EXPLANATORY STATEMENT - APARTMENT ORDER #36

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2004-05 Lease Increase Allowances for Apartments and Lofts under the Jurisdiction of the Rent Stabilization Law[1]

Summary of Order No. 36

The Rent Guidelines Board (RGB) by Order No. 36 has set the following maximum rent increases for leases subject to renewal on or after October 1, 2004 and on or before September 30, 2005 for **apartments** under its jurisdiction:

LEASE RENEWALS - WHERE HEAT IS PROVIDED OR REQUIRED TO BE PROVIDED TO A DWELLING UNIT BY AN OWNER FROM A CENTRAL OR INDIVIDUAL SYSTEM AT NO CHARGE TO THE TENANT

1 Year	2 Years
3.5%	**6.5**%

LEASE RENEWALS - WHERE HEAT IS NEITHER PROVIDED NOR REQUIRED TO BE PROVIDED TO A DWELLING UNIT BY AN OWNER FROM A CENTRAL OR INDIVIDUAL SYSTEM

1 Year	2 Years
3%	**6**%

VACANCY ALLOWANCE

The vacancy allowance is now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and in Chapter 82 of the Laws of 2003, not by the Orders of the Rent Guidelines Board.

SUPPLEMENTAL ADJUSTMENT

There shall be **no supplemental adjustment** for apartments renting below any specified amount for renewal leases.

There shall be **no equalization allowance** for apartments continuously occupied for a specified period of time for renewal leases.

SUBLET ALLOWANCE

The increase landlords are allowed to charge when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2004 and on or before September 30, 2005 shall be **10%**.

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

Adjustments for Lofts

For **Loft units** to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law, the Board established the following maximum rent increases for increase periods commencing on or after October 1, 2004 and on or before September 30, 2005. No vacancy allowance or low rent allowance is included for lofts.

1 Year	2 Years
2.5%	**5.5**%

The guidelines do not apply to hotel, rooming house, and single room occupancy units that are covered by separate Hotel Orders.

Any increase for a renewal lease may be collected no more than once during the guideline period governed by Order No. 36.

Special Guidelines

Leases for units subject to rent control on September 30, 2004 that subsequently become vacant and then enter the stabilization system are not subject to the above adjustments. Such newly stabilized rents are subject to review by the State Division of Housing and Community Renewal (DHCR). In order to aid DHCR in this review the Rent Guidelines Board has set a special guideline of whichever is greater:

1. **50%** above the maximum base rent, or

2. The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2004.

All rent adjustments lawfully implemented and maintained under previous apartment Orders and included in the base rent in effect on September 30, 2004 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

Background of Order No. 36

The Rent Guidelines Board is mandated by the Rent Stabilization Law of 1969 (Section 26-510(b) of the NYC Administrative Code) to establish annual guidelines for rent adjustments for housing accommodations subject to that law and to the Emergency Tenant Protection Act of 1974. In order to establish guidelines the Board must consider, among other things:

(1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating and maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) overall supply of housing accommodations and overall vacancy rates;

(2) relevant data from the current and projected cost of living indices for the affected area;

(3) such other data as may be made available to it.

The Board gathered information on the above topics by means of public meetings and hearings, written submissions by the public, and written reports and memoranda prepared by the Board's staff. The Board calculates rent increase allowances on the basis of cost increases experienced in the past year, its forecasts of cost increases over the next year, its determination of the relevant operating and maintenance cost-to-rent ratio, and other relevant information concerning the state of the residential real estate industry.

Material Considered by the Board

Order No. 36 was issued by the Board following one public hearing, seven public meetings, its review of written submissions provided by the public, and a review of research and memoranda prepared by the Board's staff. A total of 67 written submissions were received at the Board's offices from many individuals and organizations including public officials, owners and owner groups, and tenants and tenant groups. The Board members were provided with copies of public comments received by the **June 14th, 2004** deadline. All of the above listed documents were available for public inspection.

Open meetings of the Board were held following public notice on April 13th, April 20th, April 27th, April 30th, and June 3rd, 2004. A written transcription or audio recording was made of all proceedings. On **May 10th, 2004**, the Board adopted proposed rent guidelines for apartments, lofts, and hotels.

