

Chapter 182. Rent Control

[HISTORY: Adopted by the Borough Council of the Borough of Caldwell 6-22-1982 by Ord. No. 693-82. Amendments noted where applicable.]

§ 182-1. Definitions.

Unless the context clearly indicates a different meaning, the following words or phrases, when used in this chapter, shall have the following meaning:

AGENT

The individual or individuals designated by the owner as the person(s) authorized by the owner to perform any duty imposed upon the owner of this chapter. The term does not necessarily mean a licensed real estate broker or salesman of the State of New Jersey, as those terms are defined by N.J.S.A. 45:15-3; however, such term may include a licensed real estate broker or salesman of the State of New Jersey if such person designated by the owner as his agent is so licensed.

[Added 6-22-2010 by Ord. No. 1216-10^[1]]

APARTMENT or DWELLING

Any apartment, cottage, bungalow, any room or rooms in a rooming house/boardinghouse or other dwelling unit, consisting of one or more rooms occupying all or part of a floor in a building, whether designed with or without housekeeping facilities for dwelling purposes and notwithstanding whether the apartment be designed for residence, for office or the operation of any industry or business or for any other type of independent use. Each unit shall contain no more than one kitchen or cooking facility.

[Added 6-22-2010 by Ord. No. 1216-10]

DWELLING

Any building or structure containing housing space units which are rented or offered for rent for occupancy as living quarters.

DWELLING UNIT

Any room or rooms or suite or apartment, including any room or rooms in a rooming house/boardinghouse, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof or any of his servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with use or occupancy thereof.

[Added 6-22-2010 by Ord. No. 1216-10]

HOUSING SPACE

Includes that portion of a building rented or offered for rent for occupancy as living quarters to one or more individuals or family units, together with all privileges, services, furnishings, furniture, equipment, facilities, improvements and common areas connected with the use or occupancy of such portion of the building. Each such unit shall be called a "housing space unit."

[Amended 12-22-1987 by Ord. No. 800-87]

HOUSING SPACE AGREEMENT

A lease, or any other agreement, oral, written or implied, between a landlord and a tenant for the use and occupancy of housing space.

[Amended 9-25-1990 by Ord. No. 890-90]

INITIAL

For the first time.

LANDLORD

An owner, lessor, sublessor or any other person or entity entitled to receive rent for the use and occupancy of any housing space, or an agent or successor of any of the foregoing.

LICENSE

The license issued by the Borough Clerk or designee attesting that the rental unit has been properly registered in accordance with this chapter.

[Added 6-22-2010 by Ord. No. 1216-10]

LICENSEE

The person to whom the license is issued pursuant to this chapter. The term "licensee" includes within its definition the term agent, where applicable.

[Added 6-22-2010 by Ord. No. 1216-10]

MAJOR CAPITAL IMPROVEMENT

An addition to dwelling or housing space units which inures to the benefit of tenants; that was not previously provided or required to be provided by law or lease; materially adds to the value of the dwelling or housing space and prolongs its life; and is not upkeep, maintenance, repairs, rehabilitation or replacement of items or services.

[Amended 12-22-1987 by Ord. No. 800-87; 9-25-1990 by Ord. No. 890-90]

NOTICE

Written notice to a tenant which is mailed to the tenant's residence by certified mail, return receipt requested, or by registered mail. In the event that no signed receipt is obtained, then certification by affidavit shall be made that notice to the tenant was mailed. The affidavit and the receipt for certified mail shall be retained in the records of the landlord or his representative.

OWNER

Any person or group of persons, firm, corporation or officer thereof, partnership, association or trust who owns, operates, exercises control over or is in charge of a rental facility.

[Added 6-22-2010 by Ord. No. 1216-10]

OWNER-OCCUPIED

A portion of a rental facility, dwelling, commercial unit or dwelling unit shall be considered owner-occupied if the owner makes his primary residence therein. A person may have only one primary residence in the Borough.

[Added 6-22-2010 by Ord. No. 1216-10]

PERSON

An individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

[Added 6-22-2010 by Ord. No. 1216-10]

RENT

The consideration, including any bonus, benefits or gratuity demanded or received for or in connection with the use of occupancy of housing space or the transfer of a lease of housing space, including but not limited to moneys demanded or paid for tax surcharge, parking, pets, the use of furniture, subletting, security deposits and damage and cleaning deposits.

RENT or RENTED

Occupied by any person or persons other than the owner, regardless of whether there is a written or oral agreement and regardless of whether the owner receives consideration for the occupancy.
[Added 6-22-2010 by Ord. No. 1216-10]

RENTAL FACILITY

Every building, group of buildings or a portion thereof consisting of less than three dwelling units and has sleeping facilities for less than 25 occupants, kept, used, maintained, advertised or held out to be a place where living accommodations are supplied, whether furnished or unfurnished.
[Added 6-22-2010 by Ord. No. 1216-10]

RENTAL UNIT

A dwelling unit which is available by lease, rental or otherwise, to persons other than the owner. Rental unit shall not include that portion of a rental facility or dwelling unit that is owner-occupied.
[Added 6-22-2010 by Ord. No. 1216-10]

SUBSTANTIAL INCREASE IN SERVICE

An addition to dwelling or housing space units that which inures to the benefit of tenants; that was not previously provided or required to be provided by law or lease; materially adds to the value of the dwelling or housing space and prolongs its life; includes substantial increases in services, furniture, furnishings or equipment provided to tenants since the date of the most recent rent increase under any section of this chapter; and is not upkeep, maintenance, repairs, rehabilitation or replacement of items or services.
[Amended 12-22-1987 by Ord. No. 800-87]

TENANCY

Occupancy of the unit by one or more tenants.
[Added 6-22-2010 by Ord. No. 1216-10]

TENANT

Occupant in a unit other than the owner.
[Amended 6-22-2010 by Ord. No. 1216-10]

VOLUNTARY UNCOERCED VACATION

Includes, but is not limited to, a tenant moving from his rental space unit with or without notice to landlord, and vacation of premises pursuant to a judicially mandated eviction.

