EXPLANATORY STATEMENT - HOTEL ORDER #32

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2002-03 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 32, Effective October 1, 2002 through and including September 30, 2003.[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 Regulation Act of 1997, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 32, adopted on June 27, 2002, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 32 provides for an allowable increase of 0 percent over the lawful rent actually charged and paid on September 30, 2002 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 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 **70%** 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 was read and entered into the public record of the June 27th meeting to outline 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 doctor's offices. The numerator of the calculation is the number of units occupied by permanent rent stabilized or rent controlled tenants.

[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.

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 70% 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 70% 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.

The Board adopted the above provisos allowing for 0% increase under certain conditions. These provisos are redundant given the 0% rent increase adopted for the five classes of rent stabilized hotels. The reason for this result is that the Board took the following actions. The Chair proposed that the Preliminary Order, which had a 2% rent increase for all classes of hotels and existing provisos, be adopted as the Final Order, and opened the floor to amendments. The Board passed a motion to amend the language from the first proviso in the Preliminary Hotel Order to the new language above. The Board then passed an amendment to reduce the renewal increase from 2% to 0% for all types of hotels. A vote on the entire Order, as amended, 0% rent increase *plus* the provisos, was then taken and passed. No additional action was taken to remove the provisos. The provisos do not have any effect on rent increases under Hotel Order #34 because the adopted rent increase is 0%.

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 26, April 16, 23 and 30, and June 4, 2002 following public notices. On May 20, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

One public hearing was held on June 26, 2002 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearing was held from 10:00 a.m. to 12:15 p.m. and from 7:15 p.m. to 8:15 p.m. The Board heard testimony from 27 hotel tenants and tenant representatives, 1 hotel owner and 2 public officials. In addition, the Board's office received approximately 5 written statements from owners and owner groups and from tenants and tenant groups. On June 27, 2002, the guidelines set forth in Hotel Order Number 32 were adopted.

Oral and Written Testimony from Owners and Owner Groups:

– "…[We] ask you that you 1) lift the current 70% restriction according to Order #31 and 2) that we be given a 10% across the board increase. We are at a crucial crossroads in this industry. I ask that you address the immediate and dire need of all members, all categories (of hotels) without exception. You can make the difference and I believe you should."

– "A new contract [for unions that work in SROs] was negotiated and implemented last year. The new union contract provides for a 4% increase every year. In addition, the cost of benefits has reached new levels. Union employees have health benefits, dental and eyeglass programs, prescription drugs, life insurance, etc. In the new contract agreed to before 9/11, the owners agreed to annuities, scholarship programs and 401(k)s. They now find themselves in a dire situation to meet the contractual obligations….Therefore, I ask you to consider the labor force who are and will be effected by the inability to the owners to operate effectively."

– "By way of explanation, their [hotel owners] inability to get an increase for so many years forced many of them to diversify in order to keep their properties solvent. This is the very point for which they are being singled out. I ask you to consider their hardships. We are not talking about the Waldorf, Four Seasons or the Plaza. We are talking about SROs, many of which are concentrated on the upper west side of New York. Many of these properties are and were owned by immigrants who came to this country and saw the need for such properties. Every year more and more of them disappear. Some because of their inability to "make ends meet." Even the tenants who appear before you do not want to leave their apartments. They wish to live where they have lived for many years. An increase would provide a dual solution to this problem. It would keep these property owners/operators in New York City and would continue to provide a home for those who live in them."

– "Our wonderful City needs a comprehensive housing plan, but not on the backs of small property owners like myself here in Manhattan. My property is also my home and like many Brownstones in Manhattan had been converted into rooming houses during World War 2. These buildings with their beautiful architecture and detailed workmanship were ripped into pieces, as the world was at that period in history. The buildings became old fashioned and in much need of repairs. The fact they were and important part of the City's history was lost in the fact that we could move into new high rises with everything new and clean."

– “The rooms in my building have everything an apartment does except a private bath. Rooms require as much water, gas and electricity, and I pay for the electricity. You are here in an attempt to protect our housing stock, not just the tenants or the landlords. Please help to make this incredible City a fair city, not a welfare city,”

Oral and Written Testimony from Tenants and Tenant Groups:

– “…[T]he RGB should adopt a guideline awarding a 0% increase for permanent tenants of Hotels, rooming houses and lodging houses in 2002. In the alternative, if increases are granted, the Board should continue the provisos. Those SROs electing to derive income from other more lucrative sources, or deliberately warehousing their units, should be permitted no increase. In balancing the extreme needs of tenants for this low cost housing of last resort against the owners’ lack of need for a rent increase, this Board should vote for a 0% increase.”

– “My testimony today will focus on the relative economies of scale between SRO owners and tenants. I hope to convince you that there is no cause for any guideline increase for this special class of housing. As I will discuss, 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. The permanent tenants, however, do rely on affordable rents for their survival.”

