

EXPLANATORY STATEMENT - HOTEL ORDER #46

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2016-17 Lease Increase Allowances for Hotels Under the Jurisdiction of the Rent Stabilization Law

Explanatory Statement and Findings of the Rent Guidelines Board Concerning Increase Allowances for Hotel Units Under the Jurisdiction of the Rent Stabilization Law, Pursuant to Hotel Order Number 46, Effective October 1, 2016 through and including September 30, 2017.¹

Pursuant to the authority vested in it by the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974, implemented by Resolution Number 276 of 1974 of the New York City Council, and extended by the Rent Act of 2015, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 46, adopted on June 27, 2016, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 46 provides for an allowable increase of **0%** over the lawful rent actually charged and paid on September 30, 2016 for rooming houses, lodging houses, Class B hotels, single room occupancy buildings, and Class A residential hotels. The Order does not limit rental levels for commercial space, non-rent stabilized residential units, or transient units in hotel stabilized buildings during the guideline period. The Order also provides that for any dwelling unit in a hotel stabilized building which is voluntarily vacated by the tenant thereof, the level of rent increase governing a new tenancy shall be the same as the guideline for rent increases set forth above.

SPECIAL NOTE

In the past the Board has adopted rent increases to the rent stabilized hotel universe. In recent years, when increases were granted, the Board adopted a proviso that was designed to deny owners from taking these increases under certain conditions. Since the Board voted a 0% increase for all classifications of rent stabilized hotels, this proviso is not included in Hotel Order 46. In event that increases are considered for subsequent Hotel Orders, at such time the current members of the Rent Guidelines Board urge future Boards to consider reinstating this proviso or some form thereof. Below is the proviso and explanatory language previously adopted in Hotel Order 41:

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

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

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

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

Here are two examples. One: a hotel has 100 units and 2 stores. 32 units are rented to permanent rent stabilized tenants, 10 are vacant and 58 are rented to transients and tourists. The calculation is as follows, the denominator is 100 and the numerator is 32. This calculation results in an occupancy percentage of LESS than 85% under the formula (32%) and an increase CANNOT be taken for the permanent stabilized tenants.

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

DEFINITIONS

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

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

BACKGROUND

Public meetings of the Board were held on April 7, 14 and 21, and May 26, 2016 following public notices. On May 3, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Five public hearings were held on June 9, June 13, June 16, June 20, and June 21, 2016 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 6:30 p.m. to 8:55 p.m. on June 9, 5:15 p.m. to 9:20 p.m. on June 13, 5:20 p.m. to 9:30 p.m. on June 16, 2:15 p.m. to 8:00 p.m. on June 20, and from 5:15 p.m. to 8:45 p.m. on June 21. The Board heard testimony from approximately three hotel tenants and tenant representatives, no hotel owners, and one public official. In addition, the Board's office received approximately 11 written statements from tenants and tenant representatives, no hotel owners, and one public official. On June 27, 2016, the guidelines set forth in Hotel Order Number 46 were adopted.

Selected Oral and Written Testimony from Tenants and Tenant Groups:

- “The conditions that warranted last year’s 0% vote remain essentially unchanged: SRO tenants continue to struggle while buildings designated for residential use by rent-stabilized tenants are increasingly used for other purposes which generate significant profits in these buildings.”
- “SROs are housing of last resort for low-income people who would otherwise be homeless. Thousands of hard-working people as well as a disproportionate number of elderly and disabled people call an SRO their home. If the economic situation is difficult for low-income New Yorkers, it is dire for most residents of SROs. Many rely on SSI, disability pensions, food stamps, and other similar resources as their sole source of income. Tenants routinely report incomes as low as \$10,000 per year. For many, the affordability of their SRO home means the difference between having a roof over their head and being homeless.”
- “According to the Board’s own figures, more than half of all units in the buildings we term “SROs” are not rented as regulated SRO units. The individuals and companies that own these buildings are property owners who have a fixed number of SRO tenants and have no intention of re-renting to new permanent, rent-stabilized tenants when a tenant moves out or is evicted. To treat these property owners as though they were legitimately concerned with SRO policies – to pretend that their activities are significantly informed by the Board’s SRO orders – does not comport with reality.”
- “Rents have continued to rise over the years, and have contributed to the increase in homelessness. Oftentimes, tenants must choose whether to pay rent or put food on the table. Tenants in all categories are struggling, and it would be corrupt to bless these landlords with an annual increase.”
- “I do not want a rent increase inflicted on any SRO and residential hotel tenants – particularly those of us who live at the Tempo on 240 West 73rd Street, New York, NY, 10023. My husband and I could never afford the high market rent that the current unstabilized tenants are paying. (many former tenants were pushed out by lawsuits.)”
- “I hope you stick to that zero for the hotels. It’s really what’s warranted. ”

