

EXPLANATORY STATEMENT - HOTEL ORDER #41

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2011-12 Lease Increase Allowances for Hotels Under the Jurisdiction of the Rent Stabilization Law

Explanatory Statement and Findings of the Rent Guidelines Board Concerning Increase Allowances for Hotel Units Under the Jurisdiction of the Rent Stabilization Law, Pursuant to Hotel Order Number 41, Effective October 1, 2011 through and including September 30, 2012.¹

Pursuant to the authority vested in it by the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974, implemented by Resolution Number 276 of 1974 of the New York City Council, and extended by Chapter 97 of the Laws of 2011, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 41, adopted on June 27, 2011, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 41 provides for an allowable increase of **3%** over the lawful rent actually charged and paid on September 30, 2011 for rooming houses, lodging houses, Class B hotels, single room occupancy buildings, and Class A residential hotels. The Order does not limit rental levels for commercial space, non-rent stabilized residential units, or transient units in hotel stabilized buildings during the guideline period. The Order also provides that for any dwelling unit in a hotel stabilized building which is voluntarily vacated by the tenant thereof, the level of rent increase governing a new tenancy shall be the same as the guideline for rent increases set forth above.

Rooming house, lodging house, Class B hotel, single room occupancy building, and Class A residential hotel owners shall not be entitled to any of the above rent adjustments, and shall receive a **0% percent adjustment** if permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than **85%** of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

The following outlines the Rent Guidelines Board's intent of the above proviso:

The Board's intention for the meaning of this proviso is that ALL dwelling units in the hotel, whether occupied, vacant, rented to tourists, transients, contract clients, students or other non-permanent tenants, or to permanent rent stabilized tenants, be counted in the denominator of the calculation. The only type of units in the hotel that may be excluded from the denominator are units that are used as stores or for similar business purposes such as doctor's offices. The numerator of the calculation is the number of units occupied by permanent rent stabilized or rent controlled tenants.

Here are two examples. One: a hotel has 100 units and 2 stores. 32 units are rented to permanent rent stabilized tenants, 10 are vacant and 58 are rented to transients and tourists. The calculation is as follows, the denominator is 100 and the numerator is 32. This

¹ This Explanatory Statement explains the actions taken by the Board on individual points and reflects the general views of those voting in the majority. It is not meant to summarize all viewpoints expressed.

calculation results in an occupancy percentage of LESS than 85% under the formula (32%) and an increase CANNOT be taken for the permanent stabilized tenants.

Two: a hotel has 150 units, 2 of which are used by a dentist and a doctor for their businesses, 8 are rented to tourists, 5 are vacant and 135 are occupied by permanent rent stabilized tenants. The denominator would be 148 and the numerator would be 135. This calculation results in an occupancy percentage of GREATER than 85% under the formula (91%) and an increase CAN be taken for the permanent stabilized tenants.

DEFINITIONS

For the purpose of determining the appropriate classification of a hotel stabilized unit, the Board has set its definitions as follows:

- ∞ Residential hotels are “apartment hotels” which are designated as Class A multiple dwellings on the Certificate of Occupancy.
- ∞ Rooming houses are Class B multiple dwellings having fewer than thirty sleeping rooms as defined in Section 4(13) of the multiple dwelling law.
- ∞ A single room occupancy building is a Class A multiple dwelling which is either used in whole or in part for single room occupancy or as a furnished room house, pursuant to Section 248 of the multiple dwelling law.
- ∞ A Class B hotel is a hotel, which carries a Class B Certificate of Occupancy and contains units subject to rent stabilization.
- ∞ Lodging houses are those buildings designated as lodging houses on the Certificate of Occupancy.

BACKGROUND

Public meetings of the Board were held on March 15 and 31, April 14 and 28, and June 2, 2011 following public notices. On May 3, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Two public hearings were held on June 16 and June 20, 2011 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 4:30 p.m. to 7:50 p.m. on June 16 and from 10:00 a.m. to 7:30 p.m. on June 20. The Board heard testimony from approximately 10 hotel tenants and tenant representatives, one hotel owner, and one public official. In addition, the Board’s office received approximately three written statements from two tenants and a public official. On June 27, 2011, the guidelines set forth in Hotel Order Number 41 were adopted.