A public hearing was held on **June 15th, 2004** pursuant to Section 1043 of the New York City Charter and Section 26-510(h) of the New York City Administrative Code. Testimony on the proposed rent adjustments for rent-stabilized apartments and lofts was heard from 10:00 a.m. to 10:30 p.m. on June 15th, 2004. Testimony from members of the public speaking at these hearings was added to the public record. The Board heard testimony from 109 apartment tenants and tenant representatives, 45 apartment owners and owner representatives and 7 public officials. On **June 17th, 2004** the guidelines set forth in Order No. 36 were adopted.

Presentations by Housing Experts Invited by Members of the Board

Each year the staff of the New York City Rent Guidelines Board is asked to prepare numerous reports containing various facts and figures relating to conditions within the residential real estate industry. The Board's analysis is supplemented by testimony from industry and tenant representatives, housing experts, and by various articles and reports gathered from professional publications.

Listed below are the other experts invited and the dates of the public meetings at which their testimony was presented:

Meeting Date / Name	*Affiliation*
April 13th, 2004:	Staff presentation, *2004 Mortgage Survey*
	Guest Speakers
1. Michael Schill	Director, Furman Center for Real Estate and Urban Policy
2. Harold Shultz	Special Counsel, NYC Dept. of Housing Preservation and Development

April 20th, 2004:		Staff presentation, *2004 Income and Affordability Study*
		Guest Speakers
1.	Mark Levitan	Senior Policy Analyst, Community Service Society
2.	Jessica Leighton	Assistant Commissioner, Environmental Disease Prevention, NYC Dept. of Health and Mental Hygiene
April 27th, 2004:		Staff presentations *2004 Income and Expense Study* *2004 Price Index of Operating Costs*
April 30th, 2004:		Invited Testimony from Groups Representing Owners and Tenants
		Owner group testimony:
1.	Jack Freund	Executive Vice President, Rent Stabilization Association
2.	Jimmy Silber	Vice President, Small Property Owners of New York
3.	Chris Athineos	Owner/Manager
4.	Claudia Justy	Executive Director, Community Housing Improvement Project
5.	Nick Petras	Owner/Manager
6.	Robert Egerhart	Owner
		Tenant group testimony:
1.	Timothy L. Collins, Esq.,	Collins, Dobkins and Miller
2.	Patrick Markee	Senior Policy Analyst, Coalition for the Homeless
3.	Benjamin Ross	Special Project Coordinator, New York Immigration Coalition
4.	Matthew Chachère	Co-counsel, NYC Coalition to End Lead Poisoning
5.	Andrew Goldberg	Co-counsel, NYC Coalition to End Lead Poisoning
6.	Cordell Cleare	Co-counsel, NYC Coalition to End Lead Poisoning
7.	Deb Howard	Executive Director, Pratt Area Community Council
8.	Terry Poe	Community Organizing Supervisor, West Side S.R.O. Law Project
9.	Chris Schwartz	Staff Attorney, East Side SRO Law Project
June 3rd, 2004:		Staff presentations *2004 Housing Supply Report* *Changes to the Rent Stabilized Housing Stock in NYC in 2003*
		NYS Division of Housing and Community Renewal (DHCR) testimony
1.	Paul Roldan	Deputy Commissioner, Office of Rent Administration, DHCR
2.	David Cabrera	Deputy Counsel/Assistant Commissioner, DHCR
3.	Marcia Hirsch	General Counsel, DHCR

SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM TENANTS AND TENANT GROUPS[2]

Comments from tenants and tenant groups included:

"There is no economic justification for any rent increase this year. Every indicator before the RGB this year leads to the conclusion that rents for stabilized apartments should be frozen. Whether talking about the condition of the real estate industry or the condition of tenants, all data support a rent freeze…In sum, NYC is suffering from the worst housing affordability crisis it has experienced since the Great Depression. Instead of helping to mitigate this crisis, the RGB is a big contributing factor in making it worse, through its yearly habit of granting landlords overly generous rent increases."

[2] Sources: Submissions by tenant groups and testimony by tenants.

