

EXPLANATORY STATEMENT - HOTEL ORDER #33

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2003-04 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 33, Effective October 1, 2003 through and including September 30, 2004.¹

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 and 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 33, adopted on June 19th, 2003, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 33 provides for an allowable increase of 3½% over the lawful rent actually charged and paid on September 30, 2003 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 **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 was read and entered into the public record of the June 19th 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

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.

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 April 15th and 25th, May 1st and June 3rd, 2003 following public notices. On May 5th, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

One public hearing was held on June 17th, 2003 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearing was held from 10:00 a.m. to 11:45 p.m. and from 7:15 p.m. to 8:15 p.m. The Board heard testimony from 29 hotel tenants and tenant representatives, 4 hotel owners and owner representatives and 9 public officials. In addition, the Board's office received approximately 22 written statements from owners and owner groups and from tenants and tenant groups. On June 19th, 2003, the guidelines set forth in Hotel Order Number 33 were adopted.

Oral and Written Testimony from Owners and Owner Groups:

- “I ask for an 8% increase across-the-board with no restrictions for (all hotel) categories.”
- “I feel some of these sentiments are shared with the tenants. Through the years I have met many tenants who have lived in their respective buildings for many years. Although they appear and lobby before you, they do not want to leave their residences. Why is that? Basically, you would be hard pressed to find housing and services for the amount of rent being paid. The general rate for these buildings is about \$400.00 per month and in some cases lower. Therefore, the 2% increase they received two years ago is certainly a token increase and cannot sustain them.”
- “By and large, SRO owners have been treated poorly by the Board in recent memory. We've received no increase in 5 out of the last eight board orders and in three years when we actually got an increase, that increase was significantly less than what was granted to other rent stabilized housing accommodations. It would seem to me that if the Board is attempting to marginalize this type of housing or pressure it for conversion to other forms, not permitting revenues to rise adequately to offset constantly rising costs of operation is a sure fire prescription for it.”
- “We are constantly reminded by current, past, and prospective residents of the real service our house provides them in an otherwise unaffordable neighborhood. Some of our tenants are repeaters that have left and returned to reside again. Our average rent is a little over \$500 per month.”
- “My operating expenses on the SRO were up 12% over the prior year.... The effect of the increasing costs of fuel, taxes, insurance, maintenance, etc. more severely impacts hotel housing over apartment style housing simply due to the fact that these costs represent a greater percentage of the tenant's rental dollar.”

Oral and Written Testimony from Tenants and Tenant Groups:

– “Despite the apparent increase this year in the prices of goods which hotel owners are assumed to purchase, several facts make rent increases both unnecessary for owners and unjust for tenants. (1) Like other rational economic agents, SRO landlords economize when prices rise, so that the price increase reflected in this year’s Price Index of Operating Costs (PIOC) do not correspond to what those landlords actually spend. (2) The sharp decline in the economic situation of SRO tenants makes it impossible for them to pay higher rents, and to require them to do so would exacerbate the housing crisis which the rent regulatory system is responsible for ameliorating, to the extent that it can. (3) Almost no hotel landlords depend on increases in the rents of their few remaining rent-stabilized tenants for income. And (4) according to the Housing and Vacancy Survey, even the stabilized rents of hotel rooms have been increasing sharply.”

– “Finally, it is clear from the data on tenant incomes and rent burdens that any rise in their rents would be oppressive, in violation of the Rent Stabilization Law and the mandate of the Rent Guidelines Board. SRO tenants are already paying an average 39% of their income for rent, and they cannot pay more.”

– “In conclusion, there is no evidence that any hotel landlords require a rent increase this year to keep them from suffering a lower net operating income, and plenty of evidence to the contrary. Data from the Housing and Vacancy survey indicate that landlords’ regulated rents are rising sharply, while the majority of SRO hotels no longer rent to rent stabilized tenants, but rather to tourists, students or clients of the city’s emergency placement programs at rents of up to \$2,000 per month. As long ago as 1999, the mean asking rent for a vacant SRO room was \$950, and the average was \$1,470.”

– “...[T]he Rent Guidelines Board should not issue any rent increase for permanent tenants of hotels, rooming houses and lodging houses in 2003. If increases are granted, the Board should continue the 70% proviso since those SRO’s electing to derive income from other more lucrative sources, or deliberately warehousing their units, should be permitted no increase. To protect the extreme needs of the tenants for this low cost housing of last resort, this Board should vote for a 0% increase.”

– “By assuming a practice of vacancy decontrol, hotel owners are recovering stabilized rooms to be rented at very profitable rates when a tenant departs. A stabilized unit disappears, lost forever to the hot tourist market.”