Selected Oral and Written Testimony from Owners and Owner Groups:

- None Submitted

Selected Oral and Written Testimony from Public Officials:

– “I commend the Board for keeping SRO rents at the same level for another year. SRO tenants are a particularly vulnerable segment of the rent-stabilized population, with many aging tenants relying of fixed income in a housing market without comparable housing. I urge the Board to finalize its SRO vote at 0%.”

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 *2016 Price Index of Operating Costs*, prepared by the staff of the Rent Guidelines Board, reports and testimony submitted by owner and tenant groups relating to the hotel sector, and reports submitted by public agencies. The Board heard and received written testimony from invited guest speakers on April 21, 2016. Guest speakers representing hotel tenants included Dan Evans, from the Goddard-Riverside SRO Law Project, Brian Sullivan from the SRO Law Project at MFY Legal Services, and Larry Wood from the Goddard Riverside Law Project and Family Council. There were no guest speakers representing hotel landlords at this meeting.

FINDINGS OF THE RENT GUIDELINES BOARD

Rent Guidelines Board Research

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

1. *2016 Mortgage Survey Report*, April 2016 (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);
2. *2016 Income and Affordability Study*, April 2016 (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
3. *2016 Price Index of Operating Costs*, April 2016 (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);
4. *2016 Housing Supply Report*, May 2016 (Includes information on the conversion of Hotels to luxury apartments and transient use, new housing construction measured by certificates of occupancy in new buildings and units authorized by new building permits, tax abatement and exemption programs, and cooperative and condominium conversion and construction activities in New York City); and,
5. *Changes to the Rent Stabilized Housing Stock in NYC in 2015*, May 2016 (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The five reports listed above may be found in their entirety on the RGB’s website, www.nycrgb.org, and are also available at the RGB offices, 1 Centre St., Suite 2210, New York, NY upon request.

Price Index of Operating Costs for Rent Stabilized Hotel Units

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

The Price Index for all stabilized Hotels declined 3.8% this year, a 3.6 percentage point drop from the 0.2% fall in 2015. It is important to note that the Hotel PIOC was not re-weighted using the RPIE data. However, in order to maintain symmetry between indices, the expense items were aligned to the seven components now used in the Apartments PIOC. The realignment of the hotel expenditure items had no impact on the change in the overall PIOC, and would have still been -3.8% if the old components were used.

This year, the Hotel Fuel component declined 39.1%, due to significant declines in the cost of fuel oil and natural gas costs used for heating hotel buildings in NYC. The Fuel component accounts for nearly 20% of the entire Hotel Index. Five of the remaining six components witnessed cost increases, with Insurance having the highest rise of 8.2%, followed by Taxes at 7.3%. More moderate increases were seen in Labor Costs (4.3%), Maintenance (0.9%), and Administrative Costs (2.2%). Costs fell in the Utilities component, by 2.0%. See the table on this page for changes in costs and prices for all rent stabilized hotels from 2015-2016.

Among the different categories of Hotels, the index for “traditional” hotels decreased 1.1%, Rooming Houses fell 4.7%, and SROs fell by the greatest proportion, 11.7%.

