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August 19, 2024

Jerry Lore, RMC
Municipal Deputy Clerk
City of Hoboken
94 Washington St
Hoboken, NJ 07030

Re: Hoboken Committee of Petitioners Affordable Housing Initiative

Dear Mr. Lore:

I have seen the agenda for the upcoming council meeting suggesting that the council is considering changes to the Certified Petition which has already been, as noted below, submitted to the county for inclusion on the November ballot. Please be advised that any proposed action by the municipality or your office relating to the Committee of Petitioners ("Committee") or their Certified Petition and Interpretive Statement, should be on appropriate notice to the undersigned as their counsel. Please circulate this to all Council Members.

More importantly, there is no statutory or other authority that permits the Clerk or the Council, having declined to act to adopt the ordinance as demanded in the Petition, to modify or change the Petition papers, which include the ordinance and the interpretive statement, and which were integral parts of the Petition. Any action to do so would amount to a direct violation of the Faulkner Act and subject the City, the Council and anyone else participating in such action to immediate litigation to restrain this interference.

Worse yet, the proposed language for the interpretive statement, which was supplied by the Democrat Socialists as part of their well-financed campaign against the public question, wholly recasts the Certified Petition from an effort to enhance investment in affordable housing to a false claim that the proposal destroys rent control. This outside group is acting in concert with the City to use governmental authority to achieve a political outcome to their liking. Allowing non-governmental groups -- like the Democrat Socialists here -- to achieve a political outcome with unauthorized governmental power, amounts to a conspiracy to deprive the Committee of their express rights to access the ballot through the initiative process, a violation of their rights of free speech, assembly and right to petition the government.

There is nothing misleading or unclear in the straightforward and accurate Interpretive Statement and proposed ordinance that has been Certified and presented to the County for inclusion on the ballot on August 6, 2024. In fact, for the first time we are aware of, the Committee and the Petition signors, are promoting a creative solution to funding for affordable housing driven by fees collected from the landlords who chose to use the option created by the proposed ordinance. The ordinance proposed by the Committee creates an option for landlords that if exercised, creates a targeted and significant funding for the support of the creation of affordable housing in Hoboken through existing agencies in the City, and in return a landlord will be allowed to freely negotiate the rent to be charged for a vacant housing unit and then future increases are controlled by the Rent Control Ordinance. While the Committee welcomes a robust public debate on the ballot question, we will not tolerate unauthorized, ultra vires governmental interference with the constitutional and statutory rights of the Committee, or any tinkering with its Certified Petition papers to curry favor with opponents to the ordinance.

On the other hand, the proposed language under consideration, without support, suggests that rent control protection is adversely impacted by the adoption of the proposed ordinance. This is a wholly misleading argument with no factual support. First of all, not one current tenant's rent is impacted adversely if the ordinance is adopted, a fact not mentioned in the proposed propaganda by the Council version they adopted from the Democrat Socialists. The option created by the ordinance can only be utilized if a unit is vacant ensuring that no current tenant is impacted. As the Appellate Division cautioned in the Belmar case, that the purpose is not, “Whether advocates on one side of the issue might prefer that the Act's description be phrased differently to better enhance their political position. In short, we may intervene in such a circumstance only when the interpretive statement is so unclear as to preclude the voters' understanding of the true purpose of the question or so substantially unbalanced as to be biased.” McKenzie v. Corzine, 396 N.J. Super. 405, 418-19 (App. Div. 2007). The proposed changes to the Statement are argumentative and solely designed to make arguments on behalf of the opponents.

Second, the existing rent control ordinance currently allows a 25% increase to a vacant unit assuming it has not been done in the previous three years. This option remains available and is unchanged. Thus, the rent control ordinance itself acknowledges that greater than CPI increases for vacancies are consistent with rent control goals. So too the option created by the ordinance. If the market rent for a vacant unit is materially higher than the level that a 25% increase would provide, the ordinance gives the landlord the option to negotiate and attempt to achieve market rent, conditioned upon the contribution to the affordable housing trust fund to create affordable housing. In either case, a 25% increase or a market rate negotiation, existing tenants are not negatively impacted. Failing to mention that is creates a false narrative by intentional omission.

