

A “Wagner Act” for Tenants – A Law Reform Proposal Institutionalize Countervailing Tenant Power

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I. Introduction

The Housing Justice Movement seeks a world in which all people are guaranteed access, as a legally enforceable human right, to secure, affordable, wholesome, environmentally sound, and participatorily managed housing and public space. To achieve this we must, over the long term, expand the supply of affordable housing through preferential zoning and increased investment, and gradually extricate tenancy from the for-profit economy by increasing subsidized ownership and stewardship of housing properties by the public, tenant groups, community representatives, and environmental advocates.

In the nearer term, we seek to empower tenants and other stakeholders in conflicts with owners, landlords, and developers over the availability, quality, security, cost, and environmental externalities of residential tenancy. We believe that activism and tenant organization in the context of three legal innovations can lead to an egalitarian redistribution of power between landlords and tenants:

1. Tenants should have a high statutory floor of rights including effective rent control, prohibition of arbitrary eviction, enforceable protection of building conditions, a right to counsel in housing matters, and remedies for discrimination in leasing based on prior eviction, race, gender, sexuality, disability, source-of-income, and other invidious criteria.

2. Tenants should also enjoy a high contractual floor of rights. A lease should be required for every residential tenancy, one that provides non-disclaimable protection against uninhabitable conditions, unjust eviction, and other forms of unfairness. Law should facilitate collective bargaining of leases.

3. Tenants should have representation rights (“tenant voice”) in dealings with landlords in forms ranging from statutory tenant monitors to tenant councils to tenant collective bargaining.

B. Scope and purpose of this paper

This paper focuses on mechanisms to enhance tenant voice. We outline a legal framework to mandate various levels of tenant representation culminating in legal support for collective bargaining between landlords and tenant unions. We offer this memorandum as a “discussion” or “concept paper” for grassroots activists, progressive allies, and movement lawyers. We assume that tenant representation and tenant unions can make a significant contribution to tenant empowerment by encouraging activism, politicizing housing markets, and encouraging moderate and middle-income tenants to identify with the cause of very low-income tenants who have less leeway to resist.

To be sure, our proposal is not the only or even necessarily the most important path for housing justice advocates to pursue. Activists on the ground must decide how to choose among and prioritize a suite of progressive initiatives including campaigns for rent-control and other legislative reforms, community land trusts, and other programs in addition to or in lieu of tenant union organizing.

C. A preliminary political and legal consideration

Activists must determine the most appropriate political unit in which to fight for tenant union legislation. The most realistic context for launching discussion and activism might be a smaller jurisdiction such as a municipality or county. Legal reform at state level is usually more difficult to achieve. While reform at federal level seems a distant goal at present, we should not entirely exclude that possibility. We note recent, heightened interest in tenant protection among a growing number of members of Congress.

Although we assume an initial preference to proceed at local level, it may prove impossible to avoid carrying the political battle to statewide level. For one thing, some changes in state law (e.g., the law governing summary process eviction) may be necessary to ensure the effectiveness of any municipal program. Moreover, activists must take into account a legal doctrine known as “state preemption.” A body of rules in each state (“local government law”) determines the subjects upon which cities, towns, counties are competent to legislate. In some states, these rules grant exclusive power to the state legislature to make laws on specified topics. For example, state law may permit municipalities to levy property taxes but provide that only the state itself may levy income taxes (we would say that state law “preempts” local government from imposing income taxes). In a disturbing pattern of recent decades, conservative-dominated state legislatures have increasingly preempted liberal-leaning cities and towns from enacting progressive measures on topics such as minimum wages and gun control. A 1994 statewide ballot referendum in Massachusetts (heavily pushed by the real estate industry) revoked the permission that state law had formerly granted to Massachusetts cities and towns to enact rent control ordinances. This suggests that progressive legislation will not be secure until achieved at state level.

