

*An Introduction to the*  
**New York City**  
**Rent Guidelines Board**  
*and the Rent Stabilization System*

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Revised Edition  
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## **PREFACE**

This introduction to the New York City Rent Guidelines Board covers the structure, function and history of the Board and its role in the rent stabilization system. Some attention has also been given to the broader regulatory environment affecting all residential landlord/tenant relations within the City.

The section entitled "Membership on the Board" (starting at page 5) covers the technical and legal requirements of Board membership. **Prospective members are asked to review this section carefully prior to finalizing their appointment to the Board.** Staff is also expected to be familiar with all aspects of these requirements.

An appendix has been provided for additional materials which are brief enough to be conveniently added. Other materials may be obtained through the sources noted in the text or in the list of "Other Noteworthy Materials" following the Table of Contents. Many excellent scholarly works and government publications are maintained in the staff library as are transcripts of prior meetings, past Board orders and related documents. These are available to Board members upon request.

This work is intended to acquaint the Board and its staff with many rent regulation and landlord/tenant issues in a general way. The analysis and commentary is that of the author/consultant. Nothing herein should be viewed as an official statement of the Rent Guidelines Board nor any of its individual members. It is not an authoritative legal document and should not be used as a primary reference for legal research. For those who have specific questions concerning landlord/tenant matters, the various laws, court decisions, regulations and government reports cited in this publication should be consulted directly. Professional assistance may be advised. Board members may, of course, consult directly with staff if further information or analysis is desired.



## **ACKNOWLEDGEMENTS**

This introduction to the work of the Rent Guidelines Board and the rent stabilization system has truly been a collaborative and evolving effort. In the early years of the Board's operation, newly appointed members were supplied with notes and memoranda on various aspects of their investigative and rulemaking functions. These briefing materials grew each year as the Board launched new studies and gained access to new sources of information. In 1989 the Board published the first of its well-received annual reports on New York City's housing market and demographic trends. In that same year, I prepared the first edition of this work while serving as the Board's executive director. The third and last edition was published in 1994.

In 1999 Anita Visser was appointed executive director and began a process of conducting a complete re-organization of all of the materials and resources used by staff to support the Board's work. The updating of this book fit well within this larger effort. Because of Anita's leadership, future Board members and staff will find an operation in top shape to face new challenges. Anita contributed extensively to this edition, adding most of the graphs and tables, reviewing and critiquing early drafts, and diplomatically nudging me along when the demands of my private law practice tugged in other directions. Largely as a result of Anita's input, this new edition is substantially revised and improved.

Three first-rate attorneys from the City's Office of Corporation Counsel reviewed and contributed extensively to this work. Spencer Fisher, Anthony Crowell and Ellen Schroeder meticulously examined the text and footnotes and suggested dozens of improvements. As a busy attorney myself, I know how demanding a careful review of an extensive document like this can be. I was highly impressed by the earnestness and care which they exhibited in their review, and I am deeply grateful for their time and input. I emphasize, however, that the final product and the opinions and views expressed herein, are my own and not an official statement of the Office of the Corporation Counsel.

Since the first edition of these materials in 1989, every member of the staff of the Rent Guidelines Board has provided some support and assistance. This latest edition benefited greatly from the assistance provided by Andrew McLaughlin, Susan Hayes, Brian Hoberman and Cecille Latty. It has always been a pleasure to work with Andrew who assisted in the layout and graphics. Susan deserves special recognition for taking primary responsibility for incorporating changes from each draft - a painfully tedious process which includes checking and re-checking each page and each note to ensure that the internal referencing is correct. Her patience is greatly appreciated. Brian Hoberman researched various information on tenant incomes and

demand for subsidized housing. Cecille carefully compiled and collated several of the appendices.

I want to also thank the Board's chairman, Edward Hochman, who has been a steadfast supporter of updating and expanding these briefing materials. Throughout his tenure, Ed has insisted upon the highest quality and integrity in the research which underlies the guideline setting process. In this respect, his contribution to this work cannot be overstated.

As with any collaborative work, several individuals deserve credit for their contributions, but the author alone must take responsibility for the final content. To the extent that any errors or shortcomings remain, I accept that responsibility. To borrow a phrase from Yeats, I have tried to "cast a cold eye" on the complex and conflicted world in which the Board operates. If certain matters have escaped my attention, I encourage others to fill in the gaps. The primary goal of these materials is not to have the final word, but to contribute to a conversation with integrity.

Finally, I want to extend my warmest thanks to my wife Marilyn and children Danny and Emily. This is the last of several late evenings I have devoted to completing this project. It is 10:17 PM on a Sunday night. Time to go home.

Timothy L. Collins  
New York, New York  
March 11, 2001

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## **OTHER NOTEWORTHY MATERIALS**

1. Triennial Housing and Vacancy Survey (all years)
2. Housing NYC: Rents Markets and Trends 1989-2000
3. Price Index of Operating Costs 1969-2000 Apartments, Hotels, Lofts
4. Rent Stabilization Code
5. Rent Stabilization Law of 1969
6. Emergency Tenant Protection Act of 1974, as amended.
7. Rent Guidelines Board Orders and Explanatory Statements 1969-2000
8. DHCR 'Fact Sheets' for Rent Stabilized Housing

## INTRODUCTION

*The latent causes of faction are ... sown in the nature of man... A zeal for different opinions concerning religion, concerning government, and many other points ... have ... divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. ...[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide themselves into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principle task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.*

James Madison, 1787<sup>1</sup>

The work of the New York City Rent Guidelines Board falls squarely within the mediating traditions of democratic government described above by Madison. The Board was established midway through a legislatively recognized housing shortage which has persisted for over half a century. It operates under emergency laws regulating matters otherwise governed by the private contractual arrangements of owners and tenants. The Board's essential mission might best be described as an attempt to construct or simulate "normal" or "fair" rent levels in a market driven by chronic scarcity and instability. The housing emergency hinges on the statutory recognition that a vacancy rate of less than 5% creates abnormal market conditions. The City Council and State legislature have recognized that such conditions cause "severe hardship to tenants" and force the "uprooting [of] long-time city residents from their communities."<sup>2</sup> According to the 1999 Housing and Vacancy Survey, the citywide vacancy rate is currently 3.19%.<sup>3</sup>

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<sup>1</sup> Quoting the Federalist No. 10. The Federalist Papers were written by James Madison, Alexander Hamilton and John Jay in the months following the Constitutional Convention of 1787. They were published in the New York press under the pseudonym "Publius" urging voters to ratify the new Constitution. The papers remain classics of political philosophy and influential sources of American constitutional law.

<sup>2</sup> Quoting Rent Stabilization Law of 1969 (N.Y.C. Admin. Code 26-501) Findings and Declaration of Emergency. All of the provisions of local law governing rent stabilization are contained in chapter 4 of Title 26 of the New York City Administrative Code (referred to as the Rent Stabilization Law of 1969 - "RSL"). The provisions of State law governing rent stabilization are contained in sections 8601-8617 of the Unconsolidated Laws of New York (also referred to as the Local Emergency Housing Rent Control Act of 1962 – the enabling legislation for local rent control and stabilization) and sections 8621 through 8634 of the Unconsolidated Laws of New York (referred to as the Emergency Tenant Protection Act of 1974 - "ETPA"). The State regulations governing rent stabilization in New York City are contained in the Rent Stabilization Code (subchapter B of the Rent Stabilization Regulations, Parts 2520-2530; Also cited as 9 NYCRR Parts 2520-2530).

<sup>3</sup> See Selected Findings of the 1999 Housing and Vacancy Survey in Appendix Y.

In the late 1960's tenants residing in buildings constructed after World War II faced rising rents and a lack of affordable alternatives which threatened the balance in their bargaining relations with owners. It was this perceived imbalance which led to the development of the present *rent stabilization* system. In 1969, the Board's first year of operation, rent stabilization covered about 400,000 rental units. At the time, the vast majority of apartments were located in older (pre'47) buildings and fell under the long established *rent control* system. Due to a series of legislative changes, rent control now covers only about 50,000 apartments, while the rent stabilization system has expanded to over one million apartments which house over two million people – or about one in three City residents. This is the universe of apartments presently covered by the Board's rent orders.

The housing shortage has persisted unevenly over the years,<sup>4</sup> resulting in a continuation of rent regulations and prompting some of the most contentious legislative battles in modern times. The echoes of these larger debates have reverberated through the annual deliberations of the Rent Guidelines Board. A broad public consensus over the fairness and efficacy of rent regulation has never emerged and may well be unattainable.

Members of the rental housing industry and others have frequently charged that the rent adjustments authorized by the Board have been unfair to owners and harmful to the housing stock. The Rent Stabilization Association, representing some 25,000 rental property owners, has claimed that "the Rent Guidelines Board has increasingly viewed New York City's stabilized housing stock as a specimen in isolation, minutely examining year to year economic variations but losing sight of the long term effects of 30 years of regulation..."<sup>5</sup> Owners have asserted that low rent guidelines lead to deferred maintenance, abandonment, a loss of tax revenues, and widely disparate rents for similar apartments.

Among tenant advocates and their supporters, a market (or quasi-market) solution to the housing shortage through increased rents has been viewed as an antidote which carries an unacceptably high mortality rate - by way of evictions, homelessness, gentrification or severe economic hardship. Moreover, they argue that the forces controlling housing quantity and quality are far more complex than the rent setting policies of the Rent Guidelines Board. Tenant representatives have charged that recent legislative changes and "unwarranted rent increases" have "pushed owners' profits to record levels, while operating costs are steady and financing costs are

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<sup>4</sup>For a table of vacancy rates since 1960 in New York City, see New York City's Housing Emergency table on page 4.

<sup>5</sup>Submission by the Rent Stabilization Association - Relative to Rent Guidelines Board Order 31, May 1999.

down."<sup>6</sup> These developments, they argue, "have a devastating impact on the city's housing affordability crisis and contribute to homelessness."<sup>7</sup>

The Rent Guidelines Board has never been able to resolve this housing dilemma to the satisfaction of both sides. Even a "normal" rental market will produce hardships for some owners and some tenants. The Rent Guidelines Board is mandated to establish fair rents but is not obligated to make every apartment affordable for tenants or every building profitable for owners. As the Board's Chairman observed in 1994:

*[T]he RGB was meant to counteract the effects of what the state legislature determined was and is a continuing acute housing shortage. Such regulations, however, were never meant to either guarantee an owner a profit (i.e. thereby saving an incompetent owner from his own folly) or to serve as an adjunct to social welfare programs (i.e. protecting poor tenants from the economic forces that would be in effect, even if the housing shortage did not exist).*

Notwithstanding the volatility of these issues, experience has demonstrated that a guideline setting process with credibility, integrity and a measure of public respect is an attainable objective. Achievement of this objective requires sincere efforts to develop a full and accurate base of information on which to evaluate industry and tenant conditions, and fair hearings for the various individuals and groups who participate in the deliberative process.

In the years to come, the Rent Guidelines Board is likely to remain a key participant in the ongoing public conversation about the fairness and effectiveness of the rent stabilization system. Over the past decade the Board has made significant contributions to public understanding of housing issues by producing a wide range of empirical studies. We now know a good deal about the effects of New York's system of rent regulation on housing quantity, quality, profitability and affordability. While rent regulation will, no doubt, remain a contentious subject, speculation about its impact has gradually given way to carefully documented experience and analysis. In this briefing manual, we hope to share some of that experience, along with general information about the structure, function and history of the Board and the rent stabilization system.

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<sup>6</sup> Quoting Testimony Before the New York City Rent Guidelines Board Hearing on Rents for Rent Stabilized Apartments, June 22, 1999, Legal Services for NYC and The Legal Aid Society.

<sup>7</sup> Id.

**Table I.**

**NEW YORK CITY'S HOUSING EMERGENCY**

**NET RENTAL VACANCY RATES IN NEW YORK CITY, 1960-1999**

<b>Year</b>	<b>Net Rental Vacancy Rate</b>
1999	3.19%
1996	4.01%
1993	3.44%
1991	3.78%
1987	2.46%
1984	2.04%
1981	2.13%
1978	2.95%
1975	2.77%
1970	1.50%
1968	1.23%
1965	3.19%
1960	1.81%

The City's vacancy rate is determined by dividing the number of vacant and available units by the sum of all occupied and vacant units. Thus in 1999, 64,412 vacant and available units are 3.19% of the sum of occupied and vacant units (2,017,701). The City's vacancy rate is calculated triennially in the Housing and Vacancy Survey (HVS) to determine if a housing emergency continues to exist. According to state law, a housing emergency may be declared when the citywide vacancy rate falls below 5%. According to the latest survey (1999), the vacancy rate (3.19%) still falls below the benchmark level of 5%, which if surpassed would result in an end to both the housing crisis and rent regulation, following appropriate legal process.

The HVS is performed in New York City by the U.S. Census Bureau. It contains comprehensive data on housing, neighborhoods and tenant demographics. Selected findings from the 1999 HVS are contained in Appendix Y.

## **MEMBERSHIP ON THE BOARD**

The Rent Guidelines Board (also referred to herein as the "Board" or the "RGB") is a local body with a mandate in both state and local law to investigate conditions within the residential real estate industry and to establish fair rent adjustments for rent stabilized units. Under the Rent Stabilization Law (section 26-510) the Board is charged with establishing annual guidelines following a review of (1) the economic condition of the residential real estate industry in New York City 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.

### **Composition of the Board, Terms of Office, Eligibility for Appointment**

The RGB consists of nine members, all of whom are appointed by the Mayor. Two members are appointed to represent tenant interests. One of these serves a two-year term, and the other a three-year term. Two members are appointed to represent owner interests. Like the tenant members, one serves a two-year term, and the other a three-year term. Five members (including the chairperson) are appointed to represent the general public. One of these serves a two-year term, another a three-year term and two serve four-year terms. The chairperson serves at the pleasure of the Mayor. The complete text of the law governing Board appointments, powers and duties is set forth in Appendix A. A complete listing of all members serving on the Rent Guidelines Board since 1969 and their terms of office is included in Appendix B.

All members are required to be residents of the City and must remain residents during their period of service. Each public member must have had at least five years experience in either finance, economics or housing. No member may be an employee or officer in any state or municipal rent regulation agency. Nor can any member own or manage rental property affected by the Board's orders or be an officer in any owner or tenant organization. The chairperson may hold no other public office. All members take an oath of office.<sup>8</sup> New members are expected to submit a written

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<sup>8</sup> All of the above requirements for Board membership are contained in section 26-510(a) of the New York City Administrative Code with the exception of the residency requirements which can be found in sections 3 and 30 of the Public Officers Law, see Appendix C. The requirement of execution and filing of an oath of office is included in

statement attesting to their compliance with the above eligibility requirements upon appointment. A sample copy of the oath and such statement is annexed hereto as Appendices D and D1 respectively. Each prospective member of the Board is also subject to a background investigation by the Department of Investigation prior to appointment.

## **Vacancies and Removal**

A member may remain on the Board after the expiration of his or her term until a qualified new member is appointed. The Mayor is required to fill any vacancy which may occur by reason of death, resignation or otherwise, in a manner consistent with the original appointment. A member may be removed by the Mayor for cause, but not without an opportunity to be heard in person or by counsel. At least ten days notice to the member is required prior to such a hearing.

## **Conflicts of Interest & Financial Disclosure**

All Board members and staff are required to comply with the ethics provisions contained in chapter 68 of the New York City Charter along with the rules and opinions of the New York City Conflicts of Interest Board. Under the conflicts of interest rules members of the Board and staff are prohibited from engaging in certain specified activities which generally concern misuse of authority for personal gain or practices which directly or indirectly conflict with official duties. The Charter also contains many post-employment restrictions.

Because Board members are "public servants" but not "regular employees" and because the agency they serve is the Rent Guidelines Board and not the executive branch of city government, the application of certain of the rules is limited. For example, a "regular employee" is prohibited from having a business interest in a firm that has business dealings with any agency of the City, while Board members may not have an interest in a firm that has business dealings with "the agency served by the public servant" – a less restrictive rule. To illustrate, an RGB employee may not have a business interest in a vendor that supplies and services copying machines to any city agency,<sup>9</sup> but this would not create a conflict for an RGB member so long as the RGB did not utilize that vendor's services. In any event, it is best to consult with the Executive Director if a "conflicts" question arises.

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section 10 of the Public Officers Law. The failure to file such oath within 30 days will create a vacancy in the office as per section 30(1)(h) of the Public Officers Law.

<sup>9</sup> There are exceptions to this restriction. For example, it may be permissible for an employee to own stock in a publicly traded business (e.g. Xerox, Canon or Sharp) which does business with the city.

Unclear issues will be referred directly to the Conflicts of Interest Board. A copy of the relevant provisions of the City Charter dealing with conflicts of interest is contained in Appendix E. **All Board members and staff are expected to be familiar with these provisions.**

Upon appointment and during each year of service, Board members are required to complete a financial disclosure statement. The general purpose of this statement is to ensure that Board members do not hold any interests which conflict with their duties as Board members or which would otherwise create an appearance of impropriety. A sample copy of the first page of the Conflicts of Interest Board's Financial Disclosure form is included herein as Appendix D2.

Below are summary notes on some of the matters that may arise in connection with service as a Board member or employee:

- **GIFTS:** No public servant may accept a gift with a cumulative value of \$50 or more in a 12 month period from a person or firm doing business with the City. There are exceptions to this rule such as gifts exchanged between co-workers or relatives, wedding gifts or meals given at a function where you represent the Board.
- **MOONLIGHTING:** This rule only applies to the Board's staff members who are "regular employees." RGB staff may not work for a company that has business with the City. In addition, any such outside work must be on the employee's own time and may not involve the use of city resources, confidential information or the use of the employee's official position.
- **OWNERSHIP INTERESTS:** The Rent Stabilization Law itself prohibits Board members from having an ownership interest in property subject to the Board's orders. Notably, there appears to be no restriction on continuing as a tenant in a rent stabilized apartment while serving on the Board.
- **POLITICAL ACTIVITIES:** All political activities must be performed on the member or employee's own time. Members and staff may not use a city letterhead, supplies, equipment or personnel while carrying out such activities. They may not coerce or induce fellow employees to participate in political activities. Managers may not even ask subordinates to participate in or contribute to a campaign.
- **POST-EMPLOYMENT RESTRICTIONS:** RGB staff and members may not appear before the RGB for a period of at least one year after leaving service. They may not divulge confidential information obtained while in the Board's employ. They may never work on a particular matter or project they were directly involved

in while employed by the City. Notably, each new guideline is considered a separate and distinct matter, so it would be unusual for this latter conflict to arise.

Detailed advisory opinions and pamphlets on these topics and others are available to Board members on request. Again, if there is any uncertainty, it is always best to seek a ruling.

It may be useful to note that the Conflicts of Interest Board has the authority, upon the making of certain findings, to grant waivers and issue orders allowing public servants to hold positions, or maintain ownership interests, otherwise prohibited by the Charter.

### **Board Member Compensation**

Members are compensated at a rate of one hundred dollars per day for up to twenty-five days per year. The chairperson receives one hundred twenty-five dollars per day for up to fifty days per year. This rate of compensation has remained unchanged since 1969.

Board members are compensated on a "per diem" basis although this term has never been precisely defined. By convention each Board meeting counts as at least one day of service. Board meetings which exceed seven hours (as the Board's public hearings often will) may qualify for additional per diem payments. For example, a twelve-hour meeting would qualify for two per diem payments.

To obtain compensation for attending a meeting of the Rent Guidelines Board, the member must sign the Rent Guidelines Board sign-in sheet circulated by the Office Manager at the meeting. The city will then issue a check to each member who attended the Board meeting. An example of the sign-in sheet is included herein as Appendix D3.

Under current practice, all other Board activities which cumulatively exceed five hours shall count as one per diem. These activities are compensated by what are known as "non-public" per diems. Such activities may include individual meetings with staff or attendance at briefings by government officials or housing experts, a review of staff reports or meetings with constituent groups (e.g. tenant or owner advocates).

If a Board member attends a briefing directly related to the Board's work (other than a Board meeting), or meets with a constituent group, or conferences with staff, a signed and dated form describing the date, duration, location and purpose of the

qualifying activity should be forwarded to the Executive Director to ensure compensation. Board members may also list the time needed to review each of the many (often time consuming) reports issued in conjunction with Board meetings. A copy of an RGB per diem payment requisition form is included herein as Appendix D4. Note that non-public per diem requests are subject to review and approval by the RGB Chair, and the Department of Housing Preservation and Development.

## **Bylaws of the Board**

In 1981 the Board adopted a brief set of bylaws which largely reflect the statutory provisions governing the Board's operations. The complete text of the bylaws is contained in Appendix F. The bylaws set forth the purpose and powers of the Board, qualifications of members, role of the chairperson and compensation of members, all in accordance with the Rent Stabilization Law. In addition, the composition of the Board's staff is established and the chairperson is granted the authority to modify this composition if the financial resources of the Board permit such modification.

The bylaws also reflect the requirements for annual public meetings and hearings contained in the Rent Stabilization Law. In addition, the chairperson is granted authority to call special meetings for any purpose consistent with the Board's mandate. All meetings must take place within the City of New York.<sup>10</sup> At least five members must be present before a meeting may begin and five supporting votes are needed for the Board to exercise its guideline setting authority. Thus, if only seven members attend a meeting, a simple majority of four votes is inadequate for the Board to exercise its guideline setting authority. By convention, at least one tenant and one owner representative should be present before any meeting proceeds. The order of business at each meeting is determined by the chairperson, but the order of business may be changed by vote of a majority of the members present. *Robert's Rules of Order* govern the proceedings except as to those matters addressed directly in the bylaws.

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<sup>10</sup> A full discussion concerning the Board's meetings and hearings is provided on pages 106-109.

## **The Rent Guidelines Board Staff & Use of Consultants**

Prior to 1980 the Board relied upon staff provided by the New York City Department of Housing Preservation and Development ("HPD") for its administrative support. In that year the City Council adopted Local Law 11 (copy annexed in Appendix A1), designating the chairperson as chief administrative officer of the Board, and permitting him or her to "employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services". This legislation appears to have been, in part, in response to public criticism of the practice of borrowing staff from "other agencies to which staff members owe their primary obligations."<sup>11</sup>

In each succeeding year, the Board has received an allocation of funds through a contract with the Department of Housing Preservation and Development ("HPD") to hire staff and provide for office expenses. Thus, in terms of its funding, the Board's staff operates through negotiation by its Chair of annual terms agreed upon with HPD.

Throughout the 1980's the Board had not exercised its power under Local Law 11 to directly enter into consulting agreements itself. The annual price index studies and other projects had been procured for the Board through contracts let by the Department of Housing Preservation and Development. For a time (1972-1978) these studies were funded in whole or in part by the Rent Stabilization Association, an owners advocacy group. The funding history of this important contract is contained in Appendix G. Since 1990 the Board has exercised full control over the scope of all consulting services as well as the choice of consultants.

Section 310(2) of the City Charter now requires a Board resolution when the Chairperson performs certain contract oversight functions. A resolution of this type which authorizes the Chairperson to act on behalf of the Board in contract matters was adopted on February 13, 1991.<sup>12</sup>

The Board's current full-time staff of six includes an executive director, a senior research associate, two research associates, an office manager, and a public information assistant. In addition to providing administrative support for the Board during its annual deliberations, the staff is engaged year round in research efforts and in providing information to the public on housing questions. The staff fields hundreds of calls per month from tenants and owners with housing and rent related questions. The Office of Corporation Counsel presently serves the function of legal counsel.

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<sup>11</sup>Quoting Coalition against *Rent Increase Passalongs v. Rent Guidelines Board*, 422 N.Y.S. 2nd 660, n.1 (Sup. Ct. NY Co.1979), 104 Misc.2d 101, affd, 176 AD2d 1043 (1st Dept. 1980).

<sup>12</sup>The full text of the resolution is included in Appendix H.

The executive director coordinates meetings, maintains Board communications and media relations, administers contracts, oversees procurement, supervises the staff, and works with the City's Corporation Counsel to advise the Board on all matters concerning litigation, new legislation, and the Board's lawful functions. The executive director also oversees the development and production of the information and analysis necessary for the Board to conduct its annual review of the conditions of the residential real estate industry. Finally, the executive director advises other public agencies on Board related matters and maintains the Board's internet site.

Although the staff often consults with the State Division of Housing and Community Renewal, the City Department of Housing Preservation and Development and the Office of the Corporation Counsel, it is an independent staff, directly responsible only to the chairperson and the Board itself. The Board is solely responsible for the staff's research projects and is fully accountable for the decisions it makes based on the staff's research findings.

Notably, Board members and staff are covered by section 50-k of the General Municipal Law. Consequently, they are entitled to be represented by the City's Corporation Counsel and to be indemnified for acts occurring within the scope of their public service.

A complete copy of the staff's RGB Employee Manual and office rules is included herein as Appendix I.

**The Board's Web Site: <http://www.housingnyc.com>**

In 1996 the Rent Guidelines Board launched the City's first web site. Although it received limited use at that time, by April of 2000, the site was receiving well over 300,000 "hits" per month.

Currently the Board's site offers a variety of services. It includes all of the Board's major studies issued since 1995, along with data from the triennial Housing and Vacancy Surveys. The site also includes most of the Board's past rent orders. One highly popular feature is the "Apartment Guide" which offers advice and assistance to apartment hunters. Another widely used section is the section on frequently asked questions ("FAQ").

The site also includes a variety of publication reprints such as the Attorney General's Landlord/Tenant Guide; the New York City Housing Maintenance Code; A Tenant's Guide to Housing Court; a variety of Fact Sheets from the New York State

Division of Housing and Community Renewal; and the full text of the Rent Regulation Reform Act of 1997.

## **Legal Status of the Board**

As previously noted, the Board is a local body with a mandate in both state and local law to investigate the conditions of the residential real estate industry and establish rent adjustments for rent stabilized units. Because it is not a state agency, it is not subject to the provisions of the State Administrative Procedure Act. It is, however, subject to the City Administrative Procedure Act. It is also subject to the Open Meetings Law and other requirements governing the process by which it conducts its business. These procedural requirements are discussed on pages 106 through 108.

The Board is a quasi-legislative body without judicial or executive authority. Its authority to make rent adjustments after reviewing certain mandated considerations is very broad. But it has no power to enforce its orders or to penalize violators. Enforcement authority for exceeding the Board's orders rests with the State Division of Housing and Community Renewal and the courts (usually the Housing Part of the Civil Court of the City of New York). There is no pro-active review of rental charges by the DHCR to achieve compliance with the Board's orders. Rent overcharge proceedings are initiated by individual tenants either by filing a complaint with the DHCR or by raising an overcharge claim in the courts.

The Board cannot act outside of its rent-setting jurisdiction, nor can it adopt rent orders which are unreasonable, arbitrary or capricious. The Board's orders must be justified in terms of the economic criteria set forth in the Rent Stabilization Law. That criteria is fully set forth in the law itself which is contained in section 26-510(b) of the Rent Stabilization Law, contained in Appendix A.

The Board may not abdicate its regulatory authority over the rent stabilized housing stock nor any part of it; only the City Council may permit such deregulation, and then only after a public hearing in accordance with section 3(b) of the Emergency Tenant Protection Act of 1974 (hereafter "ETPA").

To support the Board's investigative functions, all City and State agencies are required to cooperate with the Board by responding to all reasonable requests for information and assistance.<sup>13</sup>

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<sup>13</sup>See ETPA, L. 1974, c.576, 4[13].

**Table II.**

**HISTORY OF THE BOARD AND THE RENT REGULATION SYSTEM**  
Highlights of Rent Regulation in New York

1920	Emergency Rent Laws of 1920 adopted in the wake of sharp increases in dispossession proceedings and declining construction following World War I.
1927	Construction of new dwelling units reaches an all time high of 107,185 for the year.
1929	Rent Laws of 1920 terminated as vacancy rates approached 8%.
1943	Federal rent controls first adopted as a wartime measure to address anticipated housing shortages.
1946	New York State adopts "stand-by" rent control legislation in the event federal controls expire.
1947	Federal law exempts new construction from rent controls as of February 1st.
1951	New York State takes over administration of rent control as federal controls expire.
1953	Vacant apartments in one and two family homes decontrolled. Across the board rent increases of 15% adopted for units not previously receiving increases under rent control.
1958	Apartments renting for more than \$416.66 unfurnished or \$500 furnished are decontrolled. This effected about 600 units.
1962	Administration of 1.8 million rent controlled apartments is transferred from the State to the City. Enabling legislation is adopted permitting local governments to enact rent regulations.
1964	City adopts luxury decontrol for certain high rent apartments, resulting in decontrol of about 5,000 rent controlled apartments.
1968	City adopts luxury decontrol for certain high rent apartments, resulting in decontrol of about 7,000 rent controlled apartments.
1969	Rent Stabilization Law enacted in response to plummeting vacancy rates. Buildings with six units or more constructed after 2/1/47 and previously decontrolled apartments in buildings with six units or more units are covered. Rent Guidelines Board is established. Real estate industry groups given power to promulgate a stabilization code subject to City review.
1971	Vacancy decontrol adopted for all units. City is prevented from adopting rent regulations more stringent than those already in effect.
1974	Decontrolled and destabilized units are re-regulated under the Emergency Tenant Protection Act of 1974.
1983	Omnibus Housing Act transfers administration of rent regulations from the City to the State Division of Housing and Community Renewal.
1985	Official involvement of the Rent Stabilization Association and the Metropolitan Hotel Industry Stabilization Association in promulgating codes governing rent stabilized units is terminated.
1993	Under the Rent Regulation Reform Act of 1993, the state begins deregulating high rent (\$2,000+) apartments upon vacancy. Also adopted is a high-income deregulation provision for occupied units with rents of \$2,000 or more as of October 1, 1993 with tenants whose household income exceeded \$250,000 in two previous years.
1997	Under the Rent Regulation Reform Act of 1997, the state expands high-income decontrol to cover households with incomes of \$175,000 or more. In addition, the state adopts a mandatory formula for rental increases upon vacancy.

## **Rent Regulation Prior to the Establishment of the Board**

Laws and social customs have promoted and regulated economic activities since ancient times. Rent regulation is one policy among countless others impacting on the economy and property interests. Royal charters establishing private corporations created a vehicle for massive capital formation and set the stage for the modern day business enterprise. Old English common law rules and statutes established our concepts of real and personal property and channeled the ways in which property could be sold or transferred. By the end of the nineteenth century, bankruptcy and debtor/creditor laws controlled the creation and elimination of personal and business debt, antitrust measures reigned in anti-competitive practices, and health and building codes began eliminating dangerous conditions in urban areas. In the twentieth century, legislative reforms imposed health and safety protections in the workplace, land use restrictions, environmental protections, banking and securities regulations, and redefined the terms of private employment contracts.

Along with these legal developments, massive public investments in education, roads, transportation facilities, communication systems, and various types of public research and development, combined to create a physical and human infrastructure under which commerce and culture have generally flourished.

These varying public actions have had both positive and negative effects on the value of private property and the uses to which such property may be put. For example, a city's decision to place an airport in a particular location may double the profits of a neighboring motel, while slashing the value of homes adjacent to noisy runways. Likewise, the adoption of a zoning ordinance may be devastating to a developer who purchased a vacant lot in anticipation of putting up a (now prohibited) high rise building, while being highly beneficial to the owner of a neighboring brownstone threatened with congestion and obstruction of light from the new building.

In the City of New York, the supply of rental housing is drastically limited by a variety of public actions: zoning laws limit the size, use and location of residential housing; building codes restrict materials used in construction and design; historic preservation laws limit demolition or alteration of certain structures; wage and labor policies raise the expense of construction and maintenance; public ownership of parks, roads and other spaces limit the availability of building sites. These *public* actions - driven as they are by competing public values and concerns - indirectly raise the cost of new construction and site acquisition and thereby contribute to the housing shortage. While this is true in every city, in a highly congested area such as New York, the *costs and benefits* of public intervention are more pronounced. The

enhanced value of residential buildings in New York is, thus, in large part, attributable to government intervention. To give a stark (if somewhat fanciful) illustration, if the City sold Central Park to private developers the value of residential units bordering the park would plummet, housing would be more abundant, and Manhattan, in general, would be a more affordable but far less attractive place to live.

Beyond the obvious and massive effects of federal fiscal and monetary policy, almost every act of government impacts - in some fashion - on private property interests. And at some level, all economic activity is the product of some implicit or explicit public policy, whether that policy is one of open competition or involves some degree of interventionism. Hence, there is no neutral baseline or "natural" market from which to measure deviations from market based allocations of goods and services. Government – past and present – is inextricably intertwined with the marketplace.

Both private markets and interventionist policies reflect a rough, evolving democratic consensus on how economic affairs should be conducted. We generally concern ourselves with "what works best." There are, however, constitutional limits, state laws, customs and traditions that restrict the degree to which government has been able or willing to interfere with markets and private property interests.<sup>14</sup> Among the innumerable government actions that impact on private property interests, rent regulation seems to tread most conspicuously.

Most interventionist measures and public sector activities have received widespread acceptance as necessary and proper to contain potentially destabilizing elements within our economy, to "promote the general welfare" or to foster salutary competitive practices. Generally, they spark little controversy.

Rent regulation has been an exception. Rent regulation involves direct government control of a key term in all contracts: price. Other contemporary examples of such overt intervention include minimum wage laws, milk price supports and rate setting for utilities and transportation services (e.g. yellow cabs). Yet these policies generate only a fraction of the passion witnessed during New York's periodic "rent wars."

Rent and price regulations are not new. After the first modern university was founded in Bologna, Italy around the beginning of the last millennium students flocked to the area creating a housing shortage. "Bolognese landlords threatened to raise scholars' rents" and "student protests led Emperor Frederick Barbarossa to

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<sup>14</sup> The constitutionality of rent regulation is discussed in detail at pp. 46 through 53.

award them protection from exploitation in 1158."<sup>15</sup> In England, medieval clerics developed the concept of a just price for the necessities of life and Parliament continued to pass laws regulating the price of various services and commodities long after the clergy ceased to exert a significant influence in the making of laws.<sup>16</sup> In revolutionary era America the colonies (and later the states) regularly restricted prices on staples and limited the amount innkeepers could charge for food and lodging<sup>17</sup>. Notably, Trinity Church, owner of the "first large rural Manhattan estate to be organized for a town rental market," was subject to a ceiling on its annual income.<sup>18</sup>

Many ancient rules and customs operated not to shield consumers, tenants or laborers from market forces, but to protect vested interests such as landowners. A good example is New York's feudal land laws. Until the 1840's vast tracks of land populated by tenant farmers were controlled by a small number of large landlords. Feudal land tenures harnessed these farmers to leasehold estates, and prevented them from ever owning the land they worked. Violent uprisings erupted when the landlords attempted to enforce harsh lease conditions or sought evictions during periods of economic distress. These uprisings eventually led to state constitutional reforms in 1846, abolishing all feudal land tenures and promoting a conversion to freehold estates.

In some respects, these struggles revealed an endemic tension in landlord/tenant relations. As noted in the *1980 Report of the New York State Temporary Commission on Rental Housing*:

*Simply substitute the years 1919-20, 1941-42, 1950-51, 1961-62, 1968-69, 1970-71, 1974 and 1979, for 1845, apartment house owners for landowners, and apartment house tenants for tenant-farmers and the conditions and remedial legislation action of over a century ago present a most striking parallel to the conditions and enactments of the later periods.*<sup>19</sup>

Residential leaseholders would never experience the dramatic changes secured by these early tenant farmers.<sup>20</sup> But changes in legal protections afforded residential tenants have been significant. Over the past century, lease terms governing tenure, habitability, evictions and rent adjustments have largely been supplanted or

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<sup>15</sup>Quoting from *The Life Millennium*, A University Education, p. 89, Life Books 1998.

<sup>16</sup>William H. Dunbar, *State Regulation of Prices and Rates*, 9 Harv. Q.J. Econ. 1, 4 (1895).

<sup>17</sup>See Ely, *The Guardian of Every other Right, A Constitutional History of Property Rights* at 19-20 (1992).

<sup>18</sup>Quoting Blackmar, *Manhattan for Rent 1785-1850*, 30 (1989).

<sup>19</sup>At p. 141-42.

<sup>20</sup>One might argue, however, that laws favoring conversion to co-operative and condominium ownership do, in fact, promote the gradual, albeit partial, elimination of traditional leasehold tenures in apartment buildings.

transformed by legislation and court rulings. Even in the absence of rent regulations, the common law lease of a century ago no longer exists. Leases once created independent covenants for delivery of possession and payment of rent. Tenants were thus obligated to pay rent even when possession was not delivered or services were not maintained. Leases now involve "mutually dependent" contractual obligations. If possession or services are not provided, rent may be withheld or abated.

A host of other lease terms have been altered by statute and court rulings. Lease provisions allowing "self-help" evictions are unlawful. Lease provisions waiving a landlord's obligation to maintain habitability are unlawful. Restrictions on roommates, subletting and pets are now governed by statute. Moreover, New York tenants now have affirmative rights to organize with other tenants, to receive protection against retaliatory evictions and to prevent landlords from engaging in various forms of discrimination (including discrimination on the basis of age, race, creed, color, national origin, sex, age, disability, familial status, marital status, the presence of children, sexual orientation, lawful occupation, alienage or citizenship status.)

In a sense, all leasehold interests in residential apartments in New York have evolved into a new type of tenure – clearly not the kind of freehold estate held by homeowners, but certainly not the common law leasehold of a century ago.

If the vestiges of feudalism spawned tenant-farmer uprisings of the 1840's, the unregulated proliferation of substandard (but high rent) housing in New York City created an even greater source of public unrest in the mid-nineteenth century. Affordability issues began to appear as soon as New York became a major metropolis. Notably, as today, the affordability problem was largely the product of a dual economy. As Burrows and Wallace observed in *Gotham*:

*The 1830's boom improved living conditions for many working people, notably the two-fifths of the City's artisans who worked in the building trades, erecting the thousand-plus structures going up each year... But the majority of the working class saw their living standards deteriorate, partly because of boom-fostered inflation -- especially the rapidly rising rents exacted by those the City Inspector (in 1835) called 'mercenary landlords' -- but primarily because constructing housing for poor people wasn't profitable.*<sup>21</sup>

One response to the City's low-income housing needs was the construction of multi-family "tenements" - the first of which was erected in 1833. Unfortunately this

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<sup>21</sup> Burrows & Wallace, *Gotham: A History of New York City to 1898*, p. 587.

proved to be an imperfect solution. Overcrowded tenements soon became a breeding ground for a variety of health and social problems. A cholera epidemic in 1849 took approximately 5,000 lives.<sup>22</sup> In 1854, a second cholera outbreak took 2,509 lives.<sup>23</sup> Unemployment afflicted about one in five tenement families.<sup>24</sup> Poverty was widespread and severe. According to one account:

*Conditions in the City were beginning to take their toll in terms of the general social order. Major riots in 1849 and 1857 pointed toward the increasing pathological state of the tenement population. The most traumatic civil disturbance, however, was the "draft riots" of 1863. On the surface they were a reaction to newly imposed involuntary conscription for military service in the Civil War. But the violence was also the product of the intolerable condition of the city's poor. The wretched and diseased population of the tenements, especially of the Sixth Ward, poured into the city streets. They demonstrated beyond question the connection between the housing problem and the threat of civil disturbance.*<sup>25</sup>

As Jacob Riis described in *How the Other Half Lives*:

*The tenement-house population had swelled to half a million souls by [1855], and on the East Side, in what is still the most populated district in all the world ... it was packed at a rate of 290,000 to the square mile ... The death of a child in a tenement was registered in the Bureau of Vital Statistics as 'plainly due to suffocation of foul air of an unventilated apartment,' and the Senators, who had come down from Albany to find out what was the matter with New York, reported that 'there are annually cut off from the population by disease and death enough human beings to people a city, and enough human labor to sustain it.' And yet experts had testified that, as compared with uptown, rents were from twenty-five to thirty percent higher in the worst slums of the lower wards...*<sup>26</sup>

By 1865, nearly five in seven city residents (not including Brooklyn) lived in sub-standard tenement housing.<sup>27</sup> In 1867 the State adopted the nation's first comprehensive law addressing health and safety issues in tenements. The Tenement

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<sup>22</sup>Plunz, Richard, *A History of Housing in New York City*, p. 21.

<sup>23</sup>Id.

<sup>24</sup>Id. In 1858 there were about 25,000 unemployed tenement dwellers with approximately 100,000 family members affected. Just over 480,000 people lived in tenement housing. Id at 22.

<sup>25</sup>Plunz, Richard, *A History of Housing In New York City* p. 21.

<sup>26</sup>Riis, *How the Other Half Lives*, chap. 1, at 4.

<sup>27</sup>Plunz, at 22.

House Act of 1867 mandated such things as fire escapes for non-fireproof buildings and at least one water closet for every twenty tenants. The law also forbade occupation of cellars.

As the turn of the century approached, hundreds of thousands of new immigrants filtered into an already overcrowded housing stock. In 1884, Felix Adler, leader of the New York Society for Ethical Culture, observed, "[t]he evils of the tenement house section of this city are due to the estates which neglect the comfort of their tenants, and to the landlords who demand exorbitant rents."<sup>28</sup>

Neither the Tenement House Act, the market, nor philanthropic organizations proved sufficient to the task of ensuring healthful, safe and affordable housing. In 1894 a State legislative committee reported that while New York City ranked sixth in the world in population, it ranked first in density – with the Lower East Side surpassing a section of Bombay which contained the world’s highest known population density.<sup>29</sup> Crowded, unsanitary housing again prompted legislative action. The Tenement House Act of 1901 mandated running water on each floor and a water closet in each apartment consisting of three rooms or more. Every room was required to have an exterior window and each apartment was required to have sufficient means of egress to limit the risk of death in a fire.<sup>30</sup>

Affordability remained an intractable problem. Protests and rent strikes involving thousands of apartments erupted in 1904 and 1908.<sup>31</sup> By the end of World War I conditions again worsened prompting widespread demands for greater protection.

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<sup>28</sup>Id. at p. 39.

<sup>29</sup>Id. at 37.

<sup>30</sup>Id. at 47.

<sup>31</sup>Lawson, *The Tenant Movement in New York City 1904-1984* p.39-50.

## Post-World War I Controls

The Emergency Rent Laws of 1920 were adopted in the wake of dramatic increases in dispossess proceedings and a collapse in new construction caused by a diversion of resources to the war effort. In 1919, some 96,623 dispossess proceedings were docketed in municipal courts, with an increasing number being commenced in the Fall of that year.<sup>32</sup> In the first eight months of 1920 another 87,442 such proceedings were commenced.<sup>33</sup> Construction levels were equally bleak. In 1915, 1,365 tenements went up containing 23,617 units, but by 1919 only 89 tenements were built, containing 1,481 apartments.<sup>34</sup> A highly organized and politicized tenant movement launched a series of protests and rent strikes, demanding relief from spiraling rents resulting from the shortage.<sup>35</sup>

These events coincided with the period known as the "Red Scare." Five Socialists had been elected to the State Assembly. A debate ensued as to whether the Socialists should be allowed to take their seats. In March of 1920, New York City's Mayor John Hylan, traveled to Albany, urging adoption of a series of rent bills. There he told the legislators, "[y]ou gentlemen are trying to clear the Assembly of socialism. Let me tell you that you must first eradicate the causes of socialism, and one of the greatest of these is the speculating landlord."<sup>36</sup> The Assembly expelled its Socialist members – the most ardent advocates of rent and eviction protections. A few hours later, absent votes from the Socialists, it adopted New York's first rent control laws.<sup>37</sup>

The "April rent laws" were extended and strengthened in September of 1920. Under these laws the courts of New York State were effectively charged with the administration of rents. When challenged by tenants, rent increases were reviewed according to a standard of "reasonableness". Effectively, any increase over that of a prior year was presumed "unjust, unreasonable and oppressive" unless an owner could demonstrate otherwise. Landlords seeking to justify rent increases were generally required to submit a Bill of Particulars setting forth gross income and expense figures. As observed in the *1980 Report of the New York State Temporary Commission on Rental Housing*:

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<sup>32</sup>*1980 Report of the New York State Temporary Commission on Rental Housing*, I-42.

<sup>33</sup>*Id.*

<sup>34</sup>*Id.* at I-43.

<sup>35</sup>Lawson, pp. 51-93.

<sup>36</sup>Maeder, *Roofs, Revolt of the Tenants, March-April 1920*, NY Daily News 2/4/2000.

<sup>37</sup>Lawson, p. 72.

*[The] definition of ‘reasonableness’ was subject to judicial interpretation. Conflicting opinions and an absence of uniform interpretation and ruling cannot be considered surprising in light of the fact that there were no statutory guidelines and the courts had to determine in the first instance such questions as: what was properly includable in income and operating expenses; or, the consideration to be given to extraordinary repairs, contemplated future repairs, vacancies, bad debts, depreciation, and interest on mortgages. Perhaps, most important, the courts were required to determine what constituted a proper or fair rate of return to the landlord, and became thereby the ‘administrative agency’ administering the rent laws of 1920.<sup>38</sup>*

The housing shortage of the early 1920’s was severe. Vacancy rates fell below 1% from 1920 through 1924. To induce new construction, the City exempted all properties built between 1920 to 1926 from property taxation until 1932. In addition, all units constructed after September 27, 1920 were exempt from the rent laws. Notwithstanding the presence of relatively strict rent protections for existing units, new construction proceeded at a record pace, with hundreds of thousands of new apartments being added to the stock before the decade ended. By 1928 the City’s vacancy rate was approaching 8% and rent regulations were no longer needed. A phase out began in 1926 in the form of luxury decontrol – exempting units renting for more than \$20 per room per month. After 1928 apartments renting for \$10 or more, per room, per month were excluded. The Rent Laws of 1920 expired completely in June 1929, although limited protections against unjust evictions were continued.

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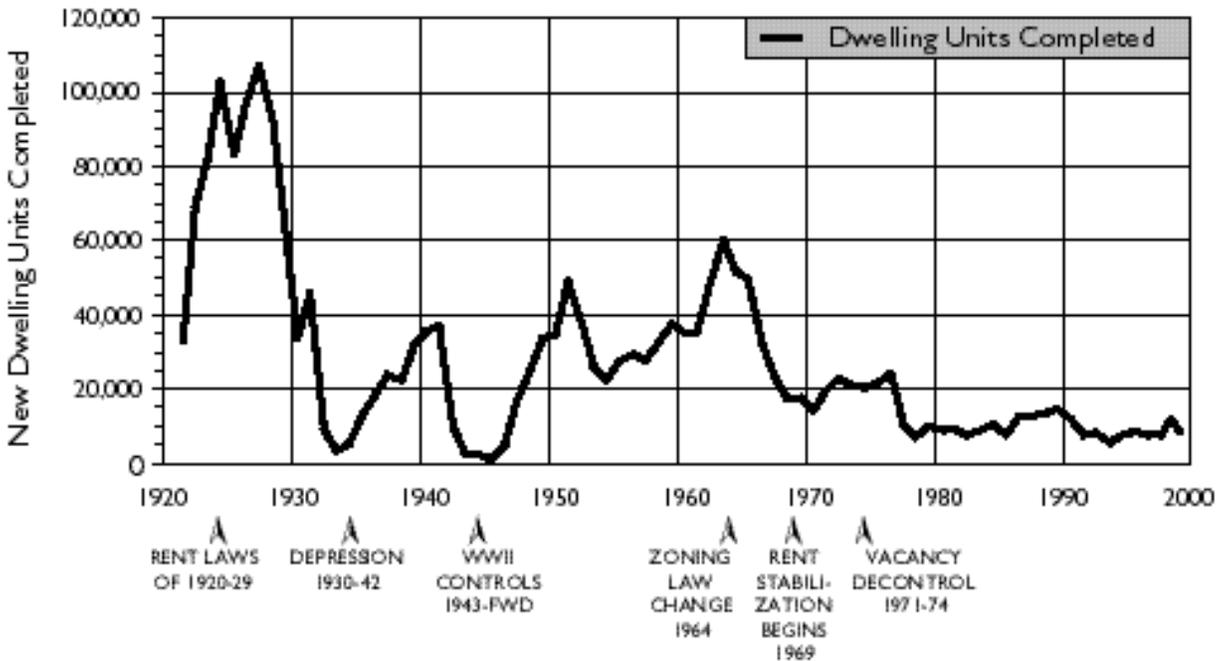
<sup>38</sup> At p.1-45.

Chart I.

## Rent Regulation and Construction of New Housing

What is notable about the experience of the 1920's is that a combination of property tax incentives, economic prosperity and the exemption of new construction from rent regulations all produced housing abundance. A second housing boom occurred in the two decades following World War II. Remarkably, as the graph below illustrates, New York's two great housing booms in the twentieth century occurred during periods when strict rent controls were imposed on existing units.

New Dwelling Units Completed: New York City 1921-99



Despite the presence of similar policies and circumstances to those of the 1920's over the past three decades (i.e. tax abatements and exemptions from rent regulation for new construction and extended periods of economic growth), the City has been unable to achieve a normal vacancy rate (5%+). Among the many factors which might explain the difference between the experience of the 1920's and the present are the loss of relatively inexpensive building sites, the enactment of more restrictive zoning and building laws, and the gradual increase in the relative cost of housing in the suburban belt surrounding the City.

## **The Great Depression**

The absence of rent controls during the Great Depression is instructive in one critical respect. Despite tragic levels of unemployment, widespread tenant unrest<sup>39</sup> and severe affordability problems, rent controls offered little as a policy option because rents were already depressed and vacancies remained high. As summarized by one housing historian:

*In the early 1930s, a massive loss of income by all city residents threw housing markets into disarray; tenants could not pay their rents, landlords could not meet their mortgages, and courts received a flood of eviction and foreclosure cases they lacked the capacity to process or enforce.*<sup>40</sup>

With affordability problems on the rise, tenant households began doubling up. According to a 1946 Report of the Joint Legislative Committee to Recodify the Multiple Dwelling Law, the housing shortage began to re-appear as early as 1936 but the shortage was largely concealed because economic conditions had forced many families to double-up.

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<sup>39</sup>See Lawson, pp. 95 - 127, (Chap. 3, From *Eviction Resistance to Rent Control*, Naison) analyzing the eruption of rent strikes and tenant activism in Harlem, the Bronx, Brooklyn and the Lower East Side in the 1930s.

<sup>40</sup>Id. at 96.

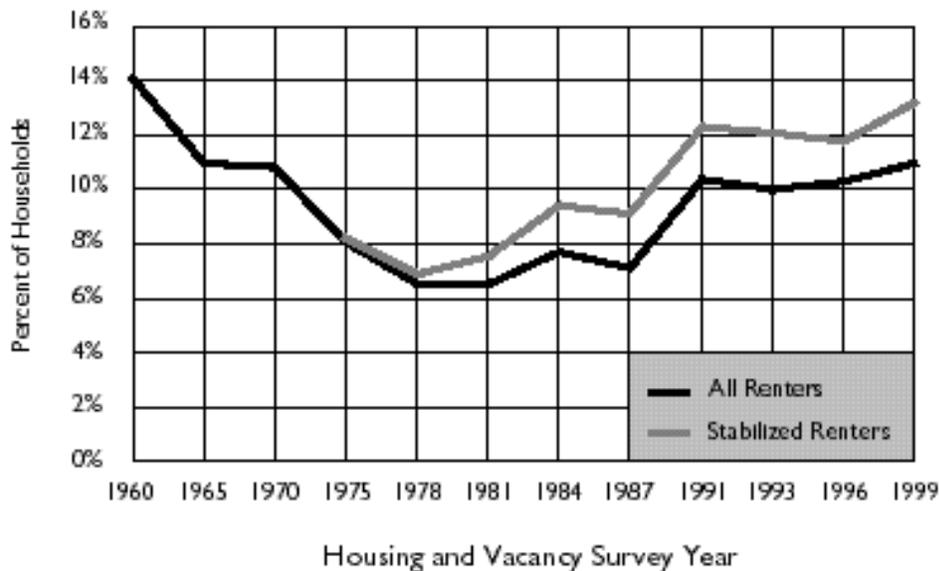
## Chart II.

### The Overcrowding Problem Today

In recent decades the triennial Housing and Vacancy Survey (HVS) has tracked the level of overcrowding in rental housing (a measure of "doubling up"). Along with vacancy rates, the level of overcrowding is a key indicator of the severity of the housing shortage and concomitant affordability problems.

#### Percent of Overcrowded Rental & Stabilized Households in New York City

(Households with more than one person per room)



The chart above shows overcrowding (defined as more than one person per room) rates found in each HVS since 1960. Rent stabilized households show more severe overcrowding levels than in all renter households, except in 1975. Overcrowding in both stabilized and all renter households has also shown a general trend of increase since the late 1970s.

### World War II Era Controls

In 1942, under the Emergency Price Control Act, the federal government established a price regulation system nationwide in response to the prospect of wartime shortages and inflation. The setting of rents under this system was left to the discretion of the Administrator of the Office of Price Administration ("OPA"), subject to review by a special court known as the Emergency Court of Appeals. Under the new system, the

implementation of rent control in New York did not begin until 1943. According to one account:

*With the advent of World War II and the imposition of federal rent control in selected defense areas elsewhere in the United States, the city's left and liberal housing groups lobbied Mayor Fiorella LaGuardia and President Roosevelt's [OPA] to freeze rents. Initially, OPA refused, claiming that the city's rental vacancy rate was too high to justify rent control. In the wake of an August 1943 Harlem riot and threatened rent strikes if landlords did not exercise voluntary restraints, however, OPA changed its mind and imposed a wartime rent freeze...<sup>41</sup>*

On November 1, 1943 rents were frozen for all rental units in New York City at rent levels that had existed on March 1, 1943. These rents were subsequently adjusted by the Administrator as conditions warranted and in accordance with federal legislative intent.

Following last minute extensions of the law in 1944 and 1945, and a belated extension in 1946 (described below), the Emergency Price Control Act expired in 1947. Prior to its expiration Congress adopted the Housing and Rent Act of 1947 which preserved rent controls into 1948. This Law did not regulate units which were certified for occupancy after February 1, 1947.<sup>42</sup> Subsequent acts further extended these controls until the federal government's involvement with rent regulation in any city was fully terminated in 1953.

In 1946 the State of New York enacted "stand by" legislation to preserve rent controls in the event that federal controls expired. In 1950 this legislation was activated with a rent freeze and the establishment of a commission to review rent regulation. In 1951, in anticipation of the withdrawal of federal controls, the State adopted a system of rent regulation similar to the federal system, and the administration of rents for 2.1 million apartments was transferred to the State from the federal government.

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<sup>41</sup>Keating, Teitz & Skaburskis, *Rent Control - Regulation and The Rental Housing Market* 1998, p. 154.

<sup>42</sup>February 1, 1947 is a critical date. Until 1969 all housing built after this date was exempt from any kind of rent regulation. Generally, references to "post-war" housing are references to buildings with certificates of occupancy issued after this date. Conversely, references to "pre-war" housing are to buildings built before this date. Virtually no housing was constructed between 1942 and 1947, so references to "pre" war housing are not entirely inaccurate.

Establishing a pattern that would continue for fifty years, the 1940's witnessed a series of "hair's breadth escapes for controls."<sup>43</sup> The first Extension Act [of federal controls] was approved on June 30, 1944, the very day initial controls were to have expired. The second Extension Act was adopted on June 30, 1945 - also the last day to act - extending controls to June 30, 1946. According to one account, "to pass this extension in time Congress went to considerable lengths. On June 30th the House of Representatives met at 10:00 A.M. (the Senate had already passed the extension), and at 1:25 P.M. the resolution was approved by the House, rushed to a waiting airplane and flown to Kansas City for President Truman's signature." One year later, on June 29th, 1946 Congress failed to override President Truman's veto of the 1946 Extension Act. By midnight on June 30th 1946 the nation would be "without price or rent controls - except in New York State... On the afternoon of Sunday, June 30, 1946, Joseph D. McGoldrick, former New York City Comptroller, was attending the christening of his third daughter. He was rushed to a waiting State Commerce Department airplane, which flew him to Albany. When he arrived at 9:00 P.M., he was taken immediately to Governor Dewey's office, where he was sworn in as temporary State Housing Rent Commissioner. Just exactly two hours and thirty-seven minutes before the expiration of controls, he issued 'State Housing Regulation Number 1' which acted to continue federal controls wherever they had existed in New York under federal law." One month later, responding to President Truman's objections to the 1946 extension bill (objections largely concerning agricultural commodities), Congress adopted a revised bill which the President signed on July 25, 1946, thus re-establishing federal controls.

Under the State system made operational in 1951, owners who claimed hardship in meeting building expenses were permitted to apply for rent increases in addition to those directly authorized by statute. A minimum fair net annual return of 4% on equalized assessed value was allowed.<sup>44</sup>

In 1953 an across the board rent adjustment of 15% over the rent levels which existed on March 1, 1943 was adopted. This applied to all rents that had not yet been increased by at least this much since 1943. In addition, the minimum fair net annual return was increased from 4% to 6%. The equalization rates of 1954 became the base rates for use in computing equalized assessed value in fair net annual return proceedings.

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<sup>43</sup>This series of events was described by Frederic Berman, former housing commissioner in the Lindsey administration, in a special 1968 report entitled A History of Rent Control in New York City. The quotes are taken from that report.

<sup>44</sup>Equalization of property taxes involves the adjustment of real property assessments (valuations) within a taxing district in order to achieve a uniform proportion between assessed values and actual cash values of real estate so that all property tax owners are taxed at an equal rate. See Wurtzback and Miles, Modern Real Estate, glossary p.742.

In 1958 some 600 units in NYC with rents exceeding \$416.66 per month (\$500 per month if furnished) and which met certain other criteria, were decontrolled as luxury units.

In 1961 the fair net annual return provisions were refined to prevent certain abuses. In addition, the use of 1954 equalization rates on assessed value as a base for reviewing fair net annual return applications was eliminated in favor of using current equalization rates. Since recognition of newer assessments and equalization rates, in effect, raised the recognized values of these properties, many owners now qualified for rent increases. Consequently, "hardship" applications were filed in record numbers.

According to the State Commission's 1980 report, the rent increases resulting from the recognition of new assessment and equalization rates were criticized by tenants as unfair, and this "issue soon spilled over into and became the principal issue in that year's mayoralty campaign". In order to prevent the State from engineering future rent increases of this sort, "the candidates of both parties pledged to demand self-determination and local administration of rent control within the City of New York".<sup>45</sup> Consequently, in 1962 the duty of administering rent control along with the power to enact local controls was transferred to the City. Post-1946 buildings, which had been exempted under federal and state controls, remained so under City controls.

Also, as noted in the Commission's report, "the maximum rents as they existed under state law, which, in effect, were the 1943 freeze date rents adjusted pursuant to intervening statutes, became the maximum rents under the City Act".<sup>46</sup>

Under City controls "[t]he fair net annual return (hardship) provision required the use of 'current assessed' instead of 'current equalized assessed' value as the valuation base for computing an owner's entitlement to a rent adjustment. Also, rent increases pursuant to the fair net annual return provision were limited to a maximum of 15 percent biennially. Local Law 30 of 1970 (which established the MBR [Maximum Base Rent] program) re-instituted the use of current equalized value in the fair net annual return provision."<sup>47</sup> The MBR system later linked the removal of certain housing code violations to eligibility for rent increases, a requirement that still applies for buildings with rent controlled units.

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<sup>45</sup>Quoting the Commission's Report at 1-62.

<sup>46</sup>Quoting the Commission's Report at 1-64.

<sup>47</sup>Id. at 1-64.

In 1971 the State adopted several new laws limiting the continuance of rent control. One of these provided for the decontrol of rental units vacated after June 30, 1971. This "vacancy decontrol" law remains in effect, although most decontrolled units now fall under rent stabilization. Another 1971 law, popularly known as the "Urstadt" law, prohibited the City from adopting new rent regulations more stringent than those already in existence. This law also remains in effect.

It should be added that the City adopted various forms of luxury decontrol for certain high rent units in both 1964 and 1968. It should also be noted that there was a brief return to federal rent regulation under the Nixon administration's wage and price program with a 90 day freeze in late 1971.

### **Rent Control Today**

There now remain only about 50,000 rent controlled units in the City. With vacancy decontrol in effect, the City loses about 6,000 rent controlled units per year. The remaining units are generally occupied by persons who have remained in possession of their apartments since June 30, 1971, or by their surviving spouse, adult lifetime partner or other family member. The median age of rent controlled tenants, as of 1999, was seventy (70). The median annual income for rent controlled households in 1998 was seventeen thousand dollars (\$17,000). In general, this is a dwindling stock occupied by an elderly, low-income population.

The "maximum base rent" or "MBR" for each rent controlled unit is adjusted biennially according to a general adjustment factor established by the State's Division of Housing and Community Renewal. These units are also subject to a 7.5% cap on annual rent increases. This cap produces what is known as the "maximum collectible rent" or the "MCR." The MCR - the amount a tenant actually pays for a given apartment - often reaches the MBR. When this occurs, adjustments in the maximum collectible rent cannot exceed the maximum base rent. For example, if the maximum collectible rent is \$500, a 7.5% increase would bring the rent to \$537.50. But, if the maximum base rent is \$510 the collectible rent cannot exceed this base. In this situation both the MCR and the MBR are now \$510. If the biennial MBR is then increased by 5%, both the MCR and the MBR will increase by 5% resulting in a rent paid of \$535.50.

It is important to note that the Rent Guidelines Board has no role in the adjustment of rent controlled rents. Most rent controlled units will fall under rent stabilization upon vacancy, however, and the Board does have a special role in helping to establish initial rents for these decontrolled units. This process is described at pages 76 through 78 under the discussion of Fair Market Rent Appeals and at pages 84 through 86 under the heading Special Guidelines for Decontrolled units.

## **Rent Stabilization**

In 1969 rapidly falling vacancy rates and an increase in complaints of rising rents in non-controlled units led Mayor Lindsay to call upon a group representing the owners of unregulated apartments to propose a self-regulation program. At the same time the Mayor appointed the first Rent Guidelines Board "to make an independent evaluation of the plan for self-regulation" to be submitted by the owner's group.

Following the owner's report and review by the Rent Guidelines Board, the City enacted the Rent Stabilization Law of 1969 ("RSL"). This law applied to some 325,000 apartments that had been completed after February 1, 1947. It also applied to some 75,000 formerly controlled apartments which had been decontrolled through subdivision, conversion or luxury decontrol laws. Unlike rent control which applied to buildings with 3 or more units (and one or two unit buildings if continuously occupied since April 1, 1953), rent stabilization applied to buildings with 6 or more units. Consequently, decontrolled units in buildings with 3, 4 or 5 units remained decontrolled. Also, the law did not apply to new buildings that received a certificate of occupancy after March 10, 1969.<sup>48</sup>

Under the 1969 law, the Rent Guidelines Board continued in operation and was charged with the establishment of guidelines for rent increases within certain prescribed limitations. Any lease or rental agreement adopted after May 31, 1968 would be subject to the first guideline which governed lease renewals and new leases occurring between June 1, 1968 and June 30, 1970.

For leases coming due under the first guideline the law prescribed no more than a 10% increase for 2-year leases, and a 15% increase for 3 year leases. Also, an additional 5% vacancy allowance was granted for two-year leases, and a 10% allowance was given for 3-year leases. The Board was thereafter charged with establishing annual guidelines following a review of (1) the economic condition of the residential real estate industry in New York City 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 [added in 1983], 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.

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<sup>48</sup>Later, this date would be changed to January 1, 1974, and newly constructed buildings may have become subject to rent stabilization if the owner/developer took part in the City's J-51, 421a or similar tax abatement programs. These programs are discussed at pages 86-87.

At the time no special Board positions for tenant or owner representation were designated. The designation of two owner and two tenant representatives was added in 1974.

The new law also placed the development of a code to regulate owner/tenant relations (with regard to appropriate supplemental charges, lease renewals, evictions etc.) in the hands of the Rent Stabilization Association ("RSA")—a private industry group—subject to approval by the City's housing agency. Also established was a "Conciliation and Appeals Board" consisting initially of owner and public members to review rent code violations. Tenant representation was added to this board in 1974. Under the Omnibus Housing Act of 1983, the Conciliation and Appeals Board was abolished. Two years later the State legislature also removed the RSA from its role in developing the rent code, along with its counterpart in the hotel sector—the Metropolitan Hotel Industry Stabilization Association. The powers of these bodies, along with the City's administration of rent regulation were transferred to the State Division of Housing and Community Renewal ("DHCR") where they remain today.<sup>49</sup>

In the mid-1980's this agency came under increasing attack from many sectors prompting a State legislative investigation of the agency's performance. The 1987 report following this review was entitled "Bleak House" and was highly critical of DHCR. It is worth noting that owner groups, while critical of DHCR, have often asserted that rent regulation in New York City is bureaucratically unmanageable. Tenant groups, on the other hand, have charged that a lack of government commitment to the proper functioning of the system is to blame for its failures. In more recent years the DHCR has implemented a number of administrative improvements addressing many of its earlier difficulties.

