

ORDINANCE NO. 13-26

AN ORDINANCE AMENDING VOLUME I, CHAPTER IV OF THE  
CODE OF THE TOWNSHIP OF NEPTUNE BY CREATING  
RENT CONTROL, PROTECTIVE TENANCY AND A RENT  
LEVELING BOARD

WHEREAS, a large portion of residents of the Township of Neptune live in apartment complexes and mobile home parks, and are in dire need of protection as tenants, especially in the area of rent increases and affordable, available housing.

NOW THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Neptune, County of Monmouth and the State of New Jersey that Volume I, Chapter IV of the Code of the Township of Neptune is hereby amended by adding the following:

**4-30 RENT CONTROL.**

**4-30.1 Definitions.** As used in this Chapter:

*Bed and Breakfast* shall mean a facility providing sleeping or dwelling accommodations to transient guests as defined by N.J.A.C. 5:70-1.5 or successor amended State Regulations and local Ordinance 4-23.1 and successor amended ordinances.

*Date that the lease is entered into* in the case of the renewal of leases shall mean the starting date of the last renewal term. Anniversary date shall mean the date that the lease is entered into or periodic tenancy commenced (oral lease) and each yearly renewal date thereafter.

*Existing legal rent* shall mean the actual legal monthly rental a tenant is paying for his apartment or mobile home unit or space. At the time of this Chapter if the present monthly rent being paid by a tenant is five hundred and eighty dollars (\$580.00) and the tenant is also paying a twenty (\$20.00) dollar a month hardship surcharge, the existing legal rent for the next permissible increase will be six hundred (\$600.00) dollars and the next permissible increase will be the increased percentage in CPI as set forth in Subsection 4-30.2b x \$600.00. Thereafter, the "existing rent" will be this six hundred dollars (\$600.00) plus any CPI increases. Any capital improvement surcharge shall be separate from the rent and not be included in the base rent.

*Guesthouse* shall mean a facility providing sleeping or dwelling accommodations for transient guests as defined by Neptune Township Ordinance 4-23.1.

*Legal rent shall* mean any consideration paid by tenant or mobile home owner or tenant for the use and occupancy of the rental property. All charges that are considered mandatory for all tenants, including but not limited to refurbishment fees and administrative fees, shall be considered "rent" and shall be illegal unless inclusive of all rents and meeting the ceiling limitations of this Chapter. Optional charges, which are chosen by tenants such as pet fees, pool fees, recreation fees, and the like, shall not be inclusive of the definition of "rent" as viewed by this Chapter.

Enforcement fees or security fees such as late fees, bounced check fees, legal fees and costs of court for enforcement of a breach of lease agreement and increases in security deposit are also not considered "rent" for purposes of this Chapter.

*Housing space, dwelling, mobile home or apartment* shall mean and include the portion of a structure rented or offered for rent for living and dwelling purposes to one individual or family unit together with all privileges, services furnishings, furniture, equipment, facilities, parking and garage facilities (whether optional or mandatory), and improvements connected with the use or occupancy of such portion of the property. Included are any building, structure, mobile home, or land used as a mobile home park, rented or offered for rent to one or more tenant or family units. Exempt from this Chapter are: motels, hotels and similar type buildings; bed and breakfast facilities; guesthouses; commercial buildings with regards to commercial rentals; and housing structures owner occupied with two (2) units or less rental units. Housing units newly constructed and rented for the first time are exempted, with regards to tenant's first year rental. That is the initial rent may be determined by the landlord but all subsequent rents will be subject to the provisions of this Chapter, subject further to any State Statute such as N.J.S.A. 2A:42-84.2, which may provide a temporary exemption for newly constructed multiple dwellings. Further exemption may exist by the preemption by Federal and State Statutes regulating residential rents such as, but not limited to, dwellings owned by HUD, financed under federal programs and subject to regulations promulgated by the Department of Housing and Urban Development, and housing regulated and provided under the New Jersey Housing Finance Agency Law of 1967. (N.J.S.A. 55:14J)

*Notify or notification* shall mean either certified mail, or regular mail or hand delivery acknowledged by written receipt; or if the party refuses to claim or acknowledge delivery, by regular mail.