Selected Oral and Written Testimony from Tenants and Tenant Groups:

- “SRO landlords continue to reap good profits from this housing stock by renting to commercial hotel guests (tourists), or renting rooms to government agencies or universities as temporary housing and – they do not rely on permanent (rent-stabilized) tenants for their financial profit or survival.”
- “There is a well established relationship between the loss of affordable SRO housing and increased homelessness. Over the last two decades, tens of thousands of SRO units have been converted to other uses. Rents for the remaining units have increased dramatically while the cheapest units – those renting for less than the public assistance shelter allowance – have disappeared. The City has been left scrambling to find solutions to “all-time record high” levels of homelessness.”
- “Rents have tended to rise in years in which no guidelines increases were granted as well as years when allowable increases were high. For many years, now, *no* residential hotel or SRO has been renting on a regular basis to new permanent tenants at anything approaching a rent that is affordable for the HVS-defined average SRO tenant. Their incomes now come overwhelmingly from daily rentals at rates of \$100 per day or more. Landlords also often charge hostel rates to rent bunk beds, at \$50-\$80 per bed with multiple bunk beds in one unit, pulling in upwards of \$200 a night for one unit.”
- “If the Rent Guidelines Board has to give rent increases it should be to landlords who derive the majority of their building income from permanent rent stabilized SRO tenants, apartment hotel tenants and/or rooming house tenants. The Board should institute a proviso that would address that.”
- “Our office, and the people who work with us, we are advocating for 0% across the board increase for SROs. Provisos are very difficult to enforce because it is impossible for us to know what percent of the units in those buildings are actually regulated tenants. And overwhelmingly, the people I work with, their buildings are being used for tourism, and for City placements, which are very high rents.”
- “It is difficult to adequately describe the effect that even small rent increases have on SRO tenants. The majority of SRO tenants live below the poverty line. They pay an unconscionable percentage of the little income they have toward rent. Since the mid-1990s, SRO tenants’ rent burdens have actually increased as rent increases have far outstripped income growth. The average SRO tenant now pays around 50% of his/her income toward rent; and approximately one-quarter to one-third pay in excess of 70%.”

Selected Oral and Written Testimony from Owners and Owner Groups:

- “An SRO does not only have to keep the building in good shape, you have to keep the building clean, you have bathrooms to clean, we have to hire people to clean bathrooms, kitchens, and often we also pay for the utilities for the tenants. So, we need at least a 6% increase this year. And we need at least the same increase every year as the rent stabilized apartments get.”

– “If you have a large hotel that’s subsidized by both the city and by tax incentives, you have commercial units and it’s a non-profit organization, they’re fine. But we’re not. We need the rent increases.”

Selected Oral and Written Testimony from Public Officials:

– “I am here today to request that the members of the Rent Guidelines Board **freeze increases for all regulated rental units**, including Class A Hotels, Single Room Occupancy Buildings, and Rooming Houses.”

– “The proviso that exempts certain SROs and residential hotels from rent increases should continue because so few permanent tenants live in them; in many cases, the Department of Homeless Services, non-profits, colleges, and long term hotel guests in the units are giving the owners the necessary profits.”

– “The severity of the current economic crisis is almost unprecedented. It is not, however, a crisis in landlord costs. It is a crisis of joblessness, and lost income, and escalating health care costs that have driven tens of thousands of New Yorkers from their homes....The Board cannot act in a vacuum; it must recognize the catastrophic human cost, and enormous financial costs to the city, of supporting housing policies that are driving people into the streets.”

MATERIAL CONSIDERED BY THE BOARD

In addition to oral and written testimony presented at its public hearing, the Board’s decision is based upon material gathered from the *2011 Price Index of Operating Costs*, prepared by the staff of the Rent Guidelines Board, reports and testimony submitted by owner and tenant groups relating to the hotel sector, and reports submitted by public agencies. The Board heard and received written testimony from invited guest speakers on April 28, 2011. Guest speakers representing hotel tenants included Anderson Fils-Aime from the Goddard-Riverside Community Center’s West Side SRO Law Project, Jonathan Burke from the East Side SRO Law Project of MFY Legal Services, and Larry Wood from the Goddard Riverside Community Center. There were no guest speakers representing hotel landlords at this meeting.

