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High Income Deregulation

Between July 7, 1993 and June 13, 2019, rent stabilized apartments could be deregulated once both the monthly rent of an occupied apartment, as well as the household income of the current tenant, surpassed a specified limit (this limit varied depending on the various Rent Acts in effect at the time of deregulation). Such deregulation is now prohibited, effective with the passage of the Housing Stability and Tenant Protection Act of 2019 on June 14, 2019.

DUTIES OF THE RENT GUIDELINES BOARD

Establishment of basic rent adjustments for renewal leases: Apartments, Hotels and Lofts

The one decision of the Rent Guidelines Board that has, by far, the greatest impact on owners and tenants is the annual establishment of lease renewal guidelines. These guidelines traditionally include a percentage increase in the monthly contract rent. For example a 2% increase in the monthly rent for a one-year lease renewal. In some years, the Board has also included a minimum rent increase in the form of a fixed dollar adjustment. For example, a 2% increase or \$20, whichever is greater, for a one-year lease renewal. Historically, past boards have included other forms of increase, i.e. a supplemental rental adjustment and minimum rents. These increases are discussed in detail below.

Since 1983 tenants have had the option of choosing between one- and two-year renewal leases.¹³³ An estimated 90% of all stabilized tenants have a renewal lease, and 10% move or 'turn over,' each year. Just over 50% of all stabilized tenants with leases regularly sign one-year leases, leaving just under 50% of tenants who sign two-year leases. Approximately half of those choosing two-year leases remain unaffected by any given guideline - being in the second year of a two-year lease signed under the previous guideline.¹³⁴ Consequently, about 68% of the approximately one million rent stabilized households are directly affected by the adoption of any single set of annual renewal guidelines.

The economic impact of these guidelines on the City's housing stock is significant. Given 2017 rent levels (as estimated by the last HVS survey), any 1% increase in average

¹³³ Prior to the enactment of the Omnibus Housing Act of 1983 tenants were given the additional option of choosing three year leases.

¹³⁴ See note 17 following Table 7 in the Explanatory Statement for Apartments (Appendix N1) for further explanation of these estimates.

rents raises aggregate rent rolls by about \$158 million dollars per year. The estimated impact of RGB renewal lease guidelines in the time period since the HVS was conducted (RGB Guidelines Orders #49, #50, and #51) amounted to approximately \$639 million in cumulative added rent – an average of about \$688 per year in total added rent per rent stabilized household.¹³⁵

Two major caveats are in order. First, not all of the increases authorized by the Board are collectible. Increases in renewal guidelines may not be passed on to tenants who occupy one of the growing number of units renting at market – particularly outside of Manhattan. The second major caveat (which may more than countervail the first) is that the impact of administrative rent adjustments authorized by the Division of Housing and Community Renewal is largely unknown. The effect of thousands of major capital improvement and individual apartment improvement rent increases is not and cannot presently be measured in the rent index prepared by the RGB staff each year. Therefore, these increases are not reflected in the above estimates.

The vast majority (about one million) of tenant households affected by these guidelines are **apartment** dwellers. A small number of rent stabilized tenants (this figure is difficult to estimate) fall within the hotel stabilized group. The number of stabilized hotel units has declined dramatically in recent years as a result of building demolitions and conversions and from an increase in transient (and thus unregulated) hotel rentals.

The Board reviews the economics of hotel buildings separately from apartments pursuant to §26-510(e) of the RSL (included as part of Appendix A). It also holds hearings for hotels and adopts separate hotel orders. These orders have historically differed significantly from those given for apartments and lofts. While one-year renewal increases for apartments and lofts averaged around 3% between 1996 -2000, increases for the hotel sector averaged about 1% over the same period. More than half of the guidelines for Hotels have been 0% since then.

A sound estimate of the number of **loft** units currently affected by the Board’s loft guidelines pursuant to §286 of the Multiple Dwelling Law is difficult to calculate.¹³⁶ As these units are “legalized” and move from interim multiple dwelling status to class “A” multiple dwellings some may be deregulated while others may fall under apartment rent stabilization.

While the Rent Guidelines Board does conduct an independent review of the economics of loft buildings, because of significant similarities with apartments in operating

¹³⁵ This is the cumulative effect of the last two rent indices, absent the estimated impact of vacancy increases (which are part of the published RGB rent indices). Estimated rent increases were not applied to the estimated number of apartments (per the 2017 HVS) that are vacant or do not have a cash rent.

¹³⁶ A copy of §286 of the Multiple Dwelling Law is contained in Appendix L.

cost changes over the years the Board's loft orders have generally paralleled its apartment orders, but are usually lower. Since 2009, loft orders have equaled apartment orders, while in 2008 they were a percentage point lower for one-year leases, and two percentage points lower for two-year leases.

Useful Appendices for Reference:

- A complete **summary of apartment and hotel increases** adopted over the years is contained in Appendices M and M1, respectively.
- A copy of the most recent **apartment guideline order** (also covering lofts) is attached in Appendix N.
- The **explanatory statement** for this order follows in Appendix N1.
- A copy of the most recent **hotel guideline order** is contained in Appendix N2 followed by the order's **explanatory statement** in Appendix N3.

Special Orders

Sublet Allowances

In previous RGB orders, dating back to 1998, the Board has promulgated a special vacancy adjustment for apartments occupied by subtenants, known as the 'sublet allowance.' Section 2525.6(e) of the Rent Stabilization Code provides that "the legal regulated rent payable to the owner effective upon the date of subletting may be increased by the vacancy allowance, if any, provided by the Rent Guidelines Board Order in effect at the commencement of the date of the lease, provided the lease is a renewal lease." However, with passage of the Housing Stability and Tenant Protection Act of 2019, the Board is no longer authorized to promulgate a vacancy allowance. Under Order #50, the Board authorized a 10% sublet allowance, but no allowance was authorized under Order #51.

Supplemental Rent Adjustment

The supplemental rent adjustment is a fixed dollar amount in addition to renewal and vacancy increases which is added to rents the Board has regarded as exceptionally low. This adjustment has been one of the most controversial components of the Board's past rent orders. Owners have strongly urged the continuance of the adjustment to remedy what is viewed as unfairly low rents. Tenant advocates, on the other hand, have regarded it as a "poor tax" upon the hardest hit class of tenants and a cause of homelessness.

As shown in the following chart, the first supplemental adjustment was adopted in 1983 as part of order #15. From 1990 through 1993 no supplemental adjustment was added. In 1994 the Board reinstated the allowance and in 1999 a minimum rent of \$215 was

imposed. In 2000 the Board added \$15 for rents under \$500 and continued the minimum rent provision. There have been no supplemental rent adjustments since Order #32 in 2000.

Table V.