D. Learning from the labor experience.

The Wagner Act, known officially as the National Labor Relations Act (NLRA) of 1935, as amended, is the major federal statute protecting the right of employees to form unions and to bargain collectively with employers. The NLRA played and continues to play an enormously important role in protecting the rights, dignity, and democratic participation of millions of workers; it enabled generations of families to rise above poverty. It is tempting to take the NLRA as a template and simply rephrase its provisions for the landlord/tenant context. For reasons beyond the scope of this paper, that would be a mistake. Union density in the US has steadily declined since the mid-1950s for a variety of reasons including not only structural changes in the economy but also increasingly sophisticated and adamant employer resistance to unionization. Progressive labor scholars now agree that NLRA design flaws enable employer resistance and impede unionization. We took this accumulated learning into account in framing our proposal for tenant union legislation. Three major departures from the NLRA model are: (1) avoiding labor law’s election model, which opened the door to employer union-avoidance tactics, (2) allowing for the

landlord-tenant bargaining on a city-wide or other geographic basis (“sectoral bargaining”), as distinct from a strict building-by-building model, and (3) provision for non-majority rights and representation in the tenant context.

II. Introduction to Our Legislative Proposal

What follows is not intended to provide “model legislation” such as could be submitted by an activist group to a city council or other legislative body. Our more modest goal is to sketch the architecture and identify the key components of a legislative package that would entitle tenants to organize into unions with specified rights, powers, and protections against retaliation. We intend the wording below to be merely illustrative of the types of provisions that would go into such a legislative proposal. Any group wishing to move forward with the concept should obtain the assistance of expert local counsel to translate our outline and suggestions into the technical format of proposed legislation, conforming to local requirements.

For ease of exposition, our paper assumes that housing justice activists in a municipality called “Elm City” seek to place before its City Council a proposal to enact a “Tenant Empowerment Ordinance” (or, alternatively, the “Landlord-Tenant Relations Ordinance”). We assume that the state law applicable to Elm City authorizes cities, towns, and counties to legislate with respect to landlord/tenant matters. We assume that, as appropriate, adjustments or exemptions can be made to any state laws implicated by the proposal. What would go into such a proposal? The remainder of this paper outlines key elements and suggests how they might be approached institutionally and legally.

III. Components of the “Elm City Tenant Empowerment Ordinance” – Preliminary Matters & Definitions

A. Findings & Policy¹

¹ Major federal statutes usually include Congressional observations on the circumstances leading to the need for the legislation, the objectives of the statute, and its underlying policy assumptions. This material memorializes “legislative history” to which courts refer in interpreting and applying the law. Statements of policy and other markers of legislative history are less common in state and local enactments. While there are some sound strategic reasons to

Statement of Findings & Policy. The Elm City Council finds and affirms that (1) secure access to adequate, wholesome, healthy, affordable, environmentally sound, and participatorily managed housing is a human right; (2) that many people are denied this right, with disparate adverse effect on the poor, people of color, women, single parents, immigrants, people living with disabilities, LGBTQ and gender non-conforming people, and other oppressed groups; (3) denial of this right is a major contributor to poverty, inequality, and structural racism and a major cause of crime, illness, unemployment, and other forms of social breakdown; (4) inequality and desperation in residential housing markets has steadily increased in recent decades; (5) successive waves of gentrification and development have placed low- and middle-income tenants in serious jeopardy and risk of displacement; (6) landlords and developers are well-organized, financed, and represented, whereas tenants have no similar resources or means to gather information, protect their interests, or influence public policy; (7) owner-occupation, small rental businesses, and minority ownership offer significant opportunities for upward mobility and community improvement; (8) in the time of the Great Depression, the country came to recognize that the power imbalance in employer/employee relationships is a matter of public interest and concern that, when left solely to private contractual arrangements, produced national disaster; (9) we must now come to the same recognition regarding power imbalances in residential housing markets; (10) the operation of rental housing markets implicates paramount public interests; (11) the challenge of achieving widespread access to adequate and affordable shelter can no longer be left to private dealings between landlords and tenants; and (12) the public power of the community must come to the assistance of tenants to provide them voice and legal tools to protect their interests.²

B. Tenants' Rights

Rights of Tenants. Tenants in the Elm City have the right to fair treatment; to consultation, a voice, and collective bargaining in determining the conditions that affect their and their family's residential life and well-being; to self-organization; to form, join, assist, or cooperate with tenant

avoid abstract policy statements in local measures, when – as here – the primary initial function of a proposal is to raise awareness and build organization, it will often make sense to include a preamble or statement of findings and policy to alert the public to the need and rationale for the proposal.

