

## **EXPLANATORY STATEMENT - HOTEL ORDER #38**

### **Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2008-09 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 38, Effective October 1, 2008 through and including September 30, 2009.<sup>1</sup>

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 38, adopted on June 19, 2008, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 38 provides for an allowable increase of **4.5%** over the lawful rent actually charged and paid on September 30, 2008 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 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 was read and entered into the public record of the June 19 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.*

*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*

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<sup>1</sup> 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.

*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 25, April 15 and 29, May 2, and June 3, 2008 following public notices. On May 5, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Two public hearings were held on June 11 and June 16, 2008 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 4:00 p.m. to 10:35 p.m. on June 11 and from 10:00 a.m. to 9:50 p.m. on June 16. The Board heard testimony from approximately 7 hotel tenants and tenant representatives, 3 hotel owners, and 10 public officials. In addition, the Board’s office received approximately 3 written statements from owners and owner groups, tenants and tenant groups, and public officials. On June 19, 2008, the guidelines set forth in Hotel Order Number 38 were adopted.

### **Selected Oral and Written Testimony from Tenants and Tenant Groups:**

– “SRO tenants were already paying an average 50% of their for rent in 2002, and they certainly cannot afford to pay more. Any RGB SRO increase would only cause undue burden to the struggling permanent rent-stabilized tenants and absolutely no real income increase to encourage SRO landlords to stop evicting permanent tenants or to stop renting residential rooms to commercial tourists. We therefore urge the Board to vote 0% increases for all categories of hotels, and to retain last year’s restrictive proviso language in its entirety.”

– “SRO owners, for their part, cannot establish any compelling need for an increase. Except in the rarest cases, SRO owners do not derive their incomes from the rents paid by permanent tenants. SRO landlords cover their costs, and make their profit, by lawfully, and unlawfully, renting out their rooms to transients, tourists, and institutional lessees at rates that exponentially exceed stabilized rents.”

– “...[I]t should be noted that the price index for rent stabilized SRO hotels this year is 7.4%. However, the accuracy of the price index for operating costs in a way reflects the reality of an SRO landlord’s expenses. In actuality, SRO landlords’ operating incomes for all stabilized units remained constant. Only one income and expense study of SRO owners has ever been conducted, in 1991. But the relationship between other elements of SRO owners’ position relative to that of apartment owners - rents, tenant incomes, the price index - has remained more or less stable. It is fair to assume then, that the relationships revealed in the 1991 SRO I&E study, which showed SRO owners having costs about two-thirds those of apartment owners, but collecting 75% as much rent, and realizing a net operating income of about 30% (vs. 35% for apartment owners), holds today.”

– “The last time I testified against rent increases for SRO’s and residential hotels there was a proviso in place stipulating that increases only be granted to those buildings with at least 80% long-term tenants. This made sense since it rewarded owners running their buildings as proper homes and penalized those who were driving out tenants and renting rooms illegally to tourists. Since there is no proviso this year I must ask that no rent increase be granted at all.”

– “People on both sides of the aisle are unsatisfied. Although the RGB should make absolutely no concessions for dishonest landlords, they should certainly find creative ways to work alongside those landlords who actually are honest as well as tenants across the city. Consequently, I propose the following recommendations for the RGB: 1. Develop a system of checks and balances to track landlords’ income along with expenses. 2. Send surveys to all landlords. Those who do not respond should not be eligible to receive increases. 3. Consider violations factors. Why should landlords be rewarded when violations on their buildings exist and they already owe the city millions of dollars? 4. Require fair market tenants to register yearly along with all regulated tenants because vacancy decontrol statistics are not reported accurately. RGB should strongly recommend this measure to the mayor. While the need for reform is urgent, I sincerely appreciate the Rent Guidelines Board and the work of their staff.”

### **Selected Oral and Written Testimony from Owners and Owner Groups:**

– “As you know, there had been an exodus from the City for quite some time. It is absolutely necessary for us to encourage and reward those who choose to stay. We must give

them some relief. Even more importantly, we must make it possible for them to stay. As I said earlier, a 2% increase is nothing more than a bandaid. That said, how is it possible that they were afforded no increase last year. We must send all businesses a positive message that we welcome new business and appreciate old business. The result will generate much needed revenue and guarantee job security which will benefit all New York. I ask for an 8% increase across-the-board (with no restrictions) for these categories [of hotels.]”

