ORDINANCE OF THE TOWNSHIP OF IRVINGTON, NJ

No. MC 3691 Effective Date APRIL 15, 2019 Dated MAR 25 2019

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY _____ Legislative Research Officer

COUNCIL MEMBER LYONS presents the following Ordinance SECONDED COX

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 472 OF THE REVISED CODE OF THE TOWNSHIP OF IRVINGTON ENTITLED RENT CONTROL

Chapter 472: Rent Control

[HISTORY: Adopted by the Municipal Council of the Town (now Township) of Irvington 7-14-1981 by Ord. No. MC 2635 (Ch. 151 of the 1981 Revised Code). Amendments noted where applicable.]

§ 472-1. Establishment of rents.

[Amended 10-27-1981 by Ord. No. MC 2644; 10-12-1982 by Ord. No. MC 2672; 2-22-1983 by Ord. No. 2687]

From and after the effective date of this chapter, no landlord in the Township of Irvington shall charge any rent in excess of that which he was charging as of the effective date hereof, except for such increases as are provided herein. Establishment of rents charged on dwelling units to which this chapter is applicable shall hereafter be determined by this chapter. At the expiration of a lease or at the termination of the lease of a periodic tenant, no landlord may request, charge or receive an increase in rent greater than that allowed by Subsection A of this section. A periodic tenant whose lease term is less than one year shall not be caused to pay any increase in any twelve-month period which exceeds that allowed by Subsection A of this section. No tenant shall be caused to pay more than one increase in any twelve-month period.

A. The increase in rents permitted under this section shall be as follows: [Amended 4-9-1985 by Ord. No. MC 2777]
   (1) Where the landlord supplies heat to the dwelling unit, the increase in rent shall not exceed 4% of the prior year's rent.
   (2) Where the landlord does not supply heat to the dwelling unit, the increase in rent shall not exceed 3% of the prior year's rent.
   (3) An individual age 65 or older who is a sole tenant or living with others adults all aged 65 or older within the unit shall be limited to a 2% increase annually regardless of whether the landlord provides heat to the unit.
   (4) Where a vacancy of a dwelling unit presently exists or occurs after the effective date of this chapter, the provisions of Subsection A(1) and (2) and (3) hereinabove shall not apply, and the rent for said vacant dwelling unit shall be decontrolled until said dwelling unit is again rented or leased at a new agreed rental rate. After one year of said new rental, the increase in rent permitted for said new tenancy shall be as set forth in Subsection A(1) and (2) and (3) above.

B. The increase permitted under Subsection A herein shall be computed upon the base rent charged the tenant and not upon the base rent plus any hardship or capital surcharge granted under § 472-4 of this chapter and collected for any specified period of time.

C. A landlord shall not be entitled to request, charge or receive any tax surcharge by reason of increase in municipal property taxes.

D. Tenants of any residential properties may present a written petition signed by a majority of the tenants and consented to by the landlord of the property agreeing to a specific rent surcharge for a specific purpose or project, and providing for the landlord's permission to permit the tenant's representative to review the expenditures involved for the particular purpose or project surcharge. Each dwelling unit shall be

considered a single tenant for the purposes of this subsection. If the aforementioned surcharge is approved by the Rent Leveling Officer, the surcharges shall run for maximum of two years, if so provided. If there are in existence joint agreements which have been in existence for more than two years, they shall expire within 60 days after the effective passage of this amendment. [Amended 2-24-1994 by Ord. No. MC 2991]

E. Unbundling. [Added 4-26-1994 by Ord. No. MC 2997]
   (1) A landlord shall not be allowed to unbundle service in order to defeat the intent of this chapter.
      a. "Unbundling" shall include, but not be limited to, subcontracting or providing for a separate charge for parking. Unbundling shall also include changing the term(s) of any previously received security deposit by increasing the amount to be deposited with the Landlord beyond the amount agreed to in the original lease or in the event of valid rent increases requiring a tenant to deposit more than the proportional increase of deposit which would make the security deposit consistent with the terms of the original lease.
      b. Any person or persons residing as a tenant on the effective date of said unbundling shall be entitled to remain in their then-existing status as long as they shall remain as a tenant.
   (2) Fines may be levied on a daily basis for anyone found to be in violation of this section. Each day the violation continues to exist can be treated as a separate violation subject to a daily fine. Fines shall be issued by the Rent Leveling Officer and/or designee.

F. Fees for Late Payment of Rent and Bounced Checks. Prospectively, upon renewal of a lease or upon entering a new lease, the landlord shall include a provision in the lease agreement limiting fees for payment of rent by the tenant more than seven (7) days late to a maximum of $50 and limiting fees for bounced checks to a maximum of $25.