In 1971, under pressure from owners, the State legislature adopted vacancy decontrol (as previously mentioned) and vacancy destabilization. This allowed owners to set market rents upon vacancy and would have led to the phasing out of both rent control and rent stabilization had the measure remained in force. However, rapidly rising rents during the 1971-74 period led to the passage of the Emergency Tenant Protection Act (ETPA) of 1974. Together with the RSL and the Local Emergency Rent Control Act of 1962, this is the fundamental law now governing the rent stabilization system. A detailed review of the ETPA, excerpted from the 1980 report, is provided below.

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<sup>49</sup>For an overview of the administrative history of rent regulation and a critique of the system as a failed attempt at owner self regulation, see Keating, *Landlord Self-Regulation: New York City's Rent Stabilization System 1969 - 1985*, 31 J. of Urb. & Contemp. L. 77 (1987).

[Note: Certain summarized sections of the ETPA contained in the 1980 report have been edited out of this excerpt.]

Vacancy decontrol and destabilization soon became a political issue in much the same manner as the change by the State in the Fair Net Annual Return provision had been ten years earlier. The City of New York brought a court action to postpone the operation of the law but its application was denied. In 1973 Mayor-elect Beame charged that as a result of the State's mandated vacancy decontrol law many of the City's poor, moderate and middle income families had been placed in an intolerable position by not only being forced to pay exorbitant rents but in also losing the assurance they previously had against the possibility of unconscionable future rent increases, and he further asserted that many City residents were being driven out of the City as a result of vacancy decontrol. Governor Rockefeller appointed a Committee under the Chairmanship of Assemblyman Andrew Stein to conduct hearings and make recommendations on the subject. The "Stein Committee" recommended abrogation of vacancy decontrol.

In 1974 the Legislature enacted the Emergency Tenant Protection Act of 1974 (ETPA) (Chapter 576, Laws of 1974) the objective of which was to prevent excessive rent increases in the decontrolled sector of the rental housing market due to low vacancy rates, the inadequate supply of standard rental housing and the increase in new household formations in New York City and the surrounding suburban counties of Nassau, Rockland and Westchester. Chapter 576 in substance provided for a State stabilization program (ETPA) and also amended the New York City Rent Stabilization law. The provisions of ETPA are declared by the statute to be applicable only to New York City, and any City Town or Village (at their respective option) in Nassau, Rockland and Westchester counties.

Chapter 576 is a complex statute. It substantially affected the State rent control program outside New York City, and all New York City rent control and rent stabilization regulation. However, it did not affect State and City pre-1947 rent controlled housing (which in New York City and the three counties remained controlled by the State and City rent control agencies) which remained under existing law and regulation so long as the same tenant in occupancy on June 30, 1971 remained in possession. Essentially ETPA amended the vacancy decontrol provision of Chapter 371 as applicable to the areas indicated above. Section 4 of Chapter 571

is the Emergency Tenant Protection Act of 1974 and significant provisions thereof are summarized by section.

Section 3(a) provides for the local determination of an emergency for all or any class or classes of housing where the vacancy rate is 5% or less (except State or City rent controlled housing accommodations) and describes the local determination of emergency as extending to housing accommodations:

- previously decontrolled
- decontrolled in the future
- previously destabilized
- presently exempt from State rent control
- presently exempt from City rent control
- presently exempt from the New York City rent stabilization law

Section 3(b) and (c) requires a declaration that the emergency is at an end when the vacancy rate exceeds 5%, and permits an earlier termination in whole or in part where the local governing body finds the emergency to be wholly or partially abated. Any existence or termination of an emergency must be preceded by a public hearing.

Section 4(c) provides that in New York City the Rent Guidelines Board shall be the Board established by the New York City rent stabilization law as amended.

Section 5 provides that a local emergency may be declared for all or any class of housing except:

- (a) New York State or City rent controlled accommodations
- (b) government-owned accommodations
- (c) accommodations whose rents are fixed or subject to the supervision of the State Division of Housing and Community Renewal, the New York City Housing and Development Administration, or the New York State Urban Development Corporation or, to the extent regulation under ETPA is inconsistent therewith accommodations aided by insurance under any provision of the National Housing Act;
- (d) accommodations in buildings containing less than six dwelling units unless part of a garden type maisonette dwelling complex containing six or more dwelling units notwithstanding the

- existence of "one or two family certificates of occupancy" for portions thereof;
- (e) buildings completed or rehabilitated after January 1, 1974;
  - (f) accommodations owned by an eleemosynary institution and operated on a non-profit basis;
  - (g) hotel accommodations outside New York City;
  - (h) motor homes, trailer homes and tourist courts;
  - (i) non-housekeeping furnished accommodations where there are two or less boarders and the remaining portion of the housing accommodation is occupied by the owner or his immediate family;
  - (j) accommodations in buildings operated exclusively for charitable purposes on a non-profit basis;
  - (k) accommodations which are not occupied by the tenant in possession as his primary residence.

Section 11 declares void as contrary to public policy any lease provision or rental agreement which purports to waive a tenant's rights under ETPA.

Section 13 directs all state and local government agencies to cooperate with the State Division of Housing and Community Renewal, and any rent guidelines board in effectuating the purposes of ETPA. [emphasis added]

## **Chapter 576**

The following sections of Chapter 576 also enacted significant changes as to the State's rent control and New York City's rent control and rent stabilization programs.

Section 2 amends Chapter 371 Laws of 1971 by repealing vacancy decontrol for New York City rent stabilized accommodations and by providing that all previously destabilized apartments and all decontrolled apartments - past and future - are to be subject to ETPA.

A provision which denied decontrol of rent controlled accommodations where a finding by the City Rent Agency that the vacature of the accommodation had been achieved via tenant harassment was retained.

Section 7 amends section YY51-3.0 [now §26-504] of the Administrative Code of the City of New York by adding housing accommodations made subject to the provisions of the Rent Stabilization Law by ETPA. These are:

- (a) Vacancy decontrolled accommodations (in buildings containing six or more accommodations) which were formerly subject to rent control;
- (b) accommodations formerly subject to New York City rent stabilization which had been vacancy destabilized;
- (c) accommodations in New York City created between 1969 and 1974 and had been exempt from both rent control and rent stabilization.

Section 9 amends section YY51-5.0 [now §26-510] with respect to the New York City Rent Guidelines Board by staggering the terms of the members, and prescribing criteria for guidelines orders.

Section 12(b) (1) repeats the language of section 9(b) of ETPA except that in addition to designating the Conciliation and Appeals Board as the agency for determining fair market rent applications,<sup>50</sup> it also requires that decisions by the Conciliation and Appeals Board on such applications consider, in addition to the special guidelines to be established by the City's Rent Guidelines Board, the "...rents generally prevailing in the same area for substantially similar housing accommodations." [Fair Market Rent Appeals are discussed at 76-78 and 84-86, *infra*.]

Section 15 provides that all rights, remedies and obligations created pursuant to the New York City Rent Stabilization Law, the Rent Stabilization Code, and the orders of the Conciliation and Appeals Board inure to the benefit of all owners and tenants made subject to the rent stabilization law by ETPA. It also declares that nothing in Chapter 576 is intended to diminish the powers of the Conciliation and Appeals Board, or the New York City Rent Guidelines Board to make, amend, or modify rules, regulations, or guidelines.

Section 17 declares the provisions of ETPA to be effective immediately subject to a declaration of a public emergency by the local legislative body.

\*\*\* *end of edited excerpt from the 1980 report* \*\*\*<sup>51</sup>

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<sup>50</sup>Now a DHCR function.

<sup>51</sup>This edited excerpt was taken from pp. 1-84 through 1-94 of the 1980 report.

## **The Omnibus Housing Act of 1983**

The next major revision of the rent regulation laws occurred in 1983 with the passage of the Omnibus Housing Act. This Act had only a limited impact on the operations of the Rent Guidelines Board, however, and its main features, including the transfer of administration of rent regulations from the City to the State and the abolition of the Conciliation and Appeals Board, have previously been mentioned. Three changes imposed by the new law did affect the Board's operations. Prior to this act the Board routinely adopted special rent adjustments or surcharges at different times within a single guideline period. The new law ended this practice by limiting the Board to one guideline package per year. In addition, the law eliminated the availability of three-year leases as an option for tenants faced with lease renewals. Finally, the law added "governmental fees" to the list of cost considerations that the Board is required to review.

Also worth note is the fact that the 1983 law significantly overhauled certain enforcement provisions of the rent stabilization laws. Treble damages were imposed for willful rent overcharges [limited to two years / straight damages for overcharges up to four years]. A four-year limitation period was established for filing overcharge claims.<sup>52</sup> In addition, for the first time owners of rent stabilized apartments were required to register rents on an annual basis.

As mentioned earlier, subsequent legislation in 1985 ended the official involvement of the Rent Stabilization Association and the Metropolitan Hotel Industry Stabilization Association in the stabilization system.

## **The Rent Regulation Reform Act of 1993**

Another major change in the rent regulation system came with the adoption of the Rent Regulation Reform Act of 1993. Following a pattern set decades earlier, there were four last minute extensions of the rent laws, including one in which Governor Cuomo entered the Senate chamber at 11:57 PM to sign a three day extension before

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<sup>52</sup>Under this rule an overcharge was viewed as a continuing infraction. Thus, a tenant was allowed to challenge the last four years of any overcharge even if the unlawful increase began prior to the four-year period. Subsequent changes in 1993 and 1997 made the limitations period absolute. Thus, unlawful increases in rent that are more than four years old are now completely immunized from challenge.

the midnight deadline. In the final bill State legislative leaders agreed to the first decontrol initiative in over twenty years. The key provisions of the 1993 law are briefly as follows:

- Apartments renting for \$2,000 or more between July 7, 1993 and October 1, 1993, which were vacant on July 7, 1993 or thereafter, were exempted from rent regulation.<sup>53</sup>
- Apartments which 1) are occupied by persons who have a total annual income in excess of \$250,000 per year for two succeeding years, and 2) that have legal rents in excess of \$2,000 per month as of October 1, 1993, were exempted from rent regulation. The \$250,000 threshold would be modified four years later with the adoption of the Rent Regulation Reform Act of 1997.
- The law established a system of income certification to be administered through the Division of Housing and Community Renewal with the cooperation of the Department of Taxation and Finance.
- The law established one-fortieth the cost of individual apartment improvements as the allowable monthly rent increase when such improvements are made. The DHCR had considered implementing a longer "amortization" period via administrative regulations. The establishment of one-fortieth as the appropriate amount by statute eliminated the possibility of such an administrative change.<sup>54</sup>
- The law limited the availability of damages in cases where stabilized tenants claim a rent overcharge because the owner failed to register the apartment with the Division of Housing and Community Renewal.<sup>55</sup>
- The law provided that the chairperson of the Senate Committee on Housing and Community Development, jointly with the chairperson of the Assembly Housing Committee would establish a study group on rental housing which would produce a report for the Governor, the President Pro Tem of the Senate, and the Speaker of the Assembly no later than June 30, 1995. The study was to examine a number of issues relating to the impact and effectiveness of rent regulations and was to include, among other things, "recommendations regarding: (1) the methodology and criteria employed by rent guidelines boards in establishing guidelines for rent

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<sup>53</sup>The July 7, 1993—October 1, 1993 time period was later extended by Act of the New York City Council so that an apartment reaching the \$2,000 threshold AFTER October 1, 1993 was subject to vacancy decontrol.

<sup>54</sup>See pages 72-74 for a discussion of individual apartment improvements.

<sup>55</sup>See page 80 for a discussion of the consequences of a failure to register.

adjustments." This study and accompanying recommendations were apparently never completed.

- The law extended the ETPA until the fifteenth day of June 1997.

### **The Rent Regulation Reform Act of 1997**

The Rent Regulation Reform Act of 1997 followed one of the most bitter state legislative battles of the 20th century. Following a failed effort to work out a compromise between the Republican led Senate and the Democratic led Assembly, existing rent laws expired at midnight on June 15, 1997 – the first time in over fifty years that the state was without some kind of rent regulations. After four days of intense negotiations, the laws were renewed for six more years, with some major changes.

- The law imposed a complex statutory vacancy allowance which provides as follows:
  - ✓ If the incoming tenant selects a two-year lease, the increase shall be 20% over the prior legal regulated rent.
  - ✓ If the new tenant selects a one-year lease, the increase shall be 20% over the legal regulated rent, less the difference between (a) the RGB two-year renewal lease guideline applied to the prior legal regulated rent, and (b) the RGB one-year renewal lease guideline applied to the prior legal regulated rent. For example, if the one year guideline is 4% and the two-year guideline is 7%, the vacancy allowance is 17% (i.e.  $20 - (7 - 4) = 17$ ).
  - ✓ In addition to the above, if an owner has not collected a vacancy allowance for the vacant apartment for at least 8 years, the owner is entitled to an additional six-tenths of one percent (.6%) for each year since the last vacancy allowance for the apartment was taken (or since the apartment fell under rent stabilization). For example, if the prior tenant was in occupancy for eleven years, and the new tenant takes a two-year lease, the vacancy allowance is 20% plus  $(.6\% \times 11)$  or a total of 26.6%.
  - ✓ If the prior legal rent was less than \$300, an additional \$100 increase may be added. If the prior rent was above \$300 but below \$500, the owner is entitled to all increases allowed by law or a minimum increase of \$100.

These vacancy allowances are in *lieu* of RGB one or two-year renewal increases, but in addition to other increases authorized by statute, such as major capital improvement increases, individual apartment increases, and any additional vacancy increase adopted by the RGB.

- The RRRRA of '97 also modified succession rights. It eliminated nieces, nephews, aunts and uncles from its definition of family members eligible to succeed departing tenants of record. These individuals still might qualify for succession rights if they can prove "emotional and financial commitment, and interdependence between [themselves] and the tenant." The new law also imposed a vacancy allowance on the second succeeding family member. Thus, if a parent passed away leaving an apartment to a son, the son would not have to pay a vacancy allowance. If, however, the son were to depart, leaving the apartment to a brother (a brother who meets the requisite two year co-occupancy requirement) the brother would have to pay all vacancy allowances in effect.
- The RRRRA of '97 further modified the luxury decontrol provisions first adopted in 1993. Tenants residing in apartments renting for more than \$2,000 per month earning more than \$175,000 per year for two consecutive years (down from \$250,000) are now subject to high income decontrol.
- An amendment to the Rent Stabilization Law adopted by the New York City Council in 1997 provided that the high rent vacancy decontrol adopted in 1993 only applied to apartments renting for \$2,000 or more *at the time they are vacated*. The DHCR had taken a different view, and concluded that if the rent lawfully reached \$2,000 (through the vacancy allowance, improvement allowances etc.) *after* the prior tenant vacated, it could be deregulated. The State adopted the DHCR's view and codified it in the RRRRA of '97. Subsequently, the City Council adopted a local law requiring owners to disclose prior rent histories to new occupants of deregulated apartments.
- The RRRRA of '97 restricted consideration of evidence to establish rent overcharge claims to events occurring within four years of the claim. Thus, if a tenant does not file an overcharge claim within four years of the rent registration filed with the DHCR claimed to include the excessive amount, the rent is final and the complaint will not be considered.
- To eliminate any fear developers may have of subsequent rent regulations, the RRRRA of '97 allows the Commissioner of DHCR to enter into contracts with developers to exempt new construction from any form of rent regulation for a period of fifty years.

- The RRRA of '97 also provides a mechanism to remove "hold-out" rent *controlled* tenants from buildings where the owner seeks to demolish and construct new units. If such tenants occupy less than ten percent of the units in a building (or one apartment in a building with 10 or fewer units), the owner may remove such tenants, but must provide relocation benefits established by the DHCR.
- The RRRA of '97 imposes strict requirements that tenants engaged in Housing Court proceedings deposit rents into court on a second adjournment or if more than 30 days have passed following the party's first appearance (unless the owner has requested the adjournments.)
- The RRRA of '97 also stiffens criminal penalties for physical harm to tenants caused by landlords engaged in harassment, making such acts a Class E felony. The Legislature's requirement of physical injury makes this particular enactment rather illusory. Under most circumstances, it is already a felony to deliberately injure someone.

## **Noteworthy Aspects of Selected Court Cases**

Along with the development of the state and local laws discussed in the preceding section, frequent litigation over the past 30 years has done much to shape the operation of the Rent Guidelines Board and the rent stabilization system. What follows is a list of court decisions and some notes on how these decisions may have reinforced or changed the system and the Board's role in it. Some of the cases involve Rent Guidelines Boards that operate outside of the City under a mandate similar to that of the N.Y.C. Rent Guidelines Board. The cases themselves should be directly consulted for further information on the facts and issues involved in each.

- (1) 8200 Realty Corporation v. Lindsay  
27 N.Y.2d 124, 313 N.Y.S.2d 733 (1970)
  - The New York Court of Appeals upheld the constitutionality of the real estate industry self-regulation system. Although noteworthy from a historical perspective, this case is no longer directly relevant to rent stabilization since the Rent Stabilization Association is no longer statutorily involved in administration of the rent regulations.
  
- (2) Associated Builders/CHIP v. N.Y.C. Rent Guidelines Board  
Supreme Court N.Y. Co., Special Term Part I (1974) Index No. 11928/74
  - The court rejected RGB guidelines on the grounds that they were not accompanied by a detailed explanatory statement.
  
- (3) Strausman v. Herman  
52 A.D. 2d 882, 383 N.Y.S.2d 59 (2d Dept. 1976), aff'd 42 N.Y.2d 1053 (1977)
  - The Appellate Division found that an affidavit by the Chairman of the Nassau County RGB stating that a DHCR ruling was consistent with the intent of the rent guideline it was interpreting was sufficient to support the validity of the ruling. Thus, the annulment of that ruling by a lower court was reversed. Therefore the courts will give the Board's interpretation of its own orders great weight.
  
- (4) Allyn Realty Corp. v. Herman  
56 A.D.2d 626, 391 N.Y.S.2d 685 (2d. Dept. 1977) [Involves Nassau County RGB]
  - The court ruled that the literal meaning of Board orders should be adhered to unless the literal interpretation of such meaning would lead to an absurd result.

- (5) Incorporated Village of Great Neck Plaza v. Nassau Co. Rent Guidelines Board  
60 A.D. 2d 593, 400 N.Y.S.2d 120 (2d Dept. 1977)  
- The Appellate Division ruled that the Nassau County RGB's failure to consider financing costs, vacancy rates and data reasonably available with respect to owners' net incomes, as required by 4(b) of the Emergency Tenant Protection Act of 1974 (a provision corresponding to 26-510(c)) resulted in the invalidation of its guidelines.
- (6) Rent Stabilization Association v. N.Y.C. RGB  
98 Misc 2d 312, 413 N.Y.S.950 (1978)  
- The Supreme Court, New York County, ruled that the Open Meetings Law applies to RGB Meetings. Because of violations of this law, the court ordered that the RGB hold further meetings to promulgate new guidelines but refrained from establishing court ordered guidelines in the interim period.
- (7) Coalition Against Rent Increase Passalongs v. Rent Guidelines Board of N.Y.C.  
104 Misc 2d 101, 427 N.Y.S.2d 660 (Sup. Ct. N.Y. Cty. 1979) aff'd 176 A.D.2d 343 (1980)  
- The Supreme Court, New York County, ruled that reopening of RGB guidelines for adjustments after the July 1, annual adjustment was permitted. This, however, is no longer permissible under the Omnibus Housing Act of 1983.  
- Also, the court noted, "...all rent controls in the City of New York [citations omitted] have a twofold purpose: to limit profiteering in a market marked by housing shortage and to conserve and improve the housing stock of the City of New York."
- (8) Incorporated Village of Great Neck Plaza v. Nassau County RGB  
69 A.D. 2d. 528, 418 N.Y.S.2d 796 (1979)\  
- The court ruled that Nassau County RGB is not a state agency and therefore is not subject to the State Administrative Procedure Act (SAPA). Following the same rationale, the New York City RGB is also not subject to SAPA.

(9) Liotta et. al. v. RGB

547 F. Supp. 800 (S.D.N.Y. 1982)

- Property owners argued in federal court that a loud and boisterous atmosphere at an RGB meeting precluded fair and rational deliberations and resulted low rent increases which constituted a denial of due process to the owners. The United States District Court for the Southern District found that in instances where state law provides an adequate remedy to initially seek redress of alleged due process violations, a plaintiff must seek state court review of the issue before it seeks review in federal court.

(10) Matter of Muriel Towers Co.

117 Misc. 2d 837 (Sup. Ct. N.Y. Co. 1983)

- The Supreme Court, New York County, found that the "circus atmosphere" (created by the exercise of constitutional rights by a "vocal citizenry") at an RGB meeting did not prevent rational deliberations by the Board. The Court also found that the Board's consideration of tenants' ability to pay in setting guidelines is proper.

(11) METHISA v. RGB

Supreme Court N.Y. Co. Index No. 21444/84(1984)

- A 0% adjustment guideline for hotel rents following hearings in which evidence of extensive neglect and deprivation of services in these buildings was presented was upheld. According to the court, the RGB is permitted to consider the nature of the services provided as part of its examination of expenditures. Such consideration is not penal nor quasi-judicial in nature and thus does not exceed the RGB's jurisdiction.

(12) Stein v. RGB

127 A.D. 2d 189, 514 N.Y.S.2d 222 (1st Dept. 1987)

- The Appellate Division, First Department ruled that supplementary Board orders or re-openers are permissible to protect the public from the impact of changed economic conditions in the housing market. [Reopening the guidelines in the same guideline period is no longer permissible since the passage of the Omnibus Housing Act of 1983. See #7]

(13) RSA v. Dinkins, RGB / Gesmer

Sup. Ct., N.Y. Co., Index No. 11506/90; 167 A.D.2d. 179, 562 N.Y.S. 2d 411 (1st Dept. 1990), app. den. 77 N.Y.2d. affd. 809 (1990)

- The Supreme Court, New York County, ruled that absolute impartiality in landlord-tenant matters is not a prerequisite to appointment as a public member of the RGB. In addition, the court held that the qualifications of Ellen Gesmer, which included 11 years experience as an attorney handling housing related matters, met the statutory requirement of "at least five years experience in either finance, economics or housing." (See note in next case)

(14) RSA v. Dinkins, RGB / Friedheim

Sup. Ct., N.Y. Co. - N.Y.L.J. 4/3/91 p.22, col. 1

- The Rent Stabilization Association (RSA) sought to have Oda Friedheim, a tenant member of the RGB removed, alleging that she was an officer in a tenant organization in violation of the Rent Stabilization Law. The court ruled that a *Quo Warranto* action brought by the Attorney General was the exclusive means for contesting title to a public office in New York State. [Note: The exclusive right of the Attorney General to contest title to office was raised on appeal in the Gesmer case as well. The Appellate Division chose to follow the lower court's ruling on the merits - and never addressed this standing issue.]

(15) 23 Realty Associates v. Tiegman et al.

Sup. Ct., Co. of N.Y. Index No. 12465/91 App. Withd. 176 A.D.2d. 1251 (1st Dept. 1991)

- A rent stabilized hotel owner claimed that hotel guidelines from 1984 through 1990, were adopted without any lawfully required investigation, or proper consideration of all guideline components and criteria. The court ruled that the City had "marshaled considerable data to show that RGB enacted its guidelines after giving due consideration to the [required] criteria".

- The Court also ruled that all challenges except the challenge to the most recent guideline were time barred by a four month statute of limitations.

(16) RSA v. Dinkins / RGB

U.S. District Court, S.D.N.Y. (J. Stanton) 805 F.Supp. 159 (S.D.N.Y 1992), affd. 5 F.3d 591 (2d. Cir. 1993)

Note: Since this case directly concerns the RGB's methodology, a summary of the District Court's opinion is provided. This summary is for informational purposes only. The plaintiff dropped the challenge against the RGB methodology on appeal, and the Second Circuit Court of

Appeals reviewed the case *de novo*. Therefore, the decision of the District Court is not binding precedent.

### *The District Court Opinion*

- The RSA initiated a challenge in federal court alleging *inter alia* that the guidelines over several years failed to account for the effects of inflation on owners net operating income. They argued that this failure, along with an inadequate hardship mechanism, resulted in an unconstitutional taking of property because such adjustments were essential to maintaining a "reasonable return on the property as an investment." The court stated that "a 'reasonable return' is not protected by law in this circuit" (p.163). Instead, the court made clear that the relevant test at issue is whether or not economic viability is impaired. Citing a prior case the court noted, "the crucial inquiry...is not whether the regulation permits plaintiffs to use the property in a 'profitable' manner, but whether the property use allowed by the regulation is sufficiently desirable to permit property owners to sell the property to someone else for that use." *Id.* The court did not conclude that the RGB failed to provide owners with a reasonable return, but found that even if the RSA's allegations to that effect were true, an unconstitutional taking would not necessarily have occurred. The court also emphasized the difficulty of mounting a facial challenge to rent regulations, noting that unlike an "as applied" challenge where a concrete injury to an individual plaintiff is demonstrated, in facial challenges plaintiffs must "establish that no set of circumstances exists under which the act would be valid."

### *The Opinion of the Second Circuit Court of Appeals, 5F 3d 591(2d. Cir. 1993)*

- On appeal to the Second Circuit, the plaintiff dropped the challenge against the RGB's methodology but pressed the claim that DHCR's hardship rent increase procedures (explained in detail at 74 to 76) were facially unconstitutional because such procedures did not guarantee an adequate return. The appeals court concluded that such claims could only be framed in an "as applied" challenge, and that "the proper recourse is for the aggrieved individuals themselves to bring suit" (p. 595). The court noted that although such an approach to a suit "may appear inefficient and burdensome, it is the only way to present a federal court with the type of live 'case or controversy' demanded by the Constitution. Moreover, it is the only realistic way to be able to resolve it fully and fairly." Finding that the RSA lacked proper standing to bring an as

applied challenge, the Second Circuit unanimous affirmed the District Court's decision.

- (17) The Greystone Hotel v. City of New York, the Rent Guidelines Board et al.  
98-9116 (2d. Cir 1999) (unpub. op.) affg. 13 F. Supp. 2d. 524 (S.D.N.Y. 1998)  
- The owner of a "Class B" hotel argued that the RGB violated its rights to due process and equal protection by granting lower rent increases than those given for apartments. The owner also argued that the rent stabilization law and code effected a physical and regulatory taking of its property. Because the property retained some economic value no regulatory taking was found. Because the owner initially chose to use the hotel as a rental property, no physical taking was found. With respect to the relatively lower rent adjustments given to hotel owners the owner claimed that it was being forced to address the affordability problems of lower income tenants. The court found that the "RGB considered tenant hardship in accordance with a statutory scheme that mandated this consideration in conjunction with a host of other factors that explicitly weigh landlord costs" (p.3). Because the RGB made "a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment" no due process or equal protection violation was found, citing Pennell v. City of San Jose, 485 U.S. 1, 13 (1988). Notably, the Court declined to permit this decision to be used as a precedent in subsequent proceedings. Thus, while it resolved the dispute between the parties, it may not be cited as precedential authority in future legal proceedings.
- (18) Benroal Realty LP v. Nassau County Rent Guidelines Board  
Supreme Court, Nassau County, N.Y.L.J. 2/14/01 p.31, col. 6  
- The Nassau County Rent Guidelines Board linked its rent adjustments to whether or not each affected community under its jurisdiction offered a Senior Citizen Rent Increase Exemption (SCRIE). Tenants in communities without a SCRIE program received higher rent increases than tenants in communities with a SCRIE program. The Supreme Court, Nassau County, ruled that the Nassau County RGB had "no statutory or inherent authority to extend the state statutory benefits of SCRIE for eligible seniors to non-eligible tenants generally."

## The Constitutionality of Rent Regulation

The constitutionality of rent regulation is an issue commonly raised in discussions about the RGB's orders. Because it is rarely analyzed, an extensive treatment of the issue is provided below.

The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that private property shall not be taken for public use without just compensation. The Takings Clause has been a source of great dispute and scholarly debate for over a century. Today, the relevant test is whether the law advances a legitimate state interest and does not deny all economically viable use of property.

Generally speaking, constitutional scholars have all but given up arguing that rent regulations inevitably result in an unconstitutional taking of private property.<sup>56</sup> The few scholars who persist in such attacks often founder on definitional grounds. If even the smallest degree of price or rent regulation results in an unconstitutional taking because the "natural" order of the market is altered in a way which favors one party over another, every act of government which economically disadvantages someone to the benefit of another becomes suspect. Virtually every law has some burden shifting economic impact. Economic interests, as measured in pure market terms, are constantly being diminished or enhanced by governmental action. Only property rights, a limited subset of such interests, receive constitutional protection. As Harvard law professor Frank Michelman has explained, if every existing "legally sanctioned advantage is property" we are gradually "forced to recognize in every act of government a redefinition and adjustment of a property boundary [for which compensation must be paid]. The war between popular self government and strongly constitutionalized property now comes to seem not containable but total."<sup>57</sup>

Constitutional norms shaped by settled precedent and adjusted by evolving practical concerns are precisely what prevent this "war" from spreading. Within our democratic system, property (and the power that attaches to it) is thus treated as a legal norm - informed but not controlled by economic analysis.<sup>58</sup> The reasonable expectations of property owners are supported by legal protections that operate

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<sup>56</sup>But see Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOKLYN L. REV. 741 (1989) and Responses by various authors in 54 BROOKLYN L. REV. 1215 (1989).

<sup>57</sup>Quoting Michelman, *Takings*, 1987, 88 COLUMBIALAW REVIEW 1600, 1627-28 (1988).

<sup>58</sup>As Justice Holmes put it in his famous *Lochner* dissent, "... a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question of whether statutes embodying them conflict with the Constitution of the United States." 198 U.S. 45, 75 (1905).

outside of any abstract or purely economic definition of property. But expectations alone do not define property rights. As constitutional scholar Laurence Tribe has observed:

*Grounded in custom or necessity, these expectations achieve protected status not because the state is deigned to accord them protection, but because constitutional norms entitle them to protection. These norms, however, cannot be expressed entirely within the language of expectations; that path is a circular one inasmuch as expectations are themselves subject to governmental manipulation. Instead, the norms must reflect a mix of several concerns -- including regularity... autonomy ...and equality. Without appeal to such concerns we are defenseless against the alluring but fatal argument that, since it is government that gives, government is free to take as well.<sup>59</sup>*

Some scholars have suggested that we should look back to the original intention of the Framers to determine what was meant by the term property at the time the Bill of Rights was adopted. Even if the Fifth Amendment's prohibition against taking property terminated the conceptual development of what is meant by "property", thereby freezing what was included in the term in 1791, locked in with it would be the operative meaning property received under the common law - a meaning which, as previously discussed,<sup>60</sup> failed to immunize against price and rent regulations.

As with all language, what is meant by a legal term or phrase is inseparable from the experience of its users. A legal term which remains in use for centuries is subtly remolded by the evolving culture, manipulated by pressing interests, nuanced by changing contexts and animated by the unique frame of reference brought to bear by each new interpreter. No special exception exists for the term property. Thus, "property" may one day incorporate within its meaning an inviolable right to demand any price that a market might allow; or it may include fewer rights than are presently secured. In any reasonable construction of the term property and the rights it implies, the correct constitutional balance will hang somewhere between established understandings and emerging practical concerns. As Professor Michelman puts it, "balancing - or, better, the judicial practice of situated judgment or practical reason - is not the law's antithesis but a part of law's essence."<sup>61</sup>

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<sup>59</sup>Tribe, American Constitutional Law, pp. 608-609.

<sup>60</sup>See text at page 16.

<sup>61</sup>Supra, note 57 at 1629.

Scholarly disputes about the nature of property and the extent of constitutional protections are likely to continue as long as scholars, property and the Constitution are around. There is, however, a rather large body of authoritative court decisions that deal with the "takings" issue, along with a number of other constitutional concerns raised by the regulation of rents.

While "takings" claims have presented the most notable challenge, rent regulations have also been attacked as violative of substantive and procedural due process, equal protection, the Contracts Clause, as exceeding Congressional war powers, violating the doctrine of separation of powers, imposing involuntary servitude, and as an unconstitutional quartering of troops.<sup>62</sup> Few such challenges have been successful.

### **The U.S. Supreme Court's Treatment of Rent Control Laws**

The first significant constitutional challenge to rent controls followed the adoption of post World War I controls in Washington D.C. and New York City. These "due process" challenges were rejected in an opinion written by Justice Oliver Wendall Holmes in 1921.<sup>63</sup> Notably, Justice Holmes' recognition of the concept of what is now referred to as a "regulatory taking," postdated these decisions by one year.<sup>64</sup> The only instance where the United States Supreme Court has stricken a rent control statute came in 1924 when Justice Holmes found that the wartime justification of the rent controls had come to an end.<sup>65</sup> On two occasions World War II era rent controls were unsuccessfully challenged before the U. S. Supreme Court.<sup>66</sup>

The most recent Supreme Court decision on a rent control ordinance, *Yee v. City of Escondido*,<sup>67</sup> involved a physical takings claim. In *Yee* the U.S. Supreme Court held that where owners of rent regulated mobile home lots or "pads" had opened their property to occupation by others (the initial pad renters), they could not "assert a per se right to compensation based on their inability to exclude particular individuals", including those who purchased mobile home units from prior tenants, and thus succeeded them in their right to a rent controlled pad. The court explicitly decided not to review a regulatory takings claim which had not been raised at trial.

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<sup>62</sup>See Radford, *Regulatory Takings Law in the 1990's: The Death of Rent Control?*, 21 SOUTHWESTERN UNIVERSITY LAW REVIEW 1019 (1992) (internal citations omitted).

<sup>63</sup>*Block v. Hirsh*, 256 U.S. 135 (1921) (dealing with Washington, D.C.'s rent control laws); See, also, *Marcus Brown Holding Co. v. Feldman* 256 U.S. 170 (1921) dealing with New York City's rent control laws.

<sup>64</sup>*In Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922), (Justice Holmes recognized that if a regulation goes "too far" it will be recognized as a taking).

<sup>65</sup>*Chaselton Corp. v. Sinclair* 264 U.S. 543 (1924).

<sup>66</sup>*Bowles v. Willingham*, 321 U.S. 503 (1944) and *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138 (1948).

<sup>67</sup>503 U. S. 519, (1992).

In *Pennell v. San Jose*,<sup>68</sup> the court found no constitutional infirmity in a rent control ordinance which permitted the consideration of tenant hardship in a mechanism for special rent adjustments. Applying a rational basis standard of review, among other things, the court held that the hardship provision neither rendered the ordinance facially invalid under the Due Process clause, nor violated the Equal Protection Clause. The court recognized that "a legitimate and rational goal of price or rate regulation is the protection of consumer welfare."<sup>69</sup> Perhaps most importantly, the Court declined to consider the appellant's claim that the hardship provision resulted in a regulatory taking. Finding that there was "no evidence that the 'tenant hardship clause' [had] in fact ever been relied upon by a hearing officer to reduce the rent below the figure it would have been set at on the basis of other factors set forth in the Ordinance"<sup>70</sup> the majority declared the regulatory taking claim premature. In a notable dissent, Justice Scalia, joined by Justice O'Connor reached the regulatory takings issue and concluded that, because the hardship provision forced some individuals (landlords) to bear a public burden alone (i.e. support low-income tenants), the hardship provision resulted in a regulatory taking.

The dissent in *Pennell* suggests that policy makers should be wary about the constitutionality of any measure that imposes a discrete regulatory burden on owners due to the fact that they may have low income or hardship tenants in their building. It implies that the elimination of abnormal rents through rent controls is clearly constitutional. However, imposing a public welfare burden on individual owners may not be.<sup>71</sup>

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<sup>68</sup>485 U.S. 1 (1987)

<sup>69</sup>Id. at 13.

<sup>70</sup>Id. at 11.

<sup>71</sup>Compare *Parrino v. Lindsay*, 29 N. Y. 2d 30 (1971). In *Parrino* the New York State Court of Appeals had occasion to consider whether a temporary local law which generally froze rents for elderly persons with household incomes of less than \$4,500, was unconstitutional. In citing the temporary nature of the measure and the fact that the rent levels paid had already been upheld as constitutionally valid, the Court of Appeals refused to find a denial of equal protection. The court also found that a regulatory taking had not occurred. This portion of the decision was criticized in a case that went before the Supreme Court of New Jersey a few years later. In *Property Owners Association of North Bergen v. North Bergen*, 378 A.2d 25 (1977) a North Bergen ordinance which provided that elderly tenants earning less than \$5,000 annually would be immune from rent increases was found to result in an unconstitutional taking. There the Court held,

*"A legislative category of economically needy senior citizens is sound, proper and sustainable as a rational classification. But compelled subsidization by landlords or by tenants who happen to live in an apartment building with senior citizens is an improper and unconstitutional method of solving the problem."* 378 A.2d at 31.

Justice Scalia quoted this passage approvingly in his dissent in *Pennell* noting that the Supreme Court of New Jersey was dealing with "the same vice I find dispositive here" 485 U.S. at 23. Perhaps the *Parrino* case can be distinguished on the grounds that it dealt with a temporary measure and that the rent levels had already been found constitutional. The New Jersey Supreme Court was clear in its disagreement with *Parrino*, however, and passed over the opportunity to distinguish it from the North Bergen case. After noting that *Parrino's* "factual circumstances are not present here" the Court added, "and we do not find *Parrino* persuasive." 378 A.2d at 31.

In *Greene v. Mirabel*<sup>72</sup> the court dismissed for want of a substantial federal question a takings claim challenging the 7 1/2% statutory limit on annual rent increases under New York's rent control law. While the statute in question permitted a higher increase if landlord's could prove that the return on their investment was less than 8 1/2%, the landlords asserted that they were denied "hardship" adjustments before the Division of Housing and Community Renewal and in state courts.

## **Challenges to Rent Regulation laws before the New York Court of Appeals**

Extending the application of recent U.S. Supreme Court decisions in the regulatory takings area, the New York Court of Appeals struck down two rent protection measures between 1989 and 1995, and upheld two others.

In *Federal Home Loan Mortgage Corporation v. New York State Division of Housing and Community Renewal*,<sup>73</sup> the New York Court of Appeals held that units in a formerly rent stabilized building which underwent cooperative conversion regain the protection of rent stabilization if the building loses its cooperative status upon foreclosure of an underlying mortgage. This result was particularly unwelcome in the banking community. The market value of properties foreclosed upon could be expected to vary significantly depending on whether the property experienced free market rents or regulated rents following foreclosure. Hence the Court's decision to recognize a reversion to rent regulated status effectively raised the incentive on the part of financial institutions to arrange for workouts - as an alternative to foreclosure in financially troubled cooperatives.

Although the court in *Federal Home Loan Mortgage Corp.*, appeared to have responsibility for addressing the narrow question of whether the building reverted to rent stabilized status,<sup>74</sup> it also considered constitutional objections to the law which permitted this reversion.<sup>75</sup> First, it addressed the plaintiff's claim that the law effected a physical taking. Recognizing that "the essence of plaintiff's dispute is not that it is being forced to use the property in a new or undesirable manner, but that the rent it charges in terms of the rental leases should be market based and not subject to regulation under the [Rent Stabilization Law]" the court found that "no new use of the

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<sup>72</sup>485 U.S. 983 (1988).

<sup>73</sup>87 N.Y. 2d 325 (1995).

<sup>74</sup>This question had been certified from the United States Court of Appeals for the Second Circuit where the case had been under consideration. Id.

<sup>75</sup>Rent Stabilization Law, NYC Admin. Code Section 26-504.

property had been forced upon plaintiff, and no unconstitutional physical taking has been effectuated."<sup>76</sup>

The court also rejected a regulatory takings claim. Notably, in addressing the regulatory takings claim the court reiterated its recognition of the legal framework for finding a regulatory taking used in *Manocherian v. Lenox Hill Hospital*,<sup>77</sup> and earlier in *Seawall Assocs. v. City of New York*.<sup>78</sup>

In *Federal Home Loan Mortgage Corp.*, the Court of Appeals wrote:

*The legal framework for finding a regulatory taking is well settled in this State. As we recently reiterated in Manocherian v. Lenox Hill Hospital regulation of private property rises to the level of an unconstitutional taking if the regulation (1) denies the owner all economically viable use of the property or (2) does not substantially advance a legitimate State interest. 87 N.Y.2d at 335.*

Unlike the *Manocherian* case, however, [discussed below] the Court found that extending the protection of the Rent Stabilization Law to the former cooperative shareholders would "serve the same legitimate State interest served by application of the RSL in a housing shortage - 'preventing eviction and resulting vulnerability to homelessness of the identified beneficiaries'". Having found the proper nexus, the court rejected the plaintiff's regulatory taking claim.

*Manocherian v. Lenox Hill Hospital*,<sup>79</sup> is a rather complex case which held that the extension of rent stabilization protections to leases held by not-for-profit hospitals for ultimate use by hospital employees (as subtenants) resulted in a regulatory taking.

With the adoption of the Omnibus Housing Act of 1983 the New York State Legislature tightened rules with regard to sublets by, among other things, limiting the right to sublet to tenants who intended to return and occupy their units at the termination of the subtenancy. Since not-for-profit hospitals could not be prime/occupying tenants, the effect of this law was to terminate the rent stabilized status of leases held by such entities. As a result, a number of hospital employee/subtenants faced eviction. To remedy this unintended consequence the New York State Legislature adopted Chapter 940 of the laws of 1984, which restored rent stabilized status to these leases.

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<sup>76</sup>87 N.Y.2d at 335.

<sup>77</sup>84 N.Y.2d. 385 (1994).

<sup>78</sup>74 N.Y. 2d 92 (1989). See also Lucas v. So. Carolina Coastal Council 505 U.S. 1003 (1992).

<sup>79</sup>84 N.Y.2d 385 (1994), *cert den.*, 514 U.S. 1109 (1995).

This re-establishment of rent protection for a non-occupying corporate entity was challenged by the plaintiff as a regulatory taking. Relying upon the takings standard articulated in *Seawall*, and finding that the Chapter 940 did "not protect and benefit specific occupant subtenants, but rather erect[ed] a subsidized housing regime for Lenox Hill Hospital's preferential allotment" the New York Court of Appeals held that Chapter 940 "suffers a fatal defect by not substantially advancing a closely and legitimately connected State interest."<sup>80</sup> The court thus drew a distinction between a non-occupant corporate entity and housing consumers who intended to occupy their apartments. The court appeared to be influenced to some degree by the perpetual status of the hospital as a corporate tenant and by the fact that the hospital employees could be evicted upon discharge from their employment. These facts, the court ruled, contravened two key goals of rent protection "occupant protection and eventual market redemption."<sup>81</sup>

Notwithstanding the various considerations which appeared to weigh in the court's finding, this was the first time that the New York Court of Appeals ruled that a rent law produced unconstitutional subsidies. The ruling appears to suggest that any legislative attempt to protect non-occupying consumers (e.g. business and not-for-profit entities) in a market where rents are effected by a legislatively recognized housing shortage, will run into constitutional difficulties.

In *Rent Stabilization Assn. v. Higgins*,<sup>82</sup> the New York Court of Appeals upheld an administrative regulation promulgated by the New York State Division of Housing and Community Renewal which granted unmarried partners of a permanent character succession rights of the same type enjoyed by surviving spouses. Among other claims raised by the appellants, the regulation was challenged as permitting a forced physical occupation of the property resulting in a *per se* taking. Relying upon *Yee*, the court concluded that "[b]ecause the challenged regulations may require the owner-lessor to accept a new occupant but not a new use of its rent-regulated property, we conclude that appellants have failed to establish their claim that, facially, a permanent physical occupation of appellant's property has been effected." The appellants also raised a regulatory taking claim. Dismissing the claim, the court found no deprivation of an economically viable use of the property and no failure to advance the legitimate state interest of protecting persons against the possible loss of their homes.

Although not directly addressing a rent regulation law in the same sense as *Higgins*, *Manocherian* and the *Federal Home Loan Mortgage* cases, these decisions

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<sup>80</sup>84 N.Y.2d 385, 386 (1994).

<sup>81</sup>84 N.Y. 2d at 394.

<sup>82</sup>83 N.Y.2d 156(1994).

have been influenced to some degree by *Seawall Associates v. City of New York*.<sup>83</sup> *Seawall* involved an attempt to prevent the further decline and loss of single room occupancy housing by imposing a moratorium on the alteration, conversion or demolition of such housing. The law allowed an exemption for those who were willing to pay \$45,000 dollars per unit into a low-income housing fund. In addition, the law mandated that unused units be repaired and rented out. Finding that the buy- out provision amounted to a form of "ransom" and that the rent up provision resulted in a forced physical occupation of the property, the New York Court of Appeals ruled that the law resulted in an unconstitutional taking.

The foregoing developments suggest that long established, traditional rent control measures appear likely to survive judicial scrutiny against takings claims. On the other hand, new and novel extensions of such protections have met with mixed success. Particular care should be given to whether there is a clear nexus between such measures and previously established or recognized "legitimate state interests." The noteworthy aspect of some of these cases, particularly *Manocherian*, is that they suggest that the legislature's identification of new or expanded state interests are subject to close judicial scrutiny.

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<sup>83</sup>74 N.Y.2d 92 cert den. 493 U.S. 976 (1989).

## **MAIN FEATURES OF RENT STABILIZATION**

### **The landlord/tenant context — objectives, enforcement & primary provisions of the Emergency Tenant Protection Act, Rent Stabilization Law, Rent Stabilization Code & related laws**

As seen from the history of rent regulation, the rent stabilization system has evolved from a combination of State, City and administrative agency actions beginning in 1969. Under the Emergency Tenant Protection Act (ETPA) of 1974, the State established the broad legal parameters within which the City, its agencies, and now the State Division of Housing and Community Renewal must administer rent stabilization. Much of the ETPA, however, refers to and relies upon provisions of the local Rent Stabilization Law (RSL) of 1969 as governing the administration of rent stabilization within New York City. Both laws in turn prescribe the establishment of a code of regulations known as the Rent Stabilization Code (RSC) which implements the provisions of these laws in detail.

Although the provisions of the ETPA concerning rent setting and the role of the Rent Guidelines Board(s) were previously noted, it may be worthwhile to consider some of the general themes of the rent stabilization laws and regulations before proceeding with a more detailed discussion of the administration of rents.

The rent stabilization system is structured to provide three interrelated protections to tenants while permitting a fair return to owners who invest in rental property. A prime concern of lawmakers in establishing the system was to preserve the basic **affordability** of rental housing. Yet, affordable rents would provide little protection for tenants who are at the same time vulnerable to arbitrary evictions or service reductions. Consequently, the rent regulation system goes far beyond the simple establishment of rents and addresses a whole range of landlord/tenant issues. These issues mainly concern **habitability** and **security of tenure**.

It is also important to consider whether rent regulation produces **fair returns** for affected owners. As previously discussed, the interests of owners are vested with certain protections based upon the constitutional guarantees of equal protection, due process and just compensation for the taking of private property for public use. Concern for these protections has been incorporated into the structure of the rent stabilization system through the allowance of "hardship" rent increases for owners and by the various constitutional limitations governing the Board's and the DHCR's general authority. Additionally, the system is designed to prevent tenants from

unfairly abusing or profiting from their control over regulated units. Finally, mechanisms have been added to encourage owners to invest in major capital improvements and to develop new rental units or to improve existing units.

A general familiarity with all of these aspects of rent stabilization is helpful in understanding the regulatory framework within which the rent guidelines must be established and enforced.

## **Affordability**

The findings of the City Council in enacting the Rent Stabilization Law of 1969, and the State legislature in adopting the Emergency Tenant Protection Act of 1974, clearly establish that fair and *generally* affordable rents are a primary objective of these laws. The intent is clearly not to guarantee an affordable rent for every tenant. Rather, it is to protect tenants against "abnormal" rents driven up by chronic housing shortages. A full reprint of the findings from the Rent Stabilization Law of 1969, as amended, is provided below:

### **Rent Stabilization Law of 1969 (as amended) Findings and Declaration of Emergency**

*The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York and will continue to exist after April first, nineteen hundred seventy-four; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings which creates a special hardship to persons and families occupying rental housing; that the legislation enacted in nineteen hundred seventy-one by the state of New York, removing controls on housing accommodations as they become vacant, has resulted in sharp increases in rent levels in many instances; that the existing and proposed cuts in federal assistance to housing programs threaten a virtual end to the creation of new housing, thus prolonging the present emergency; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the council continues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive*

*rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that the transition from regulation to a normal market of free bargaining between landlord and tenant, while still the objective of state and city policy, must be administered with due regard for such emergency; and that the policy herein expressed is now administered locally within the city of New York by an agency of the city itself, pursuant to the authority conferred by chapter twenty-one of the laws of nineteen hundred sixty-two.*

*The council further finds that, prior to the adoption of local laws sixteen and fifty-one of nineteen hundred sixty-nine, many owners of housing accommodations in multiple dwellings, not subject to the provisions of the city rent and rehabilitation law enacted pursuant to said enabling authority either because they were constructed after nineteen hundred forty-seven or because they were decontrolled due to monthly rental of two hundred fifty dollars or more or for other reasons, were demanding exorbitant and unconscionable rent increases as a result of the aforesaid emergency, which led to a continuing restriction of available housing as evidenced by the nineteen hundred sixty-eight vacancy survey by the United States bureau of the census; that prior to the enactment of said local laws, such increases were being exacted under stress of prevailing conditions of inflation and of an acute housing shortage resulting from a sharp decline in private residential construction brought about by a combination of local and national factors; that such increases and demands were causing severe hardship to tenants of such accommodations and were uprooting long-time city residents from their communities; that recent studies establish that the acute housing shortage continues to exist; that there has been a further decline in private residential construction due to existing and proposed cuts in federal assistance to housing programs; that unless such accommodations are subjected to reasonable rent and eviction limitations, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; and that such conditions constitute a grave emergency. (§26-502 of the RSL continues and re-affirms these findings.)*

The question of how much weight to give to affordability is a controversial one. Two judicial pronouncements on the issue indicate that tenants' ability to pay is a permissible consideration in setting the guidelines.<sup>84</sup> Owner representatives have often asserted that affordability (as reflected in tenant incomes, unemployment statistics, shelter allowances, non-payment petitions, evictions etc.) should not be a factor in the Board's annual deliberations. They have argued that rent limits established by focusing on economic factors - such as operating costs, vacancy rates, mortgage rates and so on - preserve affordability to the extent intended by the system. In other words, guidelines that are exclusively concerned with the specific considerations prescribed by law<sup>85</sup> result in presumptively "fair" rents. Tenants counter that this focus on the mandated considerations neglects the intent of the legislation - described in the above Declaration of Emergency - and ignores the third section of the charge to the Board which permits it to consider "such other data as may be made available to it".

Regardless of who has the better of this argument there is an independent and quite plausible reason for continuing to review and factor affordability into the guidelines. In the purest economic sense, the object of the guidelines should be to eliminate the effects of the housing shortage on rent levels. All of the mandated criteria suggest that the Board should be making a rough attempt to simulate the kinds of rents that a competitive market with a vacancy rate in excess of 5% might provide. Such a market would be shaped by the same basic forces that control all unregulated markets: supply and demand. Demand would in turn be determined by a host of factors, the most significant of which is tenant affordability.

In an unregulated rental housing market, if incomes fall or unemployment rises the demand curve will gradually shift downward - more people will double up, move away, skip out on payments or negotiate more vigorously with owners - and rents will eventually fall or rent increases will be limited. This pattern was clearly in evidence in unregulated markets nationally where rents remained virtually flat throughout the recession of the early 1990's.<sup>86</sup> In New York's unregulated rental sector, rents fell by

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<sup>84</sup>See *Greystone Hotel Co. v. City of New York, Rent Guidelines Board et al.*, case #17, supra at p.45. Note: This case was not published and may not be cited as precedent in any other case. See also *Matter of Muriel Towers Co.*, case #10, supra at page 42.

<sup>85</sup>Recall that the mandated considerations 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.

<sup>86</sup>See *State of the Nation's Housing - 1992*, Joint Center for Housing Studies of Harvard University, Exhibit 2a.

as much as 15% during this recession.<sup>87</sup> Vacancy rates are higher in other areas of the country giving rise to more balanced bargaining relations and permitting the partial transfer of recessionary pressures from tenants to owners. Except in high rent sectors where market rents prevail, New York's housing shortage largely suppresses or masks these consequences. Housing options in middle and low-income markets are limited. Owners are commonly in a position to say "take it or leave it" and tenants have little choice but to accept what is offered. The benefit to low and moderate income tenants of a recession-induced deflation of rents is largely lost.

In short, a genuine attempt to simulate a competitive equilibrium rental price will recognize that rents fall in a recession because incomes fall. From this perspective, ability to pay may be an important economic factor for the Board to consider.

The consideration of affordability does not necessarily compel lower rent adjustments. Those who are willing to factor affordability into the guidelines by limiting increases during a recession are bound to accept a logical corollary - when tenant incomes rise so should rents. Nothing in the Declaration of Emergency suggests that rent levels should be immunized against inflationary pressures brought on by rising incomes. The expansion underway since 1994 suggests that consideration of tenant affordability may actually result in relatively higher guidelines.

The chronic dilemma faced by Board members is that for decades New York has experienced a "dual" economy. According to one recent study New York ranks 50th among the states in the growing gap between high and low income earners.<sup>88</sup> From 1978 through 1998, on average, the top 5% of New York households gained 67% or \$107,880 in real (inflation adjusted) annual income while the bottom 20% lost 21% or \$2,900.<sup>89</sup> Nearly one in four New York City residents had incomes below the Federal Government's poverty threshold in 1998 – twice as high as the national average.<sup>90</sup> Thus, while incomes may rise on average, housing affordability for many, including a majority of rent stabilized households, has been stagnant or falling. According to the 1999 Housing and Vacancy Survey ("HVS"), while the incomes of all households rose 4.2% in inflation-adjusted terms between 1995 and 1998, the median income of rent stabilized households fell by one half percent.<sup>91</sup> The HVS found that the median rent stabilized household earned \$27,000 in 1998. The median

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<sup>87</sup>N.Y. Times 2/7/93 Real Estate Section at 12, col. 1.

<sup>88</sup>N.Y. Times 1/19/2000, Metro Section, B5, citing research conducted by the Economic Policy Institute and the Center on Budget and Policy Priorities.

<sup>89</sup>Id.

<sup>90</sup>N.Y. Times 10/7/99, Metro Section, B1.

<sup>91</sup>Selected Findings of the 1999 N.Y.C. Housing and Vacancy Survey, 2/16/00, Table 8.

income of homeowners was \$53,000. The median of all households was \$33,000. Fewer than 6% of rent stabilized households earned in excess of \$100,000 in 1998.<sup>92</sup> More than 19% of owner occupied households (conventional homes, co-ops and condos) earned in excess of \$100,000 in 1998.<sup>93</sup> Thus, although there are wide individual variations, when compared to owner occupied households, rent stabilized households tend to have relatively low income levels.

While rent stabilization may preserve fairness and affordability in a general sense for the 1,046,000 households protected by it, it clearly does not protect **individual** tenants who may not be able to afford existing rents at stabilized levels. Conversely, rent stabilization does protect some tenants who can afford market rents, although luxury decontrol has begun to limit such protection.

Many tenants do benefit from various government housing programs. As of 1998, 22.3% of all renter households and 21.6% of stabilized households received public assistance.<sup>94</sup> About 7.8% of renter households (7.7% of rent stabilized) receive shelter allowances.<sup>95</sup> Yet, shelter allowances often fall short of prevailing rents. Shelter allowances for a four-person household have remained at \$312 monthly since January of 1988. In inflation adjusted terms the value of these allowances is less than half of what it was in 1975.<sup>96</sup> Thousands of households threatened with eviction receive additional allowances pursuant to a court order issued in a State Supreme Court case known as Jiggetts v. Dowling<sup>97</sup>. That remedy requires the initiation of an eviction action before relief can be granted.<sup>98</sup>

Some 6.8% of renter households (6.5% of stabilized households) receive federal rent subsidies ("Section 8" vouchers).<sup>99</sup> Nearly 170,000 public housing units are occupied by tenants who pay rents determined by household income. These programs are, however, confronted with an extraordinary level of unmet demand. The wait list for public housing presently includes some 130,000 families.<sup>100</sup> This translates into waits for assistance that average about eight years. The wait list for rent vouchers

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<sup>92</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 9.

<sup>93</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1B, Table 9.

<sup>94</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 38.

<sup>95</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 102.

<sup>96</sup>N.Y. Times 7/9/00, *Housing Crisis Confounds a Prosperous City; In New York, Scarcity and High Costs Spur Competing Ideas for a Solution*, Metro Section, B1.

<sup>97</sup>261 AD2d 144,689 NYS2d 482 (1st Dept. 1999), leave to appeal dismissed, 94 NY2d 796, 700 NYS2d 428 (1999).

<sup>98</sup>For more information on this process, see *Hoops & Hurdles* by Anna Lou Dehavenon, City Limits/ October 1993.

<sup>99</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 102.

<sup>100</sup>N.Y. Times, *Housing Crisis*, supra note 96.

includes some 215,000 families.<sup>101</sup> Since the number of available vouchers is limited, many families will never receive this type of assistance.

Thousands of others reside in the approximately 122,000 (middle income) co-op (55,000) and rental (67,000) apartments commonly known as "Mitchell-Lama" housing. Waits for housing in these projects may last up to ten years.

In addition, some 6.6% of renter households receive rent increase exemptions through a program which offers a dollar for dollar property tax credit to owners for the amount of rent abated – the Senior Citizen Rent Increase Exemption or "SCRIE" program.<sup>102</sup> Among seniors in rent stabilized housing, 8.4% receive such subsidies. These subsidies cover rent increases for persons over 62 years of age earning less than \$20,000 per year and paying over one third of their income in rent.

About 3% of renter households benefit from other federal and state subsidies.<sup>103</sup>

To put all of this in perspective, New York City has a total of approximately 2,868,000 million households. About 575,000 live in conventional owner occupied homes. Some 51,000 families occupy owner occupied condominiums and 290,000 reside in owner occupied co-ops. The remaining 1,953,000 are renter households. Of these, 1,046,000 are rent stabilized and 53,000 are rent controlled.

Among all renter households, 6.8% receive Section 8 vouchers, 7.8% receive shelter allowances, 6.6% receive SCRIE and 3.1% receive other government subsidies. In sum, 24.3% of all renter households receive some kind of rental assistance. Among rent stabilized households, 24.7% (nearly one in four) receive such assistance.

Rent regulation does, of course, play some role in limiting the rents paid by many households that receive limited or no assistance. Yet, in spite of the high number of rental households protected by rent regulation, the proportion of household income paid in rent rose steeply throughout the early period of stabilization. (This phenomenon also occurred - to a lesser extent - throughout the nation during the same period.) The median "rent to income ratio," or percent of gross income paid in rent, increased from 20% to 29% for all renters and from 22% to 30% for stabilized renters over the past thirty years:

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<sup>101</sup>Id.

<sup>102</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 102.

<sup>103</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 102.

**Table III.**

Percent of Gross Income Paid in Rent <sup>104</sup> for all Renters and Stabilized Renters in New York City 1970-1999		
Year	All Renters	Stabilized Renters
1970	20%	22%
1975	25%	27%
1978	28%	30%
1981	27%	29%
1984	29%	30%
1987	29%	29%
1991	29%	28%
1993	30%	31%
1996	30%	30%
1999	29%	30%

Source: Housing and Vacancy Surveys 1970-1999, U.S. Bureau of the Census

Tenants currently residing in rent stabilized apartments (as distinguished from those searching for new apartments) receive the greatest level of protection under the existing system. The creators of rent stabilization were particularly concerned with community and household stability and sought to avoid the displacement of "long-time" residents. While existing tenants face guideline adjustments upon renewal of their leases, new tenants are charged vacancy increases (in accordance with the statutory formula). This approach has, however, resulted in widely "skewed" rents for comparable apartments. Notably, the RGB staff has found that "longevity discounts" exist in unregulated housing as well as in New York's regulated market.<sup>105</sup> Whether regulated or not, landlords favor long-term steady rent payers. The critical difference is that rent regulated tenants tend to stay in their units about twice as long (about 9 years on average) as their unregulated neighbors. Thus the longevity discounts accumulate over a longer period.

### **Habitability**

Historically a tenant's obligation to pay rent was considered independent of an owner's obligation to provide a habitable apartment. Thus tenants were required to pay rents even when services were unavailable or hazardous conditions existed. In 1939 the State began to depart from this tradition by permitting tenants to deposit rents into court when apartment conditions threatened life, health or safety. This

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<sup>104</sup>1996 HVS Table 6.26, 1999 Selected Findings of the 1999 HVS, Table 12

<sup>105</sup>See Rent Stabilized Housing in New York City, A Summary of RGB Research, 1994; Rent Skewing in Rent Stabilized Buildings, 1994, p. 62, noted further herein at page 103.

process required a court proceeding, however, and did not provide the tenant with compensation for having to live with the dangerous conditions or for the loss of services. The court simply withheld the rents to induce the landlord to make the needed repairs or to restore services - or the court ordered that the problems be remedied directly with the deposited funds.<sup>106</sup> No abatement of rent was authorized for the period in which tenants were without full enjoyment of their apartments.<sup>107</sup>

In 1943, under federal rent controls, owners were required to provide essential services or face a downward adjustment of rents. These protections were continued when the State took over the administration of rent control in 1951. In 1971, amendments to the rent control laws establishing the MBR system expanded tenant protections by requiring owners to correct all "rent impairing" violations - a designation given to a select group of housing code violations by the City's housing agency - and at least 80% of all other violations, prior to receiving any rent increase. These protections for rent controlled tenants continue in effect today.

In adopting the Rent Stabilization Law of 1969, the City established protections against loss of services for the newly created class of rent stabilized tenants by requiring that such protections be included in the code of regulations to be established by the real estate industry.<sup>108</sup> The current Rent Stabilization Code [now promulgated by the DHCR] requires owners to certify annually that they are continuing to provide the same services as those provided at the time the apartment first became subject to stabilization.<sup>109</sup>

In 1975 the State reversed completely the policy of decoupling the obligation to pay rent from the obligation to supply fully habitable premises. Under the **warranty of habitability**<sup>110</sup> all residential leases are now "effectively deemed a sale of shelter and services by the landlord who impliedly warrants: first, that the premises are fit for human habitation; second, that the condition of the premises is in accord with the uses reasonably intended by the parties; and, third, that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety."<sup>111</sup> Consequently all tenants, regardless of rent regulation status, are now eligible to seek repairs and rent abatements for violations of this warranty.<sup>112</sup>

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<sup>106</sup>Former Civil Practice Act, 1920, section 1446-a, added L. 1939, c. 661, and repealed by CPLR 10001. Now section 755 of the Real Property Actions and Proceedings Law.

<sup>107</sup>In 1965, §302-a was added to the Multiple Dwelling Law permitting, under certain circumstances, a complete abatement of rent if selected violations, designated as "rent impairing" remain uncorrected.

<sup>108</sup>See former RSL section YY51-6.0(c)(8), and current RSL section 26-514.

<sup>109</sup>See RSC sections 2523.2 through 2523.4.

<sup>110</sup>Real Property Law section 235-b.

<sup>111</sup>Quoting Cooke, Ch. J., N.Y. Court of Appeals, *Park West Management Corp. v. Mitchell*, 1979, 47 N.Y. 2d at 319.

<sup>112</sup>See also §235 of the Real Property law which makes willful refusals to provide essential services a misdemeanor.

The right of rent stabilized tenants to seek compensation for lost services and to obtain the restoration of such services is still in some ways broader than the rights afforded by the warranty of habitability. The services protected by the warranty or otherwise required by law may not include all services furnished on certain applicable base dates, which the Rent Stabilization Code has categorized as "required services" and which rent stabilized tenants have a right to continue.<sup>113</sup> If a required service is not provided, the DHCR may reduce the rent to the amount in effect prior to the most recent guideline increase for the period in which the tenant is deprived of the service. The rent reduction commences on the first day of the month following the month in which the owner is served with a copy of the tenant's complaint. It is important to note that the warranty of habitability may provide greater relief for loss of those services covered by the warranty because rent abatements under the warranty may be retroactive and are not limited solely to the elimination of guideline increases.

It is also worth noting (although unconnected with habitability) that rent stabilized tenants have a right to a renewal lease on the same terms and conditions as the expiring lease. If a tenant received what the Code considers an "ancillary service" (e.g. garage space, swimming pool access, health club rights etc.) under an expiring apartment lease - even though such service was not provided on the applicable base dates for required services - the tenant may continue to demand such services at stabilized rents upon renewal of the lease. While the owner may not demand that the tenant rent the ancillary service (other than security) as a condition of renting the apartment, once the tenant has accepted the service, the owner may demand that the service (and special charges for it) be included in subsequent renewal leases. However, tenants have a right to sublet such services. These renewal rights and obligations are not protected under the Code if the service is not provided primarily for the tenants in the building and is governed by a separate agreement.

## **Security of Tenure**

It has long been recognized that any "attempt to limit the landlord's demands" through rent regulation would fail "[I]f the tenant remained subject to the landlord's power to evict".<sup>114</sup> Therefore, under rent regulation the general power to evict is eliminated in favor of a limited power to remove tenants for specifically enumerated causes. Also, special protections have been added to protect tenants from illegal evictions and harassment.

