

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE #13/20

**AN ORDINANCE AMENDING CHAPTER 312 OF THE CODE OF THE TOWN OF
WEST NEW YORK ENTITLED “RENT CONTROL” TO PLACE A MORATORIUM AND
SUSPENSION ON RENT INCREASES**

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may enact and amend ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants including the power to regulate rents charged within the municipality; and,

WHEREAS, the Town of Town of West New York (the “Town”) is a municipality as defined by Title 40 of the New Jersey Statutes; and,

WHEREAS, the Town has a comprehensive rent control ordinance under Chapter 312 of the Code of the Town of West New York (the “Rent Control Ordinance”); and,

WHEREAS, the Rent Control Ordinance was enacted in order to regulate, control, and stabilize rents under the police powers granted to the Town in order to protect the health, safety, and welfare of the residents of the Town; and,

WHEREAS, the Coronavirus 2019 ("COVID-19") is a contagious, and at times fatal disease; and,

WHEREAS, on March 9, 2020, the Governor of the State of New Jersey declared that a Public Health Emergency and State of Emergency existed in the State of New Jersey due to the spread of COVID-19 by way of Executive Order No. 103 (2020), the facts and circumstances of which are adopted by reference herein; and,

WHEREAS, on March 15, 2020, the Mayor and Emergency Management Coordinator did issue a “Proclamation of Local Disaster/Emergency” (“the Proclamation”) that determined the circumstances of the COVID-19 pandemic affect the health, safety, and welfare of the people of the Town of West New York (“the Town”), given the facts and circumstances recited therein which are adopted by reference herein; and,

WHEREAS, the Mayor and Board of Commissioners ratified the Proclamation via resolution dated March 18, 2020 (“Resolution of Emergency Declaration”) (R20-074) given the facts and circumstances recited therein which are adopted by reference herein; and,

WHEREAS, on April 7, 2020, the Governor of the State of New Jersey extended the declaration that a Public Health Emergency and State of Emergency existed in the State of New Jersey due to the

spread of COVID-19 by way of Executive Order No. 119 (2020), the facts and circumstances of which are adopted by reference herein; and,

WHEREAS, on March 19, 2020, the Governor of the State of New Jersey imposed a moratorium on removals of individual by eviction, by way of Executive Order No. 119 (2020), the facts and circumstances of which are adopted by reference herein, on the recognition that many citizens of New Jersey are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and,

WHEREAS, removals of residents pursuant to evictions or foreclosure proceedings can increase the risk to those residents of contracting COVID-19, which in turn increases the risks to the rest of society and endangers public health; and,

WHEREAS, in recognition of this danger, the U.S. Department of Housing and Urban Development, Fannie Mae, and Freddie Mac announced the suspension of all evictions and foreclosures for 60 days; and,

WHEREAS, on March 21, 2020, the Governor of the State of New Jersey issued Executive Order No. 107 requiring New Jersey residents to remain home or at their place of residence subject to limited exceptions given the facts and circumstances recited therein which are adopted by reference herein; and,

WHEREAS, Executive Order No. 107 further required the closing of all non-essential business establishments; and,

WHEREAS, the economic impacts of COVID-19 are significant, and pose a growing threat to the housing security of many New Jersey residents; and,

WHEREAS, the Resolution of Emergency Declaration empowered certain Town officials, including the Mayor to take action and issue and amend protocols, regulations, orders and directives, from time to time, as they may determine necessary and prudent in response to the emergency conditions Caused by COVID-19, without further action of the Board of Commissioners; and,

WHEREAS, on April 27, 2020, the Mayor exercising his authority during the State of Emergency due to the COVID-19 pandemic did issue a Proclamation of Rent Increase Moratorium Due to COVID 19 State of Emergency (“the PRIM”) immediately imposing a moratorium preventing any increases in rent, even as otherwise permitted by Rent Control Ordinance, and prohibiting the continuation of any increases in rent, imposed on any tenants after the March 15, 2020 Proclamation, such moratorium remaining in effect for no longer than two (2) months following the end of the State of Emergency, the facts and circumstances recited therein being adopted by reference herein; and,