Supplemental Rent Adjustments in RGB Orders 1983-2020

Order Number	Guideline Year	Rent Cut-Off	Supplement	Minimum Rent
15	10/1/83 to 9/30/84	< \$200 per month	\$10	
16	10/1/84 to 9/30/85	< \$250 per month	\$10	
17	10/1/85 to 9/30/86	< \$300 per month	\$15	
18	10/1/86 to 9/30/87	< \$350 per month	\$15	
19	10/1/87 to 9/30/88	< \$325 per month	\$10	
20	10/1/88 to 9/30/89	< \$325 per month	\$5	
21	10/1/89 to 9/30/90	< \$325 per month	\$5	
26*	10/1/94 to 9/30/95	< \$400 per month	\$15	
27	10/1/95 to 9/30/96	< \$400 per month	\$20	
28	10/1/96 to 9/30/97	< \$400 per month	\$20	
29	10/1/97 to 9/30/98	< \$400 per month	\$15	
30	10/1/98 to 9/30/99	< \$450 per month	\$15	
31	10/1/99 to 9/30/00	< \$500 per month	\$15	\$215
32	10/1/00 to 9/30/01	< \$500 per month	\$15	\$215

*Note: There were no supplements in RGB Orders 22 through 25 and 33-51. Source: RGB Orders # 15-51.

However, with passage of the Housing Stability and Tenant Protection Act of 2019, local Rent Guideline Boards cannot establish annual guidelines for rent adjustments based on the current rental cost of a unit or on the amount of time that has elapsed since another rent increase was authorized. Therefore, the Board is now restricted from setting a supplemental rental adjustment.

Special Guidelines and Decontrolled Units

As discussed in the section concerning fair market rent appeals (*supra*, at page 78 to 79) apartments in buildings with six or more units vacated by a rent controlled tenant will fall under rent stabilization. If the first stabilized tenant chooses to challenge the rent, the DHCR will consider the special guidelines adopted by the Board pursuant to §26-513 of the RSL (See Appendix O) in making its determination as to whether the new rent is “fair”. As noted previously, in addition to this advisory guideline the DHCR will permit the owner to submit information on “rents generally prevailing in the same area for substantially similar housing accommodations.” If presented with such information, the current DHCR practice is to average the rent calculated in accordance with the special guideline with the average rent for qualified comparable units.

In establishing the special guidelines, at one time the Board's policy was generally to close the gap between rent controlled rents and rent stabilized rents, the latter often being much higher. From 1974 through 1986 the Board adopted special guidelines that ranged between 15% to 20% above the maximum base rent ("MBR") established under the rent control system. In 1987 the Board took notice of information provided by the most recent Housing and Vacancy Survey which indicated that median rent stabilized rents in pre '47 buildings were approximately 35% above median rent controlled rents. Consequently, the Board increased the special guideline to 35% above the MBR in its 1987 rent orders. The following year tenant representatives argued that since the Board's stated aim for the special guideline was to close the gap between rent controlled and rent stabilized rents, and since the gap reflected in the HVS figures is really a gap between Maximum Collectible Rents¹³⁷ and stabilized rents, the special guideline should be added to the MCR and not the MBR. Acknowledging some value in retaining the MBR as the minimally desired rent, the Board's 1988 and 1989 special guidelines consisted of a 45% increase above the MCR or a 25% increase above the MBR - whichever increase was greater. In 1990 the Board moved to a fixed increase of 35% above the MCR. In 1991, responding to arguments that the MBR is a minimally sufficient rent to run a building, the Board returned to the MBR as an appropriate base from which to calculate adjustments by simply adding 15% to the MBR. This approach was continued in 1992. In 1993 the Board once again returned to the "closing the gap" approach by adding 40% to the MCR.

In later years the Board again added a minimum increase above both the MBR and the MCR. Thus, in 1995 the special guideline consisted of the greater of 35% above the MBR or 45% above the MCR. In 1996 and 1997 the numbers were 40% and 50% respectively. In 1998 the Board increased the special guideline to the greater of 80% above the MBR or a minimum of \$650. In 1999, 2000, and 2001 the Board adopted a complex special guideline consisting of the greater of 150% above the MBR plus the fuel cost adjustment, or the Fair Market Rent for existing housing established by the U.S. Department of Housing and Urban Development. This percentage was lowered to 50% in 2002 (without fuel adjustments), where it remained until 2011, when it was lowered to 30%. It is currently 39%, with no provisions for using the Fair Market Rent in this calculation.

Notably, according to the 2017 Housing and Vacancy Survey, the median rent controlled rent (the "MCR") is \$915, while the median rent stabilized rent is \$1,269 – a 39% difference.¹³⁸ Because the MBR is always equal to or greater than the MCR, the Board's most recent minimum adjustment of 39% above the MBR would raise a typical decontrolled unit to at least \$1,269 per month, equal to the median stabilized rent.

¹³⁷ "MCR" = the amount rent controlled tenants are actually required to pay which may increase by no more than 7.5% per year. The MBR is a rent ceiling which reflects the amount theoretically required to maintain the unit and produce a fair return. The MCR never exceeds the MBR.

¹³⁸ *2017 Housing and Vacancy Survey*

It should be added that the Board's special guideline orders also affect buildings which have been decontrolled pursuant to section 2(f)(15)(c)&(d) [now §2200.2(f)(15)(iii)&(iv)] of the New York City Rent and Eviction Regulations. These sections concern apartments with past rent levels that made them high rent or "luxury" apartments in the mid-1960's. These units may still be decontrolled on a case by case basis pursuant to a court order. While this type of decontrol rarely occurs today, the Board's orders continue to provide protection for newly stabilized tenants who move into one of these previously controlled units. These decontrol guidelines have historically been identical to the special guidelines for rent controlled units which are voluntarily vacated.

Electrical Inclusion Adjustment

Approximately 89% of stabilized tenants pay for their own electricity while some 11% have the cost of electricity included in their rent. If the cost of electricity rises at a faster rate than the average increase in operating and maintenance costs and the Board does not compensate owners for this difference in its rent orders, owners who supply electricity would be at a disadvantage. Similarly, if the price of electricity were falling relative to other expenses, owners who supply electricity would reap a windfall unless the Board adjusted rents accordingly. Recognizing this, the Board has included special adjustments - both up and down - where the rate of increase for electricity costs has not paralleled changes in other costs. These "electrical inclusion adjustments" were common in the mid-1970's to the early-1980's but have not been added to any rent order since 1983 when a one percent reduction for master metered buildings was included in order #15. Master metered buildings are still analyzed separately in the Board's annual review of operating cost changes, however, and there is no indication that electrical inclusion adjustments will not be included in future rent orders.

Buildings with J-51 or 421-a Tax Abatements

As mentioned previously, owners of property completed or substantially rehabilitated after January 1, 1974 may avail themselves of 421-a (new construction) or J-51 (rehabilitation) tax abatements or similar abatements. A condition of entering these programs is acceptance of rent stabilized status for a prescribed period. The period of stabilized status and conditions for deregulation vary by program. Relevant portions of these regulations are attached as Appendix P.¹³⁹

Owners of buildings receiving 421-a benefits may charge initial rents according to a formula that accounts for development costs and operating expenses, and, during the period of gradual diminution of their 421-a tax exemption, may only charge guideline rent increases

¹³⁹ See also RSC 2520.11 (o) &(p).

plus 2.2% of the original rent per annum.¹⁴⁰ Owners of buildings with J-51 tax benefits do not receive this additional 2.2% increase.

