

EXPLANATORY STATEMENT - HOTEL ORDER #39

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2009-10 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 39, Effective October 1, 2009 through and including September 30, 2010.¹

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 39, adopted on June 23, 2009, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 39 provides for an allowable increase of **0%** over the lawful rent actually charged and paid on September 30, 2009 for rooming houses, lodging houses, Class B hotels, single room occupancy buildings, and Class A residential hotels. The Order does not limit rental levels for commercial space, non-rent stabilized residential units, or transient units in hotel stabilized buildings during the guideline period. The Order also provides that for any dwelling unit in a hotel stabilized building which is voluntarily vacated by the tenant thereof, the level of rent increase governing a new tenancy shall be the same as the guideline for rent increases set forth above.

SPECIAL NOTE

In the past the Board has adopted rent increases to the rent stabilized hotel universe. In recent years, when increases were granted, the Board adopted provisos that were designed to deny owners from taking these increases under certain conditions. Since the Board voted a 0% increase for all classifications of rent stabilized hotels, this proviso is not included in Hotel Order 39. 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 this proviso. This proviso 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 permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than **85%** of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

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

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

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

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

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

DEFINITIONS

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

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

BACKGROUND

Public meetings of the Board were held on March 24, April 7, 21 and 30, and June 4, 2009 following public notices. On May 5, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Two public hearings were held on June 15 and June 17, 2009 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 4:00 p.m. to 8:30 p.m. on June 15 and from 10:00 a.m. to 8:30 p.m. on June 17. The Board heard testimony from approximately 18 hotel tenants and tenant representatives, no hotel owners, one public official and two representatives of public officials. In addition, the Board's office received approximately seven written statements from owners and owner groups, tenants and tenant groups, and public officials. On June 23, 2009, the guidelines set forth in Hotel Order Number 39 were adopted.

Selected Oral and Written Testimony from Tenants and Tenant Groups:

- “SROs play a critical role in homeless prevention. They provide affordable housing to those who would otherwise be homeless. You have the power to vote for a 0% increase for those suffering most from the crisis, for those who are one step away from homelessness.”
- “These owners continue to reap profits from this housing stock by deriving the bulk of their income from transient guests – **they do not rely on permanent tenants for their financial profit or survival.** SRO owners continue to make new and very lucrative use of their properties while housing an ever-shrinking number of permanent tenants.”
- We respectfully request that the Board decline to approve a rent increase for 2009-2010. SRO tenants quite simply cannot afford an increase. SRO owners, for their part, cannot establish any justification for a rent hike.”
- “New York’s SRO landlords continue to fully exploit the unique characteristics of their properties to realize reasonable profits from their buildings. Except in rare cases, SRO owners do not derive their incomes from the regulated rents they collect from permanent tenants. SRO landlords cover their costs, and make their profits, by lawfully, and unlawfully, renting out their rooms to transients, tourists, and institutional lessees at rates that significantly exceed stabilized rents.”
- “Illegal hotels – this practice continues not only in nearly ever S.R.O. and Class A Residential Hotel but has now extended to 280 buildings city-wide and is reaping major profits unreported by landlords.”
- “SRO’s and Class A Hotels – approximately 10,000 or less tenants remain in this category, they suffer duress and live with deplorable conditions. Such a disgrace. The Proviso should remain intact or a definite no increase in rent.”

Selected Oral and Written Testimony from Owners and Owner Groups:

- “SROs in New York City provide a unique service to a segment of the population who needs these services whether it be temporarily or long-term. We must assist them.... We cannot afford to have this part of the industry disappear... whether through attrition or other means.”

- “While it is helpful to the association members, we would like to ask that you consider lowering the “90%” (sic) clause required by last year’s order. Even a small decrease would give them a chance to take the increase you may afford them.”
- “IN ORDER TO ALLOW THESE BUILDINGS TO CONTINUE TO REACH PARITY WITH OTHER RENTALS, WE ASK YOU CONSIDER GIVING US A 3% INCREASE ACROSS THE BOARD.”