§ 472-2. Notification of rental increase.
[Amended 10-27-1981 by Ord. No. MC 2644; 2-22-1983 by Ord. No. MC 2687]

Any landlord who shall increase rents as provided in § 472-1 hereof shall give notice to his tenants by any reasonable means of said increase; provided, however, that when said notice is not mailed to the tenant's residence, delivery is not considered to have been accomplished unless a signed receipt is obtained from the tenant or his representative. If a tenant is notified by mail other than certified or registered mail, the landlord or his representative shall certify in writing that he mailed the notice to the tenant. Said certification shall be retained for a period of three years.

§ 472-3. Exceptions.

The provisions of this chapter shall not apply to:
A. Motels, hotels and similar dwellings.
B. Dwellings of two units or less.
C. Dwellings of three and four units, at least one of which is occupied by one or more of the owners thereof.
D. Dwellings subject to rent control or stabilization under any state or federal law.
   [1] Editor's Note: Former § 151-3E of the 1981 Revised Code, pertaining to dwelling units available for occupancy on or after July 1, 1981, which previously followed this subsection, was repealed 4-9-1985 by Ord. No. MC 2777.
E. With respect to the unbundling provisions set forth in § 472-1E only, dwellings developed pursuant to a general development plan approved by the Planning Board and subject to a redevelopment agreement with the Township.
   [Added 5-14-2013 by Ord. No. MC 3492].

§ 472-4. Hardship or capital improvement relief.

A. If, as the result of circumstances which he could not reasonably have foreseen or anticipated or which are beyond his/her control, a landlord is unable to earn a fair rate of return on his investment, he may appeal to the Rent Leveling Officer (hereafter "RLO") for an increase in rent in excess of that permitted under § 472-1 hereof, via an application to be developed by the RLO. In connection with any appeal filed hereunder, the landlord shall prove his expenses of operation, including but not limited to payment of the purchase money mortgage or mortgages and any subsequent mortgages, the proceeds of which were used for major capital improvements as defined in Subsection B of this section, fuel, utilities, taxes, sewer user charges, maintenance and repairs, a management fee not to exceed 5% of gross rents, and related charges. Management fees may be allowed as an expense, whether paid to the landlord or a management company. For good cause shown, the RLO may grant either an increase in the rent charged or permit the landlord to receive a surcharge to be collected for a specified period of time only in order to enable the landlord to earn said fair rate of return.

B. Major capital improvement surcharge.
Amended 10-11-1983 by Ord. No. MC 2713]

(1) A major capital improvement consists of a substantial change in the housing accommodations such as would materially increase the rental value in a normal market and will provide tenants with a benefit or service which they had not previously enjoyed. Replacement of facilities, materials or equipment so as to maintain the same level of services as previously provided or bargained for shall not constitute a major capital improvement.

(2) Major capital improvement adjustment

a. A landlord may seek a rent surcharge for a major capital improvement. Any landlord seeking a major capital improvement surcharge shall apply to the Rent Leveling Officer and pay the application fee of $75.00, via the above proposed application, which the RLO shall, upon a showing of satisfactory proof, determine if said improvement is a major capital improvement and, if so, shall permit such surcharge. In no event shall any surcharge permitted under this section exceed the annual cost of the capital improvement per room multiplied by the number of rooms occupied by the tenant, or exceed 15% of the tenant's base rent, whichever is the lesser. The surcharge may be granted for the entire premises or the particular units benefited by the improvement.

b. Any major capital improvement surcharge granted by the RLO shall be paid in equal monthly installments over the period set by the RLO.

C. No application filed pursuant to Subsection **A** or **B** of this section may be heard by the RLO unless the landlord shall have attached to his application proof under oath that he has given notice of same to all affected tenants by posting a copy thereof in the front lobby or entranceway to the premises and by mailing same at least two weeks prior to the first scheduled hearing of the matter by the RLO. Said notice, a copy of which shall be attached to said application, shall clearly set forth the content and basis of the application. Notice of application for relief pursuant to Subsection **B** of this section shall include the total cost of the completed capital improvement, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the actual cost of the improvement, the total number of square feet of the dwelling or unit affected, the total square feet occupied by the tenant, if applicable, and the capital improvement surcharge he is seeking from each tenant.

D. No hardship or capital improvement increase or surcharge may be granted unless the landlord shall have held title to the premises in question for a period of at least one year prior to the date of his application for said relief, unless, for good cause shown, the RLO waives this requirement.

§ 472-5. Compliance.

