the date scheduled for the hearing before the rent control board on the hardship application. In addition, the landlord shall publish notice of the hardship hearing one time at least ten (10) days prior to the hearing in a newspaper of general circulation within the Borough. Following the Rent Control Board's decision, the landlord by certified mail or hand delivery shall advise each of the tenants as to the outcome of the hardship increase hearing within ten (10) days of the date of the Rent Control Board's determination. Additionally, the landlord shall publish notice of the Rent Control Board's decision in a newspaper of general circulation within the Borough within ten (10) days of the Rent Control Board's determination. The Rent Control Board shall make a decision on any application within forty-five (45) days from the conclusion of the Board's hearing of the application.

E. In applying the NOI determination referenced hereinabove, the Rent Control Board shall consider: (1) The additional debt requirements attributable to necessary refinancing will be permitted only at the expiration of the original term of the landlord's mortgage and if the Rent Control Board determines that the mortgage payments result from refinancing terms which are commercially reasonable under the circumstances. (2) In determining the NOI, applying the cost of refinancing of the original mortgage, the Rent Control Board shall not consider the refinancing of junior mortgages. (3) In a circumstance where a new apartment owner is in a negative cash flow position, the criteria to be used by the Rent Control Board is whether the mortgage payments resulted from a capitalization debt-equity ratio that is commercially reasonable and is reasonably related to the acquisition of the apartment for rental purposes.

§ 321-31 Hardship applications, eligibility.

In determining whether a landlord is entitled to a hardship increase, the Borough Administrator, or his or her designee, shall consider the landlord's ability to meet expenses and a fair and reasonable return on his/her property. A landlord shall be eligible for consideration for a hardship increase if:

- A. He/she has been the owner of the building for a twelve-month period preceding the filing of such application. Certified public accountants' records must be submitted with said application, and the Board may consider all reasonable factors as to the prudence of said investment in determining whether or not a hardship shall be granted;
- B. He/she can demonstrate that the building is in substantial compliance with all relevant property and maintenance provisions in this chapter;
- C. The following factors shall be considered in determining the fairness and reasonableness of the landlord's rate of return:
 - (1) Taxes;
 - (2) Costs of efficient maintenance and operation of the property;
 - (3) The kind, quality, quantity and efficiency off the services being rendered;
 - (4) The number and frequency of prior hardship and capital improvement increases for the building
 - (5) The reasonableness of expenses incurred by the landlord expended for capital improvements.
 - (6) Present tax and tax appeal status; and
 - (7) Discretion of hearing officers may be considered.

§ 321-32 Hearings.

Upon scheduling of hearings, the Borough Administrator, or his or he designee, shall give notice of the same to each affected tenant, five days prior thereto. All documentation submitted shall be open to inspection by affected tenants or their legal representatives. Any such notice delivered to the tenant shall include a statement that all such documentation is available for inspection at the office of the Borough Clerk. Requests for the appearance of any real estate appraiser, either by the landlord or the affected tenant, shall be made, in writing, two days prior to the hearing date to the Borough Administrator, or his or her designee and the parties. Failure to request the presence of said appraiser shall be deemed to have waived the right of his cross-examination by the party.

**ARTICLE IX
Capital Improvement Surcharge**

§ 321-33 Application.

A landlord may file an application for a surcharge to cover the cost of a planned major capital improvement to a multiple dwelling as defined in Section 321-1 hereinabove. The landlord's application shall include the total cost of the capital improvement; the number of years of useful life of the capital improvement as claimed by the landlord for depreciation for income tax purposes; and the amount of the surcharge sought from the tenant. The Rent Control Board may grant a surcharge only if it finds that the major capital improvement benefits the tenant. The Board may approve the planned major capital improvement; however, the landlord may not implement the surcharge until the landlord submits verification of completion of work and payment (in the form of a detailed invoice and paid bill or cancelled check) and the Rent Control Board provides final approval.

§ 321-34 Notification.

The landlord must give each tenant proposed to be affected by a capital improvement surcharge written notice of the application for surcharge at least 30 days prior to the hearing date of the application.

§ 321-35 Calculation of capital improvement surcharge and time period.

In calculating the capital improvement surcharge, the cost of the capital improvement shall be divided by the total square feet of the dwelling to determine the capital improvement surcharge per square foot, if applicable. The tenant shall not be liable for any capital improvement surcharge exceeding the surcharge increase per square foot multiplied by the total square feet occupied by the tenant, if applicable. Where per apartment costs are known, they should be used as a basis for apportioning the surcharge.

Only the initial investment and financing costs are eligible for the Capital Improvement Surcharge. Repairs and replacements are to be absorbed by the landlord as operating expenses and are not eligible for the Capital Improvement Surcharge.

The capital improvement surcharge applicable to each tenant shall not exceed 10% of his base rent, unless such improvement is mandated by local ordinance or state law and, shall be payable in up to 36 monthly installments.

The Capital Improvement Surcharge shall become effective no sooner than the renewal date of the next lease and no time during a pending or current lease.

§ 321-36 Exclusion from rental income.

Any capital improvement surcharge, as provided herein, shall not be considered rent for the purposes of computing the annual cost-of-living rent increases.

ARTICLE X
Services and Furnishings

§ 321-37 Maintenance of service and furnishings by landlord.

Every landlord shall maintain at least the same standards of service, utilities and maintenance and shall provide at least the same furniture, furnishings and equipment in each apartment as the landlord provided or was required by municipal, state or other law/regulation or lease at the date the tenancy commenced.

§ 321-38 Reduction of rent for deficient service.

An individual tenant or class of tenants who are not receiving substantially the same standards of service, maintenance, furniture, furnishings or equipment as specified in § 321-27 hereof may apply to have the Borough Administrator, or his or her designee, determine the reasonable rental value of the housing unit or dwelling in view of this deficiency. Such deficiency may be found and determined by the Borough Administrator, or his or her designee, only after service upon the landlord of a copy of the tenant's or tenants' application and at least 10 days' notice of the hearing. The tenant or class of tenants shall pay the reasonable rental value as full payment for rent until the landlord proves that the deficiency has been corrected.

ARTICLE XI
Miscellaneous Provisions

§ 321-39. Non-Waiver Clause: No landlord shall include a statement in any rental agreement or allow a tenant to orally agree that the rental unit intended to be occupied by the tenant shall not be subject to this Chapter nor shall any tenant be able to waive the applicability of the terms and conditions of this Chapter.

§ 321-40 Violations and penalties.

- A. Except where another specific penalty is provided in this Chapter, any person who violates any provision of this Chapter shall, upon conviction thereof, be

subject to the penalty established in Chapter 1, General Provision, Article III, General Penalty.

B. Any and all such fines shall be payable to the Borough of Highland Park.

§ 321-41 Construal of provisions.

This chapter, being instituted for the welfare of the Borough and its inhabitants, shall be liberally interpreted in accordance with its purposes.

§ 321-42 Title.

This Chapter shall be known as and may be cited as “The Rent Control Ordinance.”

Section 2. Severability.

If any section of the Chapter or any subsection, sentence, clause or phrase of this Ordinance, for any reason, are declared by a court of competent jurisdiction declares any portion of this Chapter to be invalid, such decision shall not affect the validity of this Chapter as a whole, or any part thereof, other than the part so declared.

Section 3. Effective Date.

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

Adopted: December 20, 2022

Approved: December 20, 2022

Attest: _____
Jennifer Santiago, Municipal Clerk

Gayle Brill-Mittler, Mayor

PUBLIC NOTICE is hereby given that the foregoing proposed Ordinance was Introduced and Passed on First Reading by Title on December 6, 2022.