



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRUCE F. HARVEY & SARAH)	
HARVEY, h/w,)	
GLENN D. SCHMALHOFER,)	
JOHN A. BAUSCHER,)	
DANNY R. BEAVER,)	C. A. No. _____
and)	
MAIN STREET COURT LLC,)	
individually and on behalf of all those)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF NEWARK,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiffs Bruce F. and Sarah Harvey, Glenn D. Schmalhofer, John A. Bauscher, Danny R. Beaver, and Main Street Court LLC (collectively, "Plaintiffs"), by and through their undersigned attorneys, Saul Ewing LLP, allege upon information and belief, except as to their own actions, which plaintiffs allege on knowledge, as follows:

SUMMARY OF COMPLAINT

1. This Class Action is brought by Plaintiffs individually and on behalf of a putative class consisting of all owners of residential rental properties located within the City of Newark that were charged, and paid, annual rental permit fees to the City in any of the following calendar years: 2005, 2006, 2007, 2008, 2009, and all subsequent years up to the conclusion of this litigation.

2. Throughout this period, the City of Newark charged, and the putative class paid, annual rental permit fees of \$300 per dwelling unit in a single-family or two-family dwelling;

\$70 per unit in a multi-family (i.e. more than two-family) dwelling; \$70 per rooming unit in an owner-occupied dwelling; and \$300 to \$2,100 per fraternity/sorority house. These rental permit fees charged by the City of Newark, and the aggregate revenue generated from such fees, were and are in excess of, and grossly disproportionate to, the actual, reasonable cost of administering and enforcing the City's rental permit program.

3. By way of comparison, rental permit fees charged by the City of Newark for a single-family dwelling unit are at least *six to ten times greater* than equivalent rental permit fees charged by other municipalities with significant populations of tenants who are college students (e.g., State College, Pennsylvania; Chapel Hill, North Carolina; Fairfax, Virginia; and West Chester, Pennsylvania).

4. Because the rental permit fees charged by the City of Newark exceed the actual and reasonable cost of administering and enforcing the rental permit program, they generate net revenue for the City that the City uses to fund general operations. Under well-established Delaware law, a fee that is used to generate general revenue is deemed a tax.

5. Under Delaware's Constitution and statutes, only the General Assembly may enact laws raising taxes, or authorizing home rule cities, like the City of Newark, to impose and collect taxes. *See* Del. Const. Art. III; 22 Del. C. § 801, *et seq.* The City of Newark's Charter, as enacted by the General Assembly, does not authorize the imposition and collection of a tax on owners of residential rental properties located within the City. Accordingly, the City's rental permit fees constitute an unauthorized, unlawful tax that must be refunded in full to each member of the putative class that paid such taxes during the class period.

6. In light of the foregoing, Plaintiffs, on their own behalf and on behalf of the putative class, bring this action for: i) a declaratory judgment, declaring the City of Newark's

rental permit fees to be unlawful and void; ii) an injunction, enjoining the City of Newark from charging and collecting such unlawful rental permit fees in the future; iii) an accounting of the aggregate rental permit fees collected by the City of Newark in 2005-2009, and thereafter; and iv) an order awarding each of the putative class members a full refund of all such rental permit fees paid in 2005-2009, and thereafter, with interest, attorneys' fees and the costs of this action.

JURISDICTION

7. Pursuant to 10 Del. C. § 341, the Delaware Court of Chancery has jurisdiction to hear and determine all matters and causes in equity. Pursuant to 10 Del. C. § 6501, the Delaware Court of Chancery has jurisdiction to declare rights, status, and other legal relations. Additionally, under 10 Del. C. § 6508, the Delaware Court of Chancery may grant other relief based upon a declaratory judgment to the extent that such further relief is necessary and proper.

THE PARTIES

8. Plaintiffs Bruce F. Harvey and Sarah Harvey, h/w, are individuals residing at 5 Phillips Avenue, Newark, DE 19711. The Harveys are the fee owners of the following non-owner occupied rental properties located in the City of Newark: (1) 72 Madison Drive; (2) 54 Madison Drive; (3) 18 Madison Drive; (4) 184 Madison Drive; (5) 1 Patrick Henry Court; and (6) 75 Madison Drive. The Harveys' non-owner occupied rental properties are classified as single-family dwelling units. Each unit is subject to the \$300.00 annual rental permit fee imposed by the City of Newark. In 2005-2009, the Harveys paid to the City of Newark a total of \$6,900.00 in annual rental permit fees for their non-owner occupied rental properties. On or about June 22, 2009, the Harveys demanded a refund of the \$6,900.00 from the City of Newark (the demand letter is attached hereto as Exhibit "A"), to which, on or about July 9, 2009, the City of Newark responded by refusing to remit any amount. The City of Newark's refusal came in

the form of a letter addressed to all Newark Landlord Association members, which includes the Plaintiffs. The City of Newark's refusal letter dated July 9, 2009 is attached hereto as Exhibit "B".