WHEREAS, the Board of Commissioners agrees with the terms of the PRIM due to the facts and circumstances recited therein; and,

WHEREAS, the Board of Commissioners recognizes that Town residents are or will be experiencing substantial loss of income as a result of business closures, reductions in hours, or layoffs related to COVID-19, impeding their ability to keep current on rent and mortgage payments; and,

WHEREAS, housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and,

WHEREAS, in light of these financial hardships and moratorium on eviction proceedings, the Board of Commissioners has determined that the regulation, control and stability of rents is best served by placing an immediate, temporary moratorium and suspension on all increases in rent in line with the terms of the PRIM and as of the date thereof; and,

WHEREAS, it is the intent of the Board of Commissioners that this Ordinance take effect as of the date of introduction as it is necessary for the immediate preservation of the public peace, health and safety of the Town given the urgency herein described, if it is passed by a two-thirds vote of the Board of Commissioners on introduction, pursuant to N.J.S.A. 40:74-4; and,

WHEREAS, furthermore, for purposes of N.J.S.A. 40:41A-101, if this Ordinance is not passed by two-thirds vote of the Board of Commissioners on introduction, it will take effect immediately upon adoption on second reading, as it is necessary to ensure the safety of the public, the Resolution of Emergency Declaration having been adopted by at least two-thirds of the Board of Commissioners; and,

WHEREAS, the imposition of a moratorium and suspension on and of increases in rent within the Town of West New York has a strong rational public purpose for the reasons set forth herein, as the measures taken both herein and in the PRIM are necessary for the protection of the health, safety, and welfare of the public, and as such, it is within the police power of the Town and the express intent of this Ordinance that the terms of this Ordinance be applied retroactively to the date of the PRIM, such Moratorium providing sufficient notice to the public of the Town's position on these matters;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Board of Commissioners of the Town of West New York, County of Hudson, State of New Jersey that the Code of the Town of West New York is hereby amended as follows:

SECTION I.

Incorporation. The above recitals are incorporated herein as if set forth at length herein.

SECTION II.

Definitions. Terms used in this Ordinance, whether capitalized or not, shall have the same definition as set forth in the Rent Control Ordinance, as same has been previously interpreted by the West New York Rent Control Board. For the purpose of avoiding any ambiguity, it is expressly stated that for purposes of this Ordinance the term "landlord" shall mean an owner, lessor, sublessor, assignee, or other person

receiving or entitled to receive rent or any agent of a person receiving or entitled to receive rent for use, rental or occupancy of a housing space, whether by written or oral rental agreement, letting, or otherwise, or an agent or successor of any of the foregoing.

SECTION III.

Moratorium. A moratorium shall be and is hereby effectuated to prevent any increases in rent within the Town of West New York, even as otherwise permitted by the Rent Control Ordinance, from taking effect. Such moratorium shall be deemed effective as of the date of the PRIM, and such moratorium shall remain in effect for no longer than two (2) months following the cessation of the State of Emergency declared by Governor Murphy due to the COVID-19 pandemic.

SECTION IV.

Suspension of Certain Increases. Any increases in rent that may have been noticed or otherwise enacted subsequent to the March 15, 2020, Proclamation, but prior to the PRIM, are hereby suspended effective as of the date of the PRIM, and such suspension shall remain in effect for no longer than two (2) months following the cessation of the State of Emergency declared by Governor Murphy due to the COVID-19 pandemic.

No claim for refund of increases in rent paid prior to the PRIM may be had under the terms of this Ordinance, even if such increased rent was paid pursuant to an increase in rent noticed or enacted after March 15, 2020.

SECTION V.

Notices of Future Increases. Nothing in this Ordinance or the PRIM shall be read as prohibiting the giving of notice of an otherwise lawful rent increase slated to take effect after two (2) months following the cessation of the State of Emergency declared by Governor Murphy due to the COVID-19 pandemic if such notice is not otherwise in violation of the Rent Control Ordinance, or other law or of a rental agreement.

SECTION VI.