² The preamble material should also cite provisions in the state constitution and state legislation authorizing municipalities to act in the public interest to alleviate and eliminate the baneful conditions giving rise to the legislation.

organizations including but not limited to tenant unions and tenant bargaining representatives as defined herein; and, whether singly or in concert, and with the assistance of advocates and experts of their own choosing, to engage in activities with respect to determining such conditions and for other mutual aid or protection; to information necessary to protect their legitimate interests; to accessible and inexpensive processes to protect their rights; and to such other legal and material tools and support as are necessary to accomplish tenant empowerment, rights, and protections as set forth herein. Elm City officials and the courts shall interpret and apply this ordinance so as to give full and generous effect to these rights in light of the statement of findings and policies.

C. Definitions; Basic Requirements; New Agencies

(1) *Owner registration; principal residence owner (PRO)*. The legal owner of every property in the Elm City offered for residential tenancy shall register with the Board as a “principal residence owner” (PRO), indicating contact information, legal counsel if any, and representatives authorized to act on the PRO’s behalf for maintenance, rent collection, and/or any other tenancy-related purposes. If more than one individual or entity has an ownership interest in a rental property, the owners shall agree to designate one of them as PRO with respect to that property. Every PRO registration shall designate a person or entity that will stand as a party defendant for the owner or owners in any matter arising under this ordinance or any other law applicable to tenants’ rights; such registration shall affirm that the PRO and its designee submits to the jurisdiction of Elm City agencies and the courts with respect to fulfilling any rights and obligations contained herein or under other law. No person or entity other than the PRO or their designated representative may bring an eviction proceeding concerning or collect rents with respect to an Elm City residence. The right to evict with respect to any property is suspended when PRO registration is absent, inaccurate, incomplete, or otherwise defective.

(2) *Landlord*. “Landlord” means an owner, landlord, or developer with an interest in a residential property or properties in Elm City.

(3) *Tenant representation districts*. Some provisions of the ordinance apply to all tenants in Elm City and to all residential tenancies. Other provisions apply to specific tenant representation

districts, designated and self-organized by tenants. A tenant representation district may consist of a building, a multi-building residential complex, a group of properties directly or indirectly controlled by a particular owner, landlord, or developer, or a geographic unit (such as, e.g., “all residential tenancies within Elm City”). For purposes of this provision, “landlords” and “owners” to whom reference is made in designating a tenant representation district are not limited to registered PROs but may include any persons and entities associated with or significantly connected to each other for purposes of operating in residential tenancy markets. A business group or interest that controls multiple properties through an intertwined network of separate ownership entities may be considered a single landlord for purposes of designating a tenant representation district. A tenant representation district may include landlords, owners, or developers that do not share a business relationship or other affiliation.

(4) *Elm City Housing Disputes Resolution Board.* An Elm City Housing Disputes Resolution Board (herein, “the Board”) shall be established with the authority and responsibility to implement and enforce this ordinance and to resolve residential disputes arising hereunder. Appointments to the Board, and its operating procedures and arrangements with others through whom it conducts its work shall strictly guarantee independence from the real estate industry. The Board shall have the power (a) to order compliance with the ordinance, which orders shall be enforceable in the courts; (b) to temporarily delay and to ask the courts to permanently enjoin evictions, rent increases, sales, changes in ownership, or other major decisions affecting tenants’ residential lives where such action is necessary and appropriate to accomplish the purposes of this ordinance; and (c) to promulgate such rules, regulations, and procedures as are necessary and proper to effectuate the ordinance. By agreement of affected parties, the Board may provide mediation and dispute resolution services.