9. Plaintiff Glenn D. Schmalhofer is an individual with an address of 269 Milford Drive, Grande View Farms, Middletown, DE 19709. Mr. Schmalhofer is the fee owner of the following non-owner occupied rental properties in the City of Newark: (1) 5 Bassett Place; (2) 7 Bassett Place; (3) 36 N. Chapel Street; (4) 36 E. Cleveland Avenue (up); (5) 36 E. Cleveland Avenue (down); (6) 164 N. College Avenue; and (7) 85 W. Park Place. Mr. Schmalhofer's non-owner occupied rental properties are classified as single-family dwelling units and are subject to the \$300.00 annual rental permit fee imposed by the City of Newark. In 2005-2009, Mr. Schmalhofer paid to the city of Newark a total of \$7,500.00 in annual rental permit fees for his non-owner occupied rental properties. On or about June 25, 2009, Mr. Schmalhofer demanded a refund of the \$7,500.00 from the City of Newark (the demand letter is attached hereto as Exhibit "C"), to which, on or about July 9, 2009, the City of Newark responded in writing by refusing to remit any amount.

10. Plaintiff John A. Bauscher is an individual residing at 17 Madison Drive, Newark, DE 19711. Mr. Bauscher is the fee owner of the following non-owner occupied rental properties in the City of Newark: (1) 17 Madison Drive; (2) 19 Madison Drive; (3) 96 Madison Drive; (4) 98 Madison Drive; (5) 99 Madison Drive; (6) 103 Madison Drive; (7) 119 Madison Drive; (8) 121 Madison Drive; (9) 145 Madison Drive; (10) 162 Madison Drive; (11) 167 Madison Drive; (12) 211 Madison Drive; (13) 14 White Clay Drive; (14) 16 White Clay Drive; and (15) 396 Phillips Avenue. Mr. Bauscher's non-owner occupied rental properties at (1) 17 Madison Drive; (2) 19 Madison Drive; (3) 96 Madison Drive; (4) 98 Madison Drive; (5) 99 Madison Drive; (6)

103 Madison Drive; (7) 119 Madison Drive; (8) 121 Madison Drive; (9) 145 Madison Drive; (10) 162 Madison Drive; (11) 167 Madison Drive; (12) 211 Madison Drive; (13) 14 White Clay Drive; and (14) 16 White Clay Drive are classified as single-family dwelling units and are subject to the \$300.00 annual rental permit fee imposed by the City of Newark. Mr. Bauscher's non-owner occupied rental property at 396 Phillips Avenue is classified as a multi-family dwelling with four units and is subject to the \$70.00/unit annual rental permit fee imposed by the City of Newark. In 2005-2009, Mr. Bauscher paid to the city of Newark a total of \$17,920.00 in annual rental permit fees for his non-owner occupied rental properties. On or about June 25, 2009, Mr. Bauscher demanded a refund of the \$17,920.00 from the City of Newark (the demand letter is attached hereto as Exhibit "D"), to which, on or about July 9, 2009, the City of Newark responded in writing by refusing to remit any amount.

11. Plaintiff Danny Ray Beaver is an individual with an address of 720 Wollaston Avenue, Newark, DE 19711. Mr. Beaver is the fee owner of the following non-owner occupied rental properties in the City of Newark: (1) 52 Church Street and (2) 722 Wollaston Avenue. Mr. Beaver's non-owner occupied rental properties are classified as single-family dwelling units and are subject to the \$300.00 annual rental permit fee imposed by the City of Newark (as discussed in more detail below). In 2005-2009, Mr. Beaver paid to the City of Newark a total of \$2,400.00 in annual rental permit fees for his non-owner occupied rental properties. On or about June 25, 2009, Mr. Beaver demanded a refund of the \$2,400.00 from the City of Newark (the demand letter is attached hereto as Exhibit "E"), to which, on or about July 9, 2009, the City of Newark responded in writing by refusing to remit any amount.