"It is a basic fact that for millions of residents, rent regulation is what makes it possible to live in NYC. A poll conducted by *Housing First!* has found that one in every four New Yorker—over half a million families—spends more than 50% of their incomes on rent. In fact, NYC ranks as the least affordable housing market for middle-income earners in the U.S.… Unsurprising, a recent survey shows that 45% of all New Yorkers have seriously considered leaving the city because of the high cost of housing."

"The proposed rent adjustments for apartments adopted by the RGB are unfair. While property owners operating costs have gone up this year, the 3.5%-8.5% increases are much higher than needed. The present proposal will unjustly enrich the NYC property owners and be a tremendous financial burden on working families, if this body does not reduce it at the final vote on June 17. In real economic terms, wages declined 5 percent from 2001 to 2002; homelessness has hit record levels, with 38,310 people in the city shelters every night—77 percent of them families with children; NYC lost 31,000 jobs in 2001, 108,500 in 2002 and 55,000 in 2003; unemployment rose 8.4%; non-payment petitions remain at high levels with 318,077 filed in 2003; more than 230,000 households in NYC have been evicted in the past decade; rent-to-income ratios are 28.6% citywide—they were 20% in 1970."

"I write to you to request your consideration in a fairly unique set of circumstances for a NYC stabilized apartment. I live in an apartment where the tenant pays for his own heat and hot water. When I first moved in the landlords of such buildings would get a lower increase since fuel increases are paid directly by the tenant. Over the years that has disappeared, in essence, leaving us paying an increase based on higher fuel prices paid by landlords and then paying a second time to, in my case, Con Edison, because of increases in the fuel charges. I am paying twice. In consideration of readjusting stabilized rates, I respectfully request that you consider this small group of stabilized tenants by passing a lower increase for these buildings or even no increase to make up for the many years that we have paid double increases."

Selected Excerpts from Oral and Written Testimony from Owners and Owner Groups[3]

Comments from owners and owner groups included:

"This year, the RGB has for the first time proposed a range of preliminary rent guidelines…The lower end of this range is clearly inadequate and the higher end of the range barely encompasses the minimal guideline levels that property owners need to meet last year's increases in operating costs. Even the higher end of the range will not allow owners to maintain their current economic condition and provide a sound rental housing stock."

"This past year has been an ever-increasing difficult one for property owners. Our expenses continue to soar as evidenced in your *Price Index of Operating Costs*. The PIOC at 6.9% was indicative of our escalating expenses. More importantly, the CORE PIOC shows an increase of 9.2%."

"If you feel you must balance the interests of tenants and owners this year, please consider another balance point, a point when inadequate rent guidelines will force owners to cut back on their maintenance and investment in their properties, a point when, ultimately, your good intentions will backfire and result in deteriorating housing conditions. In the last two years, building operating costs have increased by nearly 24% as measured by the Price Index, and much more than that in terms of what owners have actually paid. The current year's cost increases alone, as measured by the Price Index, call for rent increases equal to or greater than last year's guidelines. This year, we ask you to provide the fair and reasonable guidelines necessary to cover unavoidable increases in operating costs, to maintain the City's rental housing stock and to support the City's tax base."

[3] Sources: Submissions by owner groups and testimony by owners

"Last year's guidelines did not come close to keeping us on a level playing field. One of the most telling signs, in your reports for this year, has been the fact the net operating income…declined by 0.1%. This decrease in NOI was the first decrease since the RGB began to use computerized records in 1994. It is obvious that the guidelines have not kept up with expenses. Next year the NOI will be lower if the board stays with the range of the proposed guidelines."

SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM PUBLIC OFFICIALS[4]

Comments from public officials included:

"Let me state for the record that given the affordability or lack thereof of renting an apartment in NYC, the vitality of the real estate industry, the costs of maintaining real estate versus the huge profits gained by owners, and the price index, there is absolutely no way that owners should benefit from the proposed rent increases of 3 to 5 percent for one year leases and 5.5 to 7.5 percent for two year leases…As a result, I am calling for a rent freeze. All economic indicators point to the need for relief for tenants who year after year endure the hardships of skyrocketing rents and plummeting wages."

