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March 31, 2020

**VIA EMAIL - [ikarasick@montclairnjusa.org](mailto:ikarasick@montclairnjusa.org)**

Ira Karasick, Esq.  
Township of Montclair  
Law Department  
205 Claremont Avenue  
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Montclair, NJ 07042

**Re: Montclair Property Owners Association**

Dear Ira:

First and foremost, I hope that you and your family and friends are all safe and dealing with these unprecedented events. Looking forward to the return of normalcy.

Our firm is counsel to the Montclair Property Owners Association, a representative association of multifamily property owners in Montclair. I am writing to you in the hope that with the advantage of your advice and guidance that the governing body will defer action on an ordinance it apparently passed on first reading on March 10, 2020.

At its conference meeting of March 10, 2020 there was reference as a discussion item for consideration at the March 24, 2020 Council Meeting of an "Ordinance amending the Code of the Township of Montclair to include Chapter 257 Rent Regulation. I am advised that an ordinance effectuating the creation of rent control was adopted on first reading that night.

Our client group read about the consideration of rent control for the first time shortly after that March 10 meeting. We have also come to learn that it was the subject of discussion before the council and working groups leading up to the March 10. A copy of the ordinance has not been made publicly available as of this writing and I have just received a copy from the municipal clerk who was kind enough to provide me with a copy.

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Ira Karasick, Esq.  
March 31, 2020  
Page 2

I will defer comment on the actual approach taken by the municipality in the rent control proposal. Instead I am writing to suggest that serious consideration be given, especially in light of the national and state declaration of emergency due to the worldwide corona virus pandemic, to deferring action on the scheduled adoption of the ordinance on April 7, 2020. The impairment of public participation in the governing process and the consideration of a profound alteration of landlord/tenant relations in the midst of this pandemic seems too obvious to state. I do give credit to the governing body to its efforts to allow remote participation, however the public deserves a full measure of public participation on such an important issue.

This is especially so since the pandemic itself will undoubtedly place both landlords and tenants in drastically altered positions to maintaining the status quo ante. The State Government has anticipated this already and has precluded any eviction actions until the state of emergency is lifted. Thus, no tenant can be disadvantaged during an extended period of consideration for the ordinance. The operators of multifamily housing in Montclair expect that they will suffer an immediate and likely long term reduction in rent receipts without a corresponding reduction in taxes due the municipality on May 1, its mortgage payments due to their lenders on May 1, and the other expenses of the operations including payroll, insurance and fuel. It remains to be seen what relief if any will be provided to landlords who have a large reduction of operating revenue in the face of immutable and sometimes growing expenses. I respectfully suggest that the serious consideration that the residents of Montclair---tenants, landlords and homeowners alike--- deserve in considering the adoption of rent control, cannot be had in this emergency compromised environment. Municipal consideration of rent control in this very changeable setting is akin to building an airplane while it is in flight.

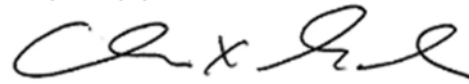
While this observation in and of itself might compel the municipality to defer action to a later date, we believe there are also significant legal obstacles to allowing this process to proceed during the pandemic which merit your attention. Adoption of this ordinance, like all other important legislative initiatives, in normal times, is subject to the power of the electorate to reject the ordinance pursuant to N.J.S.A. 40:69A-18 et seq---generally the power of referendum. As I am confident you are familiar with the state statute and its strictly construed provisions I will not repeat them here. Suffice it to say, the current ability of the public to exercise the power of referendum in the midst of social distancing orders, travel bans, and the well-founded fear of personal contact of any nature is problematic at best; while the statutory power may in theory exist, it cannot be exercised by the public in times of national and state emergency.

While we are prepared to protect the public's right to exercise referendum authority by seeking to restrain further municipal action and the possible adoption of the ordinance on April 7, 2020, we do not seek to engage in costly and time consuming litigation during these very difficult times. Your recommendation that significant legal issues compel the conclusion that deferring action on this proposed ordinance is in the public's interest would likely be persuasive to the governing body and de-politicize the issue to everyone's advantage.

Ira Karasick, Esq.  
March 31, 2020  
Page 3

We hope that you are compelled to the conclusion that the governing body should consider deferring action on the ordinance to a later date to permit it the consideration it deserves while protecting the public's power of referendum under state law. I would of course be willing to discuss this with you personally at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles X. Gormally". The signature is fluid and cursive, with a large initial "C" and a distinct "X" in the middle.

Charles X. Gormally

CXG:njc