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<sup>113</sup>See RSC 2520.6(r).

<sup>114</sup>Quoting O.W. Holmes, J., U.S. Supreme Court *Block v. Hirsh* 256 U.S. 135,157-58 (1921).

Under the **rent control** system tenants have permanent tenure and their rights and obligations are fully spelled out in the state Rent and Eviction Regulations.<sup>115</sup> Consequently they are referred to as statutory tenants and they do not face periodic lease renewals. Rent controlled tenancies may only be terminated on grounds set forth in the Rent and Eviction Regulations. Under the **rent stabilization** system tenants are also granted permanent tenure, but their rights and obligations are defined by both the Rent Stabilization Code and their individual leases. Rent stabilized tenants have a general right to renew their leases as they expire. Under rent stabilization there are two means for ending a tenancy: First, there are a number of grounds to **evict** the tenant such as nonpayment of rent, maintaining a nuisance, illegal subletting or use of the apartment for unlawful purposes; Second, there are grounds for **refusing to renew the lease** such as recovery of the apartment for the owner's personal use or recovery when the tenant maintains a primary residence elsewhere.

If an owner attempts to remove the tenant unlawfully s/he will be subject to both civil and criminal penalties. The Rent Stabilization Code provides as follows:

*It shall be unlawful for any owner or any person acting on his or her behalf, directly, or indirectly, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of services, or unwarranted or baseless court proceedings) which interferes with, or disturbs, or is intended to interfere with or disturb the privacy, comfort peace, repose, or quiet enjoyment of the tenant in his or her occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive any right afforded under this Code.*<sup>116</sup>

If a tenant was removed from a unit through harassment, the owner is not permitted to collect a vacancy increase from the next tenant who occupies the unit.<sup>117</sup> Whether or not the tenant vacates, the Division of Housing and Community Renewal may impose fines against the owner and future rent increases of any sort may be denied.<sup>118</sup> Further, criminal penalties may be sought through the Office of Corporation Counsel under the Unlawful Eviction Law.<sup>119</sup> Note that this latter law protects tenants in all rental units - not just rent regulated units.<sup>120</sup> In addition, treble

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<sup>115</sup>NYCRR §2200 et. seq.

<sup>116</sup>R.S.C. §2525.5

<sup>117</sup>See RSL §26-510(d).

<sup>118</sup>See RSC §2526.2(c)(3) & (d).

<sup>119</sup>N.Y.C. Admin. Code §26-521 et. seq.

<sup>120</sup>See also §235-d of the Real Property law granting all tenants the right to obtain injunctive relief against harassment; §286(6) of the Multiple Dwelling Law denying free market status to loft units held by owners found guilty of harassment; §26-412(d) & §26-403(e)(2)(i)(9) of the NYC Rent Control Law, making harassment a violation and

damages for unlawful evictions may be imposed under section 853 of the Real Property Actions and Proceedings Law.

## **Fair Returns**

The broad goal of the rent stabilization system is the establishment of "fair" rent levels for both owners and tenants. Fairness, of course, is a normative matter that is open to interpretation. Given the overall legal framework supporting the establishment of rent guidelines the term appears to connote a process which attempts to balance three objectives. One objective is the establishment of rent levels which are generally humane - in the sense that owners are not permitted to fully exploit demand for housing accommodations driven by situational scarcity. A corresponding objective is setting rents that reasonably support the reliance and expectation interests of good faith (non-speculative) investors. While the Board cannot guarantee a profit for every owner, it should attempt to preserve the kind of returns that a competitive market with a vacancy rate in excess of 5% might generate - given all the various and changing factors of supply and demand such as tenant incomes and costs of operation. Finally, fairness requires that the overall rent burden be allocated among tenants in an even-handed way - or that differentials in rent adjustments among similarly situated tenants bear some reasonable relationship to legitimate public policy.

Does rent stabilization produce "fair" returns? In order to consider this question logically it would be useful to have a common measure to determine whether the goal is being achieved. Unfortunately, much of the disagreement over the effectiveness of rent regulation is really disagreement over the objectives of rent regulation. Rent regulation may have many purposes:

- to keep rents generally affordable;
- to maintain a building's net operating income at stable levels; or
- to ensure a "reasonable return"

The closest thing to an authoritative measure for considering the success of the rent stabilization system is contained in the law itself, and, like many laws, the rent stabilization law contains some objectives and ideals that may not operate in complete harmony.

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forbidding decontrol of units vacated via harassment, respectively. Further, see §2.7(2)(a) of the City's 421-a regulations included in Appendix P - prohibiting deregulation in certain cases where harassment occurs, and §26-504.2 of the RSL prohibiting high rent vacancy decontrol in the case of harassment.

The rent stabilization law generally directs that the Rent Guidelines Board consider **cost-push** inflationary factors such as increases in heating fuel or labor costs before establishing rent adjustments. In addition, special rent increases administered by the DHCR are permitted to encourage major capital improvements, individual apartment improvements and to remedy economic hardship. Yet, the same laws appear to prescribe an end to the effects of **demand-pull** inflation on rents. This is the type of inflation that commonly results from a shortage or fixed supply of a needed good. As Justice Bellacosa summarized in the case of *Manocherian v. Lenox Hill Hospital*, "the State intended to protect dwellers who could not compete in an overheated rental market, through no fault of their own... and to 'forestall profiteering, speculation and other disruptive practices.'" <sup>121</sup>

Notably, the Rent Stabilization Law does not speak about "profits." There is a good reason for this. Simply put, the Board does not control profit levels. Any such attempt would result in an intractable circularity problem: rents rise, property values climb, investors must spend more to purchase properties, rents must rise again to maintain the same relative return on investment.

Generally speaking there are two investors in every rental property: the purchaser and the lending institution. The lender's profit is determined by the interest it charges and the percentage of defaults it copes with. The purchaser's profit is determined by the return it realizes on the amount of capital it has placed at risk. In a very real sense, virtually all owners of rent stabilized properties receive market rate profit levels. <sup>122</sup> That is because purchase prices are wholly unregulated and market driven.

The rent stream of any given building will determine its market value. Although the Board sets the rents, it cannot order an investor to pay more (or a seller to take less) than the building is worth in market terms. Thus, if the Board sets a rent below market, it will limit a building's appreciation and value. Any purchaser of that building will pay less for it in order to ensure that the investment is worthwhile. Whether the investment was a wise one will depend on how well the investor predicted future rent streams given the regulatory environment in which the building operates. The ultimate effect of rent stabilization is, therefore, to mute property values – not profits. <sup>123</sup> In the absence of rent regulation an investor would presumably pay

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<sup>121</sup>84 N.Y.2d 385 (1994) *cert denied*, 514 U.S. 1109 (1995).

<sup>122</sup>A notable exception to this generalization would be those owners who purchased buildings in an open market environment and were subsequently subjected to rent regulations. The precise proportion of such buildings in the stabilized stock is not known, but is thought to be relatively small.

<sup>123</sup>Notably, in empirical terms, the actions of the Rent Guidelines Board have not been shown to mute growth in the resale value of rent stabilized buildings. In a survey of real estate transactions for rental buildings in New York City covering the period from 1976 through 1993, median sales prices increased over 400% while the national inflation

more for the subject property, and, in a sense, gamble against what the market would bring in terms of changes in demand. Under rent regulation, the investor pays less and gambles against what regulatory authorities will do.

Of course, the Board may affect profit levels in unforeseen ways if it acts unpredictably or erratically. Thus, if the Board gave a far larger rent increase than its prior practices would have suggested, prudent investors would be awarded with an unexpected windfall. Conversely, if the Board adopted rent adjustments well below those suggested by its past actions, the reasonable expectations of owners who purchased stabilized buildings would be frustrated.

In sum, one factor in ensuring fair *profit* levels is steady and predictable behavior on the part of the Rent Guidelines Board. Stable behavior on the part of the Board allows new investors to make a rational assessment of whether or not the asking price of a particular building is competitive relative to other investments.

### **The Commensurate Rent Formula**

Stability requires that the Board monitor the changing relationship between operating costs and rent levels. The general approach taken by the Rent Guidelines Board over the past three decades has been to "keep owners whole" for changes in operating costs, and to protect net operating incomes from the effects of inflation. This has been accomplished, with varying degrees of accuracy, through the use of an annual price index of operating costs, along with certain formulas falling under the heading of "the commensurate rent adjustment." The "traditional" commensurate formula simply attempted to ensure that net operating income was preserved in nominal terms – unadjusted for inflation.

The commensurate rent formula has evolved over the years to a rather precise mechanism that reflects actual lease renewal and vacancy patterns from year to year. In addition, an adjustment has been added to preserve net operating income against the effects of inflation. A complete discussion of the various formulae used to construct the commensurate adjustment is included in Appendix J.

The commensurate is neither a rent floor nor a ceiling. When the commensurate is relatively high, the Board tends to adopt guidelines somewhat lower than it suggests. When it is low, the guidelines typically exceed it. For example, in

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rate increased at less than half that rate. See Sales Price Data, *Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research, 1993*, p. 112. Although this increase may be affected by a variety of factors, such as the type and quantity of buildings being sold, this consistent trend does suggest that, in general, the RGB has not acted to frustrate the reasonable expectations of good faith investors.

1990, when a 21% spike in fuel and utility costs resulted in a commensurate rent adjustment of 7.3% for one year leases and 9.5% for two year leases (under the "traditional" formula), the Board adopted a 4.5% for one year leases and a 7% for two year leases. In 2000, the traditional formula suggested a 4.8% one-year guideline and a 6% two-year guideline; the CPI adjusted formula suggested a 6% one year guideline and a 10% two year guideline (largely due to fuel costs). The Board adopted a 4% one-year guideline and a 6% two-year guideline.

By comparison, in the low inflation years of 1995, 1998 and 1999, when the traditional commensurate was 0% for one year leases and ranged from 1.1% to 1.8% for two year leases, the Board adopted 2% increases for one year leases and 4% increases for two year leases. For further detail, see the chart of commensurate rent increase formulas as presented to the Rent Guidelines Board, the PIOC percent change and final rent guidelines.

**Table IV.**

**Commensurate Rent Increase (as reported to RGB)**

Year	PIOC Change	Traditional		Net Revenue w/ Vacancy		Net Revenue w/o Vacancy		CPI-Adjusted w/ Vacancy		CPI-Adjusted w/o Vacancy		Rent Guidelines	
		1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR
1993	4.7%	3.3%	4.4%	3.0%	5.5%	4.0%	6.0%	4.0%	7.5%	5.5%	8.0%	3.0%	5.0%
1994	2.0%	1.4%	2.6%	1.0%	1.75%	1.75%	2.5%	2.0%	3.0%	2.5%	4.0%	2.0%	4.0%
1995	0.1%	0.0%	1.1%	-	-	-	-	-	-	-	-	2.0%	4.0%
1996	6.0%	4.0%	5.0%	3.0%	4.0%	5.0%	7.0%	4.5%	6.0%	7.0%	8.0%	5.0%	7.0%
1997	2.4%	1.6%	2.2%	-	-	1.5%	3.0%	-	-	2.5%	4.5%	2.0%	4.0%
1998	0.1%	0.0%	1.1%	-	-	0.0%	0.0%	-	-	0.5%	1.5%	2.0%	4.0%
1999	0.03%	0.0%	1.8%	-	-	0.0%	0.0%	-	-	0.0%	1.5%	2.0%	4.0%
2000	7.8%	4.8%	6.0%	4.0%	7.5%	6.5%	9.5%	6.0%	10.0%	8.5%	12.0%	4.0%	6.0%

Source: Price Index of Operating Costs reports 1989-2000; RGB Orders #21-32.

The practice of "smoothing" out year to year adjustments to obtain a steady pattern of increases, although not without its critics, has been a consistent feature in past RGB orders. This may, in part, be due to the fact that approximately one third of tenants do not experience renewals in any given year. Those tenants in the second year of a two-year lease, signed under a prior guideline, may either miss, or be consistently hit by periodic jumps in the guidelines. Consequently, the Board has leaned against mechanical application of the commensurate rent formula.

Historically, the Board has managed to maintain a very stable relationship between building incomes and expenses. Indeed, the best evidence available to the

Board's staff suggests that pre-war buildings, which include more than two out of three stabilized units, have witnessed a substantial increase in relative net operating income since 1970. This resulted from a decline in the proportion of each rent dollar devoted to operating expenses (the "O&M to Rent Ratio"). This occurred despite the fact that aging buildings usually tend to see a rise in the O&M to Rent Ratio over time. Relative returns in post-war buildings are more difficult to track, but appear to be stable. Overall, the RGB staff has estimated that in 1967 about 62% of rent was devoted to operating expenses. By 1997, in essentially the same group of buildings, only 59% of rent went to operating costs. As a result, average net operating income rose from 38% to 41% of rent over the period of stabilization. A detailed analysis of this issue was set forth in a May 13, 1999 memo to the Board, and is included herein at Appendix K. The usefulness of this memo cannot be overstated. It provides the best evidence available to the Board of the effects of rent stabilization on operating returns since the rent stabilization system began. The original income and expense review from 1993 is also included herein in Appendix K1.

### **Protection Against Tenant Abuses**

In attempting to equalize bargaining relations between owners and tenants the rent regulation laws conferred special benefits on tenants that were generally intended to protect their welfare. If such benefits are exchanged for the personal enrichment of the tenant, or if put to frivolous use, the objective of the laws would be undermined. Consequently, the rent stabilization laws prohibit or limit tenants from engaging in such practices as subletting or assigning apartment leases at a profit; assigning leases without the owner's consent; passing lease renewal rights on to occupants who have no legally recognized relationship with the tenant; or claiming the protection of rent regulation when the apartment is not used as a primary residence. In addition to these prohibitions, the rent laws continue to permit the remedy of eviction for practices that are generally recognized as abuses. These practices include non-payment of rent, maintaining a nuisance, use of the unit for illegal or immoral purposes or refusal to provide access for repairs.<sup>124</sup>

#### ***Subletting***

Subletting rent stabilized apartments is permissible under limited circumstances. Apartments may be sublet for two years in any four-year period if the owner has agreed to the sublet. The tenant must, however, be able to establish that the apartment will be maintained for his or her primary residence and that s/he intends to return to it

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<sup>124</sup>Procedures used in eviction proceedings are generally governed by Article 7 of the Real Property Actions and Proceedings Law.

upon the expiration of the sublease.<sup>125</sup> An owner may not unreasonably refuse to grant permission to sublet, and a failure to respond within 30 days to a request from the tenant for permission to sublet is considered an approval of the request. This procedure is described in detail in the Real Property Law §226-b, which governs all sublets in buildings with four or more units. In rent stabilized apartments subtenants may not be charged any rent in addition to the stabilized rent except for the following:

- Ten percent may be added by the prime tenant for furnishings - the 10% **furniture allowance** is a constant statutory percentage and is not affected by actions of the Rent Guidelines Board. This fee is paid by the subtenant to the prime tenant; and
- The **sublet allowance** under the rent guideline in effect at the commencement of the prime lease may be added by the owner. This allowance percentage is determined annually by the Rent Guidelines Board. The sublet allowance is paid by the subtenant to the prime tenant, who in turn pays it to the owner.

### ***Lease Assignment***

A rent stabilized tenant may not freely assign his or her lease (i.e. transfer to another all rights under the lease). According to §226-b of the Real Property Law, written permission of the owner is required unless a right to assign is already contained in the lease. If the owner unreasonably withholds such permission, the tenant's only remedy is to gain release from the lease after 30 days notice to the owner. If permission to assign is granted, the owner is entitled to increase the rent by the vacancy allowance in effect at the time the departing tenant last renewed his or her lease.

Tenants are generally obligated to honor their lease obligations throughout the lease period. Tenants who vacate before their leases expire may be held liable for rent due through the remaining period.

The limitations on assignments should not be confused with the "succession rights" of occupants of the apartment who are family members as defined in §2520.6(o) of the Rent Stabilization Code. These occupants may have the right to renew the lease in their own name upon the death or departure of the tenant of record.<sup>126</sup>

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<sup>125</sup>See RSC §2525.6.

<sup>126</sup>See RSC §2523.5(b).

### ***Succession Rights***

Spouses or family members<sup>127</sup> who have resided in the apartment for the qualifying periods provided in the Rent Stabilization Code may remain in the apartment as fully protected rent stabilized tenants. The inclusion of adult lifetime partners within the definition of spouse or family member is recognized by the Division of Housing and Community Renewal and has been upheld by the courts.<sup>128</sup>

### ***Primary Residence***

Under §2524.4 of the Rent Stabilization Code an owner may refuse to renew the lease of any tenant who does not occupy his/her apartment as a primary resident. The evidence necessary to establish non-primary residence is left to the discretion of "a court of competent jurisdiction". Often tax filings, voter registration records, utility bills, drivers licenses and other evidence of a regular presence in the unit are reviewed.

Finally, tenants who refuse to execute properly offered leases are subject to eviction.<sup>129</sup>

### ***Roommates***

A rent stabilized tenant's right to have a roommate is secured by Section 235-F of the Real Property Law, which governs additional occupants in all types of housing. Prior to the last revision of the Rent Stabilization Code, a tenant's right to charge rent to an additional occupant was unlimited. Under § 2525.7 of the new code, rent stabilized tenants may charge roommates no more than a proportionate share of the rent. A proportionate share of the rent is determined by dividing the legal rent by the total number of tenants named on the lease and the total number of occupants in the apartment. However, a tenant's spouse and family, or an occupant's dependent child, are not included in the total.

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<sup>127</sup>"Family member" is defined as a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant. See also page 38 for a discussion of changes to the definition of family member under the Rent Regulation Reform Act of 1997.

<sup>128</sup>This regulation was upheld by the N.Y. State Court of Appeals. See *Lease Succession Regulations Upheld*, N.Y.L.J., 12/22/93, page 1, col. 3, describing the court's ruling in *RSA v. Higgins*, 164 AD 2d 283 (1st Dept. 1990), *Affirmed*, 83 N.Y. 2d 156 (1993), *cert denied*, 512 U.S. 1213 (1994).

<sup>129</sup>See RSC §2524.3(f).

## **THE ADMINISTRATION OF RENTS UNDER RENT STABILIZATION: THE ROLE OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL**

As discussed in the section dealing with the history of rent stabilization, the State Division of Housing and Community Renewal ("DHCR"), through its Office of Rent Administration ("ORA"), is responsible for administering rent stabilization (along with rent control). The DHCR has three major roles within the rent stabilization system: It has the quasi-legislative role of promulgating the Rent Stabilization Code. It has the executive role of administering the various filing, registration and special rent adjustment provisions of the Code, and in prosecuting those who violate any part of it. And finally, it has the quasi-judicial role of judging the merits of claims brought pursuant to the Code between tenants and owners in accordance with the standards applicable to administrative tribunals. If appealed, such determinations are subject to review by the state courts. What follows is a brief discussion of those areas where the decisions of the DHCR may affect rent levels.

### **Major Capital Improvements and Individual Apartment Improvements**

The introductory paragraphs of a June 1989 report entitled Review of the Major Capital Improvement Program prepared for the DHCR by Ernst & Whinney and Speedwell, Inc., outline the issues and objectives related to this program:

*In an attempt to maintain and improve the condition of rent regulated housing in New York, owners who undertake building-wide major capital improvements (MCI's) have historically been allowed increases in base rents over and above annual rent guidelines and MBR rent increases to compensate them for such investments. These increases are allowed without the consent of tenants if the improvements are for "the operation, preservation and maintenance of the structure" and are approved by the Division of Housing and Community Renewal (DHCR). In addition, one-fortieth of the cost of improvements made to individual apartments can be added to the monthly base rent with the tenant's consent or if the apartment is vacant.*

*The concept of rewarding owners by increasing their internal rate of return has always been controversial, since the increase is basically financed by the tenants who occupy the building and do not have a significant role in approving the improvements. Representatives of tenant interests argue that the potential for MCI increases encourages owners to delay maintenance*

*activity, for which no incentive is provided, in order to qualify for the MCI program and its investment incentives. In addition, increases to base rents impact tenant affordability. Representatives of owner interests argue that a rent regulated system removes their ability to recapture replacement costs without special consideration, and that the current incentive levels are not sufficient to attract needed improvements (p.1).*

Basically, the major capital improvement program allows owners to increase monthly rents by a formula that allocates 1/84th of the cost of the improvements among the units in the building. Rents may not be increased by more than 6% per year (15% for rent controlled units), however, and owners must often wait two or three years before the full 1/84th allocation is fully incorporated into the building's rent structure. Thus, if 1/84th of the cost of a given improvement would ultimately permit a 10% increase in monthly rent, the tenant will receive a 6% MCI rent increase in year one and a second increase equaling 4% of the original rent in year two.<sup>130</sup> These increases are added separately and apart from increases granted by the Rent Guidelines Board. Once the rents have been increased they remain part of the base rent even after the expiration of the 84-month "amortization" period.<sup>131</sup> Major capital improvements may also qualify for J-51 tax benefits but a portion of the rent increases must be forgone if these benefits are granted. MCI increases must be approved by the DHCR before they may be collected. Tenants are notified of the MCI application and given an opportunity to object.

Where new appliances or improvements to individual apartments are concerned, 1/40th of the cost is added to the apartment's base rent. The owner is required to obtain permission from the tenant who occupies the unit to qualify for this type of rent increase. If the apartment is vacant, the rent of the subsequent tenant is simply adjusted and no approval is necessary. There is no cap on the annual increase in rent that may be collected as a result of the improvement and the prior approval of DHCR is not required.

Rent increases resulting from major capital improvements and individual apartment improvements received a great deal of attention at the hearings of the Rent Guidelines Board in the late 1980's. Tenants often asserted that guideline adjustments should take into account the returns being realized by owners through these programs. Owners argued that, taken as a whole, they are still under-compensated for their investments. According to the above quoted study, "the estimated rate of return for the

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<sup>130</sup>The practice of adding an additional increase of 6% (for a total of 12%) to make up for delays in processing MCI applications was stricken by the N.Y. Court of Appeals in *Bryant Ave. Tenant's Association v. Koch* 71, N.Y. 2d 856 (1998).

<sup>131</sup>This aspect of the MCI program has been upheld by the New York State Court of Appeals (*Ansonia Residents Assn. v. DHCR*, 75 N.Y. 2d 206 (1989)).

sample [of 1003 MCI applications studied], excluding a few J-51 ineligible buildings, was 18.2%"(p.3). This figure is somewhat overstated, however, since the "amortization period" was five years or sixty months when the study was conducted. Legislation in 1990 [perhaps in response to the study's findings] extended the amortization time to the current seven-year or 84-month period, thus reducing the allowable rent increase.

Based upon an "analysis of the provisions of the [individual apartment] program" the "annual after tax rate of return ... was estimated to be 33.9% if the improvements were not financed and 68.5% if 60% of the improvements were financed."(p.3). Despite a DHCR initiative to raise the amortization period (and thus reduce the rate of return) the forty month period for this program remains in effect and was codified in statute with the adoption of the Rent Regulation Reform Act of 1993. Since no prior approval is needed for the individual apartment improvements, no delay in obtaining these increases is incurred.

### **Hardship Rent Increases**

A rent regulation system that required owners to maintain artificially reduced rents in the face of chronic operating losses would be viewed as confiscatory. Nearly every rent regulation system allows for some type of rent adjustment to remedy such situations.

Under rent stabilization in New York City there are two formulas for determining whether a rent increase is appropriate in hardship cases: the **comparative** method and the **alternative** method. Under the comparative method a rent increase may be granted if the owner has not maintained the same average net income in the current three year period as was maintained for the years 1968-70 (marking the beginning of rent stabilization). If records are unavailable, a more recent three-year period may be substituted, under certain conditions.

The hardship application will not be approved unless the owner can demonstrate that:

- the present rate of return on the owner's equity (fair market value minus the unpaid principal amount of the mortgage indebtedness) is less than 8.5%;
- s/he has owned the building for at least three years;
- no previous hardship application has been granted in the past three years;

- real estate taxes and water and sewer charges have been paid or have been lawfully challenged; and
- all services are being maintained and immediately hazardous violations have been corrected or restoration and correction has been made a condition of granting the increase.

In calculating the rate of return the Code establishes six times the rent roll as the fair market value. Operating expenses, an allowance for management services and "actual annual mortgage debt service" are subtracted from gross rents to determine if the remaining balance falls short of 8.5% of the owners equity in the building. If it does, and all other conditions are satisfied, the owner may obtain rent increases equal to the difference between the average annual net income for the three-year base period and the average annual net income for the current period. Rents may be raised no more than 6% in any one-year period, however, and tenants may cancel their leases if they wish to leave and avoid the increases.<sup>132</sup>

Under the **Alternative Hardship** formula established by the Omnibus Housing Act of 1983, owners are permitted to receive a rent increase when the building's annual operating expenses (including mortgage interest) are greater than 95% of the gross rent. To qualify for a hardship increase the owner must:

- have owned the property for at least three years;
- have at least a 5% equity position;
- not have received a hardship increase within the previous three years;
- have paid or have lawfully challenged real estate taxes and water and sewer charges; and
- have maintained all services and corrected all immediately hazardous violations or restoration and correction has been made a condition of granting the increase.

Like comparative hardship, rents may be increased no more than 6% per year until the hardship has been remedied and the tenant may avoid the increase by canceling the lease.<sup>133</sup>

According to a 1989 report on hardship increases prepared by the Policy and Research Bureau of DHCR, "from 1984-1988 inclusive, 128 alternative hardship applications were reviewed. Of these, 92 were denied, 1 was approved, 33 were pending and 2 were withdrawn." Eleven comparative hardship applications were reviewed. Ten were reported as "denied for being incomplete" and one was pending

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<sup>132</sup>See RSC §2522.4(b) and RSL 26-511(c)(6).

<sup>133</sup>See RSC §2522.4(c) and RSL 26-511(c)(6-a).

The report went on to suggest some of the most likely reasons for the limited number of applications and the extremely low approval rate:

- "Owners are not losing money".
- Because of tenant affordability problems "owners...are not interested in a complicated filing for a rent increase they cannot collect".
- "The hardship application suffers from 'bad press'".
- Many small owners cannot afford the services of an accountant, may not keep good records and may "face language barriers and other handicaps in dealing with the rent regulation structure".
- "The hardship application process is too complex".
- Economic conditions including length of ownership, mortgage costs and purchase price have operated to help limit the prevalence of true hardship cases. Yet, "the current low level of applications received, may change radically with the slowdown of New York City's economic expansion."

The approval rate of hardship applications has increased little and the number of applications received annually remains very low. In recent years about two dozen such applications have been filed each year. This is an area of consistent concern to the RGB and the focus of possible legislative reform by DHCR. The return guaranteed by the hardship program was the subject of an unsuccessful constitutional challenge in the U.S. 2d Circuit Court of Appeals.<sup>134</sup>

### **Fair Market Rent Appeals: (Apartments moving from Rent Control to Rent Stabilization)**

As noted in the section concerning the history of rent regulation, most apartments under rent control will become rent stabilized upon vacancy. Over 700,000 formerly rent controlled units have fallen under rent stabilization this way, although only a small fraction of newly stabilized tenants will challenge their rents. Because the relationship of rents in rent controlled units to prevailing market rents varies dramatically from unit to unit, a standard increase upon becoming rent stabilized would result in stabilized rents which themselves are erratic and inconsistent in their relationship to market rents. To avoid this the authors of the ETPA wanted to provide a large degree of flexibility in the setting of rents when rent controlled units become stabilized. They did not, however, want to deprive tenants in newly stabilized units of an opportunity to protest rents that bear no reasonable relationship to a "fair" market amount. Consequently, a system was adopted which allows tenants to challenge

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<sup>134</sup>See case #16, supra at 43-44.

newly stabilized rents in formerly rent controlled units through what is known as a "Fair Market Rent Appeal".

This process begins with the vacancy of a rent controlled tenant. Recall that rent controlled units may be found in any building constructed prior to February 1, 1947, with three or more legal units and occupied by the same tenant since June 30, 1971 or occupied by the tenant's lawful successor (a spouse, adult lifetime partner or other family member). Rent controlled units that are in 3, 4 or 5 unit buildings do not become stabilized upon vacancy and, consequently, no process for appealing rent levels is available. If the vacated apartment is in a building with 6 or more units, although stabilized, the owner is initially free to advertise the apartment for any amount. The owner must, however, notify any new tenant of his/her right to challenge the rent within 90 days by providing the tenant with an "Initial Legal Regulated Rent Notice". If the tenant decides to challenge the rent, the tenant "need only allege that [the Initial Legal Regulated Rent] is in excess of the fair market rent and ... present such facts which, to the best of his or her information and belief, support such allegation".<sup>135</sup>

Once the appeal is filed, two methods are employed in attempting to determine if the new rent is legally "fair". The DHCR will look to a special guideline promulgated by the Rent Guidelines Board [more will be said about how this guideline is established on pages 84-86]. Until 1988 this special guideline took the form of a percentage increase above the pre-existing Maximum Base Rent for the unit. From 1988 through 1990 the Board experimented with alternative formulas above the Maximum Collectible Rent or "MCR" [See page 28 for the distinction between MCR & MBR]. Returning to the original approach, in 1991 and 1992 the special guideline consisted of a fixed rate of 15% above the MBR. In an attempt to close the gap between rents in pre-47 stabilized units and rents in recently decontrolled units, in 1993 the Board moved to a straight 40% increase above the MCR.

In later years the Board 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 and 2000 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.

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<sup>135</sup>See RSL §26-513(b), included in Appendix O.

The DHCR will also consider "rents generally prevailing in the same area for substantially similar housing accommodations". This is known as the "comparability" standard. The owner may submit evidence of rents for comparable units rented to tenants up to four years prior to or one year subsequent to the commencement of the complaining tenant's initial lease. Leases ending more than one year prior to the commencement of the complaining tenant's lease are updated by guideline amounts. Alternatively, "[a]t the owner's option, market rents in effect for other comparable housing accommodations on the date the tenant filing the appeal took occupancy" may be considered.<sup>136</sup>

The Office of Rent Administration will average the rent adjusted pursuant to the Special Guideline with any qualified comparable rents in reaching a final rent determination in a Fair Market Rent Appeal. Thus, the comparability standard does not operate in a manner that is wholly independent of the Special Guideline. Notably, unlike other rent overcharges, rents paid in excess of the Fair Market Rent determined by the DHCR are not subject to treble damages.

It is critical to note that if the newly established rent exceeds \$2,000 (and the tenant was initially charged over \$2,000) the apartment becomes deregulated in accordance with the Rent Regulation Reform Acts of 1993 and 1997. If the owner rents the apartment for more than \$2,000 upon vacancy of a rent controlled tenant and the incoming tenant fails to challenge the rent within the 90-day period, the apartment is also deregulated. In any event, any rent changed and paid and not challenged within the general four year statute of limitations is deemed lawful, whether or not the tenant was served with a 90-day notice to file a fair market rent appeal.

## **Overcharge Proceedings**

The Rent Stabilization Code clearly prohibits charging rent in excess of the legal regulated rent and this includes a prohibition against demanding "key money" or any other special charge not specifically authorized by the Code.<sup>137</sup> The amount of the security deposit and the distribution of interest from such deposits is also regulated by the Code.<sup>138</sup> Willful rent overcharges may result in a penalty to be paid to the tenant equal to three times the overcharge. Treble damages for willful overcharge claims may be collected for only two years of the overcharge. An overcharge which the owner demonstrates not to have been willful will result in a straight repayment of the overcharge to the tenant plus interest. Damages for non-willful overcharge claims

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<sup>136</sup>RSC 2522.3(e)(2).

<sup>137</sup>See RSC §2525.1 et seq.

<sup>138</sup>See RSC §2525.4; see also General Obligations Law, Article 7 - The security deposit laws are enforced by the State Attorney General's Office.

may be had for up to four years prior to filing the overcharge claim.<sup>139</sup> Both the Rent Stabilization Code and Section 213-a of the State's Civil Practice Law and Rules prohibit consideration of evidence of a rent overcharge occurring more than four years prior to the filing of the complaint. It is important to note that certain courts (most notably the Housing part of the Civil Court of the City of New York) have concurrent jurisdiction with the DHCR over rent overcharge claims.

## **Other Adjustments in Rent: air conditioners, failure to maintain services, failure to register**

### *Air Conditioners*

In buildings where the owner provides electricity to individual tenants as part of the services covered by the base rent [approximately 14% of stabilized units], the owner may add a special separate charge for air conditioner usage when a new air conditioner is installed. If the air conditioner is installed by the tenant the owner may charge the monthly amount permitted by the DHCR in accordance with its most recent operational bulletin update on air conditioner rates. (See DHCR's fifteenth annual update of section B of supplement No. 1 to operational bulletin 84-4. For the period from 10/1/00 through 9/30/01 - permitting an \$20.74 per month charge per air conditioner if electricity costs are included in the rent). If installed by the owner with the tenant's permission, the same amount may be collected and, in addition, the owner may collect 1/40th of the cost of the air conditioner as permitted by §2522.4(a)(1) of the Code.

### *Failure to Maintain Services*

As noted in the discussion concerning habitability (*supra*, at pages 61-63), failure to maintain the services required under §2520.6(r) of the Rent Stabilization Code could result in a rent reduction equal to the last guideline increase. The DHCR is responsible for reviewing these applications.<sup>140</sup> Most of the services covered are now protected by the warranty of habitability, however, and it is often the case that tenants will resolve service complaints in the context of a housing court proceeding - most typically in response to an owner's action for non-payment of rent. Notably, new amendments to the Rent Stabilization Code have classified a number of service reductions as "deminimus" and therefore not substantial enough to result in a DHCR ordered rent reduction (RSC 2523.4(e)).

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<sup>139</sup>See generally RSC §2526.1.

<sup>140</sup>See RSC §2523.4

### ***Failure to Register***

The Rent Stabilization Code requires owners to register all rent stabilized units.<sup>141</sup> Failure to register will bar an owner from collecting any rent increase for the period during which the apartment was required to be registered but was not. Once a late registration is properly filed the owner may collect these increases on a prospective basis only. Thus, the tenant is not obligated to pay any rent increase until the unit is properly registered and the owner may not recoup his/her losses by registering late. The Rent Regulation Reform Act of 1993 added that if rents collected on unregistered units "were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of a late registration. If such late registration is filed subsequent to the filing of an overcharge complaint, the owner shall be assessed a late filing surcharge for each late registration in an amount equal to fifty percent of the timely rent registration fee."<sup>142</sup>

### ***High Rent Vacancy Deregulation***

Apartments renting for \$2,000 per month or more *which are vacant* are no longer subject to rent regulation. Vacancy deregulation of high rent units has been in effect since July 7, 1993 under the provisions of the 1993 Rent Regulation Reform Act. Notably, a stabilized rent can exceed \$2,000 per month and remain stabilized if the same primary tenant remains in the apartment and renews his or her lease, and they are not otherwise subject to high income deregulation.

### ***High Income Deregulation***

If the legal regulated rent for an apartment exceeds \$2,000 per month and the total household income for two consecutive years exceeds \$175,000 per year, the apartment is subject to statutory decontrol. Confirmation of income is a process that involves the filing of an income statement with the DHCR if the owner makes a proper demand. If the tenant fails to respond in a timely fashion, the unit is subject to destabilization by default. If an income certification is received, the DHCR will check it against the records of the State Department of Taxation and Finance. If such a check confirms an income greater than \$175,000 a destabilization order will issue.

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<sup>141</sup>See RSC §2528.

<sup>142</sup>Rent Stabilization Law §26-517(e).

## **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. Since 1983 tenants have had the option of choosing between one and two year renewal leases.<sup>143</sup> An estimated 80% of all stabilized tenants have a renewal lease, 10-12% move or 'turn over,' approximately 7% report having no lease, and about 1% pay no cash rent. Approximately one third of all stabilized tenants with leases regularly sign one-year leases leaving some two thirds 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.<sup>144</sup> Consequently, about 53%, or approximately 540,000 of the 1,021,000 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 enormous. Given current rent levels, any 1% increase in average rents raises aggregate rent rolls by about 90 million dollars per year. An average annual increase of 4.4% in rent rolls for each of five years from 1996 through 2000 for the stabilized apartment inventory as a whole (including an estimated impact of the statutory vacancy allowance)<sup>145</sup> amounted to approximately two billion dollars in cumulative added rent - an average of about \$2,000 in total added rent per rent stabilized household. Guideline renewal increases account for most of this growth.

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

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<sup>143</sup>Prior to the enactment of the Omnibus Housing Act of 1983 tenants were given the additional option of choosing three year leases.

<sup>144</sup>See note 22 following Table 8 in the Explanatory Statement for Apartments (Appendix N1) for further explanation of these estimates.

<sup>145</sup>This is an average of the last five entries in the Board's rent index contained in table 8 of the Explanatory Statement for Order #31.

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.

Approximately 38,000 units fall within the **hotel** stabilized group which presently includes (according to the 1999 HVS) class "B" hotels (8,100), single room occupancy units (9,200), rooming houses (8,700), lodging houses (few units/no data) and "apartment hotels" (11,500).<sup>146</sup> 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 separate 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.

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.<sup>147</sup> 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 cost changes over the years the Board's loft orders have generally paralleled its apartment orders. In 1999, however, lofts were given a slightly lower increase (1% for one-year leases and 2% for two-year leases) compared to apartments (2% and 4%, respectively). In 2000 a similar lower increase was granted for lofts (3% for one-year leases and 5% for two-year leases) compared to apartments (4% and 6% respectively).

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<sup>146</sup>1999 HVS, Table 15

<sup>147</sup>A copy of §286 of the Multiple Dwelling Law is contained in Appendix L.

### *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*

As discussed in the section describing the Rent Regulation Reform Act of 1997, the vacancy allowance is now established by statute, although the RGB is not precluded from adding an additional vacancy increase. The Board may, however, promulgate a special vacancy allowance 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." Under Order #32, the Board authorized a 10% sublet allowance.

### *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.

**Table V.**  
**Supplemental Rent Adjustments in RGB Orders 1983-2000**

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. Source: RGB Orders # 15-32.

According to the 1999 Housing and Vacancy Survey, fewer than 9% of rent stabilized apartments now rent for less than \$400.<sup>148</sup> About one-fifth or 20.4% rent for less than \$500.

### ***Special Guidelines and Decontrolled Units***

As discussed in the section concerning fair market rent appeals (*supra*, at pp. 76 to 78) 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 which ranged between 15% to 20% above the maximum base rent ("MBR") established under the rent control system. In 1987 the Board took notice of

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<sup>148</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 30.

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 Rents<sup>149</sup> 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 and 2000 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.

Notably, according to the 1999 Housing and Vacancy Survey, the median rent controlled rent (the "MCR") is \$477 while the median rent stabilized rent is \$650 – a 36% difference.<sup>150</sup> Because the MBR is always equal to or greater than the MCR, the Board's most recent minimum adjustment of 150% above the MBR would raise a typical decontrolled unit to well over \$1,100 per month.

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

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<sup>149</sup>"MCR" = the amount rent controlled tenants are actually required to pay which may increase by no more than 7 1/2% 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.

<sup>150</sup>1999 Housing and Vacancy Survey, Tabulation Package, Series 1A, Table 30.

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 86% of stabilized tenants pay for their own electricity while some 14% 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.<sup>151</sup>

Owners of buildings receiving 421-a benefits may charge initial rents according to a formula which 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 plus 2.2% of the original rent per annum.<sup>152</sup> Owners of buildings with J-51 tax benefits do not receive this additional 2.2% increase.

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<sup>151</sup>See also RSC 2520.11 (o) &(p).

<sup>152</sup>See RSC 2522.5(e)(2).

### ***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 which 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 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.<sup>153</sup> 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,<sup>154</sup> and those new tenants who request leases or reside in their unit for six months and thereby become rent stabilized.<sup>155</sup> 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.

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<sup>153</sup>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 NYAdmin. Code § 26-521) prior to being locked out.

<sup>154</sup>See RSL §26-506.

<sup>155</sup>See RSL §26-510(e).

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 its last 3 hotel orders (28, 29 & 30), 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". The current provision (under Hotel Order #30) allows for no rent increase if fewer than 70% 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.

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 2% rent increase under Order #30, 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.<sup>156</sup> 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

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<sup>156</sup>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.

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 reviewed through a computer link up with 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 and water and sewer costs, the price index is not a measure of **cost** changes.<sup>157</sup> 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 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.

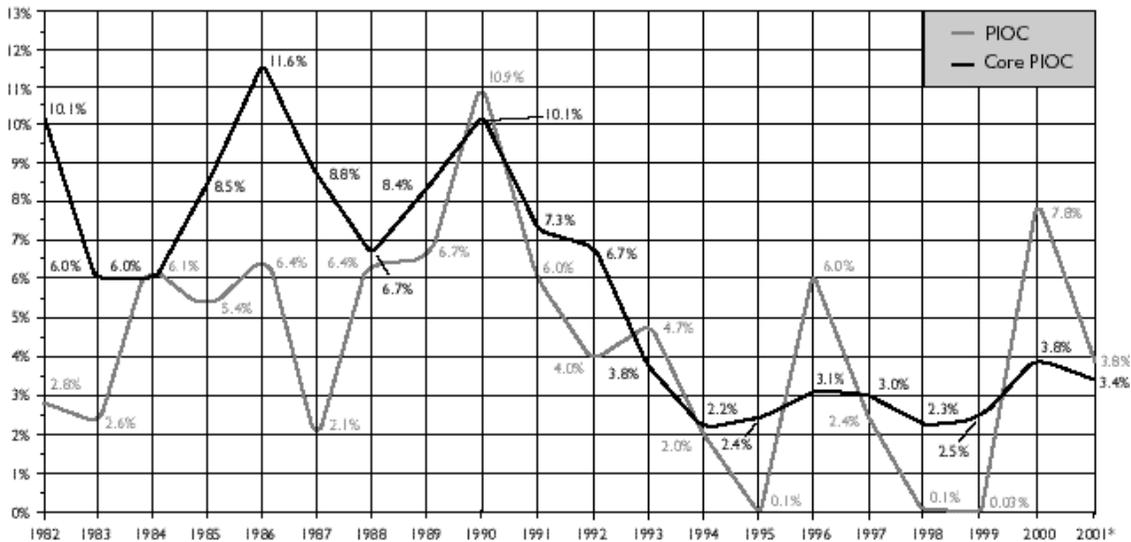
The chart below shows the percent changes in both the PIOC and the "core" PIOC from 1982 to 2000. The "core" PIOC eliminates the more volatile fuel and fuel-related costs from the calculation. The figures for 2001 are estimated.

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<sup>157</sup>The prices changes in the fuel component and some fuel-related items are 'cost-weighted,' to account for seasonal usage.

### Chart III.

Percent Change in the Price Index of Operating Costs and the Core PIOC, 1982-2000



\*Note: The percent change for 2001 was estimated. "Core" Indices for years before 1982 cannot be calculated because fuel and utility components were combined.

Source: Price Indices of Operating Costs, 1982-2000, PIOC projection for 2001

### 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 2000 including actual changes in the price indices with which to gauge the accuracy of the projections is included in Appendix S.

### 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 2000 as estimated by the price index, along the RGB Rent Index over the same period is contained in Appendix T.

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

### ***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, recent 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 eleven years 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. A recent update of that memo, analyzing historic changes in the relationship between operating costs and rents is contained in Appendix K.

The findings of this analysis are divided between units in buildings constructed before 1947 ("pre-war") and after 1946 ("post-war") due to disparate data sources. The main findings are as follows:

In the Post-War stock, the O&M to rent (contract) ratio increased by 2.1 percentage points from .55 to .571 from 1969 - 1997. That is, owners of post-war buildings spent an average of 55 cents of each rent dollar on operating costs in 1969 (the first year of stabilization), and an average of 57.1 cents in 1997.

In the Pre-War stock, the O&M to income ratio declined by 5.4 percentage points from .65 to .596 from 1967 to 1997. 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 1997 (after these units moved to rent stabilization) they spent only 59.6 cents of each rent dollar on operating costs.

Overall, the O&M to rent/income ratio declined by 3.4 percentage points from .623 to .589 between 1967 to 1997. That is owners, on average, devoted 62 cents of each rent dollar collected to operating costs in 1967-70, and only about 59 cents in 1997.

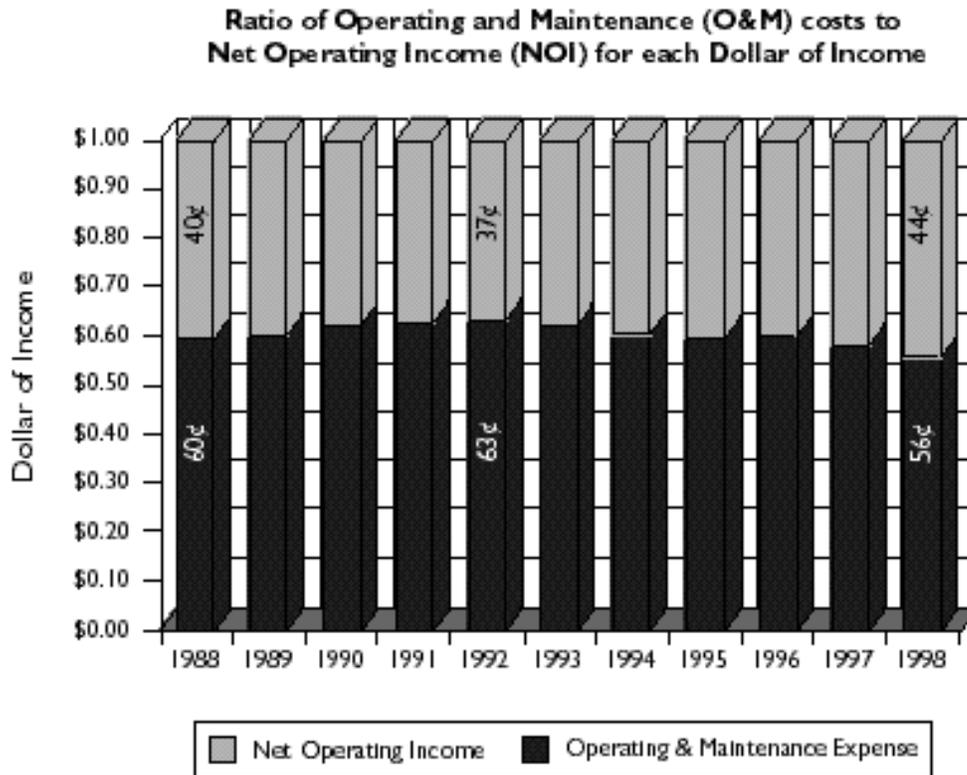
When operating costs are subtracted from rent collections, the amount remaining is net operating income ("NOI") which allows for capital improvements, financing costs and "profit."<sup>158</sup> According to the analysis provided in the memo, "[a]djusting NOI for inflation in the post-war stock (the only stock for which comparative data is available) ... from 1969-70 to 1997 average monthly NOI fell slightly from \$386 to \$378 (by \$8 or 2%). Given the fact that this stock was 27 years older at the time of the 1997 measurement, an even greater decline was expected.

These are complex issues and many caveats are in order. New members are advised to consult the complete text of the memo. Generally, the cost of operating a rental building relative to rental income has fallen slightly over three decades of rent stabilization. This means that average net operating incomes have grown relative to operating costs. In inflation adjusted terms, net operating incomes have held steady with a slight drop in real NOI for post-war housing. The relative gains in NOI for pre-war housing suggest that in inflation adjusted terms, NOI has grown as these units transitioned from rent control to rent stabilization. The chart below is derived directly from annual income and expense filings. 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. As the chart illustrates, since 1992, owners have generally spent less on expenses and have had more income left over for debt service, income tax and profit.

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<sup>158</sup>The term profit used here is not true profit, insofar as it does not account for appreciation in resale value.

**Chart IV.**



Source: RGB *Income and Expense Studies*, 1990-2000.

The price index along with the O&M to rent/income ratio and the projections are used to generate two figures known as the commensurate rent adjustment. This adjustment was previously discussed at pages 67 to 69. A memorandum describing the various commensurate formulae is included herein at Appendix J.

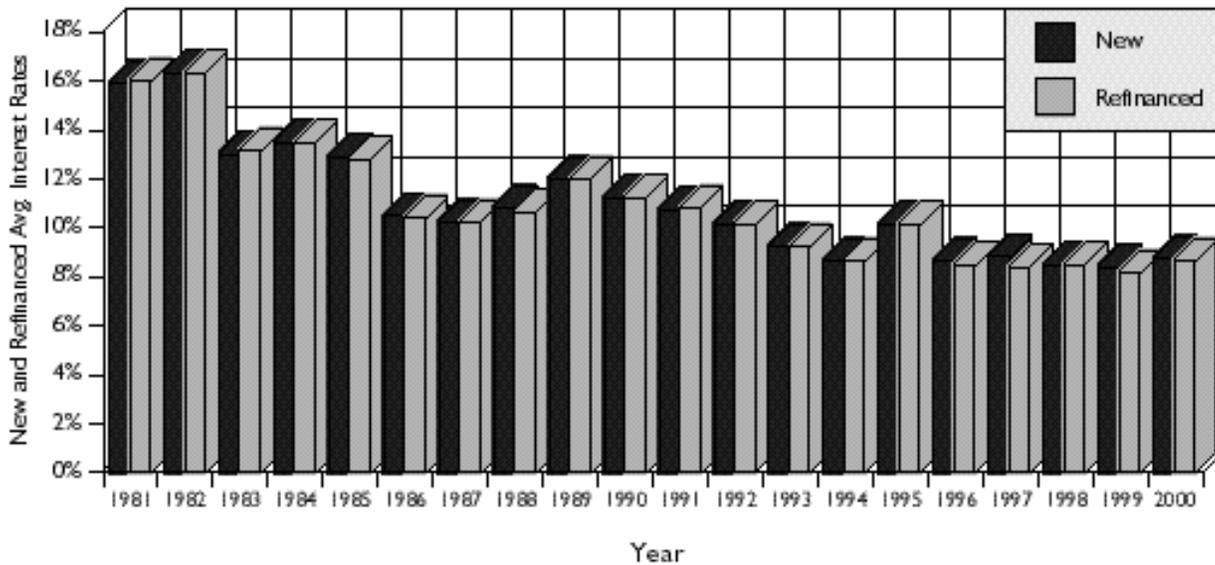
## The Cost and Availability of Financing

### *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 below shows average interest rates for new and refinanced multi-family mortgages for rent stabilized properties from 1981-2000.

Chart V.

**Average Interest Rates for New and Refinanced Mortgages, 1981-2000**



Source: RGB Mortgage Surveys, 1981-2000.

## **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.<sup>159</sup> 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, 1921-1999 on Page 22.

## **Data from the Cost of Living Indices**

### ***The Income and Affordability Study***

Each year the Board is provided with data on an April to April basis 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 V. The cost of living data is reported to the Board annually in the *Income and Affordability Study*.

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<sup>159</sup>See Unconsolidated Laws of N.Y. §8603.

One of the most important indices, stabilized tenant income, is only available in the triennial Housing and Vacancy Survey. The table below details median stabilized household income from 1974 through 1998, in nominal and real 1998 dollars.

**Table VI.**

**New York City Median Stabilized Renter Household Income 1974-1998**

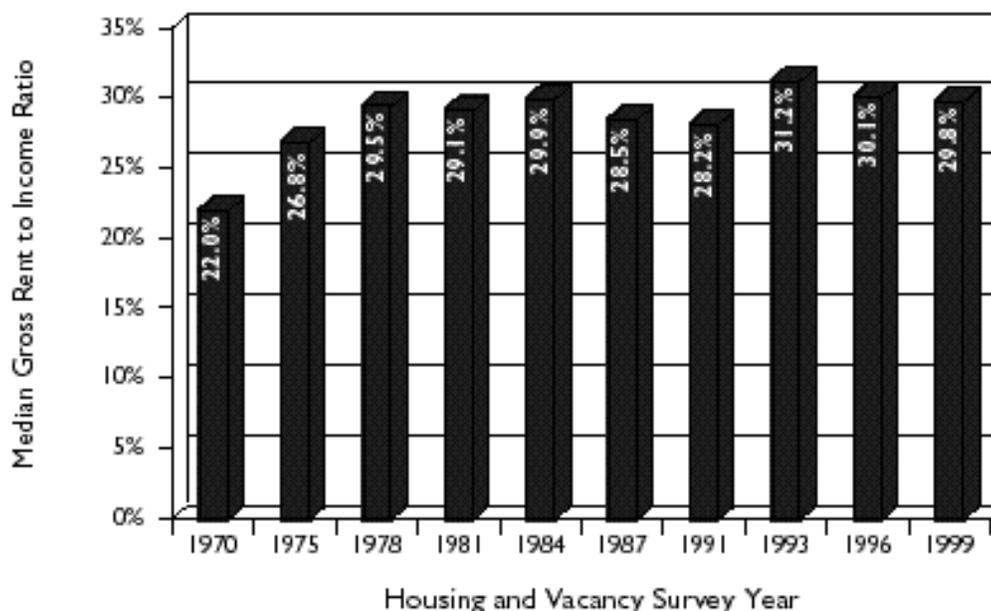
Year	Nominal	Real 1998 Dollars
1998	\$27,000	\$27,000
1995	\$25,300	\$27,078
1992	\$20,160	\$23,332
1990	\$21,000	\$26,322
1986	\$18,547	\$28,671
1983	\$14,483	\$25,193
1980	\$11,976	\$25,323
1977	\$ 9,980	\$26,986
1974	\$ 9,908	\$32,150

Source: 1974–1999 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 below shows the median rent burden for rent stabilized households from 1970-1999. As discussed earlier in the Affordability section on pages 55 through 61, the rent burden for both stabilized households and all renter households has risen sharply, especially in the initial stages of stabilization.

Chart VI.

**Stabilized Median Rent Burdens, New York City 1970-1999**  
(Gross Rent as Share of Household Income)



Source: Housing and Vacancy Surveys 1970-99, U.S. Bureau of the Census.

**Other Data - Summary of Special Research from 1989-2000**

Along with the large variety of facts and figures provided by those who testify at the Board's annual meetings and hearings, the Board has requested special reports in a number of areas related to the economic condition of the rental housing industry and to the circumstances faced by rent stabilized tenants. Key findings from these various reports are provided below. The year noted on the left column refers to the annual research summary where the full report may be found.

**1989**

**Building Violations and Tax Arrearages in Rent Stabilized Hotels, SRO's and Rooming Houses** (pp. 113-115)

While now dated, this brief report disclosed that median per unit tax arrearages were a more serious problem for rooming houses (\$390) than for hotels (\$360) and SRO's (\$210). Similarly, rooming houses averaged about three times as many housing code violations per unit (1.34) than SRO's (.42) and more than seven times as many as hotels (.17).

## **1990**

### **The Supplementary Rent Adjustment / Housing Affordability (pp. 46 - 47)**

This report provides an overview of the effects of the Board's supplemental allowance on individual rent levels from 1983 to 1989 in percentage terms - depending on rent levels and the lease terms chosen. Generally, tenants unaffected by the supplemental adjustment experienced cumulative rent increases of 30 to 32% depending on whether they chose a one or two year lease. Cumulative rent increases for tenants affected by the supplemental adjustment ranged from 40% to 72%. Thus, while the dollar amount of increases may have been as great or greater for higher rent tenants, low rent tenants experienced much larger increases in percentage terms.

## **1991**

### **Energy Efficiency in Rent Stabilized Buildings (pp. 48)**

This brief report compares energy usage targets for "efficient" buildings developed by the Department of Housing Preservation and Development's Division of Energy Conservation, with actual energy usage derived from income and expense data for rent stabilized buildings. The report concludes that owners should save "anywhere between 6% and 13% on heating bills if greater conservation efforts are made." Such improvements "should be achieved through 'better maintenance procedures, and low cost retrofits'" and "do not represent targets achievable only through highly expensive system replacements."

### **Report on Rent Stabilized Hotels (pp. 74 - 85)**

This extensive report reviews the economic condition of rent stabilized hotels, SRO's and rooming houses, along with levels of rent registration with the DHCR for each group. The study finds that "it appears that 40% of all (potential) stabilized hotel-type units have not been registered even once since 1984." It further found that 47% of buildings had not registered. It found that 59% of rooming house units, 29% of hotel units and 18% of SRO units were unregistered. A later analysis conducted in 1992 (reported at pp. 91-93 of the 1992 Research Summary) found that, among hotels that did register with the DHCR, on average, only about 60% of income was derived from registered rents. Among SRO's and rooming houses that registered with DHCR, virtually all of their income was derived from registered rents. Both reports raised

troubling questions about the enforcement and efficacy of rent regulations in the hotel/SRO/rooming house sectors.

## **1992**

### **The Vacancy Allowance (pp. 51 - 61)**

This report summarizes the history of the Board's vacancy allowance and some arguments for and against the allowance. Issues discussed include its effects on rent skewing, tenant mobility, building revenues and the enforceability of alternative vacancy allowance formulas. In addition, an analysis of DHCR's treatment of preferential rents (rents below legal levels) and what happens to these rents when a vacancy occurs. While instructive, much of the analysis has been rendered moot by the imposition of a statutory vacancy allowance formula under the Rent Reform Act of 1997.

### **Effects of Rent Regulation on Economic and Racial Integration (pp. 71 - 76)**

This extensive review found that "there is no statistical evidence of a relationship between rent regulation and economic or racial integration" but does "not conclusively negate the possibility that, under some circumstances, rent regulation may promote or facilitate greater economic and racial integration." The report relies upon extensive economic and ethnicity information available from the 1987 Housing and Vacancy Survey. Utilizing various statistical measures, the report found no significant variations in integration levels resulting from the relative proportion of rent stabilized units in 53 sub-borough areas.

## **1993**

### **A Review of Change in Income and Expenses, 1967-1991 (pp. 33-44)**

This extensive report examines the effects of over twenty years of rent stabilization on the net operating incomes of regulated buildings. It is fully updated and the same issues are analyzed in a 1999 staff memo included herein at Appendix K and K1. The key findings in that memo were previously noted at pages 93 to 95.

### **Tax Arrears in Rent Stabilized Buildings, 1993 (pp. 50-54)**

This brief report analyzes the characteristics of buildings in distress as indicated by excessive tax arrears (3+ quarters in arrears). It discloses that the arrearage

problem reflects "the ongoing financial deterioration of the worst-off buildings" insofar as many of the buildings were chronic delinquents. About 80% were built before 1929. They had slightly higher operating costs than average (driven by higher fuel and repair costs), and lower rent collections. Average tenant incomes in these buildings was about 25% lower than the average for all stabilized households. Average rents were 10% below the average for comparably sized buildings and 20% below the average for all buildings. Buildings with arrears also tended to be "over-mortgaged" insofar as they carried debt levels that were difficult to service given their rent rolls.

**The NYC Housing and Vacancy Survey: A Ten Year Retrospective (1981-91)**  
(pp. 62-76)

This extensive report covers developments in the housing market during the 1980's including new construction, household incomes, rents, affordability, vacancies, demographics of tenant households, and housing and neighborhood quality. One of the more notable findings with respect to the operations of the RGB is that during this period "[r]ent increases outpaced the RGB's Price Index of Operating Costs by a fair margin. The ten year change in the PIOC was 71% compared to an 85% increase in rents."

**1994**

**Tax Arrears in Rent Stabilized Buildings, 1994** (pp. 48-58)

Expanding upon the work started in 1993, this report includes a survey of owners of buildings with 3+ quarters in tax arrears. For those owners, the study reveals "vacancy and collection losses to be a severe problem" with "nearly 20% of the potential monthly rent roll" being "uncollected, 6% due to vacancy and 13.5% due to collection losses." When asked what single city initiative would most improve the profitability of their buildings, 40% favored lower property and water & sewer rates; 30% favored a "fairer and more efficient housing court" and only 25% favored higher rent guidelines. With respect to the actions of the Rent Guidelines Board, two-thirds of the owners responding indicated that targeted guidelines for low rent apartments or small buildings, as opposed to general guideline increases, would most improve their profit levels. This report is particularly helpful in understanding conditions in distressed housing and the concerns of owners.

## **Rent Skewing in Rent Stabilized Buildings** (pp. 62-65)

Rent skewing is a way of describing substantial differentials in rent for comparable units. One of the more significant problems with most rent regulation systems is that rent adjustments tend to impose relatively higher rents on newcomers. Allocating rent adjustments in an even-handed way is a difficult task. In this 1994 report, the RGB staff found that "length of occupancy" discounts occur in both regulated and unregulated rental housing. The annual discounts tenants receive are about the same. Nonetheless, rent stabilized tenants generally had deeper overall discounts due to the fact that they tended to occupy their apartments about twice as long as unregulated tenants. Thus, for example, in Manhattan the annual longevity rent discount received by both regulated and unregulated tenants averaged 2.6% per year. Still rent stabilized tenants in Manhattan stayed in their apartments 8.9 years on average, compared to 4.2 years for unregulated tenants. This resulted in an average longevity discount of 23.4% for stabilized tenants, and only a 10.7% average discount for unregulated tenants. The longevity discounts for the other boroughs are far less pronounced. (Brooklyn: 14.8% stabilized; 14.2% unregulated / Queens: 16.2% stabilized; 11.0% unregulated.) In the Bronx, unregulated apartments actually witnessed larger longevity discounts (11.4% - stabilized; 12.1% unregulated). In sum, the RGB staff found that because stabilization tends to produce longer-term tenancies, greater longevity discounts (and skewing) are generally found.

## **1995**

### **Distressed Housing** (pp. 49-56) (tax arrears and foreclosures)

These reports continue the Board's review of distressed housing. Most notable is the examination of tax foreclosure policies of 26 cities compiled from a survey taken by RGB staff. The survey found that few cities managed tax delinquent properties as New York has (i.e. seizing delinquent properties and managing them as a public sector landlord). Rather, "[n]early all [of the cities surveyed] attempt to retrieve as much revenue as possible from buildings in arrears through auctions, lien sales or, if necessary, demolition and subsequent sale of vacant lots." In 1994 the City announced that it had stopped foreclosing ("vesting") tax delinquent properties. By the time the RGB revisited this issue in 1996, the City began selling the tax liens of relatively healthy properties to investment banks. (See 1996 Report - Tax-Delinquent Property p. 76-77). More troubled buildings were deeded to third party buyers who were given various incentives and loans to improve the properties. The City's Department of Housing Preservation and Development also set up an "early warning"

system to help responsible owners improve the financial and physical condition of their buildings to avoid tax foreclosure.

### **Small Buildings** (pp. 59-63)

This report examines the condition of small buildings in terms of rent levels operating costs, tax arrears, and tenant incomes. The report concludes that while "small buildings are not vastly different from large buildings in most respects, small buildings are slightly worse off than large buildings according to every variable we reviewed." Small buildings have lower gross income and slightly higher expenses; they pay slightly higher property taxes relative to their total income; they have higher vacancy and collection losses; they tend to be older; they are more likely to have an owner living in them; their tenants have somewhat lower income and tend to move more frequently. The report also observes that these buildings are more vulnerable to economic downturns. Indeed, three quarters of buildings falling into tax arrears have fewer than 20 units.

Notably the report does not examine the profitability of small buildings. To do so, RGB staff would have to examine the return on equity placed at risk by small building owners. While small buildings produce less income, it is also likely that they have lower per unit purchase prices. In short, apartments in small buildings generally tend (a broad generalization) to be at the lower end of the market and their economic conditions reflect that position.

## **1996**

### **Rent to Income Ratios - a comparison among large cities** (pp. 66-68)

The RGB staff utilized census bureau data to compare the relative cost of rental housing in New York City with 21 other large cities (those with at least 50,000 rental units). New York was found to have relatively high rents (exceeded by only six of the cities). However, because New Yorkers have higher average incomes, the median tenant household had a relatively low rent to income ratio. That is, while nationally, the median tenant household spent 31% of their income on rent, in New York the average was 28%. Three-quarters of the 21 cities listed had higher average rent to income ratios than New York.

## **1996 Tax Arrears Study** (pp. 58-60)

See note under 1995 - Distressed Housing

## **1997**

### **Summary of 1996 Housing and Vacancy Survey Data** (Appendix D, pp. 94-111)

This extensive statistical summary of data from the 1996 Housing and Vacancy Survey covers regulatory status, vacancy rates, economic characteristics (rents, incomes etc.), neighborhood quality and demographic characteristics of renter households. It is largely dated, but may be useful for historical comparisons. A complete analysis of the 1996 HVS was subsequently published by the Department of Housing Preservation and Development and is available to RGB members. A similar publication for the 1999 HVS should be available in 2001.

## **1998**

### **Recent Movers Study** (pp. 56-68)

This important study offers an initial glimpse of the effects of the luxury decontrol provisions of the Rent Reform Act of 1997. In an extensive survey of recent movers, the RGB staff found that rents rose 12%, on average, when a vacancy occurred - less than the 18% to 20%+ "minimum" allowed by law. This suggested that not all landlords were able to collect the increases and that regulated rents were already at or close to market in many areas. The study found a stark difference between the market in Manhattan south of 96th Street on the East Side and 110th Street on the West Side, and the other areas of the City. In the "core" area of Manhattan recent movers paid rent increases averaging 21% while recent movers in the Bronx paid 5%; in Brooklyn 8%; and in Queens 8%. The increases were attributed to both a strong economy as well as the legislative changes in 1997. The study also found that "vacancy decontrol" (where a vacancy occurs and lawful rents exceed \$2,000) was occurring almost exclusively in Manhattan.