(5) *Elm City Office of Tenant Advocacy and Support.* An Elm City Office of Tenant Advocacy and Support (herein, the “City Advocacy Office”) shall be established independently of the Board. Appointments to the City Advocacy Office, and its operating procedures and arrangements with others through whom it conducts its work shall guarantee strict independence from the real estate industry. The City Advocacy Office shall have the authority and responsibility to provide legal counsel to and advocacy on behalf of tenants to protect their rights and interests consistent with

this ordinance. The City Advocacy Office may provide such services through its own staff and/or through arrangements with attorneys, tenant advocates, Legal Aid/Legal Services organizations, local law schools, and local bar associations. The City Advocacy Office shall develop and maintain programs for training tenant rights attorneys, tenant advocates, and residential monitors.

(6) *Tenant Representation Trust.* An amount equal to x% of Elm City property taxes shall be transferred to a trust to be established to support the operations of the City Advocacy Office.

(7) *Tenant union.* A tenant union is a civic, membership organization or association that advocates on behalf of the interests, needs, and rights of tenants consistent with this ordinance. A tenant union may admit to membership non-tenants committed to its objectives. A tenant union that represents or seeks to represent a tenant representation district as provided herein must have and maintain a democratic constitution or by-laws registered with the Board. A tenant union that represents or seeks to represent a tenant representation district as provided herein must admit to membership on a non-discriminatory basis any tenant in said district who is sincerely committed to tenants' interests, needs, and rights. Notwithstanding the previous sentence, tenant unions must exclude from membership any individuals connected directly or indirectly to the real estate industry or to owners, landlords, and developers, and no tenant union shall receive funds or anything of value from such sources; provided that a tenant union may admit to membership and receive financial or other support from individuals or entities acting as owners, landlords, or developers in connection with bona fide efforts to establish tenant led, non-profit, low-income housing.

(8) *Tenant bargaining representative.* A tenant bargaining representative is an individual, agency, committee or organization that exists for the purpose, in whole or in part, of representing tenants in dealing or negotiating with owners, landlords, and developers over the terms and conditions of their residential lives. A tenant bargaining representative may but need not be a tenant union. All tenants in any residential district as to which a tenant bargaining representative seeks and/or assumes representation responsibilities must be allowed to participate on a democratic basis in the representative's decisions. Tenant bargaining representatives must exclude from membership any individuals connected directly or indirectly to the real estate industry or to owners, landlords, and

developers, and a tenant bargaining representative may not receive funds or anything of value from such sources; provided that a tenant bargaining representative that is a tenant union may include as members individuals and receive financial or other support from individuals or entities acting as owners, landlords, or developers in connection with bona fide efforts to establish tenant led, non-profit, low-income housing. A tenant bargaining representative shall register its constitution or by-laws with the Board.

(9) *Confirmed tenant bargaining representative.* A confirmed tenant bargaining representative is a tenant bargaining representative that has been designated for meet-and-negotiate purposes by 50% or more of the residential units in a residential district as provided in § IV(E)(1).

(10) *Terms and conditions of tenancy.* In this ordinance, the phrase “terms and conditions of tenancy” shall mean rent, habitability, building conditions, maintenance, repairs, security, improvements, common areas, building and grounds infrastructure, environmental impacts, ownership continuity or changes, future business planning, compliance with this ordinance, compliance with any other provision of landlord/tenant law, and any other topic or concern that directly or indirectly affects or might affect the landlord/tenant relationship, the habitability of the premises, or the quality of tenant experience or the quality of residential life, including any action or omission of a landlord, owner, developers or their agents pertinent thereto.