Selected Oral and Written Testimony from Public Officials:

- “In Manhattan alone, over 200 buildings are currently operating as illegal hotels. The Boards must surely realize that these practices have illegally converted as many as 10,000 rent-stabilized units into hotel rooms for tourists and corporate interests that charge hundreds of dollars per night.”
- “...The Board’s responsibility in this matter is to take into full account the impact on our affordable housing stock of a loss of 10,000 units, and it must also account for the fact that these illegal conversions are being performed by landlords who also benefit from the Board’s belief in their economic hardship.”
- “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 a one’s own room. 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.”
- “Landlords are stealing needed units from the housing market by renting them out as illegal hotel rooms. They are able to make more money than they could be renting them as rent-regulated apartments, and their tenants suffer from having a building loaded with strangers coming in and out at all hours of the day and night. Yet the landlords are rewarded with rent increases.”
- “...Impose a freeze on rents for all rent regulated apartments as well as for lofts, hotels, rooming houses, single room occupancy (SRO) buildings and lodging houses. Given all the facts, the only acceptable outcome of this Board’s vote is no rent increases.”

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 *2009 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 and received written testimony from invited guest speakers on April 30, 2009. Guest speakers representing hotel tenants included Susanna Blankley from the Goddard-Riverside Community Center’s West Side SRO Law Project, Jonathan Burke from the East Side SRO Law Project of MFY Legal Services, and Larry Wood from the Goddard Riverside Community Center. There were no guest speakers representing

hotel landlords at this meeting but Helen Maurizio, Executive Director of the Associated Hotels and Motels of Greater New York, submitted written testimony.

FINDINGS OF THE RENT GUIDELINES BOARD

RENT GUIDELINES BOARD RESEARCH

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

- (1) *2009 Mortgage Survey Report*, March 2009, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);
- (2) *2009 Income and Affordability Study*, April 2009, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
- (3) *2009 Price Index of Operating Costs for Rent Stabilized Hotels in New York City*, April 2009, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);
- (4) *2009 Housing Supply Report*, June 2009, (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 2008*, June 2009, (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The five reports listed above may be found in their entirety on the RGB's website, www.housingnyc.com, and are also available at the RGB offices, 51 Chambers St., Suite 202, New York, NY upon request.

Price Index of Operating Costs for Rent Stabilized Hotel Units

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

The Price Index for all stabilized Hotels increased 3.5% this year, less than half of the 7.4% increase witnessed the year before. The Price Index for Hotels was just 0.5 percentage points

lower overall than the increase in costs measured in the Apartment Price Index. Significant disparities between the Hotel Index and the Apartment Index were seen in the Utilities and Tax components. The increase in Utilities for all types of Hotels was 2.0% versus 10.9% in apartment buildings. This difference was due to a double digit increase in water and sewer costs having more weight in the Apartment Index, and declining electricity costs having more weight in the Hotel Index. In addition, Taxes increased 14.1% for Hotels versus the 11.7% increase for apartments. These disparities resulted in a Hotel Index that was lower than that for apartments.

Prices and costs in all other components in the Hotel Index had similar changes in rates to the same components in the Apartment Index.

Among the different categories of Hotels, the index for “traditional” hotels increased 5.2%, which was significantly higher than increases for both Rooming Houses (1.2%) and SROs (1.6%). The differences between these indices are primarily due to the increased weight placed on the Tax component for “traditional” hotels. Furthermore, there were disparities among the three hotel types in Fuel and Utilities, with Rooming Houses showing a decrease in the cost for both of these components.

**Percent Change in the Components of the Price Index of Operating Costs
April 2008 to April 2009, By Hotel Type and All Hotels**

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	1.1481	1.1147	1.1492	1.1414
205-206, 208-216	LABOR COSTS	1.0328	1.0203	1.0263	1.0301
301-303	FUEL	0.9124	0.9379	0.8716	0.9080
401-407, 409-410	UTILITIES	1.0305	0.9346	1.0483	1.0199
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0353	1.0316	1.0233	1.0321
601-608	ADMINISTRATIVE COSTS	1.0395	1.0391	1.0386	1.0393
701	INSURANCE COSTS	0.9710	0.9710	0.9710	0.9710
801-816	PARTS AND SUPPLIES	1.0145	1.0269	1.0292	1.0196
901-904, 907-911	REPLACEMENT COSTS	1.0374	1.0452	1.0465	1.0403
	ALL ITEMS	1.0520	1.0123	1.0161	1.0351