[1] *Editor's Note: This ordinance also amended the first paragraph of § 182-1.*

§ 182-2. Exemptions.

- A. The owner of a dwelling in which housing space is 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.
- B. Dwellings consisting of one housing space unit and dwellings consisting of two housing space units, with one of the housing space units occupied by the owner of said dwellings, are exempt from the provisions of this chapter.
- C. Except as is otherwise provided in § **182-3** hereof and notwithstanding any limitations; provided, however that for any dwelling in which the owner rents four or more housing space units, the rent for units within such dwelling shall not, pursuant to this subsection, be fixed at an amount greater than 25% greater than the amount to which the owner would otherwise be entitled under this chapter.
- D. Except as is otherwise provided in § **182-3** hereof, and notwithstanding any limitations upon permissible rent increases under any other provisions of this chapter, upon the voluntary, uncoerced vacation of any housing space unit, rent increases for which are controlled in this chapter, the landlord shall have the right to fix the rent for such vacated housing space unit at such

sum as he deems appropriate; provided, however, that, for any dwelling in which the owner rents four or more housing space units, the rent for units within such dwelling shall not, pursuant to this subsection, be fixed at an amount greater than 25% of the amount to which the owner would otherwise be entitled under this chapter. Once a vacant housing space unit has been rented, it shall immediately be subject to all of the other terms and provisions of this chapter, including but not limited to maximum amounts of increases of rent thereafter, unless and until it shall become vacant and again qualify for a vacancy increase.

[Amended 7-24-1984 by Ord. No. 730-84; 12-22-1987 by Ord. No. 800-87; 4-26-1988 by Ord. No. 803-88; 9-25-1990 by Ord. No. 890-90]

§ 182-3. Applicability to vacant housing space units.

- A. Section **182-2** shall apply to any vacant housing space unit which is rented by a tenant who immediately prior thereto rented any other housing space unit in the same dwelling, except that the permissible increase in rent which such tenant may be required to pay shall not exceed 10% greater than the amount to which the landlord would otherwise be entitled, rather than 25% as set forth in § **182-3**.

[Amended 12-27-1988 by Ord. No. 836-88]

- B. Section **182-2** shall not apply to any vacant housing space unit where the landlord fails, in the opinion of the Board, to make a good faith effort to accommodate a tenant who rented any other housing space unit in the dwelling immediately prior thereto and who, for health, space or other valid reasons, applies to rent a vacant housing space unit. Accordingly, such housing space unit shall continue to be subject to all other terms and provisions of this chapter.

[Amended 12-27-1988 by Ord. No. 836-88]

- C. The unit vacated by any tenant who transfers from one housing space to another pursuant to Subsection **A** shall not be subject to the provisions of this section, but shall be subject to the provisions of § **182-2**, except that the maximum permissible increase for the new tenant of such a vacated unit shall be 50% rather than 25% as set forth in that section.

[Amended 12-27-1988 by Ord. No. 836-88]

- D. A tenant shall only be permitted to exercise his rights under this section one time.

[Amended 12-27-1988 by Ord. No. 836-88]

- E. This section shall not apply to any dwelling in which the owner rents fewer than four housing space units.

[Amended 2-28-1989 by Ord. No. 843-89]

- F. Any rent fixed by a landlord for housing space which becomes vacant as a result of voluntary, uncoerced vacation as referred to and provided for in § **182-2** shall be without regard to any surcharges or increases previously imposed upon said vacated housing space pursuant to § **182-13**, Adequate return increase; § **182-14**, Major capital improvement/substantial service increase; or any other extraordinary surcharge or increase heretofore permitted; and any and all such prior surcharges and increases on said housing space are hereby declared canceled and null and void.

[Amended 9-13-1983 by Ord. No. 714-83; 9-25-1990 by Ord. No. 890-90]

§ 182-4. Rent Review Board.

[Amended 12-22-1987 by Ord. No. 800-87]

- A. There is hereby created a Rent Review Board (hereinafter "Board"). The Board shall consist of five regular members. The members of the Board shall be appointed for a three-year term by the Mayor with the advice and consent of the Borough Council. Each member of the Board shall serve without compensation. A quorum shall consist of three members. Action may be taken by a majority of the members present at the meeting, provided that there is a quorum.

- B. Not less than one nor more than two of the regular members shall be landlords, and not less than one nor more than two of the regular members shall be tenants. At least one regular member shall be the owner-occupant of a single-family residence who is not a landlord or tenant.
- C. There shall also be appointed in the same manner and for the same terms as regular members three alternate members, who may serve in the absence or disqualification of regular members as directed by the Chairman of the Board. The three alternate members shall consist of one landlord, one tenant and owner-occupant of a single-family residence. In the absence of a regular voting board member, the alternate member of the same classification shall be entitled to vote; provided, however, that if the alternate landlord or tenant is needed, but is also unavailable, the owner-occupant alternate board member may vote in place of either such unavailable alternate landlord or tenant.
- D. The terms of all regular and alternate members of the Board first appointed hereunder shall include the balance of the calendar year in which they are appointed plus a regular three-year term commencing on January 1 of the year following the year in which they are appointed.
- E. At its organization meeting, which shall be the first meeting each calendar year, the Board shall elect a Chairman and a Vice Chairman. The Chairman shall preside over all meetings of the Board and exercise all of the powers of the Chairman; provided, however, that in the absence, disqualification or abstention by the Chairman, the Vice Chairman shall have all of the powers of the Chairman.
[Amended 6-9-1992 by Ord. No. 929-92]

§ 182-5. Powers and duties of Board.