Stabilizers

Stabilizers, according to a 1982 staff review, “have been authorized to take into account the yield of rent stabilized buildings relative to other investments and increases in capital costs for such buildings”. They have consisted of separate additional rent increases ranging from 1% to 1/2% in orders 2, 3, 4 & 6c. They have also been explicitly “included” in the standard increases in orders 5,7,8,9,10 & 11. While the stabilizers enacted in these years are incorporated into base rents in accordance with subsequent rent orders, no additional stabilizers have been added in recent years.

Other - Fractional Terms, Escalator Clauses

Although the RSC §2522.5 provides that rent stabilized tenants have a right to choose only a one or two-year renewal lease, under certain rare circumstances a lease term may be a fraction of these periods. If that is the case, the Board’s orders provide that lease terms of up to one year shall be deemed a one-year lease for the purposes of determining the appropriate rent adjustment. Similarly, a lease term of more than one year and up to two years in length is deemed a two-year lease.

Escalator clauses are provisions in lease agreements permitting periodic rent adjustments that are generally fixed or pegged to some economic indicator. Under the RSC §2522.5(e) most escalator clauses are no longer permitted in stabilized leases. According to the Board’s orders, where escalator clauses continue to be permitted, the amount of any increase due under such clause must be offset against the guideline increases.

Exemptions to Orders

Warehousing Exemptions

As far back as 1972, under **hotel** order #3, the Board began adopting orders denying rent increases to owners of hotel buildings that contain a large number of units deliberately withheld from the market. It has long been argued that owners who deliberately deprive themselves of additional rents by withholding units from the market should not be heard to complain that existing rents for the remaining tenants are inadequate to produce a fair return on their investment. This view may be distinguished from attempts to eliminate warehousing on public policy grounds through the imposition of fines or other penalties. The anti-warehousing provisions of recent Board orders are an attempt to distinguish between

¹⁴⁰ See RSC 2522.5(e)(2).

buildings in economic terms and to adopt guidelines accordingly - not to penalize owners who choose to utilize their properties in a manner that some might find offensive.

In 1985, an anti-warehousing provision was added to an **apartment** order for the first time. Order #17 deprived owners of vacancy allowances in buildings of 50 units or more in which more than 10% of units were deliberately withheld from the market. Anti-warehousing provisions have not been retained in the Board's recent apartment orders.

Registration Exemption/Hotels

The stabilization provisions governing hotels are distinct from those governing apartments in one fundamental respect: vacant hotel units may be rented to transient tenants who are generally not protected by the rent stabilization laws.¹⁴¹ Prior to 1983, rents in hotel units that became vacant were allowed to go to market. They were thereafter re-stabilized if the unit became occupied by a permanent tenant. In 1983 the language permitting market rents upon vacancy was deleted. New tenants were not automatically given rent stabilized status under this legislation, however, and are still required to request a lease or reside in the unit for six months before becoming “permanent” (and thus stabilized) tenants. Upon becoming a permanent tenant, the DHCR will require that the rent be rolled back to the level that existed under the last stabilized tenancy, plus any renewal increase. Consequently, the hotel stabilization laws continue to permit several classes of tenants within a single building: those who are long term stabilized tenants, those who are transient tenants and as such pay open market rents, those who reside units with rents which exceeded \$350 per month or \$80 per week on 5/31/68 and thus were never stabilized,¹⁴² and those new tenants who request leases or reside in their unit for six months and thereby become rent stabilized.¹⁴³ It is easy to see that owners have significant incentives to rent only to transient tenants and the Board has received testimony that such practices are commonplace.

Recognizing that owners who reap market rentals from transient tenants may have less of a need for rent increases from other tenants, the Board, in many recent hotel orders, adopted special exemptions for buildings which show limited occupation by rent regulated tenants. Because rent registration data compiled by the DHCR indicates the number of stabilized units and those not stabilized in a given hotel or SRO, the Board uses this ratio to establish the criteria for implementing its “registration exemption”. For instance, the provision (under Hotel Order #41) allowed for no rent increase if fewer than 85% of the residential units in a building are occupied by permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent.

¹⁴¹ Such tenants may have the right to become permanent and thus rent stabilized tenants pursuant to §2522.5(a)(2) of the RSC, as well a right to be notified of the protections afforded by rent stabilization [RSC §2522.5(c)(2)], but these protections may have been thwarted to some extent by the use of “short-stay” agreements and by other actions designed to deprive tenants of legal process (required under NY Admin. Code § 26-521) prior to being locked out.

¹⁴² See RSL §26-506.

¹⁴³ See RSL §26-510(e).

In 1991 the RGB staff compiled data on operating expenses and registration levels in the stabilized hotel sector. As the report indicated, it appeared that at least 40% of the hotel stabilized universe of buildings had never been registered with DHCR. The most severe non-registration problem appears to be with rooming houses in the outer boroughs. In 1992 the staff added to the report by compiling data which indicated, among other things, that the transient problem is largely confined to Class B hotels - where [in hotels registered with the DHCR] an average of only 57% of units were registered as stabilized. Copies of these two staff reports on hotels are included in Appendix Q and Q1.

In addition to the registration exemption, the RGB has refused rent increases to owners who fail to provide new hotel occupants with a copy of the "Rights and Duties of Hotel Owners and Tenants, pursuant to Section 2522.5(c)(2) of the Rent Stabilization Code." Thus, while hotel owners received a 3.0% rent increase under Order #41 (the last such increase), they received a 0% adjustment if they failed to provide this required notice. Among other things, this notice apprises incoming tenants of their right to the protections of rent stabilization.

Resolutions

The Board is often called upon to adopt advisory resolutions with respect to the legislative design or administration of the rent stabilization laws, and has, on occasion adopted such resolutions. In 1992 the Board adopted a resolution calling upon the DHCR to look in to possible violations of the Board's hotel orders. In 1988 the Board adopted two resolutions, one requesting an examination of the process by which hardship increases are granted and a second requesting an examination of a proposal from City Council President Andrew Stein to deny rent increases to owners who have outstanding uncollected judgments for housing code violations. (Corporation Counsel later advised that this latter policy, or any policy linking rent increases to code compliance or energy conservation efforts, may not be within the Board's discretion.) In the summer of 1993 the Board adopted an extensive resolution on distressed properties.

Research and Mandated Considerations

The Rent Stabilization Law sets forth the factors that must be considered by the Board prior to the adoption of rent guidelines. These include:

- (1) the economic condition of the residential real estate industry in N.Y.C. including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates,

- (2) relevant data from the current and projected cost of living indices for the affected area, and
- (3) such other data as may be made available to it.