*Price Index* shall mean the "Consumer Price Index for all urban consumers" for the region of the United States, of which Neptune Township, New Jersey, is a part (i.e. the New York-East-New Jersey region) published periodically by the Bureau of Labor Statistics, United States Department of Labor.

*Substantial compliance* shall mean that the housing space and dwelling are free from all heat, hot water, elevator and all health, safety and fire violations as well as ninety (90%) percent qualitatively free of all other violations of the Neptune Township Property Maintenance Ordinance, Uniform Construction Code, Hotel and Multiple Dwelling Law, Mobile Home Park Ordinance and Statute (mobile home units only).

#### **4-30.2 Establishment of Rent; Increase.**

- a. Establishment of rents between a landlord and a tenant in any dwelling shall hereafter be determined by the provisions of this Chapter. Any rental increase in excess of that authorized by the provisions of this Chapter shall be void.
- b. Upon proper notice at the expiration of a lease or periodic tenancy, no landlord may request or receive an increase greater than the percentage increase, if any, in the Price Index published in the fourth month prior to the month in which the lease or periodic tenancy terminates over the Price Index published in the sixteenth month prior to the month of termination. The rent resulting from the imposition of any increase provided hereunder may be rounded to the nearest dollar with regard to the final step of

calculation only. Calculation of the CPI published shall be in the month it is published not the month of designation, i.e., November CPI published in December is December's CPI. Calculation of percentages shall be calculated out two decimal points only and then dropped not rounded. No landlord shall request or receive more than one rental increase per year per housing space or mobile home space unless said housing space or mobile home space is decontrolled by a vacancy. By way of example, a rent increase computed in accordance with the provisions of this section shall be computed as follows:

**EXAMPLE**

Assuming a lease or periodic tenancy expires in April of 2005, use the CPI published in the fourth preceding month, or December of 2004 (a. below). Take the CPI published in the sixteenth month preceding the month of termination, or December of 2003 (b. below) and subtract b. from a. To calculate the percentage change in the CPI, take c. and divide it by b. (d. below).

Next, multiply the current rent by the percentage change in the CPI (e. below) and add to the current rent to arrive at the new rent.

a. CPI published in December 2004	293.9
b. CPI published in December 2003	<u>-283.6</u>
c. Difference in CPI	<u>10.3</u>
d. Percentage change in CPI 10.3 divide by 283.6 =	.03
e. Permissible increase is \$400 (current rent) multiplied by .03 =	12.00
f. New rent is (rounded to nearest dollar)	\$412.00

**4-30.3 Rent Increase; Notice Required.**

- a. Any landlord seeking an increase in rent shall, at least sixty (60) days prior to the effective date of the increase, notify the tenant of the calculations involved in computing the increase, including the Price Index at the respective dates as required in Subsection 4-30.2 the allowable percentage increase, the allowable rental increase, the previous year's base rent, and a certification by the landlord that the dwelling is in substantial compliance with the Municipal Property Maintenance Code, Uniform Construction Code, Hotel and Multiple Dwelling law and Mobile Home Park Ordinance and Statute (for mobile home units only). Failure to comply with this provision shall result in the rental continuing at old rent until proper notice is given.
- b. Any landlord seeking a rent increase, a lease renewal or an agreement to extend or renew leases shall provide notice of said action in writing and in duplicate to the tenant at least sixty (60) days prior to the effective date of increase renewal, extension or other action and further that no tenant shall be required to sign any such rent increase notice,

renewal or agreement to extend or renew lease until such tenant has had the opportunity to review the documents for a period of five (5) business days.