FINDINGS OF THE RENT GUIDELINES BOARD

RENT GUIDELINES BOARD RESEARCH

The Rent Guidelines Board based its determination on its consideration of the oral and written testimony noted above, as well as upon its consideration of statistical information prepared by the RGB staff set forth in these findings and the following reports:

- (1) *2011 Mortgage Survey Report*, March 2011 (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);

- (2) *2011 Income and Affordability Study*, March 2011 (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
- (3) *2011 Price Index of Operating Costs*, April 2011 (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);
- (4) *2011 Housing Supply Report*, June 2011 (Includes information on the conversion of Hotels to luxury apartments and transient use, new housing construction measured by certificates of occupancy in new buildings and units authorized by new building permits, tax abatement and exemption programs, and cooperative and condominium conversion and construction activities in New York City); and,
- (5) *Changes to the Rent Stabilized Housing Stock in NYC in 2010*, June 2011 (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The five reports listed above may be found in their entirety on the RGB's website, www.housingnyc.com, and are also available at the RGB offices, 51 Chambers St., Suite 202, New York, NY upon request.

Price Index of Operating Costs for Rent Stabilized Hotel Units

The Hotel Price Index includes separate indices for each of three categories of rent stabilized hotels (due to their dissimilar operating cost profiles) and a general index for all stabilized Hotels. The three categories of hotels are: 1) "traditional" hotels — a multiple dwelling which has amenities such as a front desk, maid or linen services; 2) Rooming Houses — a multiple dwelling other than a hotel with thirty or fewer sleeping rooms; and 3) single room occupancy hotels (SROs) — a multiple dwelling in which one or two persons reside separately and independently of other occupants in a single room.

The Price Index for all stabilized Hotels rose 7.6% this year, nearly double the increase of 3.9% witnessed the year before. The Price Index for Hotels was 1.5 percentage points higher than the increase in costs measured in the Apartment Price Index. Significant disparities between the Hotel Index and the Apartment Index were seen in the Tax and Utilities components. Taxes for Hotels (8.5%) increased at a higher pace than the increase for apartments (3.5%). In contrast, the increase in Utilities for all types of Hotels was 5.0%, versus the higher rise of 7.7% in apartment buildings. This difference was due to a double-digit increase in water and sewer costs having more weight in the Apartment Index.

In addition to the rise in costs mentioned above, increases were seen in six out of the seven remaining Hotel cost components. The largest increase in costs occurred in the Fuel component, which increased 22.5%. More moderate increases were witnessed in Labor (3.2%), Administrative Costs (3.1%) and Contractor Services (2.0%) components. The Parts and Supplies and Replacement Costs components, which carry very little weight in the Hotel Index, saw increases of 2.1% and 1.6%, respectively. Unlike the rise in cost of other Hotel components, Insurance Costs declined 0.4%.

Among the different categories of Hotels, the index for “traditional” hotels increased 10.4%, which was higher than increases for both Rooming Houses (7.5%) and SROs (7.1%). The differences between these indices are due to the increased weight and more rapid increase in costs in the Tax component for “traditional” hotels.

**Percent Change in the Components of the Price Index of Operating Costs
March 2010 to March 2011, By Hotel Type and All Hotels**

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	1.1581	1.0645	1.0427	1.0850
205-206, 208-216	LABOR COSTS	1.0306	1.0329	1.0338	1.0322
301-303	FUEL	1.2215	1.1973	1.2554	1.2252
401-407, 409-410	UTILITIES	1.0458	1.0897	1.0384	1.0499
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0198	1.0208	1.0188	1.0198
601-608	ADMINISTRATIVE COSTS	1.0320	1.0261	1.0288	1.0305
701	INSURANCE COSTS	0.9964	0.9964	0.9964	0.9964
801-816	PARTS AND SUPPLIES	1.0110	1.0421	1.0325	1.0209
901-904, 907-911	REPLACEMENT COSTS	1.0155	1.0160	1.0160	1.0157
	ALL ITEMS	1.1041	1.0754	1.0708	1.0760

Source: 2011 Price Index of Operating Costs

CHANGES IN HOUSING AFFORDABILITY

New York City’s economy remained fairly stable during 2010 as compared with the preceding year, with most economic indicators only marginally negative, including barely rising unemployment rates and homeless levels, and some positive, such as increasing Gross City Product and employment levels. Negative indicators include Citywide unemployment rates increasing to 9.5% during 2010, a 0.2 percentage point increase from the prior year. In addition, cash assistance levels increased for only the third time since at least 1994, increasing by 1.0% between 2009 and 2010. The number of food stamp recipients is also on the rise, increasing for the eighth consecutive year, by 14.9% in 2010. Homelessness levels also rose marginally, increasing to an average of just over 36,000 persons a night, a 0.7% increase.