## **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.<sup>160</sup> 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. Separate hearings are held for the apartment and hotel sectors. Notice of the hearings 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. 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 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. The hearings usually begin with testimony from public officials invited by the Board.

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<sup>160</sup>A copy of the relevant portions of the Open Meetings Law is contained in Appendix W.

## *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 which applies to City agencies. Since the Board does 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 which takes place in mid-May. The hearings that are conducted in mid-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 X.

## **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. Approving this "boilerplate" language will usually be the first order of business. At the meeting to consider the "final" guidelines, members will have copies of the proposed orders. The first order of business will typically be to adopt the language of the proposed orders except insofar as they are amended at that meeting.
- Board members attention will then be called to the hotel orders and a similar process of boilerplate approval will occur.
- The floor will be opened to proposals on apartment guidelines for one and two year leases. Other elements of rent adjustments such as supplemental increases for low rent apartments or a vacancy factor for sublets<sup>161</sup> may be "packaged" with the apartment guidelines. Votes are taken on each proposal in accordance with Roberts Rules, until at least five votes can be mustered for an apartment order.
- Loft guidelines are considered separately in a like fashion.

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<sup>161</sup>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).

- The Board will then consider the "special guideline" for units coming out of rent control. See pages 84 to 86 for a discussion of this guideline.
- The next order of business is usually the "hotel" orders. 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.
- 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.
- Once all business has concluded at the final meeting, the Chair will ask the Board to approve staff preparation of explanatory statements reflecting the information presented to the Board and the major findings of the year (i.e. price index, income and expense data, witness testimony etc.). These will be circulated to Board members prior to publication.
- 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, 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).

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.<sup>162</sup>

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<sup>162</sup>See case #15, *supra* at page 43.

## Rent Stabilization Law

### § 26-510. Rent guidelines board

a. There shall be a rent guidelines board to consist of nine members, appointed by the mayor. Two members shall be representative of tenants, two shall be representative of owners of property, and five shall be public members each of whom shall have had at least five years experience in either finance, economics or housing. One public member shall be designated by the mayor to serve as chairman and shall hold no other public office. No member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal and no person who owns or manages real estate covered by this law or who is an officer of any owner or tenant organization shall serve on a rent guidelines board. One public member, one member representative of tenants and one member representative of owners shall serve for a term ending two years from January first next succeeding the date of their appointment; one public member, one member representative of tenants and one member representative of owners shall serve for terms ending three years from the January first next succeeding the date of their appointment and two public members shall serve for terms ending four years from January first next succeeding the dates of their appointment. The chairman shall serve at the pleasure of the mayor. Thereafter, all members shall continue in office until their successors have been appointed and qualified. The mayor shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A member may be removed by the mayor for cause, but not without an opportunity to be heard in person or by counsel, in his or her defense, upon not less than ten days notice.

b. The rent guidelines board shall establish annually guidelines for rent adjustments, and in determining whether rents for housing accommodations subject to the emergency tenant protection act of nineteen seventy-four<sup>1</sup> or this law shall be adjusted shall consider, among other things (1) the economic condition of the residential real estate industry in the affected area 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, (3) such other data as may be made available to it. Not later than July first of each year, the rent guidelines board shall file with the city clerk its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodations subject to this law, authorized for leases or other rental agreements commencing on the next succeeding October first or within the twelve months thereafter. Such findings and statement shall be published in the City record.

c. Such members shall be compensated on a per diem basis of one hundred dollars per day for no more than twenty-five days a year except that the chairman shall be compensated at one hundred twenty-five dollars a day for no more than fifty days a year. The chairman shall be chief administrative officer of the rent guidelines board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services. The department of housing preservation and development shall cooperate with the rent guidelines board and may assign personnel and perform such services in connection with the duties of the rent guidelines board as may reasonably be required by the chairman.

d. Any housing accommodation covered by this law owned by a member in good standing of an association registered with the department of housing preservation and development pursuant to section 26-511 of this chapter<sup>2</sup> which becomes vacant for any reason, other than harassment of the prior tenant, may be offered for rental at any price notwithstanding any guideline level established by

the guidelines board for renewal leases, provided the offering price does not exceed the rental then authorized by the guidelines board for such dwelling unit plus five percent for a new lease not exceeding two years and a further five percent for a new lease having a minimum term of three years, until July first, nineteen hundred seventy, at which time the guidelines board shall determine what the rental for a vacancy shall be.

e. With respect to hotel dwelling units, covered by this law pursuant to section 26-506 of this chapter, the council, after receipt of a study from the rent guidelines board, shall establish a guideline for rent increases, irrespective of the limitations on amount of increase in subdivision d hereof, which guideline shall apply only to permanent tenants. A permanent tenant is an individual or family who at any time since May thirty-first, nineteen hundred sixty-eight, or hereafter, has continuously resided in the same hotel as a principal residence for a period of at least six months. On January first, nineteen hundred seventy-one and once annually each succeeding year the rent guidelines board shall cause a review to be made of the levels of fair rent increases provided under this subdivision and may establish different levels of fair rent increases for hotel dwelling units renting within different rental ranges based upon the board's consideration of conditions in the market for hotel accommodations and the economics of hotel real estate. Any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at the guideline level for vacancies established by the rent guidelines board. If a hotel dwelling unit becomes vacant because the prior tenant was evicted therefrom, there shall be no increase in the rental thereof except for such increases in rental that the prior tenant would have had to pay had he or she continued in occupancy.

g.<sup>3</sup> From September twenty-fifth, nineteen hundred sixty-nine until the rate of permissible increase is established by the council pursuant to subdivision e of this section, there shall not be collected from any permanent hotel tenant any rent increase in excess of ten percent over the rent payable for his or her dwelling unit on May thirty-first, nineteen hundred sixty-eight, except for hardship increases authorized by the conciliation and appeals board. Any owner who collects or permits any rent to be collected in excess of the amount authorized by this subdivision shall not be eligible to be a member in good standing of a hotel industry stabilization association.

h. The rent guidelines board prior to the annual adjustment of the level of fair rents provided for under subdivision b of this section for dwelling units and hotel dwelling units covered by this law, shall hold a public hearing or hearings for the purpose of collecting information relating to all factors set forth in subdivision b of this section. Notice of the date, time, location and summary of subject matter for the public hearing or hearings shall be published in the City Record daily for a period of not less than eight days and at least once in one or more newspapers of general circulation at least eight days immediately preceding each hearing date, at the expense of the city of New York, and the hearing shall be open for testimony from any individual, group, association or representative thereof who wants to testify.

i. Maximum rates of rent adjustment shall not be established more than once annually for any housing accommodation within the board's jurisdiction. Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification.

(L.1985, c. 907, § 1.)

<sup>1</sup> Section 8261 et seq., post.

<sup>2</sup> Chapter 4 of Title 26 of the Administrative Code of the City of New York.

<sup>3</sup> No par. f has been enacted.

**Appendix A1**

**THE CITY RECORD-2/29/80**

**Local Law No. 11**

Introduced by Council Member Manton (by request of the Mayor)—  
A LOCAL LAW to amend the administrative Code of the city of New York in relation to the rent guidelines board and its staff.

Be it enacted by the Council as follows:

Section 1. Subdivision c of section YY51-5.0 of title YY of chapter fifty-one of the administrative code of the city of New York is hereby amended to read as follows:  
c. Such members shall be compensated on a per diem basis of one hundred dollars per day for no more than twenty-five days a year except that the chairman shall be compensated at one hundred twenty-five dollars a day for no more than fifty days a year. The chairman shall be chief administrative officer of the rent guidelines board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services. The department of housing preservation and development shall cooperate with the rent guidelines board and may assign personnel and perform such services in connection with the duties of the rent guidelines board as may reasonably be required by the chairman.

§2 This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York passed by the Council on February 5 1980 and approved by the Mayor on February 21 1980.

DAVID N. DINKINS, City Clerk, Clerk of the Council

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CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW SECTION 27  
Pursuant to the provisions of Municipal Home Rule Law Section 27, I hereby certify that the enclosed local law (Local Law No 11 Council Int. No. 759-A), contains the correct text and received the following vote at the meeting of the New York City Council on February 5, 1980: 35 for; 5 against; 1 not voting

Was approved by the Mayor on February 21, 1980.

Was returned to the City Clerk on February 21 1980

ALLEN G SCHWARTZ, Corporation Counsel

## Appendix B

### RENT GUIDELINES BOARD MEMBERS

	Representation	Appointed	Length of Term	Expiration of service	Termination of service
<b>Chairpersons</b>					
Roger Starr	Public	6/15/69		Pleasure of Mayor	N/A
Prof. Emanuel Tobier	Public	6/08/74		Pleasure of Mayor	N/A
Dr. Jacob B. Ukeles	Public	6/28/75		Pleasure of Mayor	N/A
Frances Levenson	Public	4/20/78		Pleasure of Mayor	7/01/79
Marvin Markus	Public	11/26/79		Pleasure of Mayor	N/A
Amalia V. Betanzos	Public	11/30/84		Pleasure of Mayor	8/31/86
William J. Mulrow	Public	4/20/87		Pleasure of Mayor	4/05/88
Arthur B. Spector	Public	4/05/88		Pleasure of Mayor	12/27/89
Aston L. Glaves	Public	4/17/90		Pleasure of Mayor	12/31/93
Edward Hochman, Esq.	Public	5/03/94		Pleasure of Mayor	4/30/01
Steven Sinacori, Esq.	Public	5/07/01		Pleasure of Mayor	presently serves
<b>Board Members</b>					
Anthony H. Atlas	Public*	6/15/69		N/A	N/A
Edward J. Cleary	Public*	6/15/69		NA	N/A
Gladys Jones	Public*	6/15/69		12/31/80	6/28/80
Dr. Frank Kristof	Public*	6/15/69		N/A	N/A
William A. Lyon	Public*	6/15/69		12/31/78	N/A
Joseph P. McMurray	Public*	6/15/69		N/A	N/A
Thomas B. Shortman	Public*	6/15/69		N/A	N/A
John Trubin	Public*	6/15/69		12/29/77	N/A
Norman Samnick	Public	6/10/74	4 Years	12/31/78	8/30/78
William Brennen	Owner	6/10/74	3 Years	12/31/77	N/A
Bruce Gould	Tenants	6/10/74	3 Years	12/31/77	N/A
Ralph W. Mohard	Owners	9/15/76	2 Years	12/31/76	N/A
Sid Davidoff	Tenants	12/31/77	3 Years	12/31/80	N/A
Monsignor Harry J. Byrne	Public	12/22/78	2 Years	12/31/80	5/04/82
Barbara Chocky	Tenants	12/22/78	2 Years	12/31/79	N/A
Carolyn Odell	Public	3/27/79	4 Years	12/31/82	N/A
Scott Mollen	Public	3/27/79	3 Years	12/31/82	N/A
Hyman Sardy	Owners	6/08/79	2 Years	12/31/80	3/12/82
Karen M. Eisenstadt	Public	5/20/81	4 Years	12/31/86	N/A
David Castro-Blanco	Public	5/20/81	3 Years	12/31/83	2/25/86
Carl O. Callender	Tenants	5/20/81	2 Years	12/31/82	7/21/86
Dr. Frank Kristof	Owners	3/12/82	2 Years	12/31/82	5/21/84
W. Philip Johnson	Public	5/13/82	2 Years	12/31/84	6/30/86
Eugene J. Morris, Esq.	Owners	4/15/83	3 Years	12/31/83	12/03/84
Darryl Greene, Esq.	Public	5/18/84	4 Years	12/31/86	10/30/86
Cynthia H. Reiss, Esq.	Tenants	5/18/84	3 Years	12/31/86	8/04/86
Joseph L. Forstadt, Esq.	Owners	5/18/84	3 Years	12/31/93	5/01/97
Harold Lubell	Owners	5/17/85	2 years	12/31/94	presently serves
Harriet Cohen	Tenants	4/20/87	3 Years	12/31/90	5/10/89
Stephen Dobkin	Tenants	4/20/87	2 Years	12/31/89	5/10/89
John Durant Cooke	Public	4/20/87	2 Years	12/31/89	6/26/89
Kent C. Hiteshow	Public	4/20/87	4 Years	12/31/91	8/05/88
Nancy A. Paulson	Public	4/20/87	4 Years	12/31/91	10/02/89
Augustin Rivera	Public	4/20/87	3 Years	12/31/93	presently serves

(continued)	Representation	Appointed	Length of Term	Expiration of service	Termination of service
William R. Howell	Public	2/27/89	4 Years	12/31/91	3/28/90
Janice Robinson	Public	4/17/90	2 Years	12/31/92	10/17/91
Victor Marrero	Public	4/17/90	4 Years	12/31/91	01/08/93
Oda Friedheim	Tenants	4/17/90	3 Years	12/31/93	6/22/92
Galen Kirkland	Tenants	4/17/90	2 Years	12/31/92	6/22/92
Ellen Gesmer, Esq.	Public	5/08/90	4 Years	12/31/91	1/04/93
Kenneth Rosenfeld, Esq.	Tenants	1/01/91	3 Years	12/31/93	3/31/99
Jane Stanicki	Public	1/01/92	4 Years	12/31/95	1/23/96
Barbara Gordon-Espejo	Public	1/01/92	4 Years	12/31/95	3/12/96
Hilda Blanco	Public	6/25/92	2 Years	12/31/92	2/07/95
Leslie Holmes, Esq.	Tenants	1/01/93	2 Years	12/31/94	passed away 7/99
Paul Atanasio, Esq	Public	2/01/95	2 Years	12/31/96	1/26/96
Earl Andrews	Public	1/01/96	4 Years	12/31/99	1/13/97
Elissa Fitzig	Public	1/16/96	4 Years	12/31/99	3/23/98
Paula Dagan	Public	3/18/97	4 Years	12/31/99	3/13/98
David Pagan	Tenants	3/21/97	2 Years	12/31/98	presently serves
Edward Weinstein	Public	4/27/98	2 Years	12/31/98	12/07/00
Bartholomew Carmody	Public	4/27/98	4 Years	12/31/99	presently serves
Vincent Castellano	Owners	4/27/98	3 Years	12/31/99	presently serves
Justin Macedonia, Esq.	Public	6/18/98	4 Years	12/31/99	3/06/01
Jeffrey Coleman, Esq.	Tenants	3/31/99	3 Years	12/31/99	presently serves
Mort Starobin	Public	4/30/01	2 years	12/31/02	presently serves
David Rubenstein	Public	5/08/01	4 years	12/31/03	presently serves

\* Prior to 1974, there were no separate designations for public, owner and tenant members.

**Note:** Some Board Members resigned prior to or following the expiration date of their term. Continuation in office after expiration of the term is permitted by §26-510(a) of the RSL. Also, a number of new appointments are made to fill out the unexpired terms of members who have resigned.

## **Appendix C**

### **Public Officers Law §§ 3, 10 & 30**

#### **§ 3. Qualifications for holding office**

1. No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, have attained the age of eighteen years, except that in the case of youth boards, youth commissions or recreation commissions only, members of such boards or commissions may be under the age of eighteen years, but must have attained the age of sixteen years on or before appointment to such youth board, youth commission or recreation commission, be a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised, or who shall have been or shall be convicted of a violation of the selective draft act of the United States, enacted May eighteenth, nineteen hundred seventeen, or the acts amendatory or supplemental thereto, or of the federal selective training and service act of nineteen hundred forty or the acts amendatory thereof or supplemental thereto.

#### **§ 10. Official Oaths**

Every officer shall take and file the oath of office required by law, and every judicial officer of the unified court system, in addition, shall file a copy of said oath in the office of court administration, before he shall be entitled to enter upon the discharge of any of his official duties. An oath of office may be administered by a judge of the court of appeals, the attorney general, or by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed or by his duly designated assistant, or may be administered to any member of a body of officers, by a presiding officer or clerk, thereof, who shall have taken an oath of office. An oath of office may be administered to any state or local officer who is a member of the armed forces of the United States by any commissioned officer, in active service, of the armed forces of the United States. In addition to the requirements of any other law, the certificate of the officer in the armed forces administering the oath of office under this section shall state (a) the rank of the officer administering the oath, and (b) that the person taking the oath was at the time, enlisted, inducted, ordered or commissioned in or serving with, attached to or accompanying the armed forces of the United States. The fact that the officer administering the oath was at the time duly commissioned and in active service with the armed forces, shall be certified by the secretary of the army, secretary of the air force or by the secretary of the navy, as the case may be, of the United States, or by a person designated by him to make such certifications, but the place where such oath was administered need not be disclosed. The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside. The oath of office of every state officer shall be filed in the office of the secretary of state; of every officer of a municipal corporation, including a school district, with the clerk thereof; and of every other officer, including the trustees and officers of a public library and the officers of boards of cooperative educational services, in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

**§ 30. Creation of vacancies**

1. Every office shall be vacant upon the happening of one of the following events before the expiration of the term thereof:

d. His ceasing to be an inhabitant of the state, or if he be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen;

h. His refusal or neglect to file his official oath or undertaking, if one is required, before or within thirty days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within thirty days after notice of his appointment, or within thirty days after the commencement of such term; or to file a renewal undertaking within the time required by law, or if no time be so specified, within thirty days after notice to him in pursuance of law, that such renewal undertaking is required. The neglect or failure of any state or local officer to execute and file his oath of office and official undertaking within the time limited therefor by law, shall not create a vacancy in the office if such officer was on active duty in the armed forces of the United States and absent from the county of his residence at the time of his election or appointment, and shall take his oath of office and execute his official undertaking within thirty days after receipt of notice of his election or appointment, and provided such oath of office and official undertaking be filed within ninety days following the date it has been taken and subscribed, any inconsistent provision of law, general, special, or local to the contrary, notwithstanding.

\* \* \* \* \*

**Appendix D**

**Oath of Office example**

I, \_\_\_\_\_

*do solemnly swear, that I will support the Constitution of the United States and the Constitution of*

*the State of New York, and that I will faithfully discharge the duties of the office of*

**MEMBER**

*of the Rent Guidelines Board*

*of The City of New York, according to the best of my ability.*

*Subscribed and sworn before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_\_*

\_\_\_\_\_  
*(Member signature)*

\_\_\_\_\_  
*(Notary Public signature and stamp)*

*and filed in the office of the City Clerk, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_\_.*

\_\_\_\_\_  
*(signature)* City Clerk

## Appendix D1

### Written Statement of Eligibility (sample form)

A letter for the Rent Guidelines Board files is traditionally supplied to the Executive Director following appointment, affirming compliance with the eligibility requirements. Here is an example of a typical format for this letter:

Dear \_\_\_\_\_,  
(Executive Director)

In connection with my appointment to the Rent Guidelines Board, I, \_\_\_\_\_, affirm that I am not a member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal; I do not own or manage real estate covered by the Rent Stabilization Law; I am not an officer of any owner or tenant organization; and I am a resident of New York City.

*For Chairs only:*

In addition, I hold no other public office.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Appendix D2**

**Financial Disclosure form sample page from Conflict of Interest Board (COIB)**

REASON(S) FOR FILING  
 AND INFORMATION CONCERNING FILING

QUANTITATIVE FINANCIAL DISCLOSURE REPORT  
 FILING FOR  
 CALENDAR YEAR 1994

**A**

NEW YORK CITY  
 COMMISSION ON INTEREST BOARD  
 2 LAFAYETTE STREET  
 NEW YORK, NEW YORK 10001

LAST NAME		FIRST	M.I.	SOCIAL SECURITY NO.		
HOME ADDRESS (NO. STREET, APT. #, APTS. BLDG. NO. CITY, STATE ZIP CODE)		MORNING NEWS (NEW YORK)		CITY	COUNTY	STATE
EMPLOYER DEPARTMENT/UNIT			AGENCY CODE NO.		BUSINESS TEL. NO.	
BUSINESS ADDRESS (NO. STREET)			COUNTY		STATE	ZIP CODE
POSITION/TITLE		SALARY (gross-true salary)		MARRITAL STATUS: <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> DIVORCED <input type="checkbox"/> DOMESTIC PARTNER <input type="checkbox"/> LEGALLY SEPARATED		
CHECK BOX IF DOMESTIC PARTNER IS APPLICABLE:						
LAST NAME		FIRST	M.I.	MARRIAGE NAME (WHEN APPLICABLE)		
FOR THE WIVES OF MARRIED DOMESTIC PARTNERS:						
LAST	FIRST	LAST	FIRST	LAST	FIRST	LAST
LAST	FIRST	LAST	FIRST	LAST	FIRST	LAST

- CHECK BOX IF THIS IS THE LAST FINANCIAL DISCLOSURE REPORT YOU WILL FILE DUE TO TERMINATION OF YOUR CITY EMPLOYMENT. TERMINATION DATE: \_\_\_\_\_
- CHECK BOX IF YOU ARE FILING A FINANCIAL DISCLOSURE REPORT BECAUSE YOU CURRENTLY HOLD, OR ARE A CANDIDATE FOR ELECTION OR APPOINTMENT TO ANY OF THE FOLLOWING OFFICES:
- COUNCILMAN  CANDIDATE FOR ELECTION OF AS-SERGEANT

- SENATOR OF THE CITY OF NEW YORK
- PUBLIC ADVOCATE
- COMPTROLLER
- BOARD MEMBER OF \_\_\_\_\_ COUNTY
- COUNCIL MEMBER FROM THE \_\_\_\_\_ COUNCILMANIC DISTRICT
- LOCAL POLITICAL PARTY OFFICIAL

**Appendix D3**

**Sign-in sheet for Board members (sample)**



**New York City Rent Guidelines Board**

51 Chambers Street, Suite 202 • New York, NY 10007 • (212) 385-2934

Fax (212) 385-2554 [www.housingnyc.com](http://www.housingnyc.com)

*Chairman*  
Edward S. Hochman

*Executive Director*  
Anita Visser

**RENT GUIDELINES BOARD SIGN IN SHEET**

Date of Meeting	Place of Meeting	
Board Members Name	Signature	Social Security #
<u>EDWARD HOCHMAN</u>		
<u>BARTHOLOMEW CARMODY</u>		
<u>VINCENT CASTELLANO</u>		
<u>JEFFREY COLEMAN</u>		
<u>HAROLD A. LUBELL</u>		
<u>JUSTIN MACEDONIA</u>		
<u>DAVID PAGAN</u>		
<u>AGUSTIN RIVERA</u>		
<u>EDWARD WEINSTEIN</u>		

**Appendix D4**

**Per Diem requisition form**

**RENT GUIDELINES BOARD  
PER DIEM PAYMENT REQUISITION**  
for performance of TCE activities

FOR

TERMS/CHARGE

.....

TO

.....

UNOFFICIAL  
Receipt

DATE	PERIOD	LOCATION	ACTIVITY

Total of meals/working meals

Total of non working meals

Total of Diem by meal type

.....

Code 1  
Quantity  
Unit  
Notes

Code 1a: One meal per day for the performance of TCE activity  
 Code 1b: One meal per day for the performance of TCE activity for a TCE member  
 Code 1c: One meal per day for the performance of TCE activity for a TCE member who is not a TCE member  
 Code 1d: One meal per day for the performance of TCE activity for a TCE member who is not a TCE member and is not a TCE member  
 Code 1e: One meal per day for the performance of TCE activity for a TCE member who is not a TCE member and is not a TCE member

**STATE POLICE**

This receipt is a record of the information provided by the requisitioner and is not a receipt for the actual performance of the activity. The information provided here is for the use of the State Police and is not a receipt for the actual performance of the activity. The information provided here is for the use of the State Police and is not a receipt for the actual performance of the activity. The information provided here is for the use of the State Police and is not a receipt for the actual performance of the activity.

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_


## **Appendix E**

### **New York City Charter §2600-2606**

#### **Chapter 68**

#### **Conflicts of Interest**

##### **§ 2600 Preamble.**

Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.

##### **§ 2601 Definitions.** As used in this chapter,

1. Advisory committee means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. Agency means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. Agency served by a public servant means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. Appear means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm associated with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. Blind trust means a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. Board means the conflicts of interest board established by this chapter.

8. Business dealings with the city means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. City means the city of New York and includes an agency of the city.

10. Elected official means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. Firm means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. Interest means an ownership interest in a firm or a position with a firm.

13. Law means state and local law, this charter, and rules issued pursuant thereto.

14. Member means a member of the board.

15. Ministerial matter means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. Ownership interest means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. Particular matter means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution.

18. Position means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. Public servant means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. Regular employee means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. a. Spouse means a husband or wife of a public servant who is not legally separated from such public servant.

b. Domestic partner means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. Supervisory official means any person having the authority to control or direct the work of a public servant.

23. Unemancipated child means any son, daughter, step-son or stepdaughter who is under the age of eighteen, unmarried and living in the household of the public servant.

**§ 2602 Conflicts of interest board.**

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and

one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

### **§ 2603 Powers and obligations.**

a. [Effective upon confirmation of members nominated by mayor pursuant to §2602(c).] Rules. The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Training and education.

1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on-going program for the education of public servants regarding the provisions of this chapter.

2. The board shall provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies in conducting ongoing training programs, and shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant must file a written statement with the board that such public servant has read and shall conform with the provisions of this chapter.

c. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Advisory opinions.

1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public

servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party. The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Financial disclosure.

1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints.

1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations.

1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction.

1. A public servant or supervisory official of such public servant may request the board to review and

make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

**h. Hearings.**

1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any other person.

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Annual report. The board shall submit an annual report to the mayor and the council in accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the privacy of a public servant.

j. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Revision. The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k. [Effective upon confirmation of members nominated by mayor pursuant to § 2602(c).] Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

#### § 2604 Prohibited interests and conduct.

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing, shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

(a) divest the ownership interest; or

(b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

(a) an elected official, other than a member of the council, shall be the executive branch of the city government,

(b) a public servant who is a deputy mayor, the director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

(c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and

(d) a member of the council shall be the legislative branch of the city government.

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct.

1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

(a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,

(b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and

(c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

2. No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

3. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

5. No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

6. No public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this

subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function.

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

13. No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

(a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions.

1. No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions. A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

**§ 2605 Reporting.**

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

**§ 2606 Penalties.**

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to impose fines of up to ten thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

## **Appendix F**

### **Bylaws of the New York City Rent Guidelines Board**

#### Article One

##### Organization

Name: The name of this organization shall be NEW YORK CITY RENT GUIDELINES BOARD (herein referred to as the "Board").

#### Article Two

##### Purpose and Powers

The Board shall establish annually guidelines for rent adjustments for rent stabilized housing accommodations in New York City which are subject to the New York City Rent Stabilization Law of 1969 (hereinafter referred to as the "RSL") and the New York State Emergency Tenant Protection Act of 1974 (hereinafter referred to as the "ETPA"), including any extensions, amendments of renewals thereof.

The Board shall have the power to do any and all acts consistent with the provisions of the RSL and consistent with any and all enabling state and federal legislation, such as but not limited to, the ETPA.

In setting these guidelines, the Board shall consider, among other things (1) the economic condition of the residential real estate industry in the affected area 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, 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, (3) such other data as may be made available to it.

#### Article Three

##### Membership

The Board shall consist of 9 members. Appointment, removal and qualifications of Board members shall be in accord with the RSL.

#### Article Four

##### Officers

One public member shall be designated by the Mayor to serve as Chairman and shall hold no other public office.

The Chairman shall be chief administrative officer of the Board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the Board and enter into contracts for consultant services.

## Article Five

### Compensation of Members

Board members shall be compensated in accordance with the provisions of the RSL.

## Article Six

### Staff

The Board shall have a permanent staff to assist it in carrying out its mandate. The staff may consist of an Executive Director/Research Director, Research Associate, Counsel, Office Manager and Secretary. Notwithstanding anything herein to the contrary, the Chairman may modify the composition of the staff by adding or subtracting employees or by changing their responsibilities, provided such modifications are consistent with the overall financial resources of the Board.

## Article Seven

### Hearings and Meetings

1. Annual Hearings. Prior to the annual adjustments of the level of fair rents for dwelling units and hotel units covered by the RSL the Board shall hold a public hearing, or hearings for the purpose of collecting information.
2. Annual Meetings. Pursuant to the RSL, the Board shall hold public meetings sufficient in number to enable it to fulfill its statutory mandate of issuing annual guidelines for units covered under the RSL.
3. Special Meetings and Hearings. The Chairman may hold hearings and/or meetings in addition to those above mentioned for any purpose consistent with the Board's mandate.
4. Notice of Meetings and Hearings. Notice of all meetings and hearings shall meet the requirements of law.
5. Place of Meeting and Hearings. Every hearing and meeting of the Board shall take place within the City and State of New York.
6. Quorum Requirements. At all meetings of the Board, the Attendance of five members thereof shall constitute a quorum for the transaction of business.

Once a quorum is attained the meeting may continue thereafter, even though a member (or members) whose presence was necessary to constitute the quorum leaves the meeting prior to its adjournment, but no purported action of the Board shall be valid unless the vote thereon is in accord with the voting requirements as specified herein below.

Article Seven (continued)

7. Order of Business. The order of business at all meetings shall be determined by the Chairman, but such order may be changed by a majority of those members present. If the Chairman is unavailable to preside over a meeting, he or she shall appoint another public Board member to preside over and to determine the order of business for such meeting by orally notifying the Board's staff of such appointment.

8. Rules of Order. All meetings and hearings will be conducted in accordance with Robert's Rules of Order unless such rules are in conflict with anything stated herein, in which case these Bylaws shall control.

9. Voting. Each Board member, including the Chairman, shall be entitled to vote when he or she is present at a meeting. A member will not be entitled to vote by proxy.

The vote of at least five members of the board shall constitute an act of the Board, except as otherwise required by law or by these Bylaws.

The amendment or repeal of these Bylaws shall require the vote of at least six Board members.

Article Eight

Promulgation of Guideline Orders

Not later than July first of each year, the Board shall file with the City Clerk its findings for the preceding year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodations subject to the RSL for leases or other rental agreements commencing during the twelve month period beginning October first of that year.

On or about May first of each year, but not later than July first of that year, the Board shall issue its guidelines, as described in the above paragraph, for hotel dwelling units subject to the RSL.

Article Nine

Bylaws

The decision of the Board shall be conclusive on all questions of construction of these Bylaws.

**Adopted May 18, 1981**

**Appendix C**

**Payment History of PIOC: BLS Contract, consultants, RGB Staff**

<u>YEAR</u>	<u>CONTRACT AMOUNT</u>	<u>BLS/Consultant</u>	<u>RSA</u>
1970	\$150,000	\$150,000	
1971	\$122,000	\$122,000	
1972	\$150,000	\$ 50,000	\$100,000
1973	\$155,000	\$ 55,000	\$100,000
1974	\$160,000	\$ 55,000	\$105,000
1975	\$175,000	\$ 60,000	\$115,000
1976	\$183,000		\$183,000
1977	\$190,000		\$190,000
1978	\$196,000	\$ 35,000	\$161,000
1979	\$207,000	\$207,000	
1980	\$224,000	\$224,000	
1981	\$242,000	\$242,000	
1982	\$292,000	\$292,000	
1983	\$300,000	\$300,000	
1984	\$250,000	\$250,000	
1985	\$287,384	\$287,384	
1986	\$235,000	\$235,000	
1987	\$1.00*	\$1.00*	
1988	\$191,178	\$191,178	
1989	\$195,053	\$195,053	
1990	\$174,858	\$174,858	
1991	\$120,907	\$120,907 (RGB Staff)**	
1992	n/a	\$ 58,542 (RGB Staff)***	
1993	n/a	\$ 54,637 (RGB Staff)***	
1994	n/a	\$ 52,173 (RGB Staff)	
1995	n/a	\$ 38,630 (RGB Staff)	
1996	n/a	\$ 20,139 (RGB Staff)	
1997	n/a	\$ 21,726 (RGB Staff)	
1998	n/a	\$ 24,668 (RGB Staff)	
1999	n/a	\$ 33,384 (RGB Staff)***	

The Department of Housing Preservation and Development (HPD) issued the PIOC contract from 1970 to 1981 to the Bureau of Labor Statistics. Private consulting groups performed the PIOC from 1982 to 1990. The PIOC was brought “in-house” in 1991.

\* PIOC contract rejected by NYC Board of Estimate; Performed gratis by USR&E.

\*\* Consultant supplied survey workers and prepared tax relative.

\*\*\* Consultant prepared tax relative only.

Note: Costs for 1992-99 include printing and mailing costs, temporary workers salaries, consultants contracts and PIOC supervisor salary February to April.

**Appendix H**

**R E S O L U T I O N**  
**NEW YORK CITY RENT GUIDELINES BOARD**  
**FEBRUARY 13, 1991**

Whereas, §310(2) of the New York City Charter provides as follows:

Sec. 310. Scope. Except as otherwise provided in this charter or by statute,

2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer;

and

Whereas, the Chair of the Rent Guidelines Board is its chief administrative officer and has the authority to enter into consulting contracts pursuant to §26-510 of the Rent Stabilization Law and Article Four of the Bylaws of the Rent Guidelines Board; and

Whereas, by resolution adopted on December 4, 1990, the Rent Guidelines Board has directed its staff to produce a price index of operating costs for 1991, comparable in scope and methodology to price indices produced in prior years, and has further authorized the hiring of a consultant and other necessary personnel to assist the staff in this effort; and

Whereas, the need to purchase goods and services to support the Board's research needs may arise from time to time and may require the involvement of the Chair of the Rent Guidelines Board to act as Mayor under the procurement system Established pursuant to Chapter 13, of the New York City Charter,

NOW THEREFORE BE IT RESOLVED, that the New York City Rent Guidelines Board hereby delegates to its Chair full authority to act as, and on behalf of, the Board in all matters involving the procurement of goods and services governed by Chapter 13 of the New York City Charter. This resolution shall remain in effect until such time-- as it is specifically revoked by a majority of total members of the Rent Guidelines Board or is otherwise terminated by operation of law.

**Appendix I**

**RENT GUIDELINES BOARD  
EMPLOYEE  
OFFICE MANUAL**

**FOR THE EMPLOYEES OF THE  
NEW YORK CITY RENT GUIDELINES BOARD**

**FEBRUARY 1992**

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## **PREFACE**

### **PURPOSE OF MANUAL**

This manual summarizes the rules and regulations which govern the Rent Guidelines Board employees. It is to be used as an authoritative guide by all RGB employees.

When the staff office was established in 1980 it was with the understanding that staff employees would be treated like City employees with respect to matters such as compensatory time, annual leave, fringe benefits and that annual salary adjustments would track those for municipal employees in the prior years. Some adjustments have been made to accommodate the unique obligations of the office.

## **I. THE WORKDAY**

### **A. The Workday**

The normal workday is from 9 a.m. to 5 p.m. unless prior arrangements have been made with the Executive Director. Flex time may be arranged so that the workday may begin as early as 7:30 a.m. or as late as 10:00 a.m., and as early as 3:30 p.m. or as late as 6:00 p.m. with the prior approval of the Executive Director.

During the period from February 15th through June 30th staff may be requested to work weekend hours. All staff members are expected to be reasonably flexible with these work demands.

Compensatory or weekend hours must be requested by or otherwise pre-approved by the Executive Director or Director of Research.

### **B. Lunch Period**

Employees are allowed to take one hour for lunch at a set time unless approval is received for other arrangements by the Executive Director or Director of Research. Employees are not supposed to work for more than five hours before taking their lunch break. Employees responsible for phones wishing to take lunch at a different time should make arrangements to switch hours with another employee.

The lunch hour cannot be shortened to provide for late arrival or early departure. If employees are requested to shorten their lunch period, or remain in the office and work through lunch, they may receive credit at the end of the day for each quarter hour of lunch time lost. Such credit must be authorized by either the Executive Director or Director of Research in advance.

Employees are expected to return from their lunch periods promptly.

### **C. Lateness**

Employees should arrive at work on time and be ready to begin their work at the start of their work schedule. It is important that every employee report to work on time every day. If you are unable to report to work for whatever reason, or expect to be more than 15 minutes late, you should call the Executive Director or the Director of Research. If they are unavailable when you call, leave a message with whomever answers the phone.

Lateness without good reason is not acceptable in this office.

### **D. Management Hours**

The Director of Research and Executive Director will arrange to assure that at least one Director is generally present in the office between the hours of 8:00 a.m. and 6:00 p.m. If necessary, either Director may be contacted at home during these business hours.

**E. Public Meeting and Hearing Days**

All employees are expected to report to work at least 1 hour prior to scheduled time of Public Meetings or Hearings in order to prepare any last minute materials needed by the Board members.

All employees are expected to help in setting up the meeting rooms prior to the start of the meetings or hearings. The set up involves arranging tables and chairs, recording equipment, coffee/tea, placing material in the Board Members' folders, etc.

**II. TIME RECORD**

**A. Weekly Attendance Sheets**

Time sheets must be filled out promptly with each arrival and departure.

**III. ANNUAL LEAVE**

Annual leave is a combined vacation, personal business, and religious holiday leave allowance.

**A. Accrual of Time**

Employees are credited with the monthly accrual of annual leave after being in full pay status for at least fifteen (15) calendar days that month. Annual leave for employees hired after July 1, 1985 is as follows:

**Rate of accrual:**

<u>Years in Service</u>	<u>Annual leave allowance</u>	<u>Monthly accrual</u>
The beginning of the 1st Year	10 work days	1 day per month after the first month.
The beginning of the 2nd Year	13 work days	1 day per month plus 1 additional day at the end of the 2nd year.
The beginning of the 3rd Year.	13 work days	1 day per month plus 1 additional day at the end of the 3rd year.
The beginning of the 4th year	15 work days	1 1/4 days per month.
The beginning of the 5th Year.	20 work days	1 2/3 days per month.
The beginning of the 8th year	25 work days	2 days per month plus 1 additional day at the end of the leave year.
The beginning of the 15th Year.	27 work days	2 1/4 days per month.

Employees requesting annual leave in any amount must notify and receive prior approval from the Executive Director. Annual leave for employees who commenced service with the Rent Guidelines Board or the City **prior to July 1, 1985** is as follows:

<b>Rate of accrual:</b>	1 2/3 days per month in the 1st through 7th year.	
The beginning of the 8th year	25 work days	2 days per month Plus 1 additional day at the end of the leave year.
The beginning of the 15th year	27 work days	2 1/4 days per month.

During the period from February 15th through June 30th annual leave can be used only with permission of the Executive Director. Leave will be granted during this period only for compelling circumstances.

#### IV. SICK LEAVE ALLOWANCE

Sick leave is to be used only for the employee's personal medical purposes.

**A. Accrual of Time**

Sick leave allowance is one day per month. There is no limit on the amount of sick leave an employee may accrue. There are no restrictions on the use of sick leave based on length of service.

During the period from March 15-June 30, sick leave will only be granted for illnesses which require a visit to the doctor or the hospital. The requirement of a doctor's note may be waived by the Executive Director or Director of Research if a full explanation as to why a doctor's visit is not necessary is given by noon of the day in which sick leave commences. Any absence of more than three (3) days will require a doctor's note at any time without exception. Employees taking sick leave at any time of year are obligated to notify the office as soon as sick leave commences.

**AUTHORIZED ABSENCES WITH PAY**

Absences for which the employee must notify the Executive Director and provide documentation:

1. Absence up to four (4) days paid leave will be granted to any employee who suffers the loss of an "Immediate family" includes only the following: spouse; natural, foster or step parent, child brother or sister; father-in-law or mother-in-law, or any relative residing in the household.

When a death in in an employee's family occurs while the employee is on annual leave, such time as is excusable for death in the family shall not be charged to annual leave. The employee must submit a copy of the death certificate in order to be excused for this time. In cases of the relative residing in the household, documentation to this effect must also be presented. This material must be submitted no later than thirty (30) days after the death to the Executive Director.

2. Absence required because of Department of Health quarantine.

**V. COMPENSATORY TIME**

Authorized voluntary overtime beyond the normal work week is compensated by time off at the rate of straight time. An employee receives credit for overtime only when the overtime exceeds one (1) hour in a work week.

Compensatory time may be used in units of one-half (1/2) hour except when reporting to work. In this case, the minimum charge is one (1) hour. The use of compensatory time must have the prior approval of the Executive Director or Director Research.

Although compensatory time should be used within three months of its accrual, the Board's schedule may make this impossible for individual staff members. Therefore, staff members with large overtime balances should consult with the Executive Director regarding its use.

During the period from February 15th-June 30th compensatory time can be used only with the permission of the Executive Director. Leave will be granted during this period only for compelling circumstances.

## **VI. INFORMATION ON TIME BALANCES**

All questions relating to your time balances should be directed to the Executive Director.

At the end of each month all employees will be given a summary attendance sheet, which will show the amount of overtime, sick leave and annual leave you have earned and how much you have used for the prior month.

## **VII. MEAL ALLOWANCE**

If employees are required to work overtime and if dinner is not provided for them, they will be entitled to a monetary allowance for meals.

The allowance is provided according to the following schedule:

For two continuous hours of overtime \$6.00  
For five continuous hours of overtime \$6.50

An employee should apply for a meal allowance immediately after earning it by notifying the Executive Director or Director of Research. This will be reimbursed in cash after the next pay period.

## **VIII. HOLIDAYS**

### **A. Our regular holidays with pay are:**

1. New Year's Day
2. Martin Luther King's Birthday
3. Lincoln's Birthday
4. Washington's Birthday
5. Memorial Day
6. Independence Day
7. Labor Day
8. Columbus Day
9. Election Day
10. Veteran's Day
11. Thanksgiving Day
12. Christmas Day

When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, it shall be observed on the following Monday.

## **X. WORK HABITS**

All staff members are expected to complete their work in a timely fashion. Anyone who has completed their assignments should inform the Executive Director or Director of Research as soon as possible.

Staff members will meet with the Executive Director and Director of Research every three months on a formal basis for a briefing on their work and, of course, on an as needed basis in between.

All staff members are responsible for proofreading their own work. No correspondence, table, chart, etc. should be circulated unless it has been proofread twice. Staff members are expected to cooperate in proofreading each other's work. Correspondence from the Executive Director or Director of Research will be proofread by the person who typed it and at least once by another Director or staff member.

All employees (with the exception of the Executive Director and the Director of Research) will be expected to answer the phone if, for whatever reason, the Public Information Assistant and Office Manager are unavailable to handle the phones.

If you have any work to be typed it must go to the Public Information Assistant. All employees are expected to type their own work as composed, but the Public Information Assistant may assist where time-savings are needed.

The central files are located in the conference and public information area. These are common files and must be treated with care. After you have finished with a file folder, please put the file in the bin marked "To Be Filed" on the Public Information Assistant's desk and she will return the folder to its proper place in the files.

**RGB Staff Library** - The library is located in the conference room. There are copies of various reports and other documents from various other agencies. When you have finished with any item taken from the library return it to the bin located in the library area so that it can be placed on the proper shelf.

Dress Code - As general rule employees of the Rent Guidelines Board may dress informally except for the following times:

- a. If you have to attend a meeting outside the office or:
- b. If there is a public meeting or hearing of the Board, then in both instances employees are required to dress appropriately.

All employees are expected to be generally neat and clean.

**Appendix J**



**The City of New York**

Rent Guidelines Board  
51 Chambers Street, Room 202  
New York, NY 10007  
212-349-2262

*Chairman: Aston L. Graves*

*Public Members: Hilda Blanco, Barbara Gordon-Espejo, Agustin Rivera, Jane Stanicki*

*Owner Members: Joseph L. Forstadt, Harold A. Lubell*

*Tenant Members: Leslie Holmes, Kenneth Rosenfeld*

*Executive Director: Timothy Collins*

*Director of Research: Douglas Hillstrom*

April 27, 1993

To: Members of the Board  
From: D. Hillstrom  
Subject: Commensurate Rent Increase

The commensurate rent increase is a formula which the RGB has used throughout its history. The commensurate rent increase has been explained as the percentage rent increase needed to maintain landlords' current dollar net operating income (NOI) at a constant level. The commensurate rent increase for this year is<sup>1</sup>:

<u>One Year Lease</u>	<u>Two year Lease</u>
3.3%	4.0%

As a means of compensating landlords for cost increases, the commensurate rent increase formula has two major drawbacks. First, although the formula is supposed to keep landlords' current dollar income at a fixed level, the formula doesn't consider the mix of one and two year lease renewals. Since only two-thirds of leases are renewed in any given year, and a preponderance of leases are for two years, the formula does not necessarily accurately estimate the amount of income needed to compensate landlords for past O&M increases.

A second possible flaw of the commensurate formula is that it does not consider the erosion of landlords' income by inflation. By maintaining current dollar net operating income at a constant level, adherence to the formula may cause profitability to decline over time, although this is not an inevitable consequence of using the

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<sup>1</sup> The accuracy of the PIOC is assumed as is the collectability of legally authorized increases. Calculating the Commensurate Rent Increase requires an assumption about next year's PIOC. In this case we use 1.8%, staff's PIOC projection for 1994.

commensurate.<sup>2</sup> Of course other factors (e.g. individual apartment improvement and MCI increases) may mitigate these impacts.

An alternative to the commensurate rent increase would consider the mix of lease terms and sources of landlord revenue allowed by the RGB other than lease renewals (e.g. vacancy renewals). We will call this the "Net Revenue" rent increase. This formula takes into consideration the mix of leases actually signed by tenants but does NOT adjust NOI for inflation. Depending on whether revenue from a 5% vacancy allowance is included in these calculations, the "Net Revenue" increase is:<sup>3</sup>

<u>One Year Lease</u>	<u>Two year Lease</u>
3%	5.5% (Vacancy allowance income included)
4%	6 % (Vacancy allowance income NOT included)

An alternative to this "Net Revenue" formula would be to consider lease terms and to adjust NOI upward to reflect inflation so that BOTH O&M and NOI remain constant. We will call this the "Adjusted NOI" increase, which would result in the following figures<sup>4</sup>:

<u>One Year Lease</u>	<u>Two year Lease</u>
4%	7.5% (Vacancy allowance income included)
5.5%	8% (Vacancy allowance income NOT included)

<sup>2</sup>Whether profits will actually decline depends on the level of inflation, the composition of net operating income (i.e. how much is debt service and how much is profit), changes in tax laws, and interest rates.

<sup>3</sup>The following assumptions were used in the computations: (1) The required increase in landlord revenue is 3.3%, or 70% of the 1993 PIOC increase of 4.72%; (2) These lease terms are only illustrative. Other combinations of one and two year lease increases could also result in a 3.3% revenue increase. (3) Lease terms were derived from the 1991 NYC Housing and Vacancy Survey. According to the HVS, 24.9% of all tenants have a one-year lease and the remainder have two-year leases. As a result, 62.5% of tenants renew their leases in a given year. The increase in landlords' revenue reflects this lease distribution. (4) The 1991 HVS showed a turnover rate of 9.7%. As a result of turnover, landlords can expect an increase in revenue of about one-half percent, given the 5% vacancy allowance. This assumes that the vacancy allowance is collectible in all cases.

<sup>4</sup>NOI was adjusted upward by the most recent yearly increase in the Consumer Price Index, March 1992 to March 1993. This figure was 3.4%.

These "Adjusted NOI" figures have a major drawback - we are adjusting the debt service portion of NOI UPWARD by the inflation rate when in fact, interest rates have been falling in recent years.<sup>5</sup>

All of these methods have their limitations. The commensurate increase is artificial and doesn't consider the impact of lease terms or inflation on landlords' income. The "Net Revenue" formula does not attempt to adjust NOI based on changes in interest rates or deflation of landlord profits. The "Adjusted NOI" formula inflates the debt service portion of NOI, even though interest rates have been falling, rather than rising. Finally, none of the formulas consider the impact of the MCI program or individual apartment improvement increases on landlord profitability.

Each of these formulas may be best thought of as a starting point for deliberations. The staff's other research (e.g. the mortgage survey or the I&E study) and testimony to the board can be used to modify the various estimates depending on these other considerations.

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<sup>5</sup>An alternative would be to adjust only the portion of NOI which is "profit" upwards. In fact, we do not know what average "profits" are, but if we assume a figure of 10% of rent, the respective lease adjustments would be 4% for a one year lease and 5.75% for a two year lease if vacancy allowance income is included.

## Appendix K



### New York City Rent Guidelines Board

51 Chambers Street, Suite 202 • New York, NY 10007 • (212) 385-2934

Fax (212) 385-2554 www.housingnyc.com

*Chairman*  
Edward S. Hochman

*Executive Director*  
Anita Visser

#### Memo

To: Jeffrey Coleman  
From: Anita Visser  
CC: Edward Hochman  
All Board Members  
Date: May 13th, 1999  
Re: Table 14's reliability; and  
Comparing the Economic Condition of the Stabilized Stock, 1967 to 1997

---

Further to your request following the May 6th meeting, regarding, Part One: the history and validity of Table 14, and, Part Two: a comparison of the economic condition of the stabilized stock from 1967-97, this memo updates a staff report on these subjects from 1993.

#### **PART ONE: Table 14's History and Reliability**

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

Over the first two decades of rent stabilization, the change in the O&M to rent ratio contained in Table 8 (hereinafter, referred to as "Table 14" - its past designation) was updated each year to reflect the changes in operating costs as measured by the PIOC and changes in rents as measured by staff calculations derived from guideline increases. Over the years, some Board members and other housing experts have challenged the price index methodology and the soundness of the assumptions used in calculating the O&M to rent ratio in "Table 14". Several weaknesses in the table have been acknowledged for some time. These are outlined below, followed by description.

Several Weaknesses have been Identified in Table 14:

- Does not account for huge shifts in housing stock of units of different ages that fell under stabilization;
- Rent Index does not account for administrative rent increases: MCI's or Apartment Improvement increases;
- O&M Cost index base of .55 reflects only Post-War units;
- The first stabilized units were mostly Post-War—today about 7 out of 10 stabilized units are Pre-War;

- Faulty adjustments were made to the O&M index in the 1970s to account for the influx of Pre-War buildings-a one-sided adjustment;
- The PIOC may overstate actual cost increases as it outpaces Longitudinal I&E cost increases; and
- Any reliable longitudinal comparison cannot take place where there have been massive shifts in the universe being measured.

The first problem with Table 14 is that the calculation does not account for the changes in the housing stock and market factors which have certainly affected the relationship between rents and operating costs to some degree. Next, for the purpose of measuring the relationship between legal regulated rents and operating cost changes, the usefulness of "Table 14" is also limited. The rent index contained in the table does not adjust for administrative rent increases (MCI's and Apartment Improvement increases) and rents charged below established guidelines (preferential).

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning nearly all post-war units. The vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings which had higher O&M ratios in 1970. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. The rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units results in a one-sided distortion of the changing relationship between costs and rents.

Staff's research suggests that the PIOC may overstate actual cost increases. While most of this bias occurred in the 1970 - 1982 period, recent comparative evidence from the Income and Expense studies suggests that a gradual overstatement of operating costs may still occur under the PIOC. Expenditures examined in the most recent I&E study suggest that from 1991 to 1997 actual costs rose by some 24% while the adjusted PIOC indicated a 26% rise, showing there is only a negligible difference between the two indices over the last seven years. However, from 1990 to 1997, the gap between the two indices is larger. From 1990 to 1997, the I&E rose 33% while the adjusted PIOC rose 38%, a difference of 5 percentage points. Since this longitudinal analysis covers only an eight-year period, a conclusive statement on this pattern cannot be made at this time. What remains clear, however, is that "Table 14," in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.

## **PART TWO: Comparing the Economic Condition of the Stabilized Stock: an update of Changes in Income and Expenses, 1967-97**

To compare the economic condition of the stabilized stock over the thirty-year history of rent regulation, Table 14 has proven to be an insufficient measure. Using the best data that exists from the beginning of stabilization, however, it is possible to make point-to-point comparisons of O&M/Rent or Income ratios from 1967 to 1997. Because stabilization began in 1969 with primarily Post-War units, we will perform the following:

- Separate point-to-point comparisons of O&M Ratios for Post-War and Pre-War units from 1967-97 (Sections I & II);
- Examine the overall point-to-point O&M Ratio comparison from 1967-97 (Section III); and

- Compare inflation-adjusted NOI point-to-point from 1970 to 1997 for the Post-War stock to determine if NOI has increased or decreased in real terms for the units that have been stabilized the longest (Section IV). (The absence of actual dollar NOI at the outset of stabilization in the Pre-War stock prevents a similar comparison)

**MAIN FINDINGS**

Making like point-to-point comparisons:

- In the Post-War stock, the O&M to Rent (contract) ratio increased by 2.1 percentage points from .55 to .571 from 1969-97;
- In the Pre-War stock, the O&M to Income ratio decreased by 5.4 percentage points from .65 to .596 from 1967-97;
- The overall (Pre-War and Post-War) O&M to Rent/Income ratio declined by 3.4 percentage points from .623 to .589 from 1967-97; and
- Adjusting NOI for inflation in the Post-War stock, (the only stock for which comparative data is available), shows that from 1969-70 to 1997 average monthly NOI fell slightly from \$386 to \$378 (by \$8 or 2%).

**I. Post-War units O&M to Rent (contract rent) ratios: Point-to-Point comparison**

a) 1969-70 Post-War O&M to Rent (contract) ratio: .55

The data for the most reliable O&M Ratio for Post-War units comes from two sources. The average monthly O&M cost figure comes from a 1969 study of Stabilized Apartment Houses performed by the Bureau of Labor Statistics—\$110. The average monthly rent figure was calculated from the 1970 decennial Census data on contract rents, (not collected rents)—\$203.

A figure for average monthly gross income for 1969 in the stabilized stock is not available so to make a like-to-like comparison, the ratio we will use is O&M to Rent for Post-War units only. Furthermore, the rent in the Census data is a contract rent, not a collected rent, so to make a like-to-like comparison, we will use contract rents throughout. The \$110 cost and \$203 contract rent averages yield a O&M to Rent ratio of .54. Since the cost figure is from 1969 and the rent figure is from 1970, adjustment to bring the cost figure to 1970 levels could yield a ratio as high as .58. However, the "Table 14" O&M to Rent ratio of .55 for Post-War units in 1970 falls in this range and is a reasonable estimate.

b) 1997 Post-War O&M to Rent (contract) ratio: .571

Using the latest Income and Expense data from the NYC Department of Finance (1997 RPIE filings), we make a like-to-like comparison to the B.L.S./Census data ratio detailed above by dividing average monthly audited O&M Post-War costs: \$503.78, into average monthly Post-War rents. Because we need to make a like comparison monthly I&E rent (collected) must be adjusted to estimate contract rents. To do this, we increase the rent figure \$820.12 by the current gap between the mean RPIE (collected) and the mean DHCR (contract) rents—7.5%, yielding \$881.63. The resulting O&M to Rent ratio is .571.

\$503.78	audited Post-War O&M costs	O&M to Rent ratio
\$881.63	collected Post-War rent increased to contract	= .571

c) The Post-War O&M to Rent ratio increased by 2.1 percentage points from 1969-97

Using a like point-to-point comparison, the O&M to Rent ratio in Post-War units increased by 2.1 percentage points from an estimated .55 in 1969-70 to .571 in 1997. This means that a slightly greater amount of contract rent was being consumed by O&M costs in Post-War units in 1997.

This may be influenced, in part, by the following factors which are unrelated to rent regulation:

- 1) the departure of more profitable units to co-op and condo conversion—there were 325,000 Post-War stabilized units in 1969, there were 288,000 in 1996;
- 2) the Post-War stock is 30 years older and rising O&M costs are a natural occurrence.

Notably, since the RGB Rent Index increase was higher than the increase in operating costs in 1998 by approximately 3.6%, (See Table 14 annexed attached—O&M increased by 0.1% and the RGB Rent index increased by 3.7%), the 2.1% increase in the O&M to Rent ratio from 1970-97 may have been eliminated in 1998.

## II. Pre-War units O&M to Income ratios: Point-to-Point comparison

a) 1967 Pre-War O&M to Income ratio: .65

Based on a 1993 staff study, which constructed an estimate of a mean O&M to Rent/Income ratio for the Pre-War stock derived from extensive work by George Sternlieb in 1967, the true O&M to Income ratio estimate (Sternlieb combined rent and income) fell into a range from .65 to .70. We will accept the more conservative figure of .65

b) 1997 Pre-War O&M to Income ratio: .596

Using the latest Income and Expense data from the NYC Department of Finance (1997 RPIE filings), we make a like-to-like comparison to the Sternlieb ratio by dividing average monthly audited O&M Pre-War costs: \$389.08, into average monthly Pre-War income—\$652.79. The resulting O&M to Income ratio is .596.

\$398.08 audited Pre-War O&M costs	O&M to Rent ratio
\$652.79 Pre-War income	= .596

c) The Pre-War O&M to Income ratio decreased by 5.4 percentage points from 1967-97

Using a like point-to-point comparison, the O&M to Income ratio in Pre-War units decreased by 5.4 percentage points from an estimated .65 in 1967 to .596 in 1997. This means that less income is being consumed by O&M costs in Pre-War units from 1967-97. This may be explained by the fact that as rent controlled units gradually transitioned into stabilization, they experienced substantial increases in income. As a result, their O&M to Income ratios fell.

## III. How have conditions changed for the stabilized stock as a whole?— Overall O&M ratio Point-to-Point comparison 1967-97

To make a like comparison of the economic condition of the overall universe of stabilized units, the ratios detailed above will be weighted by the proportion of Pre- and Post-War units found in the 1996 HVS. Note however, that the ratio for the Pre-War stock is O&M to Income and the ratio for

the Post-War stock is O&M to contract Rent. While these two ratios measure slightly different things, we can still derive reasonable evidence of changes in the stabilized stock as a whole.

a) 1996 HVS proportion of stabilized units by age:

# of Units	Proportion	
Post-War	288,344	27.4%
Pre-War	763,956	72.6%
Total	1,052,300	100%

b) Point-to-Point Comparison 1967-97

Calculating the 1967-70 Overall ratio:

Ratio *	Proportion		Product
Post-War	.55	27.4%	0.1507 (O&M to Rent ratio)
Pre-War	.65	72.6%	0.4719 (O&M to Income Ratio)
	Overall 1967 Ratio:		0.6226 = .623

Calculating the 1997 Overall ratio:

Ratio *	Proportion		Product
Post-War	.571	27.4%	0.1565 (O&M to Rent ratio)
Pre-War	.596	72.6%	0.4327 (O&M to Income Ratio)
	Overall 1997 Ratio:		0.5892 = .589

c) Overall the O&M to Rent/Income ratio has declined 3.4 percentage points from 1967-97. Using a like point-to-point comparison, the overall O&M to Rent/Income ratio for stabilized units decreased by 3.4 percentage points from an estimated .623 in 1967-70 to .589 in 1997. This estimate means that less rent and income is being consumed by operating expenses in 1997 than in 1967-70. As a whole, this analysis suggests that owners of stabilized units experienced relative gains in NOI over the thirty-year period of rent stabilization.

#### **IV. Is NOI being kept whole for inflation?—a Comparison of inflation-adjusted NOI point-to-point from 1970 to 1997 for the Post-War stock**

Finally, we will compare inflation-adjusted NOI in the Post-War stock, the units that have fallen under stabilization the longest, to determine if owners are being kept "whole" for inflation, and to use another measure to assess the general economic condition of stabilized units.

##### Post-War NOI Calculation

	1970	1997
Rent	\$203	\$881.63 (\$820.12*1.075 inflates collected to contract)
O&M Expenses	\$110	\$503.78 (audited O&M costs)
NOI	\$ 93	\$377.85
CPI Urban NY-NJ	41.2	170.8 = 4.1456 inflation factor*
Real Term NOI	\$385.54	\$377.85 difference = -\$7.69

This analysis shows that by making a like comparison and adjusting 1970 NOI for inflation, NOI in Post-War units declined slightly by 2% from 1967-97. The estimated drop in NOI in the Post-War stock may be attributed, in part, to non-regulatory factors such as co-op conversions and the natural rise in maintenance costs due to aging. Moreover, rent increases authorized in 1998 may have had the effect of eliminating this 2.1% decline in NOI.

Notably, the 1999 I&E Study, found that inflation-adjusted NOI in stabilized buildings of all ages has remained roughly constant from 1989-97, growing by 3% in real terms since 1989.

It should be noted that NOI is not the sole criteria for profitability as leveraging, interest rates, mortgage terms and rates of income tax all play a role in determining the ultimate profitability of a stabilized housing investment.

\*Inflating 1970 NOI to 1997 dollars:  $\$93 * 4.1456 = \$385.54$

Attached are the following:

- 1) Copy of Table 14 from the Explanatory Statement plus additional guidelines tables;
- 2) Copy of 1993 RGB staff report:  
A Review of Changes in Income and Expenses, 1967-91.

# A Review of Changes in Income and Expenses, 1967-91

## *Introduction*

The changing relationship between rents, operating and maintenance expenses, and owner income lies at the very heart of rent regulation. Other things being equal,<sup>1</sup> rents which generally preserve the inflation adjusted value of net operating returns over time accomplish one of the central goals of the stabilization system: fairness to good faith investors. In New York City measuring the effects of stabilization on net operating incomes is a matter of exceptional complexity. Massive shifts in the regulated stock over twenty four years make point to point comparisons of income and expense profiles impossible to develop with any precision. Since 1969 over 700,000 units have moved from rent control to stabilization. Some 60,000 stabilized units in post-war buildings have moved from rentals to co-ops. About 90,000 stabilized units are now in converted buildings and will be decontrolled upon vacancy. In addition, thousands of units left regulation via abandonment or foreclosure by the City. Only about one in five currently stabilized units were subject to stabilization in 1969.

The difficulty of making such measurements is, nevertheless, clearly outweighed by the

<sup>1</sup> "Other things" of relevance here might include population trends, tenant incomes, the average age of the regulated housing stock and the return on investments of comparable risk and liquidity. To preserve the value of net operating incomes in the face of a declining population, sagging incomes, aging properties and declining returns on comparable investments would be to implement a form of profit insurance never intended by the system. On the other hand, modest gains in average net operating income might be expected in the face of a rising population, higher incomes, a decline in the average age of regulated buildings (reflecting new construction) and rising returns on comparable investments. Of course, "other things" are rarely equal - except perhaps on economics exams.

need to develop some working understanding of the impact of stabilization on relative industry returns. The last report on this issue was issued by the RGB staff in 1989. Since that time a variety of new data sources have been made available to the Board. In 1990, for the first time, the staff was provided with information on rents and operating expenses from income and expense ("I&E") statements on file with the Department of Finance. In 1992, to test whether the I&E statements were generally reliable, forty-six properties were carefully audited. In addition, aggregate data on changing market values of multi-family buildings from 1975 through 1992 has been provided. Data on tax arrearages has been made available from the Department of City Planning. Finally, the State Division of Housing and Community Renewal has contributed data on registered rents. These considerable efforts have allowed us to examine long term trends with an eye towards changes in net operating incomes. In light of these information advances we have prepared an update of the 1989 report. While a few questions will require more time before conclusions may safely be drawn, many of the questions which troubled the Board over the past decade have been answered.

## *History of the Income and Expense Issue*

Nineteen ninety-three marks the fiftieth year that New York City has been subject to some form of rent regulation. The long term impact of rent regulation on the quality and availability of housing is, therefore, an issue which has been a subject of public concern for some time. In his

well known study, *The Urban Housing Dilemma: The Dynamics of New York City's Rent Controlled Housing*, George Sternlieb asked property owners in 1967 many of the questions that continue to occupy center stage in the debates over rent regulation. The focus of these questions is summarized in his introduction:

"The rent control formula, as presently implemented in the city, has provision for a number of ways of securing rent increases, both in return for additional investment and in order to prevent undue owner hardship; but the formula raises numerous questions. How well have these increase methods kept pace with increased costs? To what degree has maintenance suffered as a function of rent control? What elements of the Rent Control Law are being utilized and are there variations in the knowledge and utilization of these formulas? Are there significant variations between operational patterns of rent controlled and non-rent controlled structures of which the city should be aware? What is the influence of tenant ethnic origins and welfare reciprocity upon landlord attitudes? For that matter, who are the landlords and what are the factors which enter into their decision making, particularly in relationship to maintenance and other forms of investment procedure?

New York City's housing policies and rent control must be considered as one element in the broad matrix whose function is to provide, both now and in the future, a satisfactory environment for the city's inhabitants. Currently, most social concern is with the tenant's needs. In the long run there is the question of whether these can be satisfied without a reasonable degree of assured return to the landlord.

The mere age of the city's housing stock requires continual reinvestment. Within the context of our time, most of the funds must be secured from the private market. How

competitive, given the variety of outlets for private capital, is New York City's housing?"

In short, Sternlieb's inquiry concerned the broad social and economic environment affecting investment in rental housing. An isolated examination of the relationship between rental income and operating costs without a careful look at how these other matters might affect (dis)investment patterns provides an incomplete basis for policy analysis. Yet, a full update on the wide variety of matters covered in his study would be very costly and time consuming (Sternlieb's field work began in 1967; his report was issued in 1972). For our immediate purposes, we will only examine Sternlieb's findings on the relationship between rents and operating costs in pre-war buildings.