#### **4-30.4 Appeal by Landlord.**

- a. In the event that a landlord cannot receive a fair return after having received the increase provided in Subsection 4-30.2, he may appeal to the Rent Leveling Board for increased rental. The Board may grant a hardship rent increase to meet this requirement. The landlord must provide evidence according to the standards recognized at law for determining fair return. The Board will rely upon the recognized standard that a landlord should receive a net operating income of at least forty (40%) percent of the gross annual income after deducting reasonable and necessary operating expenses, in the absence of an adequate showing that utilization of this standard will result in an unfair return to the landlord. Operating expenses shall not include mortgage principal or interest payments, depreciation or amortization. Any hardship increase granted by the Board will take the place of the annual CPI increase and shall be equally prorated to all units within the structure thirty (30) days after the decision of the Rent Leveling Board, provide that no increase shall take effect with regard to any tenant who has a written lease until the expiration of the lease unless the lease provides otherwise.
- b. Landlord may seek addition surcharges for major capital improvements or services. To qualify for a major improvement surcharge, claimant must show a benefit to the tenant, in the form of improved lifestyle, convenience, ease and/or security. The landlord must notify each tenant of the total cost of the completed capital improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square feet occupied by the tenant and the capital improvement surcharge he is seeking from each tenant. The landlord seeking a capital improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board who shall determine if the improvement is a major improvement and if so, may permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the capital improvement. If the increase is granted it shall not be considered rental and calculated in cost of living increases. In any event, no increase authorized by this section shall exceed fifteen (15%) percent of the tenant's rent.
- c. Prior to any such appeal to the Board provided for in paragraphs a. and b. of this section, a landlord must post in the lobby of each building or if no lobby is present, in a conspicuous place in and about the premises a notice of the appeal setting forth the basis for the appeal. The notice must be posted for a least fifteen (15) days prior to the proposed date of appeal. He shall also send a separate notice by regular and certified mail return receipt requested to each tenant at least fifteen (15) days prior to the proposed date of the appeal. Landlord must also submit to the Board a certification from the Housing and Construction Department of Neptune Township that the building and grounds are in substantial compliance with the municipal property maintenance ordinance, uniform construction code, hotel and multiple dwelling law and with regards to mobile homes the mobile home park ordinance.

#### **4-30.5 Rent Leveling Board Established.**

There is hereby created a Rent Leveling Board within the Township of Neptune. The Board shall consist of five (5) regular members and two alternate members. The members of the Board shall be appointed by the governing body and their terms of office shall be for a period of one year each, with each member serving without compensation.

Except as provided herein, the powers herein granted to the Rent Leveling Board are advisory powers and its actions shall be subject to review by the governing body of the Township hereinafter provided.

The Board shall elect among themselves a Chairperson at the first annual meeting of the Rent Leveling Board, which it is called. The Township Committee shall appoint a paid Board Secretary and legal counsel when needed. The Construction Official, Housing Inspector and/or Code Enforcement Officer may be called for specific reasons when needed by the Board and in its discretion. The Board shall be subject to Open Public Meeting Act.

#### **4-30.6 Rent Leveling Board: Powers.**

The Rent Leveling Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Chapter, including but not limited to the following:

- a. To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this Chapter, which rules and regulations shall have the force of law until revised, repealed or amended by the Board in the exercise of discretion, providing that such rules are filed with the Township Clerk.
- b. To supply information and assistance to landlords and tenant to help them comply with the provisions of this Chapter.
- c. To hold hearings and adjudicate applications from landlords for additional rental and surcharges.
- d. To hold hearings and adjudicate applications and complaints from tenants for reduced or improper rentals. The Board shall give both landlord and tenant reasonable opportunity to be heard before making any determination.
- e. Upon application the Board may in its discretion issue written advisory opinions as to any issue of jurisdiction on any future potential matter. The opinion shall not be binding but shall be advisory in nature and provide guidance for future actions.

#### **4-30.7 Appeal.**

Both landlord and tenant may appeal in writing the findings of the Board to the governing body within twenty (20) days from the date of the determination. The Township Committee shall hold a hearing on the record before the Board. Procedures for appeal and costs shall be determined in the Rules and Regulations of the Board.

#### **4-30.8 Tax Reduction; Tenant Credit.**

In the event a tax appeal is taken by the landlord and the landlord is successful in the appeal and the tax is reduced, the landlord shall remit and tenant shall receive fifty (50%) percent of the reduction as applied to its tax portion, after deducting all expenses incurred by the landlord in prosecuting the appeal, within forty-five (45) days of receipt by the landlord of the monies or the crediting of such monies against the landlord's outstanding taxes. The landlord shall notify each tenant of such tax reduction and of the calculations involved in computing the tenant's credit, including the property tax for the dwelling place before the appeal, the reduced property tax for the dwelling place after the appeal, the number of square feet of all housing space in the dwelling, the tax decrease per square foot of housing space, the number of square feet occupied by the tenant, the credit to which the tenant is entitled and how it is being credited. The landlord shall provide the Board in writing with a detailed list of the items of expense incurred by him in prosecuting the tax appeal.

