

Initiative 2

Reaction to Hearings

We applaud the efforts of the Council to get rent control right. The dialogue at the first meeting was a truly significant event and revealed the sincerity – and necessity – of this effort to update Jersey City’s rent control ordinance.

Unfortunately, some material presented revealed an unfortunate lack of adherence not only to economic principal, but also the basis for rent regulation. Please accept our reaction in the same good faith in which we would like to participate in the continuing dialogue about rent control in Jersey City.

1. **Rent Control Is Not Affordable Housing, It Is Consumer Protection Legislation.** Rent control in New Jersey does not provide means testing, and therefore it does not match rent controls with economic need. Without question, Jersey City is in need of affordable housing. However, existing tenants are already protected from rent increases above the consumer price index; and occupation of vacant units cannot be determined on the basis of income.
2. **Rent Control Does Not Supply Affordable Housing.** was referenced as a means of supplying affordable housing, and not only is that contrary to law, it also is proven to have just the opposite effect. We would recommend the Book “On Rent Control” by Anthony Downs, who extensively studied the issue for the Brookings Institute on behalf of a consortium of tenant and property owner advocates. This study showed that rent control did not reach populations in need of support, instead it prevented creation of new housing and it delivered the protected housing to the most fit households, a dynamic that several Councilpeople referenced.
3. **Context of Housing Costs.** Cost-burdens are not merely defined by the percentage of income allocated to housing costs. In particular, younger households with earners at the beginnings of their careers spend a disproportionate amount on rent; and households on the east coast with far greater discretionary income than those in other areas of the country cannot be measured without also measuring their capacity to make housing decisions based on their own value system. The person renting a \$5000 per month apartment may be clearing \$10,000 per year, but as a percentage of income would fall under the “burdened” definition, which they clearly are not, with a budget or \$5000 per month for non-household expenses.
4. **New Construction Impact.** It was mentioned that in 2014 costar research showed in 54 cities of all new construction was targeted to the highest income renters with 82% luxury of them labeled luxury. This brings up two points: 1) in New Jersey and elsewhere, everything from 60-year-old garden apartments to brand new high-rises are labeled “luxury” and the term has ceased to have meaning; 2) supply of new units must be encouraged, and those new

construction units at the high-end have the function of freeing older units for new tenancies. Greater supply is the only relief for the sort of excess demand that characterizes the New Jersey marketplace.

5. **Inauthentic Policy.** The statement was made that “Rent control is cheap, timely and short-term effective.” This is an observation that can only be applied in ignorance of the larger picture. It is not “cheap” because it constrains tax collection. It is not timely in that it has been here for 45 years. It is not short-term effective in that the number of units declines consistently and will continue to decline in the face of comparatively low returns. Rent control in this context is seen as a shortcut to affordable housing, which is not only contrary to the law in New Jersey, under which rent control is consumer protection legislation, but it is nonsensical because no more rent control housing is being created and the units that already are there already are under rent control. Efforts to constrain price increases will not result in any households who need housing subsidies being provided housing; but transplanted New Yorkers will simply occupy this housing at a discount.
6. **Deferred Rent.** In another indication of the wrong-headedness of the regulatory environment, the Administration celebrated its disallowance of deferred rental increases, a practice that some owners enacted out of sensitivity to tenant budgets. In the next breath, the Administration decried the displacement of long-term residents, not recognizing that forbearance of rent increases is a means of stabilizing tenancy and its policy would now force the landlords to increase rents at every opportunity rather than increase them at once to a tenant qualified to pay. This forbearance should be rewarded, as it stabilizes neighborhoods. But instead Fodice and Hendon want to apply a use-it-or-lose-it standard, which will force landlords to increase rents every year, which will displace needed households.
7. **Hardship Applications and Equity Calculation.** The Committee needs to examine the consequences of the newly adopted hardship provision, including a new interpretation of the calculation of a building’s “equity.” The equity in the building cannot be considered the amount originally invested, as this does not include improvements and renovations made to the building that add to its capital base. With many structures in Jersey City more than 60 years old, these reinvestments in the property, some that occurred prior to the enactment of rent control, it would be impossible to fairly value the contributions made, often by multiple owners, over the life of a building. This is why the base value of the building, upon which a return can be calculated, is most fairly its assessed value, which is computed by the City itself. This is not only equitable to all parties, it uncomplicates future calculations during hardship applications. But looked at more deeply, a hardship provision that allows 2.5% return simply encourages conversion of the property. There can be no improvement of a building that offers a 2.5% return, and therefore it is destined for demolition at that point. The better policy was already in place, assuring that returns on rent control property were consistent with the risk of operating the properties. A

2.5% return is less than the bond interest the City pays, which, theoretically, is a far more secure investment.