### ***The Pre-War Stock in 1967***

Since "expenses" and "repair and maintenance costs" were separated in Sternlieb's analysis, and since these are combined in more recent data, we have combined them here for the purpose of later comparisons.

Mean operating cost to rent ratios<sup>2</sup> are reported in exhibits 3-1 and 3-5 in Sternlieb's report. Again, Sternlieb did not combine "expenses" and "repairs" as a percent of net rent received [see text accompanying exhibit 3-1]. The samples for expenses and repairs as a percent of rent received appear to be virtually identical - with only 6 of 664 buildings missing in the repairs table because of the "lack of baseline data." Consequently, combining the two tables to get expenses and repairs as a percent of net rent received is not too risky. Doing so provides the

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<sup>2</sup> The O&M to rent ratio is the proportion of all rent that landlords spend on operating and maintenance expenses. A declining O&M ratio over time generally indicates that landlords are in a better position while a growing O&M ratio indicates that operating expenses are taking a larger portion of landlords' revenues, thereby leaving less net operating income.

### O&M Ratios in Pre-war Structures in 1967

	<u>Expenses</u>	<u>Repairs</u>	<u>Total</u>
<u>Old Law Structures</u>			
5-19 units .....	66.05%.....	16.9%.....	82.95%
20 units or more .....	57.47%.....	12.6%.....	70.07%
<u>New Law Structures</u>			
5-19 units .....	60.15%.....	16.2%.....	76.35%
20-49 units .....	56.03%.....	13.0%.....	69.03%
50 units or more .....	52.54%.....	10.9%.....	63.44%
<u>Structures Built After 1929</u>			
10-49 units .....	54.04%.....	9.3%.....	63.34%
50 units or more .....	52.24%.....	8.9%.....	61.14%
<u>Small Structures</u>			
3 and 4 units.....	67.31%.....	19.5%.....	86.81%

mean O&M to rent ratios for the pre-war universe in 1967 as shown in the table above.

Note that “net rent received is a residual of gross potential residential rents, including imputed rents for superintendent and other resident employees and/or owners, and commercial rents; less vacancies and bad debts and other gross income elements” (p. 22, emphasis added). This observation is critical in making comparisons with more recent data on O&M to rent ratios which will be examined further on. Note also the affect of age and size upon the O&M ratios.

The universe of buildings examined by Sternlieb in 1967 included some 881,312 units in rent controlled (pre-war) buildings (Exhibit AII-8).<sup>3</sup> Tens of thousands of these properties were, no doubt, lost to abandonment since that time. Today some 707,000 pre-war apartments fall under rent stabilization while about 120,000 remain under rent control. Rent controlled properties with fewer than six units do not, as a matter of law, fall under rent stabilization upon vacancy. Since smaller

<sup>3</sup> The largest category was the New Law structures with 20-49 units which included 296,460 units.

properties have undergone vacancy decontrol and many marginal properties have been abandoned, one would expect that only a fraction of the buildings with very high O&M to rent ratios would have fallen under stabilization. Consequently, the average O&M ratios for buildings examined by Sternlieb may be affected somewhat if all properties which did not eventually fall under stabilization were removed from the sample. Those that made it into stabilization probably had slightly lower than average

O&M ratios in 1967.

Examining the proportion of units in each class and the relative mean O&M ratios, and eliminating the 3-4 unit category, it appears that pre-war properties combined had a mean O&M to rent ratio of about .70.<sup>4</sup> Assuming a loss of the most distressed of these properties to abandonment and a slight loss (of five unit buildings) to decontrol, it appears that the properties which eventually fell under rent stabilization had O&M ratios in the mid to high 60s. Keep in mind that this estimate includes commercial income in the denominator of “net rent received”. While not a precise estimate, this is the only figure available with which to compare with the current O&M ratios of pre-war buildings. As will be shown further on, it appears that O&M ratios in the pre-war stabilized stock were not demonstrably different in 1967 from the O&M ratios found in our recent study of 1991 income and expenses.

<sup>4</sup> This figure is derived by multiplying the mean O&M ratios listed above by the number of units in each respective class (See Sternlieb, Exhibit AII-8), summing and then dividing by the total number of units in all classes (excluding 3-4 unit properties as noted).

The failure to achieve lower O&M ratios may have been affected, in part, by non-regulatory influences: aging buildings, relative declines in tenant income, vacancy losses etc. It is important to recall that owners of rent controlled units have been entitled to market rents upon vacancy except when newly stabilized tenants have initiated and prevailed in Fair Market Rent Appeals. Such appeals occur only in a fraction of eligible cases. Also, once stabilized, rents in pre-war buildings are increased periodically in accordance with established rent guidelines. Finally, rents may increase as a result of major capital or individual apartment improvements.

Perhaps a better measure of changes in O&M to rent ratios is found in the post-war universe to which we will later turn our attention.

### ***Information Development After the Urban Housing Dilemma***

Moving beyond 1967 allows us to focus on the workings of the Rent Guidelines Board and the impact of its decisions on the changing relationship between rents and operating costs. In order to put our newest information in perspective it is important to recall the history of Board practices and policies relating to this issue.

In 1969, in response to an extremely tight rental market with a vacancy rate at 1.23%, the newly enacted Rent Stabilization Law limited the rents of some 325,000 previously unregulated post-war units and about 75,000 decontrolled units. Specified increases above levels that had existed on May 31, 1968 were established by the City Council. Thereafter, the Rent Guidelines Board was given responsibility for further annual adjustments.

In the early days of stabilization (1970 to 1974) the RGB focused primarily on changes in operating and maintenance expenses (i.e. the Price Index of Operating Costs) to determine its rent guidelines. Dennis Keating, in his comprehensive

review of the rent stabilization system (*Landlord Self-Regulation: New York City's Rent Regulation System 1969-1985*, Journal of Urban & Contemporary Law, Vol. 31:77) found that

"Beginning in 1970, the RGB relied heavily, but not exclusively, on the BLS operating cost price index for its determination of rent increases. Initially, the absence of tenant representation on the RGB, the use of the operating cost price index, the RGB's secrecy, and its consideration of additional factors to justify rent increases occasioned little controversy. These issues, however, would later become much debated in a public forum. During this early era, the RGB convened annually, held no public hearings, and quietly issued annual rent increase orders."

Following a period of vacancy decontrol, in 1974 the State Legislature passed the Emergency Tenant Protection Act (ETPA). The act extended rent stabilization to hundreds of thousands of units previously subject to rent control. At the same time, the RGB was required to include designated seats for tenant and owner representatives.

Shortly after passage of the ETPA, in a letter of August 6, 1974 to Roger Starr (Administrator of the Housing Development Administration), Emmanuel Tobier (Chairperson of the Rent Guidelines Board) seems to have foreseen the probability that the RGB would need better information to reconcile the conflicting demands of tenants and landlords.

". . . we must re-examine the current relationship between operating and maintenance costs and building income in the rent stabilized sector . . . building owners might be willing to provide this data. Perhaps the easiest route might be to look at the relationship between operating costs and revenue, by examining a representative sample of buildings, and

incorporate this information into our guidelines."

By looking to voluntary disclosure of income and expense information from owners, Professor Tobier may have been attempting to catch a brief moment in time before the landlord-tenant relationship worsened beyond compromise. In fact, the last half of 1974 and the first months of 1975 were an unusually troubled period for the RGB. Lawsuits were filed challenging the legitimacy of the Board's orders. As a result, one rent guideline was invalidated on the procedural ground that the Board had failed to adequately explain the factual basis for its order and its methodology. This court decision led to the development of detailed explanatory statements which now accompany each new set of rent guidelines.

Dennis Keating sums up the atmosphere of the mid-70's -

"The protracted and acrimonious public conflict, in which the RGB's credibility, conclusions, and procedures were politically and legally challenged was a turning point in the history of the rent stabilization system. No longer would the rent-adjustment process under self-regulation be shielded from public scrutiny . . . Henceforth, the RSA and tenant groups would become increasingly combative . . ."

Although the RGB was sued by both landlord and tenant groups in the late 70's, the courts refused to invalidate the Board's methodology. The RGB continued to rely to a great extent on the Bureau of Labor Statistics' Price Index of Operating Costs (PIOC).

In addition to the studies produced by the RGB, tenant and landlord groups attempted to examine the income and expense issue from their different perspectives. Landlords argued that the net operating income of rent stabilized buildings was declining due to large increases in operating costs and insufficient rent increases. Tenants, on

the other hand, believed that rents were rising faster than tenant incomes. During this period of stagnant income growth and high inflation in New York City it is possible that both groups were correct in their assertions.

It was not until 1982 that the issue of profitability of rent stabilized housing was raised once again by the RGB. In that year Urban Systems Research and Engineering (USR&E) replaced the Bureau of Labor Statistics as the contractor for the PIOC. In addition to the price index, the RGB also commissioned USR&E to undertake research on six so-called "special topics" including:

1. Operating cost to rent ratios
2. Mortgage financing and refinancing characteristics
3. Rates of return
4. Tenant turnover patterns and the distribution of lease terms
5. Tenant income characteristics
6. Use of city tax abatement programs and the use of energy conservation programs

In a publication of June 1, 1982 entitled "Research Design on Special Topics" USR&E broadly outlined a "rate of return" (i.e. landlord profit) study. The authors examined several different definitions of "rate of return" and the sources of data which would be required to examine actual landlord profits. They concluded that:

". . . it will be impossible to secure all the information necessary to calculate the actual rates of return on any significant or usable set of buildings. Such a data base would include owners' annual tax returns, annual financial statements on the buildings, financing arrangements and purchase/sale prices. This is evidently impossible to acquire."

It is unclear why the consultants concluded at that time that sources of data for a study of actual landlord profits were "evidently

impossible to acquire.” USR&E did propose an alternative study of rates of return, using “a set of prototypical buildings, intended to be representative of the stabilized inventory.” However, this study was never undertaken.

In 1982 USR&E was also commissioned to produce a landlord expenditure study. A sample was selected to be representative of all stabilized buildings in the city. In the fall of 1982 a survey questionnaire was mailed to over 2400 owners of stabilized buildings. In essence, the questionnaire asked owners to provide a detailed breakdown of operating and maintenance expenses for 1982. Approximately 400 landlords returned fully completed questionnaires.

The primary purpose of the 1982 Expenditure Study was to update the expenditure weights in the Price Index of Operating Costs. An expenditure weight is the percentage of landlord operating and maintenance (O&M) cost attributable to a given type of O&M expenditure (e.g. in 1982 the Price Index of Operating Costs assumed that fuel costs were 37% of all landlord expenditures in pre-'47 buildings. However, the 1982 Expenditure Survey found that owners of pre-'47 buildings spent only 29% of O&M on fuel in 1982. As a result, the expenditure weight for fuel was revised from .37 to .29 the following year). Precise expenditure weights are needed if year-to-year changes in overall O&M costs are to be accurately measured.

For reasons that remain unclear, Table 14 of the RGB's annual explanatory statement, which details the history of changes in the O&M to rent ratio, was NOT updated following completion of the 1982 Expenditure Study, even though the information to do so was available. Although tentative plans for a “operating cost to rent ratio” study were made in 1984, plans for the study were discontinued in 1985.

In the mid-80's criticism of the Price Index of Operating Costs continued to build. For instance, in 1985 the New York State Tenant and

Neighborhood Coalition issued the following statement:

"The Price Index is not only conceptually flawed, but yields no information whatever about actual landlord incomes, expenditures, or profits - the true measures of the economic condition of the industry. In contrast to the practices of every other body charged with the responsibility of regulating prices in the public interest, the Rent Guidelines Board neglects all questions of income and profitability when considering the need for rent adjustments."

At least some of these sentiments were apparently shared by the Board of Estimate, which, in a unanimous vote in 1985, passed a resolution supporting an examination of owners' books and records. The city administration did support legislative initiatives to allow such an examination. However, none of the proposals to require owners to “open the books” ever passed the State Senate. In the fall of 1985 members of the RGB asked the staff

". . . to prepare a report, in consultation with New York City's Department of Housing, Preservation and Development (HPD) and the New York State Division of Housing and Community Renewal (DHCR), regarding how the Board could obtain a representative sample of owners books and records and how such a sample and examination could be of use to the Board . . ."

After contacting both DHCR and HPD regarding the feasibility of obtaining a sample of owners' books it was concluded that

". . . Since both HPD and DCHR [sic] have stated that such a study could not take place without a legislative change which would either grant DHCR jurisdiction to conduct the study or grant subpoena power to the New York City Rent Guidelines Board, such a study could not

be undertaken . . ." (Research Report Regarding the Feasibility of Auditing a Representative Sample of Owners Books and Records dated January 31, 1986)

The situation that the RGB found itself in in 1986 was best summarized by an article in the New York Times entitled "Dissatisfaction with Stabilization's Cost Index Grows, but No Consensus has Emerged on Alternate System" (*New York Times*, July 6, 1986). The article found that the two RGB tenant representatives had resigned "citing personal reasons but also dissatisfaction with this year's increases and the way they were determined."

In 1987, reflecting a continued dissatisfaction with the price index methodology, the Board of Estimate rejected the price index contract. The consultant selected for the study (USR&E) performed it gratis at the request of the Commissioner of the Department of Housing, Preservation and Development. Later that year the consultant filed a voluntary petition for bankruptcy protection. In 1988 and 1989 the price index was procured through the City University Research Foundation and, therefore, did not require Board of Estimate approval. Until 1991, the Rent Guidelines Board did not commission or fund the price index - procurement and payment were handled directly by the Department of Housing Preservation and Development (except in 1988 and 1989 as noted).

By 1987 it appeared that the debate over landlord "profits" had reached a standstill. However, in 1986 the City Council enacted Local Law 63, which mandated that owners of income-producing properties file income and expense statements with the City's Department of Finance. The law was passed in order to aid the city in determining assessed values of properties.

Local Law 63 filings were, of course, of much interest to the RGB, since a representative sample of these properties' income and expense

statements could be used to calculate and update operating and maintenance cost to rent ratio. In addition, if the filings were obtained by the RGB on a regular basis they could be used to calculate year-to-year changes in landlord operating and maintenance costs and income to examine the accuracy of the Price Index of Operating Costs. However, Local Law 63 filings by themselves are not sufficient to calculate landlord "profits" since they do not contain any information on mortgage expense, changes in building resale values, and so on. In addition, these filings cannot by themselves replace the price index because the time periods reflected in the filings are at least one year old at the time of aggregation. The Board's mandate calls for more recent cost data which only the price index supplies.

Not long after Local Law 63 was enacted, litigation concerning various aspects of the law made it impossible for the RGB to obtain any of the new information. A temporary restraining order was imposed prohibiting the City's Finance Department from releasing any Local Law 63 data. On March 9, 1988 the RGB requested the city's Corporation Counsel to seek a lifting of the temporary restraining order. Although the attempt to lift the order was unsuccessful, the court order did eventually expire in March of 1989. Unfortunately, the RGB was still unable to obtain any Local Law 63 data. In a letter dated April 22, 1989, Anthony Shorris, Commissioner of the Department of Finance explained that until the case was fully settled the data would be reserved for Department of Finance purposes only. In addition, key entry of the data had not yet been implemented and would take some time.

In April 1989 Harriet Cohen, a tenant member of the RGB, requested that staff review "Table 14" of the Board's annual explanatory statement. "Table 14" contains a calculation of the operating and maintenance cost ratio for rent stabilized buildings from 1972 to the present (see Appendix C, Table C.3). After thoroughly reviewing

the history and methodology of "Table 14" staff concluded that "between 1970 and 1982 the "Table 14" O&M ratio seems to have diverged from the actual cost and rent data which can be obtained by using HVS and operating cost studies." The staff review did not conclusively show that the "Table 14" O&M to rent ratio was mistaken. However, it did show that "a lack of sufficient new survey data over the last 20 years has resulted in a present inability to supply valid corroborating evidence for the statistical and economic assumptions underlying "Table 14"." **The staff review suggested that the problem with "Table 14" most likely was a result of the inaccuracy of the Price Index of Operating Costs in measuring actual landlord expenditures between 1970 and 1982. It was strongly suggested that new studies be undertaken to:**

"... provide a new O&M to rent ratio in both mean and median terms. Perhaps more importantly, a new study of rents and expenses could analyze the distribution of buildings in terms of varying O&M to rent ratios. This would help inform the Board as to the number of rent stabilized buildings operating at the margin, and the proportion of those with adequate net operating income. Finally... the PIOC (Price Index of Operating Costs) probably needs to be updated (to make it)... a more reliable indicator of cost increases in rent stabilized housing."

The events of the summer of 1986 were repeated in May of 1989 when the two tenant representatives resigned from the Board. In their letters of resignation Harriet Cohen and Stephen Dobkin stated that the city administration had "conspired to make it impossible... to obtain any data on owner profits or the steadily rising value of residential real estate" and that the City University Research Foundation had "once again been misused to produce the Price Index...which reflects

only the owners' concerns." In addition, both called on the RGB to expand research efforts.

In the spring of 1990 the new city administration actively supported the RGB's efforts to obtain summary data from owner local law 63 income & expense filings. RGB and Finance staff worked together to produce the first I&E (income & expense) study. The methodology of the study is contained in *Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research, 1990*. Subsequent Income and Expense studies were produced in 1991, 1992 and 1993.

### ***The Post War Stock in 1970***

Before moving to the major findings of these studies we will need to revisit our analysis of the relationship between rents and operating costs in post-war buildings at the beginning of rent stabilization. This analysis was included in RGB's 1990 Research Summary (pages 26-30):

"Using an estimate of the mean rent for stabilized post '46 apartments (\$203) derived from a special tabulation of the 1970 decennial census and comparing it to the mean operating cost in 1969 (\$110) found by the Bureau of Labor Statistics in its 1970 study of stabilized apartment houses yields a mean O&M ratio of .54. However, since the operating cost study measured 1969 costs and the census measured 1970 rents, it is possible that the true O&M ratio for 1970 may have been as high as .58 (adjusting for subsequent price increases). As far as we can tell, the "true" O&M ratio probably ranged between a low of .54 and a high of .58. The O&M ratio for 1970 in "Table 14" [the RGB index of rents and operating costs] was .55 and falls into this range."

An examination of these data sources in 1989 led to a conclusion that the .55 estimated O&M ratio for post-war buildings in 1970 appeared

to be reasonable. This continues to be the best available estimate.

It is important to note, however, that this is an estimate of the ratio between operating costs and residential contract rents. The rents used here do not reflect vacancy or collection losses or commercial income. The 1967 O&M ratio for pre-war properties previously discussed is a ratio of operating costs to net rent received which adjusts for such losses and includes commercial income.

\* \* \*

**In short, we have concluded that the best estimates of the relationship between operating costs and rental income in the rent stabilized sector - at the outset of rent stabilization - are as follows:**

- **In pre-war buildings which eventually fell under stabilization approximately 65¢ to 70¢ of each rent dollar actually collected was spent on operating costs in 1967.<sup>5</sup>**
- **In post-war buildings which first fell under rent stabilization in 1969, approximately 55¢ of each rent dollar contracted for in residential units was spent on operating costs.**

## *Today's Income and Expense Issues*

### ***The Pre-War Stock Today***

Now, turning to the more recent data we find further complexities. The pre-war stock continues to include a significant number of rent controlled units. While contract rents for stabilized units in the pre-war stock were \$512 according to the 1991 HVS, residential rents actually collected were much lower at \$451 according to statements reflecting 1991 incomes and expenses filed with the Department of

<sup>5</sup> See supra p. 34-36.

Finance. The effect of rent controlled units along with vacancy and collection losses and preferential rents thus becomes quite clear. These factors have a large impact on revenues in pre-war buildings independent of the influences of rent stabilization. The best we can do in terms of a comparative O&M ratio for the pre-war stock is a straightforward comparison of operating expenses with total building income (which appears comparable to Sternlieb's "net rent received"). This results in a ratio of .70. If we adjust the operating expenses downward by 8% (reflecting an estimate of over-reporting of expenses derived from our 1992 audits) the ratio is .64. Consequently, **the relationship of operating expenses with total building income in the pre-war stock in 1991 appears to be in the same range (.64 to .70) as it was in 1967.**

A few more qualifying observations are in order. First, pre-war buildings have aged some 26 years since 1967 and thus could be expected to have experienced rising O&M ratios - in the absence of regulatory changes. Second, collection and vacancy losses are probably quite a bit higher now than in 1967.<sup>6</sup> The gap between rents registered with DHCR and rent collections rose sharply in 1991 reflecting, in part, the effects of the current recession on collection and vacancy losses. In a related development, there has been a sharp decline in tenant incomes relative to rents. In 1970 the median gross rent as a percent of income was 19% for rent controlled households.<sup>7</sup> In 1991 the median gross rent to income ratio for stabilized pre-war buildings was over 29%.<sup>8</sup>

<sup>6</sup> Sternlieb found vacancy losses for most buildings ranging from .4% to 2.4%. Similarly, collection losses for most buildings ranged from a negligible .1% to 2.3% (see Sternlieb exhibits 2-2 and 2-3 and accompanying text). With over 4% of units in pre-war buildings vacant and available for rent in 1991, vacancy losses have clearly risen. We suspect that collection losses have also risen significantly.

<sup>7</sup> Sternlieb, *Housing and People in New York City*, Exhibit 5-12. Sternlieb's analysis was based upon a special tabulation of the 1970 decennial census.

<sup>8</sup> 1991 Housing and Vacancy Survey, Series IA- Table 36.

## ***The Post-War Stock Today***

Turning now to the post-war stock further complexities appear. One would expect that, as in the pre-war stock, residential rents collected would be below the contract rents reported in the 1991 HVS. This, however, is not the case. The I&E data for 1991 indicates that, on average, \$653 in rent was collected for each apartment in post-war buildings. The HVS data indicates that the average contract rent for these units [excluding stabilized units in co-ops] was actually \$652. While collection and vacancy losses are much smaller in post-war buildings (and rents received are not affected by the presence of rent controlled units) one would expect rent collections to be a bit less than contract rents. The staff's Table 14 rent index (updating a \$203 average rent for 1970) suggests that the rent guidelines alone should have resulted in an average rent of some \$662 - and that would not include administrative increases authorized for major capital improvements and individual apartment improvements. However, at least some of the increases authorized by the RGB and the DHCR are not charged at the high end of the market and this may partly explain why the \$652 is lower than expected. Rents reported to surveyors are rents actually paid - including preferential rents. In short, the \$652 figure for contract rents, while lower than actual rent collections would suggest, is still reasonable enough to be explained by sampling differences between the HVS and the I&E data.

Comparing the \$652 HVS figure to average operating costs of \$470 reported in the I&E data results in a ratio of operating costs to contract rents of .72. Adjusting the \$470 figure by the 8% suggested by our audit findings produces a ratio of .66. Thus, **it appears that ratio of expenses to contract rents for post-war stabilized buildings has risen (from .55 in 1970) to at least .66.**

Again, a few qualifying observations are in order. Although some post-war stabilized units were newly constructed after 1970 (fewer than 10%), the average age of post-war buildings has obviously risen over 23 years. This alone would have resulted in some rise in O&M ratios. Second, less than two out of three of the original stabilized post-war units remain in unconverted buildings. Our operating cost and rent figures reflect only the approximately 200,000 units remaining in unconverted post-war properties. If conversions typically occurred in better and newer buildings this would leave behind properties with higher O&M ratios resulting in a misleading rise in the average. Finally, we suspect that preferential rents are a more common occurrence in post-war buildings today than in 1970. The contract rents reported to HVS surveyors are rents agreed to by tenants and owners - not necessarily the highest rents authorized by law. Contract rents in 1970 may have been much closer to legal limits. If the market has taken over the higher end of this stock, the rise in the O&M ratio may reflect a relative decline in demand for luxury units. That is, in the tight market of 1970 owners may have been less likely to rent below legal limits and their relative returns would have been higher. A loss of demand at the high end is the consequence of a changing market - not rent regulation. We cannot gauge the precise effect of any of these factors on the current O&M ratio. Nonetheless, it would certainly be misleading to suggest that this rise in the O&M ratio is wholly a function of rent stabilization.

### ***Revisiting "Table 14"***

As previously noted, much of the staff's past work focused on the accuracy and usefulness of a table which compares changes in operating costs (as measured by the PIOC) with changes in rents (as measured by staff

calculations derived from guideline increases). "Table 14" (see Appendix C.3) depicts O&M ratios rising from .55 in 1970 to .74 in 1993. Several weaknesses in the table have been acknowledged for some time. Changes in the housing stock and market factors noted above have certainly affected the relationship between rents and operating costs to some degree. Yet, if these were the only weaknesses the table might remain useful as a simple measure of the relationship between legal regulated rents and operating cost changes. Even for this limited purpose, however, the table is misleading in several categorical respects. First, the rent index contained in the table fails to account for administrative rent increases (MCI's and Apartment Improvement increases) and does not adjust for rents charged below established guidelines (preferentials). Coincidentally, however, the rent index appears to have tracked contract rents in post-war buildings quite effectively. If rents in post-war buildings were \$203 in 1970 as we have suggested, the rent index projects a rise to \$662 by 1991. The 1991 HVS reported mean contract rents at \$663 for the post-war stock [not excluding stabilized units in co-ops].

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning only post-war units. As we have noted the vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings which had higher O&M ratios. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. As noted, the rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units results in a one sided distortion of the changing relationship between costs and rents. If PIOC changes for post-war buildings had been left unadjusted the index

would have risen from .55 in 1971 to 222.78 in 1991 (as adjusted the index rose even higher - to 228.96). From 1969 to 1971 average operating costs in post-war buildings had risen to about \$128 per month. Updating this figure by the unadjusted index (i.e. by the PIOC for post-war buildings) to 1991 results in an average operating cost of \$519 per month - fully 10.4% higher than the \$470 figure for 1991 expenses reported by owners of post-war buildings on I&E forms, and 20.1% above the \$432 staff estimate when an adjustment for estimated over-reporting is factored in.

We believe that this difference in cost estimates reflects a tendency on the part of the PIOC to overstate actual cost increases. We continue to suspect, however, that most of this bias occurred in the 1970 - 1982 period. When USR&E conducted its operating cost survey in 1982, an average monthly cost of \$262 per unit was found in the post-war stock. Updating that figure by the PIOC for post-war buildings through 1991 results in an average cost of \$441 per month - a figure much closer to our \$432 estimate of actual costs. Note, however, that much of this period witnessed increasing investment and improvement in the city's housing stock - a time when we would not expect owners to limit maintenance and operating costs. Expenditures examined in our most recent I&E study suggest that from 1989 to 1991 actual costs rose by some 11% while the PIOC indicated a 16% rise (see page 31) - perhaps reflecting recession induced cost cutting. Since this longitudinal analysis covers only a two year period a conclusive statement on this pattern cannot be made at this time. What remains clear, however, is that **table 14, in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.**

## Conclusions and Recommendations

A long effort to measure the impact of rent stabilization on the relationship between operating expenses and rents has resulted in some notable findings in recent years. Intricate and complex questions remain, however, and it is now evident that a clear picture may never emerge.

According to our best evidence, it presently appears that the ratio of operating costs to rent collections in the pre-war stabilized stock is about where it was twenty-five years ago. Given the passage of time and the probability of rising vacancy and collection losses, the pre-war stock seems to have achieved modest benefits transitioning to rent stabilization. Substantial evidence indicates that the ratio between operating costs and contract rents has risen in the post-war stock. The aging of that stock along with cooperative conversions and slack demand at the high end may explain much of this rise. Whatever deterioration may have occurred is clearly not as dramatic as is often charged. Recognizing the long period in which it was handicapped by inadequate information, it appears that the Rent Guidelines Board has done a remarkably effective job of immunizing owners from the effects of cost push inflationary factors while protecting tenants from demand driven rent increases. In this respect, the rent stabilization system has lived up to its mandate and continues to fulfill its purpose.

We note, however, that this analysis reflects industry averages and cannot capture the effects of stabilization on individual properties. In addition, although the impact of rent regulation on changes in the relationship between rents and operating costs may have been limited, that does not suggest that market influences on that relationship should be ignored by regulators. In the overall attempt to establish fair rents, market influences on housing viability are as critical a

concern as market influences on tenants' ability to pay. Unfortunately, the current economic environment poses an equal threat to both.

We close with one recommendation. For over four years the staff has expressed serious reservations about the usefulness and accuracy of "Table 14". Nonetheless, we remained cautious about discontinuing the table for lack of a substitute. With current longitudinal income and expense data we have constructed a new and far more reliable index, using 1989 as a base year. Except for the most recent year and the coming year, this new index measures changes in building income and operating expenses as reported in annual income and expense statements. The second to last year in the table will reflect actual PIOC increases and projected rent changes. The last year in the table - projecting into the future - will include staff projections for both expenses and rents. A copy of the proposed new index is attached.

While we believe this to be a more reliable index, it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Commercial income - accounting for some 11% of average owner income - will continue to be an independent variable on the rent side. While this figure will be corrected with actual income data each year, changes for the most recent and coming year will be estimated to follow residential rents. Because of the relatively small portion of income derived from commercial units, this should not throw the projections off by any significant amount - unless, of course, the commercial market undergoes abrupt changes. Second, while the new table attempts to measure industry conditions by looking at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship. Because we cannot anticipate the effects of preferential rents, MCI and individual apartment improvements for the past and coming

year, such a specific measure is impossible to develop. More importantly, the continued presence of operating costs for commercial units in the I&E data<sup>9</sup>, impairs our ability to precisely measure the relationship of residential rents to purely residential operating costs. If, however, the goal of the table is to broadly monitor the health of the housing stock over time, the inclusion of all building income and operating costs is a preferred indicator in any event.

Before closing we would like to note the special nature of this report. We have attempted to objectively analyze income and expense trends in

stabilized housing along with the history of policy development in this area. We also have suggested a new way of measuring future changes. These are not, however, simple administrative or ministerial matters. The ultimate determination of the relative state of the housing industry and the manner in which conditions are monitored are clearly matters which call for a legislative judgment. We hope that this report will assist the Board in making that judgment. □

<sup>9</sup> Residential rents are reported separately from commercial income, but expenses relating to commercial and residential space are not separated.

Editor's Note: On June 11, 1993 the Board voted to continue reporting "Table 14" along with the new table.

### Calculation of Operating and Maintenance Cost Ratio for Rent Stabilized Buildings, 1989-93

	<u>Average Monthly O&amp;M Per d.u.*</u>	<u>Average Monthly Income Per d.u.</u>	<u>Average O&amp;M to Income Ratio*</u>
1989.....	\$370 (\$340)	\$567	.65 (.60)
1990.....	\$382 (\$351)	\$564	.68 (.62)
1991.....	\$382 (\$351)	\$559	.68 (.63)
1992**.....	\$400 (\$368)	\$576	.69 (.64)
1993***.....	\$412 (\$379)	\$592	.70 (.64)

\* Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See *Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research, 1992*, pages 40-44. Figures in parentheses are adjusted to reflect these findings.

\*\* Expense figure includes expenses for 1991 (average expenses reported on income and expense statements filed with the Department of Finance) updated by the increase in Price Index of Operating Costs for the 4/1/92 -4/1/93 period (4.7%). Income figure includes income for 1991 (average income reported on income and expense statements filed with the Department of Finance) updated by a staff estimate based upon renewal and vacancy guidelines, choice of lease terms and estimated annual turnover rates (3.11%).

\*\*\* Expense figure includes 1992 expense estimate updated by staff projections for the period from 4/1/93 through 4/1/94 (3.1%) (Note: The projection was revised to 3.1% from 1.8% after the initial publication of this report.). Income includes income estimate for 1992 updated by staff estimate based upon renewal guidelines and choice of lease terms (2.8%).

## Appendix L

### Multiple Dwelling Law

#### Article 7-C. Legalization of Interim Multiple Dwellings

##### § 286. Tenant Protection

1. It shall not be a ground for an action or proceeding to recover possession of a unit occupied by a residential occupant qualified for the protection of this article that the occupancy of the unit is illegal or in violation of provisions of the tenant's lease or rental agreement because a residential certificate of occupancy has not been issued for the building, or because residential occupancy is not permitted by the lease or rental agreement.

2. (i) Prior to compliance with safety and fire protection standards of article seven-B of this chapter<sup>1</sup>, residential occupants qualified for protection pursuant to this article shall be entitled to continued occupancy, provided that the unit is their primary residence, and shall pay the same rent, including escalations, specified in their lease or rental agreement to the extent to which such lease or rental agreement remains in effect or, in the absence of a lease or rental agreement, the same rent most recently paid and accepted by the owner; if there is no lease or other rental agreement in effect, rent adjustments prior to article seven-B compliance shall be in conformity with guidelines to be set by the loft board for such residential occupants within six months from the effective date of this article.

(ii) In addition to any rent adjustment pursuant to paragraph (i) of this subdivision, on or after June twenty-first, nineteen hundred ninety-two, the rent for residential units in interim multiple dwellings that are not yet in compliance with the requirements of subdivision one of section two hundred eighty-four of this article shall be adjusted as follows:

(A) Upon the owners' filing of an alteration application, as required by paragraph (ii) [fig 1] , (iii) or (iv) of subdivision one of section two hundred eighty-four of this article, an adjustment equal to six percent of the rent in effect at the time the owner files the alteration application.

(B) Upon obtaining an alteration permit, as required by paragraph (ii) [fig 1] , (iii) or (iv) of subdivision one of section two hundred eighty- four of this article, an adjustment equal to eight percent of the rent in effect at the time the owner obtains the alteration permit.

(C) Upon achieving compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building, an adjustment equal to six percent of the rent in effect at the time the owner achieves such compliance.

(D) Owners who filed an alteration application prior to the effective date of this subparagraph shall be entitled to a prospective adjustment equal to six percent of the rent on the effective date of this subparagraph.

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<sup>1</sup> Multiple Dwelling Law §275 et. seq.

(E) Owners who obtained an alteration permit prior to June twenty- first, nineteen hundred ninety-two shall be entitled to a prospective adjustment equal to fourteen percent of the rent on June twenty-first, nineteen hundred ninety-two.

(F) Owners who achieved compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building prior to June twenty-first, nineteen hundred ninety-two shall be entitled to a prospective adjustment equal to twenty percent of the rent on June twenty-first, nineteen hundred ninety-two.

(iii) Any rent adjustments pursuant to paragraph (ii) of this subdivision shall not apply to units which were rented at market value after June twenty-first, nineteen hundred eighty-two and prior to June twenty-first, nineteen hundred ninety-two.

(iv) Payment of any rent adjustments pursuant to paragraph (ii) of this subdivision shall commence the month immediately following the month in which the act entitling the owner to the adjustment occurred.

3. Upon or after compliance with the safety and fire protection standards of article seven-B of this chapter, an owner may apply to the loft board for an adjustment of rent based upon the cost of such compliance. Upon approval by the loft board of such compliance, the loft board shall set the initial legal regulated rent, and each residential occupant qualified for protection pursuant to this article shall be offered a residential lease subject to the provisions regarding evictions and regulation of rent set forth in the emergency tenant protection act of nineteen seventy-four, except to the extent the provisions of this article are inconsistent with such act. At such time, the owners of such buildings shall join a real estate industry stabilization association in accordance with such act.

4. The initial legal regulated rent established by the loft board shall be equal to (i) the rent in effect, including escalations, as of the date of application for adjustment ("base rent"), plus, (ii) the maximum annual amount of any increase allocable to compliance as provided herein; and (iii) the percentage increase then applicable to one, two or three year leases, as elected by the tenant, as established by the local rent guidelines board, and applied to the base rent, provided, however, such percentage increases may be adjusted downward by the loft board if prior increases based on loft board guidelines cover part of the same time period to be covered by the rent guidelines board adjustments.

5. An owner may apply to the loft board for rent adjustments once based upon the cost of compliance with article seven-B of this chapter and once based upon the obtaining of a residential certificate of occupancy. If the initial legal regulated rent has been set based only upon article seven-B compliance, a further adjustment may be obtained upon the obtaining of a residential certificate of occupancy. Upon receipt of such records as the loft board shall require, the loft board shall determine the costs necessarily and reasonably incurred, including financing, in obtaining compliance with this article pursuant to a schedule of reasonable costs to be promulgated by it. The adjustment in maximum rents for compliance with this article shall be determined either (i) by dividing the amount of

the cash cost of such improvements exclusive of interest and service charges over a ten year period of amortization, or (ii) by dividing the amount of the cash cost of such improvements exclusive of interest and service charges over a fifteen year period of amortization, plus the actual annual mortgage debt service attributable to interest and service charges in each year of indebtedness to an institutional lender, or other lender approved by the loft board, incurred by the owner to pay the cash cost of the improvements, provided that the maximum amount of interest charged includable in rent shall reflect an annual amortization factor of one-fifteenth of the outstanding principal balance. Rental adjustments to each residential unit shall be determined on a basis approved by the loft board. An owner may elect that the loft board shall deem the total cost of compliance with this article to be the amounts certified by the local department of housing preservation and development of such municipality in any certificate of eligibility issued in connection with an application for tax exemption or tax abatement to the extent such certificate reflects categories of costs approved by the loft board as reasonable and necessary for such compliance. Rental adjustments attributable to the cost of compliance with this article shall not become part of the base rent for purposes of calculating rents adjusted pursuant to rent guidelines board increases.

6. Notwithstanding any provision of law to the contrary, a residential tenant qualified for protection pursuant to this chapter may sell any improvements to the unit made or purchased by him to an incoming tenant provided, however, that the tenant shall first offer the improvements to the owner for an amount equal to their fair market value. Upon purchase of such improvements by the owner, any unit subject to rent regulation solely by reason of this article and not receiving any benefits of real estate tax exemption or tax abatement, shall be exempted from the provisions of this article requiring rent regulation if such building had fewer than six residential units as of the effective date of the act which added this article, or rented at market value subject to subsequent rent regulation if such building had six or more residential units at such time. The loft board shall establish rules and regulations regarding such sale of improvements which shall include provisions that such right to sell improvements may be exercised only once for each unit subject to this article, and that the opportunity for decontrol or market rentals shall not be available to an owner found guilty by the loft board of harassment of tenants.

7. The local rent guidelines board shall annually establish guidelines for rent adjustments for the category of buildings covered by this article in accordance with the standards established pursuant to the emergency tenant protection act of nineteen seventy-four. The local rent guidelines board shall consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline. The loft board shall annually commission a study by an independent consultant to assist the rent guidelines board in determining the economics of loft housing.

8. Cooperative and condominium units occupied by owners or tenant-shareholders shall not be subject to rent regulation pursuant to this article.

9. No eviction plan for conversion to cooperative or condominium ownership for a building which is, or a portion of which is an interim multiple dwelling shall be submitted for filing to the department of law pursuant to the general business law until a residential certificate of occupancy is obtained as required by this article, and the residential occupants qualified for protection pursuant to this article are offered one, two or three year leases, as elected by such persons, in accordance with the provisions for establishment of initial legal regulated rent contained herein. Non-eviction plans for such buildings may be submitted for filing only if the sponsor remains responsible for compliance with article seven-B and for all work in common areas required to obtain a residential certificate of occupancy. Cooperative conversion shall be fully in accordance with section three hundred fifty-two-eeee of the general business law, the requirements of the code of the local real estate industry stabilization association, and with the rules and regulations promulgated by the attorney general.

10. The functions of the local conciliation and appeals board of such municipality regarding owners and tenants subject to rent regulation pursuant to this article shall be carried out by the loft board until such time as provided otherwise by local law.

11. Residential occupants qualified for protection pursuant to this article shall be afforded the protections available to residential tenants pursuant to the real property law and the real property actions and proceedings law.

12. No waiver of rights pursuant to this article by a residential occupant qualified for protection pursuant to this article made prior to the effective date of the act which added this article shall be accorded any force or effect; however, subsequent to the effective date an owner and a residential occupant may agree to the purchase by the owner of such person's rights in a unit.

13. The applicability of the emergency tenant protection act of nineteen seventy-four to buildings occupied by residential tenants qualified for protection pursuant to this article shall be subject to a declaration of emergency by the local legislative body. In the event such act expires prior to the expiration of this article, tenants in interim multiple dwellings shall be included in coverage of the rent stabilization law of nineteen hundred sixty-nine of the city of New York.

Section effective through March 31, 2001.

# Apartment Guidelines

1969-2000





# Hotel Guidelines

1969-2000



# The City of New York

Rent Guidelines Board

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Chairman: Edward Hochman  
Executive Director: Anita Vasser

## Rent Guidelines Board Hotel Orders #1 through #30 (1971 to 2001)

Order Number	Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings	*FOR SPECIAL NOTE ON RENT ADJUSTMENTS ON VACANCY. SEE REVERSE.
1	1/1/71 to 12/31/71	6% <sup>18</sup> %	6% <sup>18</sup> %	6% <sup>18</sup> %	6% <sup>18</sup> %	6% <sup>18</sup> %	*Order #1 calls for a 6% increase which shall be applicable as of June 1, 1971 to 8% over the rent in effect on 12/31/71.
2	1/1/72 to 12/31/72	4.5%	4.5%	4.5%	4.5%	4.5%	
3	1/1/73 to 12/31/73	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	*This increase will not apply where 40% or more of the dwelling units in a hotel are vacant and unoccupied on the date specified in the order except as otherwise permitted in the order.
4	1/1/74 to 12/31/74	5.5% <sup>18</sup>	5.5% <sup>18</sup>	5.5% <sup>18</sup>	5.5% <sup>18</sup>	5.5% <sup>18</sup>	
5	1/1/75 to 12/31/75	8% <sup>18</sup>	8% <sup>18</sup>	8% <sup>18</sup>	8% <sup>18</sup>	8% <sup>18</sup>	
6	1/1/76 to 4/30/77	6% <sup>18</sup>	6% <sup>18</sup>	6% <sup>18</sup>	6% <sup>18</sup>	6% <sup>18</sup>	
7	5/1/77 to 4/30/78	7% <sup>18</sup>	7% <sup>18</sup>	7% <sup>18</sup>	7% <sup>18</sup>	7% <sup>18</sup>	
8	5/1/78 to 4/30/79	5% <sup>18</sup>	5% <sup>18</sup>	5% <sup>18</sup>	5% <sup>18</sup>	5% <sup>18</sup>	
9	5/1/79 to 4/30/80	6.5% <sup>18</sup>	6.5% <sup>18</sup>	6.5% <sup>18</sup>	6.5% <sup>18</sup>	6.5% <sup>18</sup>	
10	5/1/80 to 4/30/81	9.5% <sup>18</sup>	9.5% <sup>18</sup>	9.5% <sup>18</sup>	9.5% <sup>18</sup>	9.5% <sup>18</sup>	
11	5/1/81 to 6/30/82	10% <sup>18</sup>	10% <sup>18</sup>	10% <sup>18</sup>	10% <sup>18</sup>	10% <sup>18</sup>	*A temporary surcharge of 1.67% can be applied for the period between 5/1/81 to 5/31/81 and remains in effect through June 30, 1982 or through the termination of the tenancy, whichever occurs first and shall not merge with the base established pursuant to Hotel Order 11 for the purpose of computing any rental adjustments. *A temporary surcharge of .83% can be applied for the period between 6/1/81 to 6/30/81 and remains in effect through June 30, 1982 or through the termination of the tenancy, whichever occurs first and shall not merge with the base established pursuant to Hotel Order 11 for the purpose of computing any rental adjustments.
12	7/1/82 to 6/30/83	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	
13	7/1/83 to 6/30/84	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	4% <sup>18</sup>	*These units which have had no tenancy commencing on or after July 1, 1978, are allowed an additional 5% vacancy allowance over rates charged on June 30, 1983.
14	7/1/84 to 6/30/85	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	
15	7/1/85 to 6/30/86	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	2% <sup>18</sup>	*For buildings of more than 30 units this increase shall not apply where more than 5% of the units are vacant for the 60 days preceding the effective date of this order, except as otherwise permitted in the order.
16	7/1/86 to 6/30/87	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	0% <sup>18</sup>	

Order Number	Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings
17	7/1/87 to 6/30/88	3%	3%	3%	0%	0%
18	7/1/88 to 6/30/89	3.5%	2%	3.5%	2%	2%
19	10/1/89 to 9/30/90*	3.5%	3.5%	3.5%	3.5%	3.5%
20	10/1/90 to 9/30/91	2%	2%	2%	2%	2%
21	10/1/91 to 9/30/92	3.5%	3.5%	3.5%	3.5%	2%
22	10/1/92 to 9/30/93	3%	2%	2%	2%	2%
23	10/1/93 to 9/30/94	3%	2%	2%	2%	3%
24	10/1/94 to 9/30/95	2%	2%	2%	2%	2%
25	10/1/95 to 9/30/96	0%	0%	0%	0%	0%
26	10/1/96 to 9/30/97	0%	0%	0%	0%	0%
27	10/1/97 to 9/30/98	0%	0%	2%***	0%	0%
28	10/1/98 to 9/30/99	0%	0%	2%***	0%	0%
29	10/1/99 to 9/30/00	4%***	4%***	4%***	4%***	4%***
30	10/1/00 to 9/30/01	2%***	2%***	2%***	2%***	2%***

**\*NOTE ON RENT INCREASES UPON VACANCY IN STABILIZED HOTEL UNITS:**

Prior to 1983 the Rent Stabilization Law provided that "any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at any price notwithstanding any established permissible rent level." Chapter 448 of the Laws of 1983 substituted the following language: "Any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at the guideline level for vacancies established by the rent guidelines board." Only once, in 1988, has the board permitted a special increase upon vacancy for stabilized hotel units.

If the affected building contains A) 20 or more units and 10% or more of the units have been delinquent with held from the rental market for a period exceeding 30 days OR B) 20% or more of the units in issue were delinquent with the DBCC, then the allowable level of rent adjustment shall be 0%.

If those leases or months of leases which will expire between 7/1/89 and 9/30/89 the rent in effect under the existing leases shall continue in effect through 9/30/89.

A temporary rent increase of 875% of the amount included and paid on 7/1/80, 1989 may be applied. This temporary increase may be collected only for the effective period of this Order and may not be included in the legal regulated base for a new rent schedule under subsequent Order.

If the affected building contains A) 20 or more units and 10% or more of the units have been with held from the rental market for a period exceeding 30 days; or less the conventional allowable basis for the with holding; OR B) 20% or more of the units in issue not regulated with the DBCC, then the allowable level of rent adjustments shall be 0%.

If fifty percent or more of the units have been leased, used, or dedicated to use other than permanent residential housing at the legal level, then the allowable level of rent adjustment shall be 0%.

If the owner failed to provide to tenancy party(s) of a unit a copy of the legal and Order of Hotel Owners and Tenants, pursuant to Section 25-252.5 of the Rent Stabilization Code, then the allowable level of rent adjustments shall be 0%.

If these increases shall be 0% if fewer than 75% of the residential units in a building are occupied by permanent 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.

## **Apartment & Loft Order #32**

**June 23, 2000**

Order Number 32 - Apartments and Lofts, rent levels for leases commencing October 1, 2000 through September 30, 2001.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY RENT GUIDELINES BOARD BY THE RENT STABILIZATION LAW OF 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended, implemented by Resolution No 276 of 1974 of the New York City Council and extended by the Rent Regulation Reform Act of 1997, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Rent Guidelines Board (RGB) hereby proposes the following levels of fair rent increases over lawful rents charged and paid on September 30, 2000. These rent adjustments will apply to rent stabilized apartments with leases commencing on or after October 1, 2000 and through September 30, 2001. Rent guidelines for loft units subject to Section 286 subdivision 7 of the Multiple Dwelling Law are also included in this order.

### **ADJUSTMENT FOR RENEWAL LEASES (APARTMENTS)**

Together with such further adjustments as may be authorized by law, the annual adjustment for renewal leases for apartments shall be:

For a one-year renewal lease commencing on or after October 1, 2000 and on or before September 30, 2001: 4%

For a two-year renewal lease commencing on or after October 1, 2000 and on or before September 30, 2001: 6%

These two adjustments shall also apply to dwelling units in a structure subject to the partial tax exemption program under Section 421a of the Real Property Tax Law, or in a structure subject to Section 423 of the Real Property Tax Law as a Redevelopment Project.

### **NO VACANCY ALLOWANCE FOR APARTMENTS**

No vacancy allowance is permitted except as provided by sections 19 and 20 of the Rent Regulation Reform Act of 1997.

**SUPPLEMENTAL ADJUSTMENT OF UP TO \$15 PER MONTH FOR RENEWAL LEASES FOR APARTMENTS RENTING FOR \$500 OR LESS ON SEPTEMBER 30, 2000. RENTS THAT ARE \$215 OR LESS AFTER ANY ALLOWABLE INCREASES IN THIS ORDER ARE APPLIED WILL BE INCREASED TO \$215.**

For a renewal lease on a dwelling unit with a lawful rent of \$500 or less per month on September 30, 2000, the levels of rent increase for renewal leases commencing October 1,

2000 through September 30, 2001 are the same as those set forth hereinabove plus a \$15 per month supplementary adjustment.

For a renewal lease commencing on or after October 1, 2000 through September 30, 2001, on a dwelling unit with a lawful rent of \$215 or less per month after any allowable increase(s) in this Order are applied, the new lawful rent will be \$215.

#### ADDITIONAL ADJUSTMENT FOR RENT STABILIZED APARTMENTS SUBLET UNDER SECTION 2525.6 OF THE RENT STABILIZATION CODE

In the event of a sublease governed by subdivision (e) of section 2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be 10%.

#### ADJUSTMENTS FOR LOFTS (UNITS IN THE CATEGORY OF BUILDINGS COVERED BY ARTICLE 7-C OF THE MULTIPLE DWELLING LAW)

The Rent Guidelines Board proposes the following levels of rent increase above the "base rent", as defined in Section 286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

For one-year increase periods commencing on or after October 1, 2000 and on or before September 30, 2001:           3%

For two-year increase periods commencing on or after October 1, 2000 and on or before September 30, 2001:           5%

#### VACANT LOFT UNITS

No Vacancy Allowance is permitted under this Order. Therefore, except as otherwise provided in Section 286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after October 1, 2000 and on or before September 30, 2001 may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

#### FRACTIONAL TERMS

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

#### ESCALATOR CLAUSES

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of

1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on September 30, 2000 over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than October 1, 2000 from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

#### **SPECIAL ADJUSTMENTS UNDER PRIOR ORDERS**

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on September 30, 2000 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

#### **SPECIAL GUIDELINE**

Under Section 26-513(b)(1) of the New York City Administrative Code, and Section 9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby proposes the following Special Guidelines:

For dwelling units subject to the Rent and Rehabilitation Law on September 30, 2000, which become vacant after September 30, 2000, the special guideline shall be the greater of the following:

- (1) 150% above the maximum base rent as it existed or would have existed, plus the allowable fuel cost adjustment, or
- (2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1] ) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2000.

## DECONTROLLED UNITS

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after September 30, 2000, shall be the greater of the following:

(1) 150% above the maximum base rent as it existed or would have existed, plus the allowable fuel cost adjustment, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1] ) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2000.

## CREDITS

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

## STATEMENT OF BASIS AND PURPOSE

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4 [§2]).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to Section 286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (Section 280).

Dated: June 25th, 2000

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Edward S. Hochman, Esq. ,  
Chairman  
New York City Rent Guidelines Board

**EXPLANATORY STATEMENT - APARTMENT ORDER #32**

**Explanatory Statement and Findings of the Rent Guidelines Board  
In Relation to 2000-2001 Lease Increase Allowances for Apartments and Lofts  
under the Jurisdiction of the Rent Stabilization Law<sup>1</sup>**

**Summary of Order No. 32**

The Rent Guidelines Board (RGB) by Order No. 32 has set the following maximum rent increases for leases subject to renewal on or after October 1, 2000 and on or before September 30, 2001 for **apartments** under its jurisdiction:

**LEASE RENEWALS**

<u>1 Year</u>	<u>2 Years</u>
4%	6%

**SUPPLEMENTAL ADJUSTMENTS**

Plus a supplemental adjustment of **\$15** per month for apartments renting for \$500 or less as of September 30, 2000.

For rents that are \$215 or less per month after any allowable increase(s) in this Order are applied, the new lawful rent will be increased to \$215.

**VACANCY ALLOWANCE**

The vacancy allowance is now determined by a formula set forth in the State Rent Regulation Reform Act of 1997, not by the Orders of the Rent Guidelines Board.

**SUBLET ALLOWANCE**

The increase landlords are allowed to charge when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2000 and on or before September 30, 2001 shall be **10%**.

**ADJUSTMENTS FOR LOFTS**

For **Loft units** to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law, the Board established the following maximum rent increases for increase periods commencing on or after October 1, 2000 and on or before September 30, 2001. No vacancy allowance or low rent allowance is included for lofts.

<u>1 Year</u>	<u>2 Years</u>
3%	5%

The guidelines do not apply to hotel, rooming house, and single room occupancy units that are covered by separate Hotel Orders.

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

Any increase for a renewal lease may be collected no more than once during the guideline period governed by Order No. 32.

### **SPECIAL GUIDELINES**

Leases for units subject to rent control on September 30, 2000 that subsequently become vacant and then enter the stabilization system are not subject to the above adjustments. Such newly stabilized rents are subject to review by the State Division of Housing and Community Renewal (DHCR). In order to aid DHCR in this review the Rent Guidelines Board has set a special guideline of whichever is greater:

(1) **150% above the Maximum Base Rent** (MBR) as it existed or would have existed, plus applicable fuel adjustments; or

(2) The **Fair Market Rent** for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2000.

All rent adjustments lawfully implemented and maintained under previous apartment Orders and included in the base rent in effect on September 30, 2000 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

### **Background of Order No. 32**

The Rent Guidelines Board is mandated by the Rent Stabilization Law of 1969 (Section 26-510(b) of the NYC Administrative Code) to establish annual guidelines for rent adjustments for housing accommodations subject to that law and to the Emergency Tenant Protection Act of 1974. In order to establish guidelines the Board must consider, among other things:

- (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating and 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) overall supply of housing accommodations and overall vacancy rates;
- (2) relevant data from the current and projected cost of living indices for the affected area;
- (3) such other data as may be made available to it.

The Board gathered information on the above topics by means of public meetings and hearings, written submissions by the public, and written reports and memoranda prepared by the Board's staff. The Board

calculates rent increase allowances on the basis of cost increases experienced in the past year, its forecasts of cost increases over the next year, its determination of the relevant operating and maintenance cost-to-rent ratio, and other relevant information concerning the state of the residential real estate industry.

### **Material Considered by the Board**

Order No. 32 was issued by the Board following one public hearing, eight public meetings, its review of written submissions provided by the public, and a review of research and memoranda prepared by the Board's staff. A total of 59 written submissions were received at the Board's offices from many individuals and organizations including public officials, owners and owner groups, and tenants and tenant groups. The Board members were provided with copies of public comments received by the **June 15th, 2000** deadline. All of the above listed documents were available for public inspection.

Open meetings of the Board were held following public notice on March 21st, March 28th, April 11th, April 25th, May 2nd, and June 6th, 2000. A written transcription or audio recording was made of all proceedings. **On May 8th, 2000**, the Board adopted proposed rent guidelines for apartments, lofts, and hotels.

A public hearing was held on **June 15th, 2000** pursuant to Section 1043 of the New York City Charter and Section 26-510(h) of the New York City Administrative Code. Testimony on the proposed rent adjustments for rent-stabilized apartments and lofts was heard from 1:00 p.m. to 5:30 p.m., and from 8:00 p.m. to 11:00 p.m. on June 15th, 2000. Testimony from members of the public speaking at these hearings was added to the public record. The Board heard testimony from 52 apartment tenants and tenant representatives, 24 apartment owners and owner representatives and 10 public officials. **On June 22nd, 2000** the guidelines set forth in Order No. 32 were adopted.

### **PRESENTATIONS BY HOUSING EXPERTS INVITED BY MEMBERS OF THE BOARD**

Each year the staff of the New York City Rent Guidelines Board is asked to prepare numerous reports containing various facts and figures relating to conditions within the residential real estate industry. The Board's analysis is supplemented by testimony from industry and tenant representatives, housing experts, and by various articles and reports gathered from professional publications.

Listed below are the other experts invited and the dates of the public meetings at which their testimony was presented:

<i>Meeting Date / Name</i>	<i>Affiliation</i>
<b>March 21st, 2000:</b>	<u>Staff presentation, 2000 Mortgage Survey</u>
1. Glenn Borin	Deputy Commissioner for Real Property, NYC Dept. of Finance
2. Michael Cooney	Assessor in Charge, NYC Dept. of Finance
3. Louis Giampetruzzi	NYC Dept. of Finance
<b>March 28th, 2000:</b>	<u>Consultant presentation 'What to do With the Price Index'</u>
1. Dr. Anthony Blackburn	Housing Consultant
<b>April 11th, 2000:</b>	<u>Staff presentation, 2000 Income &amp; Expense study</u>

1. William Kusterbeck Treasurer, Dept. of Environmental Protection,  
New York City Water Board

**April 25th, 2000:** Staff presentations, 2000 Income & Affordability study;  
2000 Price Index of Operating Costs

**May 2nd, 2000:** Owner group testimony:

1. Jack Freund Executive Vice President, Rent Stabilization Association  
2. Dan Margulies Executive Director, Community Housing Improvement Program  
3. Jimmy Silber Vice President, Small Property Owners of New York  
4. Christopher Athineos Property Owner, Athineos Enterprises, Inc.

Tenant group testimony:

1. Michael McKee Associate Director, New York State Tenants & Neighbors Coalition  
2. Peter Marcuse Professor of Urban Planning, Columbia University  
3. Celia Irvine Housing Policy Analyst, Office of the Manhattan Borough President  
4. Kenny Schaffer Staff Attorney, Legal Aid Society  
5. Liz Krueger Director, Access to Benefits Projects, Community Food Resource Center  
6. Candace Mitchell rent stabilized tenant

**June 6th, 2000:** Staff presentation, 2000 Housing Supply Report

Panel on Affordable Housing Development in NYC

1. John Reilly Executive Director, Fordham-Bedford Housing Corp.  
2. Donna Gibbons Deputy Director, Manhattan Valley Development Corp.  
3. Lydia Tom Director of Housing and Finance, The Enterprise Foundation of New York  
4. Chuck Brass President and CEO, Housing Partnership Development Corp.  
5. Michael Schill Director of the Center for Real Estate and Urban Policy, NYU School of Law

## **SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM OWNERS AND OWNER GROUPS<sup>2</sup>**

Comments from owners and owner groups included:

"In light of substantial increase in costs this year [and] the inadequacy of the Price Index in capturing all cost increases ...the RSA is asking the Board to approve a 9% increase in rent for a one-year lease renewal. And in light of the underlying inflationary trends which are now becoming evident, as well as the risks of unexpected cost increases which owners incur when they enter into longer term leases, we ask that the board approve a 15% increase for two-year leases."

"The supplemental adjustment for low rent apartments reflects the realization by the board that a percentage increase translates into a lower dollar amount for low rent apartments than for higher rent apartments. This supplemental dollar amount added to the guideline percentage increases the likelihood that all apartments will derive the intended benefits of the rent increases deemed necessary by the RGB. Even though a low rent adjustment has been authorized by the Board for the last five years, a significant number of apartments still rent for \$500 or less per month. This is an indication that a substantial number of apartments started out with such inordinately low rents that even the prior supplemental

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2. Sources: Submissions by owner groups and testimony by owners.

adjustments have failed to raise these rent levels significantly. ...In consideration of these factors, we [the RSA] strongly urge the Board to maintain the current supplemental adjustment for low rent apartments, and to consider restoring the adjustment to its prior level of \$20."

"Last year, the Board inexplicably dropped the 5% vacancy allowance for sublets which it has adopted in each of the two prior years. It should be restored and increased this year....[W]e (the RSA) ask that the Board grant a vacancy allowance in the amount of 10% for sublets, an amount equal to the bonus which accrues to the prime tenant in a sublet situation."

"I wanted to focus today on certain administrative and related costs that the Board probably doesn't fully understand. Every year there are new costs imposed on property owners by the city, state, and federal government. These costs are frequently phased in with the implementation of a rule months or years after a statutory change. Often, the costs were not considered or were misunderstood in drafting the law or rule. A seemingly simple paperwork requirement can become a substantial record keeping expense."

"As imperfect as the system is I think the signal that we get from the price index this year is that prices are going up. Costs are going up. Fuel is skyrocketing. There is inflationary pressure in the cost of running a building and that has to be addressed by this Board. Two percent and three percent increases aren't going to cut it this year because the small owner is going to be pushed over the edge if he doesn't get a substantial increase."

### **SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM TENANTS AND TENANT GROUPS<sup>3</sup>**

Comments from tenants and tenant groups included:

"The supply of rent stabilized apartments with rents under \$500 is diminishing rapidly, in large part because of five years of 'supplemental' rent increases under the Koch administration and six years under Giuliani. The incomes of tenants in these apartments clearly are much lower than the incomes of tenants in apartments renting for \$500 or more. And the tenants of these apartments are overwhelmingly people of color and/or Spanish-speaking. The RGB justifies the poor tax by citing the amount required on average to operate and maintain buildings with rent stabilized apartments. This overlooks the reality that landlords run their buildings on the rent roll from the entire building, not from individual apartments, and that landlords collect a range of rents from high to low. It's time that you end this punitive rent increase."

"Tenants and Neighbors supports legislation (A.1865) in the State Legislature that would give the New York City and suburban Rent Guidelines Boards subpoena power and mandate an annual audit of a representative sample of buildings. We have suggested in the past that the RGB pass a resolution supporting this bill, and we suggest it again now."

"[Y]ou should heed the advice contained in last year's submission from the Rent Stabilization Association, when they told you not to focus on the one-year changes in the Price Index, but to look at rent-stabilized housing over time. A majority of the Board listened to the RSA last year, and the year before, when despite two years of zero Price Indices, you granted rent increases that cumulatively have

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3. Sources: Submissions by tenant groups and testimony by tenants.

raised rents citywide by at least five percent. If you can disregard the Price Index when it doesn't justify rent increases for two years in a row, you can also disregard it this year, when it would seem to justify a rent hike. Or a majority of this Board can once again demonstrate that fairness to tenants doesn't enter into your considerations."

"[T]he existence of distressed housing is an important housing policy issue that needs to be addressed. However, the RGB, whose authority is limited to adjusting regulated rents, is not the appropriate body to address it. The RGB is not authorized to increase funding for owner outreach and education, for low-interest loan and grant programs, or to restructure the City's allocation of responsibility for generating revenue for the general fund or for the management of the City's water system. I urge the members not to allow concern for a small and troubled segment of the housing inventory to become the justification for across-the-board rent increases when there are other more direct strategies of addressing the needs of distressed housing."

"Consider these facts: inflation is markedly low and landlords' profits are already high. These proposals follow years of increases despite flat operating costs. And those increases have become a permanent part of the rent structure even though fuel-cost spikes are temporary. Everybody who lives in New York already knows, either from experience or published research findings, that New York's most affordable housing is at an all time low and that unregulated housing is astronomically expensive."

#### **SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM PUBLIC OFFICIALS<sup>4</sup>**

Comments from public officials included:

"I strongly urge the Rent Guidelines Board to reduce the proposed rent increase to no more than 2 and 4 percent, to eliminate the supplemental "poor tax," to eliminate the proposed increases for loft units and SRO units (and, if any SRO increase is allowed, to make it applicable to buildings in which at least 80% of units are used as SRO housing). I also strongly urge the Board to support a change in methodology for evaluating rent increases to look at landlords' income rather than operating expenses and maintenance costs, which would help bring rent increases down and allow more tenants to afford to remain in their homes."

"I urge the Board to approve no rent increases for apartments, SROs or boarding houses this year. I also urge the Board to repeal the so-called \$15 "poor tax."

"As we are all aware, rents in our communities continue to skyrocket, and more and more middle class and elderly tenants are forced to relocate. The only way that we will maintain our affordable housing stock is to continue the fair adjustment for tenants by imposing the 2% and 4% increases that we have already seen success with. I respectfully request that the members of the Board seriously consider the needs and financial limits that tenants face, and approve the 2% and 4% increases for the coming year."

"Inflated rent guideline increases are an attack on working people, middle-income and low-income tenants. Large increases, such as these proposed, will cause real hardship for many current tenants, at a

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4. Sources: Submissions by public officials.

time large owners are already enjoying historic revenue increases. And, even worse, higher-than-reasonable increases serve to jack up rents at a rapid pace towards the threshold level for deregulation."

"The \$15 surcharge on apartments renting for \$500 or less targets the same vulnerable New Yorkers who have already been hit with this "poor tax" every year since 1994. The median income of tenants with a rent less than \$500 in 1998 was \$15,000. Many of these tenants are paying 30% or more of their incomes toward rent. This surcharge is unjust and mean spirited."