Economic Condition of the Residential Real Estate Industry

Price Index of Operating Costs Survey

Each year since 1969 the Board has been provided with a Price Index of Operating Costs (also known as the price index or “PIOC”) which approximates the actual changes in gross operating costs for apartment buildings. The PIOC also provides information on actual changes in real estate taxes and sewer and water rates.¹⁴⁴ These price changes are incorporated into a single figure that often becomes a point of departure for consideration of other economic and policy issues relating to the guidelines. Although not controlling, the PIOC is perhaps the most influential figure affecting the final guidelines.

The price index is a relatively complex instrument for estimating the actual costs of operating a rental building. In 1970 the federal Bureau of Labor Statistics constructed a “market basket” of goods that a typical owner is expected to purchase in a given year. The basic components of that market basket include taxes, labor, fuel, utilities, insurance, maintenance and administrative costs. Each item is given a “weight” to gauge its relative importance in the overall basket. Price changes in the various components are gathered through a series of surveys of vendors and reviews of such things as labor and insurance contracts. In the case of taxes, actual changes in tax bills are derived from tax data received from the City's Department of Finance. The price of heating fuel is adjusted to reflect the relative warmth of the year under review, by adjusting for degree-day variation. Each year the weights in the market basket are adjusted to reflect the relative changes in the price of each component. Thus, for example, if labor costs outpace insurance costs, the weight given to labor will be increased before the next survey.

With the exception of taxes, fuel and insurance, the price index is not a measure of **cost** changes.¹⁴⁵ Rather it is a measure of **price** changes. Thus, if an owner experiences fuel savings due to conservation measures such as the installation of thermopane windows, or labor savings by switching from manual to automatic elevators, such gains are not captured in the index. Similarly, if an owner is saddled with new costs such as new permit or filing

¹⁴⁴ From 1969 through 1981 this index was prepared by the Bureau of Labor Statistics. Between 1982 and 1987 the index was prepared by Urban Systems Research and Engineering and in 1988 and 1989 by Abt Associates. In 1990 it was prepared by Speedwell Inc. Since 1991 the index has been prepared by the RGB staff with the assistance of Speedwell Inc. A payment history of the contract is included in Appendix G. Separate price indices are also provided for hotels and lofts.

¹⁴⁵ The prices changes in the fuel component and some fuel-related items are 'cost-weighted,' to account for seasonal usage.

fees, or regulatory obligations such as lead paint removal, these burdens are not captured in the index.

In addition to these limitations, any mechanism for measuring prices may run askew over long periods of time. Thus, periodic “reality checks” through alternative data sources or through a wholesale updating of the weights or the market basket may be needed. In 2000 the Board undertook a review of these various issues by contracting with Dr. Anthony Blackburn, who authored many of the price index reports in the 1980's, to examine the need for updating the index. Dr. Blackburn found that “[t]he PIOC appears to have provided quite accurate estimates of changes in operating costs over the last 17 years, in part because its errors have been offsetting. It also appears that, because of a drift in the expenditure weights, there is now a potential for the PIOC to misestimate future changes in operating costs.” For this reason, Dr. Blackburn recommended various adjustments utilizing alternative income and expense data. A complete copy of his report is annexed hereto in Appendix R.

This “drift in the expenditure weights” predicted by Dr. Blackburn came to fruition in the first decade of the new millennium. Although the PIOC expenditure weights were revised each year, and there had been some changes to expenditure items since 1983, the PIOC no longer represented expenditure patterns that are prevalent today. In fact, the RGB report that measures recent owner-reported expenses, the *Income and Expense Study (I&E)*, shows that increases in overall operating costs had been smaller than those shown by the PIOC in recent years.

In the fall of 2013, the RGB commissioned Dr. James Hudson to study this issue and to offer suggestions on how to use the NYC Department of Finance Real Property Income and Expense (RPIE) data presented in the *RGB Income and Expense Studies* to update the expenditure patterns in the PIOC. The results of Dr. Hudson’s analysis were released in his paper entitled *Comparing the Price Index of Operating Costs (PIOC) and the RGB Income and Expense Study* and were presented to the Board on March 27 of that year and can be found in Appendix S. Dr. Hudson concluded that the main cause of the differences between the PIOC and the I&E is “how owners change their spending in response to changes in prices and the goods and services that are available.” These changes are not captured in the PIOC. He proposed two approaches to address the divergence between these indices:

- Use the most recent I&E to create the component weights for each year’s PIOC. This will connect the PIOC much more closely to what owners have actually been buying so that we can better estimate the overall effect of price changes.
- Annually survey owners about their costs for various items within a single component, to update the item weights and allow development of improved items and specifications. Since this is not necessary for taxes and insurance (which have one item each in their components), it should allow updates of items weights across the PIOC every 5-6 years.

In 2015 Dr. Hudson, with the assistance of the RGB staff, used the expenditure patterns presented in the *2015 Income and Expense (I&E) Study* to update the component weights for the apartment *2015 PIOC*. The I&E provides an analysis of expenses as reported by owners in the Real Property Income and Expense (RPIE) statements (as required by Local Law 63, enacted in 1986). These statements are submitted annually to the NYC Department of Finance and represent reported expenses by building owners with stabilized units, based on the most recent completed calendar year at the time of filing. Going forward, RGB staff will use this annual data to update the PIOC expenditure weights each year, ensuring that future indices will contain current expenditure patterns.

As a result of updating the owners' expenditure patterns, it is important to note that the PIOC now contains seven expense components, instead of the traditional nine components presented in previous PIOC. However, the individual items priced in the PIOC are the same items that were included in previous price indices. Where appropriate, they have simply been allocated to new components. Taxes, Labor Costs and Insurance Costs are the only components that contain the same items as in previous PIOC, and therefore the only components that can be directly compared to previous price indices.

It is also important to note that the update to expenditure patterns is only for the Apartment PIOC. Since staff was unable to obtain sufficient I&E data to update either the PIOC for Lofts or the PIOC for Hotels, the methodology used to calculate the loft and hotel indices is the same as in previous PIOC. However, in order to maintain symmetry between indices, the expense items were aligned to the seven components now used in the Apartments PIOC.

Price Index Projections

In addition to the price index, each year the staff produces a set of price projections for the coming year. These projections are particularly helpful with respect to the renewal guidelines for two-year leases. A complete summary of the projections from 1975 through 2020 including actual changes in the price indices with which to gauge the accuracy of the projections is included in Appendix T.

RGB Rent Index

The price changes measured by the PIOC are also compared to projected changes in rent levels to produce an estimate of the average operating cost to rent ratio ("O&M to rent ratio") in rent stabilized buildings. The staff uses a measure called the RGB Rent Index to estimate the overall impact of the Board's guidelines and the statutory vacancy allowance on rent rolls each year. The one and two-year guideline increases, the mix of lease terms, the supplemental adjustment, the statutory vacancy allowance and the minimum rent are combined to produce the aggregate change in rent levels. A chart of the changes in operating costs from 1969

through 2019 as estimated by the price index, along with the RGB Rent Index over the same period is contained in Appendix U.