Source: 2009 Price Index of Operating Costs

CHANGES IN HOUSING AFFORDABILITY

For the first time in five years, New York City’s economy did not generally improve as compared with the preceding year, with mixed economic indicators, including rising unemployment rates and stagnant Gross City Product, but rising employment levels and declining homeless levels. Citywide unemployment rates (on an annual basis) increased to 5.5% during 2008, after falling for the previous four years. And while the City’s Gross City Product increased for the fifth consecutive year, the rate of growth annually fell to almost zero, and fell in the last three quarters of 2008. In addition, although cash assistance levels dropped, applications rose for the third consecutive year, increasing by more than 8%. The number of food stamp recipients is also on the rise, with rates increasing each month since March, as compared to the previous month. And for the third straight year, the number of evictions grew, by 1.3% despite less housing court filings.

However, there were indicators tracked in the I&A Study that showed a positive trend during 2008. Homeless levels were down on average in 2008, with the total number of individuals decreasing by 2.2%, and families by 3.5%. Real wages (which have a long lag time in reporting) increased significantly between 2006 and 2007, rising 6.3%. Preliminary findings from the 2008 *Housing and Vacancy Survey* show that in real terms, the income of rent stabilized tenants increased 1.4% between 2004 and 2007, after dropping 8.6% between 2001 and 2004. In addition, cash assistance cases fell for the fourth year in a row, dropping more than 5% between 2007 and 2008. Average employment levels also rose during 2008, by 1.2%. In addition, housing court filings fell for the third consecutive year, falling by more than 2%.

But while on an annual basis, there were many positive indicators in 2008, some of these took a negative turn as the year progressed. For instance, homeless levels declined at a slower pace during the fourth quarter of 2008 (but nevertheless declined), and employment levels dropped during the same time period. And real wages during the second quarter of 2008 (the latest available figures), declined by 3.9%.

CONSUMER PRICE INDEX

The Board reviewed the Consumer Price Index. Table that follows shows the percentage change for the NY-Northeastern NJ Metropolitan area since 2001.

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2001-2009 (For "All Urban Consumers")									
	2001	2002	2003	2004	2005	2006	2007	2008	2009
1st Quarter Avg. ²	2.8%	2.3%	3.2%	2.8%	4.1%	3.4%	2.9%	3.7%	1.3%
Yearly Avg.	2.5%	2.6%	3.1%	3.5%	3.9%	3.8%	2.8%	3.8%	-

Source: U.S. Bureau of Labor Statistics.

² 1st Quarter Average refers to the change of the CPI average of the first three months of one year to the average of the first three months of the following year.

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 *2009 Mortgage Survey Report* of lending institutions. The table below gives the reported rate and points for the past nine years as reported by the mortgage survey.

2009 Mortgage Survey³										
Average Interest Rates and Points for										
New and Refinanced Permanent Mortgage Loans 2000-2009										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Avg. Rates	8.7%	8.4%	7.4%	6.2%	5.8%	5.5%	6.3%	6.3%	5.8%	6.5%
Avg. Points	0.99	0.99	0.79	0.81	0.67	0.56	0.44	0.61	0.47	0.62
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2008
Avg. Rates	8.6%	8.0%	7.4%	6.2%	5.7%	5.5%	6.3%	6.2%	5.8%	6.5%
Avg. Points	1.01	1.06	0.83	0.78	0.60	0.56	0.44	0.61	0.44	0.62

Source: 2000–2009 Annual Mortgage Surveys, RGB.

HOTEL CONVERSION

Conversion of single room occupancy (SRO) buildings also continued over the past year. SRO owners may convert SRO housing to other uses after obtaining a “Certificate of No Harassment” from HPD. Certificates are down for the fourth consecutive year, falling to 127 in 2008, down from 182 in 2007 and more than 200 in each year from 2004-2006.

OTHER RELEVANT INFORMATION

On June 4, 2009, staff released a memo to the Board analyzing hotel data contained in the NYS Division of Housing and Community Renewal’s 2008 apartment and building registration databases. Below is the memo in its entirety.

This memo is an update to a staff memo released June 4, 2007, which analyzed hotel registration data filed with DHCR in 2005. Staff members recently analyzed the 2008 DHCR registration database for data related to hotels, SROs, or rooming houses (hereafter referred to only as “hotels”). In 2008, 472 buildings that were self-identified as hotels registered units with the DHCR. These 472 buildings contained a total of 22,827 units, of which 17,758 are registered with DHCR as rent stabilized, and 10,577 are non-exempt rent stabilized units.⁴

Building owners/managers were asked to identify which of their units were temporarily or permanently exempt from rent stabilization laws. In 2008, 371 units were reported as being

³ Institutions were asked to provide information on their “typical” loan to rent stabilized buildings. Data for each variable in any particular year and from year to year may be based upon responses from a different number of institutions.