A tenant who has resided in housing space for less than the entire tax year to which a reduction pertains (hereinafter "tax year") shall be entitled to receive a percentage of the tax refund pertaining to his housing space which percentage shall be equal to the percentage of the tax year the tenant resided in the housing space.

With respect to any tenant who is entitled to a tax refund but whose whereabouts are unknown, the landlord shall, within forty-five (45) days after receipt by him of his tax refund or the crediting of such refund against outstanding taxes, deposit the tenant's portion in a bank account maintained by the landlord.

With respect to a tenant whose whereabouts are unknown, the landlord shall make a reasonable effort to ascertain such tenant's whereabouts, and refund to him any amounts to which he is entitled. If, after two (2) months from the date of the landlord's receipt of his tax refund or the crediting of such refund against outstanding taxes, he has been unable to ascertain the whereabouts of any tenant entitled to a refund, the landlord shall apply such tenant's portion of the tax refund for general maintenance purposes and/or making improvements to the common elements of the dwelling.

Within two (2) months after the expiration of the two (2) month period during which a landlord must attempt to locate a tenant whose whereabouts is unknown, the landlord shall expend, and shall provide details to the Board pertaining to the expenditure of, funds for general maintenance purposes and/or for making improvements to the common elements.

#### **4-30.9 Standards of Service.**

During the term of this Chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space, dwelling and common areas as it provided or was required to do by law or lease or tenancy at the date the lease or tenancy was entered into or started. In the event the landlord fails to provide such services, tenants may petition the Board for a rent reduction.

#### **4-30.10 First Time Rental.**

The owner of housing space or dwelling being rented for the first time shall not be restricted in the initial rent he charges. Any subsequent rental increases, however, shall be subject to the provisions of this Chapter.

**4-30.11 Precedence of Ordinance.**

Should a lease entered into between the landlord and tenant prove to be in conflict with a Rent Leveling Ordinance, the Ordinance shall take precedence.

**4-30.12 Vacant Housing Decontrolled, Recontrolled.**

Any housing space which is presently vacant or which will become vacant during or at the end of any lease term shall be decontrolled and the rent may be raised by the landlord. The rent to be charged to a new tenant as well as the rent previously charged for the same space shall be reported to the Rent Leveling Board within fifteen (15) days of renting the space. Upon being re-rented, the rental space shall be considered recontrolled to the same extent and under the same conditions as any space originally controlled.

Failure to report the information required within the fifteen (15) days specified shall result in the rental space remaining controlled to the same extent and under the same conditions as if it had not been vacant and any rental charged the new tenant in excess of that controlled rate shall be void.

**4-30.13 Complaint Against Landlord.**

Any tenant filing a complaint with the Rent Leveling Board against the landlord shall be required to sign a complaint and appear before the Board to give testimony as requested by the Board. The landlord and/or his representative upon due notice shall be required to appear and give testimony. Any tenant appearing before the Board may select someone to represent them who need not be an attorney provided the person representing the tenant is authorized to do so in writing. Any person representing a tenant except an attorney is not permitted to charge a fee for his service. Any landlord who is incorporated or is an LLC must be with legal counsel when appearing on a landlord instituted complaint.

**4-30.14 Request for Information.**

When the Rent Leveling Board shall request of any landlord any information with respect to any rental unit such information shall be provided to the Rent Leveling Board within fifteen (15) days of such request. Failure to report the information required within the fifteen (15) days specified shall result in the rental space remaining controlled to the same extent and under the same conditions as it had not been vacant and any rental charged the new tenant in excess of that controlled rate shall be void.

**4-30.15 Posting Required.**

All landlords shall be required to have at all times a copy of the Rent Leveling Ordinance posted in the lobby or other conspicuous place in the premises or landlord and provide a copy to all tenants on the initial lease or tenancy or all existing tenants written 60 days of enactment of this Ordinance.

**4-30.16 Purpose.**

This Ordinance being necessary for the welfare of the Township of Neptune and its inhabitants shall be liberally construed to effectuate the purposes thereof.