12. Plaintiff Main Street Court LLC ("Main Street") is a Delaware limited liability company with an address of 236 East Delaware Avenue, Unit 101, Newark, DE 19711. Main

Street is the fee owner of forty-eight (48) non-owner occupied residential apartments known as Main Street Court Apartments located at 236 East Delaware Avenue, Newark, DE 19711. Main Street's non-owner occupied residential apartments are classified as multi-family dwelling units and are subject to the \$70 annual rental permit fee imposed by the City of Newark. In 2007-2009, Main Street paid to the City of Newark a total of \$10,080.00 in annual rental permit fees for its forty-eight (48) non-owner occupied residential apartments. On or about September 24, 2009, Main Street demanded a refund of the \$10,080.00 from the City of Newark (the demand letter is attached hereto as Exhibit "F"), to which the City of Newark has not responded.

13. Defendant City of Newark (hereinafter the "City") is a municipal corporation of the State of Delaware, with a business address of 220 Elkton Road, Newark, DE 19715-0390.

FACTUAL ALLEGATIONS

Establishment of Rental Permit Fee Program by City of Newark

14. Defendant City of Newark's authority to impose a rental permit fee derives from the Delaware General Assembly via the City's Charter.

15. By way of background, the City of Newark's Charter (the "Newark Charter" or "Charter") provides the Newark City Council with the "right to grant or refuse, and to charge fees for licenses or permits for traveling shows and other business of any description within the City and control their use of any property within the city." Newark Charter § 404.

16. The Newark Charter does not authorize the City to impose taxes on businesses in lieu of or in addition to license or permit fees.

17. The City's rental permit program is codified at section 17-4(t) of its Municipal Code (the "Newark Code").

18. The City originally enacted Chapter 17, Housing and Property Maintenance, on September 14, 1987. Section 17-1 of the Newark Code formally adopts the International Property Maintenance Code, including the 2006 Supplements thereto (the "International PM Code"). Section 17-4 of the Newark Code amends certain sections of the International PM Code.

19. Section 17-4(t) of the Newark Code amends Section 404 of the International PM Code by adding a new Section 404.8 entitled "Rental Permits Required." Section 17-4(t) has been amended numerous times since 1987 and currently provides:

(1) *Rental permits required.* An annual rental permit is required prior to letting, leasing, sub-leasing, renting, or otherwise allowing the occupancy of the following structures:

- Every non-owner occupied single-family and/or two-family dwelling.
- Every owner-occupied dwelling taking in more than two boarders or roomers unrelated to the owner by blood, marriage or legal adoption.
- Every multi-family dwelling (defined as a structure containing three or more dwelling units) including condominiums.
- Every rooming house.
- Every boarding house.
- Any structure housing a mixture of occupancies that includes residential.
- All fraternities and sororities as defined in Chapter 32, Zoning.

The annual permit fee shall be as follows:

- Three hundred dollars (\$300.00) per dwelling unit for single-family or two-family dwellings, including row and townhouses.

- Seventy dollars (\$70.00) per dwelling/rooming unit in any other occupancy except fraternities and sororities

(2) Fee for fraternity or sorority shall be based on the maximum occupancy of the building as established by the code official.

(3) Rental permit fees shall be considered delinquent if not paid by the due date as noted on the rental registration or renewal form.

The annual permit fees for fraternities and sororities are established in the following schedule and are payable upon submission of the permit application. The fees are based on the maximum occupancy of the building as established by the code official. These fees shall be reduced by one-third if the written lease or recorded deed for the property prohibits the use of alcohol by the tenants or occupants of the fraternity or sorority. Where a fraternity or sorority occupies more than one building, each building shall require a separate permit.

TABLE INSET:

No. of occupants	1-8	9-18	19-30	31-44	45-60	61-78	79-98
Fee	\$300	600	900	1,200	1,500	1,800	2,100

Rental permit fees for multi-family dwelling units shall include a late fee of \$15.00 per unit if paid after the due date. All rental permit fees for one-family, one-family semi-detached, duplex, and row or group dwellings that are paid late shall include a late fee of \$15.00 if paid after the due date.

Any agreement, contract, lease, or sublease which provides for, permits, allows, contemplates, or facilitates the occupancy of any dwelling for which a rental permit is required herein shall be in writing if such agreement, contract, lease, or sublease is for a period in excess of 30 days. Such written agreements, contracts, leases, or subleases must be submitted to the building code official upon request.

404.8.1 *Applications.*

Applications shall be in writing on a form provided by the city.