The Board is hereby granted and shall have and exercise, in addition to other powers herein expressly granted, all the powers necessary and appropriate to carry out and execute the purpose 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 from time to time by the Board in the exercise of its discretion, provided that such rules and regulations are filed with the Borough Clerk.
- B. To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
- C. To review complaints from tenants alleging noncompliance and answers from landlords in response to such tenants, as hereinafter provided, and to make a determination based upon such complaints and answers. However, no hearing shall be held in connection herewith, unless the same is specifically required by the Board upon notice to the parties.
[Amended 11-22-1988 by Ord. No. 831-88; 2-7-2017 by Ord. No. 1327-17]
- D. To review applications from landlords for capital improvements surcharges, increased service surcharges and additional rental increases as hereinafter provided.
- E. To hold and conduct hearings, as a quasi-judicial body, and adjudicate applications from landlords for capital improvements surcharges, increased service surcharges and additional rental increases. The Board shall give both landlord and tenant reasonable opportunity to be heard before making a determination under this chapter.
- F. The Board shall annually review the provisions of this chapter, particularly § **182-10**, and shall render to the Borough Council such recommendations for amendment hereof as it deems appropriate to effectuate the purposes of this chapter.
[Amended 9-25-1990 by Ord. No. 890-90]
- G. On its own initiative or on the complaint of any tenant moving into vacancy increased housing space as provided and referred to in § **182-2** to hold hearings and to take any other action

necessary to determine if the vacancy was voluntary and uncoerced.
[Amended 9-13-1983 by Ord. No. 714-83; 9-25-1990 by Ord. No. 890-90]

- H. To impose monetary penalties or impose other relief as set forth in § **182-18**.
[Added 2-7-2017 by Ord. No. 1327-17]

§ 182-6. Executive Secretary.

There is hereby created the office of Executive Secretary to the Rent Review Board to supervise the day-to-day administration of this chapter and to handle complaints alleging noncompliance with any of the provisions of this chapter and, where appropriate, to schedule hearings before the Rent Review Board. The Executive Secretary shall be designated by the Mayor from among the full-time employees of the Borough, and may serve in the capacity of Executive Secretary to the Rent Review Board in addition to any other office or position in the Borough government. Said Executive Secretary shall be required to appear at all hearings and meetings of the Board, at which time he or she shall take minutes, shall assist the Board in the preparation of documents, including resolutions, and shall otherwise assist the Board.

§ 182-7. (Reserved)

- [1] *Editor's Note: Former § 182-7, Registration; inspections; license; fees; taxes and other charges; occupancy standards; revocation of license; violations and penalties, as amended, was repealed 3-4-2014 by Ord. No. 1285-14. See now Ch. 131, Housing.*

§ 182-8. (Reserved)

- [1] *Editor's Note: Former § 182-8, Inspection upon vacancy; compliance with provisions; certificate of occupancy; notice of violation; violations and penalties; relocation assistance, as amended, was repealed 3-4-2014 by Ord. No. 1285-14. See now Ch. 131, Housing.*

§ 182-9. Retroactivity.

No landlord shall, after the effective date of this chapter, charge any rent in excess of what he was receiving prior to the effective date of this chapter except for such increases as were authorized pursuant to previously effective rent control ordinances as amended or as may be authorized hereafter under this chapter.

§ 182-10. Rent increases violating chapter; complaints.

- A. No housing space agreements shall provide for a rent that is in excess of the rent permitted by the provisions of this chapter. Any rental increase in excess of that authorized by the provisions of this chapter shall be void.
- B. In the event that the Board receives a written complaint by a tenant under the provisions of this section, then in that event:
- (1) The Executive Secretary shall notify the landlord of such tenant, in writing, within five working days from the date such complaint is received by the Board of the following:
 - (a) The name and address of the tenant.
 - (b) The identity of the housing space unit occupied by such tenant.

- (c) The specific substance of such tenant(s) complaints(s).
 - (d) A copy of such tenant's complaint shall be enclosed.
 - (e) That the landlord must file an answer to the complaint in accordance with Subsection **B(2)**, or alternatively that no answer is necessary in accordance with Subsection **D** hereof.
- (2) No later than 10 working days from the date the notification referred to in Subsection **B(1)** of this section is mailed by the Executive Secretary, the landlord shall file with the Board its answer (including all supportive documents, reports and exhibits) to the complaint and shall serve a copy of such answer upon the complaining tenant. Service upon such tenant shall be by certified mail, return receipt requested, and by ordinary mail.
- C. Except as is otherwise set forth in Subsection **D** hereof, the failure of the landlord to file and serve its answer in the manner and within the time prescribed in Subsection **B(2)** of this section shall result in the voiding of the rental increase complained of, and the same shall be retroactive to the original date of such increase.
- D. In the event that the Board determines, from an initial review of the tenant's complaint, that such complaint is without merit, the Board will so notify both the tenant and landlord, and the landlord need not file any answer thereto.
- E. In the event that a timely answer is filed and served in the manner within the time prescribed in Subsection **B(2)** of this section, the Board shall determine, without hearing, upon a complete review of all documents submitted, whether or not the landlord has violated this chapter. Such determination shall be made by the Board within 30 working days from the date of such filing and service by the landlord of such landlord's answer. Such determination shall be reduced in form to formal resolution containing findings of fact and conclusions of law, which shall be mailed to both the complaining tenant and such tenant's landlord. Whenever, in the opinion of the Rent Control Board, an alleged violation may justify imposition of a monetary penalty, the Board shall refer the matter to the appropriate officer or to the Borough Attorney, pursuant to § **182-18**, to initiate an appropriate complaint in Municipal Court.
[Amended 11-22-1988 by Ord. No. 831-88]
- F. Filing of complaints.
[Amended 7-24-1984 by Ord. No. 730-84; 9-25-1990 by Ord. No. 890-90]
- (1) All complaints by tenants against landlords for alleged violations of this chapter shall be filed with the Rent Review Board within the twelve-month period commencing the first day of the month next succeeding the month in which the alleged violation first commenced. By way of illustration, if rent or other surcharge is payable on the first day or the 15th day of the month, and it is alleged that the amount charged is in violation of this chapter, the twelve-month period in which a complaint must be filed commences on the first day of the next month. No complaints may be filed or heard by the Rent Review Board after the expiration of the twelve-month period next succeeding the month in which the violation initially commenced. This section is intended to be in the form of a jurisdictional requirement and not in the nature of an ordinance of limitations of time, and the absence of knowledge of the existence of a violation on the part of any tenant shall not extend the twelve-month time period in which a complaint must be filed.
- (2) Notwithstanding the provisions of this subsection to the contrary, the twelve-month jurisdictional limitation shall not bar the filing and hearing by the Rent Review Board of complaints by tenants against landlords who have not obtained then current rent licenses pursuant to § **182-7** of this chapter.