"For many years, the Board has increased rents way above landlords' costs. This year's proposals are another example of this trend. These proposed increases…are unjustified and would make life harder for all New Yorkers. And this comes on top of the largest rent increase since 1989, which the board imposed last year…It is long past time to abandon the Price Index. It only reflects changes in prices, not in actual landlord expenditures. More importantly, it does not take into account the incomes of tenants, and its data on landlord income and expenses is outdated by the time the Board makes its decision."

"Every year, this Board has favored landlords and granted a rent increase, supposedly justified by the rising costs incurred by property owners. But the Board must also consider 'relevant data from the current and projected cost of living indices' in determining increases. A review of data of leading economic indicators affecting City tenants presented in the RGB's own *2004 Income and Affordability Study* reveals that NYC's economy shrunk by over 2% last year, indicating that we are still in the midst of a recession. The study also notes the continuing rise in unemployment…during this period, however, loans and refinancing were up by over 50%, a financial boon for landlords."

"I realize the increases are sometimes necessary to help owners—especially owners of small properties—maintain quality living conditions in their buildings in the face of increasing expenses, and I am not in the business of demonizing landlords…In the past two decades, however, rents have gone up so much faster than operating costs that, on average, landlords of rent stabilized properties in NYC have seen a sizeable increase in their net profits."

RENT GUIDELINES BOARD RESEARCH

The Rent Guidelines Board also based its determination on its consideration of the following reports and information prepared by the RGB's staff:

(1) *2004 Mortgage Survey Report*, April, 2004, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);

(2) *2004 Income and Expense Study*, April, 2004, (Based on income and expense data provided by the Finance Department, the *Income and Expense Study* measures rents, operating costs and net operating income in rent stabilized buildings);

(3) *2004 Tenant Income and Affordability Study,* April, 2004, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);

[4] Sources: Submissions by public officials.

(4) *2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City,* April, 2004, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized buildings);

(5) *2004 Housing Supply Report*, June, 2004, (Includes 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,

(6) *Changes to the Rent Stabilized Housing Stock in NYC in 2003,* June 2004, (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City

The *2004 Price Index of Operating Costs For Rent Stabilized Apartment Houses in New York City* found a 6.9% increase in costs for the period between April, 2003 and April, 2004.

This year, the PIOC for rent stabilized apartment buildings increased by 6.9%, ten percentage points below the PIOC percent change from the year before (16.9% in 2003). The PIOC was driven upward by the increase in property taxes (16.2%) and escalating insurance costs (14.7%). These increases were offset by the decrease in the cost of fuel (-2.8%) and low to moderate increases in the remaining six cost components that ranged from 0.8% to 4.5%. See Table 1 for changes in costs and prices for all rent stabilized apartment buildings from 2003-04.

The "core" PIOC, which excludes the erratic changes in fuel oil, natural gas and electricity costs, is useful for analyzing long-term inflationary trends. The core PIOC rose by 9.2% this year, propelled mainly by tax and insurance increases, and outpaced the growth in the Consumer Price Index (CPI) (2.96%), by over 6 percentage points.[5]

[5] The average CPI-U for All Urban Consumers, New York-Northeastern New Jersey for the year from April 2002 to March 2003 (193.4) compared to the average for the year from April 2003 to March 2004 (199.2) rose by 2.96%. This is the latest available CPI data and is roughly analogous to the 'PIOC year', which for the majority of components compares the most recent point-to-point figures from April to April, monthly cost-weighted figures from May to April, or the two most recent fiscal year bills.

Table 1 details the expenditure weights, the percentage change and weighted percentage change by component for the 2004 Price Index.

Table 1

2003-04 Percentage Changes in Components of *the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City*[6]			
Item	Expenditure Weights	2003-04 Percentage Δ	2003-04 Weighted Percentage Δ
Taxes	26.07%	16.16%	4.21 %
Labor Costs	15.00	4.54	0.68
Fuel Costs	10.97	-2.81	-0.31
Utility Costs	15.52	0.77	0.12
Contractor Services	13.68	4.06	0.56
Administrative Costs	7.83	3.96	0.31
Insurance Costs	8.52	14.70	1.25
Parts & Supplies	1.81	1.18	0.02
Replacement Costs	0.77	0.99	0.01
All Items	**100.00**	**-**	**6.86**

Source: *2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.*
Note: The Δ symbol means change.