Third, the proposed language, blinded by its advocacy that rent control would be destroyed, uses argumentative terms like 'what the market will bear' suggesting that the private negotiation of the rent for a vacant unit has a preordained result. Just like every other negotiation, the parties are

free to reach agreement at a mutually advantageous level, but it is deceptive and wrong to claim imply that such process always results in the highest possible outcome.

The Committee has a right to access the ballot and the City has acknowledged as much by reporting their failure to adopt the ordinance to the County on August 6, 2024, and requesting that it be included on the November ballot. Now, knuckling under the pressure for opponents of the ordinance, the Council wants to put their thumb on the scale. It is no secret that each of the Council members were willing to avoid the vote on the ordinance by offering a compromise ordinance to the Committee. However, after the Mayor weighed in before the vote in support of the Democrat Socialist agenda, all of the support evaporated.

Now each of the Council members has already publicly indicated their opposition to the proposed ordinance and have coordinated their political and ultra vires campaign with the Democrat Socialist. Since they all have voiced active opposition to the proposed ordinance, none of the Council can be objective on the issue and must recuse themselves from any effort to interfere with the interpretive statement. Thus any action by the Council to adopt the proposed resolution and rewrite the Interpretive Statement will be subject to challenge since the council members have all publicly stated their opposition and intention to campaign against the proposed ordinance.

In addition, the case citation noted in the proposed resolution under consideration by the counsel -- DeSanctis vs. Boro of Belmar -- does not empower the City or the County to rewrite or otherwise correct submitted Certified Petition papers. In that case, the referendum petition papers did not include an Interpretive Statement and the Boro Administrator wrote one and submitted it for inclusion with the question on the ballot. The court rejected this statement since it was not done by ordinance or resolution adopted by council. Here, the Committee included its Interpretive Statement and Ordinance as part of it petition papers and is entitled to have its proposed ordinance considered in the same manner as its presentation to the signors of the petition.

This Petition was reviewed and certified by the clerk who then sent both to the County on August 6, 2024 for inclusion in the ballot. After doing so there is no other role for the Clerk to fulfill as set forth in the statute. The Statute is clear on this matter.

As set forth in N.J.S.A.40:69A-191:

> “If within 20 days of the submission of a certified petition by the municipal clerk the council shall fail to pass an ordinance requested by an initiative petition in substantially the form requested or to repeal an ordinance as requested by a referendum petition, **the municipal clerk shall submit the ordinance to the voters unless**, within 10 days after final adverse action by the council or after the expiration of the time allowed for such action, as the case may be, a paper signed by at least four of the five members of the Committee

> of the Petitioners shall be filed with the municipal clerk requesting that the petition be withdrawn. Upon the filing of such a request, the original petition shall cease to have any force or effect."

The Clerk once having submitted the "ordinance to the voters" has no further role in the process.

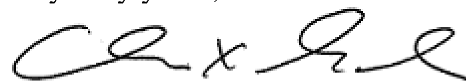
Similarly, after the Council failed to adopt the proposed ordinance (or a compromise ordinance), there is no further role for the Council as noted in the statute. The time for Council action is 20 days from the submission of the Certified Petition by the clerk. The Clerk certified the Petition and provided written notice of his certification to the Council on July 10, 2024. This means that the Council is required to act on the proposed ordinance on or before July 30, 2024.

On July 10, 2024 the agenda confirms that the Council treated the proposed ordinance as having its first reading. The Council thereafter took no further action on the proposed ordinance and instead focused on a possible compromise ordinance which it also failed to adopt. Thus as of July 30, 2024, the Council no longer had any role authorized by statute relating to the proposed public question and ordinance. The Clerk promptly reported this to the County on August 6, 2024. Now the Council seems intent to tinker with the Interpretive statement that was part of the certified petition papers a power it simply does not have. The fact that the ballot deadline for the County to include public questions on the ballot is August 23, 2024 does not sanction ultra vires tinkering with the Interpretive statement.

It is inexcusable that the Council has long abdicated its legislative responsibilities when it comes to creating affordable housing. The result is that no funding is ever provided and therefore no housing is ever created through the City's efforts. The proposed ordinance creates for the first time a connection between rent controlled landlords by providing them an option to fund affordable housing efforts in return for the right to negotiate a rent amount with a new tenant. The Committee looks forward to a robust public debate about its unique and balanced approach. However, it is wrong for the Council to use its power to recast the issue to reduce its political embarrassment for its own inaction.