A table of the history of the RGB Rent Index, along with a brief explanation, is included in Appendix V.

Income and Expense Study

Much has been said about the accuracy and general value of the annual price index. Owners have charged that it fails to reflect true operating costs and other obligations of ownership while tenants claim that the index methodology is unsound and misleading in the sense that it does not provide data on actual expenditures and profits. While no study of profits has ever been undertaken, access to income and expense statements on file with the New York City Department of Finance has greatly enhanced the Board's understanding of the financial condition of rent stabilized properties. For over two decades, the Board has received detailed summaries of operating costs as well as rental incomes. The Real Property Income and Expense (RPIE) data is analyzed by RGB staff in its annual *Income and Expense Study*. In addition, in the Spring of 1992 the Department of Finance conducted audits on some 46 rent stabilized properties in order to gauge the accuracy of the I&E filings.

The changing relationship between incomes and expenses is an extraordinarily complex matter that draws upon a variety of data sources. A complete history of the income and expense issue was prepared in the spring of 1993 and was published in the 1993 Summary of Research. The full text of the 1993 report is contained in Appendix K1. An update of that memo, analyzing historic changes in the relationship between operating costs and rents is contained in Appendix K. These memos provide a summary of the methodology used to compute O&M costs prior to the inception of the RPIE.

In previous editions of the **Introduction to the NYC Rent Guidelines Board** book, there has been an analysis of the difference between costs and income among both pre- and post-war buildings, that is, buildings constructed before 1947 (“pre-war”) and after 1946 (“post-war”). The sources of this data are annual apartment registrations filed with the NYS Division of Housing and Community Renewal (DHCR) as well as RPIE (Real Property Income and Expense) filings with the NYC Department of Finance. Unfortunately, the growing disparities between these two data sources makes a comparison among post-war buildings incompatible.

Historically, the post-war analysis compared the cost-to-rent ratio for expenses and **contract** rent from 1969 to a current cost-to-income ratio derived from expense and **collected** rent data from RPIE filings for buildings built after 1946. Because one data source relies on contract rents, and the other collected rents, and we need to make a like comparison, monthly I&E rent (which includes vacancy and collection losses) must be adjusted to estimate contract rents. To equate these two numbers, a methodology, which was developed

by the RGB staff in 1999, adjusted the collected rent by the gap between the monthly mean RPIE rent and the monthly mean registered DHCR rent. Although this methodology was sound when first implemented, changes to the recent data since then have made it problematic for us to continue making this comparison. (See Appendix K for a full discussion of this methodology.)

Perhaps the most significant problem is how the rent is reported to DHCR. Owners are now required to report legal rents, actual rents and preferential rents separately. Each of these rents present problems for staff in determining which can be used in the post-war methodology as a proxy for contract rent. While DHCR legal rents are the maximum rent that an owner can charge the tenant, it does not necessarily reflect the actual rent paid by the tenant. The legal rent may be significantly higher than the contract or actual rents paid. Recent owner registration data indicated that approximately 30% of apartment rents registered with DHCR were receiving preferential rents, which by definition is less than the legal amount.¹⁴⁶ This was not the case in 1999. As with legal reported rents, using the actual rent data creates issues as well. The actual rent paid as reported to DHCR represents what the tenant actually **pays**, not what the owner actually **receives** in rent. Therefore, actual rents reported by owners includes those tenants whose rent is partially paid by the government, e.g. a section 8 subsidy. Finally, the reported preferential rent field does not include those tenants who are paying the legal amount. To further complicate the issue, DHCR does not document the year the building was built as a part of the registration requirement, making it impossible to focus solely on rents for buildings built after 1946.

While DHCR rent only includes rent stabilized apartment rents, RPIE rent includes rents from units that have been deregulated that are commanding free market rents. Since 1993, the year owners were allowed to deregulate apartments under certain situations, a significant number of units have been deregulated. Once deregulated, owners can charge market rents. These market rents are included in the RPIE rent because buildings containing both stabilized units and free market units are included in the calculation of this rent figure. In addition, the RPIE data also includes rents from rent controlled apartments. Finally, unlike the DHCR rental data, the RPIE rent does not include data from buildings with 10 units or less because owners of buildings with fewer than 11 units are not required to file under the law.

Although staff can no longer calculate a Post-War cost-to-rent ratio, we can still calculate the Pre-War cost-to-income ratio because the methodology does not include the use of DHCR rents. In the Pre-War stock, the audited cost-to-income ratio decreased by five percentage points from .65 in 1967 to .60 in 2017. In other words, owners of these units (which were subject to rent control at the time) spent 65 cents of each rent dollar on operating costs in 1967. By 2017 they spent an average of 60 cents of each rent dollar on operating

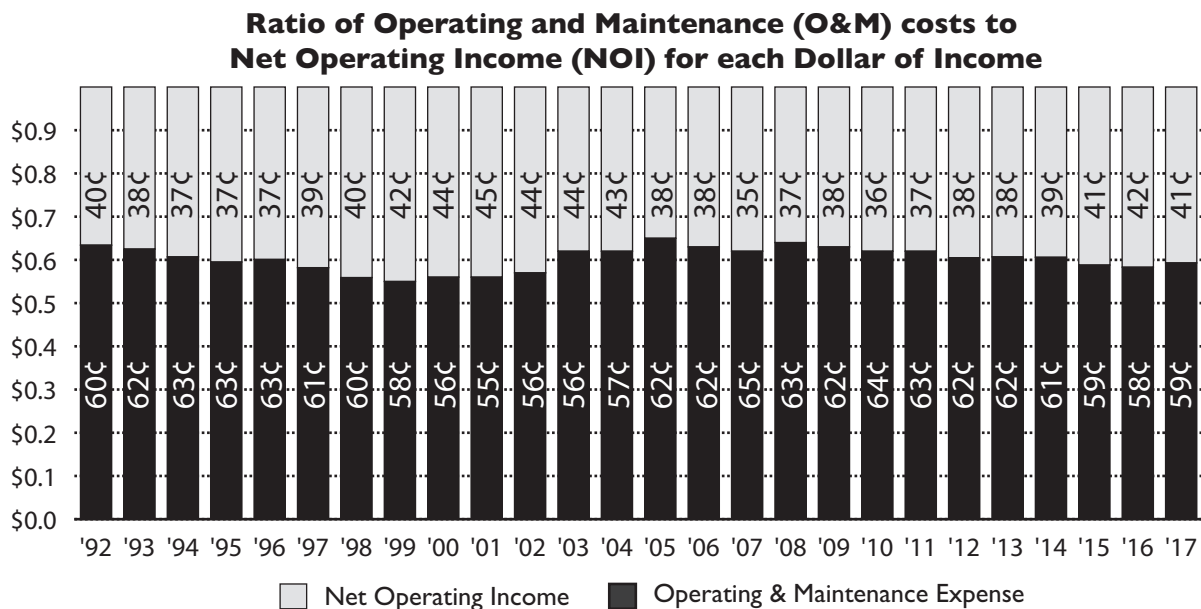
¹⁴⁶ Some of the disparity between legal and preferential rents is due to the 421a tax abatement program, where initial legal rents are often set at market, and if market rents decline, the legal rent can become substantially higher than the preferential rent.

costs. According to the 2017 HVS, 72% of the stabilized units in NYC are located in pre-war buildings.