– “We do not understand why there are no increases in rents for SRO’s... The costs have gone up more for the SRO buildings than for the rent stabilized buildings. The SRO buildings we pay for their electricity, the heat, do the cleaning, everything basically. It’s just incomprehensible to me that you do not give the same rent increases for SRO buildings as for rent stabilized buildings.”

– “My family owns a legal, single room occupancy property in Brooklyn, a class A in Bayridge, Brooklyn. It has 36 residential units. It is an electrical inclusion building, which means that none of the tenants pay for their own utilities, such as gas, electricity, or water. We are asking for your help in granting SROs a fair guideline to meet the overwhelming increase in operating costs this year. ”

– “We must remember that as the old ‘hoteliers’ leave this City, whether it be by attrition or otherwise, new owners tend to be foreign and ‘not in touch’ with the true meaning of the management of these properties and their original purpose or necessity. Many owners have given up their properties due to lack of response on their behalf. Those who have not need your help.”

– “Why are our costs not compensated for? How can this board tell us that there should be no increases for SRO while everybody knows how much the costs have gone up. What is the reason for that?”

### **Selected Oral and Written Testimony from Public Officials:**

– “Another major concern of mine and my constituents is the operation and proliferation of illegal hotels. In Manhattan alone, over 200 buildings are currently operating as illegal hotels. The Board 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.

– “I have introduced a bill to increase fines significantly for operation of an illegal hotel, and look forward to its passage. But 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.”

### **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 2008 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, 2008. Guest speakers representing hotel tenants included Yarrow Willman-Cole 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) *2008 Mortgage Survey Report*, March 2008, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);
- (2) *2008 Income and Affordability Study*, April 2008, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);
- (3) *2008 Price Index of Operating Costs for Rent Stabilized Hotels in New York City*, April 2008, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);
- (4) *2008 Housing Supply Report*, June 2008, (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 2007*, June 2008, (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](http://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 7.4% this year, 2.1 percentage points higher than the 5.3% increase found the year before. The Price Index for Hotels was just 0.4 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, Labor Costs, and Contractor Services components. The increase in Utilities for all types of Hotels was 6.6% versus 8.9% in apartment buildings. This difference was due to water and sewer, which witnessed double-digit increases, having more weight in the Apartment Index. Labor Costs rose 5.3%, about 1.3 percentage points higher than in the Apartment Index (4.0%). Contractor Services saw a higher increase in the Apartment Index (4.6%) than for Hotels (3.4%) due to more weight being placed on repainting, plumbing and roof repair for apartments, items that witnessed the highest increases. These disparities resulted in a Hotel Index that was lower than that for apartments.

Prices in all other components in the Hotel Index had similar changes in rates to the same components in the Apartment Index. Taxes decreased in Hotels by 0.7%, while increasing 0.3% for apartments. Insurance costs increased at the same rate in both indices and Fuel costs were roughly a percentage point higher for apartments.

Among the different categories of Hotels, the index for “traditional” hotels increased 5.9%, which was lower than increases for both Rooming Houses (8.9%) and SROs (9.6%). The differences between these indices are primarily due to the increased weight placed on the Tax component for “traditional” hotels and the disparity among the three hotel types in the Fuel Costs component, with Rooming Houses showing the lowest increase in the cost for fuel.

### Percent Change in the Components of the Price Index of Operating Costs April 2007 to April 2008, By Hotel Type and All Hotels

Spec #	Item Description	Hotel	RH	SRO	All Hotels
101	TAXES, FEES, & PERMITS	0.9860	1.0197	0.9863	0.9931
205-206, 208-216	LABOR COSTS	1.0557	1.0520	1.0511	1.0530
301-303	FUEL	1.3523	1.3021	1.4369	1.3608
401-407, 409-410	UTILITIES	1.0565	1.1031	1.0709	1.0660
501-509, 511-516, 518	CONTRACTOR SERVICES	1.0310	1.0376	1.0388	1.0337
601-608	ADMINISTRATIVE COSTS	1.0502	1.0487	1.0485	1.0497
701	INSURANCE COSTS	1.0233	1.0233	1.0233	1.0233
801-816	PARTS AND SUPPLIES	1.0080	1.0247	1.0227	1.0138
901-904, 907-911	REPLACEMENT COSTS	1.0156	1.0234	1.0241	1.0184
	<b>ALL ITEMS</b>	<b>1.0588</b>	<b>1.0895</b>	<b>1.0965</b>	<b>1.0740</b>