404.8.2 *Unlawful Leases.*

(a) No owner or landlord shall enter into any agreement, contract, lease, or sublease which provides for, permits, allows,

contemplates, or facilitates occupancy of any structure which would require a rental permit in accordance with Subsection 404.8 of this code, contrary to the use requirements of Section 32-9, RH, RT, and RS districts, Section 32-10, RD districts, Section 32-11, RM districts, and Section 32-13, RR districts, Code of the City of Newark. Any agreement, contract, lease, or sublease which provides for, permits, allows, contemplates, or facilitates such occupancy by more persons than permitted in the aforementioned code sections is unlawful and hereby declared to be contrary to public policy.

(b) Agreements, contracts, leases, or subleases for the occupancy of dwelling units requiring rental permits as specified in this section:

1. Prominently stipulate that the conviction of any renter, boarder, or roomer who violates Chapter 20A, Noise; the occupancy limitations of this chapter and Chapter 32, Zoning, Code of the City of Newark; any property maintenance requirements of this chapter attributable to a renter, boarder, or roomer; any on-site violations of Chapter 22, Police Offenses, attributable to a renter, boarder, or roomer; and, on-site violations of Chapter 19, Minors, Section 19-5, prohibiting minors from possessing or consuming alcoholic beverages, more than one time within a one year period, shall result in the giving of notice to all renters, boarders, or roomers residing in the relevant leased premises of the commencement of eviction proceedings pursuant to the provisions of the Delaware Landlord Tenant Code (hereinafter the DLTC). Thereafter the landlord of the leased premises, or an agent thereof, shall proceed to conclude such eviction proceedings pursuant to the relevant provisions of the DLTC. Offenses at any single leased premises shall be cumulative. Convictions under this section of two different renters, boarders, or roomers of the leased premises for violations as listed herein shall result in the commencement of eviction proceedings as set forth in this section. This section shall not prohibit the execution of a new lease between the owner of the relevant premises and any person named as a renter, boarder, or roomer on a prior lease who was not subject to either of the two convictions which resulted in the termination of the prior lease and the commencement of lawful eviction proceedings. It shall be a further violation of this section for an owner to enter into a new lease of the same premises with a person who has been

convicted of an offense listed in this section and lawfully evicted for a period of one year following the date of the eviction of such person.

2. Prominently stipulate the number and names of persons who may occupy the premises, under appropriate city and state laws or regulations, and that any violation of the allowable number of occupants shall result in the termination of the rental agreement, contract, lease, or sublease as it applies to all renters or occupants of the premises, and providing that the said renter(s) shall have not more than seven days to vacate the dwelling unit.

If it is necessary to evict the tenant, the landlord shall immediately initiate and pursue in good faith summary proceedings for possession as specified in 25 Del.C., Part III, Landlord-Tenant Code. If the landlord or owner fails to initiate and pursue in good faith summary proceedings as stipulated herein, the building code official shall revoke for one year the rental permit of the affected dwelling unit.

(c) Landlords or owners shall be required to stipulate in writing, as part of their application for rental permits, that the lease(s) for the dwelling unit(s) for which application is made contains the prominent notification to renters as specified in this section.

(d) The city shall notify the landlord, owner, or owner's agent if a renter in a unit for which a rental permit is required as stipulated in this section, is convicted of violating Chapter 20A, Noise, and/or Section 22-74.1, Disorderly Premises, Code of the City of Newark. Notice shall be deemed to be properly serviced upon the owner or owner's agent if a copy thereof is delivered to the owner or owner's agent; or by leaving a notice at the usual place of abode, in the presence of someone in the family of suitable age and discretion, who shall be informed of the contents thereof, or by certified mail addressed to the owner or owner's agent at the last known address with return receipt requested; or by posting a copy thereof in a conspicuous place in or about the structure affected by such notice.

404.8.3 Posting Maximum Occupancies in Rental Dwelling.

Each owner of a one-family and/or a two-family dwelling type structure which requires a rental permit as specified in this chapter

shall post the maximum occupancy permitted within said dwelling, as set forth in Chapter 32 of this code, and the number of available on-site off-street parking spaces associated with said dwelling, so that the posting is readily visible to all tenants residing on the property. The occupancy statement shall include the maximum number of unrelated persons who may lawfully inhabit the dwelling pursuant to a valid lease, statement of penalties, as established herein for failure to comply with the requirements of this chapter, the name and telephone number of the owner or the owner's agent, and the telephone number of the City of Newark Building Department.