#### **4-31 SENIOR CITIZENS AND DISABLED PROTECTED TENANCY ACT.**

##### **4-31.1 Established.**

The Rent Leveling Board of the Township of Neptune has been authorized and instructed to administer the provisions of the Senior Citizens and Disabled Protected Tenancy Act, Chapter 226 of the Laws of New Jersey 1981. The Rent Leveling Board of the Township of Neptune has been instructed to report to the Mayor and Township Committee within thirty (30) days, its recommendations as to the fees which should be charged to owners seeking to convert properties to condominiums or cooperatives as provided in Section 16 of the Act. Until such time as the Rent Leveling Board has submitted its recommendations and the Mayor and Township Committee have had an opportunity to act thereon, it is necessary to establish interim fees for the processing of notices and applications and to otherwise administer the provisions of the Senior Citizens and Disabled Protected Tenancy Act.

##### **4-31.2 Fees.**

The following fee structure is provided to cover the costs of the services to be provided by the Township of Neptune under the provisions of the Senior Citizens and Disabled Protected Tenancy Act and are to be paid by the owners of properties sought to be converted to condominiums or cooperatives at the time such owners take steps to invoke the services of the Township under the Senior Citizens and Disabled Protected Tenancy Act:

- a. Five hundred (\$500.00) dollars for the application for conversion of structures, and
- b. Ten (\$10.00) dollars for each unit.

##### **4-31.3 Interim Fees to Remain in Effect.**

This ordinance shall take effect upon publication according to law and remain in effect until such time as an ordinance establishing permanent fees for the Township's services under the Senior Citizens and Disabled Protected Tenancy Act is adopted by the Mayor and Township Committee of the Township of Neptune.

#### **4-32 VIOLATIONS AND PENALTIES.**

##### **4-32.1 Penalties - Section 4-30 Rent Control and Section 7-31 Protected Tenancy.**

- a. Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be subject to a fine not to exceed one thousand two hundred and fifty dollars (\$1,250.00) or be imprisoned for a term not to exceed ninety (90) days, community service not exceeding ninety (90) days or any combination thereof. Each day that any violation continues shall be considered a new and separate violation of this Chapter.
- b. Upon recommendation to the Township Committee by the Rent Leveling Board that a violation be prosecuted, it shall be the duty of the Township Housing Inspector or Code Enforcement Officer to sign the complaint, within fifteen (15) days after the Township Committee has authorized the same by resolution.



**4-32.2 Graduation of Penalties for Offenses.**

- a. Any person who violates any provision of the Chapter shall and upon conviction for the first offense pay a fine of not more than five hundred Dollars (\$500.00) and for the second offense shall pay a fine of not more than one thousand dollars (\$1,000.00); and for the third offense shall pay a fine of one thousand two hundred and fifty (\$1,250.00) dollars or be imprisoned for a period not more than ninety (90) days or community service not to exceed ninety (90) days or any combination thereof. Each and every offense shall be deemed to be and constitute a separate and distinct violation of this act.
- b. In addition to the penalties hereinabove provided in the case of conviction under this Chapter, upon any four (4) convictions for violations of this act, the premises in or upon which the violations occurred shall be deemed a nuisance and the owners, tenants and occupants of such premises shall be liable for the penalties and additional penalties provided for the maintenance of nuisances and in accordance with such acts made and provided.
- c. Any person who is not in willful violation of this chapter, but still violates this Chapter shall first be given twenty (20) days written notice by the Neptune Township Housing Department or Code Enforcement Department to cease the aforesaid violation before a complaint is filed against the landlord or owner of a mobile home park. This does not include complaints filed by tenants before the Rent Leveling Board claiming an illegal rent increase by the landlord or requesting a reduction in rent for reduced services. In those cases, the complaint filed by the tenant before the Rent Leveling Board and served upon the landlord or mobile home park owner shall be sufficient notice of violation. A willful violation is considered a direct violation of a Board decision or Court order.

BE IT FURTHER ORDAINED, that all Ordinances or parts of Ordinances which are inconsistent herewith are repealed, but only to the extent of such inconsistency.

BE IT FURTHER ORDAINED that this Ordinance shall take effect upon passage and publication.

APPROVED ON FIRST READING:

APPROVED, PASSED, AND ADOPTED:

---

Richard J. Cuttrell,  
Municipal Clerk

---

Eric J. Houghtaling,  
Mayor