LOCAL LAW 63/ INCOME & EXPENSE REVIEW

Following computerization of I&E filings, the sample size for the I&E study has been greatly increased to over 12,000 buildings. This is the twelfth year that staff has been able to obtain longitudinal data in addition to cross-sectional data. The RGB staff found the following average monthly (per unit) operating and maintenance (O&M) costs in 2003 Real Property Income and Expense (RPIE) statements for the year 2002:

Table 2

2004 Income and Expense Study Average Monthly Operating and Maintenance Costs Per Unit[7]			
	Pre '47	**Post '46**	**All Stabilized**
Taxes	$119	$170	$133
Labor	59	106	72
Fuel	49	38	46
Utilities	52	57	53
Maintenance	111	108	110
Administration	68	81	72
Insurance	34	28	33
Miscellaneous	50	54	51
Total	**$543**	**$644**	**$570**

Source: *2004 Income and Expense Study*, from 2003 Real Property Income and Expense filings for 2002, NYC Department of Finance.

In 1992, the Board benefited from the results of audits conducted on a stratified sample of 46 rent stabilized buildings by the Department of Finance. Audited income and expense figures were compared to statements filed by owners. On average the audits showed an 8% over reporting of expenses. The categories, which accounted for nearly all of the expense over reporting, were maintenance, administration, and "miscellaneous." The largest over-reporting was in miscellaneous expenses.

[6] Totals may not add due to weighting and rounding.
[7] Totals may not add due to weighting and rounding.

If we assume that an audit of this year's income and expense data would yield similar findings to the 1992 audit, one would expect the average O&M cost for stabilized buildings to be $523, rather than $570. As a result, the following relationship between operating costs and residential rental income was suggested by the Local Law 63 data:

Table 2(a)

2002 Operating Cost to Rent/Income Ratio Adjusted to 1992 Audit					
	O&M Costs[8]	Rent	O&M to Rent Ratio	Income	O&M to Income Ratio
All stabilized	$523	$821	0.64	$912	0.57
Stabilized Pre'47	$499	$760	0.66	$848	0.59
Stabilized Post'46	$591	$990	0.60	$1,088	0.54

Source: *2004 Income and Expense Study*, from 2003 Real Property Income and Expense filings for 2002, NYC Department of Finance.

Forecasts of Operating and Maintenance Price Increases for 2003-04

In order to decide upon the allowable rent increases for two-year leases, the Rent Guidelines Board considers price changes for operating costs likely to occur over the next year. In making its forecasts the Board relies on expert assessments of likely price trends for the individual components, the history of changes in prices for the individual components and general economic trends. The Board's projections for 2004-05 are set forth in Table 3, which shows the Board's forecasts for price increases for the various categories of operating and maintenance costs.

Table 3

Year-to-Year Percentage Changes in Components of the Price Index of Operating Costs: Actual 2003-04 and Projected 2004-05		
	Price Index 2003-04	Projected Price Index 2004-05
Taxes	16.2%	3.0%
Labor Costs	4.5	3.5
Fuel Costs	-2.8	-8.1
Utility Costs	0.8	1.2
Contractor Services	4.1	4.2
Administrative Costs	4.0	4.7
Insurance Costs	14.7	23.4
Parts & Supplies	1.2	1.1
Replacement Costs	1.0	0.9
Total (Weighted)	**6.9%**	**3.6%**

Source: *2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City*, which includes the 2005 PIOC Projection.

Overall, the PIOC is expected to grow by 3.6% from 2004 to 2005 due to a 3.0% projected increase in Taxes, a 23.4% estimated increase in Insurance Costs, and projected growth in Contractor Services (4.2%) and Administrative Costs (4.7%). Labor Costs are projected to increase by 3.5%. These increases in cost are expected to be offset by decreases in Fuel (-8.1%) and energy-related utility costs. The overall Utilities component is expected to increase by 1.2% in 2005 because water and sewer rates are expected to rise by 5.5% and will offset the anticipated decreases in electricity and gas charges. The core PIOC is projected to

[8] Overall O&M expenses were adjusted according to the findings of an income and expenses audit conducted by the Department of Finance in 1992. The unadjusted **O&M to Rent** ratios would be 0.69 (All), 0.71 (Pre-47), and 0.65 (Post-46), respectively. The unadjusted **O&M to Income** ratios would be 0.62 (All), 0.64 (Pre-47), and 0.59 (Post-46).

rise more rapidly than the overall PIOC, by 5.8%, as the energy-related costs that are predicted to decline are eliminated. The above table shows the predicted changes in the PIOC components for 2005.