Prohibited Increases Null and Void. Any increases in rent enacted or imposed in violation of this Ordinance or the PRIM shall be null and void and shall not be considered legally due and owing for any purpose.

SECTION VII.

Prohibited Increases not Legally Due and Owing. Any amount, or portion thereof, that would otherwise have been due as an increase in rent, except for the terms of this Ordinance or the PRIM, shall not be considered legally due and owing for any purpose.

SECTION VIII.

Attempts at Collection of Barred Rent Increases; violation. Any attempt to collect any increase in rent in violation of this Ordinance or the PRIM, shall be considered a violation of this Ordinance. Every receipt of any increase in rent, or any portion of such increase from any tenant in violation of this Ordinance shall be considered a separate and distinct violation hereof.

SECTION IX.

Safe Harbor. To the extent any amount of rent increases barred from collection by this Ordinance or the PRIM are collected prior two (2) months following the cessation of the State of Emergency declared by Governor Murphy due to the COVID-19 pandemic, an affirmative defense to any violation for the collection of same, shall be that within thirty (30) days of such collection, the landlord either: (i) returned such amount to the tenant, or (ii) the tenant agreed in a writing to an offer by the landlord to apply such amount as an offset to future rent due; and (iii) that the Landlord was either without actual knowledge of the terms of this Ordinance or the increase was paid without solicitation of the landlord after the PRIM.

SECTION X.

Prohibited Increases Not to be Collected as Back Rent or other Fee or Charge.

- a) Any amount, or portion thereof, that would otherwise have been due as an increase in rent except for the terms of this Ordinance, or the PRIM, shall not be attempted to be recouped, even after the lapse of the moratorium and suspension instituted by the terms of this Ordinance or the PRIM, (“Moratorium and Suspension Period”) such as by: (i) charging a tenant or tenants any “back rent”; or (ii) through other artifice, such as by way of example, the imposition of any surcharge or any fee or other charge not enacted for a *bona fide* reason, except as may otherwise be provided by the Rent Control Ordinance.
- b) No fee or charge collected and authorized by a rental agreement prior to the passage of this Ordinance or the PRIM may be increased during the term of the Moratorium and Suspension Period, even if such fee or charge does not qualify as rent.
- c) No fee or charge that was collected and authorized by the rental agreement prior to this Ordinance or the PRIM, but that does not qualify as rent, may be increased after the lapse of the Moratorium and Suspension Period, absent a *bona fide* reason.
- d) For purposes of this section, recoupment of any increase in rent foregone as a result of this Ordinance or the PRIM is not a *bona fide* reason.

- e) Any attempt at recouping the foregone rent increase in a manner prohibited by this Section either during or after the lapse of the Moratorium and Suspension Period shall be considered a violation of this Ordinance.
- f) Every receipt, of any portion, of any amount sought recouped from any tenant or tenants in a manner prohibited by this Section shall be considered a separate and distinct violation of this Ordinance.

SECTION XI.

Refund of Certain Rent Increases and Offsets. Any amount of increase in rent, however denominated, collected in violation of the terms of this Ordinance or the PRIM, whether during or after the lapse of the Moratorium and Suspension Period, shall be refunded. If within thirty (30) days of collection such amount is either: (i) not returned to a tenant or tenants; or (ii) the landlord has not offered to apply such amount to future rents due, as otherwise provided for in this Ordinance, thereafter the tenant or tenants who paid such amount may elect, in a writing to the landlord, to have such amount offset or deducted from future rents, and any amount not returned may be considered by the Rent Control Board in making determinations, in favor of a tenant only, under the Rent Control Ordinance, or by the Superior Court in making any determination in action for eviction or ejectment. No increase of rent enacted in violation of this Ordinance shall be considered as part of the base rent under the Rent Control Ordinance for any purpose, except if consideration of same would be favorable to the interests of a tenant.

SECTION XII.

