

EXPLANATORY STATEMENT - HOTEL ORDER #35
Explanatory Statement and Findings of the Rent Guidelines Board
In Relation to 2005-06 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 35, Effective October 1, 2005 through and including September 30, 2006.¹

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 Chapter 82 of the Laws of 2003, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 35, adopted on June 21, 2005, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 35 provides for an allowable increase of **0%** over the lawful rent actually charged and paid on September 30, 2005 for rooming houses, lodging houses, Class B hotels, single room occupancy buildings, and Class A residential hotels. The Order does not limit rental levels for commercial space, non-rent stabilized residential units, or transient units in hotel stabilized buildings during the guideline period. The Order also provides that for any dwelling unit in a hotel stabilized building which is voluntarily vacated by the tenant thereof, the level of rent increase governing a new tenancy shall be the same as the guideline for rent increases set forth above.

SPECIAL NOTE

In the past the Board has adopted rent increases to the rent stabilized hotel universe. In recent years, when increases were granted, the Board adopted provisos that were designed to deny owners from taking these increases under certain conditions. Since the Board voted a **0%** increase for all classifications of rent stabilized hotels, these provisos are not included in Hotel Order 35. 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 adopt and reinstate these provisos. These provisos and explanatory language are as follows:

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 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 **75%** of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

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

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

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

Here are two examples. One: a hotel has 100 units and 2 stores. 32 units are rented to permanent rent stabilized tenants, 10 are vacant and 58 are rented to transients and tourists. The calculation is as follows, the denominator is 100 and the numerator is 32. This calculation results in an occupancy percentage of LESS than 75% 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, 20 are vacant and 120 are occupied by permanent rent stabilized tenants. The denominator would be 148 and the numerator would be 120. This calculation results in an occupancy percentage of GREATER than 75% under the formula (81%) and an increase CAN be taken for the permanent stabilized tenants.

- 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.

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 29, April 12 and 22, May 2 and June 2, 2005 following public notices. On May 3, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Two public hearings were held on June 14 and June 16, 2005 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 4:00 p.m. to 8:45 p.m. on June 14 and from 10 a.m. to 8:00 p.m. on June 16. The Board heard testimony from 24 hotel tenants and tenant representatives, no hotel owners and owner representatives and 2 public officials. In addition, the Board's office received approximately 5 written statements from owners and owner groups, tenants and tenant groups, and public officials. On June 21, 2005, the guidelines set forth in Hotel Order Number 35 were adopted.

Written Testimony from Owners and Owner Groups:

- “I ask you to please give the SROs and other building groups a 10% increase across the Board so that they may have the incentive to stay in business.”
- “The fact is that I have been appearing before this Board for several years and have always believed that we would reach an amicable meeting of the minds. The fact is that last year these owners were voted NO INCREASE at all, not even the token 2% which had been afforded them in the past. Apparently, this has sent a signal to all these owners that their problems and concerns were not going to be addressed. This is truly sad commentary.”
- “While I have attempted to calm their fears, some [owners] have lost patience, and view the fact that they were ignored, as a signal that operating these types of buildings was no longer considered necessary or important to the City of New York or the tenants that reside there that a vast majority of them have put their properties on the market, while others feel diversity is the only alternative. Is it not still true that tenants want to live in these buildings? Have these buildings been ignored while others get increases? These are questions that I must field on a daily basis. Whether or not we admit it, we are truly bound by mutual interests.”
- “[N]ever has there been such division in the ranks. Membership [of the Associated Hotels and Motels of Greater New York] has decreased by over one-third and their needs to be a considerable effort on the part of the Board to keep them interested in doing business... We are truly at a crossroad insofar as these buildings are concerned and I'm afraid that the only hope is recognition on the preliminary vote.”
- “I believe most of the original SRO and SRO hotel owners are seeing a market for their properties as a way out of a dying industry that no longer enables them to see a profit... [S]ome members who I sought to bring before you totally surprised me by putting up their properties for sale rather than take any further losses.”

Oral and Written Testimony from Tenants and Tenant Groups:

- “The owners and landlords of the dwindling supply of SRO housing do not rely upon the relatively low rent of permanent tenants to meet their operating costs and make a profit. Last year, the RGB ordered no increase for the tenants of SRO hotels and lodging houses. On behalf of the SRO tenants of New York City, we thank the Board and urge it to do so yet again, as the housing crisis in the City has only deepened.”
- “It continues to be blindingly obvious that no SRO owners choose to remain ‘in the system’ (i.e., continue to rent to permanent tenants at the legal rent) because they do or do not receive permission to take an increase in their tenants’ rents each year. Rents have tended to rise in years in which no guidelines increases were granted as well as years when allowable increases were high. For many years now, no hotels or SRO’s have been renting on a regular basis to new permanent tenants at anything approaching a rent that is affordable for the HVS-defined average SRO tenant; their income now comes overwhelmingly from daily and weekly rentals at rates of \$100 per day or more.”
- “In the absence of any evidence that SRO owners need rent increases in order for them to hold their profit positions steady (a remarkable assumption to begin with), no increases can be justified.”
- “Many factors are eroding the supply of affordable SRO units in New York City but one of them should not be ever escalating rents....Please vote to help folks who live in SROs stay there — vote no increase.”
- “My landlord has refused to rent to people who want rent stabilized, long-term rooms at the hotel. Such a refusal is illegal and very common and that in of itself is sufficient reason to deny rent increases for a SRO hotel.”
- “Why should owners such as ours-who violates the law and exploits tenants-be given an increase so that they can continue to abuse, harass, and retaliate using that very increase for their benefit and yet continues to reduce services, fail to make required repairs and get tax increases and is still bringing tenants to court for frivolous reasons. Therefore we say no to rent hikes.”