404.8.4 *Enforcement.*

Pursuant to the procedures herein, the building code official is hereby empowered to deny issuance of or revoke any permit applied for or issued as described herein if it is discovered either that the applicant or holder has misrepresented himself or the state of his property, or any time subsequent to the issuance of said permit, becomes violative of this section [404].

404.8.5 *Penalty.*

Any person, firm, corporation, partnership, or other commercial entity or representative thereof, who fails to comply with Section 404.8 of this chapter shall be guilty of a violation and upon conviction, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00, or imprisonment for not more than 60 days, or both; and any person, firm, corporation, partnership, or representative thereof, who fails to comply with Sections 404.8.1 through 404.8.2 of this chapter shall be guilty of a violation and upon conviction, shall be punished by a fine of not less than \$250.00 nor more than \$500.00, or imprisonment for not more than 30 days, or both.

20. In short, the rental permit program as defined in Section 17-4(t) of the Newark Code has the following key elements:

- (a) the owner wishing to rent a residential property must make application for and receive an annual rental permit;
- (b) the City collects the designated annual rental permit fee, and a late fee if applicable;

- (c) the owner may not enter leases permitting units to be occupied by more persons than permitted by Section 404 of the International PM Code (as amended and adopted by the City) and local zoning;
- (d) leases must be in writing, contain various tenant notifications concerning compliance with laws and occupancy limits, and be available for inspection by the building code official upon request;
- (e) the owner must evict tenants who exceed occupancy limits or are twice convicted of certain offenses;
- (f) the permit program is enforced by the building code official, who has the power to revoke rental permits for violations or misrepresentations by the owner;
- (g) in the case of violations, the owner may be fined \$250 to \$1,000, and is subject to imprisonment for 30-60 days, depending on the provision that has been violated.

Administration and Enforcement of the Rental Permit Program

21. At all times relevant hereto, the City of Newark has publicly proclaimed the purpose of its rental permit program on its Internet website:

The City of Newark requires all properties that are not owner-occupied but are leased to a tenant to acquire a yearly rental permit. It also requires all owner-occupied premises that let rooms out to more than two people, unrelated to the owner, to purchase the same type of rental permit. The permits are used to guard against overcrowding and to make sure rental units are limited to certain neighborhoods.

22. Thus, according to the City, the rental permit program (also described by the City as a “tenant registration fee” in annual budgets) has two fundamental purposes: (i) enforcement of occupancy limitations; and (ii) limiting rental properties to neighborhoods zoned for such use.

23. The City of Newark's rental permit program has been, until very recently, administered and enforced through its Building Department.

24. In 2005-2009, Building Department employees inspected most rental properties annually. During the annual inspection, rental units are inspected for compliance with occupancy standards. The annual inspections also typically include checking for and testing smoke alarms, and checking for compliance with International PM Code standards of general applicability, which standards are not uniquely applicable to rental properties.

25. On information and belief, the inspection of each unit in a single family or two-family dwelling takes an average of only ten (10) to twenty (20) minutes to complete; and inspections of units in multi-family dwellings take an average of only five (5) to fifteen (15) minutes to complete. Moreover, not all rental properties in the City of Newark are inspected annually.

Rental Permit Fees Charged by the City of Newark Far Exceed the Actual, Reasonable Cost of Administering and Enforcing the Rental Permit Program

26. Although the elements of the City of Newark's rental permit program have not materially expanded since its inception, the annual rental permit fee imposed on Newark landlords has been increased dramatically over the years. By way of example, the following increases have been imposed for single-family or two-family dwellings, and "multi-family" dwellings:

(a) 1986-1987: \$25 per dwelling unit in a single-family or two-family dwelling; and \$25 per dwelling unit in a multi-family dwelling (defined as a structure containing three or more dwelling units);

(b) 1987-1989 \$35 per dwelling unit in a single-family or two-family dwelling; and \$25 per dwelling unit in a multi-family dwelling;

(c) 1989-1994: \$120 per dwelling unit in a single-family or two-family dwelling; and \$25 per dwelling unit in a multi-family dwelling unit;

(d) 1994-1997: \$150 per dwelling unit in a single-family or two-family dwelling; and \$35 per dwelling unit in a multi-family dwelling unit;

(e) 1997-2004: \$300 per dwelling unit in a single-family or two-family dwelling; and \$55 per dwelling unit in a multi-family dwelling unit; and

(f) 2004-present: \$300 per dwelling unit in a single-family or two-family dwelling; and \$70 per dwelling unit in a multi-family dwelling unit.

