

ORDINANCE NO. 5873

**AN ORDINANCE TO AMEND CHAPTER 5.70 OF THE CODE OF THE CITY OF ELIZABETH, ENTITLED "RENT CONTROL AND STABILIZATION," SPECIFICALLY TO REMOVE THE PERMANENT EXEMPTION OF NEW CONSTRUCTION FROM THE PROVISIONS OF CHAPTER 5.70 AND TO ALLOW CERTAIN NEWLY CONSTRUCTED DWELLINGS TO BE EXEMPT FROM SECTION 5.70.060, WHICH LIMITS THE REGULAR INCREASES OF BASE RENT, IN CONFORMITY WITH N.J.S.A. 2A:42-84.2**

**WHEREAS**, Prior to 1982, the City of Elizabeth's rent control ordinances provided that housing units and new construction were exempt, with the initial rent to be determined by the landlord, with all subsequent rents subject to provisions and rent limits of Chapter 5.70 (the "Rent Control Ordinance"). However, Ordinances 1464 through 1474, all passed on April 13, 1982, amended various portions of the Rent Control Ordinance. Notably, Ordinance 1464 changed the exemption provision to permanently exempt new housing units constructed after the effective date of the ordinance. Therefore, any dwellings constructed after May 10, 1982, 20 days after the mayor's approval on April 20, 1982, would be permanently exempt from rent control; and

**WHEREAS**, on June 25, 1987, the Rent Control Act, N.J.S.A. 2A:42-74 et seq., was established, which states: "[i]n any municipality which has enacted or which hereafter enacts a rent control or rent leveling ordinance, other than under the authority of [the Rent Control Act], those provisions of the ordinance which limit the periodic or regular increases in base rentals of dwelling units shall not apply to multiple dwellings constructed after the effective date of this act, for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for 30 years following completion of construction, whichever is less. [...] In the event that there is no initial mortgage financing, the period of exemption from a rent control or rent leveling ordinance shall be 30 years from the completion of construction. N.J.S.A. 2A:42-84.2; and

**WHEREAS**, the statute dictates that the provisions of the Rent Control Ordinance that limit the "periodic or regular increases in base rentals of dwelling units", specifically Section 5.70.060, shall not apply to multiple dwellings constructed after June 25, 1987, for the period of amortization of an initial mortgage loan or 30 years following the completion of construction, whichever is less." N.J.S.A. 2A:42-84.2(a). However, Section 5.70.010 permanently exempts dwellings constructed after 1982 from all local rent control rules in their entirety; and

**WHEREAS**, the Rent Control Ordinance has been re-established in its entirety by City Council several times thereafter, notably in 1992 and 1998. It is also renewed every two years. To date, new construction, which are dwellings constructed after May 1982, continue to be permanently exempt from the rent control ordinance because no moratorium for this exemption was established nor intended with every renewal or establishment of Chapter 5.70; and

**WHEREAS**, in 1999, N.J.S.A. 2A:42-84.5 was amended, through which it made clear the intent of the exemption of newly constructed multiple dwellings from local rent control ordinances. N.J.S.A. 2A:42-84.5(b) states: "[t]he Legislature deems it to be necessary for the public welfare to increase the supply of newly constructed rental housing to meet the need for such housing in New Jersey. In an effort to promote this new construction, the Legislature enacted [N.J.S.A. 2A:42-84.1 et seq.], the purpose of which was to exempt new construction of rental multiple dwelling units from municipal rent control so that the municipal rent control or rent leveling ordinances would not deter the new construction." Accordingly, because the Rent Control Ordinance created a permanent exemption of new construction after its effective date of May 10, 1982, its

PRESENTED to the Mayor for  
APPROVAL or DISAPPROVAL on  
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intent aligned with that of the State Legislature and was never preempted by State law; and

**WHEREAS**, because the Rent Control Ordinance is broader in scope than that State statute, all rental housing constructed after May 10, 1982, has enjoyed complete exemption from rent control, meaning that landlords are able to charge rent at market values and increase base rents at a rate higher than the current 3% maximum allowable increase imposed by the Rent Control Ordinance; and

**WHEREAS**, the City Council of the City of Elizabeth now deems it necessary and proper to remove the permanent exemption of newly constructed multiple dwellings as defined by the Rent Control Ordinance and to require that new construction shall only be exempt from the regulations of the Rent Control Ordinance for the period of amortization of an initial mortgage loan or 30 years following the completion of construction, whichever is less, in conformity with N.J.S.A. 2A:42-84.2. This will have the immediate effect of having all multiple dwellings constructed between May 1982 through July 1993 become subject to the regulations of the Rent Control Ordinance, and will continuously require dwellings constructed thereafter to comply with the limitations of base rent increases as dictated by N.J.S.A. 2A:42-84.2; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH:**

**SECTION 1.** Section 5.70.010 of the Code of the City of Elizabeth, entitled "Definitions – Notices – Applications," shall be amended to read as follows:

A. As used in this chapter, the following terms shall have the meanings indicated:

"Base rent" means rent exclusive of capital improvements, temporary hardship increases, real property tax and sewer surcharges and other adjustments allowed by this chapter and prior rent control ordinances.