COMMENSURATE RENT ADJUSTMENT

Throughout its history, the Rent Guidelines Board has used a formula, known as the commensurate rent adjustment, to help determine annual rent guidelines for rent stabilized apartments. In essence, the "commensurate" combines various data concerning operating costs, revenues, and inflation into a single measure indicating how much rents would have to change for net operating income (NOI) in stabilized buildings to remain constant. The different types of "commensurate" adjustments described below are primarily meant to provide a foundation for discussion concerning prospective guidelines.

In its simplest form, the commensurate rent adjustment is the amount of rent change needed to maintain landlords' current dollar NOI at a constant level. In other words, the formula provides a set of one- and two-year renewal rent increases or guidelines that will compensate owners for the change in prices measured by the PIOC and keep net operating income "whole".

The first commensurate method is called the "Net Revenue" approach. While this formula takes into consideration the types of leases actually signed by tenants, it does not adjust landlords' NOI for inflation. The "Net Revenue" formula is presented in two ways, first adjusting for the mix of lease terms and second, adding an assumption for stabilized apartment turnover and the impact of revenue from vacancy increases. Under the "Net Revenue" formula, a guideline that would preserve NOI in the face of this year's 6.9% increase in the PIOC, is 5.5% for a one-year lease and 9.0% for a two-year lease. Guidelines using this formula and adding assumptions for the impact of vacancy increases on revenues when apartments experience turnover are 2.5% for one-year leases and 4.5% for two-year leases.

The second commensurate method considers the mix of lease terms while adjusting NOI upward to reflect general inflation, keeping both O&M and NOI constant. This is commonly called the "CPI-Adjusted NOI" formula. A guideline that would preserve NOI in the face of the 2.96% increase in the Consumer Price Index (see Endnote 1) and the 6.9% increase in the PIOC is 7.0% for a one-year lease and 11.5% for a two-year lease. Guidelines using this formula and adding the estimated impact of vacancy increases are 4.0% for one-year leases and 7.0% for two-year leases.[9]

The original formula that has been in use since the inception of the Rent Guidelines Board, is called the "traditional" commensurate adjustment. The "traditional" commensurate yields 4.3% for a one-year lease and 5.5% for a two-year lease, given the increase in operating costs of 6.9% found in the 2004 PIOC, and the projection of a 3.6% increase next year.[10]

As a means of compensating for cost changes, this "traditional" commensurate rent adjustment has two major flaws. First, although the formula is supposed to keep landlords' current dollar income constant, the formula does not consider the mix of one- and two-year lease renewals. Since only about three-fifths of leases are renewed in any given year, with a preponderance of leases having a two-year duration, the formula does not necessarily accurately estimate the amount of income needed to compensate landlords for operating and maintenance (O&M) cost changes.

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[9] The following assumptions were used in the computation of the commensurates: (1) the required change in landlord revenue is 62.5% of the 2004 PIOC increase of 6.9%, or 4.3%. The 62.5% figure is the most recent ratio of average operating costs to average income in stabilized buildings; (2) for the "CPI-Adjusted NOI" commensurate, the increase in revenue due to the impact of inflation on NOI is 37.5% times the latest 12-month increase in the CPI ending March 2004 (2.96%) or 1.1%; (3) these lease terms are only illustrative. Other combinations of one- and two-year guidelines could produce the adjustment in revenue; (4) assumptions regarding lease renewals and turnover were derived from the 1999 Housing and Vacancy Survey; (5) for the commensurate formulae including a vacancy assumption, the 18.0% median increase in vacancy leases found in the rent stabilized apartments that reported a vacancy lease in the 2001 Apartment registration file from the Division of Housing and Community Renewal was used.