You are on notice.

Very truly yours,



Charles X. Gormally

CXG:njc
Enclosure

From: Jerry Lore <j.lore@hobokennj.gov>
Sent: Tuesday, August 6, 2024 2:52 PM
To: Amber Vargas <avargas@hcnj.us>; jmaldonado@hcnj.us
Cc: James Farina <jfarina@hobokennj.gov>; countyclerk@hcnj.us; Jamie Davis <jdavis@hcnj.us>
Subject: RE: Certification of an initiative and referendum for the City of Hoboken

Good afternoon Junior and Amber,

Just wanted to let you know last night we had a council meeting, the City Council voted down on their own ordinance that would have compromised with the committee of petitioners but the public came out and they decided to let the residents of Hoboken decide in November.

With that said, I sent you the interpretive statement and we will now have to move forward on placing this as a public question for this November and we have til the 23rd of this month to finalize it.

Please let me know what else you need from us since we have some time.

Best,

JL

Jerry Lore
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INTERPRETIVE STATEMENT FOR INITIATIVE PETITION

Currently, Property Owners/Landlords operating rent-controlled properties are not required to contribute to the funding necessary to foster and create new affordable housing. Rent controlled apartments do not satisfy the need for affordable housing since Tenants who move into or currently reside in Hoboken have incomes that generally exceed the standards to qualify for affordable housing.

A vote Yes means: *This amendment creates an option to all landlords governed by the ordinance to pay a fee of $2500 to the Hoboken Affordable Housing Trust Fund in order to lease voluntarily vacated apartments at a freely negotiated rent. Thereafter the unit rent remains subject to the Rent Control Ordinance including limitations on annual rent increases. This Ordinance creates a new option to landlords who contribute to the city's Affordable Housing Trust Fund but does not eliminate any existing provision of the current rent control ordinance, or the rent amounts being charged to existing tenants in Hoboken.*

A vote No means: *The current rent control ordinance would not be changed; no option would be provided to landlords to financially contribute to the creation of new affordable housing in order to freely negotiate the rent amount with a new tenant; and there would be no obligation for landlords to contribute to the city's Affordable Housing Fund.*

Committee of Petitioners: Anthony Soares: 1101 Grand St, Apt. 504 Hoboken NJ 07030 - Rose Marie Markle: 630 Grand St. Apt. 5 Hoboken NJ 07030- James Vance: 107 Monroe Street, Apt. 1, Hoboken, NJ 07030 - Nicholas Dinallo: 1125 Maxwell Lane, Apt. 736, Hoboken NJ 07030 - Justin Calabrese: 406 Madison St. Apt. 1R Hoboken 07030

TEXT OF ORDINANCE

Article VII, Chapter 155, specifically Section 155- 31 of the Ordinances of the City of Hoboken shall be repealed and replaced with the following provision.

§ 155-31 Dwelling decontrolled and exempted; Optional decontrol with Affordable Housing Contribution

Rent increases for existing tenants in properties subject to this ordinance are limited to those annual increases as set forth in Section 155-5. Provided that a dwelling is registered before the landlord implements a vacancy decontrol rent increase, upon the vacation of a residential apartment unit by a tenant, the landlord shall be entitled to either:

1. An increase of 25% over the last rental paid by the tenant who voluntarily vacated the rental unit, exclusive of any capital improvement surcharge that is a component of said last rental, or

2. Agree to the monthly rental amount with a new tenant conditioned upon the payment of a fee of $2,500 by the landlord to the Affordable Housing Trust Fund of the City of Hoboken at the time of execution of the new lease agreement. It is the intention of this Amendment that such fees will be utilized to build new, affordable housing units in the City of Hoboken through the City of Hoboken's affordable Housing Trust Fund.

3. Section 155-34 will continue to apply to increases taken under option 1 above, but will not apply to option 2 above.

4. Any further increases, including annual increases are governed by the existing rent control ordinance.

5. The provisions of Section 155-32 B shall continue to apply to any vacancy decontrol to protect against tenant harassment.

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