

EXPLANATORY STATEMENT - HOTEL ORDER #40
Explanatory Statement and Findings of the Rent Guidelines Board
In Relation to 2010-II 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 40, Effective October 1, 2010 through and including September 30, 2011.¹

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 82 of the Laws of 2003, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 40, adopted on June 24, 2010, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 40 provides for an allowable increase of **0%** over the lawful rent actually charged and paid on September 30, 2010 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.

SPECIAL NOTE

In the past the Board has adopted rent increases to the rent stabilized hotel universe. In recent years, when increases were granted, the Board adopted provisos that were designed to deny owners from taking these increases under certain conditions. Since the Board voted a 0% increase for all classifications of rent stabilized hotels, this proviso is not included in Hotel Order 40. In event that increases are considered for subsequent Hotel Orders, at such time the current members of the Rent Guidelines Board urge future Boards to consider reinstating this proviso or some form thereof. Below is the proviso and explanatory language previously adopted in Hotel Order 38:

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:

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.

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 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 23, April 16, 27 and 30, and June 3, 2010 following public notices. On May 5, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Two public hearings were held on June 15 and June 17, 2010 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 4:00 p.m. to 8:00 p.m. on June 15 and from 10:00 a.m. to 7:15 p.m. on June 17. The Board heard testimony from approximately 13 hotel tenants and tenant representatives, no hotel owners, and one public official. In addition, the Board's office received approximately two written statements from a tenant and a public official. On June 24, 2010, the guidelines set forth in Hotel Order Number 40 were adopted.

Selected Oral and Written Testimony from Tenants and Tenant Groups:

– “I am here today because if those living in SROs find it unaffordable to continue living there due to RGB increases, they will become homeless. I am here to explain why anything other than a 0% increase for SRO tenants is unacceptable as it will add to an already burgeoning homeless population.”

– “In contrast to Hotel owners, the permanent tenants **do rely on affordable rents for their survival**. SRO tenants are generally on fixed incomes or struggle at subsistence level jobs, including waiters, messengers and vendors, and rent increases will result in major financial hardships or homelessness for many of them...Additionally, the RGB should protect the dwindling number of tenants who rely on this source of housing for their homes. Should the rents escalate beyond their means, they will certainly become homeless as this is truly housing of last resort.”

– “These owners continue to reap profits from this housing stock by deriving the bulk of their income from commercial hotel guests and city placements – **they do not rely on permanent tenants for their financial profit or survival**. SRO owners continue to make new and very lucrative use of their properties, while housing an ever-shrinking number of permanent tenants.”

– “SRO tenants, already one of the poorest, most marginalized populations in the city, have been hurt badly by the downturn. On the other side, all available evidence indicates that owners continue to realize significant profits from their SRO properties. While a rent increase may marginally increase owners' profits, it will take desperately needed income away from a poor population that cannot afford additional expenses.”

– “...The SRO owners are not coming down here and making the case that they need the guideline increase because we really think it's largely immaterial to the economics of them running their buildings.”

– “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%.”

– “When landlords argue that ‘everyone is struggling’ they choose to ignore the fact that not everyone is struggling to nearly the same degree, and that the struggle of the many is the

direct result of the privilege endowed to a few. The very least this board can do is to vote for a 0% increase for all tenants, including SRO units. While SRO tenants struggle to defend and protect their ability to live in this city, landlords “struggle” to make a larger profit. It is clear to me which struggle is the more difficult and unjust struggle, and I hope you can see this too.”

Selected Oral and Written Testimony from Owners and Owner Groups:

– “Our members are looking to you for relief in a very difficult economy. Please be aware that our stabilization members (for the most part) are hard working people, who provide a unique service for tenants who because of circumstances, find themselves with a need for such living conditions provided by the SRO.”

– “Many buildings provide services such as furniture, utilities, security, linens, switchboards and other telephone services, some provide air-conditioning, etc. These owners are responsible for the upkeep of these services and even though costs of these services have risen dramatically since they initiated them, the increases afforded them in the last 10-15 years have certainly not kept up with their costs. Please remember that these properties are not allowed to suspend services that they provided initially and must continue to bear the raises, which in some cases are unbearable. ”

– “Many owners were unable to keep up and have left their buildings and the City. We are discussing TAX PAYING citizens who provided tenants with affordable housing for many years. These buildings are disappearing and those remaining are in jeopardy. They need your assistance and recognition...Please don't allow these properties to go by the wayside. Without help, they surely will.”

Selected Oral and Written Testimony from Public Officials:

– “**Another major concern I share with my constituents is the operation and proliferation of illegal hotels.** In Manhattan alone, almost **300** buildings are currently operating as illegal hotels. Surely the Board realizes that these illegal practices have converted as many as 10,000 rent-stabilized units into hotel rooms for tourists and corporate interests that charge hundreds of dollars per night for rooms in which New Yorkers once lived before being evicted or paid to leave. ”

– “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 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. Is the Board aware that we have a **34%** increase in homelessness rates of New York City families and individuals from a year ago? It is thus hard to believe that the Board would support rent increases for an unthreatened population of landlords, while ensuring that thousands more tenants are forced from their homes.”

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 *2010 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 30, 2010. Guest speakers representing hotel tenants included Susanna Blankley 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 but Helen Maurizio, Executive Director of the Associated Hotels and Motels of Greater New York, submitted written testimony.

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) *2010 Mortgage Survey Report*, March 2010 (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);
- (2) *2010 Income and Affordability Study*, April 2010 (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
- (3) *2010 Price Index of Operating Costs*, April 2010 (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);
- (4) *2010 Housing Supply Report*, June 2010 (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 2009*, June 2010 (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 front desk, maid or linen service; 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 occupy a single room residing separately and independently of other occupants.