More positive indicators include the annual measure of Gross City Product, which increased in real terms by 1.6% in 2010, including quarterly increases seen in every quarter since the fourth of 2009. In addition, employment levels grew, increasing 0.4% in 2010, and inflation-adjusted wages increased 3.5% during the most recent 12-month period (the fourth quarter of 2009 through the third quarter of 2010). There was also a 3.0% decrease in evictions, despite the number of “calendered” non-payment filings in Housing Court rising 3.4%.

The most recent numbers suggest that the economy improved more rapidly in the latter part of last year, with homeless levels down in both the third and fourth quarters of 2010, GCP increasing almost 4% in the fourth quarter, and public assistance levels falling 0.7% in the fourth quarter. Food stamp levels, which have been rising rapidly in recent years, also grew at a slower pace as the year progressed, rising by 20% in the first quarter of 2010, but by less than 11% in the fourth quarter. Citywide unemployment rates were also down in every month from June of 2010 through February of 2011, as compared with same months of the prior year. Employment levels also rose in the second, third, and fourth quarters of 2010, including a high of 1.3% growth during the fourth quarter.

CONSUMER PRICE INDEX

The Board reviewed the Consumer Price Index. The table that follows shows the percentage change for the NY-Northeastern NJ Metropolitan area since 2003.

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2003-2011 (For "All Urban Consumers")									
	2003	2004	2005	2006	2007	2008	2009	2010	2011
1st Quarter Avg. ²	3.2%	2.8%	4.1%	3.4%	2.9%	3.7%	1.3%	2.1%	2.0%
Yearly Avg.	3.1%	3.5%	3.9%	3.8%	2.8%	3.9%	0.4%	1.7%	-

Source: U.S. Bureau of Labor Statistics.

EFFECTIVE RATES OF INTEREST

The Board took into account current mortgage interest rates and the availability of financing and refinancing. It reviewed the staff's *2011 Mortgage Survey Report* of lending institutions. The table below gives the reported rate and points for the past ten years as reported by the *Mortgage Survey*.

2011 Mortgage Survey ³ Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 2002-2011										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Avg. Rates	7.4%	6.2%	5.8%	5.5%	6.3%	6.3%	5.8%	6.5%	6.3%	5.8%
Avg. Points	0.79	0.81	0.67	0.56	0.44	0.61	0.47	0.62	0.79	0.61
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Avg. Rates	7.4%	6.2%	5.7%	5.5%	6.3%	6.2%	5.8%	6.5%	6.3%	5.7%
Avg. Points	0.83	0.78	0.60	0.56	0.44	0.61	0.44	0.62	0.83	0.61

Source: 2002–2011 Annual Mortgage Surveys, RGB.

HOTEL CONVERSION

Conversion of single room occupancy (SRO) buildings also continued over the past year. SRO owners may convert SRO housing to other uses after obtaining a "Certificate of No Harassment" from HPD. Certificates are down for the sixth consecutive year, falling to 107 in 2010, down from 117 in 2009, and more than 200 in each year from 2004-2006. Efforts are also underway to ensure that SROs are used for permanent housing rather than as transient hotels. As of May 1, 2011, laws were newly passed strengthening the City's ability to crack down on housing being used illegally for transient occupancy. Transient occupancy is now clearly defined as stays of less than 30 days, and in just the first two weeks after passage of the new laws, 15 locations were issued fines and/or full or partial vacate orders.

² 1st Quarter Average refers to the change of the CPI average of the first three months of one year to the average of the first three months of the following year.

³ Institutions were asked to provide information on their "typical" loan to rent stabilized buildings. Data for each variable in any particular year and from year to year may be based upon responses from a different number of institutions.

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 41 was as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
Guidelines for Hotels	6	3	-

Dated: June 28, 2011

Filed with the City Clerk: June 30, 2011

Jonathan L. Kimmel
Chair
NYC Rent Guidelines Board

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