Percent Change in the Components of the Price Index of Operating Costs March 2015 to March 2016, By Hotel Type and All Hotels

Item Description	Hotel	RH	SRO	All Hotels
TAXES	7.8%	6.6%	7.0%	7.3%
LABOR COSTS	4.1%	4.2%	4.6%	4.3%
FUEL	-38.6%	-42.9%	-38.3%	-39.1%
UTILITIES	0.5%	-5.5%	-1.7%	-2.0%
MAINTENANCE	0.6%	1.0%	1.1%	0.9%
ADMINISTRATIVE COSTS	2.0%	2.7%	2.7%	2.2%
INSURANCE COSTS	8.2%	8.2%	8.2%	8.2%
ALL ITEMS	-1.1%	-4.7%	-11.7%	-3.8%

Source: 2016 Price Index of Operating Costs

Changes in Housing Affordability

Preliminary results from the 2014 Housing and Vacancy Survey were released in February of 2015, and showed that the vacancy rate for New York City is 3.45%. Approximately 47% of renter households in NYC are rent stabilized, with a vacancy rate of 2.12%. The survey also shows that the median household income in 2013 was \$40,600 for rent stabilized tenants, versus \$41,500 for all renters. The median gross rent for rent stabilized tenants was also lower than that of all renters, at \$1,300 versus \$1,325 for all renters. And rent stabilized tenants saw a median gross rent-to-income ratio of 36.4% in 2014, compared to 33.8% for all renters.²

Looking at New York City's economy during 2015, it showed many strengths as compared with the preceding year. Positive indicators include growing employment levels, which rose for the sixth consecutive year, increasing 2.9% in 2015.³ The unemployment rate also fell, declining by 1.5 percentage points, to 5.7%.⁴ Gross City Product (GCP) also increased for the sixth consecutive year, rising in real terms by 3.4% in 2015.⁵ In addition, inflation-adjusted wages rose by 1.6% during the most recent 12-month period (the fourth quarter of 2014 through the third quarter of 2015)⁶, and inflation slowed to just 0.1%.⁷ The number of non-payment filings in Housing Court fell by 2.4%,⁸ "calendared" cases fell 12.5%,⁹ and evictions fell by 18.1%.¹⁰ In addition, Supplemental Nutrition Assistance Program (SNAP) caseloads fell for second consecutive year, by 3.2%.¹¹

Negative indicators include the seventh consecutive year of increase in homeless levels, which rose to an average of more than 57,000 persons a night, an increase of 5.6% over 2014 levels.¹² Public assistance caseloads also rose, by 5.7% over 2014 levels.¹³

The most recent numbers, from the fourth quarter of 2015 (as compared to the fourth quarter of 2014), show that homeless levels were up 2.1%, cash assistance levels were up 5.7%, and the number of filings in housing court were up 7.1%. However, most fourth quarter indicators were positive, with employment levels up 2.2%, the unemployment rate down 1.3 percentage points, the number of calendared cases in Housing Court down 17.1%, and SNAP recipients down 2.8%. Fourth quarter GCP also rose, by 2.1% in real terms, and inflation was lower than

² Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey, NYC Dept. of Housing Preservation and Development, February 9, 2015.

³ NYS Dept. of Labor; <http://www.labor.state.ny.us>; Data accessed March 2016. Data is revised annually and may not match data reported in prior years.

⁴ NYS Dept. of Labor; <http://www.labor.state.ny.us>; Data accessed March 2016. Data is revised annually and may not match data reported in prior years.

⁵ Data from the NYC Comptroller's Office as of March, 2016. GCP figures are adjusted annually by the New York City Comptroller's Office. The figures in this report are the latest available estimate from that office, based on inflation adjusted 2009 chained dollars.

⁶ NYS Dept. of Labor; <http://www.labor.state.ny.us>; Data accessed March 2016. Data is revised annually and may not match data reported in prior years.

⁷ Bureau of Labor Statistics; <http://www.bls.gov>; Data accessed March, 2016.

⁸ Civil Court of the City of New York data.

⁹ Civil Court of the City of New York data.

¹⁰ NYC Department of Investigation, Bureau of Auditors data.