## **RENT GUIDELINES BOARD RESEARCH**

The Rent Guidelines Board also based its determination on its consideration of the following reports and information prepared by the RGB's staff:

- (1) 2000 Mortgage Survey Report, March, 2000, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);
- (2) 2000 Owner Income and Expense Study, April, 2000, (Based on income and expense data provided by the Finance Department, the Income and Expense Study measures rents, operating costs and net operating income in rent stabilized buildings);
- (3) 2000 Tenant Income and Affordability Study, April, 2000, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
- (4) 2000 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, April, 2000, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized buildings);
- (5) 2000 Housing Supply Report, June, 2000, (Includes 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,

The Board also examined the 1999 New York City Housing and Vacancy Survey data on vacancy rates. The information showed that the vacancy rate for stabilized units was lower in 1999 (3.19%) than it was in 1996 (4.01%).

### **2000 PRICE INDEX OF OPERATING COSTS FOR RENT STABILIZED APARTMENT HOUSES IN NEW YORK CITY**

The 2000 Price Index of Operating Costs For Rent Stabilized Apartment Houses in New York City found a 7.8% increase in costs for the period between April, 1999 and April, 2000.

Over the year ending April 2000, increases in costs occurred in most PIOC components, ranging from a 0.7% rise in insurance costs to a 54.8% increase in fuel costs. While all PIOC components experienced increases this year, the extraordinary rise in fuel costs (54.8%), and strong increases in utility costs (5.7%) and taxes (5.2%), drove the overall PIOC increase to 7.8%, the highest increase since 1990 (10.9%). The 2000 PIOC was higher than the 5.3% projected in 1999, primarily because of the spike in fuel costs (54.8%) which was higher than estimated (22.2%).

Staff also computed a "core" PIOC, which excludes erratic changes in fuel oil, natural gas, and electricity costs, as a supplement to the regular PIOC. This core PIOC, like the core Consumer Price Index, is useful for analyzing longer-term inflationary trends.

In recent years the "core" rate has fluctuated between approximately 2% and 3%. The "core" rate

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5. Totals may not add due to weighting and rounding..

6. Totals may not add due to weighting and rounding..

moved upward from 2.1% in 1994 to 2.4% in 1995, and to 3.1% in 1996. The rate dropped slightly to 3.0% in 1997, fell further to 2.3% in 1998, then rose to 2.5% in 1999. This year, the core rose by 3.8%, the highest rate seen since 1993 when the "core" also rose by 3.8%. The "core" slightly outpaced growth in the Consumer Price Index (CPI), which grew by 3.4% from March 1999 to March 2000.

Overall, the PIOC is expected to grow by 3.8% from 2000 to 2001 due to brisk increases in taxes and fuel costs and more moderate growth in labor, utility, contractor services and administrative costs. The absence of fuel and most utility costs from the core PIOC will cause this index to rise somewhat more slowly, by 3.4%, due to relatively rapid increases in taxes, and labor based component costs.

Table 1 details the expenditure weights, the percentage change and weighted percentage change by component for the 2000 Price Index.

**Table 1**  
**1999-2000 Percentage Changes in Components of the Price Index of**  
**Operating Costs for Rent Stabilized Apartment Houses in New York City<sup>5</sup>**

Item	Expenditure Weights	1999-2000 Percentage	1999-2000 Weighted Percentage
Taxes	25.89%	5.18%	1.34%
Labor Costs	17.62	2.62	0.46
Fuel Costs	7.33	54.79	4.02
Utility Costs	14.66	5.68	0.83
Contractor Services	15.64	4.58	0.72
Administrative Costs	8.85	3.96	0.35
Insurance Costs	6.65	0.66	0.04
Parts &Supplies	2.34	1.93	0.05
Replacement Costs	1.01	0.77	0.01
<b>All Items</b>	<b>100.00</b>	<b>-</b>	<b>7.82</b>

Source:2000 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.

## LOCAL LAW 63/ INCOME & EXPENSE REVIEW

Following computerization of I&E filings, the sample size for the I&E study has been greatly increased to over 10,000 buildings. This is the ninth year that staff has been able to obtain longitudinal data in addition to cross-sectional data. The RGB staff found the following average monthly (per unit) operating and maintenance costs in 1999 I&E statements for the year 1998:

**Table 2**  
**2000 Income and Expense Study Average Monthly**  
**Operating and Maintenance Costs Per Unit<sup>6</sup>**

	Pre '47	Post '46	All Stabilized
Taxes	\$89	\$146	\$105
Labor	53	99	66
Fuel	37	29	35
Utilities	44	51	46
Maintenance	94	86	92

7. Overall O&M expenses were adjusted according to the findings of an income and expenses audit conducted by the Department of Finance in 1992. The unadjusted O&M to rent ratios would be .67 (All),.70 (Pre-47),and .63 (Post-46), respectively. The unadjusted O&M to Income ratios would be .61 (All),.63 (Pre-47),and .57 (Post-46).

Administration	57	67	60
Insurance	23	19	22
Miscellaneous	32	37	33
<b>Total</b>	<b>\$430</b>	<b>\$ 536</b>	<b>\$459</b>

Source:2000 Owner Income and Expense Study, from 1999 Real Property Income and Expense filings for 1998, NYC Department of Finance.

In 1992, the Board benefited from the results of audits conducted on a stratified sample of 46 rent stabilized buildings by the Department of Finance. Audited income and expense figures were compared to statements filed by owners. On average the audits showed an 8% over reporting of expenses and a 1% under-reporting of income. The categories, which accounted for nearly all of the expense over reporting, were maintenance, administration, and "miscellaneous." The largest over reporting was in miscellaneous expenses.

If we assume that an audit of this year's income and expense data would yield similar findings to the 1992 audit, one would expect the average O&M cost for stabilized buildings to be \$422 rather than \$459. As a result, the following relationship between operating costs and residential rental income was suggested by the Local Law 63 data:

**Table 2(a)**

**2000 Operating Cost to Rent/Income Ratio Adjusted to 1992 Audit**

	<u>O&amp;M Costs<sup>7</sup></u>	<u>Rent</u>	<u>O&amp;M to Rent Ratio</u>	<u>Income</u>	<u>O&amp;M to Income Ratio</u>
All stabilized	\$422	\$681	0.62	\$755	.56
Stabilized Pre'47	\$395	\$617	0.64	\$684	.58
Stabilized Post'46	\$492	\$849	0.58	\$940	.52

Source:2000 Owner Income and Expense Study, from 1999 Real Property Income and Expense filings for 1998, NYC Department of Finance.

**FORECASTS OF OPERATING AND MAINTENANCE PRICE INCREASES FOR 2000-01**

In order to decide upon the allowable rent increases for two-year leases, the Rent Guidelines Board considers price changes for operating costs likely to occur over the next year. In making its forecasts the Board relies on expert assessments of likely price trends for the individual components, the history of changes in prices for the individual components and general economic trends. The Board's projections for 2000-01 are set forth in Table 3, which shows the Board's forecasts for price increases for the various categories of operating and maintenance costs.

**Table 3**

**Year-to-Year Percentage Changes in Components of the Price Index of Operating Costs:  
Actual 1999-2000 and Projected 2000-01**

	<u>Price Index 1999-2000</u>	<u>Projected Price Index 2000-01</u>
Taxes	5.2%	5.2%
Labor Costs	2.6	2.9
Fuel Costs	54.8	7.0
Utility Costs	5.7	3.2
Contractor Services	4.6	3.6
Administrative Costs	4.0	3.4
Insurance Costs	0.7	0.9

Parts & Supplies	1.9	2.0
Replacement Costs	0.8	1.0
Total (Weighted)	7.8%	3.8%

Source:2000 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, which includes the 2001 PIOC Projection.

## Taxes

Property taxes comprise roughly a quarter of the PIOC. From the mid 1980's to the early 1990's, taxes often rose faster than the overall PIOC. Recently however, slower increases in tax rates and falling or stable assessments meant lower than average increases in taxes. However, the 5% increase in assessments found in 2000 may indicate that the effects of the NYC economic recovery are finally being felt in the Tax component.

Class Two properties include rent stabilized apartments, co-ops and condominiums. Within this category, rent stabilized dwellings are classified as either "rental buildings" or "4-10 unit family buildings." Based on the preliminary tax roll, the Finance Department forecasts billable assessments (the assessed value of a property on which tax liability is based) for rental buildings to increase by 8.6%, while billables for 4-10 family buildings are expected to increase by 4.8% in 2001. However, preliminary assessments are slightly imprecise because following the release of the tentative assessment roll each year, a small percentage of appraisals are contested and overall final assessments are generally reduced.

After adjusting for estimated changes in the class levy share, the value of exemptions, the tax rate, the value of abatements, and contested assessments, it is estimated that the tax cost to owners will grow by 6.5% and 2.8% respectively for rentals and 4-10 unit properties. Once these tax class categories are combined according to their proportion of the stabilized stock and distribution by borough, average property tax bills for rent stabilized buildings, which are predominantly classified as "rental" buildings, are estimated to increase by 5.2% in the next fiscal year.

### Projection for April '00 to April '01

Taxes .....5.2%

## Labor-Based Components (Contractor Services, Labor Costs, and Administrative Costs)

Labor Based Components in the PIOC include "Labor Costs," comprising the wages and benefits of building maintenance workers (e.g. superintendents, porters, etc.), "Contractor Services," which primarily covers the work of plumbers and painters, and "Administrative Costs," which is almost entirely comprised of management, legal, and accounting fees.

At the release of this report a new contract for Union Local 32B -32J had yet to be negotiated for the year 2001. The only wages set for the upcoming year are for Local 32E. All other projected labor increases are based on a three-year average.

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8. Source:"Short-Term Energy Outlook," April 2000. U.S.Energy Information Administration,Department of Energy.

9. "Normal" weather refers to the typical number of heating degree-days measured at Central Park over a given period. A heating degree-day is defined as, for one day, the number of degrees that the average temperature for that day is below 65 degrees Fahrenheit.

Wages for members of Local 32-E will rise 1.8% while wages for Local 32B-32J are predicted to rise 2.7%. By combining these increases with the remaining items in the Labor component, an increase of 2.9% is projected in labor costs for the coming year.

Increases in "Administrative Costs" and "Contractor Services" are projected by averaging the growth rates observed in each component over the past three years. Administrative cost increases have been fairly constant over the decade and are estimated to rise by 3.4% over the next year. In comparison, the cost of Contractor Services has been more variable in the recent past and based on a three-year average is projected to increase by 3.6% next year.

**Projection for April '00 to April '01**

Administrative Costs.....	3.4%
Contractor Services.....	3.6%
Labor Costs.....	2.9%

**Fuel Costs**

The cost of fuel oil depends heavily on volatile weather patterns as well as political and economic variables that cannot be reliably predicted. Given these difficulties (and barring unforeseen natural or geo-political events), the cost of fuel oil in New York City is estimated to rise by 7.0% in the coming year following last year's significant cost increase.

Similar to last year, the biggest single factor influencing petroleum product prices over the next year will be crude oil prices. In 2000, average annual crude oil costs for the first half of the year are expected to be about double the price compared to the same period a year ago. These higher crude oil prices mean higher petroleum product prices, however, crude prices are projected to decline in 2001.

Assuming that annual temperatures return to the most recent five-year average for Central Park, New York City (see Endnote 1), which will be about 5% colder than that experienced in 1999-2000, the commensurate increase in demand for heating fuels will in turn accelerate the cost of fuel oil to building owners.

In sum, based on current U.S. Energy Information Administration (EIA) forecasts<sup>8</sup>, rising fuel prices and elevated fuel consumption brought about by "normal" weather conditions<sup>9</sup>, are estimated to increase fuel oil costs to owners of stabilized buildings in New York City by 7.0% in the next year.

**Projection for April '00 to April '01**

Fuel Costs.....	7.0%
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**Utility Costs**

In the PIOC, the costs of electricity, natural gas, water and sewer service, purchased steam, and telephone service are grouped as "Utility Costs." Water and sewer costs alone account for about 62% of

this component, while electricity and gas comprise another 35% of the utility category (17% and 18% respectively). Steam and telephone prices constitute the remainder of the utility component (3%).

Next year, the overall cost of utilities is estimated to rise by 3.2%. The bulk of this growth will come from a sharp estimated increase in the cost of natural gas (11.4% according to EIA estimates). The projected rise in gas costs is offset by more moderate estimates of increases in electricity costs (2.6%), and in water and sewer rates (a 1.0% increase is proposed for the coming year).

The New York State Public Service Commission (PSC) estimates that, following a recent rate drop, electricity base rates will remain constant in the upcoming year. In April 2000, Con Edison's electricity rates were reduced by 2.0% for most multi-family buildings. Next April, electricity rates for these properties are expected to decline an additional 2.0% - 3.5%, depending on the size of the building. However, adjustment charges for the changing cost of supplying power should increase somewhat assuming fuel prices behave as predicted. Using EIA projections, the cost of electricity is estimated to rise by 2.6% over the coming year.

Natural gas costs are estimated to increase by 11.4% next year. With current storage levels above those of last year's, natural gas prices are projected to stay relatively constant. In addition, both Brooklyn Union Gas and Con Edison project a continuation of their rate freeze next year. Assuming a return to the five-year average weather pattern, however, in combination with EIA estimates for the change in natural gas prices, increased consumption is projected to ultimately produce growth in gas costs of 11.4% over the next year.

During the past ten years, Water and Sewer costs have grown the fastest of all the items in the Utilities component. After many double digit increases, water and sewer rates were frozen from FY 1994 to FY 1995. Rates were unfrozen in FY 1996, rising by 5%, followed by increases of 6.5% in FY 1997 and '98. Rates rose less rapidly in the last two fiscal years, each by 4%. An increase of 1% for FY 2001 should take effect from July 1st, given current proposals before the New York City Water Board.

In total, weighted increases in water/sewer charges, electricity and natural gas costs, are projected to cause Utility Costs to rise by 3.2% in 2000.

**Projection for April '00 to April '01**

Utilities.....3.2%

**Insurance Costs**

Insurance Costs for rent stabilized buildings increased 0.7% last year. This highly variable component showed a decrease of 1.5% in 1998 and an increase of 3.5% in 1999. Based on the latest three-year average, Insurance Costs are estimated to rise by 0.9% over the coming year.

**Projection for April '00 to April '01**

Insurance Costs.....0.9%

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10. The accuracy of the PIOC is assumed, as is the collectibility of legally authorized increases. Calculating the "traditional" Commensurate Rent Increase requires an assumption about next year's PIOC. In this case, the 3.8% PIOC projection for 2001 is used.

11. Whether profits will actually decline depends on the level of inflation, the composition of NOI (i.e. how much is debt services and how much is profit), changes in tax laws, and interest rates.

## Parts and Supplies

The Parts and Supplies component has usually played a very small role in the PIOC, comprising less than 3% of the index in 2000. Over the past five years there has been very modest growth in this component ranging from 0.8% to 2.2%. This trend should extend to 2001 when the cost of Parts and Supplies is estimated to increase by 2.0%.

### Projection for April '00 to April '01

Parts and Supplies.....2.0%

## Replacement Costs

This component accounted for about one-percent of the entire price index in 2000. Over the past year, Replacement Costs increased by only 0.8%. The modest 14-year trend of growth in Replacement Costs should continue with costs rising by an estimated 1.0% over the next year.

### Projection for April '00 to April '01

Replacement Costs.....1.0%

## COMMENSURATE RENT ADJUSTMENT

Throughout its history, the Rent Guidelines Board has used a formula, known as the "commensurate rent increase," to help determine annual rent increases for rent stabilized apartments. In essence, the "commensurate" combines various data concerning operating costs, revenues, and inflation into a single measure indicating how much rents would have to rise for net operating income (NOI) in stabilized buildings to remain constant. The "commensurate" increase described below is primarily meant to provide an initiation, and not a floor or ceiling, for discussion concerning prospective guidelines.

In its simplest form, the commensurate rent increase is the amount of rent growth needed to maintain

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12. The following assumptions were used:(1) The required increase in landlord revenue is the sum of the increase due to increased costs and the impact of inflation on NOI. The increase in revenue due to costs is 61% of the 2000 PIOC increase of 7.8%,or 4.76%. The 61% figure is the most recent ratio of average operating costs to average income in stabilized buildings.

Assumptions regarding lease renewals were derived from the 1999 Housing and Vacancy Survey. In a given year approximately 29.4% of stabilized tenants sign a one-year lease, and 29.5% sign a two-year lease. Another 29.5% have a two-year lease but do not sign, and 11.6% turn over, and are subject to a vacancy lease. For the commensurate including a vacancy assumption, the 12.0% median increase in vacancy leases found in the 1998 Recent Movers Study was used. These terms are only illustrative. Other combinations of terms could produce the 4.76% increase in landlord revenue.

13. The following assumptions were used:(1) The required increase in landlord revenue is the sum of the increase due to increased costs and the impact of inflation on NOI. The increase in revenue due to costs is 61% of the 2000 PIOC increase of 7.8%,or 4.76%. The 61% figure is the most recent ratio of average operating costs to average income in stabilized buildings. The increase in revenue due to the impact of inflation on NOI is 39% times the latest March 1999 to March 2000 12-month increase in the CPI (3.4%) or 1.32%. Thus, the total increase in landlord income required is 6.07%. (2) Assumptions regarding lease renewals were derived from the 1999 Housing and Vacancy Survey. In a given year approximately 29.4% of stabilized tenants sign a one-year lease, and 29.5% sign a two-year lease. Another 29.5% have a two-year lease but do not sign, and 11.6% turn over, and are subject to a vacancy lease. For the commensurate including a vacancy assumption, the 12.0% median increase in vacancy leases found in the 1998 Recent Movers Study was used. These terms are only illustrative. Other combinations of terms could produce the 6.07% increase in landlord revenue.

landlords' current dollar NOI at a constant level. The commensurate rent increase for this year is<sup>10</sup>:

<u>One Year Lease</u>	<u>Two Year Lease</u>
4.8%	6.0%

As a means of compensating landlords for cost increases, this "traditional" commensurate rent increase has two major flaws. First, although the formula is supposed to keep landlords' current dollar income constant, the formula does not consider the mix of one- and two-year lease renewals. Since only about three-fifths of leases are renewed in any given year, with a preponderance of leases having a two year duration, the formula does not necessarily accurately estimate the amount of income needed to compensate landlords for past O&M increases.

A second possible flaw of the traditional commensurate formula is that it does not consider the erosion of landlords' income by inflation. By maintaining current dollar NOI at a constant level, adherence to the formula may cause profitability to decline over time. However, such degradation is not an inevitable consequence of using the commensurate formula.<sup>11</sup>

Two alternatives to the commensurate rent increase adjusts for the mix of lease terms and sources of landlord revenue allowed by the RGB other than lease renewals (e.g. vacancy allowance). The first is called the "**Net Revenue**" approach, and takes into consideration the mix of leases actually signed by tenants but does NOT adjust NOI for inflation. This year, two alternative formulas are presented in two ways. First, the formula is presented with an assumption for stabilized apartment turnover and vacancy increases, and second, without this assumption. Under the "Net Revenue" formula, a guideline that would preserve NOI in the face of this year's 7.8% increase in PIOC, is **4.0%** for a one-year lease and **7.5%** for a two-year lease with a vacancy increase assumption, and **6.5%** and **9.5%** without a vacancy increase assumption.<sup>12</sup>

The "**CPI-Adjusted NOI**" formula considers the mix of one- and two-year lease terms while adjusting NOI upward to reflect inflation, keeping both O&M and NOI constant. A set of guidelines which would preserve NOI in the face of the 3.4% increase in the Consumer Price Index (March '99 to March '00) and the 7.8% rise in the PIOC, including an assumption for turnover and the median Citywide vacancy increase found in the 1998 Recent Movers Survey of 12%, is **6.0%** for a one-year lease and **10.0%** for a two-year lease. Guidelines using this formula without including an assumption for turnover and vacancy increases are **8.5%** for a one-year lease and **12.0%** for a two-year lease.<sup>13</sup>

All of these methods have their limitations. The traditional commensurate increase is artificial and does not consider the impact of lease terms or inflation on landlords' income. The "Net Revenue" formula does not attempt to adjust NOI based on changes in interest rates or deflation of landlord profits. The "CPI-Adjusted NOI" method has its limitations. The "CPI-Adjusted NOI" formula inflates the debt service portion of NOI, even though interest rates have been generally falling over recent years. However, the fact that this year's Mortgage Survey found an increase in interest rates for multi-family stabilized properties may indicate that this trend is reversing.

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14. 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.

15. Data for FY 2000 reflects the number of titles vested during the first 8 months of the fiscal year. FY 1993 vestings figures were revised and may not be the same as those reported in prior years. 2000 marks the fifth year the City implemented its anti-abandonment and modified in rem foreclosure policies that include sales of tax liens.

## **Consideration of Other Factors**

Before determining the guideline, the Board considered other factors affecting the rent stabilized housing stock and the economics of rental housing.

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16. 1991-1993 figures include conversions of commercial structures to residential cooperatives and the rehabilitation of vacant residential structures, while 1994 through 1999 rehabilitation plans are a separate category. The figures given above for eviction and non-eviction plans include those that are abandoned because an insufficient percentage of units were sold within the 15 month deadline. In addition, some of the eviction plans accepted for filing may have subsequently been amended or resubmitted as non-eviction plans and therefore may be reflected in both categories. HPD sponsored plans are a subset of the total plans. For 1996, information on specific types of cooperative / condominium plans filed was unavailable.

**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 2000 Mortgage Survey of lending institutions. Table 4 gives the reported rate and points for the past nine years as reported by the mortgage survey.

**Table 4**

**2000 Mortgage Survey<sup>14</sup>  
Average Interest Rates and Points for  
New and Refinanced Permanent Mortgage Loans 1992-2000**

**New Financing of Permanent Mortgage Loans, Interest Rate and Points**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Avg. Rates	10.1	9.2	8.6	10.1	8.6	8.8	8.5	7.8	8.7
Avg. Points	1.4	1.4	1.2	1.28	1.32	1.34	1.02	1.01	0.99

**Refinancing of Permanent Mortgage Loans, Interest Rate and Points**

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Avg. Rates	10.1	9.2	8.6	10.1	8.5	8.4	8.5	7.2	8.6
Avg. Points	1.4	1.4	1.1	1.25	1.21	1.15	0.99	0.92	1.01

Source: 1992-2000 Annual Mortgage Surveys, RGB.

**CONDITION OF THE RENT STABILIZED HOUSING STOCK**

The Board reviewed the number of buildings being taken by the City through its in rem actions and the number of units that are moving out of the rental market due to cooperative and condominium conversion.

**Table 5**

**Summary Data of In Rem Vestings<sup>15</sup>  
of Occupied Multiple Dwellings, Fiscal Years 1993-2000**

	1993	1994	1995	1996	1997	1998	1999	2000
Titles Vested	211	69	17	2	0	0	0	0
Total Units	(2,455)	(715)	(240)	(49)	(0)	(0)	(0)	(0)

Source: NYC Department of Housing Preservation and Development, Office of Property Management. 1996 marks the first year the City implemented its anti-abandonment and modified *in rem* foreclosure policies that include sales of tax liens.

17. Estimate of percentage increases are based on the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City for the relevant year and adjustments made by the Rent Guidelines Board; detailed explanations are available in the individual Explanatory Statements of the Board.
18. For explanation of the derivation of individual percentage rent increases see the Explanatory Statements of the Board's previous Orders.
19. The rent index for the period 10/1/97-9/30/98 is revised from 5.53% to 3.66% to reflect more recent data from the Recent Mover Survey. The 3.66% increase in rent roll estimated for leases signed during the period 10/1/97-9/30/98 under Order 29 reflects the following: (1) Renewal guidelines are estimated to contribute a 0.568% and 1.199% increase in the rent roll with 28.4% of all units experiencing a one-year lease signing (2%) and 30.0% of all units experiencing two-year lease signings (4%). These figures are derived from the 1996 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These sums were reduced by the turnover rate of 11.6%, derived from the latest full year of the 1996 HVS (118,133 year moved avg. 1995-98) and taken as percentages of all stabilized lease signers (1,014,751); (2) the vacancy allowance of 15.1%, which is the increase in mean monthly rent found in stabilized units after a vacancy in the Recent Mover Survey, from 1997 prior to the Rent Regulation Reform Act (\$767), to 1997-98 after the Act took effect (\$883), is estimated to increase overall rent rolls by 1.761% when multiplied by the average HVS turnover rate (11.6%) for 1993-95, which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 29; (3) the supplemental adjustment of \$15 for units renting at \$400 or less is estimated to contribute a 0.136% increase in rent roll, derived as follows: according to the 1996 HVS, 113,666 units rented for \$378 or less per month. Updating \$378 by the RGB Rent Index for 10/1/96 to 9/30/97 (5.72), results in an average rent of \$400 per month. Only 58.4% (28.4% for 1-year plus 30% for 2-year leases) of all units sign a lease in a given guideline year, therefore, we estimate that approximately 66,381 units would have been affected by the Board's supplemental adjustment. This group represented 6.5% of the occupied rent stabilized universe in 1996 (1,014,751 units), multiplied by the estimated percentage increase in rent roll represented by \$15 a month, 2.1% (\$15/\$719, the mean 1996 HVS stabilized rent of \$680 updated by the RGB Rent Index), for a result of 0.136%.
20. The rent index for the period 10/1/98-9/30/99 is revised from 3.86% to 3.71% to reflect consistent lease terms for all rent index calculations from 1997 to 1999. The 3.71% increase in rent roll estimated for leases signed during the period 10/1/98-9/30/99 under Order 30 reflects the following: (1) Renewal guidelines are estimated to contribute a 0.568% and 1.199% increase in the rent roll with 28.4% of all units experiencing a one-year lease signing (2%) and 30.0% of all units experiencing two-year lease signings (4%). These figures are derived from the 1996 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These sums were reduced by the turnover rate of 11.6%, derived from the latest full year of the 1996 HVS (118,133 year moved avg. 1993-95) and taken as percentages of all stabilized lease signers (1,014,751); (2) the vacancy allowance of 15.1%, which is the increase in mean monthly rent found in stabilized units after a vacancy in the Recent Mover Survey, from 1997 prior to the Rent Regulation Reform Act (\$767), to 1997-98 after the Act took effect (\$883), is estimated to increase overall rent rolls by 1.761% when multiplied by the average HVS turnover rate (11.6%) for 1993-95, which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 30; (3) the supplemental adjustment of \$15 for units renting at \$450 or less is estimated to contribute a 0.182% increase in rent roll, derived as follows: according to the 1996 HVS, 157,187 units rented for \$411 or less per month. Updating \$411 by the RGB Rent Index for 10/1/96 to 9/30/97 (5.72), and for 10/1/97 to 9/30/98 (3.66) results in an average rent of \$450 per month. Only 58.4% (28.4% for 1-year plus 30% for 2-year leases) of all units sign a lease in a given guideline year, therefore, we estimate that approximately 91,797 units would have been affected by the Board's supplemental adjustment. This group represented 9.0% of the occupied rent stabilized universe in 1996 (1,014,751 units), multiplied by the estimated percentage increase in rent roll represented by \$15 a month, 2.0% (\$15/\$745, the mean 1996 HVS stabilized rent of \$680 updated by the RGB Rent Index), for a result of 0.182%.
21. The rent index for the period 10/1/99-9/30/00 is revised from 3.90% to 3.91% to reflect consistent lease terms for all rent index calculations from 1997 to 1999. The 3.91% increase in rent roll estimated for leases signed during the period 10/1/99-9/30/00 under Order 31 reflects the following: (1) Renewal guidelines are estimated to contribute a 0.568% and 1.199% increase in the rent roll with 28.4% of all units experiencing a one-year lease signing (2%) and 30.0% of all units experiencing two-year lease signings (4%). These figures are derived from the 1996 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These sums were reduced by the turnover rate of 11.6%, derived from the average households who moved in the 1996 HVS (118,133 year moved avg. 1993-95) and taken as percentages of all stabilized lease signers (1,014,751); (2) the vacancy allowance of 15.1%, which is the increase in mean monthly rent found in stabilized units after a vacancy in the Recent Mover Survey, from 1997 prior to the Rent Regulation Reform Act (\$767), to 1997-98 after the Act took effect (\$883), is estimated to increase overall rent rolls by 1.761% when multiplied by the average HVS turnover rate (11.6%) for 1993-95, which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 31; (3) the supplemental adjustment of \$15 for units renting at \$500 or less is estimated to contribute a 0.279% increase in rent roll, derived as follows: according to the 1999 HVS, 237,773 units rented for \$500 or less per month. Only 58.4% (28.4% for 1-year plus 30% for 2-year leases) of all units sign a lease in a given guideline year, therefore, we estimate that approximately 138,859 units would have been affected by the Board's supplemental adjustment. This group represented 13.6% of the occupied rent stabilized universe in 1999 (1,020,588 units), multiplied by the estimated percentage increase in rent roll represented by \$15 a month, 2.1% (\$15/\$731, the mean 1999 HVS stabilized rent), for a result of 0.279%; and (4) the rent floor that raises rents at \$215 or less to \$215 is estimated to contribute a 0.105% increase in rent roll, derived as follows: according to the 1999 HVS, 25,866 units rented for \$215 or less per month, adjusted by .584 to 15,106 units. This group represents 1.5% of the occupied stabilized universe in 1999 (1,020,588), multiplied by the estimated percentage increase in rent roll represented by the difference between the monthly rent for these units \$163 and \$215 = \$52, as a percentage of mean average rent (\$731) for a result of 0.105%.
22. The 4.81% increase in rent roll estimated for leases signed during the period 10/1/2000-9/30/01 under Order 32 reflects the following: (1) Renewal guidelines are estimated to contribute a 1.167% and 1.757% increase in the rent roll with 29.2% of all units experiencing a one-year lease signing (4%) and 29.3% of all units experiencing two-year lease signings (6%). These figures are derived from the 1999 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These sums were reduced by the turnover rate of 12.3%, derived from the average households who moved in the 1996 HVS (118,133 year moved avg. 1995-98) and taken as percentages of all stabilized lease signers (1,020,588); (2) the vacancy allowance of 13.0%, which reduces the mean increase found on vacancy in the 1998 Recent Mover Survey (15.1%) downward to reflect the new vacancy allowances of 16% and 20% is estimated to increase overall rent rolls by 1.594% when multiplied by the HVS turnover rate (12.3%), which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 32; (3) the supplemental adjustment of \$15 for units renting at \$500 or less is estimated to contribute a 0.217% increase in rent roll, derived as follows: according to the 1999 HVS, 191,591 units rented for \$481 or less per month. Updating \$481 by the RGB Rent Index for 10/1/99 to 9/30/00 (3.912), results in an average rent of \$500 per month. Only 58.5% of all units sign a renewal lease in a given guideline year, therefore, we estimate that approximately 112,081 units will be affected by the Board's current supplemental adjustment. This group represented 11% of the occupied rent stabilized universe in 1999 (1,020,588 units) multiplied by the estimated percentage increase in rent roll represented by \$15 a month, 2.0% (\$15/\$760, the mean 1999 HVS stabilized rent of \$731 multiplied by the RGB Rent Index for the previous Order, 1.03912), for a result of 0.217%; and (4) the rent floor that raises rents at \$215 or less to \$215 is estimated to contribute a 0.075% increase in rent roll, derived as follows: according to the 1999 HVS, 25,866 units rented for \$215 or less per month, adjusted by .584 to 15,106 units. There should be only 10,760 remaining units. This group represents 1.1% of the occupied stabilized universe in 1999 (1,020,588), multiplied by the estimated percentage increase in rent roll represented by the difference between the monthly rent for these units \$161 and \$215 = \$54, as a percentage of mean average updated rent (\$760) for a result of 0.075%.

**Table 6**

**Number of Cooperative / Condominium Plans<sup>16</sup>  
Accepted for Filing,1991-99**

	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
New Construction	42	32	37	14	17	-	33	69	50
Non-Eviction Plans	27	11	4	10	9	-	4	40	12
Eviction Plans	5	0	2	11	5	-	0	0	27
Rehabilitation				45	56	-	-	48	30
Total	183	130	58	80	87	33	37	157	119
<b>Subtotal:</b>									
<b>HPD Sponsored Plans</b>	<b>109</b>	<b>87</b>	<b>15</b>	<b>48</b>	<b>41</b>	<b>-</b>	<b>-</b>	<b>24</b>	<b>26</b>

Source: New York State Attorney General's Office, Real Estate Financing.

**CONSUMER PRICE INDEX**

The Board reviewed the Consumer Price Index. Table 7 shows the percentage change for the NY-Northeastern NJ Metropolitan area since 1993.

**Table 7**

**Percentage Changes in the Consumer Price Index  
for the New York City - Northeastern New Jersey Metropolitan Area,1993-2000  
(For "All Urban Consumers")**

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
1st Quarter Avg.	3.4%	2.5%	1.9%	3.5%	2.5%	1.3%	1.4%	3.4%
Yearly Avg.	3.0%	2.4%	2.5%	2.9%	2.3%	1.6%	2.0%	-

Source: U.S.Bureau of Labor Statistics.

**CALCULATING OF THE CURRENT OPERATING AND MAINTENANCE EXPENSE TO RENT RATIO**

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

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23. Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research 1992, pages 40-44. Figures in parentheses are adjusted to reflect these findings.
  24. Estimated expense figure includes 1998 I&E expenses updated by 1999 Price Index for the period from 4/1/98 through 3/31/99 (0.03%). Income includes income estimate for 1998 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/98 through 3/31/99 (3.68% - i.e., the 10/1/97 to 9/30/98 rent projection (3.66) times (.583), plus the 10/1/98 to 9/30/99 rent projection (3.71) times (.417)).
  25. Estimated expense figure includes 1999 expense estimate updated by 2000 Price Index for the period from 4/1/99 through 3/31/2000 (7.8%). Income includes income estimate for 1999 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/99 through 3/31/2000 (3.79% - i.e., the 10/1/98 to 9/30/99 rent projection (3.71) times (.583), plus the 10/1/99 to 9/30/2000 rent projection (3.91) times (.417)).
  26. Estimated expense figure includes 2000 expense estimate updated by the staff PIOC projection for the period from 4/1/00 through 3/31/01 (3.8%). Income includes income estimate for 2000 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/00 through 3/31/01 (4.27% - i.e., the 10/1/99 to 9/30/2000 rent projection (3.91) times (.583), plus the 10/1/00 to 9/30/01 rent projection (4.78) times (.417)).

Over the first two decades of rent stabilization, the change in the O&M to rent ratio contained in Table 8 (hereinafter, referred to as "Table 14" - its past designation) was updated each year to reflect the changes in operating costs as measured by the PIOC and changes in rents as measured by staff calculations derived from guideline increases. Over the years, some Board members and other housing experts have challenged the price index methodology and the soundness of the assumptions used in calculating the O&M to rent ratio in "Table 14". Several weaknesses in the table have been acknowledged for some time.

The first problem with "Table 14" is that the calculation does not account for the changes in the housing stock and market factors which have certainly affected the relationship between rents and operating costs to some degree. Next, for the purpose of measuring the relationship between legal regulated rents and operating cost changes, the usefulness of "Table 14" is also limited. The rent index contained in the table does not adjust for administrative rent increases (MCI's and Apartment Improvement increases) and rents charged below established guidelines (preferential).

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning nearly all post-war units. The vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings, which had higher O&M ratios in 1970. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. The rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units' results in a one-sided distortion of the changing relationship between costs and rents.

Staff's research suggests that the PIOC may overstate actual cost increases. While most of this bias occurred in the 1970 - 1982 period, recent comparative evidence from the Income and Expense studies suggests that a gradual overstatement of operating costs may still occur under the PIOC. From 1990-91 to 1997-98, the I&E rose 26% while the adjusted PIOC rose 26.5%, a difference of .5 percentage points. Since this longitudinal analysis covers only an eight-year period, a conclusive statement on this pattern cannot be made at this time. What remains clear, however, is that "Table 14," in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.

**Table 8 (Formerly Table 14)**  
**Calculation of Operating and Maintenance Cost Ratio**  
**For Rent Stabilized Buildings from 1972 to 2001**

<u>Period</u>	<u>Percent O&amp;M<sup>17</sup> Increase</u>	<u>O&amp;M Index</u>	<u>Period</u>	<u>Percent Rent<sup>18</sup> Increase</u>	<u>Rent Index</u>	<u>O&amp;M/Rent Ratio</u>
4/1/70-3/31/71	-	55	7/1/71-6/30/72	-	100	0.55
4/1/71-3/31/72	5.7	58.14	7/1/72-6/30/73	5.4	105.40	0.55
4/1/72-3/31/73	7.9	62.73	7/1/73-6/30/74	5.4	111.09	0.56
4/1/73-3/31/74	15.5	72.45	7/1/74-6/30/75	5.64	117.36	0.62
4/1/74-3/31/75	6.5	77.16	7/1/75-6/30/76	5.62	123.95	0.62
4/1/75-3/31/76	8.8	83.95	7/1/76-6/30/77	5.33	130.56	0.64
4/1/76-3/31/77	6.9	89.74	7/1/77-6/30/78	5.49	137.73	0.65
4/1/77-3/31/78	0.6	90.28	7/1/78-6/30/79	4.23	143.55	0.63
4/1/78-3/31/79	10.4	99.67	7/1/79-6/30/80	7.73	154.65	0.64
4/1/79-3/31/80	17.0	116.61	7/1/80-9/30/81	10.28	170.55	0.68
4/1/80-3/31/81	14.6	133.64	10/1/81-9/30/82	10.11	187.79	0.71
4/1/81-3/31/82	2.8	137.38	10/1/82-9/30/83	3.52	194.40	0.71
4/1/82-3/31/83	2.6	140.95	10/1/83-9/30/84	4.93	203.98	0.69
4/1/83-3/31/84	6.3	149.83	10/1/84-9/30/85	5.82	215.86	0.69
4/1/84-3/31/85	5.4	157.92	10/1/85-9/30/86	6.55	229.99	0.69

4/1/85-3/31/86	6.4	168.03	10/1/86-9/30/87	6.18	244.21	0.69
4/1/86-3/31/87	2.1	171.56	10/1/87-9/30/88	5.87	258.54	0.66
4/1/87-3/31/88	6.4	182.54	10/1/88-9/30/89	6.39	275.06	0.66
4/1/88-3/31/89	6.7	194.77	10/1/89-9/30/90	6.16	292.01	0.67
4/1/89-3/31/90	10.9	216.00	10/1/90-9/30/91	4.15	304.13	0.71
4/1/90-3/31/91	6.0	228.96	10/1/91-9/30/92	3.93	316.08	0.72
4/1/91-3/31/92	4.0	238.12	10/1/92-9/30/93	3.11	325.91	0.73
4/1/92-3/31/93	4.7	249.31	10/1/93-9/30/94	2.93	335.46	0.74
4/1/93-3/31/94	2.0	254.30	10/1/94-9/30/95	2.73	344.62	0.74
4/1/94-3/31/95	0.1	254.55	10/1/95-9/30/96	4.10	358.74	0.71
4/1/95-3/31/96	6.0	269.82	10/1/96-9/30/97	5.72	379.26	0.71
4/1/96-3/31/97	2.4	276.30	10/1/97-9/30/98	3.66 <sup>19</sup>	393.16	0.70
4/1/97-3/31/98	0.1	276.58	10/1/98-9/30/99	3.71 <sup>20</sup>	407.75	0.68
4/1/98-3/31/99	0.03	276.65	10/1/99-9/30/00	3.91 <sup>21</sup>	423.70	0.65
4/1/99-3/31/00	7.8	298.23	10/1/00-9/30/01	4.81 <sup>22</sup>	443.95	0.67

For years the staff has expressed serious reservations about the usefulness and accuracy of "Table 14". With current longitudinal income and expense data staff has constructed a new and far more reliable index, using 1989 as a base year. Except for the most recent year and the coming year, this new index measures changes in building income and operating expenses as reported in annual income and expense statements. The second to last year in the table will reflect actual PIOC increases and projected rent changes. The last year in the table - projecting into the future - will include staff projections for both expenses and rents. The proposed new index is in Table 9.

While we believe this to be a more reliable index, it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Second, while the new table looks at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship. This new table is listed below as Table 9.

**Table 9**

**Revised Calculation of Operating and Maintenance Cost Ratio for  
Rent Stabilized Buildings from 1989 to 2000**

	<u>Average Monthly O &amp; M Per d.u.</u> <sup>23</sup>	<u>Average Monthly Income Per d.u.</u>	<u>Average O &amp; M to Income Ratio</u>
1989	\$370 (\$340)	\$567	.65 (.60)
1990	\$382 (\$351)	\$564	.68 (.62)
1991	\$382 (\$351)	\$559	.68 (.63)
1992	\$395 (\$363)	\$576	.69 (.63)
1993	\$409 (\$376)	\$601	.68 (.63)
1994	\$415 (\$381)	\$628	.66 (.61)
1995	\$425 (\$391)	\$657	.65 (.59)
1996	\$444 (\$408)	\$679	.65 (.60)
1997	\$458 (\$421)	\$724	.63 (.58)
1998	\$459 (\$422)	\$755	.61 (.56)
1999 <sup>24</sup>	\$459 (\$422)	\$782	.59 (.54)
2000 <sup>25</sup>	\$495 (\$455)	\$812	.61 (.56)
2001 <sup>26</sup>	\$514 (\$472)	\$847	.61 (.56)

Source: RGB Income and Expense Studies, 1989-2000, Price Index of Operating Costs 1992 - 2000, RGB rent index for 1992 - 2001 (see table 8).

## CHANGES IN HOUSING AFFORDABILITY

New York City's economy over the past year continued to mirror the strong performance of the nation. The City's improving economy is best exemplified by the growth in the Gross City Product (GCP), which increased by 5.3% in 1999, the highest recorded growth in the decade. The City also saw an increase in the number of jobs by 93,000, including 82,700 in the private sector, and a significant decrease in the unemployment rate. Inflation remained moderate last year, increasing by only 2.0%. However, while many sectors of the NYC economy have benefited, other sectors have not, including apartment-hunters and households at the low end of the wage scale.

Data from the recently released 1999 Housing and Vacancy Survey reflects the duality often found in NYC's economic indicators. While inflation-adjusted New York City renter income increased slightly from 1995 to 1998 (by 1.7%), real stabilized tenant income actually declined over the same period to \$27,000 (-0.5%). Overall housing affordability for stabilized tenants in 1999 showed slight improvement from 1996, with the contract rent-to-income ratio remaining under the 30% affordability level for the median household. However, the percentage of stabilized households paying 50% or more of their income on contract rent in 1996 (26.9%) was virtually the same three years later (26.8%).

The 1999 citywide vacancy rate of 3.19%, the lowest found since 1987, indicates that while owners are experiencing fewer vacancies, fewer apartments are available for tenants. Furthermore, the vacancy rate for stabilized apartments was even lower at 2.46% in 1999. The lack of housing availability in NYC is exacerbated by both increasing population and limited housing growth. The effects of low housing availability and income growth combine to hamper affordability for many stabilized households in NYC.

## BUILDINGS WITH DIFFERENT FUEL AND UTILITY ARRANGEMENTS

The Board was also informed of the circumstances of buildings with different fuel and utility arrangements including buildings that are master metered for electricity and that are heated with gas versus oil, and where heat is not a service provided by the owner but is paid for separately by tenants (see Table 10). Under some of the Board's Orders in the past, separate adjustments have been established for buildings in certain of these categories where there were indications of drastically different changes in costs in comparison to the generally prevailing fuel and utility arrangements. This year the Board made no distinction between guidelines for buildings with different fuel and utility arrangements under Order 32.

**Table 10**

### **Changes in Price Index of Operating Costs for Apartments in Buildings with Various Heating Arrangements, 1999-2000, and Commensurate Rent Adjustment**

Index Type	1999 to 2000 Price Index Change	One-Year Rent Adjustment Commensurate With Adjusted O&M to Income Ratio of .61
All Dwelling Units Individually Metered for Electricity: .....	7.8%.....	4.8%
Pre 1947 .....	8.81.....	5.4
Post 1946.....	7.23.....	4.4
Oil Used for Heating.....	9.09.....	5.5
Gas Used for Heating .....	4.61.....	2.8
Master Metered for Electricity:.....	8.22.....	5.0

Source: RGB's 2000 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.

**ADJUSTMENTS FOR UNITS IN THE CATEGORY OF BUILDINGS COVERED BY ARTICLE 7-C OF THE MULTIPLE DWELLING LAW (LOFTS)**

Section 286 sub-division 7 of the Multiple Dwelling Law states that the Rent Guidelines Board "shall annually establish guidelines for rent adjustments for the category of buildings covered by this article." In addition, the law specifically requires that the Board, "consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline."

In 1986, Abt Associates Inc. conducted an expenditure study of loft owners to construct weights for the Loft Board's index of operating costs and to determine year-to-year price changes. In subsequent years, data from the PIOC for stabilized apartments was used to compute changes in costs and to update the loft expenditure weights. This is the procedure used this year.

The increase in the Loft Index this year was 5.8%, two percentage points less than the increase for apartments. This difference is explained by the fact that fuel costs that grew rapidly are less important for lofts than for apartments, and insurance costs that grew hardly at all are more important for lofts than for apartments.

This year's guidelines for lofts are: 3% for a one-year lease and 5% for a two-year lease.

**Table 11**

**Changes in the Price Index of Operating Costs for Lofts from 1999-2000**

	Loft O & M <u>Price Index Change</u>
All Buildings	5.8%

Source:2000 Price Index of Operating Costs for Rent Stabilized Lofts in New York City.

**SPECIAL GUIDELINES FOR VACANCY DECONTROLLED UNITS ENTERING THE STABILIZED STOCK**

Pursuant to Section 26-513(b) of the New York City Administrative Code, as amended, the Rent Guidelines Board establishes a special guideline in order to aid the State Division of Housing and Community Renewal in determining fair market rents for housing accommodations which enter the stabilization system. This year, the Board set the guidelines at the greater of the following:

- (1) 150% above the Maximum Base Rent paid by the last tenant, plus applicable fuel adjustments or
- (2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

The Board concluded that for units formerly subject to rent control, either an increase to rent levels reflecting the Fair Market Rent guidelines established by the U.S. Department of Housing and Urban Development (HUD), or 150% above the maximum base rent was a desirable minimum increase. Notably, the HUD guidelines differentiate minimum rents on the basis of bedroom count.

**INCREASE FOR UNITS RECEIVING PARTIAL TAX EXEMPTION PURSUANT TO SECTION 421 AND 423 OF THE REAL PROPERTY TAX LAW**

The guideline percentages for 421-A and 423 buildings were set at the same levels as for leases in other categories of stabilized apartments.

This Order does not prohibit the inclusion of the lease provision for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 per cent per annum where the dwelling unit is receiving partial tax exemption pursuant to Section 421-A of the Real Property Tax Law. The cumulative but not compound charge of up to 2.2 per cent per annum as provided by Section 421-A or the rate provided by Section 423 is in addition to the amount permitted by this Order.

**SUPPLEMENTAL GUIDELINES**

In recognition of various information presented to the Board concerning average operating costs for rent stabilized units (see Table 9), the Board included within its Order two supplemental adjustments.

For apartments renting at \$500 or less on September 30th, 2000, a supplemental adjustment of \$15 is allowed. This allowance is added following adjustment authorized for renewal leases under this Order.

For rents that are \$215 or less per month after any allowable increase(s) in this Order are applied, the new lawful rent will be increased to \$215.

**VACANCY ALLOWANCE**

As of June 15, 1997, Vacancy Allowances are now determined by a formula set forth in the Rent Regulation Reform Act of 1997.

**SUBLET ALLOWANCE**

The increase landlords are allowed to charge under Order 32 when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2000 and on or before September 30, 2001 shall be 10%.

**VOTES**

The votes of the Board on the adopted motions pertaining to the provisions of Order 32 were as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
Guidelines for Apartment Renewal Leases	6	3	-
Guideline for Apartment Sublet Allowance	6	2	1
Guideline for Minimum Rent Supplement	5	4	-
Guideline for Lofts	6	3	-

Dated: June 30, 2000  
Filed with the City Clerk: June 30, 2000

Edward S. Hochman, Esq., Chairman  
Rent Guidelines Board

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## **Appendix N2**

### **Hotel Order #30**

**June 23, 2000**

Order Number 30 - Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses. Rent levels to be effective for leases commencing October 1, 2000 through September 30, 2001.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY RENT GUIDELINES BOARD BY THE RENT STABILIZATION LAW OF 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended, implemented by Resolution No. 276 of 1974 of the New York City Council and extended by the Rent Regulation Reform Act of 1997, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Rent Guidelines Board hereby proposes the following levels of fair rent increases over lawful rents charged and paid on September 30, 2000.

#### **APPLICABILITY**

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (Sections 26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c. 576 §4[§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of October 1, 2000, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after October 1, 2000 upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

#### **RENT GUIDELINES FOR HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES**

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C Administrative Code) the Rent Guidelines Board hereby proposes the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2000 shall be:

- |   |    |
|---|----|
| 1) Residential Class A (apartment) hotels - | 2% |
| 2) Lodging houses -                         | 2% |

- |   |    |
|---|----|
| 3) Rooming houses (Class B buildings containing less than 30 units) - | 2% |
| 4) Class B hotels -   | 2% |
| 5) Single Room Occupancy buildings (MDL section 248 SRO's) -          | 2% |

Except that the allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2000 shall be 0% if:

Fewer than 70% 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, at the time that any rent increase in this Order would otherwise be authorized.

Furthermore, the allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2000 shall be 0% on any individual unit if the owner has failed to provide to the new occupant of that unit a copy of the Rights and Duties of Hotel Owners and Tenants, pursuant to Section 2522.5 of the Rent Stabilization Code.

#### NEW TENANCIES

No "vacancy allowance" is permitted under this order. Therefore, the rents charged for tenancies commencing on or after October 1, 2000 and on or before September 30, 2001 may not exceed the levels over rentals charged on September 30, 2000 permitted under the applicable rent adjustment provided above.

#### ADDITIONAL CHARGES

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

#### STATEMENT OF BASIS AND PURPOSE

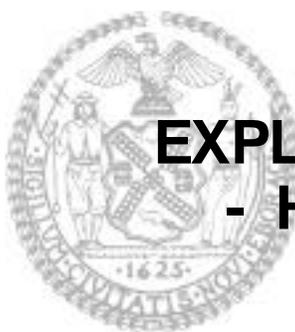
The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4 [§2]).

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Dated: June 25th, 2000  
Edward S. Hochman, Esq., Chairman  
New York City Rent Guidelines Board

## Appendix N3

The New York City Rent Guidelines Board • 51 Chambers Street, Suite 202 • New York, NY 10007

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# EXPLANATORY STATEMENT - HOTEL ORDER # 30 -



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 30, Effective October 1, 2000 through and including September 30, 2001.<sup>1</sup>

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 The Rent Regulation Act of 1997, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 30, adopted on June 22, 2000, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 30 provides for an allowable increase of 2 percent over the lawful rent actually charged and paid on September 30, 2000 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 any or all of the following conditions exist:

- 1) If fewer than 70% 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, at the time that any rent increase in this Order would otherwise be authorized; or
- 2) If the owner has failed to provide to the new occupant of that unit a copy of the Rights and Duties of Hotel Owners and Tenants, pursuant to Section 2522.5 of the Rent Stabilization Code.

<sup>1</sup> 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.

## 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 21 and 28, April 11 and 25, May 2, and June 6, 2000 following public notices. On May 8, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

One public hearing was held on June 15, 2000 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearing was held from 10:00 a.m. to 12:30 p.m. and from 7:00 p.m. to 8:00 p.m. The Board heard testimony from 47 hotel tenants and tenant representatives, 1 hotel owner representative and 10 public officials. In addition, the Board’s office received approximately 31 written statements from owners and owner groups and from tenants and tenant groups. On June 22, 2000, the guidelines set forth in Hotel Order Number 30 were adopted.

### Testimony from owners and owner groups:

- “We (Associated Hotels and Motels of Greater New York) ask you to please consider giving the industry a 9% increase across the board with no restrictions. This would insure the owners that we are interested in keeping as many SRO tenants in their homes as possible...”
- “As you are aware, the rising fuel costs are a very serious issue this year. Everyday owners call and ask me for recommendations regarding this problem. I can only look to you to help them. Some have reported exorbitant raises and an inability to continue operating if they have no relief.”
- “[T]he last order limited the increase to those buildings who had 70% or more occupancy by tenants. This means for this particular sector, there has been no relief in

over ten years. While your position is understood, today I wish to discuss those owners who have had no relief, some fell just short of the 70%, some have had to diversify in order to meet their obligations and provide the services required. Therefore, they were ineligible."

- "Everyone agrees we need SROs. Tenants want to remain in their buildings. Owners wish to stay in business. An increase is necessary."

### Testimony from tenants and tenant groups:

- "Except for rooming houses, where a small increase is arguably warranted, although there is certainly a lot of questions that could be raised about that, the increase for SRO's should still be 0%."
- "Those SRO's electing to derive income from other more lucrative sources, or deliberately warehousing their units, should be permitted no increase. And those that fail to provide the Notice of Rights, as required by law, should be permitted no increase. By awarding an increase with the provisos that deter and punish owners who do not derive their income and profits from permanent tenants, the Board will effect a good balance of the extreme needs of the tenants for this low cost housing available to the last of New York City's low income tenants."
- "Over the last 15 years, SRO rents have risen almost 21% and over 25% for rooming houses. A large increase would be devastating to tenants living on fixed incomes including elderly people, low income wage earners, and public assistance recipients. This Board must take into account the tenants' ability to pay."
- "The vast majority of SRO landlords are making a lot of money, most of it coming from tourist and other non-rent stabilized tenant. There is no economic problem for them (landlords). On the otherhand there is a economic problem for their tenants who are still the poorest of the poor and they can't afford to pay increases. ...Even if you look only at what's happening in the rent stabilized sector of the SRO market you are going to find that incomes have been rising over the last ten years at least at a faster rate than costs."
- "In years past, the Rent Guidelines Board has bolstered the rationale for increases for SROs by putting in place a proviso — a sentry — which routes increases only to landlords who, at least arguably, may need it: those who rent at least 70% of their units to permanent tenants. Reducing that requirement to 50% utterly defeats the point of the sentry and strips any increase this board may grant of any rational basis."

## 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 *2000 Price Index of Operating Costs for Hotel Stabilized Units* in New York City, 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 testimony from invited guest speakers on May 2, 2000. Guest speakers representing hotel tenants included: Elizabeth Kane, Project Director, and Terry Poe, Tenant Organizer, from the West Side SRO Law Project; Peggy Earisman, Managing Attorney, from the East Side SRO Law Project of MFY Legal Services; and Bob Grossman, tenant of the Riverside Tower Hotel. Guest speaker representing hotel landlords was Helen Maurizio, Executive Director, Associated Hotels and Motels of Greater New York.

## 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) Hotels—a multiple dwelling which has amenities such as a front desk, and 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 rose 8.0% this year, slightly more than the increase in the apartment price index. The primary difference between the increase in the hotel index and the apartment index was in the tax component. The increase in taxes for all types of hotels was 7.2% overall (versus 5.2% in apartment buildings), driven mainly by the increase found in assessments for "traditional" Hotels. There was notable diversity among hotel subgroups in tax expense this year, as "traditional" stabilized Hotels experienced an increase in taxes of 10.9%, while Rooming Houses and SRO's had lower tax increases of 5.7% and 4.7% respectively.

While the increase in cost for taxes was higher for stabilized hotels than for apartments, these properties also experienced higher increases for utilities and labor expense. The increase in utility cost for hotels was 7.6%; somewhat larger than the 5.7% increase for apartments. The difference was due primarily to electricity costs in Hotels, which is weighted more heavily in hotels than in apartments. The sharper increase in the tax, labor and utility components caused the price index for all stabilized hotels to rise somewhat faster than the price index for all stabilized apartments.

Among the different categories of hotels, the index for "traditional" Hotels increased 8.8%, SROs by 8.6% and Rooming Houses by 8.1% respectively.<sup>2</sup>

**Table 1**  
**PERCENT CHANGE IN THE COMPONENTS OF THE PRICE INDEX OF OPERATING COSTS**  
 April, 1999 to April, 2000

	<u>Hotels</u>	<u>Rooming Houses</u>	<u>SRO's</u>	<u>All Hotels</u>
Taxes, Fees & Permits	10.86	5.71	4.70	7.15
Labor Costs	3.65	5.37	4.42	3.93
Fuel Costs	42.51	35.76	54.46	43.66
Utilities Costs	7.53	7.35	7.79	7.57
Contractor Services	2.66	3.36	3.35	2.91
Administrative Costs	3.78	3.84	3.81	3.80
Insurance Costs	0.66	0.66	0.66	0.66
Parts & Supplies	1.89	2.11	2.15	1.98
Replacement Costs	1.30	1.18	1.22	1.27
<b>Overall</b>	<b>8.80</b>	<b>8.06</b>	<b>8.60</b>	<b>8.01</b>

Source: 2000 Price Index of Operating Costs for Rent Stabilized Hotels.

(2) This year for the first time, the 'All-Hotels' price index change lies outside the range of the price index changes of the N3-4

individual hotel categories. This seemingly paradoxical outcome results from the fact that, for several years, the 'All-Hotels' tax and utility price relatives were constructed using data which included some buildings whose Multiple Dwelling Law classifications (Hotel, Rooming House, SRO) were not known. As a result, the 'All-Hotels' price index is not an exact weighted average of the Hotel, Rooming House and SRO indices.

## VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 30 was as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
<b>Guidelines for Hotels</b>	5	4	—

Dated: June 30, 2000  
 Filed with the City Clerk: July 1, 2000

Edward S. Hochman  
 Chairman  
 Rent Guidelines Board

## BIBLIOGRAPHY

- The City of New York Rent Stabilization Law of 1969 Section 26 - 501 et, seq.
- Chapter 576 of the Laws of 1974 (The Emergency Tenant Protection Act).
- Resolution Number 276 of 1974 of the New York City Council.
- Chapter 203 of the Laws of 1977.
- Chapter 933 of the Laws of 1977 (Open Meeting Law).
- Local Laws of the City of New York for the year 1979, No. 25.
- Chapter 234 of the Laws of 1980.
- Chapter 383 of the Laws of 1981.
- Local Laws of the City of New York for the Year 1982, No. 18.
- Chapter 403 of the Laws of 1983.
- Chapter 248 of the Laws of 1985.
- Chapter 45 of the New York City Charter.
- Chapter 65 of the Laws of 1987.
- Chapter 144 of the Laws of 1989.
- Chapter 167 of the Laws of 1991.
- Chapter 253 of the Laws of 1993.
- Rent Regulation Reform Act of 1997.
- RGB Staff, "2000 Price Index of Operating Costs for Rent Stabilized Hotels in New York City."
- Written submissions by tenants, tenant organizations, owners, owner organizations and independent consultants.



## Appendix O

### Rent Stabilization Law of 1969

#### § 26-513 Application for adjustment of initial rent

a. The tenant or owner of a housing accommodation made subject to this law by the emergency tenant protection act of nineteen seventy-four<sup>1</sup> may, within sixty days of the local effective date of this section or the commencement of the first tenancy thereafter. Whichever is later, file with the commissioner an application for adjustment of the initial legal regulated rent for such housing accommodation. The commissioner may adjust such initial legal regulated rent upon a finding that the presence of unique or peculiar circumstances materially affecting the initial legal regulated rent has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar housing accommodations.

b. 1. The tenant of a housing accommodation that was regulated pursuant to the city rent and rehabilitation law<sup>2</sup> or this law prior to July first, nineteen hundred seventy-one and that became vacant on or after January first, nineteen hundred seventy-four may file with the commissioner within ninety days after notice has been received pursuant to subdivision d of this section, an application for adjustment of the initial legal regulated rent for such housing accommodation. Such tenant need only allege that such rent is in excess of the fair market rent and shall present such facts which, to the best of his or her information and belief, support such allegation. The rent guidelines board shall promulgate as soon as practicable after the local effective date of the emergency tenant protection act of nineteen seventy-four guidelines for the determination of fair market rents for housing accommodations as to which any application may be made pursuant to this subdivision. In rendering a determination on an application filed pursuant to this subdivision b the commissioner shall be guided by such guidelines and by the rents generally prevailing in the same area for substantially similar housing accommodations. Where the commissioner has determined that the rent charged is in excess of the fair market rent he or she shall, in addition to NY other penalties or remedies permitted by law, order a refund of any excess paid since January first, nineteen hundred seventy-four or the date of the commencement of the tenancy, whichever is later. Such refund shall be made by the landlord in cash or a credit against future rents over a period not in excess of six months.

2. The provisions of paragraph m<sup>ph</sup> one of this subdivision shall not apply to a tenant of a housing accommodation for which the initial legal regulated rent is no greater than the maximum rent that would have been in effect under this law on December thirty-first, nineteen hundred seventy-three, or for the period commencing January first, nineteen hundred seventy-four and ending December thirty-first, nineteen hundred seventy-five as calculated pursuant to the city rent and rehabilitation law (if no such maximum rent has been calculated for a particular unit for the period commencing January first, nineteen hundred seventy-four and ending December thirty-first, nineteen hundred seventy-five, he division of housing and community renewal shall calculate such a rent), as the case may be, if such apartment had not become vacant on or after

January first, nineteen hundred seventy-four, plus the amount of any adjustment which would have been authorized under this law for renewal leases or other rental agreement, whether or not such housing accommodation was subject to this law, for leases or other rental agreement commencing on or after July first, nineteen hundred seventy-four.

c. Upon receipt of any application filed pursuant to this section, the commissioner shall notify the owner or tenant as the case may be and provide a copy to him or her of such application. Such owner or tenant shall be afforded a reasonable opportunity to respond to the application. A hearing may be held upon the request of either party, or the commission may hold a hearing on his or her own motion. The commissioner shall issue a written opinion to both the tenant and the owner upon rendering his or her determination.

d. Within thirty days after the local effective date of the emergency tenant protection act of nineteen seventy-four the owner of housing accommodations as to which an application for adjustment of the initial legal regulated rent may be made pursuant to subdivision b of this section shall give notice in writing by certified mail to the tenant of each such housing accommodation on a form prescribed by the commissioner of the initial legal regulated rent for such housing accommodation and of such tenant's right to file an application for adjustment of the initial legal regulated rent of such housing accommodation.

e. Notwithstanding any contrary provision in this law an application for an adjustment pursuant to this section must be filed within ninety days from the initial registration this subdivision shall not extend any other time limitations imposed by this law.

(L.1985, c. 907, § 1.)

Footnotes

<sup>1</sup> Section 8621 et seq., post.

<sup>2</sup> Section 26-01 et seq., ante.

**Excerpts from J-51 & 421-a regulations**

**J 51 Regulations**

**Section 2.6 Rent Regulatory Requirements**

(1) Rent Regulation Generally Mandatory. In order to be eligible to receive tax benefits under the Act and for at least so long as a building is receiving the benefits of the Act, except for dwelling units which are exempt from such requirement pursuant to paragraph (2) below, all dwelling units in buildings or structures converted, altered or improved shall be subject to rent regulation pursuant to:

- (i) the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code); or
  - (ii) the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code); or
  - (iii) the Private Housing Finance Law; or
  - (iv) any federal law providing for rent supervision or regulation by HUD or any other federal agency; or
  - (v) the Emergency Tenant Protection Act of 1974.
- (2) (i) Exemption from Rent Regulation. Notwithstanding paragraph (1) above, dwelling units in multiple dwellings which are owned as cooperatives or condominiums and which are not regulated pursuant to any of such laws shall not be required to be subject to rent regulation.
- (ii) Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office shall not be required to be registered with DHCR, unless a plan of cooperative or condominium ownership has not been declared effective within fifteen (15) months of the date of the acceptance for filing of the plan of cooperative or condominium ownership with the Attorney General.
- (3) Deregulation of units.
- (i) With respect to a dwelling unit in any building receiving benefits under the Act,
    - (A) such unit shall remain subject to rent regulation until the occurrence of the first vacancy after tax benefits are no longer being

received for the building at which time the unit shall be deregulated, unless the unit is otherwise subject to rent regulation; or

(B) if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefits has included a notice in at least twelve-point type informing such tenant that the unit shall become subject to deregulation upon the expiration of the tax benefits and stating the approximate date on which tax benefits are to expire, such dwelling unit shall be deregulated after tax benefits are no longer being received for the building, unless the unit is otherwise subject to rent regulation.

(ii) Rent regulation shall not be terminated by the waiver or revocation of tax benefits.

(iii) Rent regulation of dwelling units shall not be exempted or terminated other than as set forth in this subdivision (f) as long as benefits are in force.

(4) Permanent residential use. All dwelling units must be leased for permanent residential purposes for a term of not less than one year so long as tax benefits are in effect. Permanent residential use shall not include use as a hotel, dormitory, employee residence or facility, fraternity or sorority house, resort housing or any similar type of non-permanent housing. For purposes of this subdivision (f) a "hotel" shall be any building containing any units registered with DHCR as hotel units or any building not exclusively utilized for permanent residential use. Notwithstanding the foregoing, benefits may be pro-rated by deducting out work attributable to Class B units in a building containing both Class A and Class B units, provided that all units in a building are registered with DHCR as rent stabilized or rent controlled units, and are utilized for permanent residential use. Additionally, in projects receiving substantial governmental assistance, HPD may permit a portion of the units to be utilized on a transient basis for special needs groups.