IV. Tiers of Rights, Powers & Obligations³

A. Applicable to all owners, landlords, and developers

Notice. The Board shall prepare an accessible, plain language official summary of tenant rights and owner/landlord obligations under this and all other pertinent statutes or legal doctrines

³ Our proposal employs a “sliding scale” model for determining the scope of tenant rights and representation and of corresponding landlord obligations. Rights and obligations increase as we move up the scale of tenant involvement and affiliation. Every single tenant should enjoy basic rights looking toward the possibility of collective consultation and/or unionization, such as basic protections against retaliation. Increased rights and obligations should apply once a representative group of tenants coalesces, say, one covering 20% of the units in a district. The most robust set of rights and obligations would apply once tenants achieve majority or super-majority affiliation.

(including but not limited to warranties of habitability, rent control if applicable, and rent withholding rights). The official summary shall provide contact information for relevant Elm City agencies and other sources of assistance to tenants such as local Legal Aid organizations. The PRO of every property offered for residential tenancy in Elm City shall provide every tenant and prospective tenant with the official summary, and it shall be incorporated by reference in every residential lease. The Board shall prepare a chart containing highlights of the official summary that shall be conspicuously posted in a common area of every residential property with five or more units. Failure to provide the official summary or to post the chart shall suspend the right to evict during such failure and for six months following correction thereof.

B. Applicable to all tenants.

1. *Right to counsel.* Tenants shall have a right to counsel in all eviction or potential eviction cases, all cases involving building conditions, and all cases involving enforcement of the rights and protections under this ordinance. If a tenant does not have or cannot afford to retain counsel, counsel shall be provided by Elm City through the auspices of the City Advocacy Office and/or the Tenant Representation Trust.

2. *Expanding access to tenant justice.* In affording tenants counsel as provided in the previous paragraph, the City Advocacy Office may experiment with limited representation models consistent with the state rules and regulations governing practice. Elm City will make best efforts to advocate for and bring about changes in state rules governing law practice that would, as appropriate, permit representation in residential tenancy cases by non-attorney tenant advocates and law students supervised by the City Advocacy Office or an officer of the state's highest court.

3. *Landlord/tenant discussions.* In all discussions with landlords or their authorized representatives, tenants shall have a right to be accompanied and represented by a "next friend" or tenant advocate of their choice. A tenant may designate a tenant union to serve as tenant advocate for this purpose. The landlord or agent shall meet and confer with the tenant's chosen representative at reasonable times and places. There shall be no interference with or retaliation on

account of a tenant's assertion of their right to representation or choice of representative. The right to evict is suspended during any period in which a landlord is in violation of this section.

4. *Rights.* All tenants, family members, and residents, regardless of the size of their building and/or landlord, shall have the right to form, join, assist, or participate in tenant councils, tenant bargaining representatives, and tenant unions as described herein (regardless of whether such tenant council and/or tenant union satisfies any numerical or representation criterion specified herein).

C. Residential monitors.

This provision shall apply whenever a building contains and/or an owner or landlord controls five or more residential units. In each such case, any tenant of the building or a group of tenants shall have the right to request the Board to appoint a residential monitor. The residential monitor may be a tenant, an expert or tenant advocate recommended by the City Advocacy Office, a tenant union, or other appropriate individual or entity. The Board shall promulgate rules and regulations concerning the designation of residential monitors.

Residential monitors shall have the right to meet, confer with, and interview tenants privately; to inspect common areas of the premises and private areas to which tenants afford access; and to make suggestions to the landlord regarding repairs, safety concerns, improvements, and compliance with this ordinance and other provisions of law. The purpose and responsibility of the residential monitor is to ensure compliance with law; to call to landlords' attention to any potential or actual violation of this ordinance and any potentially or actually unsafe, unsecure, or unwholesome condition of premises; to suggest remedies for such potential or actual violations and conditions; to transmit to tenants and explain information about their rights and sources of assistance; to trigger and accompany premises inspections by city inspection officers; and to engage in such other activities as are consistent with the purposes of this ordinance. The "official summary" and "chart" referenced above in § IV(A) shall call attention to the residential monitor provisions and provide appropriate contact information.

A tenant council established in accord with § IV(D) may serve as residential monitor. A tenant bargaining representative confirmed in accord with § IV(E)(1) shall succeed to the rights and functions of a residential monitor, if any.