§ 182-11. Rent increases.

- A. From and after the effective date of this chapter, no landlord 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 for housing space units to which this chapter is applicable shall be determined by this chapter.

- B. The increase in rent permitted under this section shall not exceed: 2 3/4% of previous year's rent.
[Amended 7-24-1984 by Ord. No. 730-84; 3-13-1986 by Ord. No. 761-86; 11-14-1989 by Ord. No. 864-89; 11-12-2024 by Ord. No. 1467-24]
- C. All deductions from permissible rent increases heretofore allowed for tenant furnished heat, electricity and gas and/or electricity for hot water and/or cooking are terminated as of the effective date of this chapter.
[Amended 3-13-1986 by Ord. No. 761-86; 9-25-1990 by Ord. No. 890-90]
- D. The percentage increases permitted under Subsections **B** and **C** of this section shall be computed upon the base rent charged the tenant and not upon the base rent plus any capital improvement or service surcharges granted under § **182-14** of this chapter and collected for any specific period of time.
- E. All charges to a tenant for rental of a dwelling and parking space/garage shall be deemed added to the rent and be considered part of the total rent for purposes of calculating maximum permitted annual increase under this section. Increases in rent on parking spaces shall not be made independently of the maximum provided for in this section. An increase caused by an increase in the quantity of parking spaces in the year the new space or spaces are added to the lease shall not be considered part of the total rent when calculating the maximum allowable rent increase for that year.

Example: If monthly rent is \$950 and monthly parking is \$50, then the annual maximum increase in rent permitted at the end of the year is \$27.50 per month (2 3/4% of previous years rent).
- F. Rent for any housing space unit shall not be increased more than once during any twelve-month period regardless of the number of housing space agreements in effect covering the housing space during said twelve-month period.
[Amended 7-24-1984 by Ord. No. 730-84]
- G. No rent increase of any kind or for any reason shall be permitted under any of the provisions of this chapter by any landlord unless such landlord has a valid rent license issued pursuant to § **182-7** of this chapter. A landlord making application to the Rent Review Board for any relief under this chapter shall present proof that said landlord holds a valid rent license for the dwelling which is the subject of the application at the time said application is submitted to the Board.
[Amended 7-24-1984 by Ord. No. 730-84]
- H. A landlord shall not require a tenant in his dwelling to pay a sewer charge included, prior to May 1988, within the property taxes paid by the landlord with respect to such dwelling, except that if a rent increase is otherwise permitted by this chapter, the total increase may include the amount of the sewer charge, provided that the total increase (including the amount of the sewer charge) shall not exceed the increase otherwise permitted by this chapter.
[Amended 10-11-1988 by Ord. No. 827-88]
- I. All charges to a tenant for rental of a dwelling and pet fees shall be deemed added to the rent and be considered part of the total rent for purposes of calculating maximum permitted annual increase under this section. Increases in rent on pet fees shall not be made independently of the maximum provided for in this section. An increase caused by an increase in the quantity of pets in the year, such additional fees for added on quantity shall not be considered part of the total rent when calculating the maximum allowable rent increase for that year. There shall be no new pet fees for pets permitted at the time this subsection of the section is adopted, and no new pet fees for pets already existing in a tenant's lease. Furthermore, consistent with the State Law Against Discrimination (LAD), the Federal Fair Housing Act (FHA) and the Federal Americans with Disabilities Act (ADA), there shall not be any fee (including an increased security deposit) charged for service animals or emotional support animals.

§ 182-12. Notification of rent increase.

[Amended 7-24-1984 by Ord. No. 730-84; 9-25-1990 by Ord. No. 890-90]

- A. At least 30 days prior to the effective date of any rent increase, a landlord who shall increase rents as provided in § 182-11 shall give notice of such increase to his tenants by any reasonable means; 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 a 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.
- B. Said notice of increase shall be signed by the landlord under oath and shall set forth in detail the computation of the increase and shall include the following information:
- (1) The monthly base rent prior to the increase.
 - (2) The amount of any previously granted and then effective surcharge and the specific total time period covered by the same.
 - (3) The monthly rent after the increase.
 - (4) The effective date of the increase.
 - (5) The address, including apartment number, of each housing space unit affected by the increase.
 - (6) The date and amount of the most recent increase.
- C. Said notice also shall contain a statement that the landlord has complied with the health, safety and housing laws, codes and regulations of the Borough of Caldwell, the County of Essex and State of New Jersey, together with all prior orders of any federal, state, county or municipal agencies directed against it, including the Rent Review Board, and the landlord shall have paid all real property taxes due and owing to the Borough of Caldwell for the affected premises and that the landlord has applied for and been granted a rent license pursuant to § 182-7 of this chapter which is on file with the Caldwell Rent Review Board to include the date of issuance thereof.

§ 182-13. Adequate return increase.