8. **Pass-Throughs.** Mr. Fodice asserted that he is not recommending pass throughs for taxed and utility cost expenses. Again, this policy only exacerbates the difficulties of operating rental property and sentences the owner to ever-reducing returns until they fall under a hardship ordinance that discourages them from ownership. It is inherently inequitable for the City to increase taxes to cover its increased costs and prohibit property owners from passing along the increases in costs for the same expenses to tenants.
9. **Regulatory Issues.** The Administration acknowledged that it does not have an accurate count or a location census of the buildings that should be regulated under its Ordinance. In response to the most basic questions, including the number of hardship cases filed and the percentage of annual turnover, it could not supply an answer. Still, the Rent Leveling Office has identified a number of actions it intends to take in reforming its operations, but certainly the top priority should be to be able to provide the Council with data on its regime. There is a great deal of animosity in the marketplace over the operation of the Office, which Councilman Boggianos termed harassment, for its practice of pursuing landlords who are in general compliance rather than seek to regulate those bad actors who do not even file registration. While the Office has sent out letters requesting registrations and some are being returned, it must apply the law equally, and without a true understanding of the rent control environment, it is not doing that.
10. **Vacancy Capital Improvement Rent Increase.** The Office seems to be moving toward a far greater level of oversight in the construction aspect of the capital improvement process. Historically, photographic evidence of the improvement and receipts were sufficient proofs. Strengthening verification in itself is not a problem for honest actors, and the processes around distinguishing between work performed by inside entities versus contractor is reasonable. However, improving apartments is time consuming and expensive, and adding bureaucracy will only make the process take longer, leaving apartments vacant longer and adding to the cost. Property owners assert that they should be able to recover the time cost of the improvement as well, allowing them to submit uncollected rent during the improvement as a cost under the capital improvement process.
11. **Promoting Rent Challenges.** The Ordinance safeguards the marketplace from excessive litigation with a two-year statute of limitations and generally has been complaint-driven, putting the burden on the owner to register rents and the tenant to verify legal rent, with the rent leveling office and board acting as record-keeper and arbiter. The Office is now taking on the unseemly role of promoting rent challenges when if it were only to sustain its administrative function of maintaining reliable records, it could simply validate rents at registration. There seems to be no sincere reason to disrupt the landlord-tenant relationship when it actually is more work and less certain than maintaining its own records. Perhaps anticipating this perspective, the Dinah Hendon made a

plea for more staff to review records, but again, with a 2-year statute of limitations, with thousands of unregistered units, and with costly legal action to follow, the more practical route would be to seek 100% registration and then allow a more determined notice to the tenants at the outset of the lease to serve as the vehicle to encourage verification.

12. **Conditions Issues.** The notion that creating additional severity in the rent control office will cause landlords to better maintain buildings is ridiculous. Their care for the buildings is first motivated by compliance and second by the desire to maintain the value of their asset. Constricting their income will only serve to reduce services to tenants and encourage conversion.
13. **Loose Regulatory Methodology.** Some of the cases that were mentioned by Tom Fodice and Dinah Hendon are narrow and inconsistent with the general market. Others that are of general interest seem to be regulated in a “seat-of-the-pants” style without the due process or methodology we would expect of a sophisticated City regulating a top-10 national rent control market.
14. **Encourage Idea Exchange.** The meeting format, which encourages a variety of interests to express their views on rent control in a controlled meeting setting, is counter to a productive dialogue on rent control. Without at least a semblance of debate – in the form of reaction by interested parties at the instance of the hearing – the Council could come away with incomplete policy formation concepts. Each meeting should include public comment.