These are complex issues and many caveats are in order. Board members are advised to consult the complete text of the memo (see Appendix K). When applying the methodology outlined in the memo, the cost of operating a rental building relative to rental income has fallen over four decades of rent stabilization for buildings built prior to 1947. This means that the average net operating incomes for this set of buildings have grown relative to operating costs.

As previously stated, the RGB has had access to owner-reported income and expense data from the Department of Finance RPIE filings for over 25 years. From this data, the RGB staff calculates a cost-to-income ratio. Chart III that follows is derived directly from annual income and expense filings and represents both post-war and pre-war buildings. It shows, for every dollar of stabilized owner income, the average amount spent on expenses in a building and the amount left over for net operating income. In 2017, the cost-to-income ratio for the entire stock of rent stabilized housing was .593, meaning that owners were spending 59.3 cents of every dollar earned on expenses.

Chart III.



Source: RGB Income and Expense Studies, 1993-2019.

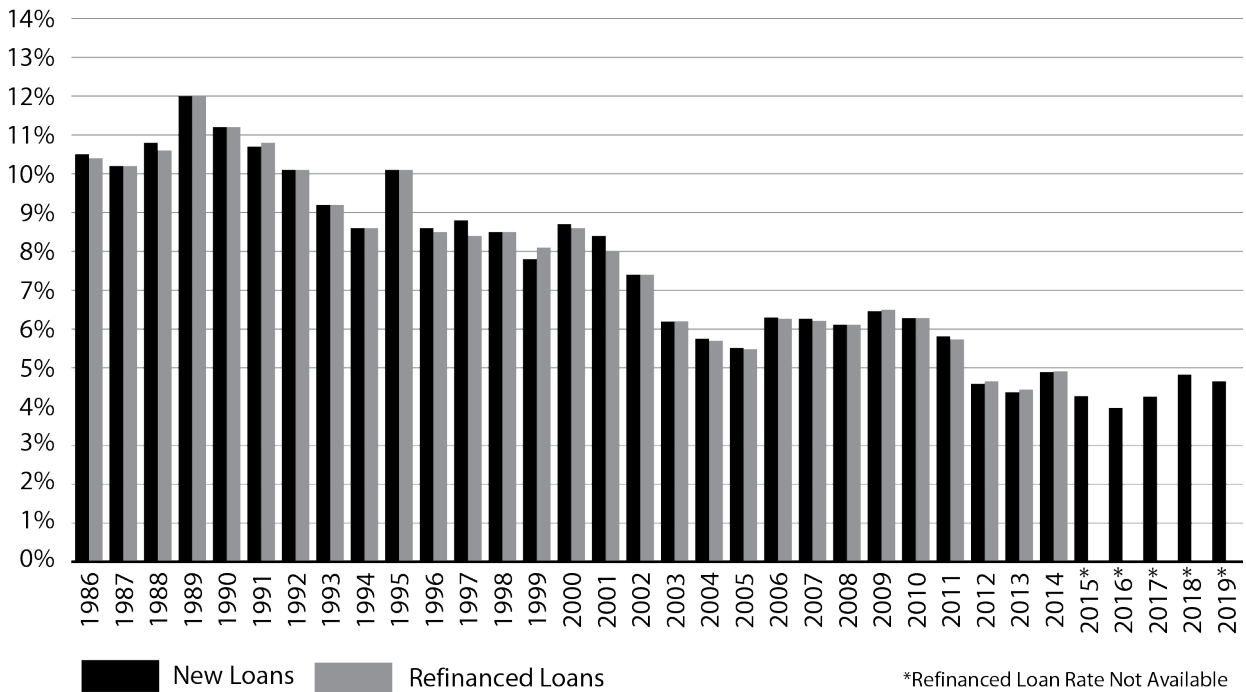
The price index, along with the O&M to rent/income ratios and the projections, are used to generate two figures known as the commensurate rent adjustment. This adjustment was discussed on pages 70 to 72. A memorandum describing the various commensurate formulae is included herein at Appendix J.

The Cost and Availability of Financing

The Mortgage Survey

Each year the Board’s research staff conducts a survey of area lending institutions. This survey includes questions on financing terms, financial characteristics of “typical mortgages,” factors influencing mortgage decisions, and the number and dollar value of loans made to owners of stabilized buildings. The results of the survey are reported to the Board annually in the *Mortgage Survey Report*. In addition, experts in banking and finance are often invited to testify at Board meetings. The chart on this page shows average interest rates for new and refinanced multi-family mortgages for rent stabilized properties from 1986-2019.

Chart IV.
Average Interest Rates for New and Refinanced
Mortgages, 1986-2019



Source: RGB Mortgage Surveys, 1986-2019.

Overall Supply of Housing and Overall Vacancy Rates

The Housing Supply Report

The local emergency housing rent control act mandates the production of a housing survey every three years specifically to determine if the declared housing emergency continues to

exist justifying a continuation of the rent control law.¹⁴⁷ This survey commonly known as the Triennial Housing and Vacancy Survey (or the “HVS”), has evolved over the years into a highly detailed picture of the City’s rental housing stock along with demographics on the tenant population. Although originally concerned only with rent control, the survey now provides a wealth of data on all housing sectors. Consequently, the Board is provided with a comprehensive base of information regarding the overall supply of housing and vacancy rates every three years.

In addition to the HVS data, the Board updates its information on the City’s housing supply by reviewing new construction levels and rehabilitation efforts through information provided by the Department of Buildings and the Department of Housing Preservation and Development. Data provided by the State Attorney General’s Office on the number of buildings converted to cooperatives is also reviewed. This data is summarized annually for the Board in the *Housing Supply Report*. See also the chart of New Dwelling Units Completed: New York City, 1921-2018 on Page 21.

Changes to the Rent Stabilized Housing Stock in NYC

Rent regulation has been a fixture in New York City’s housing market for the last 60 years. The rent laws that govern rent regulated housing have been substantially changed and/or modified over time. Specifically, the Rent Regulation Reform Act of 1993 allowed for high rent/vacancy decontrol of stabilized units. In addition to legislative changes, the existing laws allow for dynamic changes in the regulatory status of a significant portion of the rent regulated housing stock in any given year. Units enter the regulatory system, leave the system, or change status within the system.