The Price Index for all stabilized Hotels increased 3.9% this year, more than the rise of 3.5% witnessed the year before. The Price Index for Hotels was 0.5 percentage points higher overall 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 Utilities and Tax components. The decrease in Utilities for all types of Hotels was 5.2% versus 1.7% in apartment buildings. This difference was due to a double-digit increase in water and sewer costs having more weight in the Apartment Index, and declining electricity costs having more weight in the Hotel Index. In addition, Taxes increased 13.5% for Hotels versus the 10.1% increase for apartments. These disparities resulted in a Hotel Index that was higher than that for apartments.

In addition to the changes above, Fuel declined 0.8% for hotels but increased 0.5% for apartments. Similarly, Parts and Supplies decreased 0.3% for hotels but increased 1.7% in the Apartment Index. Prices and costs in all other components in the Hotel Index had similar changes in rates to the same components in the Apartment Index. See the table on this page for changes in costs and prices for all rent stabilized hotels from 2009-10.

Among the different categories of Hotels, the index for “traditional” hotels increased 4.9%, which was higher than increases for both Rooming Houses (2.2%) and SROs (3.2%). The differences between these indices are primarily due to the increased weight placed on the Tax component for “traditional” hotels. Furthermore, there were disparities among the three hotel types in Fuel and Utilities. The Hotel and Rooming House indices showed a decrease in the cost for both of these components while the SRO Index witnessed a decrease in Utilities but an increase in Fuel.

Percent Change in the Components of the Price Index of Operating Costs May 2009 to March 2010, By Hotel Type and All Hotels

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	1.1293	1.1332	1.1405	1.1351
205-206, 208-216	LABOR COSTS	1.0293	1.0110	1.0193	1.0253
301-303	FUEL	0.9826	0.9226	1.0793	0.9923
401-407, 409-410	UTILITIES	0.9590	0.9598	0.9110	0.9481
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0326	1.0291	1.0301	1.0315
601-608	ADMINISTRATIVE COSTS	1.0387	1.0347	1.0371	1.0378
701	INSURANCE COSTS	0.9798	0.9798	0.9798	0.9798
801-816	PARTS AND SUPPLIES	0.9879	1.0122	1.0109	0.9969
901-904, 907-911	REPLACEMENT COSTS	1.0227	1.0189	1.0186	1.0213
	ALL ITEMS	1.0494	1.0221	1.0315	1.0395

Source: 2010 Price Index of Operating Costs

CHANGES IN HOUSING AFFORDABILITY

For the third consecutive year, New York City's economy did not generally improve as compared with the preceding year, with mostly negative economic indicators, including rising unemployment rates and homeless levels, and falling Gross City Product and employment levels. Citywide unemployment rates (on an annual basis) increased to 9.5% during 2009, a 4.1 percentage point increase from the prior year. And the annual measure of Gross City Product fell for the first time since 2003, declining by 3.0%, despite growth in the fourth quarter. In addition, cash assistance levels increased for only the second time since 1995, increasing by 1.5% between 2008 and 2009. The number of food stamp recipients is also on the rise, with rates increasing 20.0% in 2009. There was also a 7.5% increase in evictions, the largest proportional rise since 2002, and both non-payment filings in Housing Court and cases "calendared" both rose 2.3%. Homeless levels also rose, increasing to an average of almost 36,000 persons a night, a 7.0% increase. In addition, employment levels fell, decreasing 2.8% in 2009, and real wages in 2008 (the latest available annual data) fell 3.4%, and fell 2.3% during the third quarter of 2009 (the latest quarterly data).

As the economy struggled, inflation remained at historically low levels in New York. Costs rose on average just 0.4% in 2009, the lowest rate of inflation since the deflation of 1955. Gross City Product also increased during the fourth quarter of 2009, rising 0.9%, the first quarterly increase in real terms since the fourth quarter of 2007. Homeless levels also decreased slightly in both November and December of 2009 as compared to the prior month. And non-payment filings in Housing Court dropped 4.5% in the fourth quarter of 2009 as compared with the same quarter in 2008.

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 2002.

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2002-2010 (For "All Urban Consumers")									
	2002	2003	2004	2005	2006	2007	2008	2009	2010
1st Quarter Avg. ²	2.3%	3.2%	2.8%	4.1%	3.4%	2.9%	3.7%	1.3%	2.1%
Yearly Avg.	2.6%	3.1%	3.5%	3.9%	3.8%	2.8%	3.9%	0.4%	-

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 *2010 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*.

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.

2010 Mortgage Survey³										
Average Interest Rates and Points for										
New and Refinanced Permanent Mortgage Loans 2001-2010										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Avg. Rates	8.4%	7.4%	6.2%	5.8%	5.5%	6.3%	6.3%	5.8%	6.5%	6.3%
Avg. Points	0.99	0.79	0.81	0.67	0.56	0.44	0.61	0.47	0.62	0.79
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Avg. Rates	8.0%	7.4%	6.2%	5.7%	5.5%	6.3%	6.2%	5.8%	6.5%	6.3%
Avg. Points	1.06	0.83	0.78	0.60	0.56	0.44	0.61	0.44	0.62	0.83

Source: 2001–2010 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 fifth consecutive year, falling to 117 in 2009, down from 127 in 2008 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. A bill introduced to the State Legislature earlier this year, and backed by Mayor Bloomberg, would close a loophole in the existing law and require owners of SROs to rent only to permanent tenants who intend to stay more than 30 days.

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 40 was as follows:

	Yes	No	Abstentions
Guidelines for Hotels	7	2	-

Dated: June 24, 2010

Filed with the City Clerk: June 30, 2010

Jonathan L. Kimmel
Chair
NYC Rent Guidelines Board

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.

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