D. Tenant Councils; Meet-and-Confer.

1. *Threshold and establishment.* The tenant council provisions of this ordinance shall apply to tenant representation districts containing 10 or more residential units. A group representing at least 20% of the tenant units in such a district amounting to a minimum of five residential units, may form a tenant council. All tenants in the district must be eligible to join and invited to do so. With the assistance of the City Advocacy Office and/or a tenant union, a tenant council shall determine its operating procedures and select its leadership, memorializing that information by registration with the Board. A given tenant representation district may have more than one tenant council. Owners, landlords, developers, or persons connected to them by personal and/or business relationships shall not participate in or interfere with formation of tenant councils.

2. *Meet-and-confer.* Upon request from a tenant council, an owner, landlord, management firm related to a property or properties in the district, and/or developer shall engage in meet-and-confer processes. This refers to processes in which a tenant council and owners/landlords/management firms/developers periodically meet at reasonable times and places no less than quarterly to discuss terms and conditions of tenancy.

3. *Rights.* Tenants shall have the right to make reasonable use of common areas, mailboxes, and bulletin boards to discuss, advocate for, and organize tenant councils and to conduct tenant council business. These rights of access shall apply to any building in a district, regardless of whether the tenant exercising the right lives in that building. Subject to reasonable rules and regulations, tenants and tenant unions with which they are affiliated may approach and solicit tenants in the same district for purposes of discussing or taking steps to invoke the tenant council provisions of this ordinance. In conducting activities described in this paragraph, tenants may have the assistance of and may invite to the premises tenant advocates and tenant unions registered with the City Advocacy Office.

4. *Rent withholding.* When a tenant council has been established in conformity with this ordinance and requested meet-and-confer processes, tenants in the designated district may withhold rent whenever the relevant owner/landlord/developer refuses without just cause to engage in meet-and-confer or retaliates against any person for the exercise of meet-and-confer rights as provided herein. An owner, landlord, or developer with an interest in a relevant property against whom rent withholding has been initiated may apply to the Board for an order instructing tenants to cease withholding rent if the Board finds that the owner/landlord/developer has just cause to refuse to engage in meet-and-confer. Tenants withholding rent pursuant to this provision shall deposit equivalent amounts in interest bearing escrow accounts supervised by the Board. Funds in such accounts shall be released to the owner/landlord/developer when the Board is satisfied that meet-and-confer in good faith has commenced, provided that any such funds up to the amount of one-month's rent plus interest shall be returned to the tenants. No one may be evicted for failure to pay rent in connection with rent withholding pursuant to this section.

E. Meet-and-Negotiate.

1. *Threshold and establishment.* The meet-and-negotiate provisions of this ordinance apply to tenant representation districts containing at least 10 residential units, where 50% or more of the residential units have designated a tenant bargaining representative as their representative for purposes of meet-and-negotiate as provided herein. Selection of a tenant bargaining representative shall supersede and suspend any tenant council and meet-and-confer processes. Owners, landlords, developers, or persons connected to them by personal and/or business relationships shall not participate in or interfere with formation of a tenant bargaining representative. A tenant representation district shall have only one tenant bargaining representative which shall have the authority to meet-and-negotiate on behalf of all tenants in the district. Situations may arise in which a residential unit falls within two or more previously existing, overlapping tenant representation districts in which a tenant bargaining representative meets the 50% threshold. In this event, the Board will encourage negotiation between the tenant bargaining representatives to realign the contours of the respective districts and, failing negotiated settlement, shall determine their contours so as best to fulfill tenants' rights and the policies of this ordinance.