¹¹ New York City Human Resources Administration. HRA Charts (SNAP Recipients): <http://www.nyc.gov/html/hra/html/facts/charts.shtml>

¹² Data from the Policy & Planning Office of the NYC Dept. of Homeless Services (DHS), DHS daily reports, and monthly Citywide Performance Reporting reports. Note that the NYC Department of Housing Preservation and Development, the NYC Department of Youth and Community Development, and the NYC Human Resources Administration also operate emergency shelters, which house approximately 5,000 persons per night.

¹³ New York City Human Resources Administration. HRA Charts (Cash Assistance Recipients): <http://www.l.nyc.gov/site/hra/about/facts.page#charts>

that of the last quarter of 2014, rising by 0.6%, as compared to 0.8% in the fourth quarter of 2014.

Consumer Price Index

The Board reviewed the Consumer Price Index. The table that follows shows the percentage change for the NY-Northeastern NJ Metropolitan area since 2008.

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2008-2016 (For "All Urban Consumers")									
	2008	2009	2010	2011	2012	2013	2014	2015	2016
1st Quarter Avg. ¹⁴	3.7%	1.3%	2.1%	2.0%	2.7%	2.1%	1.4%	-0.2%	0.7%
Yearly Avg.	3.9%	0.4%	1.7%	2.8%	2.0%	1.7%	1.3%	0.1%	

Source: U.S. Bureau of Labor Statistics.

Effective Rates of Interest

The Board took into account current mortgage interest rates and the availability of financing and refinancing. It reviewed the staff's *2016 Mortgage Survey Report* of lending institutions. The table below gives the reported rate and points for the past ten years as reported by the *Mortgage Survey*.

2016 Mortgage Survey ¹⁵ Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 2006-2015										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Avg. Rates	6.3%	5.8%	6.5%	6.3%	5.8%	4.6%	4.4%	4.9%	4.3%	4.0%
Avg. Points	0.61	0.47	0.62	0.79	0.61	0.63	0.59	0.54	0.70	0.4
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Avg. Rates	6.2%	5.8%	6.5%	6.3%	5.7%	4.7%	4.4%	4.9%	--*	--*
Avg. Points	0.61	0.44	0.62	0.83	0.61	0.63	0.40	0.50	--*	--*

Source: 2007-2016 *Annual Mortgage Surveys*, RGB.

* Questions specific to refinancing are no longer asked on the survey.

¹⁴ 1st Quarter Average refers to the change of the CPI average of the first three months of one year to the average of the first three months of the following year.

¹⁵ 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.

Hotel Conversion

Conversion of single room occupancy (SRO) buildings also continued over the past year. SRO owners may convert SRO housing to other uses after obtaining a “Certificate of No Harassment” (CONH) from HPD. Following a decrease in 2014, approved CONH applications rose, up 52.8%, from 108 in 2014 to 165 in 2015.¹⁶

Efforts are also underway to ensure that SROs are used for permanent housing rather than as transient hotels. As of May 1, 2011, laws were newly passed strengthening the City’s ability to crack down on housing being used illegally for transient occupancy. Transient occupancy is now clearly defined as stays of less than 30 days, and between May of 2011 and April of 2012 1,820 violations (ranging from \$800 to \$2,000) were issued to illegal hotel operators (including private apartments, hostels, and SROs).¹⁷ More than 5,800 violations have been issued since (including more than 1,300 between May, 2015 and April, 2016),¹⁸ and in late 2012, the City Council strengthened this law even further, increasing fines to up to \$25,000 for repeat offenders.¹⁹

As detailed in last year’s Housing Supply Report, the NYS Attorney General, using data provided by Airbnb, released a report in October of 2014 that found that as many as 72% of the company’s listings were illegal, and 6% of hosts (offering hundreds of units for rent) garnered 36% of all bookings and 37% of all revenue.²⁰ In the wake of that report, and facing pressure from regulators to release data about their business, in December of 2015 and February of 2016 Airbnb released limited data on its New York City rentals. Focused primarily on listings of “Entire Home” rentals, many of which are illegal in New York City, the data shows that as of February 15, 2016, of the 40,349 listings on Airbnb, 54% were offers of entire homes. Of the hosts who offer entire homes, approximately 40% of the revenue comes from hosts with multiple listings, including 10% from hosts with five or more listings. In a letter to State lawmakers that accompanied the February data, Airbnb reaffirmed their commitment to remove listings from their site that are controlled by commercial operators.²¹ However, a news report from the end of February claims that of the more than 600 hosts who were removed from the site in November of 2015, 134 had relisted at least one unit on the site, with 44 adding at least two.²²