In 2003, the RGB started to track the units entering and leaving the rent regulatory system. The findings of the staff were released in a report entitled *Changes in the Rent Stabilized Housing Stock in NYC, 1994-2002*. This report outlined the changes in the rent stabilized housing stock in New York City from 1994 to 2002 by quantifying the events that lead to additions to and subtractions from this category of housing. From 1994 through 2002, approximately 105,000 housing units left rent stabilization, while approximately 62,000 units initially entered the stabilization system. The built-in fluidity of the system resulted in a net loss of an estimated 43,000 regulated stabilized units to the rent stabilized housing stock. Subsequent reports have been done in each year since 2002, resulting in a total net loss of units since 1994 of approximately 144,000.

However, it is important to note that these totals do not represent every unit that has been added or subtracted from the rent stabilized stock since 1994, but rather those that have been recorded or registered by various city and state agencies. They represent a 'floor', or

¹⁴⁷ See Unconsolidated Laws of N.Y. §8603.

minimum count, of the actual number of newly regulated and deregulated units in these years.

Data from the Cost of Living Indices

The Income and Affordability Study

Each year the Board is provided with data from the regional cost of living index. This information may be compared to the data provided by the annual price index to gauge changes in a landlord's cost of maintaining rental housing relative to the overall cost of other goods and services. It is also helpful in comparing relative changes in rent to the cost of other goods and services. A comparison of changes in rent stabilized rents to changes in the regional consumer price index is contained in Appendix W. The cost of living data is reported to the Board annually in the *Income and Affordability Study*.

One of the most important indices, stabilized tenant income, is only available in the triennial Housing and Vacancy Survey. The table on this page details median stabilized household income from 1974 through 2016, in nominal rates as well as real 2016 dollars.

Table VI.

New York City Median Stabilized Renter Household Income 1974-2016

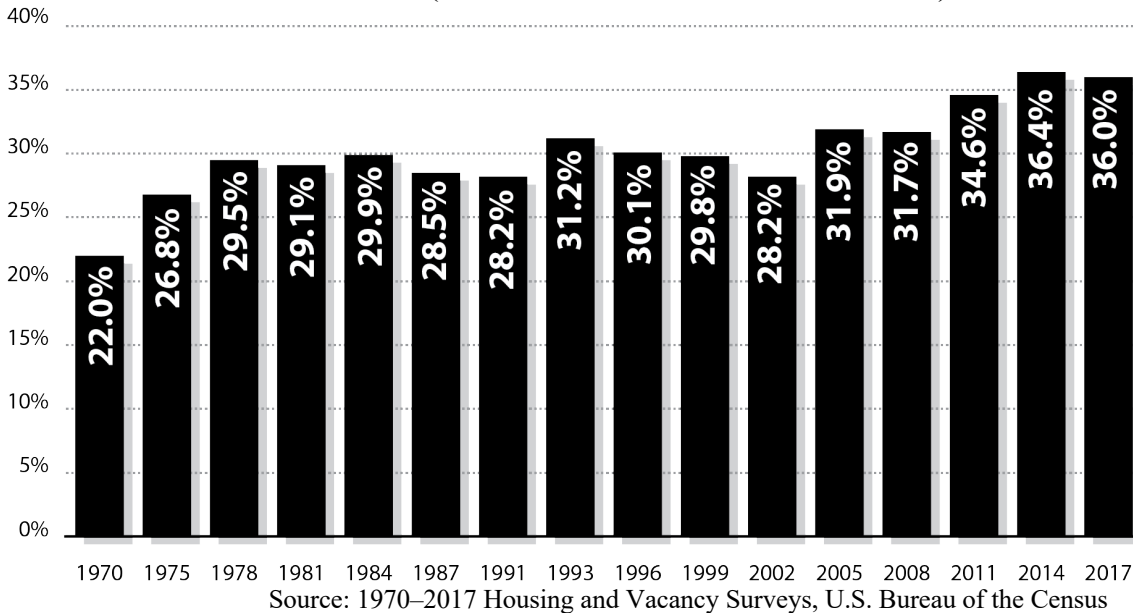
Year	Nominal	Real 2016 Dollars
2016	\$44,560	\$44,560
2013	\$40,600	\$41,633
2010	\$37,000	\$40,456
2007	\$36,000	\$41,778
2004	\$32,000	\$41,151
2001	\$32,000	\$45,044
1998	\$27,000	\$40,961
1995	\$25,300	\$41,080
1992	\$20,160	\$35,396
1990	\$21,000	\$39,933
1986	\$18,547	\$43,496
1983	\$14,483	\$38,220
1980	\$11,976	\$38,441
1977	\$9,980	\$40,962
1974	\$9,908	\$48,736

Source: 1975–2017 Housing and Vacancy Surveys, U.S. Bureau of the Census

Another important figure derived from the HVS is the share of income paid in rent, or rent burden for *rent stabilized* tenants. The chart on this page shows the median rent burden for rent stabilized households from 1970-2017. As discussed earlier in the Affordability section on pages 56 through 64, the rent burden for both stabilized households and all renter households has risen sharply, especially in the initial stages of stabilization.

Chart V.

Rent Stabilized Median Rent Burden, New York City 1970-2017
(Gross Rent as a Share of Household Income)



Other Data

Along with the large variety of facts and figures provided by those who testify at the Board’s annual meetings and hearings, the Board frequently requests additional research in a number of areas related to the economic condition of the rental housing industry and to the circumstances faced by rent stabilized tenants. Staff responds to these data requests in the form of research memos. Due to the large volume of these memos, they are not contained in this publication but are published in the Board’s annual explanatory statements which can be downloaded from our website, nyc.gov/rgb, by navigating to the Rent Guidelines tab. Furthermore, additional RGB research can be found in the Special Reports and Briefs Archive on our website in the RGB Research Reports tab.

Meetings, Hearings and Administrative Procedures

Meetings

The Board typically holds eight to ten meetings per year to discuss its research agenda, review staff reports and to hear testimony from invited guests including public officials, housing experts and industry and tenant representatives. In accordance with the Open Meetings Law every meeting of the Board must be open to the public, except when circumstances warrant executive sessions.¹⁴⁸ Public notice of any meeting scheduled at least one week in advance must be provided to the press and conspicuously posted in a public location at least 72 hours before the meeting. Notice of meetings scheduled less than one week in advance must be given, to the extent practicable, to the press, and publicly posted at a reasonable time before the meeting. The schedule of Board meetings is usually discussed and resolved in the early spring and is published in the City Record.

Executive sessions are permissible for the limited purposes set forth in §105 of the Public Officers Law and to consult with legal counsel.