2. *Meet-and-negotiate.* Whenever a confirmed tenant bargaining representative that has been designated by a 50% or more of the tenant units amounting to at least 10 residential units in a tenant representation district as provided in the previous section, any owner, landlord, and/or developer with an interest in a property within the district shall be under a duty, on request, to meet and negotiate in good faith at reasonable times and places with and only with the confirmed tenant bargaining representative about terms and conditions of tenancy. The parties may enter legally binding and enforceable agreements concerning terms and conditions affecting tenants, including but not limited to compliance with this ordinance and other provisions of landlord/tenant law, maintenance, repairs, security, common areas, improvements, environmental impacts, infrastructure, rent, ownership continuity or changes, and future business planning. Any agreements reached between an owner, landlord, and or developer, whether formal or informal, shall apply to all tenants and tenant-units in the district.

3. *Rights.* On notice to the Board of an intent to engage in solicitation, organization, and/or advocacy, a tenant bargaining representative registered with the Board may access residential premises at reasonable times to post notices in common areas, solicit affiliation, distribute material and information, and discuss this ordinance or other issues of interest to tenants, subject to the right of tenants to refuse such contact. By invitation of a tenant, a registered tenant bargaining representative may conduct on-premises meetings with tenants.

4. *Information disclosure.* A tenant bargaining representative meeting the threshold 50% requirement previously stated shall be entitled to disclosure by all landlords, owners, and developers within the tenant representation district of information relevant to good-faith consultation. The Board shall promulgate appropriate rules and regulations governing information disclosure which shall include provisions to protect the confidentiality of private tenant information and sensitive financial and business data. Said protections may include (without limitation to) restricting access to private tenant information or sensitive financial records to Board appointed accountants, attorneys, or experts bound by an obligation of confidentiality who may be limited to providing the tenant bargaining representative only general advice based on their study of information disclosed.

5. *Major decisions.* A “major decision” within this ordinance refers to any actual or projected sale, transfer, or conversion of a property, any projected rent increase, and any actual or projected significant alteration of the premises or services. Subject to appropriate rules to protect personal and business privacy, a confirmed tenant bargaining representative shall be entitled to at least three months advance notice of any major decision affecting tenants. Except under extraordinary circumstances for cause shown, courts shall, on motion of a confirmed tenant bargaining representative or the City Advocacy Office, enjoin effectuation of major decisions during the three-month period during which meet-and-negotiate procedures shall ensue upon request of either party to consider alternatives to and effects of the actual or projected major decision. Except under extraordinary circumstances, no eviction consequent upon a major decision affecting a property in a tenant representation district represented by a confirmed tenant bargaining representative shall occur for at least six months from provision of notice to the confirmed tenant bargaining representative of the major decision.

6. *Refusal of bargaining, bad-faith bargaining, interference with meet-and-negotiate process.* When a confirmed tenant bargaining representative has been designated under this ordinance, it shall be unlawful for an owner, landlord, or developer to refuse to engage in the meet-and-negotiate process; to do so in bad faith or in a surface manner intended to or effectively preventing meet-and-negotiate; to refuse to provide information as required herein; or to engaged in retaliatory or discriminatory behavior affecting the meet-and-negotiation process. The Board shall receive complaints of violations of this section. On notice to the named (“respondent”) owner, landlord, or developer, the Board shall provide for a hearing on such complaint consistent with the requirements of the state Administrative Procedure Act. Upon a finding based on a preponderance of the evidence that the respondent has violated this section, the Board shall state its findings and order the respondent to cease-and-desist from such unlawful conduct and to take such affirmative action as shall restore the meet-and-negotiate process and otherwise effectuate the rights and policies under this ordinance. In conformity with state administrative procedure, the Board and/or the respondent may respectively approach the courts to confirm and enter the Board’s order as a decree of court or to dismiss it, in either case in whole or in part. During any period in which a Board order finding a violation of this section is in effect, tenants in properties covered by the order may withhold rent. Tenants withholding rent pursuant to this provision shall deposit

equivalent amounts in escrow accounts supervised by the Board. Funds in such accounts shall be released to the owner/landlord/developer when the Board is satisfied that meet-and-confer in good faith has commenced or if a court dismisses a Board order, provided that any such funds up to the amount of one-month's rent plus interest shall be returned to the tenants. No eviction for failure to pay rent may occur in connection with rent withholding pursuant to this section or for a reasonable grace period for making up arrears if a court dismisses a Board order.