OTHER RELEVANT INFORMATION

The NYS Division of Housing and Community Renewal released a memo to the Board dated June 7, 2016 in which they outline information from their registration database relating to Hotels/SROs/Rooming Houses. The following is an excerpt from that memo (Pages 3-4):

¹⁶ NYC Department of Housing Preservation and Development.

¹⁷ Mayor Bloomberg Announces Results of City’s Efforts to Curb Dangerous Illegal Hotels in New York City After State Legislation Enhances Enforcement Abilities.” Mayor’s Office Press Release 157-12. April 27, 2012.

¹⁸ Office of the Criminal Justice Coordinator, Mayor’s Office of Special Enforcement. Inclusive of data through April 8, 2016.

¹⁹ “Illegal Hotel Fines Could Skyrocket,” The Real Deal. September 12, 2012.

²⁰ “Airbnb in the City,” NYC Attorney General, October 2014 and press release, “A.G. Schneiderman Releases Report Documenting Widespread Illegality Across Airbnb’s NYC Listings; Site Dominated by Commercial Users,” October 16, 2014.

²¹ Airbnb Action: Our Community Compact in New York City. <https://www.airbnbaction.com/our-community-compact-in-new-york-city/>

²² “Airbnb’s Purged Listings Are Already Coming Back,” Bloomberg, February 25, 2016.

<http://www.bloomberg.com/news/articles/2016-02-25/airbnb-s-purged-landlords-are-relisting-their-apartments>

11. What is the total number of SRO/Hotel units registered with the DHCR in 2015? How many of these units are rent stabilized? How many are temporarily and permanently exempt? How many are registered as transient? How many as vacant?

Rent Stabilized Units	12,418
Vacant Units	1,963
Temporary Exempts Units	3,892
*of these 2,700 are Transient Units	
Permanent Exempt Units	49
Total Number of Units	18,332

12. What is the total number of SRO/Hotel units registered with the DHCR on an annual basis from 2009-2015?

- **In 2009 the total number of units registered was 22,250**
- **In 2010 the total number of units registered was 22,587**
- **In 2011 the total number of units registered was 22,254**
- **In 2012 the total number of units registered was 21,473**
- **In 2013 the total number of units registered was 17,792**
- **In 2014 the total number of units registered was 18,787**
- **In 2015 the total number of units registered was 18,322**

13. What is the average and median rent for rent stabilized SRO/Hotel units in 2015?

- **The average rent stabilized rent in buildings due to SRO/Hotel is \$2,292; the median rent is \$1,250.**

14. When a hotel tenant files an overcharge complaint, does DHCR look at the number of units rented to permanent tenants per the RGB Order and how does DHCR calculate the number of units rented to permanent stabilized tenants?

- **Yes, where applicable. This requirement is not in every RGB Hotel Order. The onus is on the owner to prove the status of the subject units. A “permanent tenant” is defined in Fact Sheet #42 (Hotels, SROs and Rooming Houses) as an individual or his or her family member residing with such individual, who: (1) has continuously resided in the same building as a principal residence for a period of at least six months; or (2) who requests a lease of six months or more, which the owner must provide within 15 days; or (3) who is in occupancy pursuant to a lease of six months or more even if actual occupancy is less than six months.**

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 46 was as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
Guidelines for Hotels	7	2	-

Dated: June 28, 2016

Filed with the City Clerk: June 30, 2016

Hon. Kathleen A. Roberts (Ret.)
Chair
NYC Rent Guidelines Board

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Written submissions by tenants, tenant organizations, owners, and owner organizations.