27. Current fees for fraternity/sorority houses range from \$300 to \$2,100 per building, depending on occupancy.

28. In 2007, the City of Newark reportedly issued permits for dwelling units in 1,241 single-family and/or two-family dwellings, and 2,986 units in multi-family dwellings.

29. Pursuant to the current rental fee schedule, the City of Newark reportedly has generated aggregate annual revenues of \$656,815 in 2005, \$611,915 in 2006, and \$589,620 in 2007 from its rental permit program. On information and belief, similar or higher revenue levels were generated in 2008-2009.

30. The City's aggregate annual rental permit program revenues in 2005-2009 have far exceeded the actual, reasonable cost of administering and enforcing the requirements of Section 17-4(t) of the Newark Code, which Section defines the rental permit program.

31. Instead of limiting the rental permit fees charged to landlords to the actual, reasonable cost of administering and enforcing the requirements of the rental permit program, the City of Newark has imposed fees that are grossly disproportionate to its actual, reasonable costs as part of a fiscal strategy to generate general revenue.

32. In doing so, the City of Newark has purported to justify its excessive rental permit fees by improperly and arbitrarily attributing five percent (5%) of its annual police force costs to enforcement of the rental permit program.

33. The City of Newark's police force costs, however, are general services provided by the City for the benefit of all residents, not services directly or indirectly attributable to administration or enforcement of the rental permit program. The cost of general services provided to all residents of the City (such as police, fire service, etc.) cannot be used to justify an excessive and discriminatory fee adversely affecting owners of residential rental properties.

34. In essence, the City of Newark has improperly used the rental permit fee program as a mechanism to shift the costs of policing the conduct of a substantial segment of the City's residents – college students – from the general population to the limited class of approximately 800 residential landlords.

35. In addition, the City of Newark has purported to justify its excessive rental permit fees by improperly and arbitrarily attributing forty percent (40%) or more of its annual building department costs to enforcement of the rental permit program. In doing so, the City has included substantial costs not directly or indirectly related to administration or enforcement of its rental permit program.

36. By increasing rental permit fees for reasons other than the cost of inspection, administration, and enforcement of Section 17-4(t) of the Newark Code, the City of Newark has imposed a license fee that is arbitrary, discriminatory, and grossly disproportionate to the reasonable cost of administration and enforcement.

Newark's Rental Permit Fees Constitute an Unauthorized, Unlawful Tax

37. Under Delaware law, a license fee or rental permit fee must be reasonably related to the cost of regulating the licensed or permitted activity. A fee that exceeds the actual, reasonable cost of the administration and enforcement of the permit/license program is deemed

to be a tax subject to all applicable Delaware constitutional and statutory requirements, including enabling authority to impose such a tax.

38. The Newark Charter does not permit the City of Newark to impose a tax targeting owners of residential rental properties.

39. In fact, the City recently acknowledged its limited taxing authority when it resolved to request the Delaware General Assembly to amend the Newark Charter to expand its taxing power as follows:

The [Newark City Council] shall have the power and authority to license, tax, and collect fees annually or more frequently for any and all city purposes of such various amount or amounts as the [Newark City Council] shall, from time to time, fix from any individual, firm, association or corporation carrying on or practicing any activity, business, profession or occupation within the limits of the city.

See City of Newark Delaware Resolution No. 09-L approved by the Newark City Council on June 8, 2009 and attached hereto as Exhibit “G”. As of the date of filing of this Class Action Complaint, the Delaware General Assembly has not enacted any such amendment to the Newark Charter.

40. The rental permit fees imposed pursuant to Section 17-4(t) of the Newark Code are grossly disproportionate to the actual, reasonable expenses incurred by the City of Newark in its administration and enforcement of the occupancy limitations and other requirements of Section 17-4(t) of the Newark Code and Section 404 of the International PM Code.

41. The excessive rental permit fee is therefore an illegal tax that has been imposed contrary to the requirements of the Newark Charter and the laws of the State of Delaware. As such, it is illegal, unfair and unjust for the City of Newark to retain any portion of any rental permit fee it unlawfully collected over the past four (4) years.

42. As described above, each Plaintiff herein, among other landlords owning rental properties in the City of Newark, formally demanded in writing that the City of Newark refund of all rental permit fees paid to the City in 2005-2009. The City of Newark has failed and refused to refund any portion of any rental permit fee paid by the Plaintiffs or the putative plaintiff class. As a result, Plaintiffs have filed this Class Action Complaint to recover rental permit fees unlawfully collected by the City of Newark.