– “We have witnessed a recent trend over the past year in which hotel owners are circumventing the proviso by purposely misinterpreting it in their favor. While the Board’s intent is that the proviso covers all available units when calculating the 70 percent, including those rented to transients, hotel owners have argued that the language “residential units” only includes those already rented to rent stabilized tenants. In other words, owners do not include those units rented solely to transients, labeling them “commercial units.” They thus shrink the pool of residential units to consist of only those already occupied by permanent tenants. Thus, they cannot fail to meet the criteria. I would suggest that the Board clarify the proviso by expressly indicating that it is intended to include all residential units — both those rented to permanent tenants and those available for transient use — so as to avoid any further opportunities for SRO owners to unjustly increase their profits.”

– “The RGB voted preliminarily on May 20 for a 2 percent rent increase for Single Room Occupancy buildings, and to allow owners who rent 70 percent of their rooms to rent-regulated tenants to collect it. (Most SROs rent primarily to tourists.) This rent hike is unaffordable to these low-income tenants. A fair rent adjustment for SROs/hotels would be zero.”

– “Although my landlord shows no interest in renting out rooms, unfortunately he does show an avid interest in harassing his remaining tenants.”

Oral and Written Testimony from Public Officials:

– “The SRO rent increase is unsupportable. As anyone who has witnessed the conditions of most SRO housing units knows, it is housing of last resort. For a person with a low income, even a two-percent increase could mean the difference between being on the street or being in one’s own room. The Board should not approve any SRO rent increase at all, in order to protect vulnerable housing for those who need it most, and who can least afford to pay more.”

– “I am here to urge the Rent Guidelines Board to vote against the proposed increases in rents for rent stabilized apartments, lofts and hotels, based on the substantial financial hardship it would pose for my constituents, as well as for residents throughout the City.”

– “I also rise in support of the notion that a fair rent adjustment for SROs/hotels should be zero.”

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 2002 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 April 30, 2002. Guest speakers representing hotel tenants included Terry Poe, Tenant Organizing Supervisor, from the Goddard Riverside Community Center’s West Side SRO Law Project and Marty Weithman, Staff Attorney, from the East Side SRO Law Project of MFY Legal Services. The 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) “traditional” 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 decreased 1.5% this year, 12 percentage points lower than the year before and is nearly identical to the 1.6% decrease in costs experienced by the apartment Price Index. The primary difference between the increase in the Hotel Index and the apartment Price Index was in the Tax component. The increase in taxes for all types of Hotels was 10.8% overall (versus 6.6% 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 real estate taxes increased in "traditional" stabilized hotels by 12.9%, by 9.9% in SROs, and by 7.9% in Rooming Houses. The increase in tax burden found for Hotels this year was caused by the gains in assessed value for all classes of rent stabilized Hotels (14.4% for “traditional” hotels, 11.1% for SROs and 8.5% for Rooming Houses), offset slightly by a decrease in the tax rate.

While the increase in cost for taxes was higher for stabilized Hotels than for apartments, these properties also experienced higher increases for labor expense. Labor Costs increased more rapidly in Hotels (5.4%) versus the 4.0% rise in apartments, mainly due to the greater importance of non-union labor in the Hotel Index. Utility costs decreased in Hotels by 11.6%, a larger decrease than the 9.9% decrease for apartments. The difference was due primarily to electricity costs in Hotels, which are weighted more heavily in Hotels than in apartments. Conversely, the rates for Contractor Services did not rise as quickly in Hotels (2.7%) as they did in apartments (3.9%) this year. Because the Contractor Services component is less important in the Hotel Index (accounting for about 9% of the weight) than in the apartment index (about 14% of the weight), the lower increase in maintenance rates did not offset the overall hotel index significantly. Although the Tax and Labor Costs components showed higher increases than in the apartment index, these gains did not offset the decreases in energy-related costs for hotels. These changes caused the Price Index for all stabilized Hotels to decrease at about the same rate as the Price Index for all stabilized buildings.

Among the different categories of Hotels, the index for "traditional" hotels increased 1.3%, the index for Rooming Houses and SROs decreased by 3.6% and 4.2% respectively.