Private Right of Action; Defense to Eviction. Without limiting any other rights a tenant may have, any tenant who was charged and paid any increase of rent, or any other sum, in violation of the terms of this Ordinance or the PRIM, shall be permitted to make an application for recovery of same with the Rent Control Board, and/or any court of competent jurisdiction, or otherwise raise the terms of this Ordinance or the PRIM as a defense to any action for eviction or ejectment based on non-payment of rent up to the amount of rent increase or other sums collected by the landlord in violation of the terms of thereof, in the event that: (i) any amount of increase in rent or sum collected in violation of the terms of this Ordinance or PRIM shall not have been refunded by landlord to the tenant who paid such amount within thirty (30) days of collection of same; (ii) the tenant has not otherwise previously elected in a writing to the landlord to have such amount offset or deducted from future rents; and (iii) in the case where payment is raised as a defense to eviction or ejectment, such amounts have not yet been utilized to offset or deduct future rents due.

SECTION XIII.

No Ratification of Otherwise Improper Rent Increases; Rights and Remedies Cumulative. Nothing in this Ordinance or the PRIM shall be read as ratifying or otherwise permitting any rent increase, fee or charge in violation of Rent Control Ordinance or any other ordinance, the laws of this State, or of any rental agreement, or in derogation of any other rights a tenant may otherwise have under a rental

agreement or against a landlord of whatever kind, the rights remedies provided for herein being remedial and cumulative.

SECTION XIV.

Penalties for Violations. Any violation of this Ordinance or the PRIM shall also be considered a separate violation of the Rent Control Ordinance. Furthermore, any person or entity violating the terms of this Ordinance or the PRIM shall be subject to an additional fine of up to \$2000.00 and an additional fine of up to the amount collected in violation of the terms of this Ordinance, and shall otherwise be subject to the penalties set forth in Section 1-16 of the Code of the Town of West New York.

SECTION XV.

Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but same shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION XVI.

Repealer. The PRIM and all Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency.

SECTION XVII.

Codification. The Town Clerk shall have this Ordinance incorporated in the official copies of the Code of the Town of West New York. The Town Clerk and the Town Attorney be and are hereby authorized and directed to correct any typographical errors, change any heading, chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those headings and numbers and existing provisions of the Code of the Town of West New York, or as they may otherwise deem appropriate, even if the headings, chapter numbers, article numbers and section numbers thus modified are otherwise provided for in this Ordinance.

SECTION XVIII.

Effective Date of Ordinance.

- a) This Ordinance shall take effect as of the date of introduction as it is necessary for the immediate preservation of the public peace, health and safety of the Town given the urgency herein described, if it is passed by a two-thirds vote of the Board of Commissioners on introduction, pursuant to N.J.S.A. 40:74-4.

- b) Furthermore, for purposes of N.J.S.A. 40:41A-101, if this Ordinance is not passed by two-thirds vote of the Board of Commissioners on introduction, it will take effect immediately upon adoption on second reading, as it is necessary to ensure the safety of the public, the Resolution of Emergency Declaration having been adopted by at least two-thirds of the Board of Commissioners.

- c) This Ordinance shall be published as otherwise required.

SECTION XIX.

Retroactive Effect. The terms of this Ordinance are expressly made retroactive to the date of the PRIM, and as otherwise set forth herein.

Summary of Ordinance

This Ordinance retroactively codifies and ratifies, as set forth herein, the moratorium and suspension of increases in rent set forth in the PRIM from the date thereof, which shall remain in effect for no longer than two (2) months following the cessation of the State of Emergency declared by Governor Murphy due to the COVID-19 pandemic.

Introduction: 4/29/2020

Notice

The foregoing Ordinance was adopted for first reading by the Mayor and Board of Commissioners of the Town of West New York, New Jersey, on **April 29th, 2020** and ordered published, and will be further considered before final passage at a public hearing on **May 20th, 2020 at 6:30 p.m.** at the Commission Chambers, Municipal Building, West New York, NJ. A copy of this Ordinance has been posted on the bulletin board upon which public notices are customarily posted on in the Town Hall of the Town of West New York, and a copy (at no charge) is available up to and including the time of such meeting to the members of the public of the Town who shall request such copies, at the Office of the Town Clerk in said Town Hall in West New York, N.J.

Carmela Riccio, RMC
Town Clerk