[Amended 12-22-1987 by Ord. No. 800-87; 4-26-1988 by Ord. No. 803-88]

A landlord whose current rentals are insufficient to provide a fair return on his investment may apply to the Board for an adequate return increase to permit a fair, just and reasonable rate of return. Prior to any such application to the Board, a landlord must post in the lobby of each dwelling, and if no lobby is present, in a conspicuous place in or about the dwelling, a notice of said application, setting forth the basis for such application. Said notice must be posted and served upon the tenants at least 14 working days prior to the proposed date of such application.

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

FAIR NET OPERATING INCOME

Gross maximized annual income less reasonable and necessary operating expenses, such expenses not to exceed 60% of gross maximized annual income.

GROSS MAXIMIZED ANNUAL INCOME

All income resulting directly or indirectly from the operation of such dwelling, including but not limited to all rent received or collectible, including any rent from a less-than-arm's-length transaction, the landlords' share of interest on security deposits, all earnings from commissions, vending machines, deductions from security deposits, late fees, pet fees, parking fees, pool fees, key charges, finder's fees, amounts received from successful tax appeals, income from rebates, capital improvement surcharges, rent surcharges and hardship surcharges.

[Amended 9-25-1990 by Ord. No. 890-90]

REASONABLE AND NECESSARY OPERATING EXPENSES

All valid expenses incurred and paid by the landlord in the operation of such dwelling during the period reflected in income computed in accordance with the provisions and limitations of this section.

B. Hardship rental increase.

- (1) Whenever a landlord shall determine that the reasonable and necessary operating expenses, as hereinabove defined and hereinbelow set forth, of a dwelling subject to rent regulation under the terms of this chapter are greater than 60% of the gross maximized annual income, as hereinabove defined, of such dwelling, said landlord may make application to the Board for an adequate return rental increase.

[Amended 12-22-1987 by Ord. No. 800-87]

- (2) When a landlord shall file an application before the Board for an adequate return increase pursuant to this chapter, the Board shall review said application to determine the eligibility of the landlord for said adequate return increase pursuant to this chapter.

[Amended 9-25-1990 by Ord. No. 890-90]

- (3) If the Board is satisfied that the landlord named in said application is eligible for an adequate return rental increase and the facts set forth in said application comply as required in Subsection **B(2)** hereinabove, then the Board shall compute the proper gross maximized annual income by dividing the reasonable and necessary operating expenses contained in the application, as they may be modified by the Board, by 60%, said reasonable and necessary operating expenses being the numerator of the equation and 60% being the denominator. The resulting quotient shall be the new gross maximized annual. The Board shall subtract from the new gross maximized annual income the gross maximized income which was previously received by the landlord applicant and which was set forth in his application to the Board. The resulting remainder shall be prorated to all housing space units within the dwelling covered by the application.

[Amended 9-25-1990 by Ord. No. 890-90; 7-13-1999 by Ord. No. 1073-99]

- (4) The application of the landlord for an adequate return increase shall include all facts and figures of at least the preceding two years of income and expenses, all of which shall be duly certified under oath by the landlord or his agent and shall be supported. At the time of the application, the landlord shall notify all tenants affected, in writing, that an application is being made and is available to any tenants requesting the same. The landlord shall also make available to the Board all records and books supporting the application. Any interested tenants or groups of tenants or association of tenants who wish to be heard at the public meeting may notify the Board of their intention, and the Board shall permit that tenant, group of tenants or association of tenants to be parties to the hearing. This provision shall be liberally construed as to afford ample opportunity for all interested parties to present their views before the Board.

C. In computing gross maximized annual income under this section, the following limitations shall apply in all cases:

- (1) No allowance shall be permitted for a vacancy, except as the same may be adequately demonstrated to be the result of market conditions and/or deteriorated physical conditions of the rental space unit, which the landlord applicant may show unavailable for rental due to said deteriorated conditions.
- (2) Income and expenses arising out of a nonresidential use, including that for professional or commercial space resulting from arm's-length transactions, shall not be considered.
- (3) No loss caused by a nonresidential use may be considered.

D. In computing reasonable and necessary operating expenses under this section, the following limitations shall apply in all cases:

- (1) Taxes shall be limited to amounts actually paid, including those in escrow for appeal, and the landlord shall further demonstrate that taxes assessed against the property were reasonable and, if not, have been appealed.
- (2) Repairs and maintenance shall be limited to arm's-length transactions and shall be reasonable and necessary as not to cause over-maintenance of the premises. Cost of service contracts shall be prorated over the period covered. Painting costs shall be prorated for the number of years of actual painting cycle in the building, but in no event shall painting be prorated over a period of less than three years for the interior of rental space units or five years for the exterior and common areas of the dwelling.
- (3) Cost of new equipment shall be prorated over its useful life.
- (4) Legal and auditing expenses shall be limited to reasonable and necessary costs of the operation of the property. No legal expenses or audit expenses shall be allowed as a deduction that do not directly result from the landlord-tenant relationship. A landlord may not deduct expenses incurred in litigating any declaratory or injunctive relief as to his rights under any state, local or federal law, except for actions in the nature of a writ of mandamus. All cost shall be itemized on the application.
- (5) Management fees shall be limited to actual services performed, including the Resident Manager's salary, telephone expenses, postage, office supplies, stationery and value of the apartment provided, if included.
[Amended 9-25-1990 by Ord. No. 890-90]
- (6) Salaries not included in management fees shall be limited to actual services performed and amounts for similar positions in the area, including rental value, if included in income, and expenses and wages and benefits paid.
- (7) Advertising shall be limited to actual costs that are reasonable to ensure occupancy only. Where waiting lists exist, advertising expenses shall not be allowed.
- (8) Utilities, including but not limited to gas, electric, water and oil, shall derive from arm's-length transactions, and the landlord shall demonstrate that all reasonable efforts to conserve energy and fuels have been used.
- (9) Insurance premiums shall derive from arm's-length transactions and shall be prorated over the terms of the policies and shall not include the landlord's life, medical or other personal policies.
- (10) No penalties, fines, depreciation, interest, mortgage amortization or mortgage service fees for any reason shall be allowed.
- (11) The history of the income and expenses shall be consistent with the application or fully documented as to any changes.
- (12) The Board may establish a fair value to be considered for labor performed by the landlord or the landlord's immediate family as an expense for purposes of this section.