(5) Escalation clauses in leases. Except for the notice referred to in subparagraph (i)(B) above, no lease for dwelling units which are registered with DHCR shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease, other than permitting an increase in rent pursuant to an order of DHCR or the Rent Guidelines Board.

(6) Partial waiver of rent adjustments attributable to major capital improvements.

(i) As a requirement for claiming or receiving any tax abatement attributable to a major capital improvement, the owner of the property shall file with the Office, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be

received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by DHCR pursuant to the rent stabilization code equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. For example, an owner receiving a total rent adjustment over eighty-four months equal to \$100,000 for a major capital improvement along with tax abatement of \$100,000 for the same improvement would waive collection of \$50,000 during such period. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. The entire amount shall be applied against the first annual rent adjustment, including any retroactive rent adjustments which maybe granted by the applicable DHCR order, unless the amount exceeds such adjustments, in which event the excess shall be carried forward. The calculation of the amount attributable to the waiver shall be against the total rent adjustment for the eighty-four-month period prior to the application of any annual percentage limitation applied by DHCR to defer collection of the total rent adjustment. In calculating rental adjustments pursuant to Rent Guidelines Board orders, the amount of the waived rent shall not be included in the base rent. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by DHCR, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with DHCR. Such declaration shall be binding upon such owner and his or her successors and assigns.

The provisions of subparagraph (i) shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with substantial governmental assistance.

## **421-a Regulations**

### **Section 2.7 Rent Regulatory Requirements**

To be eligible for partial tax exemption the land upon which the eligible project is located must meet the following letting, rental and occupancy requirements:

(1) If a building which, on December 31, 1974, contained more than twenty-five occupied dwelling units administered under the City Rent and Rehabilitation Law, the Rent Stabilization Law of nineteen hundred sixty-nine, or the Emergency Tenant Protection Act of nineteen hundred seventy-four, is displaced, or any unit therein is displaced, the new multiple dwelling will be eligible for partial tax exemption only if a Certificate of Eviction was issued for at least one dwelling unit in the displaced building. If only one unit is displaced as the result of eligible construction, the Certificate of Eviction must pertain to that displaced unit. Notwithstanding the foregoing, the sale, transfer or utilization of air rights over residential buildings which were not demolished shall not be construed as a displacement within the purview of this subdivision (g).

(2) Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the Emergency Tenant Protection Act of 1974, the rents of a unit shall be fully subject to regulation under such local law or such Act, unless exempt under such local law or such act from regulation by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to the Act, or for the period any such applicable local law or such Act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such regulation to the same extent and in the same manner as if this subdivision (g) had never applied thereto, except that for dwelling units in buildings completed, as that term is defined herein, on or after January 1, 1974, such rents shall be deregulated if:

- (i) with respect to dwelling units located in multiple dwellings completed after January 1, 1974 such unit becomes vacant after the expiration of the lease for the unit in effect when such benefit period or applicable law or Act expires, provided, however, such unit shall not be deregulated if the Commissioner of the New York State Division of Housing and Community Renewal or a court of competent jurisdiction finds the unit became vacant because the owner thereof or any person acting on his or her behalf engaged in any course of conduct, including but not limited to, interruption or discontinuance of essential services which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of such unit, and that upon such finding in addition to being subject to any other penalties or remedies permitted by law, the owner of such unit shall be barred from collecting rent for such unit in excess of that charged to the tenant, if the tenant so desires, in which case the rent of such tenant shall

be established as if such tenant had not vacated such unit, or compliance with such other remedy, including, but not limited to, all remedies provided for by the emergency tenant protection act of nineteen seventy-four for rent overcharge or failure to comply with any order of the Commissioner of the New York State Division of Housing and Community Renewal, as shall be determined by said Commissioner to be appropriate; provided, however, that if a tenant fails to accept any such offer of restoration of possession, such unit shall return to rent stabilization at the previously regulated rent.

- ii) with respect to dwelling units located in multiple dwellings with became subject to the rent stabilization provisions of the Act on or after July 1, 1984, the lease for the unit expires after such tax benefit period expires, provided that each lease and renewal thereof for such unit for the tenant entitled to a lease at the time of such deregulation contained a notice in at least twelve (12) point type informing such tenant that the unit shall be subject to deregulation upon the expiration of such benefit period and stated the approximate date on which such benefit period was expected to expire. If each lease and renewal thereof has not contained such notice, a unit covered by such lease shall be subject to subdivision (i) above even though it became subject to the rent stabilization provisions of the Act on or after July 1, 1984. This subdivision (ii) shall not apply to any unit in any multiple dwelling which was subject to the rent stabilization provisions of the Act prior to July 1, 1984, notwithstanding any contrary provision in any lease or renewal thereof.

(3) Notwithstanding paragraph (2) above, dwelling units in multiple dwellings owned as cooperatives or condominiums which are exempt from such provisions of law shall not be required to be subject to the provisions of law set forth in that paragraph (2) during the time period specified therein. Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office, shall not be required to be registered with the New York State Division of Housing and Community Renewal, provided that an affidavit has been filed with the Office stating that the sponsor will register the building and all units as they become occupied, with the New York State Division of Housing and Community Renewal within fifteen months from the date of issuance of a Final Certificate of Eligibility if a cooperative or condominium plan has not been declared effective by that time.

(4) The offering by the owner to all tenants in rental dwelling units in the multiple dwelling, of an initial lease of at least two years; unless the dwelling unit's rent is regulated by local laws, such as §26-401 of the Administrative Code, which do not provide for the offering of leases for fixed terms. This requirement shall not preclude a shorter lease where requested by the tenant, or where a lease of at least two years is specifically prohibited by the terms of a Department of Housing and Urban Development regulatory agreement for an insured subsidized project, or where,

through foreclosure, title to a building eligible for partial tax exemption pursuant to the Act is held subsequently by the Department of Housing and Urban Development.

(5) No lease for dwelling units subject to the Rent Stabilization Law or Emergency Tenant Protection Act which are registered with the New York State Division of Housing and Community Renewal shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease other than permitting an increase in rent pursuant to an order of the New York State Division of Housing and Community Renewal or the Rent Guidelines Board; or an increase of 2.2 percent pursuant to §6-04(b) of this chapter.

**TITLE 4: DETERMINATION OF INITIAL RENT; RENT INCREASES**

**§6-04 Determination of Initial Rent; Rent Increases.**

(a) Determining the initial adjusted monthly rent and the comparative adjusted monthly rent for rental dwelling units. No certification of eligibility shall be issued by the Department until the Department determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling. Except for affordable units, the initial adjusted monthly rent is determined in accordance with the provisions of paragraph (3) below.

(1) The total expenses of the multiple dwelling shall be determined by the Department in order to calculate the initial adjusted monthly rent. Total expenses shall mean the annual total of the following:

(i) An amount for the annual cost of operation and maintenance, as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(ii) An amount for vacancies, contingency reserves and management fees as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(iii) Projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy; plus,

(iv) Fourteen percent of the total project cost, as determined pursuant to §6-05(b)(1)(i) and the Annual Schedule of Reasonable Costs which amount will include debt service; less,

(v) The estimated annual income to be derived from any Floor Area of Commercial, Community Facilities, and Accessory Use Space in the multiple dwelling.

(2) The adjusted monthly rent per room shall be determined by the Department by dividing the total expenses as determined pursuant to paragraph (1) above by twelve (12) and then dividing that amount by the Room Count as defined herein; i.e.,

$$\frac{\text{Total Expenses/}}{12 \times \text{Room Count}} = \text{Adjusted Monthly Rent Per Room}$$

(3) The initial adjusted monthly rent for each dwelling unit shall be determined by the Department by multiplying the adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined herein, of each rental

dwelling unit. Adjustments to the initial adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined herein, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent for any dwelling unit may be allowed by the Department provided that the total of the rentals charged in the multiple dwelling do not exceed the total expenses of such multiple dwelling, as determined pursuant to paragraph (1) above; i.e.,

$$\begin{array}{l} \text{Adjusted Monthly Rent} \\ \text{Per Room X Room Count} \\ \text{Per Dwelling Unit} \end{array} = \begin{array}{l} \text{Initial Adjusted Monthly} \\ \text{Rent for Such Dwelling} \\ \text{Unit} \end{array}$$

**(b) Rent increases.**

The owner of a multiple dwelling receiving partial tax exemption may insert in each lease to be effective during the period of gradual diminution of tax exemption, as defined in §6-06(e) of this chapter, a provision for an annual rent increase over the initial adjusted monthly rental at a rate not to exceed 2.2 percent per annum on the anniversary date of the first lease for the unit provided, however, that no increase shall be permitted pursuant to this subdivision (b) unless specifically provided for in each affected lease, and provided further that no more than one such increase per unit may be charged or collected in each given year regardless of the number of lease renewals or new leases which may pertain to that unit. The initial 2.2 percent escalation and all subsequent escalations shall be based solely on the actual rental amount in effect (regardless of whether the legal regulated rent may be greater) at the commencement of the period during which the increase may be charged and shall not be compounded from year to year but rather shall remain constant based on said rent. In addition, the increase shall be independent of any other escalation authorized by the Rent Guidelines Board and shall not be considered or included when a Rent Guidelines Board increase is effected, making the latter increase effective upon the base rent, excluding the 2.2 percent escalation. The maximum increase permitted by this subdivision (b) is 19.8 percent over the actual rental amount in effect at the commencement of the period during which the increase may be charged. The maximum increase permitted by this subdivision (b) may be charged in each year following the expiration of the tax benefit period, but shall not exceed 19.8 percent, or that amount charged in the last year of the exemption period, and shall not become part of the base rent.

**(c) Annual rent schedule.**

Each year the owner shall make available to the Office a schedule of rents for each unit in the building.

# Report on Rent Stabilized Hotels

## Summary

The data in this study raises some troubling questions about the implementation of rent regulation in the hotel sector. Given the low rate of registration and the possibility that many owners may derive a small percentage of revenue from permanent tenants one might argue that the impact of the regulatory system on this vital housing resource is rapidly diminishing.

As our registration study will show, a very large proportion of hotel buildings and units which should have registered with DHCR have failed to do so. In fact, using a very *conservative* approach, we estimate that 40% of all hotel-type units which should have registered between 1984 and 1989 did not register even once. The non-registration rate for the 1987-1989 period is even higher.

The hotel I&E portion of this study indicates that "apartment" rental income represents less than half of all income for hotel-type buildings as a group. For hotels and SROs the

percentage of income from apartment rental is even less - about one-third. The I&E form includes separate categories for "apartment" rental

income and "other" rental income under the heading "Rental from Tenants." If owners considered the apartment rental income category to include rents from permanent tenants and "other rental income" to refer to transient tenants, the implications of the above findings would be dramatic. However, it must be said that the I&E form is not tailored to the needs of hotel owners. There is enough ambiguity in the form (and how the owners may have approached the form) to make conclusive statements about the exact percentage of income from permanent tenants difficult.

Between 1985 and 1990 nearly a third of hotel buildings became luxury hotels or motels, were converted to co-ops or condominiums, became vacant, or changed use in some other manner. The disappearance of single room occupancy hotel rooms described in USR&E's *Single Room Occupancy in New York City* continues.

Although the

stabilization system does protect a dwindling number of tenants, one might ask at what cost. Landlords who follow the RGB guidelines have received very modest rent increases since 1983. It is obvious that market, institutional and regulatory forces encourage owners to leave the stabilization system. It is not clear, however, if this loss would have occurred differently in the absence of rent regulation.

Finally, it must be pointed out that 25% of the buildings in this study reported O&M to income ratios of more than 100% (vs. 10% in the apartment I&E study). Over one-third of rooming house operators reported O&M to income ratios of over 100%.

# Introduction

## Background

The most recent and comprehensive hotel research dates from the mid-80's. The studies of particular interest to the Board were both undertaken by USR&E: *Single Room Occupancy in New York City* and the *1985 Hotel Expenditure Study*. The primary objective of *Single Room Occupancy* was to estimate the number and type of hotel units in the city; however, a module on owner operating costs and income was also part of the study. The object of the hotel expenditure study was to provide a reliable estimate of average operating costs by expenditure category for the hotel PIOC.

The Hotel Expenditure Study was conducted in the first four months of 1985. The sample frame for the study was the Metropolitan Hotel Industry Association (METHISA) membership list. All of the 647 establishments registered with METHISA were contacted and 134 responded to the survey, including 14 hotels (44% of units), 104 rooming houses (37% of units), and 15 SROs (19% of units). USR&E used the survey responses to devise expenditure weights for the Hotel PIOC. Weights were computed for four categories: Hotels, Rooming Houses, SROs

and "All."

*Single Room Occupancy in New York City* was commissioned by HPD to help the city

devise policies to combat the loss of SROs. One major goal was simply to establish a reasonable estimate of the remaining population of SRO-type units. After a lengthy analysis of the Master Building File and visits by HPD inspectors to buildings likely to contain SRO units, HPD and USR&E determined the number of units which were extant. The percent-age breakdown of these units, excluding the "other" category, was: Hotels (42%), Rooming Houses (42%) and SROs (15%).

In another portion of the SRO study USR&E surveyed the owners of SRO-type buildings; 193 responses to the survey were received. Over 90% of the units represented in the owner survey were hotels or SROs while a mere 10% were rooming houses. However, a majority of BUILDING responses were from rooming houses. Usable financial information was gathered for 66 buildings. Due to the extremely small size of the Hotel and SRO samples (12 and 10 buildings respectively) the information does not appear to be reliable.

Apart from the USR&E studies, only one other major effort has been made in the last 6 years to quantify the remaining population of hotels. In preparation for the 1991 Housing and Vacancy Survey (HVS), HPD

staff prepared a SRO sample frame for use by the U.S. Census Bureau. The sample frame is HPD's best estimate of the remaining universe of SRO-type units. Although the list should not be used to arrive at a numerical estimate of SROs (the HVS will do this) it may give us some idea how the distribution of units within this sector has changed in the past few years. According to HPD the 1990 breakdown (excluding "other" SROs) is as follows: Hotel (33%), Rooming House (50%) and Section 248 SRO (16%).

It is interesting to compare the breakdown of units in the 1985 SRO study and HPD's most recent effort. The total number of units is comparable but rooming houses are a substantially greater proportion of the stock in 1990 (i.e. about 50% of units) while both the number and percentage of hotel units has declined substantially. As we shall see, the decline in the number of hotel units is largely a result of hotel owners converting their buildings to luxury hotels or co-ops/condominiums.

The two hotel studies undertaken in the mid-80's suffer from a common problem - poor survey results. For instance, the Hotel Expenditure Study received only 14 responses from hotels. Yet, due to the way in which the weights for the Hotel PIOC were calculated, these 14 hotels account for MORE THAN HALF of the entire index. Only 22 SROs and hotels

responded to USR&E's owner survey but these buildings contained over 90% of the units on which the per unit net operating income (NOI) figures were based. The I&E portion of the current study, which is based on a carefully chosen sample of properties, will attempt to address the problem of poor financial survey statistics.

Before we delve into the issues, a note on terminology would be useful. The RGB has used the term "hotel guidelines" to cover all hotel-type units covered by the Board's orders, including apartment hotels, SROs and rooming houses. In some years separate rent guidelines have been formulated for the various sub-categories. This paper tries to use the word "hotel-type" as a generic term to refer to all three categories. To make matters a little more confusing, HPD (and the reports commissioned by HPD) most often uses the term "SRO" or "SRO-type units" as a generic term to cover all three types of "hotels" (as defined by the RGB). Hopefully the context will be sufficient to allow the reader to decipher the appropriate meaning of all terms.

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## Issues

In the *1985 Price Index of Operating Costs for Hotel Stabilized Units in New York City* it was noted that

*When buildings are sorted according to the Multiple*

*Dwelling Law classification into three groups (Hotels, Rooming Houses, and SROs), it is apparent that their operating characteristics are quite dissimilar. Accordingly, separate price indexes have been constructed for each class of building.*

Despite the apparent effort by USR&E to emphasize the *variety* of the housing stock in the hotel sector, hotel guidelines in the 80's were shaped largely by conditions in Manhattan hotels and SROs. The guidelines largely reflected testimony of hotel tenants about poor living conditions and a presumption that hotel owners were collecting adequate rents by making units available to transient tenants. Most of the evidence presented to the Board was circumstantial, and very little of it concerned rooming houses, apart from the testimony of a few rooming house operators.

This study is an attempt to gather some quantifiable evidence to supplement the vast amount of anecdotal material the Board has received over the past few years. In particular, there are five main areas of concern:

1. Reliability of the Hotel PIOC;
2. Overall financial condition of hotel-type buildings;
3. Registration issues;
4. Housing conditions;
5. Differences between sectors of the hotel stabilized

stock.

Over the past eight years the hotel PIOC has been overtaken by other considerations in the determination of hotel guidelines. With numerous and pressing research needs and limited resources, examination of the reliability of the hotel PIOC has not been a top research priority. The recent availability of the Finance Department I&E data has made it now possible to evaluate the reliability of the hotel PIOC expenditure weights.

The financial condition of hotel-type buildings is a matter of greater dispute. Although it has been assumed that many hotel owners are renting units on a "transient" basis, the relative importance of income derived from these rentals has been a matter of speculation. In addition, it has never been possible to evaluate the notion that while some owners (e.g. hotel) benefit substantially from transient income others might not (e.g. rooming house operators). This study presents up-to-date information on the O&M to income ratio for the various categories of hotels.

The registration of hotel buildings and units is an issue that is closely tied to the financial condition of owners. Owners who do not register their buildings may be more likely to rent units on a "transient" basis. Some owners may have never registered in order to evade rent regulations entirely. It is possible that others, discouraged

by low rent increases in recent years, no longer register their buildings, recognizing that in the event of enforcement, the only penalty for failing to register is no rent increases.

It has proven impossible to make a direct connection between DHCR's rent registration data and the Finance Department's I&E files. Even so, this data is a good start.

## Registration Study

In the 1985 SRO study (*Single Room Occupancy Housing in New York City, USR&E, 1986*) a serious attempt was made to determine the size of the SRO housing stock. After choosing a sample of buildings which were thought to contain SRO units, HPD inspectors visited each building to determine whether this was the case. Of the original sample of over 1,100 buildings, 794 were determined to contain SRO units.

The purpose of this registration study is to examine these 794 buildings in detail. More specifically, we attempt to answer the following questions:

1. How many of the buildings are part of the stabilized stock and are required to register with DHCR? How many actually did register at least once between 1984 and 1989?
2. What has become of these

buildings since 1985? For instance, how many of the buildings are now vacant or converted to co-ops or condominiums?

3. Has registration been affected by the low rent guidelines of the past several years?

In order to answer the first question, the 1985 list was tailored to exclude buildings which did not contain stabilized units. The 1985 buildings did not include institutional SRO buildings (e.g. college dormitories, nurses residences), luxury hotels, vacant buildings, and residences operated by the city, state or another government entity. However, the list did contain some buildings with less than 6 units. After excluding the 22 buildings with less than 6 units, we were left with 772 buildings containing SRO-type units; these are buildings which should have registered with DHCR (Seven of these buildings had less than six units in our files but also registered with DHCR. We assume that they were required to register.)

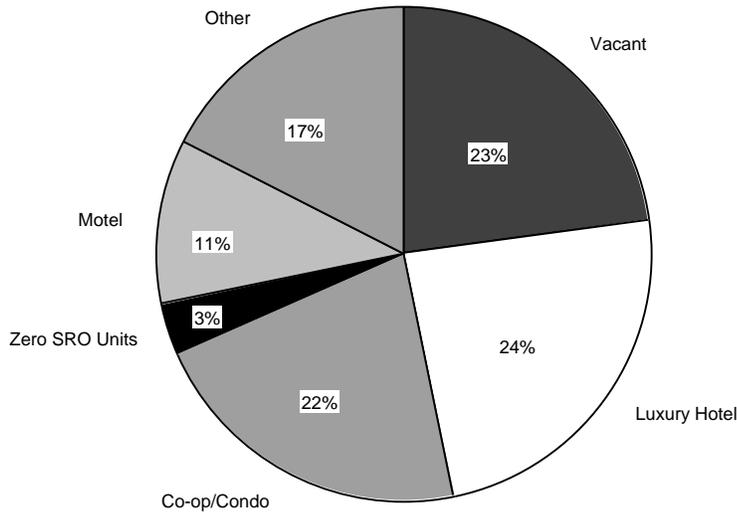
In order to develop a conservative estimate of non-registration which takes into consideration developments in the stock since 1985, two additional adjustments to the data were made. First, it was presumed that all buildings which were in-rem in 1991 (27 buildings) were not required to register in any year. Second, some of the buildings in the 1985 group (of 772) were excluded by HPD from their 1990 list for various reasons. It was assumed that NONE of these buildings were required to register in any year between 1984 and 1989.

Of the 772 buildings from the 1985 SRO study, 92 were excluded from HPD's 1990 sample frame. The reasons for exclusion were diverse and include the following: Vacant, dormitory, luxury hotel, co-op/condo, zero SRO units, motel, miscellaneous other reasons. The chart on page Q-5 shows the breakdown of excluded buildings by the reason for exclusion.

Nearly one-third of the hotel buildings on the 1985 list (60 buildings) were excluded by HPD in 1990. Over half of these buildings were classified as either luxury hotels or as motels in 1990; the next largest group of excluded buildings included co-ops or condos. About one-tenth of the rooming houses and SROs on the 1985 list were excluded; "vacant" and "co-op/condo" were the most frequent explanations.

In excluding buildings from the 1985 sample, HPD did

### Distribution of the 92 Buildings Excluded by HPD on the 1991 HVS List



Source: NYC Department of Housing Preservation and Development.

Note: The category "other" includes buildings that are dormitories, buildings with certain types of informational housing code violations, and buildings rejected in the 1985 SRO Survey.

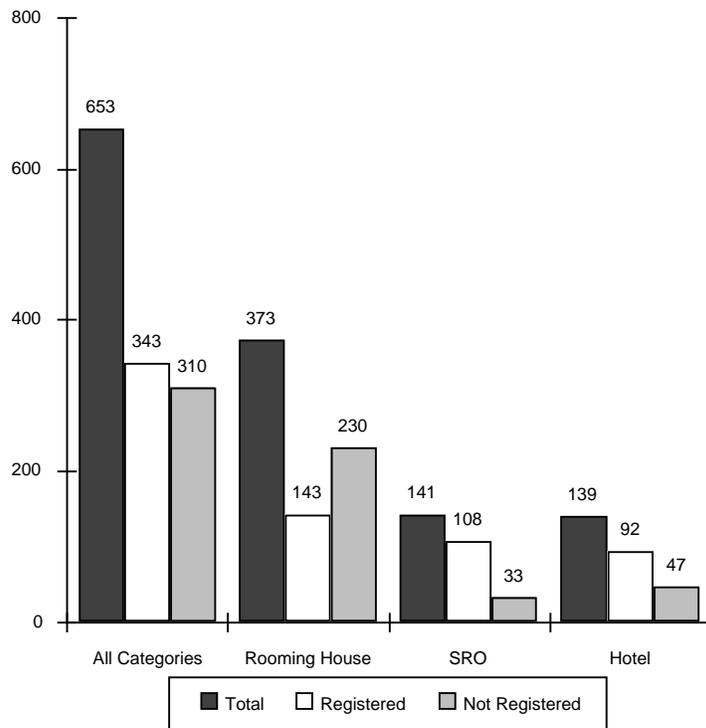
see that 47% of all buildings failed to register, including 34% of hotels, 23% of SROs and fully 62% of rooming houses.

The picture is somewhat different if we look at units registered rather than buildings. Using the conservative approach once again, 59% of rooming house units in our sample are unregistered, 29% of hotel units, and 18% of SRO units. Since the 1985 sample is not representative of the hotel stock as a whole, it has been weighted to arrive at an estimate of the total number of hotel-type units in the city which have not registered since 1984. **It appears that at least 40% of all**

not necessarily determine that the excluded buildings contained NO SRO-type units. HPD's primary aim was to include buildings which were SROs (although the buildings may also contain some type A housing units) and to exclude buildings which were likely to have few or no SROs. It is reasonable to assume, for instance, that some of the co-ops excluded from HPD's SRO sample frame were converted under noneviction plans and still contain SRO-type units.

The assumption that NONE of the buildings excluded by HPD were required to register is a very conservative approach. This will be considered a low bound for non-registration. Using the 653 buildings which remain (original 772 minus 27 in-rem, minus 92 excluded by HPD), we

### Registered and Non-Registered Buildings by Hotel Category



Source: NYS Division of Housing and Community Renewal, 1985 SRO Study, and NYC Department of Housing Preservation and Development.

**(potential) stabilized hotel-type units have not been registered even once since 1984.**

And what of the buildings which have registered? Have they continued to register even though the rent guidelines were extremely low throughout the 80's? The chart on this page shows registration trends for the 1984 to 1989 period.

The peak year for registration was in 1984. During the next three years registration for all types of hotel-type buildings declined steadily, reaching a level of 218 buildings in 1987. During the next two years registration levels improved somewhat. Even so, the non-registration rate for buildings

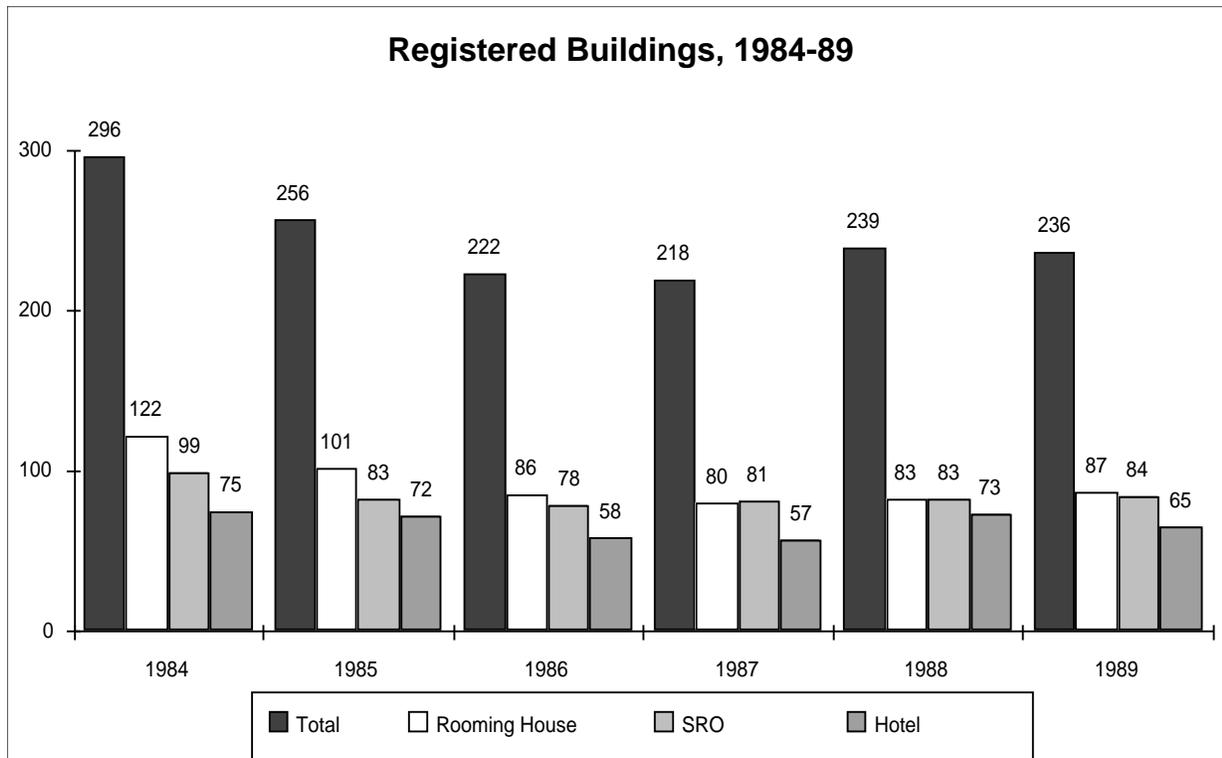
was 64% in 1989 using our most conservative assumptions and over 75% among rooming houses.

The patterns in registration rates do not directly parallel low rent allowances. If low allowances were the sole factor influencing registration rates one might have expected an uninterrupted decline in registration. Instead, registration seems to follow trends in the New York City economy (in an inverse fashion) with declining registration during the prosperous mid-80's and registration improving somewhat as the economy softened.

The correlation between the economy and registration

rates could be entirely coincidental, although it does seem reasonable to assume that enhanced economic opportunities for landlords might lead to lower registration rates. Other factors which may have had a more direct impact on registration include DHCR enforcement efforts, the activities of tenant groups, and tenants' knowledge of the rent registration system.

The data does not, of course, reveal WHY non-registration rates differ for the various classes of buildings, though it does provide some hints. Building size, location, and building type all appear to be important factors in determining whether a building



Source: NYS Division of Housing and Community Renewal, 1985 SRO Study.

will register.

There are enormous differences in building size among the three categories of hotels. While rooming houses contain an average of 13 units per building, hotels have 162 units. SROs are in between with 70 units. Within each of the three groups, buildings which are registered are, on average, larger than those which have not registered. For instance, among Manhattan SROs, registered buildings average 92 units per building while non-registered buildings have only 66 units per building.

Location also seems to be very important. Manhattan is the only borough with a majority of registered buildings. The “close in” boroughs follow with substantially lower registration rates. Amazingly enough, in Queens only 3 of 74 buildings were registered. It seems as if distance from Manhattan is directly correlated with the likelihood of registration.

The RGB also gathered information on tax arrears and housing code violations for the buildings in our sample. Average arrears for rooming houses (1.26 quarters) were double the rate for SROs and hotels (.63 quarters). Rooming houses also had substantially more housing code violations per unit (1.72) than either SROs (.7) or hotels (.26). The average number of violations per building for rooming houses was half that of hotels; however, hotels are on average more than 10 times larger.

The data on arrears and violations was also tabulated for buildings which registered and buildings which did not. Average arrears are not significantly different for the two groups. This may indicate that regulated rents are not a significant factor in the financial stress experienced by some of these buildings.

Violations per unit are higher for **registered** buildings than non-registered buildings in the hotel and rooming house sectors but lower for SROs. The most serious (i.e. “C”) violations follow the same pattern. High registration levels and large

number of violations in certain locations and building types may reflect pressure from local advocacy and enforcement organizations such as the West and East Side SRO Law Projects. The higher violation count may relate to a greater frequency of inspections in closely monitored buildings, brought on by such organizations. Without more specific information, however, this data is largely inconclusive.

## *I&E Study*

### *Sample Frame*

A comprehensive sample frame for the hotel income and expense study was not readily available, therefore staff was faced with the necessity of developing one. To compile a comprehensive sample frame of stabilized hotels, RGB used USR&E's list from the 1985 SRO Study and a listing developed by HPD for the 1991 Housing and Vacancy Survey (HVS). The original sample of hotels chosen by HPD in 1985 consisted of 1138 buildings. In the 1985 survey HPD inspectors determined that 794 buildings contained hotel units. These 794 buildings provided the initial basis for the sample frame.

To prepare the sample frame for the I&E study the 794 buildings from the 1985 list were matched with the updated list for the 1991 HVS. Staff found that 785 buildings matched with the 1991 list. All but one of the nine excluded buildings were in Staten Island.

This matched list was the starting point for staff to work toward a “cleaner” sample frame by excluding certain types of buildings. Based on additional information in the 1991 list, some of the reasons for excluding additional buildings were: vacant, dormitory, luxury hotel, co-op/condo & non-residential, building used for

specialized social services, multiple dwelling converted to a private dwelling without a properly authorized certificate of occupancy, dwellings not inspected since 1970.

RGB staff excluded 125 buildings which were in one of the above specified categories. Most of the excluded buildings fell in the co-op/condo category (30 buildings), followed by vacant buildings (27 buildings) and luxury hotels (25 buildings). Twenty out of the 27 vacant buildings were in Manhattan. There existed a similar relationship in the co-op/condo category. However, 48% of the luxury hotels were in Queens (12 out of 25 buildings). RGB staff excluded an additional 200 buildings because the number of units was less than 11. A total of 325 buildings, containing 10,859 units, were excluded.

After these adjustments, the resulting sample frame included 460 buildings with a total of 36,254 units. These buildings were determined to have stabilized hotel units in 1985 and 1991. Also, the list consisted only of hotel buildings required to file I&E forms with the Finance Department.

### *Sample Size and Selection*

The characteristics of the stabilized stock of hotels and staff's sample frame dictated the specification of the categories and the distribution of sample

units among them. At the outset, the sample size was set at 250. The first step in drawing the sample was to make sure it reflected the Hotel Section of the Rent Stabilization Law.

Therefore, staff divided the sample frame into three distinct categories: Hotels, rooming houses and single room occupancy (SRO) buildings.

The next step was to distribute the sample size of 250 buildings among the 3 categories. The allocation reflects the importance of each building type in the sample frame. The number of sample buildings desired within each category were as follows:

Hotels	67
SROs	68
Rooming Houses	115
Total	250

No information pertaining to the buildings' assessed value was readily available. Thus, staff did not know what proportion of buildings in the list would meet the basic criterion of an assessed value of at least \$40,000. Also, due to the likelihood that some I&E forms might be incomplete, or the possibility that some landlords did not file their I&E statements, RGB wanted to give Finance as many buildings as possible in order to obtain data for the target sample size of 250. Since the sample frame was somewhat small (containing only 460 buildings), the entire list was randomized and sent to Finance.

### *Data Collection and Summary Statistics*

The major changes made in the I&E study of stabilized apartments have been incorporated into the hotel study. Briefly recapitulating these changes, staff requested that Finance exclude buildings with short accounting periods and with no rental income. In addition, assessors examined the miscellaneous category. Also, the assessors reclassified miscellaneous expenses if the owner provided enough information for them to do so. The Finance Department produced additional summary output for buildings without commercial space, and for those buildings with an O&M to income ratio greater than or equal to 100%.

Due to time constraints there was not any replacement if Finance did not find I&E forms for all 250 buildings. In fact, Finance could only locate and provided summary statistics for the following:

Hotels	66
SROs	67
Rooming Houses	45
Total	178

Finance staff provided the RGB with summary data on the number of buildings for which I&E forms could not be located. The large shortfall in the number of rooming houses was

due mainly to the fact that over 60% of those buildings did not meet the minimum assessed value of \$40,000.

There is no detailed data for stabilized hotels in the triennial HVS. The most comprehensive study, to date, is the 1985 SRO Study. However, the list prepared for the 1991 HVS also includes estimates of the weights for the three types of hotel units. Staff decided that the best alternative was to use both the 1985 and 1991 weights in order to estimate a range of values for citywide rents and expenses. The weight assigned to each category was equivalent to the citywide share of all stabilized hotel units in that cell.

After aggregating the raw data with both sets of weights, there was not any major difference between the two figures. The difference was \$4 for overall O&M costs. Therefore, only the estimates using the 1985 weights are discussed in this report.

The data is taken from the I&E forms filed with the Finance Department by September 1990. Most owners do file statements for calendar year 1989, but there may be some who reported income and expenses for later fiscal years. As a result, the average O&M expenses and income are for Fall 1989.

### Operating & Maintenance Costs

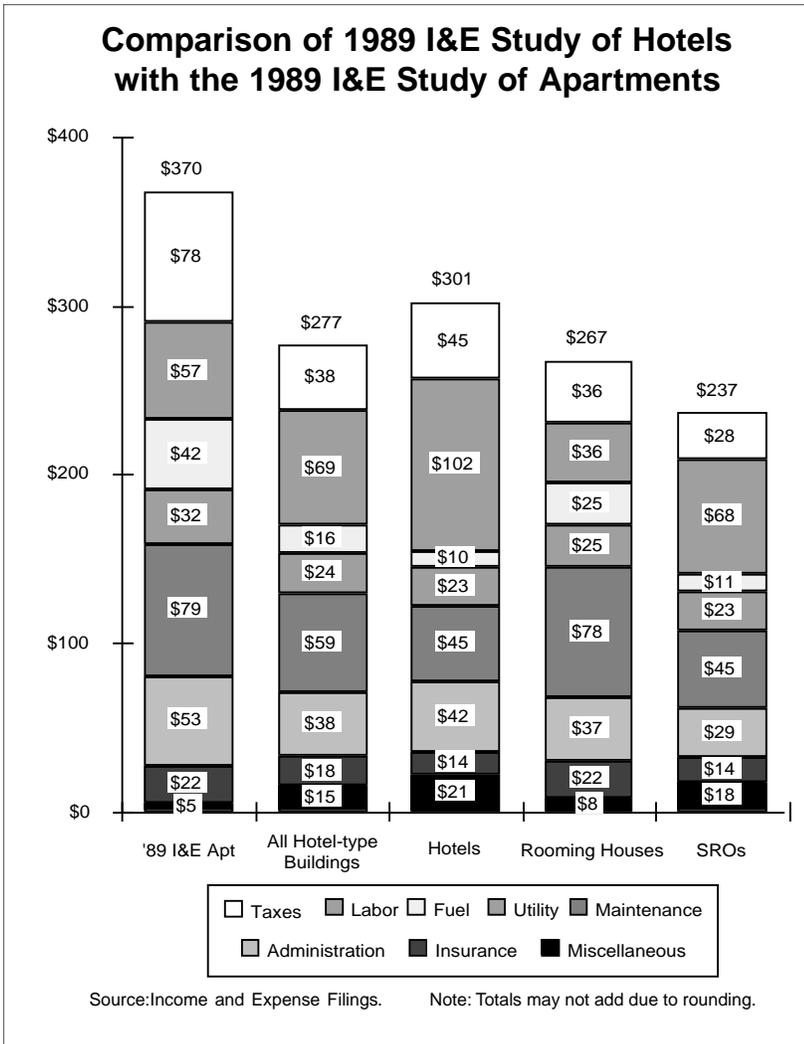
The chart shows average

O&M expenses for all stabilized hotel units, and for each of the three hotel groups: rooming houses, SROs, and hotels. In addition, we included the figures from the '89 I&E Study for the apartments. These figures have been included in order to allow for some comparisons between the two studies.

Average monthly O&M costs are estimated to be \$277 for all hotel type units. The average for rooming houses and SROs are lower than the average, \$267 and \$237 respectively. The average monthly expenses for

hotels is much higher at \$301 per month. Labor and maintenance account for most of the difference in overall cost levels between the three groups.

The most obvious and striking difference is the wide difference in estimated labor costs. Hotels' labor costs averaged \$102 per month, followed by \$68 per month for SROs, and rooming houses averaged only \$36 per month for labor expenses. It is also interesting to note that there is a wide gap in maintenance expenses. In rooming house



units these expenses are 32% higher than the overall average maintenance costs for all stabilized hotel units, \$78 versus \$59. In fact, the \$78 seems surprisingly high and raises some concern about the accuracy of this figure. In most of the other components, the average costs for rooming houses are about equal to or lower than the overall average.

Although overall O&M is substantially different for hotels and SROs, many of the component costs are in fact remarkably similar. For instance, average expenses for utilities, maintenance, and insurance are the same; fuel expenses only differ by \$1. The major differences can be attributed to labor costs and taxes and to a lesser extent administration.

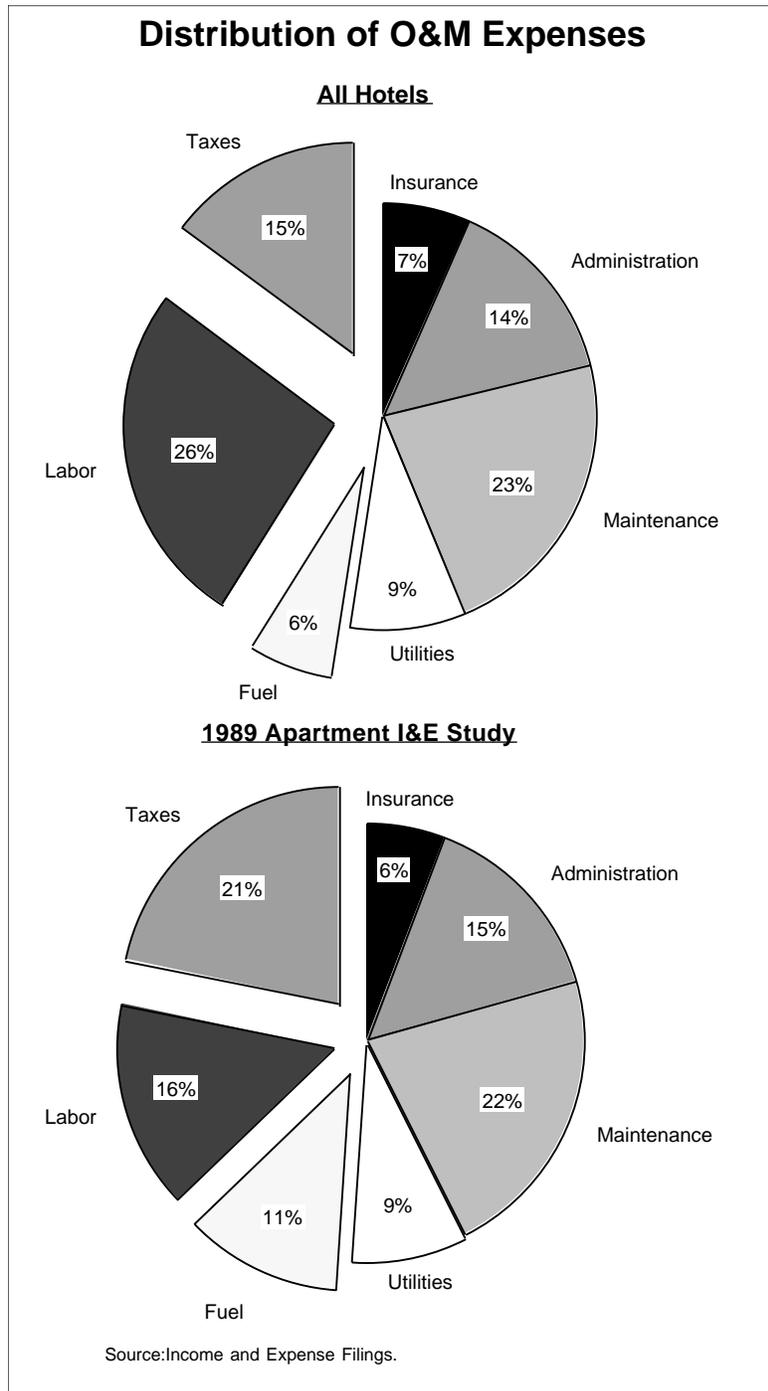
The best explanation for the huge difference in labor costs between hotels and rooming houses is in building size. A rooming house can not have more than 29 units whereas hotels have a minimum of 30 units. Hence, due to labor expenses such as front desk clerks, maid services and superintendents, labor costs would tend to be higher for hotels.

Overall expenses for apartments is \$370, or \$93 higher than O&M costs for all stabilized hotel units. In terms of overall cost levels, taxes, fuel, and maintenance account for most of the difference. One would, in fact, expect all three of these categories to be

substantially higher for apartments than for hotel units since hotel rooms are much smaller than apartments and often lack amenities such as kitchen facilities or even bathrooms. This difference is

quite apparent in hotel fuel costs which are only 38% of the apartment average.

Although overall cost levels vary, the weight of most components, with the exception of the three just discussed, is



quite similar for hotels and apartments. Insurance, administration, maintenance, and utilities have the same weights for both types of units. Taxes and labor do show a wide difference. In the apartment study taxes accounted for 21% of costs and 14% for hotel units. Also, labor's weight in the overall costs for all hotel units is 25% and 15% for apartments.

### O&M Costs for Buildings Without Commercial Space

Average expenses for residential buildings is \$253.

This is approximately 9% lower than the average for all buildings. This difference between the two figures can be attributed to the small percentage of buildings with commercial units. About 16% of the buildings had commercial units. Most of the commercial units are located in SRO buildings which play a relatively small role in the computation of overall average O&M costs. Based on data from the 1985 SRO Study, SRO units accounted for only 15% of all hotel units.

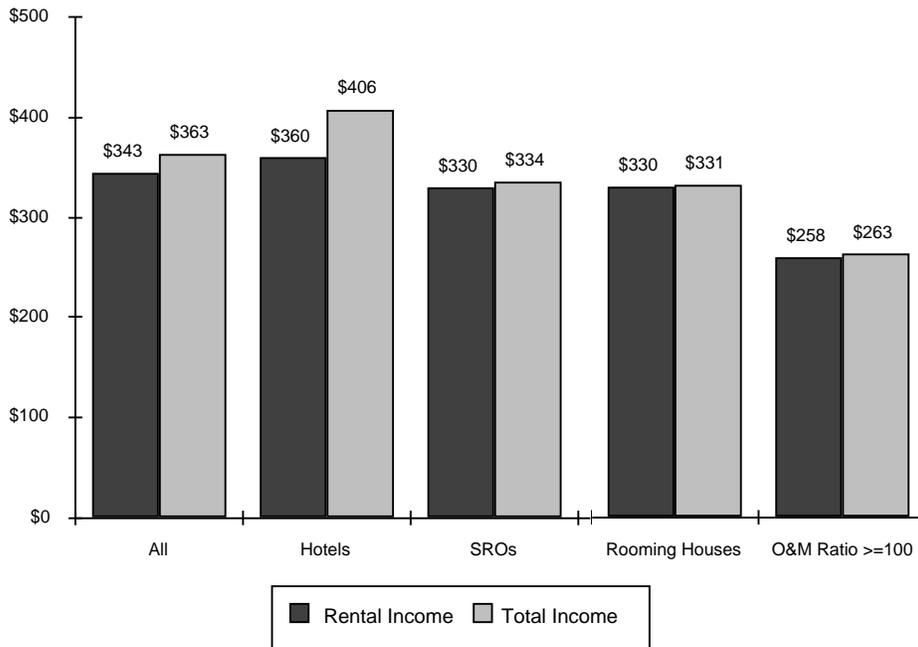
One would expect buildings with commercial units to have higher expenses. However, this is not the case for each of the hotel groups. The difference between O&M costs for

all buildings versus all residential buildings is somewhat inconsistent and unusual. For hotels and SROs, overall expenses for residential buildings are higher than those for all buildings.

### Income

The definitions of rent and income remain unchanged from the I&E study of apartments. Rent is defined as payments collected from tenants plus governmental rent subsidies

**Average Rental Income and Total Income per Dwelling Unit by Hotel Category**



Source: Income and Expense Filings.

(i.e., SCRIE and Section 8). Rental income is defined as apartment rent plus rent from offices, retail space, garage/parking, and industrial space. Total income is apartment rent plus commercial rent plus other sources of revenue such as the sale of utilities and laundry services.

In the schedule of income and expenses, no specific instructions were provided for hotel owners. In particular, the income section did not specify if the definition of "apartments" included hotel-type units, which are technically individual rooms. Therefore, the decision as to where to include rent from rooms becomes crucially important.

According to Finance Department staff, on many of the forms a substantial amount of income was reported on the line "other" rental income. It is uncertain exactly how much of this income is from transient tenants and whether landlords reported rent from permanent tenants on this line.

Unfortunately, since RGB does not have access to the raw data, we can not state what proportion of forms listed rent from rooms as "apartment" rental income, nor can we report if major reallocations should or would have been done. However, staff will attempt to obtain additional information from Finance to clarify this matter.

## O&M Ratio

The overall O&M to gross income ratio for all stabilized hotel units is .76. For SROs and hotels the ratio is lower, .71 and .74 respectively, while the rooming house O&M ratio (.81) is higher. The O&M to gross income ratio for all residential units is also .76.

These O&M to income ratios are substantially higher than those found in the apartment sector (e.g. the .65 for all stabilized apartments). The higher O&M to income ratio for hotels could reflect either lower debt levels or lower profit margins. Anecdotal evidence and the 1985 SRO survey suggest that many hotel-type buildings have long term owners who may have little mortgage debt.

The overall O&M to income ratio (.76) is comparable to the O&M to rent ratio in Table 2 of the Board's Explanatory Statement for hotels (.74). The latter ratio was originally developed by USR&E in 1985 and has been updated each year since then. The similarity between the two figures appears to be largely a matter of coincidence, however, since none of the individual hotel sectors are similar. For instance, the O&M to income ratio for SROs in this study is .71 while the figure in the explanatory statement is .57.

A strong case could be made to replace the (updated) 1985 O&M ratios with those developed in this study. As

pointed out in the introduction, the 1985 study is based on a very small sample of buildings. In addition, the current data is fresher and makes no artificial distinction between rents and income. Of course, the weakness in the current data is the absence of rooming houses with fewer than 11 units or with assessed values of less than \$40,000. Nonetheless, this study includes far more hotel stabilized properties than the 1985 study.

## O&M to Income Ratio Over 100%

In the recent apartment I&E study we found that about 10% of the buildings in the sample had an O&M to income ratio of 100% or more. In the current study 25% of the hotel-type buildings reported a ratio of 100% or more including 16% of SROs, 26% of hotels and 36% of rooming houses.

Among the high ratio buildings income per unit was substantially below average (\$263 vs. \$363 for all hotels) while expenses were well above average (\$363 vs. \$277). It should be noted that labor costs in these buildings are extremely high - \$123 vs. \$69 for the sample as a whole. In fact, labor costs account for two-thirds of the difference in the average O&M figures. The remainder of the difference is spread among many of the components:

# TRANSIENT RENTALS IN SRO-TYPE BUILDINGS

## Summary

The purpose of this study is to determine the proportion of rent hotel owners derive from “transient” tenants. In this paper we compare data derived from Department of Finance I&E statements with DHCR rent rolls. For buildings which are registered with DHCR, it appears that hotel owners derive a considerable proportion of their revenue (40% or more) from transient rentals. Registered rooming houses and SROs, on the other hand, seem to have little or no transient income.

[Editor's Note: One of the major issues the Rent Guidelines Board has debated over the past several years is "transient income" in hotels. Tenant advocacy groups have argued that owners benefit greatly by short term rentals not subject to stabilization regulations. Hence, no rent increases for stabilized tenants are necessary. Owner groups contend that such a policy merely punishes the "good" owners who rent to long-term stabilized tenants (i.e. not to transients). This study contains the only concrete evidence presented to the Board regarding the extent of transient rentals.]

## Background

Last year's research consisted of two hotel studies. In the first of these, the so-called “Registration Study,” staff attempted to estimate the number of SRO-type buildings which should have registered with DHCR from 1984 to 1989,

and the percentage of buildings and units which actually did register. Using very conservative assumptions, it was estimated that almost half of all buildings and 40% of all units were not registered even once during the period. Based on this analysis we concluded that

“The data ... raises some troubling questions about the implementation of rent regulation in the hotel sector. Given the low rate of registration and the possibility that many owners may derive a small percentage of revenue from permanent tenants one might argue that the impact of the regulatory system on this vital housing resource is rapidly diminishing.”<sup>1</sup>

The second hotel study analyzed income and expenses in hotel buildings using the Finance Department's Local Law 63 filings. Although this study did allow us to compute averages for O&M expense, income, and the O&M to income ratio, it proved to be impossible to estimate how much income landlords derived from “transient” (i.e. non-stabilized) tenants.

In April the RGB gained access to DHCR's “on-line” rent registration records, thereby making it possible to compare the total amount of income reported by landlords to the Department of Finance with the aggregate amount of rent registered with DHCR. The difference between these two figures can be considered a rough estimate of income derived from non-registered units, some of which may be rented on a “transient” basis.<sup>2</sup>

<sup>1</sup> *Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research*, 1991, p.74.

<sup>2</sup> “Rental income” reported to the Department of Finance includes rent from all “apartment units” (SRO-type or regular) as well as rent from commercial units (e.g. stores, parking). It is a measure of rent collected rather than rent charged. Registered DHCR rents, on the other hand, are rents charged and account for vacancy losses (in our study) but they do not account for collection losses. If commercial rent constitutes 10% of total income (as in the apartment I&E study) and collection losses average 10%, these factors would more or less cancel out, making the two sources of data roughly comparable.

The income and expense study included data from 178 buildings, including 66 hotels, 67 SROs, and 45 Rooming Houses. After a comprehensive search of the DHCR registration records, we found that only 107 of these buildings registered between 1988 and 1991.<sup>3</sup> In short, 40% of the buildings were unregistered compared to 47% in the previously mentioned registration study. Registration rates ranged from 67% of SROs, to 58% of rooming houses, and 55% of hotels.

Addresses for the 107 registered buildings were transmitted to the Finance Department. Finance staff then “matched” these buildings with last year’s computer file to produce income and expense data for the registered buildings. RGB staff undertook the task of manually entering the DHCR data (comprising 107 rent rolls and about 7700 units) into spreadsheets and deriving estimates of rent.

<sup>3</sup> Last year’s I&E study was largely comprised of income and expense filings for calendar 1989. The most directly comparable DHCR rent information is from April 1989.

## Findings

The table below shows the characteristics of the buildings in our study. In order to allow direct comparisons between the amount of rent reported to DHCR and the amount of income reported to the Department of Finance, buildings with commercial units have been eliminated. This allows us to compare income reported to Finance (nearly all of which presumably comes from residential unit rents) with rents registered with DHCR.

Although all of these owners registered their buildings with DHCR, the percentage of units which were registered varies considerably.<sup>4</sup> In the rooming house and SRO sectors it appears that 95% and 88% of the units (respectively) were registered.<sup>5</sup> In the hotel sector, on the other hand only 57% of units were registered.

The table also indicates the percentage of registered units which are labelled “stabilized” in the DHCR files. Between 87% and 91% of all the units are registered as “stabilized” units. The other two categories are “exempt” (indicating that the unit is either temporarily or permanently exempt from rent stabilization) and “vacant.” Very few units are registered “exempt.” The vast majority of

<sup>4</sup> This percentage is the sum of all units registered with DHCR (whether “stabilized,” “exempt” or “vacant”) divided by the number of units reported on the Finance Department income and expense form. It should be kept in mind that ALL of these figures were reported by owners to the respective government departments.

<sup>5</sup> Some of the units are certainly owner-occupied and not required to register. As a result, the percentage of units which should have been registered and were actually registered is slightly higher than indicated by the table.

### Buildings Registered with DHCR Which Also Filed I&E Forms

	<u>% Units Registered</u>	<u>% Registered Units registered “Stabilized”</u>	<u>% Income from Registered units*</u>
Rooming Houses .....	95%	87%	112%
SROs .....	88%	91%	104%
Hotels.....	57%	88%	60%

\* Defined as registered rent divided by rents reported to the Department of Finance.  
Source: NYS Division of Housing and Community Renewal, NYC Department of Finance.

the registered units not registered as “stabilized” are in the “vacant” category. Vacant units account for about 10% of all registered units.

The fact that few units are registered as exempt does NOT mean that transient occupancy is a rare phenomenon. As we noted previously, 40% of the buildings in the I&E sample did not register at all and a large percentage of hotel units are unregistered. Some portion of these may be rented on a transient basis. In addition, according to testimony heard by the board this year some landlords also rent out units registered as “stabilized” on a transient basis.

The last column of the table is the amount of registered rent divided by the amount of income reported to the Department of Finance.<sup>6</sup> In the rooming house sector this figure is 112% - in other words, DHCR rents actually exceed income reported to Finance. Part of the difference between the DHCR and Finance figures is due to collection losses. If collection losses of 10% are included, the figure would approximate 100%. It is conceivable that some of the rent paid by tenants to small landlords is in cash and that not all is reported. Note from the table that the characteristics of SROs are similar to rooming houses.

Hotels derive approximately 60% of their income from registered units.<sup>7</sup> Since we have excluded buildings with commercial units from our sample, the remaining 40% of the income must be derived from the unregistered units (43% of all hotel units), some portion of which may be rented on a transient basis. **It seems clear that hotels have a very different income structure from rooming houses and SROs. The figures**

**cited here suggest that transient income is probably an important factor in the hotel industry.** Rooming houses, on the other hand, may derive little if any income from transient tenants. SROs are between the two extremes but appear to be more akin to rooming houses than hotels.

One final aspect of these figures is worth noting. The average monthly rent for non-registered hotel units is \$351, or less than the average for registered stabilized units (\$455). Since one might expect unregistered units to rent for more than the registered units, the only plausible explanation is that a large number of units are unoccupied - either through deliberate warehousing or because of inability to rent them to transients. ○

<sup>6</sup> DHCR rents are annualized to arrive at a figure comparable to the Department of Finance figures. Included in the DHCR figure are all unit rents classified as “stabilized” or “exempt” but NOT those classified as “vacant.” By excluding the vacant units we assume that this “snapshot” of the vacancy rate would hold true for the entire year.

<sup>7</sup> The figure may be somewhat less since collection losses are not considered.

## Appendix R

### What to Do With the Price Index?

Anthony Blackburn

#### Brief History of the Price Index of Operating Costs

The Price Index of Operating Costs (PIOC) was constructed for the first time in 1970 by the Bureau of Labor Statistics (BLS), U.S. Department of Labor, under contract to the City of New York. The first BLS PIOC report provided estimates of price index change for the 3 years 1967-1970.<sup>1</sup> The BLS continued to provide annual PIOC reports through 1981, at which time reductions in force mandated by the Reagan administration compelled BLS to decline further PIOC responsibilities. From 1982-1991, RGB contracted with private consulting firms to prepare the annual PIOC. Annual PIOC reports from 1992 onwards have been prepared by RGB staff with modest levels of outside consulting assistance.

The PIOC is a "base-weighted index of the prices of various cost components".<sup>2</sup> "Base-weighted" in this context means that the quantities of goods and services used in the base year operation of apartment buildings are assumed to remain unchanged over time.

The relative importance of each component of the index, as measured by the expenditure weights, changes over time as some prices grow faster than others. Thus, the expenditure weights are updated annually, but the implicit base year quantities (i.e. gallons of fuel oil per unit per annum) remain fixed. The expenditure weights are combined with the changing prices of goods and services purchased by landlords to arrive at an estimate of changes in operating costs over time. As BLS pointed out in its first PIOC report, "The index is a price index and not a cost index. To the degree that the base-period market basket becomes unrepresentative because landlords choose to purchase more or fewer units of the same item, the index would to some extent lose its appropriateness as a measure of changing cost."<sup>3</sup>

The usefulness of the PIOC to RGB is, however, based solely on its presumed accuracy in measuring changes in operating costs over time. For this reason, the RGB has been periodically concerned to make sure that the base-year market basket is indeed representative of the current pattern of landlords' expenditures.

In 1974, BLS re-surveyed a subsample of its 1970 landlords at RGB's request and concluded that the expenditure weights had remained reliable, and a full-scale expenditure

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1. The decision to commission a specific price index for apartment buildings evidently reflected a concern for insuring the high quality of information used by RGB. The CPI, which is a poor indicator of changes in rental operating costs, was used extensively in other communities as a basis for rent adjustments. (See Monica Lett, *Rent Control: Concepts, Realities, and Mechanisms*. Center for Urban Policy Research, 1976.)

2. *A Price Index of Operating Costs for Uncontrolled Apartment Houses in New York City*, U.S. Department of Labor, Bureau of Labor Statistics, Middle Atlantic Office, Regional Report No. 17. February 1971, p. 4.

3. Op.Cit., p.4

4. 1981 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, U.S. Department of Labor, Bureau of Labor Statistics, p. 87.

survey to update the weights was not warranted at that time.<sup>4</sup> In 1980, during a three-year period of extraordinary increases in the price of heating oils, the RGB itself made an ad hoc reduction of 10% in the fuel expenditure weight to incorporate the estimated effects of landlords' fuel conservation efforts. In 1980, BLS again re-surveyed a subsample of its 1970 landlords, and this time concluded that there was a need to revise the expenditure weights, particularly with respect to utilities and fuel.

In 1983, RGB commissioned its PIOC contractor to perform a new survey of rent stabilized landlords' 1982 expenditure patterns. The updated weights, which were first used in construction of the 1982-1983 PIOC, confirmed the BLS suspicion that the major differences between the 1969 and 1982 market baskets were in the fuel and utilities components.<sup>5</sup> It was also apparent from the 1982 updated fuel weight that RGB's 1980 10% reduction in the fuel weight had substantially underestimated the effect of conservation.

Seventeen years have now elapsed since the PIOC weights were last updated. The passage of time does not by itself mean that the expenditure weights are no longer accurate, particularly if relative prices have been fairly stable and the underlying technology of apartment building operations is essentially unchanged. However, the fact that so many years have passed since the last update does at least raise the possibility that the PIOC may no longer provide an accurate measure of change in apartment operating costs.

The accuracy of the PIOC in the future will depend on whether the items priced, and the weights attached to those prices (the market basket), are representative of landlords' actual expenditure patterns. A market basket must specify the relative importance of the major components and sub-components of landlords' expenditures in the new base year, based on data on landlord expenditures. Within these major components and sub-components, a list of items representative of goods and services purchased by landlords, together with precise specifications of each item and an attached "item weight" is then developed, and the new market basket is complete. It should be noted that the items included in the index are a representative sample of goods and services purchased by landlords, not an exhaustive list.

### **Sources of Change in Expenditure Weights**

In a world in which technology, regulation, and relative prices were unchanging over time, there would be no reason for landlords to adjust their expenditure patterns. This is not the world we live in, however.

Changes in the relative prices create incentives for landlords to economize on goods and services whose prices increase faster than average. The sharp increase in fuel prices in the late 1970s was, as is well documented, accompanied by a sharp reduction in fuel use. Landlords' ability to substitute less expensive for more expensive inputs in order to enhance return on investment means that a price index, in which inputs are not substituted for one another, will tend to overestimate actual changes in costs. Changes in technology, such as more energy efficient appliances, more reliable elevators, cheaper PC-based accounting systems, will tend to

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5. *Report on the 1983 Expenditure Study and Analysis*, Urban Systems Research & Engineering, April 1983, pp. 4-5.

reduce the cost of required inputs (or they would not be adopted). Such advances contribute to price index overestimates of cost changes.

Offsetting the effect of changing relative prices and technological change may be the effect of increased regulatory requirements. Increased regulatory requirements typically force landlords to purchase goods and services not previously needed. These increases in required inputs are not captured by a price index, and, as a result, a price index will tend to underestimate actual changes in costs when the regulatory burden is increasing.

It should also be noted that the inventory of rent stabilized buildings today is not the same as it was in 1983 when the expenditure weights were last updated. Between 1981 and 1996, the number of pre-1947 stabilized units increased by approximately 130,000, while the number of post-1946 stabilized units fell by about 30,000.<sup>6</sup> Given the known differences in expenditure patterns between older and newer buildings, this shift might by itself lead to progressive inaccuracy in the expenditure weights.

For all these reasons, the market basket that was constructed in 1983 may no longer be representative of landlords' expenditure patterns. Landlords may be purchasing more of some items and less of others; furthermore, there may be some new items (fees, computers, etc.) that did not exist 17 years ago, but which now account for significant shares of building operating costs.

### **Price and Cost Indexes**

A price index, such as the PIOC, directly measures change in a weighted average of a set of prices paid for goods and services. To the extent that the weights correspond to the relative importance of these goods and services in providing a service, such as rental housing, the price index will provide an accurate measure of change in costs. However, if the relative importance of the goods and services being priced is changing while the weights are fixed, the price index may not provide an accurate measure of change in costs.

A cost index, on the other hand, directly measures costs, rather than base-weighted prices, at different points in time. At each point in time, costs are the sum of the product of prices paid and quantities purchased; unlike a price index, in a cost index the quantities purchased may vary over time.

For the purpose of regulating rents, an index that directly measures costs is clearly preferable to a price index, other things being equal. However, it is generally the case that a price index is much cheaper to construct, because it is much easier to collect price data than to obtain detailed expenditure data from less-than-cooperative landlords. To construct a price index, it is necessary to collect the detailed expenditure data from landlords only when the weights are updated. To construct an annual cost index, it would normally be necessary to

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6. *Housing New York City 1993*, Table 4.11, and *Housing New York City 1996*, Table 4.25.

7. Real estate taxes are the same in both price and cost indexes because there is no "quantity" variation. The same is true for water and sewer frontage costs. This is not true however for metered water costs, which, because the PIOC uses actual bill amounts, incorporate varying water use just like a cost index.

conduct a major expenditure study every year.

There is another practical reason why a price index approach might be preferred. Landlords surveyed to find out how much their costs had risen over time would have powerful reasons to exaggerate the increase in their costs. In contrast, if data supplied by landlords are used simply to update price index expenditure weights, these incentives would not exist.

It should be noted at this point that, while the PIOC is for the most part a pure price index, it contains some important elements that would also show up in a cost index.

The most important of these is the Real Estate Tax component, accounting for about 25% of aggregate operating costs. This is currently measured by real estate taxes levied on rent stabilized buildings. This information is provided by the Department of Finance, and would presumably be corroborated if it were instead obtained through a survey of landlords' expenditures. The same reasoning holds for water and sewer costs, which account for a further 6% of operating costs.<sup>7</sup> Thus, approximately one-third of the operating costs covered by the PIOC would be treated identically in a cost index.