"Capital improvement." Capital improvements shall be defined as an added benefit to the use of the building and enjoyment of the tenants therein. It shall be a benefit which substantially changes the housing accommodations. Capital improvement shall not include any repair or replacement of an already existing facility, or those items or services required by law, or previously required by law. The addition of, or improvement, to laundry rooms, vending equipment and facilities and items of like nature shall not be considered capital improvements. The conversion of one heating system for another or the replacement of windows of similar quality shall not be deemed a capital improvement.

"Dwelling" includes any building or structure or trailer or land used as a trailer park, condominium or cooperative apartments, rented or offered for rent to one or more tenants or family units. Exempt from this chapter are motels, hotels, rooming houses and similar type buildings, housing units of two (2) units or less, housing units of three (3) are owner-occupied and housing units of four (4) which are owner-occupied. ~~New housing units constructed after the effective date of this chapter are exempted permanently from this chapter.~~

"Equity in real property investment" means the actual cash contribution of the purchaser-landlord at the time of closing of title and any principal payments to outstanding mortgages.

"Fair rental housing board" is the body created by this chapter, and shall hereinafter be called the "board."

"Housing space" includes that portion of a dwelling rented or offered for rent for living and dwelling purposes to one or more individuals or family unit, together with all privileges, services, furnishings, furniture, equipment, facilities and

improvements connected with the use or occupancy of that portion of the property.

"Substantially rehabilitated" means the cost of improvements which exceeds forty (40) percent of the assessed value of value of the unit or building being rehabilitated and is in compliance with all New Jersey Hotel and Multiple Dwelling Laws and all local municipal housing and housing maintenance codes. Further, all work done on the structure must have been done with appropriate local approval as evidenced by permits, if necessary, and the completed improvement must be in accord with building, fire and other code regulations.

"Warehousing" means intentionally withholding vacant rental units in a building which is subject to the provisions of this chapter. Any complex consisting of twenty-six (26) dwelling units or more in which at least one-fourth or twenty-five (25) percent of the units are vacant at the same time shall be considered being warehoused and subject to the provisions of this chapter. Any complex consisting of twenty-five (25) dwelling units or less in which at least five units are vacant at the same time shall be considered being warehoused and subject to the provisions of this chapter.

- B. Normal repairs and painting shall not be considered rehabilitation.
- C. Notices shall be on forms prescribed by the board and shall be served by certified mail or by personal service, provided that the landlord obtains the tenant's signature acknowledging receipt of the notice.
- D. Applications to the board shall be on forms prescribed by the board and in the manner prescribed by the board.

**SECTION 2.** Section 5.70.060 of the Code of the City of Elizabeth, entitled "Increases in Base Rent," shall be amended to read as follows:

- A. Establishment of base rents between a landlord and a tenant to whom this act is applicable shall hereinafter be determined by the provisions of this chapter. At the expiration of a lease, termination of a lease of a periodic tenant or at the anniversary date of the building, no landlord shall request or receive any increase in base rent in excess of three percent over the base rent received for the twelve (12) months prior.
- B. No landlord may request or receive more than one increase in base rent for any twelve (12) month period.
- C. Any landlord who willfully violates this section may be subject to the penalties provided in Section 5.70.220.
- D. **All dwellings, as defined herein, are subject to the provisions of this Chapter, but dwellings may be exempt from provisions of this Section for a period of time not to exceed that which is proscribed by N.J.S.A. 2A: 42-84.2.**

**SECTION 3.** All ordinances or parts of ordinances inconsistent with the provisions of this ordinance be and the same are hereby repealed.

**SECTION 4.** If any portion or clause of this ordinance is declared invalid for any reason whatsoever, same shall not affect the validity or constitutionality of any other part or portion of this ordinance.

**SECTION 5.** The effective date of this ordinance shall be twenty (20) days after its final passage by City Council and approval by the Mayor at the time and in the manner provided by law.

PASSED: 7/25/23

Frank O. Mazza 7/25/23

FRANK O. MAZZA  
President of City Council

APPROVED: 7/22/23

J. Christian Bollwage

J. CHRISTIAN BOLLWAGE  
Mayor

ATTEST:

Yolanda M. Roberts  
YOLANDA M. ROBERTS, R.M.C.  
Municipal Clerk