

**CITY OF HOBOKEN**  
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**MEMORANDUM**

**To:** Hoboken City Council

**From:** Alyssa Bongiovanni, Assistant Corporation Counsel

**Re:** Power of Appointments to Hoboken's Rent Control Board

**Date:** March 6, 2018

**Issue:** In a municipality organized pursuant to the Faulkner Act (Mayor-Council Plan), who has the power to appoint members to the Rent Control Board?

**Short Answer:** The Mayor with the advice and consent of the council.

Please be advised that after an ordinance was placed on the February 21, 2018 agenda proposing to amend the Hoboken City Code to provide the City Council with the power to appoint members to the Rent Leveling and Stabilization Board, I performed legal research to determine whether the ordinance was consistent with the Faulkner Act. For the reasons set forth below, it is my opinion that the ordinance is violative of the Faulkner Act and therefore do not recommend the passage of same.

The City of Hoboken is a municipality organized under the Optional Municipal Charter Law, N.J.S.A. 40:69A-1 et seq., also known as the "Faulkner Act." "The

Faulkner Act is an elective statutory scheme that authorizes participating municipalities to choose [from among] four plans of government that are set forth in the Act.” McCann v. Clerk of City of Jersey City, 167 N.J. 311, 324 (2001). Specifically, “[t]he Faulkner Act was created with the intent to confer upon municipalities the greatest possible power of local self-government consistent with the Constitution of this State” Id. at 328 (quoting Casamasino v. City of Jersey City, 158 N.J. 333, 342 (1999)).

The City of Hoboken has elected the mayor-council plan, which is “quite close to the presidential or gubernatorial form in its concentration of power in the hands of a highly-visible, independently-elected Chief Executive who has substantial power over the administration” and the “mayor's authority under the Faulkner Act's mayor-council plan is, therefore, substantial...” Municipal Council of the City of Newark v. James, 183 N.J. 361, 364 (2005) (citations omitted).

The issue of appointments to boards, authorities, and commissions is addressed in the Faulkner Act at N.J.S.A. 40:69A-43(f), as follows:

Whenever in any municipality with a population greater than 100,000, according to the latest federal decennial census, the governing body is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the advice and consent of the council. **In all other municipalities, whenever the governing body is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the advice and consent of the council, unless the specific terms of that general law clearly require a different appointment procedure or appointment by resolution, in which case the appointment shall be by the council.** Id. (emphasis added).

The term "general law" is defined by the Faulkner Act, N.J.S.A. 40:69A-28, as: “...any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities....” Id.

A municipality is authorized under N.J.S.A. 2A:42-77 to enact a rent control ordinance whenever “the governing body of a municipality finds that the health and safety of residents of that municipality are impaired or threatened by the existence of substandard multiple dwellings.” Pursuant to N.J.S.A. 2A:42-77(a), the ordinance shall include a provision that a “public officer be designated or appointed to exercise the power prescribed by the ordinance.” Public officer is defined as “the officer, officers, board or body who is or are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by this act.” See N.J.S.A. 2A:42-75.

The City of Hoboken has enacted a rent control ordinance in the Hoboken City Code Chapter 155 entitled “Rent Control.” Hoboken City Code Sections 155-18 and 19 create a Rent Leveling and Stabilization Board to administer Hoboken’s rent control ordinance and therefore act as the City’s “public officer.” Pursuant to N.J.S.A. 2A:42-77(a), the governing body of the municipality shall appoint the public officer to exercise the power prescribed by the ordinance. There is no specific method of appointment proscribed in N.J.S.A. 2A:42-77(a), therefore, in accordance with N.J.S.A. 40:69A-43(f), the appointment shall vest in the mayor with the advice and consent of council.

In light of the above, it is my opinion that the City Council does not have the power to appoint members to the Rent Control Board, but that said appointment power vests in the Mayor with the advice and consent of the Council. Thus, it is my opinion that the ordinance introduced at the February 21, 2018 meeting is invalid pursuant to the Faulkner Act. Should you have any questions, please do not hesitate to contact me.

*/s/ Alyssa L. Bongiovanni*