The current treatment of fuel oil and gas used for space heating in the PIOC is also somewhat anomalous for a price index. Through 1985, the fuel oil and gas price relatives were conventionally estimated on a "point-to-point" basis; i.e. as the ratio of the prices in successive April's. From 1986 onwards, at the request of the Board, the PIOC fuel oil and gas price relatives were calculated by estimating the ratio of total costs in successive years. The construction of price ratios involves combining monthly climatic data (heating degree days) with monthly prices so that the price relative is typically higher when cold years follow warm years, and vice versa.

These fuel and gas components may look a little like components of a cost index, but actually they are not because they implicitly assume that base-year consumption levels correspond to current average yearly consumption levels. To the extent that the underlying fuel oil and gas weights may have become less accurate with the passage of time (possibly as a result of on-going conservation efforts), changes in these components of the PIOC may no longer accurately measure actual changes in cost.

Notwithstanding the somewhat anomalous treatment of fuel oil and gas heating in the PIOC, the decision of the Board to convert from a "point-to-point" price relative to what might reasonably be called an annual "cost relative" clearly improved the PIOC's ability to track annual changes in apartment operating costs over time. All other price relatives except taxes and water and sewer are calculated on a point-to-point basis.

### **Accuracy of the PIOC**

The PIOC is intended to provide a reliable estimate of the annual percentage change in the aggregate operating costs of rent stabilized apartment buildings. To assess the accuracy of

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8. *2000 Income & Expense Study*, NYC Rent Guidelines Board, p. 10.

the PIOC over time, it would be necessary to determine average costs per unit in the base year, as measured by an expenditure survey, use the PIOC to predict average costs per unit in a subsequent year, and compare this prediction with actual costs in the same year, as measured by a second expenditure survey.

It is possible to use the 1982 expenditure survey results to assess the reliability of the BLS price index as a measure of costs over the period 1969-1982. The BLS price index "predicted" monthly operating costs for post-1946 units to be \$328 in 1982. By contrast, the 1982 expenditure study estimated annual operating costs for post-1946 units to be \$262. Of the \$66 (25%) overestimate, \$48 (73%) was accounted for by two components: - fuel and utilities (\$27) and taxes (\$20). The overestimate of fuel and utilities resulted from reduced fuel use in response to rapidly rising oil prices that led RGB to reduce the fuel weight by 10%. The overestimate of taxes cannot be explained in the same way because there is no baseline "quantity" for taxes. The overestimate of 1982 taxes can most probably be attributed to statistical sampling error resulting from the use of a rather small sample of establishments to calculate the tax price relative over the 1969-1982 period.

To assess the accuracy of the PIOC between 1983 and 1999, absent data from a new expenditure study of the type performed in 1983, recourse may be had to the I&E data that was first made available to RGB in 1990. The I&E survey respondents are not a completely representative sample of the rent stabilized universe, but RGB staff correctly re-weight the I&E data to insure that building types and geographic areas are not underrepresented.

Over the eight years since the I&E data became available, RGB staff research has shown that there is a high level of agreement between growth in the PIOC and growth in I&E-based costs. Between 1990 and 1998, the PIOC increased by 26.5%, while I&E costs increased by 26.0%.<sup>8</sup>

In 1997, the most recent year for which I&E data are available, the average monthly operating cost per I&E unit was \$458. If this is adjusted downwards by 8% to reflect the findings of the 1992 I&E audit study, average monthly operating expense would be \$421.<sup>9</sup> The comparable PIOC estimate of average monthly operating costs over the 12 months April 1997 to 1998 was \$419.

This extraordinary degree of agreement does not necessarily imply that the PIOC has functioned like a precision instrument for the last 17 years, but rather than its errors have tended to offset one another. To see this, compare the PIOC expense projections for the year ending 3/31/98 with the 1997 I&E breakdown.<sup>10</sup>

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9. *Rents, Markets & Trends 1999*, NYC Rent Guidelines Board, p. 32.

10. The I&E figures incorporate downward adjustments of 11% to Maintenance, 25% to Administration, 37% to Miscellaneous, and 1% to all other categories to reflect the findings of the Audit Study (*Rent, Markets & Trends, 1997*, p. 42). The Maintenance category incorporates the Contractor Services, Parts & Supplies, and Replacement Costs components of the PIOC. All Miscellaneous expenses in the I&E data have been allocated to the combined Maintenance and Admin. Category.

	<u>PIOC</u>		<u>I&amp;E</u>		<u>Variance</u>
Taxes	\$107	(25.5%)	\$107	(25.4%)	\$0
Labor	70	(16.7%)	64	(15.2%)	+6
Fuel	44	(10.5%)	43	(10.2%)	+1
Utilities	60	(14.3%)	47	(11.2%)	+13
Insurance	27	(6.4%)	23	(5.5%)	+4
Maintenance & Admin.	110	(26.3%)	137	(32.5%)	-27
TOTAL	\$419		\$421		-\$2

*(Numbers do not sum exactly because of rounding error.)*

It will be apparent that, if the I&E data are accurate, the PIOC has overpredicted combined Labor, Fuel, Utilities, and Insurance costs by about \$25 per month and underpredicted, by a similar amount, Maintenance and Administrative costs. The underprediction of maintenance and administrative costs is consistent with the owners' claims of an increased regulatory burden; the overprediction of utilities may be evidence of ongoing energy conservation. In any event, it is clear that there is significant deviation between the two sets of weights, particularly for Utilities, which is a fairly volatile component, and for Maintenance and Administration.

### **Should the PIOC Expenditure Weights be Revised?**

Notwithstanding the remarkable degree of agreement between the aggregate expense estimates from the two sources, it is apparent that the possibility now exists for the PIOC to mis-estimate future change in operating costs. This will certainly happen if utility prices increase faster or slower than the All-Items change or if the prices of maintenance and administration items increase faster or slower than the All-Items change.

For example, if utility prices were to increase by 10% while all other prices increased by around 2%, the All-Items PIOC price relative would over-estimate actual price change by about one quarter of one percent. If, in the same year, Maintenance/Admin costs increased by only 1%, the PIOC over-estimate would be about one third of one percent (3.2% vs. 2.9%).

The basic case for updating the PIOC rests on the importance of its accuracy in measuring changes in operating costs. Statistical analysis of the relationship between the one-year rent guideline and the PIOC All-Items price index change over the 23-year period 1975-1997 indicates that each one-percent increase in the PIOC translates into a one-half-percent increase in the one-year rent guideline. Given an aggregate rent roll of \$8 billion for the stabilized inventory, a one-percent error in the PIOC would translate into a \$40 million transfer in one direction or another between landlords and tenants in the first year. The present value of this indefinite stream discounted at 5 percent is therefore around \$800 million.<sup>11</sup> This simple arithmetic is the most powerful reason for trying to enhance the reliability of the PIOC as a measure of operating costs.

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11. This is certainly an overestimate because stabilized rents exceed market rents in many areas of the City.

## **Alternative Approaches to Revising the PIOC**

Two alternative approaches are available. The most obvious is to replicate the 1983 Expenditure Survey. This would support estimates of new component weights, would assist in the specification of items to be priced, and would provide a basis for the new item weights.

There are two problems with this approach. The first problem is that it is expensive. In 1983, the cost of the Expenditure Survey was \$235,000, and by now this cost would certainly be much higher. Given the importance of accuracy in the PIOC, such an expense may again be justifiable.

The second problem concerns the statistical reliability of the findings of both the 1983 Expenditure Survey and any similar survey that the RGB might commission. Notwithstanding an extraordinarily intense effort to survey the owners/managers of almost 2,500 buildings (mailings, postcard reminders, and over 13,000 telephone callbacks), the number of completed responses was just 398, a response rate of only 17 percent. The low response rate may be partially attributed to factors that could be avoided in any future survey. These include fielding the survey in the holiday season, augmenting the basic survey with a long survey of mortgage financing, and the refusal of RSA to supply a letter of endorsement. None of these hindrances were present when the survey was pre-tested, but even then the response rate achieved was only 26 percent.

The problem with such a low response rate is possible self-selection bias. We cannot know whether owners who differ in their willingness to respond also differ in the way they operate their buildings. Notwithstanding the seeming reliability of the 1982-based PIOC, the accuracy of the 1982 expenditure weights, given the 17% response rate, are necessarily suspect.

Lastly, it should be noted that a revised PIOC, even with initially accurate expenditure weights, would continue to have the same drawbacks as any price index, in that actual utilization patterns may change over time, while the base year market basket does not.

The alternative approach is to use the I&E data to update the component weights. Simply comparing sample sizes, it is clear that the I&E data is greatly preferable. The 1983 Expenditure Survey was based on data from 398 buildings accounting for about 24,000 units. The 1998 I&E data, by contrast, are based on data from 12,383 buildings accounting for 569,042 units. The 1983 Expenditure Survey response rate was 17 percent. The 1998 I&E data contained information on approximately 60 percent of all rent stabilized buildings required to file. These buildings account for 51 percent of all rent stabilized units registered with DHCR, and 56 percent of all rent stabilized units in buildings required to file. On grounds of sample size, response rate, and coverage, the I&E database is clearly superior to any data which might be acquired through a replication of the 1983 Expenditure Survey.

It is the nature of things that we cannot know whether owners who respond to an expenditure survey or who submit RPIE filings have different expenditure patterns than those who do not respond. If they do, the resulting expenditure weight estimates will be biased. The extent of this bias is inversely related to the response rate. Since the I&E response rate is 3.5 times higher than the 1983 Expenditure Survey response rate, weights based on the I&E data

are, other things being equal, likely to be much less biased than weights based on expenditure study data.

In one respect, and only one respect, an expenditure survey approach is to be preferred over an I&E approach to revising the weights. The I&E data excludes data on buildings with 10 or fewer units, whereas the expenditure study sample universe includes all rent stabilized buildings. The I&E data also excludes buildings with assessed values of \$80,000 or less, of which there are very few.

The problem of the 6-10 unit buildings is not as serious as it might seem because of the way that the expenditure weights are constructed. Buildings with 10 or fewer units account for just 10 percent of all rent stabilized units and probably somewhere around 10 percent of aggregate operating costs. Because the expenditure weight estimates are equal to the share of each component of aggregate expenditure, the exclusion of a relatively small portion of aggregate expenditures would not greatly bias the estimates. In any event, a statistical analysis of the relationship between building size and expenditure patterns would support a simple adjustment to remove what relatively little bias might be introduced by the unavailability of data on the smallest stabilized buildings.

It should be acknowledged that the I&E buildings are known to be somewhat unrepresentative of the rent-stabilized universe, particularly in terms of the under-representation of buildings in distressed areas of the City. RGB staff currently deal with this problem by weighting the data at the borough level. It would certainly be possible to refine this procedure by going to a higher level of geographic disaggregation; i.e. the 55 sub-boroughs used in the Housing and Vacancy Survey (HVS).

It may be argued that the I&E data, being essentially unaudited, are inherently unreliable. This argument can be countered in two ways. In the first place, I&E filings, which are legal documents with owner/agent signatures, are probably at least as reliable as expenditure survey data to which no penalties for providing false information are attached. Secondly, the evidence of the 50-building audit study of 1990 I&E filings is generally reassuring, especially for taxes, labor, fuel, utilities, and insurance, which currently account for 62% of all operating costs.

For many years, tenant representatives have argued for the use of audited expense data from all stabilized landlords as a basis for estimating annual change in operating costs. As a practical matter, comprehensive audited financial data are not going to become available on an annual basis, and even if they were, the elapsed time between fiscal year ends and the completion of the audit process and data analysis would mean that such information could not be obtained in time to meet the need for annual rent guidelines that are not hopelessly out-dated.

A case could be made for commissioning a one-time comprehensive audit study of a large number of RPIE filings and using the results to re-estimate the expenditure weights. This would undoubtedly be an expensive undertaking and, in any event, the findings of such an audit study would be better applied to make adjustments to the much larger data set of unaudited filings. An updated audit study of the type performed by the Finance Department in 1992

would be an extremely valuable contribution if the PIOC is to be revised using the I&E data.

Concerns that the I&E buildings may not be representative of the rent stabilized universe in terms of location or building characteristics should be alleviated by the knowledge that RGB staff already re-weight the data to deal with this problem.

For the reasons outlined above, it should be apparent that the I&E data would support more reliable estimates of the expenditure weights than would a new expenditure study of the type performed in 1983.

There is an additional, and perhaps even more compelling, reason for constructing an index based on the I&E data. The I&E weights will change each year, albeit with a lag, not only because of changing prices, but also because the base-year quantities may be changing. In this way, an I&E-based index would approximate a true cost index, without the drawback of fixed base-year quantities. It was precisely this drawback that caused the 1969-based index to overestimate the change in operating costs in the 1970s.

### **Specifying Items to be Priced and Assigning Item Weights**

The I&E data, unlike expenditure survey data, do not include information that can be used to estimate item weights. There is no real reason for supposing that the existing item weights are unsatisfactory, except in the area of administrative costs, where information technology has been completely revolutionized since 1982, and in the area of taxes, fees, and permits, where additional regulatory requirements have been imposed over the years. It would be desirable to introduce a number of new items into the administrative cost index component, such as personal computers, printers, accounting software, etc., and also to include the various fees referenced in RSA's May 1999 submission to RGB.

This could be best accomplished by conducting a relatively small survey of landlord/building managers to find out what they have been purchasing and how much they have been spending on such items. This survey, administered to a sample of 50-100 owners of buildings stratified by size and location, would be designed to elicit information on outlays for such items as computer equipment, lead paint abatement, recycling, etc. The survey could be conducted by telephone and/or mail, using RGB staff resources. It would also be desirable to determine the continued representativeness of other items through an informal survey of vendors.

It is important that RGB members understand that introducing new items into the market basket will not lead to an increase in the PIOC estimate of operating costs. For example, any additional fees and charges that are not included in the current index would simply appear as new items to be priced in a re-based PIOC. To the extent that these fees and charges do not increase over time as fast as other items, their inclusion will tend to reduce rather than increase the rate of growth of the All-Items price index.

### **Summary**

The 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 drift in the expenditure weights, there is now a potential for the PIOC to misestimate future changes in operating costs.

For this reason, it is recommended that the PIOC be revised and that the new index be based on expenditure weights estimated using I&E data. The I&E 1999 weights, for example, would be updated using the 1999-2000 price relatives for use in estimating the 2000-2001 PIOC change. The resulting index would approximate a cost index for all price index components, thereby avoiding the well-known drawbacks of a base-weighted price index. A similar approach could be adopted to update the Hotel Price Index based on hotel-specific tabulations of the I&E data.

## **Attachment A**

### **Issues Raised by Mr. Lubell**

*Is there any rationale for having some utility measured on a point-to-point basis while others are measured in a cost-weighted basis? Wouldn't it be more accurate to have all elements measured on a cost-weighted basis? Since utility costs usually have fuel-cost adjustments associated with them, aren't owners disadvantaged if utilities are measured on a point-to-point basis (April to April) when fuel costs have been driven up during the winter?*

In 1986, the Board decided to abandon the traditional point-to-point method of calculating the price relatives for all three grades of heating oil and for the two gas bills used for space heating in favor of a more complex "cost-relative" approach. The objective was to achieve a more accurate estimate of year-to-year change in heating costs.

Mr. Lubell has raised the possibility of extending this approach to cover additional utility bills (electricity, gas used for cooking). His reasoning is that, while usage for non-space heating purposes may not exhibit much inter-year and seasonal variation, the rates charged for these utility items may well vary from month to month because of fuel adjustments. Mr. Lubell is quite correct in making this suggestion, and it would not be difficult to incorporate such a change in future PIOC calculations. I do suspect, however, that the change in method will not change the numbers very much.

I do not share his view that seasonal variation in utility prices means that April-to-April calculations of price change are unfair to owners. April prices may tend to be below the year-round average, but over the years they will be below the year-round average in the same degree. This means that the point-to-point method will generally provide an unbiased estimate of the change in costs.

*Doesn't it make sense for the RGB to at least consider the real estate tax increase for the "average" building alongside the traditional "aggregate" increase in real estate taxes measured by the PIOC?*

This same question was also raised in a recent letter to the RGB Chairman by Mr. Lubell, in which he requested that certain alternative methods of calculating the change in real estate taxes be considered for the 2000 PIOC. Specifically, Mr. Lubell requested that "the staff calculate an average and a median per-building increase in real estate taxes" and that, in

addition to reporting the standard PIOC results, supplementary PIOC be calculated which incorporate these alternative methods of computing the tax price relative.

In general, I would support Mr. Lubell's request for mean and median per-building tax changes on the grounds that the more information the Board has, the better will be its decisions on rent guidelines. I would, however, argue strongly against using these numbers to construct alternative PIOC.

Basic price index methodology mandates the use of the traditional "aggregate" calculation of the tax price relative, which is used implicitly for all other components of the PIOC. To substitute an alternative method for taxes would mean that the PIOC could no longer be described as a price index in the terminology of economics, but rather as some sort of hybrid index. It would also mean that the PIOC could no longer be used as it has been in the past to set rent guidelines.

Over the years, the Board has commonly considered rent increases that will, at a minimum, indemnify building owners for increases in costs. This was the purpose of the "traditional" commensurate rent increase calculation, although the Board also took into account other factors. Using the standard PIOC tax price relative methods would insure that, if aggregate real estate taxes levied on rent stabilized buildings increased by, say, 5% or \$50 million, the resulting commensurate rent increase would allow a \$50 million increase in rental income.

As Mr. Lubell has correctly pointed out, taking the average percentage tax increase across buildings will almost certainly yield a different number for the tax price relative, say 7.5% in this example. The total tax increase is still \$50 million, however. But plugging the 7.5% into the commensurate rent increase calculation would then lead to a \$75 million increase in rental income. The argument is similar if the median percentage tax increase is used.

It should be noted, however, that the average percentage tax increase across buildings may be either greater or less than the standard PIOC tax increase. The standard PIOC tax increase implicitly weights each building's tax relative by its share of aggregate base-year taxes. The average percentage tax increase across buildings gives each building's tax relative equal weight. If buildings with smaller base-year taxes tend to have larger than average percentage tax increase, the average percent tax increase will exceed the PIOC price relative, as in the above example. Conversely, if percentage tax increases are positively correlated with base-year taxes, the reverse is true.

## Appendix S

### PIOC Projections 1975-2000

Comparison of percentage changes in actual PIOC and 1-year and 2-year projections

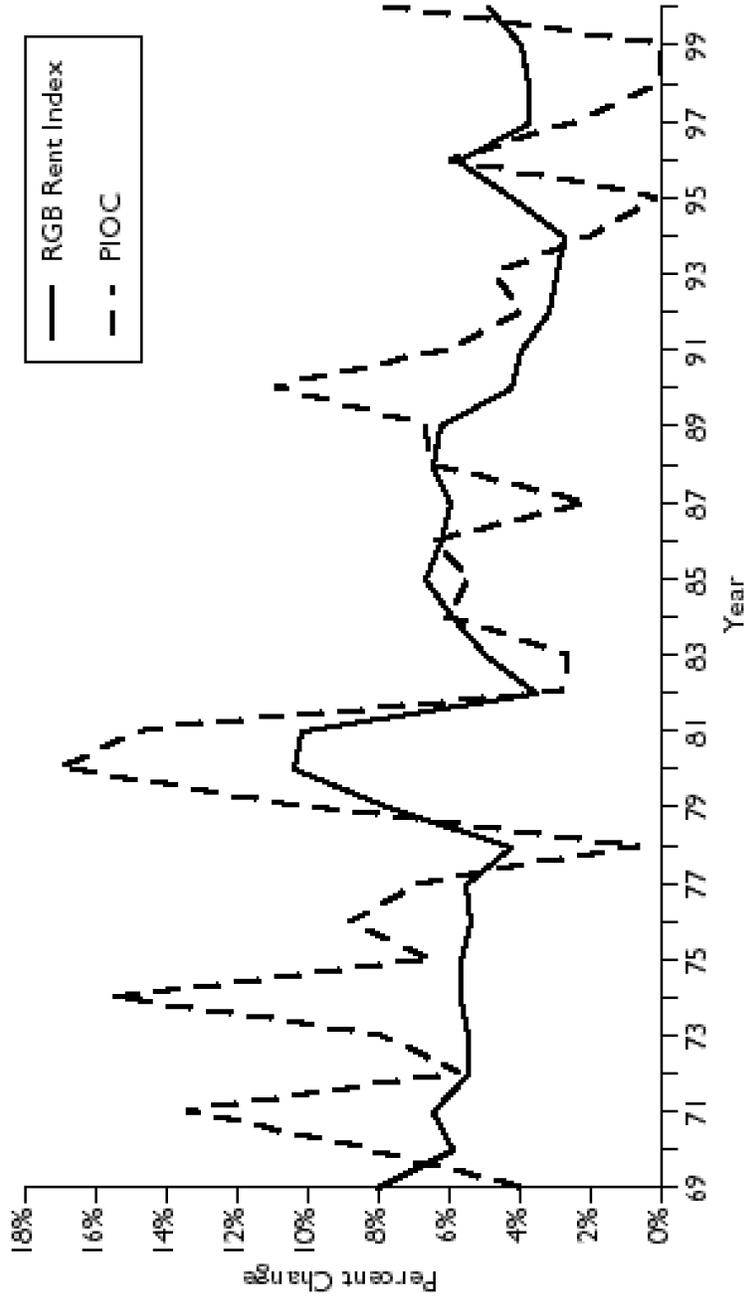
Year	1 Yr. Proj.	2 Yr. Proj.	Actual	1 Yr. Diff.	2 Yr. Diff.
'75	6.8		6.5	0.3	
'76	10.3		8.8	1.5	
'77	6.6	8.7	7.5	-0.9	1.2
'78	6.0	7.7	0.6	5.4	7.1
'79	5.7	6.9	10.4	-4.7	-3.5
'80	8.3	7.5	17.0	-8.7	-9.5
'81	9.8	5.8	14.6	-4.8	-8.8
'82	9.5	8.6	2.8	6.7	5.8
'83	5.8	8.9	2.6	3.2	6.3
'84	6.8	5.6	6.3	0.5	-0.7
'85	6.7	6.5	5.4	1.3	1.1
'86	5.4		6.4	-1.0	
'87	9.1		2.1	7.0	
'88	7.0		6.4	0.6	
'89	6.6		6.7	-0.1	
'90	7.5		10.9*	-3.4	
'91	6.0		6.0**	0.0	
'92	5.2		4.0	1.2	
'93	5.3		4.7	0.6	
'94	3.1		2.0	1.1	
'95	3.4		0.1	3.3	
'96	3.2		6.0	-2.8	
'97	2.7		2.4	0.3	
'98	1.8		0.1	1.7	
'99	3.5		0.03	3.2	
'00	5.3		7.8	-2.5	

\*I&E data indicated a 7.7% rise

\*\*Revised

Note: Since 1984, owners have not been able to offer three year leases. Consequently, the RGB staff ceased two year projections.

## Stabilized Rent Increases and Price Index Changes, 1969—2000



### Appendix T

#### RGB Year .....Rent Index .....PIOC

1969	8.0%	4.0%
70	5.8%	8.4%
71	6.4%	13.4%
72	5.4%	5.7%
73	5.4%	7.9%
74	5.6%	15.5%
75	5.6%	6.5%
76	5.3%	8.8%
77	5.5%	6.9%
78	4.2%	0.6%
79	7.7%	10.4%
80	10.3%	17.0%
81	10.1%	14.6%
82	3.5%	2.8%
83	4.9%	2.6%
84	5.8%	6.1%
85	6.6%	5.4%
86	6.2%	6.4%
87	5.9%	2.1%
88	6.4%	6.4%
89	6.2%	6.7%
90	4.2%	10.9%
91	3.9%	6.0%
92	3.1%	4.0%
93	2.9%	4.7%
94	2.7%	2.0%
95	4.1%	0.1%
96	5.7%	6.0%
97	3.7%	2.4%
98	3.7%	0.1%
99	3.9%	0.03%
00	4.8%	7.8%

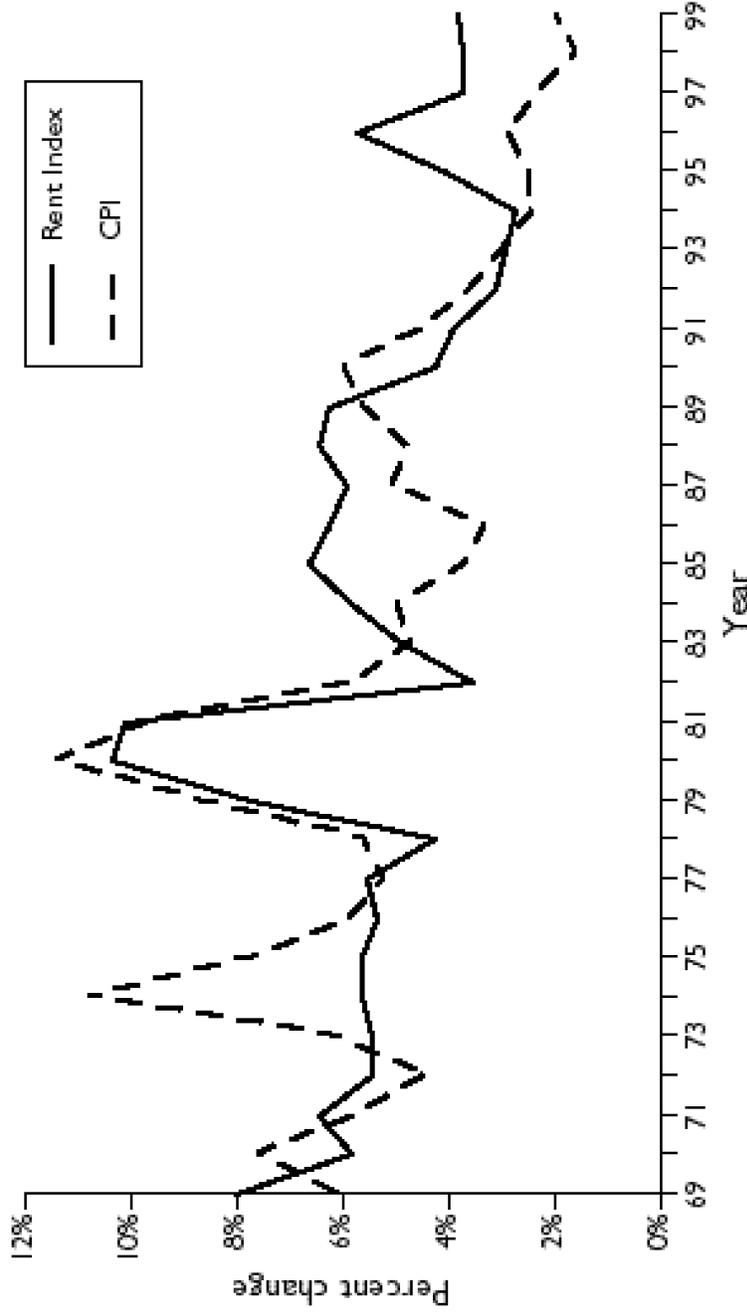
## Appendix U

### The Rent Guidelines Board (RGB) Rent Index

The RGB Rent Index estimates the overall effect of the Board's annual rent increases and vacancy increases on stabilized contract rents each guideline year (October 1 to September 30). The RGB Rent Index includes the percentage increases for one- and two-year leases, the estimated increase for vacancy leases and increases, if applicable, due to the low rent supplement or the minimum rent. Rents can increase due to other factors not included in the RGB Rent Index, e.g., increases for Major Capital Improvements or "1/40th" individual apartment improvements.

<u>Order No.</u>	<u>Year</u>	<u>RGB Rent Index</u>
1	1969-70	8.0%
2	1970-71	5.8%
3	1971-72	6.4%
4	1972-73	5.4%
5	1973-74	5.4%
6	1974-75	5.6%
7	1975-76	5.6%
8	1976-77	5.3%
9	1977-78	5.5%
10	1978-79	4.2%
11	1979-80	7.7%
12	1980-81	10.3%
13	1981-82	10.1%
14	1982-83	3.5%
15	1983-84	4.9%
16	1984-85	5.8%
17	1985-86	6.6%
18	1986-87	6.2%
19	1987-88	5.9%
20	1988-89	6.4%
21	1989-90	6.2%
22	1990-91	4.2%
23	1991-92	3.9%
24	1992-93	3.1%
25	1993-94	2.9%
26	1994-95	2.7%
27	1995-96	4.1%
28	1996-97	5.7%
29	1997-98	3.7%
30	1998-99	3.7%
31	1999-2000	3.9%
32	2000-01	4.8%

## Consumer Price Index\* and Stabilized Rent Increases, 1969-99



\*Note: The CPI is for all Urban consumers in the New York, Northeastern New Jersey region as reported by the Bureau of Labor Statistics for the calendar year. The RGB Rent Index covers different terms, 7/1 to 6/30 from 1969-80; from 7/1/80 to 9/30/81, and from 10/1 to 9/30, 1981 to present.

**RGB**  
**Year ..Rent Index.....CPI**

1969	8.0%	6.1%
70	5.8%	7.4%
71	6.4%	5.8%
72	5.4%	4.4%
73	5.4%	6.2%
74	5.6%	10.8%
76	5.3%	7.7%
75	5.6%	5.9%
77	5.5%	5.2%
78	4.2%	5.6%
79	7.7%	8.7%
80	10.3%	11.4%
81	10.1%	9.7%
82	3.5%	5.8%
83	4.9%	4.7%
84	5.8%	5.0%
85	6.6%	3.7%
86	6.2%	3.3%
87	5.9%	5.1%
88	6.4%	4.8%
89	6.2%	5.6%
90	4.2%	6.0%
91	3.9%	4.5%
92	3.1%	3.6%
93	2.9%	3.0%
94	2.7%	2.4%
95	4.1%	2.5%
96	5.7%	2.9%
97	3.7%	2.3%
98	3.7%	1.6%
99	3.8%	2.0%

## Appendix W

### Open Meetings Law §§ 103 & 104

#### **§ 103. Open meetings and executive sessions**

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five<sup>1</sup> of this article.

(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.

(c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.

(Formerly §93, added L.1976, c. 511, §1; amended L.1977, c. 368, §1; renumbered §98, L.1977, c. 933, §2; renumbered §103, L.1983, c. 652, § 1.)

<sup>1</sup>Now section one hundred five.

#### **§ 104. Public notice**

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

(Formerly §94, added L.1976, c. 511, §1; renumbered §99, L.1977, c. 933, §2; amended L.1979, c. 704, §2; renumbered § 104, L.1983, c. 652, §1.)

## NYC Charter- 1041-1045

### CHAPTER 45 CITY ADMINISTRATIVE PROCEDURE ACT

#### Section

- 1041. Definitions.**
- 1042. Regulatory agenda.**
- 1043. Rulemaking.**
- 1044. Review of previously adopted rules.**
- 1045. Compilation of City rules.**
- 1046. Adjudication.**
- 1047. Declaratory rules.**

#### **§ 1041. Definitions. As used herein, the term**

1. "Adjudication" means a proceeding in which the legal rights, duties or privileges of named parties are required by law to be determined by an agency on a record and after an opportunity for a hearing.

2. "Agency" means any one or more of the elected or appointed officers provided for in this charter and any other official or entity which is acting (1) under the direction of one or more of such officers, (2) under the direction of one or more other officials who are appointed by, or appointed on the recommendation of, such officers, or (3) under the direction of a board, the majority of whose members are appointed by, or appointed upon the recommendation of, one or more of such officers, but shall not include the city council.

3. "Compilation" means the Compilation of city rules required to be published under section one thousand forty-five.

4. "Law" means federal, state and local law, this charter and rules issued pursuant thereto.

5. "Rule" means the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication.

a. "Rule" shall include, but not be limited to, any statement or communication which prescribes (i) standards which, if violated, may result in a sanction or penalty; (ii) a fee to be charged by or required to be paid to an agency; (iii) standards for the issuance, suspension or revocation of a license or permit; (iv) standards for any product, material, or service which must be met before manufacture, distribution, sale or use; (v) standards for the procurement of goods and services; (vi) standards for the disposition of public property or property under agency control; or (vii) standards for the granting of loans or other benefits.

b. "Rule" shall not include any (i) statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; (iii) statement or communication concerning the allocation of agency resources or personnel; (iv) statement or communication for guiding, directing or otherwise regulating vehicular and pedestrian traffic, including but not limited to any statement or communication controlling parking, standing, stopping or a construction detour, the contents of which is indicated to the public in signs, signals, markings and similar devices, the determination and installation of which is based on engineering or other technical considerations not involving substantial policy considerations; (v) statement or communication effecting a non-continuous closing of a street; (vi) statement or communication adopted pursuant to sections fifty-one, one hundred ninety-seven-a except pursuant to the first sentence of subdivision b or the third sentence of subdivision c of section one hundred ninety-seven-a, one hundred ninety-seven-c except pursuant to subdivisions i and l of section one hundred ninety-seven-c, one hundred ninety-nine, two hundred, two hundred one, two hundred two and seven hundred five of this charter; or (vii) building code reference standards amended, revised

or added by the commissioner of the department of buildings in consultation with the fire commissioner on all issues relating to fire safety after notice and a public hearing and published as part of the administrative code.

**§ 1042 Regulatory agenda.** a. Each agency shall publish by the first day of May annually, a regulatory agenda which shall contain:

1. a brief description of the subject areas in which it is anticipated that rules may be promulgated during the next fiscal year, including a description of the reasons why action by the agency is being considered;

2. a summary, to the extent known, of the anticipated contents of each such proposed rule, its objectives and legal basis;

3. a description of the types of individuals and entities likely to be subject to the rule;

4. an identification, to the extent practicable, of all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule; and

5. an approximate schedule for adopting the proposed rule, and the name and telephone number of an agency official knowledgeable about each subject area involved.

b. Each agency the single head of which is appointed by the mayor shall forward to the mayor its regulatory agenda. The mayor shall review such regulatory agenda to determine whether regulations contemplated by city agencies are consistent with the policy objectives of the administration.

c. Failure to include an item in a regulatory agenda shall not preclude action thereon. If rulemaking is undertaken on a matter not included in the regulatory agenda the agency shall include in the notice of proposed rulemaking the reason the rule was not anticipated. The inadvertent failure to provide the reason such rule was not included in the regulatory agenda shall not serve to invalidate the rule.

**§ 1043 Rulemaking.** a. Authority. Each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law. No agency shall adopt a rule except pursuant to this section. Each such rule shall be simply written, using ordinary language where possible.

b. Notice. 1. Each agency shall publish the full text of the proposed rule in the City Record at least thirty days prior to the date set for a public hearing to be held pursuant to the requirements of subdivision d of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending an existing rule shall contain in brackets any part to be deleted and shall have underlined or italicized any new part to be added. A proposed rule repealing an existing rule shall contain in brackets the rule to be repealed, or if the full text of the rule was published in the Compilation required to be published pursuant to section one thousand forty-five, shall give the citation of the rule to be repealed and a summary of its contents. Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments. If the proposed rule was not included in the regulatory agenda, such notice shall also include the reason the rule was not anticipated, as required in subdivision c of section one thousand forty-two of this chapter.

2. Copies of the notice shall be transmitted to the council and the corporation counsel and mailed to each council member, the chairs of all community boards, the news media and civic organizations; provided that an inadvertent failure to fully comply with the notice requirements of this paragraph shall not serve to invalidate any rule.

3. (a) News media, for the purposes of this subdivision, shall include (i) all radio and television stations broadcasting in the city of New York, all newspapers published in the city of New York having a city-wide or borough-wide circulation, and any newspaper of any labor union or trade association representing an industry affected by such rule, and (ii) any community newspaper or any other publication that requests such notification on an annual basis.

(b) Civic organizations, for the purposes of this subdivision, shall include any city-wide or borough-wide organization or any labor union, trade association or other group that requests such notification on an annual basis.

c. Review of statutory authority. The corporation counsel shall review the proposed rule to

determine whether it is within the authority delegated by law to the agency proposing the rule. If the corporation counsel determines that the proposed rule is not within the agency's delegated authority, the corporation counsel shall notify the agency in writing prior to the publication of the final rule in the City Record.

d. Opportunity for and consideration of agency and public comment. The agency shall provide the public an opportunity to comment on the proposed rule (i) through submission of written data, views, or arguments, and (ii) at a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose. All written comments and a summary of oral comments concerning a proposed rule received from the public or any agency shall be placed in a public record and be made readily available to the public as soon as practicable and in any event within a reasonable time, not to be delayed because of the continued pendency of consideration of the proposed rule. After consideration of the relevant comments presented, the agency may adopt a final rule pursuant to subdivision e of this section. Such final rule may include revisions of the proposed rule, and such adoption of revisions based on the consideration of relevant agency or public comments shall not require further notice and comment pursuant to this section.

e. Effective date. 1. No rule shall be effective until

(a) the rule is filed by the agency with the corporation counsel for publication in the Compilation,

(b) the rule and a statement of basis and purpose is transmitted to the council for its information, and

(c) the rule and a statement of basis and purpose have been published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after such publication shall not apply where a finding that a substantial need for the earlier implementation of a program or policy has been made by the agency in writing and has been approved by the mayor prior to the effective date of the rule and such finding and approval is contained in the notice.

2. A rule shall be void if it is not published in the next supplement to the Compilation in which its publication is practicable; provided, however, that in the case of an inadvertent failure to publish a rule in such supplement, the rule shall become effective as of the date of its publication, if it is published within six months of the date the corporation counsel receives notice of its omission; and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

f. Petition for rules. Any person may petition an agency to consider the adoption of any rule. Within sixty days after the submission of a petition, the agency shall either deny such petition in writing, stating the reasons for denial, or state the agency's intention to initiate rulemaking, by a specified date, concerning the subject of such petition. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. In the case of a board, commission or other body that is not headed by a single person, such rules of procedure may authorize such body to delegate to its chair the authority to reject such petitions. Such decision shall be within the discretion of the agency and shall not be subject to judicial review.

g. Maintenance of comments. Each agency shall establish a system for maintaining and making available for public inspection all written comments received in response to each notice of rulemaking.

h. Emergency procedures. 1. Notwithstanding any other provision of this section, an agency may adopt a rule prior to the notice and comment otherwise required by this section if the immediate effectiveness of such rule is necessary to address an imminent threat to health, safety, property or a necessary service. A finding of such imminent threat and the specific reasons for the finding must be made in writing by the agency adopting such rule and shall be approved by the mayor before such rule may be made effective. In the event that an elected official other than the mayor has the authority to promulgate rules, such official may make such findings without prior mayoral approval. The rule and accompanying finding shall be made public forthwith and shall be published in the City Record as soon as practicable.

2. A rule adopted on an emergency basis shall not remain in effect for longer than sixty days unless the agency has initiated notice and comment otherwise required by this section within such sixty day period and publishes with such notice a statement that an extension of such rule on an emergency

basis is necessary for an additional sixty days to afford an opportunity for notice and comment and to adopt a final rule as required by this section; provided that no further such finding of an emergency may be made with respect to the same or a substantially similar rule.

**§ 1044 Review of previously adopted rules.** a. Submission of previously adopted rules.

1. By the tenth day of August, nineteen hundred eight-nine, each agency shall send to the corporation counsel a copy of each rule, as defined in subdivision five of section one thousand forty-one, in force as of the first day of January of nineteen hundred eight-nine. Each such rule shall be identified by the agency as one of the following:

- (a) a rule which should be continued in its present form;
- (b) a rule which should be continued with amendments; or
- (c) a rule which should be repealed.

2. Any amendment or repeal of a rule described in paragraph one of this subdivision, shall be subject to the provisions set forth in section one thousand forty-three.

b. In regard to all rules submitted pursuant to subdivision a of this section, the corporation counsel shall

1. include such rules in the Compilation required to be published pursuant to section one thousand forty-five; provided, however, that each rule which the agency identifies as a rule which should be continued but with amendments, and each rule which the agency identifies as a rule which should be repealed, shall be published in the Compilation with an appropriate notation as to the agency's comments and intentions. Such notations shall be provided for informational purposes only and such rule in its present form shall remain in full force and effect until and unless such rule is amended or repealed pursuant to the procedures set forth in section one thousand forty-three, and

2. submit to the City Record for publication by the first day of September, nineteen hundred ninety, a list of rules submitted pursuant to subdivisions a and e of this section, except for rules contained in the health code. Such list shall include for each rule a short descriptive title, as well as any available identifying names, numbers, adoption dates or similar information regarding such rule; and an indication of the agency's intention to continue such rule without amendments, to continue it with amendments or to repeal it.

c. No rule, as defined in subdivision five of section one thousand forty-one, which is in force as of the first day of January, nineteen hundred eighty-nine shall have any force or effect on or after the tenth day of August, nineteen hundred and eighty-nine unless it is submitted by the agency to the corporation counsel by such date.

d. Except as provided in subdivision e, no rule adopted by any agency prior to the effective date of this chapter shall have any force or effect after the first day of July, nineteen hundred ninety-one unless it is included in the Compilation required to be published by that date pursuant to section one thousand forty-five; provided however that in the case of an inadvertent failure to publish a rule in such Compilation, the rule shall become effective as of the date of its publication, if it is published within six months from the date the corporation counsel received notice of its omission, and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

e. On or before a date one hundred eighty (180) days after the publication date that of Compilation required to be published pursuant to section one thousand forty-five, any person may submit to the agency involved a copy or a description of a rule which such person believes to be in force as of the effective date of this chapter. Upon the receipt of a description or copy of such a rule, the agency shall endeavor to verify the existence of such rule and upon identifying such rule, if such rule was if force and effect as of the effective date of this chapter and has not been submitted to the corporation counsel pursuant to subdivision a of this section, the agency shall take the actions required pursuant to subdivision a of this section, and notwithstanding the provisions of subdivisions c and d of this section, such rule shall remain in force and effect until or unless amended or repealed pursuant to section one thousand forty-three.

**§ 1045 Compilation of city rules.** a. The corporation counsel shall publish a Compilation of city rules and thereafter keep such Compilation up to date through supplements issued at least every six months

and at such other times as the corporation counsel shall determine. The Compilation and its supplements shall be certified by the corporation counsel and shall include every rule currently in effect. The Compilation and its supplements may contain such other information as the corporation counsel deems necessary and appropriate for full understanding of any rule or which the corporation counsel in his or her discretion determines may be of interest or assistance to the public. The Compilation and its supplements shall be organized by agency and indexed by subject matter. An indexed edition of the Compilation shall be published by the first day of July, nineteen hundred and ninety-one, which date shall be deemed the publication date of the Compilation, and shall be updated and republished by the first day of March of every fourth year thereafter.

b. The rules contained within the Compilation and its supplements shall be certified by the corporation counsel and shall be the rules of the city unless added to, amended or repealed in accordance with section ten hundred forty-three of the charter. Materials included in the Compilation may be edited, rearranged and updated for clarity, accuracy and reorganization without change in substance. Section numbers, stylistic and organizational formats and other non-substantive revisions to the rules effected by the law department pursuant to this subdivision shall become effective on the publication date of the Compilation and upon the publication of each supplement.

c. Documents submitted by an agency pursuant to subdivision a of section ten hundred forty-four of the charter which were not formally adopted by the agency as rules pursuant to section eleven hundred five of the charter as in effect prior to November eighth, nineteen hundred eighty-eight shall either be included in the Compilation or filed in the municipal reference and research center in the manner provided below. All documents which the corporation counsel, in his or her discretion, determines should not be included in the Compilation shall be organized by agency and subject matter in a form which shall be easily accessible to the public and filed by the corporation counsel in the municipal reference and research center on or prior to July first nineteen hundred ninety-one. Notice of such filing and a list of the documents filed shall be published in the City Record. Notwithstanding any inconsistent provision of section ten hundred forty-four of the charter, any of such documents so filed shall, if otherwise valid, continue to be effective provided, however, that the amendment or repeal of any document which is within the definition of rule set forth in subdivision five of section ten hundred forty-one of the charter shall be in accordance with section ten hundred forty-three of the charter.

## **Appendix Y**

### **Selected Findings of the 1999 New York City Housing and Vacancy Survey**

Prepared by  
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New York City Department of Housing Preservation and Development  
February 16,2000

The following is a summary of the initial findings of the 1999 New York City Housing and Vacancy Survey (HVS).

#### **A. Housing Inventory**

1. The number of housing units in New York City increased by 44,000 units, from 2,995,000 in 1996 to 3,039,000 in 1999. The number of rental units was 2,018,000, comprising 66 percent of the housing stock, in 1999 (Table 1).
2. Vacant units, both rental and owner, decreased substantially between 1996 and 1999: vacant units available for rent decreased by 21 percent, from 81,000 to 64,000; vacant units available for sale decreased by 28 percent, from 24,000 to 17,000. At the same time, the number of vacant units not available for sale or rent decreased substantially by 19 percent, from 110,000 in 1996 to 89,000 in 1999 (Table 1).
3. Rent controlled units numbered 53,000 or 2.7 percent of the occupied rental stock in 1999. The number of rent controlled units declined by 18,000, or by 26 percent, from 71,000 units in 1996 (Table 2).
4. There were 1,046,000 rent stabilized units (occupied and vacant), comprising 52 percent of the rental stock in 1999. This number is little changed from 1996, when it was 1,052,000 (Table 2).

#### **B. Vacancies**

1. The 1999 HVS reports a city wide decrease of 17,000 vacant-for-rent units, lowering the vacancy rate for units available for rent in the City during the period between February and May of 1999 to 3.19 percent, down from 4.01 percent during a similar period in 1996. The 1999 vacancy rate is significantly lower than 5 percent and, thus, meets the legal definition of a housing emergency in the City. (Table 3)
2. Between 1996 and 1999, the rental vacancy rate declined in all boroughs, except Staten Island. The rate in the Bronx decreased from 5.43 percent to 5.04 percent; in Brooklyn, it dropped from 4.20 percent to 3.26 percent; in Manhattan, it fell from 3.47 percent to 2.57 percent; and, in Queens, it declined from 3.28 percent to 2.11 percent. On the other hand, the rate increased significantly in Staten Island from 4.17 percent to 5.82 percent (Table 3).
3. The vacancy rate for rent stabilized units was 2.46 percent in 1999, a substantial decline from 1996, when it was 3.57 percent (Table 4).

4. The vacancy rate for low-rent units decreased considerably between 1996 and 1999. The vacancy rate in 1999 for units with asking rents of less than \$400 was 1.26 percent, down from the 1996 vacancy rate of 3.21 percent, using inflation-adjusted asking rents (changing 1996 rents into April 1999 dollars). The vacancy rate for units with a monthly asking rent level of \$400-\$499 fell from 3.31 percent to 2.53 percent. The rate for units in the \$500-\$599 level decreased from 3.89 percent to 2.86 percent (Table 5).

5. The vacancy rate for asking rents between \$600 and \$699 also decreased considerably from 4.58 percent in 1996 to 3.44 percent in 1999, while the rate for units with asking rents in the \$700-\$799 level did not change much in the three-year period. However, as the citywide rental vacancy rate declined during the period, vacancy rates for the next two higher levels of asking rent also declined markedly. The rate decreased from 5.52 percent to 3.75 percent for the \$800-\$899 level and from 4.06 percent to 2.74 percent for the \$900-\$999 level (Table 5).

6. The rental vacancy rates for the two higher levels of asking rents between \$1,000 and \$1,749 remained stable, while the rate for the highest rent level, \$1,750 and over, increased significantly, from 3.40 percent in 1996 to 5.70 percent in 1999 (Table 5).

7. The number of vacant units not available for sale or rent was 89,000 in 1999, a significant decline from 1996, when it was 110,000. Of these, the number undergoing or awaiting renovation was 32,000, or 36 percent of the total number of unavailable units, relatively stable since 1996, when it was 31,000. On the other hand, the number of unavailable units in the category of occasional, seasonal, or recreational use declined substantially by 48 percent, from 33,000 to 17,000, during the same three-year period. Of units in this category, 63 percent were in cooperative or condominium buildings; about 80 percent of these units in cooperative or condominium buildings were located in Manhattan (Table 6).

### **C. Incomes**

(Note that incomes are reported for 1998, while housing data are for 1999.)

1. The median income for all households (renters and owners combined) increased considerably from \$29,600 to \$33,000, or by 11.5 percent, between 1995 and 1998. The inflation-adjusted median income (changing 1995 dollars into 1998 dollars) for all households increased by 4.2 percent during the three-year period (Table 7).

2. The median income of renter households increased by 8.8 percent, from \$23,892 in 1995 to \$26,000 in 1998. However, after adjusting for inflation, the median income of renter households increased slightly by 1.7 percent (Table 7)

3. The median income of homeowners was \$53,000 in 1998, a 9.1-percent increase over 1995, when it was \$48,562. After adjusting for inflation, however, the median income of homeowners increased by just 2.0 percent (Table 7).

4. The median income of rent controlled households was \$17,000 in 1998. This median income increased by 18.3 percent from the inflation-adjusted median income in 1995 (Table 8).

5. The median income of rent stabilized households was \$27,000 in 1998, about the same as their inflation-adjusted median income in 1995 (Table 8).

6. The median income of renter households in pre-1947 rent stabilized units was \$25,600 in 1998, almost the same as their inflation-adjusted income in 1995. On the other hand, the 1998 median income of renter households in post-1947 rent stabilized units was \$30,400, an inflation-adjusted decrease of 6.9 percent since 1995 (Table 8).

7. The proportion of renter households with incomes below the poverty level dropped noticeably from 26.3 percent in 1995 to 24.5 percent in 1998 (Table 9).

#### **D. Rents**

1. The median monthly gross rent, which includes fuel and utility payments, increased by 9.4 percent, from \$640 in 1996 to \$700 in 1999. However, the inflation-adjusted increase in median gross rent (changing 1996 rent into April 1999 dollars) was 3.1 percent (Table 10).

2. The median monthly contract rent, which excludes tenant payments for fuel and utilities, increased by 8.0 percent, from \$600 in 1996 to \$648 in 1999. This was a 1.9-percent increase, after adjusting for inflation (Table 10).

3. The number of low-rent units declined and the number of high-rent units increased noticeably between 1996 and 1999. In April 1999 dollars, the number of units with monthly gross rents of less than \$400 declined by 6.5 percent; at the same time, the number of units with monthly gross rents between \$400 and \$599 decreased by 10.6 percent (Table 11).

4. On the other hand, the number of units with monthly gross rents of \$1,000 or more increased by 16.5 percent, while the number of units with monthly gross rents of \$1,750 or more increased by 34.0 percent (Table 11).

5. The median gross rent-income ratio fell from 30.0 percent in 1996 to 29.2 percent in 1999 (Table 12)

#### **E. Housing and Neighborhood Condition**

Housing and neighborhood condition in the City measured by the HVS improved markedly between 1996 and 1999. Moreover, these conditions in 1999 were the best since the HVS started covering them.

1. Building condition improved considerably.

The percent of renter-occupied units in dilapidated buildings was just 1.0 percent in 1999, a further improvement over 1996, when the dilapidation rate was 1.3 percent. The 1999 rate was the lowest in the 35-year period since the first HVS in 1965 (Table 13).

2. Housing maintenance condition improved substantially.

- a. The proportion of renter-occupied units with no maintenance deficiencies increased from 42.1 percent in 1996 to 45.5 percent in 1999 (Table 13).
  - b. The proportion of renter-occupied units with no heating breakdowns rose from 80.4 percent in 1996 to 83.7 percent in 1999 (Table 13).
3. Neighborhood quality improved greatly.
- a. The proportion of renter households near buildings with broken or boarded-up windows on the street declined significantly from 11.4 percent in 1996 to 8.8 percent in 1999 (Table 13).
  - b. The proportion of renter households that rated the quality of their neighborhood residential structures as "good" or "excellent" increased substantially from 63.9 percent to 68.6 percent between 1996 and 1999 (Table 13).

#### **F. Crowding**

The crowding situation became somewhat more serious in 1999, compared to 1996. The proportion of renter households that were crowded (more than one person per room) in 1999 was 11.0 percent, a slight increase over 1996, when the crowding rate was 10.3 percent.

**Table 1**  
**New York City Housing Inventory, 1996 and 1999**

	<u>1996</u>	<u>1999</u>	<u>Percent Change</u> <u>1996-1999</u>
<b>Total housing units</b>	2,995,276	3,038,796	+1.5%
<b>Total rental units</b>	2,027,421	2,017,701	-0.5
Occupied	1,946,165	1,953,289	+0.4
Vacant, available for rent	81,256	64,412	-20.7
<b>Total owner units</b>	857,765	932,123	+8.7
Occupied	834,183	915,126	+9.7
Vacant, available for sale	23,581	16,997	-27.9
<b>Vacant units, not available for sale or rent</b>	110,090	88,973	-19.2

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

**Table 2**  
**Rental Housing Inventory by Rent Regulation Status**  
**New York City, 1996 and 1999**

	<u>1996</u>	<u>1999</u>	<u>Percent Change</u> <u>1996-1999</u>
Total rental units (occupied and vacant available)	2,027,421	2,017,701	-0.5%
Rent controlled	70,572	52,562	-25.5
Rent stabilized	1,052,300	1,046,377	-0.6
Pre-1947 stabilized	763,956	769,079	+0.7
Post-1947 stabilized	288,344	277,298	-3.8
Private nonregulated(a)	575,666	602,861	+4.7
All other renter units(b)	328,883	315,901	-3.9

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys

Notes:

- (a) "Private nonregulated" consists of units which were never rent controlled or rent stabilized, units which were decontrolled, including those in buildings with five or fewer units, and unregulated rentals in cooperative or condominium buildings.
- (b) Includes Public Housing, Mitchell-Lama, In Rem, HUD regulated, Article 4, Loft Board.

**Table 3**  
**Vacant Units Available or Rent by Borough**  
**New York City, 1996 and 1999**

	<b>Vacant Units</b>		<b>Net Vacancy Rate(a)</b>	
	<b><u>Available for Rent</u></b>			
	<b><u>1996</u></b>	<b><u>1999</u></b>	<b><u>1996</u></b>	<b><u>1999</u></b>
Total	81,256	64,412	4.01%	3.19%
Bronx(b)	18,825	17,385	5.43	5.04
Brooklyn	25,937	19,819	4.2(c)	3.26
Manhattan(b)	20,185	14,816	3.47	2.57
Queens	14,020	9,109	3.28	2.11
Staten Island	2,289(c)	3,283	4.17(c)	5.82

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Notes:

- (a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated and renter-occupied units.
- (b) Marble Hill included in the Bronx.
- (c) The New York City Housing and Vacancy Survey is a sample survey. Since the number of vacant units available for rent in this category is small, the sampling error of the vacancy rate is likely to be large. Thus, interpretation of the vacancy rate should be done with caution.

**Table 4**  
**Rent Stabilized Vacant Units and Vacancy Rates**  
**New York City, 1996 and 1999**

	<u>1996</u>	<u>1999</u>
All Vacant for Rent Units	81,256	64,412
Rent Stabilized Units	7,549	25,790
Pre-1947 Stabilized	29,381	0,069
Post-1947 Stabilized	8,168	5,720

Net Vacancy Rate(a)

	<u>1996</u>	<u>1999</u>
All Rental Units	4.01%(b)	3.19%(b)
Rent Stabilized Units	3.57	2.46
Pre-1947 Stabilized	3.85	2.61
Post-1947 Stabilized	2.83	2.06

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Notes:

(a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated and renter-occupied units.

(b) The standard error of the vacancy rate for all renter units was 0.21 percent in 1996 and 0.1 percent in 1999.

**Table 5**  
**Number of Vacant Units Available for Rent and Net Vacancy Rate**  
**by Monthly Rent Level in 1999 Dollars**  
**New York City, 1996 and 1999**

<b>Month Rent(b)</b> <b>Level</b>	<b>Vacant Units</b> <b>Available for Rent</b>		<b>Net Vacancy Rate(a)</b> <b>(Percent)</b>	
	<b><u>1996</u></b>	<b><u>1999</u></b>	<b><u>1996</u></b>	<b><u>1999</u></b>
Total	81,256	64,412	4.01%	3.19%
Less than \$400	11,528	3,884	3.21	1.26
\$400 to \$499	7,536	5,203	3.31	2.53
\$500 to \$599	12,771	8,510	3.89	2.86
\$600 to \$699	15,556	11,176	4.58	3.44
\$700 to \$799	13,673	13,685	5.61	5.35
\$800 to \$899	7,116	6,661	5.52	3.75
\$900 to \$999	4,801	3,107	4.06	2.74
\$1,00 to \$1,249	3,980	4,600	3.43	3.33
\$1,250 to \$1,749	2,463(c)	3,149	3.13	3.41
\$1,750+	(d)	4,438	3.40(c)	5.7
\$2,000+	(d)	4,054	5.00(c)	7.13

Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Notes:

- (a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated and renter-occupied units.
- (b) Asking rents for vacant units and contract rents for occupied units. The ratio of the April 1999 over the April 1996 Consumer Price Index values (CPI-U) for New York-Northeast New Jersey-Long Island (176.0/166.0) was used to convert nominal 1996 rents into rents measured in 1999 dollars.
- (c) Since the number of units is small, interpret with caution
- (d) Too few units to report.

**Table 6**  
**Number of Vacant Units Unavailable for Rent or Sale**  
**by Reason for Unavailability, 1996 and 1999**

<u>Reason Unavailable</u>	<u>1996</u>		<u>1999</u>		<u>Percent Change 1996-1999</u>
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	
Total	110,090	100.0%	88,973	100.0%	19.2%
Dilapidated	6,356	6.0%	4,542	5.2%	-28.5%
Rented, Not Yet Occupied	6,807	6.4%	5,049	5.7%	-25.8%
Sold, Not Yet Occupied	3,850	3.6%	5,385	6.1%	39.9%
Undergoing Renovation	16,988	15.9%	19,121	21.8%	12.6%
Awaiting Renovation	14,112	13.2%	12,870	14.6%	-8.8%
Held for Occasional, Seasonal or Recreational Use	32,929	30.8%	17,229	19.6%	-47.7%
Used/Converted to Non-Residential Use	2,151(a)	2.0%	(b)	2.1(a)	(b)
In Legal Dispute	8,180	7.7%	5,990	6.8%	-26.8%
Awaiting Conversion/Being Converted to coop/Condo	(b)	(b)	(b)	(b)	(b)
Held Pending Sale of Building	(b)	1.8%	3,160	3.6%	(b)
Owner's Personal Problems (age, illness, etc.)	8,054	7.5%	5,276	6.0%	-34.5%
Held for Planned Demolition	(b)	(b)	(b)	(b)	(b)
Held for Other Reasons	4,795	4.5%	7,019	8.0%	+46.4
Reason not reported	3,342	-	(b)	-	-

Sources: U.S. Bureau of the Census, 1996 and 1999 New York; City Housing and Vacancy Surveys.

Notes:

(a) Since the number of units is small, interpret with caution.

(b) Too few units to report.

**Table 7**  
**Median Household Incomes**  
**New York City, 1995 and 1998**

	<u>1995</u>	<u>1998</u>	<b>Percent Change <u>1995-1998</u></b>
<b><u>In current dollars</u></b>			
All households	29,600	\$33,000	+11.5%
All renters	\$23,892	\$26,000	+8.8
All Owners	\$48,562	\$53,000	+9.1
CPI(a)	162.2	173.6	+7.0
<b><u>In 1998 dollars</u></b>			
All households	\$31,680	\$33,000	+4.2
All renters	\$25,571	\$26,000	+1.7
All owners	\$51,975	\$53,000	+2.0

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Sources: U.S. Bureau of the Census, 1996 and 1999. New York City Housing and Vacancy Surveys.

Notes:

(a) Consumer Price Index for All Urban Consumers for New York-Northeast New Jersey-Long Island (1982-84=100), yearly average, Bureau of Labor Statistics, U.S. Department of Labor.

**Table 8**  
**Median Renter Household Incomes by Rent Regulation Status**  
**New York City, 1995 and 1998**  
**(Constant 1998 dollars)**

	<u>1995</u>	<u>1998</u>	<b>Percent Change</b> <u>1995-1998</u>
All Renters	\$25,571	\$26,000	+1.7%
Rent Controlled	\$14,372	\$17,000	+18.3
Rent Stabilized	\$27,132	\$27,000	-0.5
Pre- 1947 Stabilized	\$25,687	\$25,600	-0.3
Post-1947 Stabilized	\$32,644	\$30,400	-6.9
Private nonregulated(a)	\$32,109	\$35,350	+10.1

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Note:

(a) "Private nonregulated" consists of units which were never rent controlled or rent stabilized, units which were decontrolled, including those buildings with five or fewer units, and unregulated rentals in cooperative or condominium buildings.

**Table 9**  
**Renter Households With Incomes Below Poverty Level**  
**New York City, 1995 and 1998**

<u>Renter Households</u>	<u>1995</u>	<u>1998</u>
Below 100% of poverty level	26.3%	24.5%

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

**Table 10**  
**Median Rents, All Renter-Occupied Units**  
**New York City, 1996 and 1999**

<b><u>In current dollars</u></b>	<b><u>1996</u></b>	<b><u>1999</u></b>	<b><u>Percent Change</u></b> <b><u>1996-1999</u></b>
Median gross rent	\$640	\$700	+9.4
Median contract rent	\$600	\$648	8.0
CPI(a)	166.0	176.0	6.0
<b><u>In April 1999 dollars</u></b>			
Median gross rent	\$679	\$700	+3.1
Median contract rent	\$636	\$648	+1.9

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Survey

Notes: (a) Consumer Price Index for all Urban Consumers for New York-Northeast New Jersey-Long Island (1982-84=100), April of each year, Bureau of Labor statistics, U.S. Department of Labor.

**Table 11**  
**Monthly Gross Rent in Renter Occupied Housing**  
**New York City, 1996 and 1999**  
**(Constant April 1999 Dollars)**

<b>Monthly Gross rent April 1999 Dollars</b>	<b>1996</b>		<b>1999</b>		<b>Percent Change 1996-1999</b>
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	
<b>Total</b>	1,946,165	100.0%	1,953,289	100.00%	+0.4%
<b>Less than \$400</b>	286,781	15.0	268,228	13.9	-6.5
Less than \$300	182,770	9.6	174,539	9.0	-4.5
\$300-\$399	104,011	5.4	93,689	4.9	-9.9
<b>\$400-\$599</b>	427,550	22.3	382,411	19.9	-10.6
\$400-\$499	157,215	8.2	147,815	7.7	+6.0
\$500-\$599	270,335	14.1	234,596	12.2	-13.2
<b>\$600-\$99</b>	893,514	46.7	922,952	47.9	+3.3
\$600-\$999	313,818	16.4	310,000	16.1	-1.2
\$700-\$799	254,687	13.3	271,928	14.1	+6.8
\$800-\$899	185,908	9.7	201,625	10.5	+8.5
\$900-\$999	139,101	7.3	139,399	7.2	+0.2
<b>\$1000 or more</b>	304,998	15.9	355,248	18.4	+16.5
\$1,000-\$1,249	155,885	8.1	168,479	8.7	+8.1
\$1,250-\$1,499	55,982	2.9	66,997	3.5	+19.7
\$1,500-\$1,749	32,966	1.7	39,154	2.0	+18.8
\$1,750+	60,165	3.1	80,618	4.2	+34.0
Not Reported/No rent	33,321	--	24,448	--	--

Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Note:

(a) Constant 1999 dollars are derived by multiplying 1996 rents by the ratio of the April 1999 CPI over the April 1996 CPI (176.0/166.0). Consumer Price Index for All Urban Consumers (CPI U) for New York-Northeast New Jersey-Long Island (1982-84= 100), Bureau of Labor Statistics, U.S. Department of Labor.

**Table 12**  
**Median Gross Rent/Income Ratios**  
**New York City, 1996 and 1999**

	<u>1996</u>	<u>1999</u>
Gross Rent/Income Ratio	30.0%	29.2%

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

**Table 13**  
**Housing and Neighborhood Condition**  
**New York City, 1996 and 1999**

<b>Housing Condition</b>	<b><u>1996</u></b>	<b><u>1999</u></b>
Renter-occupied units in dilapidated buildings		
Number	25,561	19,006
Percent	1.3%	1.0%
Renter-occupied units in buildings with no building defects	88.6%	89.1%
Renter-occupied units with 5 or more of 7 maintenance deficiencies(a)	6.1%	4.4%
Renter-occupied units with no maintenance deficiencies(a)	42.1%	45.5%
Renter-occupied units with heating breakdowns (4 or more times)	8.2%	6.5%
Renter-occupied units with no heating breakdowns	80.4%	83.7%
<b><u>Neighborhood Condition</u></b>		
Renter household opinion of good/excellent neighborhood quality	63.9%	68.6%
Renter household opinion of poor neighborhood quality	7.5%	5.7%
Renter households with any buildings with broken or boarded-up windows on same street	11.4%	8.8%

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Sources: U.S. Bureau of the Census, 1996 and 1999 New York City Housing and Vacancy Surveys.

Note: (a) Maintenance deficiencies include: 1) additional heating required in winter; 2) heating breakdown; 3) cracks or holes in interior walls; 4) presence of rodents; 5) presence of broken plaster or peeling paint; 6) toilet breakdown; 7) water leakage into unit.