[Amended 9-28-1982 by Ord. No. MC 2668; 6-14-1988 by Ord. No. MC 2858; 7-14-2009 by Ord. No. MC 3407; 7-1-2014 by Ord. No. MC 3511]

No application made pursuant to § 472-4A of this chapter may be heard by the Board unless attached thereto is an informational certificate or report of inspection issued by the New Jersey Department of Community Affairs or the Department of Housing Services pursuant to § 355-26 of this Code not more than 18 months prior to the date of said application. No such application may be approved by the Board unless the Board shall have first determined that there are no substantial violations of the health, safety or housing laws, codes or regulations of the Township of Irvington affecting said premises. In the event that said informational certificate or report of inspection discloses substantial violations of said laws, codes or regulations, the Board may approve such application; conditioned, however, upon the submission by the landlord within 180 days of said conditional approval of an informational certificate or report of inspection indicating that all of said violations have been corrected. Failure to submit said supplemental certificate or report within 180 days shall render any conditional approval void as of the date granted, and any hardship rent increase or surcharge collected during said period of time shall be returned forthwith to the tenant.

§ 472-6. Rent Leveling Officer.

In order to administer the provisions of this chapter, the prior authority exercised under the auspices of the Rent Leveling Board within the Town of Irvington shall be exercised by the Rent Leveling Officer.

§ 472-7. Acts to cause tenant to vacate prohibited.

No landlord of dwelling units to which this chapter is applicable shall do, or cause to be done, any act or thing with the intent to cause a tenant to vacate said dwelling unit in order that said dwelling unit shall become vacant and no longer subject to this chapter as provided by § 151-3E hereof. 2 In any proceeding instituted by a tenant under this section, the reduction of standards of service, maintenance, health and safety conditions, furniture, furnishings or equipment in and for said dwelling unit shall create a rebuttable presumption that the act or thing done or caused to be done by the landlord was done with the intent to cause said tenant to vacate said dwelling unit.

§ 472-8. Powers of Rent Leveling Board.

The Rent Leveling Officer shall have the following powers:

A. To promulgate such rules and regulations as he/she deems necessary to implement the purposes of this act, which rules and regulations shall be approved by the Township of Irvington Council and have the force of law until revised, repealed or amended from time to time by the resolution of the Township of Irvington Council, in the exercise of his/her discretion
B. To supply information and assistance to landlords and tenants to enable them to comply with the provisions of this chapter.
C. To hold hearings and adjudicate applications by landlords for additional rent or surcharges.
D. To hold hearings and consider complaints by tenants that the premises is not in substantial compliance with the health, safety and housing laws, codes and regulations of the Town of Irvington. In the event that the Board determines that substantial violations of said laws, codes and regulations exist, it may order the return to the tenant of all or any portion of the increase provided for in § 472-1A and B hereof; provided, however, that before ordering any such return of rent, the Board shall afford the landlord 90 days within which to abate such violations.
E. To hold hearings and consider complaints that a landlord has violated § 472-7 of this chapter. For good cause shown, the Board may order that said dwelling unit shall remain or again become, as the case may be, subject to the provisions of this chapter for such period of time as the Board considers just, the provisions of § 151-3E notwithstanding.[1]

[1] Editor's Note: Former § 151-3E, pertaining to dwelling units available for occupancy on or after July 1, 1981, was repealed 4-9-1985 by Ord. No. MC 2777

F. To employ an attorney to attend meetings and advise and represent the RLO, and such other consultants, including a certified or public accountant, as the RLO may deem necessary or advisable ***upon approval of the Rent Leveling Board***.

G. To issue fines for any violations of Township code, to rescind a Certificate of Habitability, Certificate of Occupancy and/or take any other action permitted under applicable Code Enforcement/Housing/Building Construction State or local laws, rules and regulations. In such instances where the RLO shall pursue fines against a Landlord for violations and/or non-compliance with a ruling of the RLO, the RLO shall seek restitution damages for the Township for any cost(s) incurred outside the normal operations of the RLO and/or any additional staff of the Township of Irvington to address the violation(s) and/or non-compliance.

H. To afford both landlords and tenants reasonable opportunity to be heard before making any determination.

I. Landlord Property/Unit Registration

(1) Between January 1 and March 3 of each calendar year, all owners and/or landlords of dwellings shall file with the Township of Irvington Department of Housing and Building Construction a new landlord registration statement for each dwelling unit owned. An owner and/or landlord who purchases a dwelling on or after April 1 of any year shall also file a landlord registration statement within seven (7) days of purchase. Owner(s) and/or landlords(s) entitled to an increase in the base rent as a result of improving vacant housing spaces shall immediately file an amended landlord registration statement.