§ 182-14. Major capital improvement/substantial service increase.

A. Application for rent increase.

[Amended 9-25-1990 by Ord. No. 890-90]

- (1) A landlord may make application for a major capital improvement rent increase (as defined in § 182-1 of this chapter), or for any substantial increase in services rendered to the tenant (as defined in § 182-1 of this chapter). The landlord shall notify each tenant who may or shall be affected by such rental increase, by certified mail, of the total cost of the completed capital improvement, the number of years of useful life thereof as claimed by the landlord, the average annual cost of the improvement or service, the total number of rooms occupied by the tenant and the capital improvement or service increase surcharge which the landlord is seeking from

each tenant. The tenant shall not be liable for a capital improvement or service increase surcharge exceeding the same ratio to the total annual cost thereof as the number of rooms occupied by said tenant bears to the total number of rooms of housing space in the dwelling in question.

- (2) Any landlord seeking a major capital improvement or a service increase surcharge shall apply for said surcharge to the Board, which Board shall grant said application if it shall determine whether any said improvement is a main capital improvement or if said services increase is a substantial service increase. No landlord shall be entitled to a classification and determination of such major capital improvements or substantial increase in service prior to the commencement of such improvement or service, except as the Board, in its discretion, deems appropriate. Such discretion shall be limited to whether or not a specific item of improvement may be classified as a major capital improvement within the meaning of this chapter. If any such surcharge is granted, it shall not be considered rental for purposes of calculating any future rental increases.
- (3) Commencing with the month next succeeding the date of the granting of any such major capital improvement or service increase surcharge, each tenant affected thereby shall pay, together with his monthly rental, 1/12 of the portion of such surcharge allocated to him by application of the calculation hereinabove set forth. Prior to any such application to the Board for any such major capital improvement or service increase surcharge, a landlord shall post in the lobby of each dwelling the tenants of which may or shall be affected thereby or, if no lobby is present, then, in a conspicuous place of said dwelling, a notice of said application setting forth the basis for said application and the place and date scheduled for the hearing thereof. Said notice must be posted and served upon tenants not less than 14 working days in advance of said date scheduled for the hearing of said application.

B. Exemptions.

- (1) In the event a landlord undertakes a program of major capital improvements which are not deemed as ordinary repair items, the expense of which is greater than or equal to the number of rental space units in the building times the sum of \$1,000, and the Capital Improvement Program is accepted into either Section 8 Moderate Rehabilitation Program sponsored by the Department of Housing and Urban Development or the landlord is participating in a housing rehabilitation program sponsored by Section 312 of the Federal Housing Act of 1964, as amended, or any other federal program designed to sponsor the rehabilitation of an existing housing program, then the property shall be exempt from the provisions of this chapter, and all future rental increases shall be controlled by HUD guidelines as promulgated in the year in which the increase is sought.
- (2) Expenditures; increased rent.
[Amended 7-24-1984 by Ord. No. 730-84]
 - (a) Whenever a landlord of a dwelling that was constructed and occupied on or before January 1, 1939, undertakes such major renovations to the dwelling and housing space units so as to require the expenditure (exclusive of interest and/or finance charges) of 35% of the true value of the landlord's dwelling based on the tax assessment as determined and equalized by the Essex County Board of Taxation, a landlord may make application to the Board for a temporary exemption from the rent controls of this chapter. In the event that such temporary exemption is granted by the Board, then for a one-year period commencing with the year next succeeding the date of the granting of any such increase, the rentals on such premises shall be deemed to be rentals for the first time as in § **182-2A** hereof, and the landlord shall not be restricted in fixing the amount of initial rental thereon with respect to the housing units renovated. With respect to the housing space units not renovated at the time application is made by a landlord for expenditures pursuant to this section, rentals on such unrenovated housing space units may not be increased in excess of 10% of the existing rent. Then, as equivalent renovation of each additional housing space unit is completed, the rental of such unit shall also be deemed to be rental for the first time as in § **182-2A** hereof.

- (b) In the event a landlord of a dwelling makes major renovations that exceed 35% of the true value of such dwelling, but which does not include major renovations of housing space units in the dwelling, then and in that event, the landlord may not increase rentals on the housing space units within the dwelling in excess of 15% of the then-existing rent.
[Amended 9-25-1990 by Ord. No. 890-90]
 - (c) In making application for such temporary exemption, a landlord shall follow the procedure set forth in this chapter, including the provisions of Subsection **A**. In addition to the requirements thereof, a landlord who has been granted such exemption by the Board shall serve notice to each tenant of the landlord's dwelling of such tenant's new rental. Such notice shall be by certified and ordinary mail, and the same shall be served no later than 60 days from the date of the Board's decision.
- C. Any landlord who is granted relief under Subsection **B(2)** hereof shall be prohibited from making application for and receiving any major capital improvement or service increase surcharge for a period of five years, commencing with the date such application is filed with the Board.
[Amended 7-24-1984 by Ord. No. 730-84; 9-25-1990 by Ord. No. 890-90]
- D. Subsections **B(2)** and **C** shall not apply to a landlord who has undertaken such major renovations in connection with a conversion from the rental market to a condominium or a cooperative, notwithstanding that such landlord ultimately determines not to proceed with such conversion.
[Amended 2-7-2017 by Ord. No. 1327-17]
- E. The provisions of this section shall only apply in the event that the property owner does not seek either a municipal real estate tax deferral or a municipal real estate tax abatement.
- F. The cost to the landlord of actual interest expense required to finance major capital improvement may be included as a part of the total cost of said improvements in application to the Board for rental adjustments under this section, subject however, to a maximum interest rate not to exceed 1% over the 10 existing prime rate.
[Amended 2-24-1984 by Ord. No. 730-84]
- G. In addition to the requirements of Subsection **A** hereof, a substantial increase in service surcharge may be allowed by the Board only upon a consideration by the Board that there has been a substantial increase as defined in § **182-1** of this chapter, and after consideration by the Board of the cost of the increased service, the necessity for the service, the benefit to the tenant, the purpose of this chapter and any other information which the Board deems relevant.
[Amended 9-25-1990 by Ord. No. 890-90]
- H. References in this chapter (including but not limited to this section) to "capital improvement" mean "major capital improvement" as defined in § **182-1**.
- I. All major capital improvement surcharge applications granted by the Board under Subsections **A** and **C** shall be reported to the Caldwell Tax Assessor's office by the Board.