CLASS ACTION ALLEGATIONS

43. This action is brought as a class action, pursuant to Court of Chancery Rule 23.

44. This Class Action is brought by Plaintiffs individually and on behalf of a putative class consisting of all owners of residential rental properties located within the City of Newark that were charged, and paid, annual rental permit fees to the City in any of the following calendar years: 2005, 2006, 2007, 2008, 2009, and all subsequent years up to the conclusion of this litigation (excluding the City of Newark) (the "Class"). The Class includes the owners of all rental properties for which the City requires rental permits: single-family dwellings and two-family dwellings, multi-family dwellings, fraternity and sorority houses, and owner-occupied dwellings with more than two roomers/boarders.

45. This action is maintainable as a class action.

46. The Class, on information and belief, consists of no fewer than eight hundred (800) persons who reside in Pennsylvania, Maryland, New Jersey, and other states, as well as Delaware. Thus, the members of the Class are so numerous that joinder of all Class members is impracticable. The exact number of Class members is not presently known to Plaintiffs, but can readily be determined by appropriate discovery.

47. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue redress on their own.

48. There are questions of law and fact that are common to all members of the Class, and which predominate over any questions affecting only individuals, including, *inter alia*, the following:

(a) the factual determination of the actual costs annually incurred by the City of Newark in 2005 through 2009 as a direct result of the City's administration and enforcement of its rental permit fee program pursuant to Section 17-4(t) of the Newark Code;

(b) whether such costs were reasonable;

(c) whether the rental permit fees charged to and paid annually by the Class in 2005-2009 substantially exceed, in the aggregate, the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code;

(d) whether the City of Newark, through the rental permit fees, has charged and collected an unauthorized, unconstitutional, and unlawful tax from the Class in 2005-2009; and

(e) whether the Class is entitled to a full refund of all payments unlawfully charged to and collected from members of the Class from 2005-2009.

49. Plaintiffs are committed to prosecuting this action vigorously and have retained competent counsel experienced in complex litigation of this nature.

50. The claims of the Plaintiffs are typical of the claims of other members of the Class and Plaintiffs have the same interests as the other members of the Class. As such, Plaintiffs will fairly and adequately represent the Class.

51. The City of Newark has acted in a manner that affects Plaintiffs and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

52. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damage suffered by many individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to individually seek redress for the wrongful conduct of the City as alleged herein.

53. The prosecution of separate actions by individual members of the Class would also create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendant, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

COUNT I – DECLARATORY JUDGMENT

54. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 53 above.

55. An actual, existing and continuing controversy within the scope and meaning of 10 Del. C. § 6501, *et seq.*, exists between Plaintiffs and Defendant as a result of Defendant's past and

continuing imposition of excessive rental permit fees on Plaintiffs and the members of the Class, and Defendant's failure and refusal to refund such rental permit fees.

56. The annual rental permit fees imposed by the City of Newark on all residential landlords in the City pursuant to Section 17-4(t) of the Newark Code constitute an unlawful tax as they are grossly disproportionate to the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code.

57. Each of the Plaintiffs has formally demanded a refund of the unlawful rental permit fees charged and collected by the City of Newark from 2005-2009, but the City has failed and refused to pay any refunds.

58. The aforesaid case or controversy is a substantial controversy between adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

59. The Plaintiffs' and the Class's interest in the above-described controversy is direct, substantial and present.

60. Plaintiffs and the Class are entitled to a judicial determination, declaration, and adjudication that:

(a) the rental permit fees charged to and paid annually by the Class from 2005-2009 substantially exceed, in the aggregate, the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code;

(b) the City of Newark, through the aforesaid rental permit fees, has charged and collected an unauthorized, unconstitutional, and unlawful tax from the Class from 2005-2009; and

(c) each of the members the Class is entitled to a full refund of all payments unlawfully charged to and collected by the City by members of the Class from 2005 through the conclusion of this litigation.

61. Declaratory judgment to determine the parties' respective rights and interests is an appropriate remedy under the circumstances.

COUNT II – INJUNCTION

62. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 61 above.

63. The City of Newark's scheme for the issuance of rental permits under Section 17-4(t) of the Newark Code is an unlawful and unconstitutional exercise of its governmental authority.

64. The rental permit fees established under Section 17-4(t) of the Newark Code are grossly disproportionate to the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code.

65. The Plaintiffs and the Class members will be irreparably harmed unless the City of Newark is enjoined from its continuing violations of Delaware statutory and constitutional law.