7. Rent withholding during meet-and-negotiate. On one month's notice where parties are engaged in an on-going meet-and-confer process, tenants may within any 18-month period engage in rent withholding for a period of four months. No eviction for failure to pay rent may occur in connection with rent withholding pursuant to this section. Tenants withholding rent pursuant to this provision shall deposit equivalent amounts in interest bearing escrow accounts supervised by the Board which funds shall be released to the owner/landlord/developer by agreement of the parties or at the conclusion of the four-month period.

8. Successorship. Whenever a change of ownership occurs with respect to a property that is or is part of a tenant representation district that has chosen meet-and-negotiate representation by a confirmed tenant bargaining representative as provided in § IV(E), the new owner shall assume by operation of law all of the duties, obligations, and responsibilities of the predecessor owner, including those provided by this ordinance, and any duties, obligations, and responsibilities contained in agreements entered by the predecessor owner.

9. Members-Only Bargaining. Whenever at least 20% but less than 50% of tenant units in a tenant representation district, amounting to a minimum of five residential units, have designated a tenant bargaining representative as their representative for purposes of collective bargaining, the representative and landlord may engage in meet-and-negotiate processes under such terms and procedures as they agree to consistent with this ordinance, and they may enter binding agreements with respect to any terms and conditions affecting tenants. Any resulting agreement shall be applicable only to the tenants and tenant-units that designated the said tenant bargaining representative. Provisions resulting from members-only negotiation that are favorable to

represented tenants shall be evidence of discrimination against tenants who choose not to engage in members-only collective bargaining.

V. Retaliation & Discrimination

It shall be unlawful for any person or entity by intent or effect to retaliate or discriminate against any person for protected conduct consisting of:

1. exercising any lawful right of tenants, including but not limited to the rights provided in this ordinance,

2. making any complaint to an owner, landlord, or developer with an interest in a relevant property relative to tenants' conditions,

3. making or stating an intention to make contact, formal or informal, with an attorney or with any Elm City agency (including the Board and City Advocacy Office) with respect to any aspect of a tenancy,

4. referring any matter to, making any filing or contact, formal or informal, with, seeking the assistance of, cooperating with, or testifying before any court or Elm City agency (including the Board and City Advocacy Office), or stating an intention to do any of these things

5. seeking to initiate the appointment of or assisting and cooperating with a residential monitor,

6. inquiring about, joining, assisting, cooperating with, or participating in tenant organization, tenant council, tenant bargaining representative, or tenant union,

7. publicly or privately protesting, any conditions affecting tenants or any actions made illegal by this ordinance or state law respecting tenants.

Conduct or words that may be found to have been done or uttered with retaliatory or discriminatory intent or effect include but are not limited to eviction, attempted eviction, threat of eviction, refusal to renew or extend a tenancy or threat thereof, withdrawal or reduction of services to or maintenance of any property, harassment, and any other discrimination or mistreatment of any kind against a tenant or family member.

Any person suffering retaliation or discrimination as defined herein shall have a civil action for damages (including emotional distress, consequential, and punitive damages) and appropriate equitable relief, and shall recover attorneys' fees and court costs. Residential monitors, the City Advocacy Office, tenant councils, tenant bargaining representatives, and/or registered tenant unions shall have standing to bring such a civil action on behalf of affected parties and/or to seek equitable relief to enforce this ordinance or otherwise to protect the public interest with respect to the rights and policies embodied therein. In any action hereunder, it shall not be a defense that the tenant owed rent or that the tenant committed a Code or lease violation or created a public health hazard of which the owner, landlord, or developer with an interest in a relevant property knew or should reasonably have known. Retaliatory action occurring within two years of protected conduct shall be presumed to be unlawful retaliation herein; this presumption may be rebutted by clear and convincing evidence that said action was motivated for reasons entirely independent of the protected conduct.