(2) Every owner and/or landlord shall, within 90 days following the effective date of this subsection or the creation of the first tenancy in any dwelling containing five (5) or more housing spaces, whether or not subject to the restriction of *rent* increases in this chapter, file a landlord registration statement with the Department of Housing and Building Construction containing the following information.

a. The name and address of the record owner or owners of the dwelling and the record owner or owners of the rental business if not the same person.

b. If the record owner is a corporation, the name and address of the registered agent and corporate officers of the corporation.

c. If the address of any record owner of owners is not located in the County of Essex, the name and address of a person who resides in the County of Essex or has an office in the County of Essex and is authorized to accept notices from tenants and to issue receipts for notices from tenants to accept services of process on behalf of the record owner or owners.

d. The name and address of the managing agent of the dwelling, if any.

e. The name and address, including the dwelling unit, apartment or room number of the superintendent, janitor, custodian or any other individual employed by the record owner or managing agent to provide regular maintenance service if any.

f. The name, address and telephone number of any individual representative of the record owner or managing agent who may be called at any time in case of an emergency affecting the dwelling or any housing space with in the dwelling, including such emergencies as the failure of any essential service or system, and wo has the authority to make emergency decisions concerning the building and any repair to the building or expenditure in connection with the building.

g. A list of the base monthly rents of each housing space, by apartment or room number, within the dwelling as of the date of registration.

J. Non-Registration Penalty

The RLO shall have the authority to issue penalties consistent with those authorized in §151-8G for non-compliance with the registration provision outlined above.

§ 472-9. Appeals.

Decisions of the RLO may be appealed to the Rent ***Leveling*** Board, which shall consistent of the seven member Township of Irvington Municipal Council. Any appeal(s) thereafter shall be filed with the courts in accordance with the rules pertaining to administrative appeals.

§ 472-10. Fees.
[Amended 8-11-1987 by Ord. No. MC 2834]

Upon the filing of an application for relief to the Rent Leveling Board, the applicant shall pay the following fees:

A. For hardship or capital improvement relief, the fee shall be $5 per dwelling unit, but not less than $25 nor more than $200.
B. For all other applications or complaints, the fee shall be $10.
C. The fee for a copy of this chapter shall be $2.50.
D. The fee for a copy of the hardship application forms shall be $2.

§ 472-11. Violations and penalties.
[Amended 9-8-1987 by Ord. No. MC 28355]

A willful violation of any provision of this chapter, including but not limited to the willful filing with the RLO of any material misstatement of fact, shall be punishable as provided in Chapter 1, Article III. A violation affecting more than one dwelling unit shall be considered a separate violation as to each such dwelling unit. If a landlord has been in violation of the chapter, then the tenants shall have a remedy to receive a refund for an over charge retroactive to two years from the date of the complaint.

§ 472-12. Construal.
This chapter, being necessary for the welfare of the inhabitants of the Town of Irvington, shall be liberally construed to effectuate the purposes thereof.

§ 472-13. Complaints.
Any complaint by a tenant respecting a violation of this chapter shall be in writing and filed with the Rent Leveling Board within one year from the date of the violation; provided, however, that complaints filed pursuant to § 472-7 shall be filed within 60 days of the date of the last act or thing alleged to violate said section. Failure to file within the aforesaid periods shall bar the acceptance of the complaint by the Board.

§ 472-14. Repealer.
Ordinance No. MC 2597 is hereby repealed.[1]

[1] *Editor's Note: Ordinance No. MC 2597 comprised former Ch. 151, Rent Control, of the 1981 Revised Ordinances of the Township of Irvington.*

RECORD OF COUNCIL VOTE

X = *Indicates Vote* **N.V.** = *No Vote* **A.B.** = *Absent* **X.O.R.** = *Indicates Vote to Override Veto*

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BURGESS 1ST VICE PRESIDENT	X				**INMAN**				X
COX	X								
FREDERIC	X				**LYONS,** PRESIDENT	X			
DR. HUDLEY	X								

Ordinance on First Reading Date MAR 1 1 2019 **Council Adopted on Second Reading Date** MAR 2 5 2019

MAYOR _____ **Date** 3/26/19 **Approved** X **Rejected** _____

Reconsidered by Council - Override Yes _____ **No** _____ **Date of Override** _____

COUNCIL PRESIDENT _____ **MUNICIPAL CLERK** _____

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK _____ **DATE** _____

ADMINISTRATOR☐ ASSESSOR☐ BLDG☐ CFO☐ COLLECTOR☐ COURT☐ EDGO☐ ENGINEER☐ FIRE~CF☐ HEALTH☐ HOUSING☐ INIC☐ JUDGE☐ LEGAL☐ LIBR☐ LICEN☐ MAYOR☐ NPP☐ OCDP☐ PARKS☐ PAYROLL☐ PUBLIC SAFETY~DIR☐ PUBLIC WORKS☐ PURCHASING☐ SEC~PB/ZBA☐ TRAFFIC☐ ZONING~OFF☐ DLGS☐ GNCD☐
OTHER(S): _____