§ 182-15. Applications and hearings.

- A. A landlord seeking an additional rent increase (§ **182-13**), a service increase surcharge or a major capital improvement surcharge (§ **182-14**) shall make application to the Board on forms approved by the Board. Said application shall set forth, in summary form, all facts relevant to the application and shall include the dates and amounts of all real property tax reductions received from all sources in the three-year period immediately next preceding the application, including county and state board tax appeals and tax rebates legislatively mandated. Nine copies thereof shall be submitted by the landlord. The Executive Secretary of the Rent Review Board shall notify the landlord of the date that the application will be heard and considered by the Board. The landlord shall, at least 14 working days prior to said hearing date, notify each tenant thereof and serve a copy of this application upon each tenant affected thereby. At the hearing, all persons having an interest in the proceedings shall be entitled to be heard.

[Amended 9-25-1990 by Ord. No. 890-90]

- B. The Board shall ensure that a sound recording is made of all public proceedings before said Board.
- C. Applications for additional rent increases in any dwelling as provided herein shall include all housing spaces within said dwelling. Within 14 working days following receipt by the landlord of written notice of the determination by the Board on any application for an additional rent increase as provided herein, copies thereof shall be provided by the landlord to the tenants of all housing spaces affected thereby.
- D. As a precondition to the submission of any application for rent increases as provided herein, the landlord shall have fully complied with all prior orders of any federal, state, county or municipal agencies, directed against it, including the Rent Review Board, and the landlord shall have paid all real property taxes due and owing to the Borough of Caldwell for the affected premises. The application for rent increases shall contain a certification by the landlord that the aforesaid conditions have been complied with and satisfied.

§ 182-16. Board determinations; nonretroactivity.

All determinations of the Rent Review Board shall be prospective in nature only and shall be effective as of the date of the determination without retroactivity. An application shall not be submitted to amend or modify a determination of the Board unless more than 12 months have passed from the date of the determination on the original application.

§ 182-17. Maintenance of services.

[Amended 7-17-2012 by Ord. No. 1258-12]

- A. Despite anything contained in this chapter to the contrary, the landlord shall maintain the same standard of service and maintenance and shall supply furniture, furnishings and equipment in the housing space, dwelling and associated grounds as the landlord provided or was required to provide by law or lease as of the date the tenancy was created.
- B. If any tenant or tenants' group believes that a landlord is violating the terms of Subsection **A** above, the tenant or tenants' group may file a complaint with the Rent Board Secretary seeking a reasonable reduction in rent. The Rent Board Secretary shall serve a true copy of the complaint upon the landlord, with a written notice scheduling a hearing, and shall simultaneously serve the written notice scheduling the hearing upon the complainants.
- C. The Rent Board Secretary shall request the Building Code Official to inspect the premises. The Official shall submit a report to the Board and shall be available to testify at the Rent Board hearing.
 - (1) At the hearing, the Rent Board may consider the following:
 - (a) Whether the condition complained of is true, and if so, whether it substantially affects the habitability of the premises;
 - (b) When the condition first occurred;
 - (c) The duration of the condition and whether the landlord was responsible for it;
 - (d) Whether the landlord has taken corrective action within a reasonable period of time after notice of the condition;
 - (e) Whether the condition violates any provision or standard as set forth in any of the Borough's applicable codes, including property maintenance, building and health codes, and/or applicable state statutes and codes;
 - (f) Any other factors reasonably related to the habitability and value of the rented premises.

(2) If, as a result of such hearing, a reasonable reduction in rent is granted, it shall remain in effect until the landlord proves to the Rent Board that the standards have been restored, or until such time as the Rent Board deems appropriate, but no earlier than the date upon which the landlord has filed written notification with the Rent Board Secretary that the standards have been restored.

- D. Despite the provisions of § **182-16**, determinations pursuant to a complaint filed under this § **182-17** shall be retroactive to the filing of the complaint.
- E. Nothing contained herein shall preclude the remedies under § **182-18**, or any other provision of this chapter, as applicable and as the Rent Board deems appropriate.

§ 182-18. Violations and penalties.

[Amended 11-22-1988 by Ord. No. 831-88; 9-25-1990 by Ord. No. 890-90]

A. A violation of any provision of this chapter, including but not limited to the willful filing with the Board of any material misstatement of fact, shall be punishable by a fine not exceeding \$2,000, imprisonment for a term not exceeding 90 days, a period of community service not exceeding 90 days, or a combination thereof. In addition to the above sanctions, the Board may refuse such landlord and rent increases or surcharges otherwise permissible under this chapter. Each violation affecting a housing space shall be considered a separate violation.

[Amended 7-13-1999 by Ord. No. 1073-99; 10-14-2008 by Ord. No. 1187-08]

B. Whenever, in the opinion of the Rent Control Board, an alleged violation may justify imposition of a monetary penalty, the Board shall refer the matter to the appropriate officer or, in the absence of such designation, to the Borough Attorney. Any penalty imposed for a violation shall be imposed by the Municipal Court.

[Amended 2-7-2017 by Ord. No. 1327-17]

§ 182-19. Waiver prohibited.