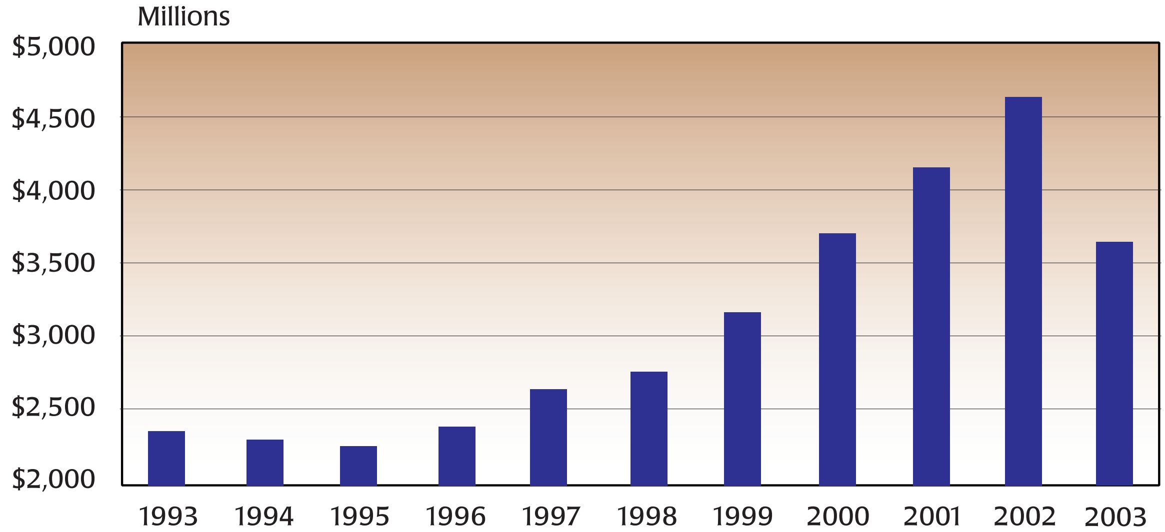
Presentation to the Board by Staff, April 23, 2002

The price index for all stabilized Hotels decreased 1.5% this year, nearly identical to 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 10.8% overall (versus 6.6% in apartment buildings), driven mainly by the increase found in assessments for "traditional" hotels.

Labor costs also increased more rapidly in Hotels (5.4%) versus the 4.0% rise in apartments, mainly due to the greater importance of the cost of non-union labor which rose by 6.4% in Hotels.

The decrease in utility cost for Hotels was 11.6%, a larger decrease than the 9.9% decrease found in apartments. The difference was due primarily to electricity costs in Hotels, which decreased by 12% and are weighted more heavily in Hotels than in apartments. Also, water and sewer charges which rose by 1.6% are much more important in the Apartment Index than in the Hotel Index, and therefore did not counter-balance the decreases we found in the other utilities items in the Hotel Price Index as much as they did in the Apartment Index.

Here is a chart supplied by the Department of Finance in their FY 2003 Tentative Assessment Roll. As you can see in the chart, the market values for major hotels have steadily increased from fiscal year 1995. You can also see an increase major hotel market values in the fiscal years we measured in this year’s Price Index, FY 2001 to FY 2002. However, in fiscal year 2003, these values are estimated to drop.



2003 Values per Tenative roll
NYC Department of Finance, Property Division

Although the PIOC measures 3 different categories of stabilized hotels only, we certainly saw in our data the rising market values of all types of stabilized hotels reflected in the rising tax assessments.

This year's Hotel Price Index, which measures changes from FY 2001 to FY 2002, measured an overall increase in assessments of 12.1%. Assessments for traditional hotels rose 14.4%, Rooming House assessments rose by 8.5% and those in SROs rose by 11.1%.

Here is the summary for the three different types of hotels measured in the PIOC. As you can see in the table, There was notable diversity among hotel subgroups in tax expense this year, as real estate taxes increased in "traditional" stabilized hotels by 12.9%, by 9.9% in SROs, and by 7.9% in Rooming Houses.

The increase in tax burden found for Hotels this year was caused by the relatively high gains in assessed value for all classes of rent stabilized Hotels (12.1%) offset slightly by a decrease in the tax rate (0.54%) and decreasing values of abatements (0.32%) and exemptions (0.34%).

Percent Change in the Components of the Price Index of Operating Costs April, 2001 to April, 2002, By Hotel Type and All Hotels

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	1.1286	1.0791	1.0986	1.1082
205-206, 208-216	LABOR COSTS	1.0541	1.0474	1.0555	1.0542
301-302	FUEL	0.6511	0.6773	0.6100	0.6467
401-407, 409-411	UTILITIES	0.8961	0.8811	0.8510	0.8841

501-509, 511-516, 518	CONTRACTOR SERVICES	1.0227	1.0315	1.0348	1.0266
601-608	ADMINISTRATIVE COSTS	1.0448	1.0403	1.0412	1.0435
701	INSURANCE COSTS	1.1650	1.1650	1.1650	1.1650
801-816	PARTS AND SUPPLIES	1.0118	1.0116	1.0076	1.0109
901-904, 907-911	REPLACEMENT COSTS	1.0151	1.0067	1.0077	1.0124
	ALL ITEMS	**1.0125**	**0.9640**	**0.9577**	**0.9848**

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 32 was as follows:

	Yes	No	Abstentions
Guidelines for Hotels	5	4	-

Dated: June 28, 2002
Filed with the City Clerk: July 1, 2002

Marvin Markus
Chairman, Rent Guidelines Board

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