Hearings

The Rent Stabilization Law §26-510(h) (contained in Appendix A) along with the City Charter [discussed below] mandates annual hearings prior to the adoption of rent guidelines. Notice of the hearings, as well as the language of the proposed orders, is provided in the City Record for eight days and at least once in a newspaper of general circulation at least eight days before the hearing. At the same time that the proposed guidelines are published in the City Record, they must be posted on the NYC website, nyc.gov, in the NYC Rules section. The language of the public notice of comment, along with that of the proposed guidelines, must be approved by Corporation Counsel and the Mayor's Office of Operations. The hearings are usually held in mid-June just prior to the Board's July 1st deadline for promulgating new guidelines. Any person who wishes to testify has a legal right to do so, and the Board has traditionally allowed two to three minutes for each speaker, alternating between owner and tenant representatives. Speakers have also been permitted to register in advance of the hearings and pre-registered speakers are given priority in the order of speakers.

Administrative Procedures

Prior to the adoption, in 1988, of Chapter 45 of the New York City Charter, also known as the City Administrative Procedure Act, or "CAPA", the Board operated exclusively under the limited procedures prescribed by the Rent Stabilization Law. CAPA is a uniform set of rulemaking and adjudication procedures that applies to City agencies. Since the Board does

¹⁴⁸ A copy of the relevant portions of the Open Meetings Law is contained in Appendix W.

not perform any adjudicative functions it is only affected by CAPA's rulemaking procedures. These procedures added the requirement that proposed guidelines be published at least thirty days prior to the public hearings on the final guidelines. Consequently, the Board's procedures have remained largely unchanged except to the extent that proposed guidelines are now adopted at a public meeting that takes place in May. The hearings that are conducted in June, pursuant to §26-510(h) of the Rent Stabilization Law, also function as CAPA hearings on the proposed guidelines. A copy of CAPA is included in Appendix Y.

As stated above, the RGB is required to follow CAPA when determining preliminary and final adjustments on renewal leases for rent stabilized apartments, lofts and hotels in New York City. Local Law No. 134 of 2013 (LL 134), enacted by the City Council, amended CAPA in Charter section 1043(e), by adding the following provisions:

[O]ther than a rule adopted pursuant to subdivision i of this section, no final rule shall be adopted by [a] board or commission unless its final language is posted in a prominent location on such agency's website and electronically transmitted to each member of such board or commission at least three calendar days, exclusive of Sundays, prior to such rule's adoption; provided, however, that revisions may be made to a final rule posted online and sent electronically in conformity with this subdivision at any time prior to the vote on such rule if such revisions are approved by all members of such board or commission by unanimous consent. ... This paragraph shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this paragraph shall not result in the invalidation of any rule.

As a result of these new provisions, the RGB staff is required to email the language of the Apartment and Loft Order and the Hotel Order that will be voted on (consistent with the preliminary adjustment that the RGB will propose in May) to the members of the Board at least three calendar days (excluding Sunday) before the meeting at which the vote on these final guidelines are taken. In addition, staff is also required to prominently post this language on the RGB website, nycrgb.org, at least three calendar days prior to the meeting in which the final Orders are adopted.

Furthermore, LL 134's provision requires that revisions made to the final rule *less* than three days prior to the meeting must be approved by *unanimous* consent of all RGB members present at the meeting. Barring unanimous consent, any adopted motion that was not previously e-mailed to RGB members and posted in conformance with LL 134 and that seeks to change the one- and/or two-year renewal lease adjustment or any other component of the annual guideline at the final voting meeting would *not* be final. Adoption of such a change would be contingent on compliance with LL 134's notice requirements and a second vote necessitating that the Board reconvene at least three calendar days (excluding Sunday)

later. When the Board does reconvene, it could then adopt the change by a vote of five members; there would *not* need to be a unanimous vote at the reconvened meeting.

Voting Meetings - Order of Business

Two meetings are held each year for a vote on rent adjustments: the meeting to adopt proposed guidelines discussed above, and the meeting to adopt the final guidelines. While the Chair and the Board establish the order of business, a typical voting meeting will proceed as follows:

- Board members attention will be called to drafts of the apartment (and loft) orders in their folders. At the meeting on the proposed guidelines, these drafts will consist of the prior year's order with blank spaces where rent adjustments will be entered. This “boilerplate” language will usually be read into the record by the Chair. At the meeting to consider the “final” guidelines, members will have copies of the proposed orders.
- Prior to the meeting members will receive drafts of the Apartment and Loft Explanatory Statement and Findings and the Hotel Explanatory Statement and Findings. These documents will be adopted by the Board at this meeting, subject to being modified after the voting meeting per the Board's actions and instructions.
- The floor will be opened to proposals on apartment guidelines for one and two year leases as well as the Special Guideline for units leaving rent control and becoming stabilized (see pages 85 to 87 for a discussion of this guideline.) Other elements of rent adjustments such as supplemental increases for low rent apartments or a vacancy factor for sublets¹⁴⁹ may be “packaged” with the apartment guidelines. Votes are taken on each proposal in accordance with Roberts Rules, until at least five “yes” votes can be mustered for an apartment order. Generally, the language of the Order and the language for the Explanatory Statement and Findings are adopted within the same motion.
- Loft guidelines can be bundled with the apartment motion or considered separately in a like fashion.
- The next order of business is usually the “hotel” orders. Board members attention will then be called to the hotel orders and the process of reading into the record the boilerplate language will occur. There are five groups of hotel stabilized units: Class A and Class B hotels, rooming houses, SRO's and lodging houses. These groups may be addressed separately or together. Voting proceeds in the same fashion as for apartments. Once again, the language of the Hotel Order and the language for the Explanatory Statement and Findings are adopted within the same motion.

¹⁴⁹ Note that since 1997 vacancy guidelines are prescribed by statute. The RGB retains the authority to increase rents where sublets occur as per the Rent Stabilization Code, section 2525.6(e).

- Any special or new items of business may be introduced at any time, but any material change in the order of business will require a majority vote.
- A motion to adjourn will be taken.

Final Orders and Explanatory Statements

Usually about one week after the final vote, the Board's orders and related explanatory statements are filed with the City Clerk and published in the City Record. The Rent Stabilization Law directs that the *filing* of the Board's orders and its findings—i.e. the explanatory statements — must be completed not later than July 1st of each year. Once the language of the orders is reviewed and approved by Corporation Counsel and the Mayor's Office of Operations, the orders and explanatory statements should be published in the City Record as soon as is practicable. The final orders and explanatory statements should be forwarded to City Council for its information and published at least 30 days (by August 31st) before the first effective date of the orders (October 1st). In addition, the final orders and explanatory statements must be posted on NYC Rules, which is a part of the City's website, nyc.gov, at least 30 days before the rules go into effect.

The guidelines themselves go into effect for leases being renewed and vacancies occurring on or after October 1st of the same year, and on or before September 30th of the following year. Most hotel/SRO tenants do not have leases and pay the new rent immediately upon the effective date of the hotel guidelines—which is also October 1st.

The orders of the Board are final unless found to be unlawful by a court of competent jurisdiction. A 1991 court ruling indicates that any legal challenge to the Board's orders must be initiated within four months.¹⁵⁰

¹⁵⁰ See case #15, *supra* at page 42.