[10] The collectability of legally authorized adjustments is assumed. Calculating the "traditional" commensurate rent adjustment requires an assumption about next year's PIOC. In this case, the 3.6% PIOC projection for 2005 is used.

A second flaw of the "traditional" commensurate formula is that it does not consider the erosion of landlords' income by inflation. By maintaining current dollar NOI at a constant level, adherence to the formula may cause profitability to decline over time. However, such degradation is not an inevitable consequence of using the "traditional" commensurate formula.[11]

All of these methods have their limitations. The "traditional" commensurate formula is artificial and does not consider the impact of lease terms or inflation on landlords' income. The "Net Revenue" formula does not attempt to adjust NOI based on changes in interest rates or deflation of landlord profits. The "CPI-Adjusted NOI" formula inflates the debt service portion of NOI, even though interest rates have been generally falling, rather than rising over recent years. Including a consideration of the amount of income owners receive on vacancy assumes both that vacancy increases are charged and collected, and that turnover rates are constant across the City.

Finally, it is important to note that only the "traditional" commensurate formula uses the PIOC projection and that this projection is not used in conjunction with or as part of the "Net Revenue" and "CPI-Adjusted NOI" formulas. As stated previously, all three formulas attempt to compensate owners for the adjustment in their operating and maintenance costs measured each year in the PIOC. The "Net Revenue" and the "CPI-Adjusted NOI" formulas attempt to compensate owners for the adjustment in O&M costs by using only the known PIOC change in costs (6.9%). The traditional method differs from the other formulas in that it uses both the PIOC's actual change in costs as well as the projected change in costs (3.6%). If the change in projected costs, which may not end up being an accurate estimate of owner's costs, is added to the "Net Revenue" and "CPI-Adjusted NOI" formulas, the resulting guidelines will likely over- or under-compensate for the change in costs.

Each of these formulae may be best thought of as a starting point for deliberations. The other Rent Guidelines Board annual research reports (e.g., the *Mortgage Survey Report* and *the Income and Expense Study*) and testimony to the Board can be used to modify the various estimates depending on these other considerations.

[11] Whether profits will actually decline depends on the level of inflation, the composition of NOI (i.e. how much is debt service and how much is profit), changes in tax laws, and interest rates.

Consideration of Other Factors

Before determining the guideline, the Board considered other factors affecting the rent stabilized housing stock and the economics of rental housing.

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 *2004 Mortgage Survey* of lending institutions. Table 4 gives the reported rate and points for the past nine years as reported by the mortgage survey.

Table 4

2004 Mortgage Survey[12] Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 1996-2004									
New Financing of Permanent Mortgage Loans, Interest Rate and Points									
	1996	1997	1998	1999	2000	2001	2002	2003	2004
Avg. Rates	8.6%	8.8%	8.5%	7.8%	8.7%	8.4%	7.4%	6.2%	5.8%
Avg. Points	1.32	1.34	1.02	1.01	0.99	0.99	0.79	0.81	0.67
Refinancing of Permanent Mortgage Loans, Interest Rate and Points									
	1996	1997	1998	1999	2000	2001	2002	2003	2004
Avg. Rates	8.5%	8.4%	8.5%	7.2%	8.6%	8.0%	7.4%	6.2%	5.7%
Avg. Points	1.21	1.15	0.99	0.92	1.01	1.06	0.83	0.78	0.60

Source: 1996–2004 *Annual Mortgage Surveys*, RGB.

CONDITION OF THE RENT STABILIZED HOUSING STOCK

The Board reviewed the number of buildings owned by the City following *in rem* actions and the number of units that are moving out of the rental market due to cooperative and condominium conversion.

Table 5

City-Owned Properties in Central Management Occupied and Vacant Building Counts, Fiscal Years 1996-2003								
	1996	1997	1998	1999	2000	2001	2002	2003
Occupied Bldgs.	2,684	2,484	2,232	1,905	1,730	1,203	919	610
Vacant Bldgs.	1,349	1,139	1,021	869	805	633	524	367

Source: NYC Department of Housing Preservation and Development, Office of Property Management.

[12] 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.

