

- \* **Demand Year**
- \* **Base Rent**
- \* **Registration Requirements**

### Background

We have testified at past rent control committee hearings as to why mandatory Registration is the most important aspects of a reformed rent control ordinance. We believe that affirmative enforcement is the key to the Hoboken rent control dilemma, and we are providing a snapshot of the current situation in order to arrive at prospective solutions:

**Corrupted Records.** For most of its tenure, the Rent Leveling Office permitted files to be removed from its office; allowed them to be altered; and refused to accept the filing of mandated forms. Given the application of the law, which was found to be unconstitutional in a decision by Judge Tolentino, there is no practical means of recovering the viability of the record-keeping system.

**Unregistered Apartments.** Many apartments subject to the Rent Leveling Ordinance still are not registered. This units are off the grid of rent control and precludes effective calculation of a legal base rent. In large part, the lack of affirmative governance and policing are to blame, coupled with owners now being discouraged from registration lest they be subjected to liability as a result of the City's misadministration of the ordinance. Pending installation of a governable ordinance and administration, universal annual registration must be the single most important initiative in the Rent Leveling Office.

**Rulings Render Irrelevant.** To an important degree, court decisions directing the Rent Leveling Office have rendered the ordinance itself irrelevant. Some of the activity undertaken by the Rent Leveling Office, including but not limited to its "Legal Rent Calculation" procedure, are not part of the Ordinance and have been and will be subject to litigation since they are performed without any written guidance from the board and based on unwritten informal guidelines from previous administrations. Any reform of the Ordinance MUST include written operational guidelines that permit the efficient and equitable administration of the ordinance and also should be consistent with best practices of other municipalities.

**Ordinance Neglected.** The Council itself has not meaningfully addressed the rent leveling Ordinance since 1987 and has maintained a base date of 1981. Given the court decisions, gaps in record keeping, changes in policy about record keeping, changes in policy about legal rent calculation and other variable since 1981, it is unthinkable that it would continue to be relevant and operable as a reference point. The reform of the Ordinance should reflect contemporary and future residency issues.

### Policy Discussion

Right-thinking people accept that adhering to the rule of law is the basis of our society; the rent leveling ordinance in Hoboken generally has not been appropriately administered by the City and has not been followed by the regulated class.

Tenants who wish to protect their right to protected rents will make the point that landlords in violation of the Rent Leveling Ordinance should not be “left off the hook,” and we agree that this is a sensibility that must inform any reform of the Ordinance.

However, a judge already has found that the Rent Leveling Ordinance is unconstitutional as applied in a specific case, but a case whose circumstances are common to many other cases. Regardless of technical appeals to this specific case, the overwhelming experience and testimony in Hoboken points to an irrevocably broken ordinance: any time a judge is saying your law is unconstitutional, the first thing you better do is change it. Any time the three most recent lead rent Leveling Officers testify that the application of the law under their administrations materially varied and leave some regulated parties unable to exist in a conforming state, you have to change it.

At this point the question of who is responsible for the poor administration of rent leveling policy and who is culpable is immaterial. The objective now is to recover viability in the administration of the Rent Leveling Office in Hoboken so that the rule of law can prevail over future administration. The key is to protect the rights of residents while establishing legal rents and an efficient means of requiring and policing registration.

### **Recommendations**

#### **- New Base Year.**

A new base year would necessarily need to begin when record-keeping in Hoboken changed, which at the earliest would be 2006. More profitably, a base year of 2008 or beyond would provide existing residents with a rent rollback, as they would avoid the sewer and water pass-through increases as a result. Thereafter, the base year would be updated with every registration of rent.

#### **Benefits:**

- 1) permits Hoboken to perfect its record-keeping and maintain it to withstand challenges;**
- 2) would use historical data (existing leases) to affirm first year rents;**
- 3) relieves/resolves outstanding litigation, eliminates clouds on title; removes threat of property tax down spiral;**
- 4) overcomes the objections of some landlords to register;**
- 5) permits a new fee schedule for registration that can be used to underwrite the cost of automating the rent leveling office.**

#### **Challenges:**

- 1) requires that a phase-in program be in place to protect the rights of existing residents to challenge rents.**
- 2) Administrative program to modernize operations of rent leveling office so that it maintains complete and accurate rent rolls and can police uncomforming parties.**

### - Rent Registration

The Rent Leveling Office would be charged with notifying every property that falls under rent control in the City of Hoboken to register its rents on an annual basis and that it maintain records that demonstrate the legality of the rent charged (signed leases with tenants contact information being the principle requirement). The records of registration would be readily accessible and computerized in the rent leveling office, permitting the Rent Leveling Officer to affirm and certify that any increases taken were allowable, and then commemorating that fact in the permanent record. The property owner would affirm that all other regulatory requirements were met (tenants rights were provided, etc.). In the event of a challenge, these records would provide the defense of the owner.

#### **Benefits:**

- 1) Greatly reduce or eliminate the rent calculation process, as the computerized program would provide immediate histories that were certified by the rent leveling officer at the signing of the lease.**
- 2) Creates a registration, fee collection and record-keeping focus rather than a litigation-support focus in the rent-leveling office.**
- 3) Permits a rolling base year so that after registration a complete and current set of records exists.**

#### **Challenge:**

- 1) process required to upgrade administrative equipment and procedures might be difficult, but if the town is entitled to regulate rents, it is obligated to do so in a productive and equitable manner. Currently, both the City and the property owners are vulnerable to unnecessary litigation due to the ineffective operations of the Rent Leveling Office.**