66. The Plaintiffs and the Class members do not have an adequate remedy at law to prevent the recurrence in the future of the unlawful and unconstitutional acts by the City of Newark, through its imposition of excessive rental permit fees.

67. A balancing of the equities and the public interest favor issuance of the requested injunction against Defendant.

68. An injunction is an appropriate remedy to prevent the recurrence of future collection of unlawful rental permit fees by the City of Newark, and to relieve Plaintiffs from the need to bring repeated lawsuits in the future to redress such unlawful conduct.

COUNT III – ACCOUNTING

69. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 68 above.

70. Information concerning the aggregate rental permit fees collected by the City of Newark from 2005-2009 resides within the sole custody and control of the City of Newark.

71. Information concerning the actual costs of administering and enforcing the rental permit program codified at Section 17-4(t) of the Newark Code resides solely in the custody and control of the City of Newark.

72. Plaintiffs, as taxpayers, and as rental property owners in the City of Newark who have annually paid rental permit fees, are entitled to an accounting of the aggregate rental permit fees collected by the City of Newark, the disposition of such rental permit fees, and the actual costs of administering and enforcing the rental permit program codified at Section 17-4(t) of the Newark Code, from 2005-2009.

73. Plaintiffs have no adequate remedy at law.

COUNT IV – REFUND OF UNLAWFUL TAX

74. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 73 above.

75. The Plaintiffs and the Class members have paid rental permit fees from 2005-2009 which were unlawfully collected by the City of Newark.

76. The rental permit fees collected by the City of Newark substantially exceeded the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code, to the detriment of the Plaintiffs and the Class. Accordingly, the rental permit fees constituted an unlawful, unconstitutional tax.

77. Each Plaintiff herein, along with other landlords owning rental properties in the City of Newark, formally demanded in writing that the City of Newark refund all rental permit fees paid to the City from 2005-2009, but the City of Newark has failed and refused to refund any portion of any rental permit fee paid by the Plaintiffs, or any of the Class members.

78. Plaintiffs and the Class are entitled to a full refund of the rental permit fees unlawfully collected by the City of Newark from 2005-2009.

COUNT V – UNJUST ENRICHMENT

79. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 78 above.

80. From 2005-2009 inclusive, the Plaintiffs and the Class members have paid rental permit fees to the City of Newark that were unlawfully collected by the City of Newark.

81. The rental permit fees unlawfully collected by the City of Newark from the Plaintiffs and the Class members have unjustly benefited the City to the detriment of the Plaintiff and the Class members.

82. The City of Newark's failure and refusal to refund rental permit fees unlawfully collected from Plaintiffs and the Class members is unfair and unjust.

REQUEST FOR RELIEF – ALL COUNTS

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that this Court grant the following relief:

(a) Declaring this action to be a proper class action and certifying Plaintiffs as the class representatives and Plaintiffs' counsel as class counsel;

(b) Declaring that the rental permit fees charged to and paid annually by the Plaintiffs and the Class from 2005-2009 substantially exceed, in the aggregate, the actual, reasonable costs incurred by the City of Newark in its administration and enforcement of the rental permit program codified at Section 17-4(t) of the Newark Code;

(c) Declaring that the City of Newark, through the aforesaid rental permit fees, has charged and collected an unauthorized, unconstitutional, and unlawful tax from the Plaintiffs and the Class from 2005-2009;

(d) Declaring that each of the members of the Class is entitled to a full refund of all payments unlawfully charged to and collected by the City from the members of the Class from 2005 through the conclusion of this litigation;

(e) Issuing an injunction enjoining the Defendant from further charging and collecting annual rental permit fees at the current level of \$300 per dwelling unit in a single-family or two-family dwelling; \$70 per dwelling unit in a multi-family (i.e., more than two-family) dwelling or owner-occupied rooming/boarding house; and \$300 to \$2,100 per fraternity/sorority house, pursuant to Section 17-4(t) of the Newark Code;


(f) Ordering an accounting of the aggregate rental permit fees collected by the City of Newark, and the actual costs of administering and enforcing the rental permit program codified at Section 17-4(t) of the Newark Code;

(g) Directing that Defendant refund to the Plaintiffs, and all other members of the Class, all unlawful rental permit fees collected by the Defendant over the past four (4) years, with interest as allowed by law;

(h) Awarding Plaintiffs the costs of this action, including the fees and expenses of Plaintiffs' attorneys and experts; and

(i) Granting such other or further relief as the Court may deem just and proper.

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