Oral and Written Testimony from Public Officials:

- “Lastly, I would like to state for the record that I strongly oppose any rent increase for SRO tenants. I urge the members of this body to support a ZERO guideline for SRO tenants throughout the city of New York.”
- “Any SRO rent increase is unsupportable. As anyone who has witnessed the conditions of most SRO housing knows, it is housing of last resort. For a person with a low income, even a small increase could mean the difference between being on the street or being in one’s own room. The Board should be commended for enacting an SRO rent freeze last year, and it is good to see that the Board has proposed rent increases for SROs that range from 0-2%. The Board should not approve any SRO rent increase, in order to protect vulnerable housing for those who need it most, and who can least afford to pay more.”

– “Single Room Occupancy (SRO) buildings and Residential Hotels are also an important part of the rent stabilized housing stock. SRO owners derive the bulk of their income from their transient guests, not from permanent tenants. While rent increases would have a minimal affect on the total income of these landlords, such an increase would have a very large impact on the incomes of tenants living in SROs. The Rent Guidelines Board should NOT issue any rent increase for permanent tenants of hotels, rooming houses, and lodging houses.”

– “Another rent increase could not only hurt those who live in rent stabilized apartments, but also SRO residents, many of whom are formerly homeless and at great risk of becoming homeless again. I strongly urge the RGB once again to freeze rents for SROs as it did last year. I commend the Board for its action last year and I hope that the Board continues to recognize that SRO residents are the New Yorkers who are most in need of affordable housing.”

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 2005 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, 2005. Guest speakers representing hotel tenants included Terry Poe, Tenant Organizing Supervisor, from the Goddard-Riverside Community Center’s West Side SRO Law Project and Christopher Schwartz, Staff Attorney, from the East Side SRO Law Project of MFY Legal Services. There were no guest speakers representing hotel landlords at this meeting but Helen Maurizio, Executive Director of the Associated Hotels and Motels of Greater New York, submitted written testimony.

FINDINGS OF THE RENT GUIDELINES BOARD

Price Index of Operating Costs for Rent Stabilized Hotel Units

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

The Price Index for all stabilized Hotels increased 5.7% this year, half of a percentage point lower than the 6.2% increase found the year before. The Price Index for Hotels was just 0.1 percentage point lower overall than the increase in costs measured in the Apartment Price Index. The primary differences between the increase in the Hotel Index and the Apartment Index was in the Tax and Utilities components. The increase in taxes for all types of Hotels was 0.6% overall versus 1.2% in apartment buildings. This disparity in taxes placed downward pressure on the Hotel Index. However, it was offset by utility costs that increased in Hotels by 10.6%, compared to the 8.4% increase for apartments, resulting in two indices that are nearly identical.

Prices in all other components in the Hotel Index had similar changes in rates to the same

components in the Apartment Index. Labor Costs increased more rapidly in Hotels (4.1%) versus the 3.5% rise in apartments. Hotels tend to employ more non-union labor than apartment buildings, and non-union labor costs increased at a higher rate than unionized labor costs did this year. Conversely, the rates for Contractor Services did not rise as quickly in Hotels (3.5%) as they did in apartments (4.5%) this year. Because the Contractor Services component is less important in the Hotel Index (accounting for about 8% of the weight) than in the Apartment Index (about 13% of the weight), the lower increase in maintenance rates did not offset the overall Hotel Index significantly. Fuel and Insurance increased at the same rates in both indices. See the table on the facing page for changes in costs and prices for all rent stabilized hotels from 2004-05.

Among the different categories of Hotels, the index for “traditional” hotels increased 2.8%, the index for Rooming Houses increased 9.0%, and SROs increased by 6.5%. The differences between these indices are primarily due to the increased weight placed on the Tax component for “traditional” hotels and the increased weight for certain fuel, electricity, and gas items for the smaller rooming houses and SROs. (See Appendices 4 and 7)

There was diversity among hotel subgroups in tax expense this year, as real estate taxes decreased in “traditional” stabilized hotels by 4.1% but increased 2.6% in SROs, and by 3.4% in Rooming Houses. The decrease in tax burden found for “traditional” hotels this year was caused by the decline in assessments for Hotels of 3.1%, compared to increases of 6.6% for both SROs and Rooming Houses. (See Appendix 5) A decrease in tax costs for traditional Hotels along with high fuel costs, which have more importance in Rooming Houses and SROs, resulted in significant disparities among the different hotel indices.

**Percent Change in the Components of the Price Index of Operating Costs
April 2004 to April 2005, By Hotel Type and All Hotels**

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	0.9590	1.0336	1.0256	1.0057
205-206, 208-216	LABOR COSTS	1.0384	1.0481	1.0424	1.0411
301-303	FUEL	1.2046	1.2382	1.1575	1.2000
401-407, 409-410	UTILITIES	1.0919	1.1698	1.1062	1.1057
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0282	1.0391	1.0505	1.0347
601-608	ADMINISTRATIVE COSTS	1.0365	1.0340	1.0342	1.0357
701	INSURANCE COSTS	1.0889	1.0889	1.0889	1.0889
801-816	PARTS AND SUPPLIES	1.0143	1.0244	1.0224	1.0176
901-904, 907-911	REPLACEMENT COSTS	1.0135	1.0202	1.0208	1.0159
	ALL ITEMS	1.0279	1.0899	1.0653	1.0570

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 35 was as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
Guidelines for Hotels	6	2	1

Dated: June 29, 2005

Filed with the City Clerk: July 1, 2005

Marvin Markus, Chair
Rent Guidelines Board

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