Any provision of a housing space agreement whereby any provision of this chapter is waived shall be deemed against public policy and shall be void.

§ 182-20. Information provided to tenants.

[Amended 9-13-1983 by Ord. No. 714-83; 4-26-1988 by Ord. No. 803-88]

A landlord whose dwelling is controlled by the terms of this chapter shall provide, in a conspicuous place in a common area in the dwelling, a frame eight inches by 10 inches to display the annual notice provided by the Borough. This annual notice will provide the following: Rent Control Ordinance existence; dwelling license; license validation and expiration dates; permissible annual increase; certificate of occupancy requirements for new rentals and any other information required by the Board. Failure by the landlord to comply with this requirement shall result in penalties under § **182-18** and/or shall result in a loss of the right to pass any increase permitted under this chapter.

§ 182-21. Notice of tenant's rights.

[Amended 6-22-1982 by Ord. No. 693-82]

A. Every lease shall contain a provision which shall advise the tenant in a conspicuous manner of the name and address of the Board, the maximum rent allowable and the tenant's right to object to a proposed rent increase. This notice shall be given at the inception of every lease and annually in the case of renewals. In the case of a periodic tenant, the same notice of tenant's rights shall be

given at the inception of each tenancy. This requirement shall be in addition to the obligation imposed under § **182-20** of this chapter.

- B. If any provision of this chapter or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect, and, to this end, the provisions of this chapter are declared to be severable.

§ 182-22. Proscription against withholding units from rental market.

[Amended 12-27-1988 by Ord. No. 835-88; 2-28-1989 by Ord. No. 844-89; 9-25-1990 by Ord. No. 890-90]

- A. Notification to Rent Leveling Board of Vacancy. The owner of any dwelling which is subject to the provisions of this chapter at any time when housing space in that building has been vacant for a period of two full calendar months shall, within 10 days thereafter, notify the Rent Review Board of the Borough of Caldwell, in writing, of the fact of such vacancy, the identity of the owner, the full address and apartment number of the vacant housing space and the specific date upon which it became vacant, and such other information as the Rent Review Board may require, as well as prominently displaying in a sign readable from the curb of said dwelling the fact that a housing space vacancy exists at said dwelling. For purposes of this section, a housing space unit is defined as "vacant" for any period of time not covered by a valid enforceable housing space agreement. Any agreement entered into for the purpose of circumventing the intent of this chapter shall not be considered a valid enforceable housing space agreement for purposes of this chapter.
- B. Efforts to lease housing space by landlord. At or before the time any such housing space described in § **182-1** hereof shall become vacant, and continuing during the entire period of such vacancy, the landlord thereof shall make diligent efforts to rent the same.
- C. Rental to qualified tenants; declining future rental to tenants. A landlord shall accept as a tenant for immediate occupancy of such housing space any person who offers to pay the lawful rent and proper security deposit pursuant to N.J.S.A. 46:8-21.2 which may be required for the housing space and agrees to any reasonable rental terms. Provided, however, that a landlord may decline to accept any such person as a tenant where he or she is able to establish clearly and convincingly that a prospective tenant:
 - (1) Would be likely to engage in conduct which would constitute any good cause ground set forth in the summary eviction statute, N.J.S.A. 2A:18-61.1; except those contained in Subsections g, h, k or l as presently constituted;
 - (2) Has failed to comply with a reasonable request of the landlord for financial, criminal or other relevant personal information which is necessary for the owner to make an informed decision as to the suitability of the person as a prospective tenant within a reasonable time after request therefor; and
 - (3) A landlord may offer any such person a tenancy in such a housing space with occupancy to commence on a date which is not more than two full calendar months from the date such prospective tenant offers to rent the housing space unit where the landlord is able to establish clearly and convincingly that the delay in occupancy is necessary for the purposes of making repairs or improvements to the dwelling unit, which said repairs or improvements cannot practically be made while a prospective tenant is in possession and occupancy of the housing space.
- D. Notification of acceptance or rejection of tenant. Within five business days after a person has offered to rent a vacant unit which is subject to the provisions of this chapter enumerated herein, the owner shall notify that person and the Rent Review Board of the Borough of Caldwell, in writing, whether such person is accepted for the tenancy, rejected or accepted for a future tenancy and, in

the latter two instances, the owner shall set forth with particularity the reasons therefor and, in the last instance, the date the occupancy is to begin.

E. Redress of aggrieved parties.

(1) Any person aggrieved by the action or inaction of an owner of a housing space subject to the provisions of this chapter may bring the matter before the Municipal Court on a complaint for violations of this chapter, in addition to any other action in any other court of law he or she deems appropriate.

(2) It is the intent and meaning of this chapter that each day in which an owner of a housing space unit subject to the provisions of this chapter is in violation of this chapter shall constitute a separate and distinct offense.

F. Methods of notification. It shall be the sole obligation of any person required to give written notice pursuant to this chapter to ensure that all parties required to be served with notice actually are served.

G. Applicability. This chapter shall also be applicable to all housing spaces which are vacant on the effective date of this chapter and which either have been vacant for a period of at least 30 days at that time or which remain vacant and later reach that 30 days vacancy period. A landlord who would be in violation of this chapter as of its effective date shall have 15 days to comply with the provisions hereof.

§ 182-23. Construction.

This chapter, being necessary for the welfare of the Borough and its inhabitants, shall be liberally construed to effectuate its purposes.

§ 182-24. Repeal of inconsistent ordinances.

Each and every ordinance inconsistent with the provisions of this chapter is hereby repealed, including Ordinance Nos. 624 and 654, except for claims of violations presently pending before the Rent Review Board and claims for violations which may be filed on or before June 22, 1982.

§ 182-25. Title.

[Amended 7-13-1999 by Ord. No. 1073-99]

This chapter shall be known as the "Rent Control Ordinance of 1982."