Oral and Written Testimony from Public Officials:

– “The 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 four-percent increase could mean the difference between being on the street or being in one’s own room. SRO tenants have absorbed an 8% rent increase in the last four years. Between 1993 to 1999 (the most recent data available), hotel tenants’ average income has fallen from \$9,100 to 7,300 – a 20% drop – while hotel landlords’

real income and rent collections have risen 40% over the same period. 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.”

– “I also call on you to take official notice of the fact that over the past few years tens of thousands of formally rent regulated apartments have been removed both legally and illegally from the system and are now being rented at market rents. The substantial additional income realized by owners from these units should be factored into annual guidelines as an offset to rising costs.”

– “I am here to urge the Board to vote against the proposed increases. I understand the proposal calls for ...a 4% increase in Single Room Occupancies (SRO’s). These increases in rents and the escalation clauses of the ‘special guidelines’ would case a tremendous financial hardship for my constituents, other residents throughout the city as well as newcomers - who have always been welcome to our City.”

– “I join with tenants in urging the Board to approve guidelines significantly lower than those approved in the preliminary vote. I understand that owners are facing large increases in property taxes this year as a result of the City and State’s severe fiscal crisis. The large increases proposed are on top of increases granted during the boom years of 1995-2002. It’s time for everyone, including landlords, to shoulder their fair share of this economic crisis. The burden should not be transferred solely onto the backs of tenants, most of whom are low- and middle-income families who have already been hit with increased taxes and fees on everything from subway fare to CUNY tuition.”

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 2003 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 1st, 2003. 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. The guest speakers representing hotel landlords was Helen Maurizio, Executive Director, Associated Hotels and Motels of Greater New York and Robert Eberhart, Owner and Manager of the SRO property located at 208 East 85th Street.

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 (SRO's)—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 16.0% this year, 17.5 percentage points higher than the 1.5% decrease found the year before. Prices increased in all of the components in the Hotel Index at similar rates to the same components in the Apartment Index. The Price Index for Hotels was just 0.9 percentage points lower overall than the increase in costs measured in 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 12.8% overall versus 14.8% in apartment buildings.

There was notable diversity among hotel subgroups in tax expense this year, as real estate taxes increased in "traditional" stabilized hotels by 6.9%, by 17.9% in SRO's, and by 17.0% in Rooming Houses. The lower increase in tax burden found for "traditional" hotels this year was caused by the lower gains in assessed value for Hotels (4.5% compared to 10.0% and 9.2% for SRO's and Rooming Houses), and a discount in tax bills from exemptions (-6.8%), that was much larger than the discount found for the other classes of rent stabilized hotels (-1.1% and -0.3% respectively). (See Appendix 5)

While the increase in Taxes, Fuel and Contractor Services were lower for stabilized Hotels than for apartments, these properties experienced higher increases for labor expense. Labor Costs increased more rapidly in Hotels (4.6%) versus the 3.5% rise in apartments, mainly due to the greater importance of non-union labor in the Hotel Index. Utility costs increased in Hotels by 25.9%, a larger increase than the 21.7% increase 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 (3.3%) as they did in apartments (4.8%) this year. Because the Contractor Services component is less important in the Hotel Index (accounting for about 10% of the weight) than in the Apartment Index (about 15% of the weight), the lower increase in maintenance rates did not offset the overall Hotel Index significantly. Although Taxes and Fuel increased at lower rates in the Hotel Index, these components are weighted more heavily than they are in the Apartment Index, so the effect of these components on the overall change in prices was similar in both indexes. These changes caused the Price Index for all stabilized Hotels to increase at a similar rate to the Price Index for all stabilized buildings. See the following table for changes in costs and prices for all rent stabilized hotels from 2002-03.

Among the different categories of Hotels, the index for "traditional" hotels increased 12.6%, the index for Rooming Houses and SRO's both increased by 18.7%.

**Percent Change in the Components of the Price Index of Operating Costs
April 2002 to April 2003, By Hotel Type and All Hotels**

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	1.0685	1.1704	1.1787	1.1279
205-206, 208-216	LABOR COSTS	1.0475	1.0424	1.0456	1.0461
301-303	FUEL	1.6341	1.5419	1.7890	1.6493
401-407, 409-410	UTILITIES	1.2492	1.2322	1.3051	1.2586
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0244	1.0443	1.0521	1.0332
601-608	ADMINISTRATIVE COSTS	1.0548	1.0480	1.0511	1.0531
701	INSURANCE COSTS	1.4046	1.4046	1.4046	1.4046
801-816	PARTS AND SUPPLIES	1.0088	1.0052	1.0054	1.0075
901-904, 907-911	REPLACEMENT COSTS	1.0242	1.0181	1.0177	1.0220
	ALL ITEMS	1.1261	1.1873	1.1874	1.1604

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 33 was as follows:

	Yes	No	Abstentions
Guidelines for Hotels	5	4	-

Dated: June 23, 2003
Filed with the City Clerk: July 1, 2003

Marvin Markus
Chairman, Rent Guidelines Board

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