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December 22, 2020

Danielle West-Chuhta, Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

Subject: Rent Control Referendum Implementation

Dear Danielle:

I am writing on behalf of the Southern Maine Landlord Association regarding the recent rent control referendum and the City's implementation of its provisions. We have questions and comments regarding the City's guidance that was issued on December 4th. In addition, we have identified additional questions and issues regarding the ordinance amendments, both practical and legal. We fully appreciate the difficult position the City is in when it is expected to interpret a lengthy referendum that it did not draft. Nevertheless, the referendum is full of gaps, inconsistencies and illegalities, and we ask that the City revisit the guidance on this matter and reconsider implementation.

December 4th Guidance

In its December 4th guidance, the City makes the following statements: 1) The Rent Control Ordinance establishes the January 1, 2021 base rent of most rental units in Portland to the rent charged in June 2020, and caps the amount by which landlords may increase that rent annually; 2) the Ordinance provides various protections to tenants, including notice of rent increases, additional notice or payments before evicting certain tenants, prohibiting discrimination on the basis of funding (such as Section 8 or GA), and notice of tenants' rights to new tenants; and 3) the Ordinance establishes a Rent Board to conduct hearings in response to tenant complaints, mediate disputes between tenants and landlords, and consider landlords' requests for rent increases outside the scope of the Ordinance.

With regard to the first statement, we agree that the Ordinance states that the rent charged in June 2020 is the base rent and that the Ordinance caps the amount by which landlords can increase rents annually. However, the Ordinance language fails to link the June 2020 base rent to January 1, 2021, other than a requirement for registration. The

Ordinance also fails to link the base rent to the increase limitations, with one exception. Although Section 6-233 discusses a base rent, the only time base rent is mentioned in relation to rent increases is with regard to a 5% increase upon a new tenancy. As written, the base rent only comes into play when calculating the increase for a new tenant, and is not the basis for the other allowable increases. We understand the drafters have stated that it was their intent, but they failed to draft it in a way that accomplishes the intent.

The second statement in the guidance refers generally to different aspects of the ordinance. We note that the Building Code had already required 75 days' notice for rent increases and that state law had already prohibited discrimination on the basis of receipt of public assistance. Although we agree with the final statement regarding the rent board, we question the legality of the board's duties and activities.

We have the following additional comments on the FAQ sheet:

1. In the first question and answer, the first bullet point mischaracterizes the ordinance. The exemption is for landlord-occupied buildings with less than 5 units, not owner-occupied. This is an important distinction because landlord is more broadly defined than just the owner.
2. As stated above, we disagree with the statement in the FAQ that the rent charged on January 1, 2021 should be equal to the amount charged in June 2020. The ordinance language does not say that. It requires registration by January 1, 2021 and the inclusion of information about June 2020 rent. However, nowhere in the ordinance does it say that as of January 21, 2021 the rent charged shall be equal to June 2020 rent.
3. When discussing allowable increases, the tax rate adjustment is misstated. The FAQ states that rent can be increased if the tax rate increases. However, the ordinance states that a landlord can increase the rent if the mil rate is "altered." An altered mil rate could be an increase or decrease. It is very possible that the City could see a decrease in the mil rate after a revaluation, and some property owners see an increase in their property taxes. Under the language of the ordinance, a landlord would be able to increase rent if the mil rate were decreased and taxes increase.
4. The FAQ incorrectly states that the rent board will mediate disputes regarding rent increases with both parties consenting. Section 6-234(e) allows a tenant to appeal any rental increase. It then allows the board to impose fines if it finds that the landlord violated the ordinance.

We request that the City amend the FAQ document to correct the above inaccuracies.

Additional Questions not Covered by the FAQ

Landlords have many questions about the ordinance that were not covered in the FAQ. Here is a sampling:

1. If the City will not publish the Allowable Increase Percentage until September of 2021, for rent increases in 2022 (“the following calendar year”), what is the allowable rent increase for 2020 and 2021?
2. How are items like utilities, trash removal and furnishings handled when those items add value but are not necessarily “rent.”
3. If a landlord made improvements in 2020 and increased rents to recoup the investment, how will those increases be analyzed since they occurred prior to enactment of the ordinance?
4. “Extended care facilities” are excluded from the ordinance. That term is not defined. Would it include assisted living, memory care and other elderly housing facilities where the monthly charge includes services that are beyond rent?
5. The ordinance allows for a rent increase when a new tenant occupies the unit. Tenant is not defined. Could a landlord increase the rent when there is a changeover in one roommate?
6. Is there anything in the ordinance that would prevent a tenant from subleasing a unit for a higher rent?
7. How is the tax rate increase spread over multiple units of different value?
8. The FAQ mentions a tenant complaint system. What will be the City’s system for handling questions from landlords?
9. If a landlord increases the rent and the tenant appeals, which rate applies during the appeal period?
10. Is there anything preventing a tenant from appealing an increase that the landlord had previously received approval for from the rent board?
11. Does the ordinance apply to short term rentals and/or longer-term seasonal rentals?

The breadth of these questions, which is not a complete list, demonstrates the many issues that the Ordinance fails to address. Unfortunately, as you are aware, the Ordinance cannot be amended by the Council for five years, which would have allowed for clarification on these issues. We therefore request that the Ordinance not be

December 22, 2020

Page 4

implemented unless and until the above questions and others posed by landlords can be answered and clear direction can be provided to both landlords and tenants that is consistent with the Ordinance as drafted.

Legal Issues

In addition to the multitude of unanswered questions and procedural issues created by the ordinance amendments, we have identified a number of legal issues that will prove problematic as the City attempts to implement the ordinance as written. The legal issues include but are not limited to the following: The retroactivity of the ordinance amendments to June 2020; the unfettered discretion of the rent board; state law preemption of landlord-tenant law; and citizen initiative legislation restrictions.

We ask that the City consider the comments and questions included in this letter and delay implementation of the new ordinance provisions until the City can provide clarity regarding the many gaps and inconsistencies created by the amendments and until all legal issues are resolved. Although the amendments were adopted by the voters, the City is not under any obligation to implement an ordinance that contains illegal provisions. Thank you for your time and attention to this matter. Please contact me should you have any questions.

Sincerely,



Mary E. Costigan

cc: Brit Vitalius