Source: 2008 Price Index of Operating Costs

## CHANGES IN HOUSING AFFORDABILITY

For the fourth year in a row, New York City's economy generally improved as compared with the preceding year, with steady unemployment rates, rising wages and employment levels, and Gross City Product growing steadily from the last quarter of 2003 through the fourth quarter of 2007. Citywide unemployment rates held steady at 5.0% during 2007, after falling the prior three years (although rates are still the lowest of the more than 30 years the RGB has access to). Total employment levels in the City increased 2.1%, and the City's Gross City Product increased for the fourth consecutive year and 17th consecutive quarter, increasing by 3.0% during 2007, compared to 3.6% during 2006. Real wages also increased by 4.1% between 2005 and 2006 (the most recent year for which there are statistics). In addition, public assistance cases fell for the third year in a row, dropping more than 8% between fiscal years 2006 and 2007.

However, there were indicators tracked in the *I&A Study* that showed a downward trend during 2007. HVS data released two years ago showed that household income for rent stabilized tenants declined in real terms by 8.6% between 2001 and 2004, remaining at a nominal \$32,000 for both years. There was also a rise in homeless levels, increasing by 11.5% for families, although declining for single adults. And while employment levels in most tracked sectors increased, there was again a significant decline in the manufacturing sector, falling 4.8% from 2006 levels, while real income in that sector also declined, by 3.3%. In addition, evictions and possessions rose more than 4% in 2007, as well as an increase in the proportion of calendared cases that resulted in eviction, the highest level in 10 years. Cash assistance applications also rose by 8.8% during the 2007 fiscal year, while job placements for those receiving cash assistance declined by 7.0%.

## 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 2000.

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2000-2008 (For "All Urban Consumers")									
	2000	2001	2002	2003	2004	2005	2006	2007	2008
1st Quarter Avg. <sup>2</sup>	3.0%	2.8%	2.3%	3.2%	2.8%	4.1%	3.4%	2.9%	3.7%
Yearly Avg.	3.1%	2.5%	2.6%	3.1%	3.5%	3.9%	3.8%	2.8%	

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 *2008 Mortgage Survey* of lending institutions. The table below gives the reported rate and points for the past nine years as reported by the mortgage survey.

<sup>2</sup> 1<sup>st</sup> 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.

<b>2008 Mortgage Survey<sup>3</sup></b>										
<b>Average Interest Rates and Points for</b>										
<b>New and Refinanced Permanent Mortgage Loans 1999-2008</b>										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Avg. Rates	7.8%	8.7%	8.4%	7.4%	6.2%	5.8%	5.5%	6.3%	6.3%	5.8%
Avg. Points	1.01	0.99	0.99	0.79	0.81	0.67	0.56	0.44	0.61	0.47
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Avg. Rates	7.2%	8.6%	8.0%	7.4%	6.2%	5.7%	5.5%	6.3%	6.2%	5.8%
Avg. Points	0.92	1.01	1.06	0.83	0.78	0.60	0.56	0.44	0.61	0.44

Source: 1999–2008 Annual Mortgage Surveys, RGB.

## **HOTEL CONVERSION**

Conversion of single room occupancy (SRO) buildings also continued in high numbers over the past year. SRO owners may convert SRO housing to other uses after obtaining a “Certificate of No Harassment” from HPD. The last several years have seen significantly more Certificates issued than in previous years. While from 1995-1996, there were an average of 67 applications filed each year, from 1997- 2001, an average of 114 applications for Certificates were filed. HPD reports there were 182 Certificates applied for in 2007, down from 209 in 2006. In addition, there has been increased focus on the issue of illegal hotels, that is residential units meant to be used by permanent tenants that are instead rented out on a nightly basis to tourists. A bill pending in the City Council would increase fines from \$800 for an illegal conversion to \$1,000-\$5,000 for a first offense, and up to \$20,000 for subsequent offenses.

## **VOTE**

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 38 was as follows:

	<b>Yes</b>	<b>No</b>	<b>Abstentions</b>
<b>Guidelines for Hotels</b>	5	4	-

Dated: June 20, 2008

Filed with the City Clerk: June 27, 2008

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Marvin Markus, Chair  
Rent Guidelines Board

<sup>3</sup> 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.



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