⁴ All data in this memo, except for the total number of units in each building (derived from Dept of Finance and HPD data) is based on owner-reported information as reported to DHCR in their 2008 registration database.

permanently exempt (1.6% of the total number of hotel units), while 5,300 units were reported as temporarily exempt (23.2% of the total number of hotel units). Units in hotels are most commonly reported as being temporarily exempt because of “Hotel/SRO (Transient),” as was the reason given for 3,754 (70.8%) units. Less common was “Not Prime Residence” (542 units, or 10.2%) and “Owner Occupancy/Employee” (242 units, or 4.6%). For permanently exempt units, 259 (69.8%) were reported as being deregulated due to High Rent/Vacancy Decontrol, while just a few were reported as being deregulated due to substantial rehabilitation or other reasons. In general, units that are temporarily exempt are either rented at what the market will bear, for as little as one night, or rented to government agencies or universities as temporary housing. In addition, 1,510 units were registered with DHCR as “Vacant.”

Each building registered with DHCR was also analyzed by the ratio of exempt units to total units. Of the 472 buildings registered in 2008, the average percentage of units in each building that are exempt is 28.6%. The median is 38.0%.

The most recent proviso stipulates that at least 85% of a hotel must be used for permanent residences in order for guideline increases to be taken. In 2008, 5,140 rent stabilized units, housing permanent tenants, were reported to be in buildings that are at least 85% rent stabilized. Of these units, located in 144 buildings, the median reported legal rent (the most a tenant is allowed to be legally charged) was \$977 and the average was \$1,158. Actual rents on these apartments (the amount actually being charged a tenant, which may be lower than legally allowed, or the legal rent, if actual rent paid was not specified in the registration data) were reported as \$705 (median) and \$723 (average).

Number of Units & Median Rent Paid, Median Building Size in Hotel Buildings with 85% or more rent stabilized units, All Hotel Types, 2008

	<i># of Stabilized Units</i>	<i># of Stabilized Buildings</i>	<i>Median # of Units per Bldg</i>	<i>Median Stabilized Rent Paid</i>
Bronx	214	16	25	\$612
Brooklyn	1,930	70	11	\$800
Manhattan	2,595	37	42	\$555
Queens	382	20	7	\$924
Staten Island	19	1	16	\$900
Total	5,140	144	14.5	\$705

Source: 2008 DHCR Building and Apartment Registration filings, Dept. of Finance and HPD

Finally, hotels can be analyzed by their reported size. The following table presents the number of buildings in each of nine size categories.

Number of Registered Hotels by Building Size, All Hotel Types, 2008

<i># of Total Units in Building</i>	<i># of Buildings</i>	<i>Percentage</i>	<i>Cumulative %</i>
1-5	55	11.65%	11.65%
6-10	138	29.24%	40.89%
11-15	52	11.02%	51.91%
16-20	35	7.42%	59.32%
21-30	24	5.08%	64.41%
31-50	67	14.19%	78.60%
51-100	39	8.26%	86.86%
101-200	31	6.57%	93.43%
More than 200	26	5.51%	98.94%
Unknown	5	1.06%	100.00%
Total	472	100.00%	100.00%

Source: 2008 DHCR Building and Apartment Registration filings

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 39 was as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstentions</u>
Guidelines for Hotels	6	3	-

Dated: June 24, 2009

Filed with the City Clerk: June 29, 2009

 Marvin Markus, Chair
 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 Meetings 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.
Chapter 82 of the Laws of 2003.
RGB Staff, *2009 Price Index of Operating Costs for Rent Stabilized Hotels in New York City*.
RGB Staff, *2009 Income and Affordability Study*.
RGB Staff, *2009 Mortgage Survey Report*.
RGB Staff, *2009 Housing Supply Report*.
RGB Staff, *Changes to the Rent Stabilized Housing Stock in NYC in 2008*.
Written submissions by tenants, tenant organizations, owners, and owner organizations.