Table 6

Number of Cooperative / Condominium Plans[13] Accepted for Filing, 1995-2003									
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
New Construction	17	16	34	69	50	87	145	136	190
Conversion Non-Eviction	9	8	4	40	12	9	12	14	10
Conversion Eviction	5	1	1	0	27	9	2	15	0
Rehabilitation	56	10	37	48	30	15	13	20	18
Total	**87**	**35**	**76**	**157**	**119**	**120**	**172**	**185**	**218**
Subtotal:									
HPD Sponsored Plans	41	0	21	24	26	8	2	15	0

Source: New York State Attorney General's Office, Real Estate Financing.

CONSUMER PRICE INDEX

The Board reviewed the Consumer Price Index. Table 7 shows the percentage change for the NY-Northeastern NJ Metropolitan area since 1997.

Table 7

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 1997-2004 (For "All Urban Consumers")								
	1997	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**
1st Quarter Avg.	2.5%	1.3%	1.4%	3.4%	2.7%	2.5%	3.1%	3.0%
Yearly Avg.	2.3%	1.6%	2.0%	3.1%	2.5%	2.6%	3.1%	--

Source: U.S. Bureau of Labor Statistics.

CALCULATING OF THE CURRENT OPERATING AND MAINTENANCE EXPENSE TO RENT RATIO

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

Over the first two decades of rent stabilization, the change in the O&M to rent ratio contained in Table 8 (hereinafter, referred to as "Table 14" - its past designation) was updated each year to reflect the changes in operating costs as measured by the PIOC and changes in rents as measured by staff calculations derived from guideline increases. Over the years, some Board members and other housing experts have challenged the price index methodology and the soundness of the assumptions used in calculating the O&M to rent ratio in "Table 14". Several weaknesses in the table have been acknowledged for some time.

The first problem with "Table 14" is that the calculation does not account for the changes in the housing stock and market factors which have certainly affected the relationship between rents and operating costs to some degree. Next, for the purpose of measuring the relationship between legal regulated rents and operating cost changes, the usefulness of "Table 14" is also limited. The rent index contained in the table

[13] The figures given above for eviction and non-eviction plans include those that are abandoned because an insufficient percentage of units were sold within the 15-month deadline. In addition, some of the eviction plans accepted for filing may have subsequently been amended or resubmitted as non-eviction plans and therefore may be reflected in both categories. HPD sponsored plans are a subset of the total plans.

does not adjust for administrative rent increases (MCI's and Apartment Improvement increases) and rents charged below established guidelines (preferential).

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning nearly all post-war units. The vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings, which had higher O&M ratios in 1970. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. The rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units' results in a one-sided distortion of the changing relationship between costs and rents.

Staff's research suggests that the PIOC may have overstated actual cost increases from 1970 to 1982. However, from 1989-90 to 2001-02, the I&E rose 70% and the adjusted PIOC rose 67%. What remains clear, however, is that "Table 14," in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.

Table 8 (Formerly Table 14)[14]

Calculation of Operating and Maintenance Cost Ratio For Rent Stabilized Buildings from 1970 to 2004						
Period	Percent O&M[15] Increase	O&M Index	Period	Percent Rent[16] Increase	Rent Index	O&M/Rent Ratio
4/1/70-3/31/71	-	55	7/1/71-6/30/72	-	100	0.55
4/1/71-3/31/72	5.7	58.14	7/1/72-6/30/73	5.4	105.40	0.55
4/1/72-3/31/73	7.9	62.73	7/1/73-6/30/74	5.4	111.09	0.56
4/1/73-3/31/74	15.5	72.45	7/1/74-6/30/75	5.64	117.36	0.62
4/1/74-3/31/75	6.5	77.16	7/1/75-6/30/76	5.62	123.95	0.62
4/1/75-3/31/76	8.8	83.95	7/1/76-6/30/77	5.33	130.56	0.64
4/1/76-3/31/77	6.9	89.74	7/1/77-6/30/78	5.49	137.73	0.65
4/1/77-3/31/78	0.6	90.28	7/1/78-6/30/79	4.23	143.55	0.63
4/1/78-3/31/79	10.4	99.67	7/1/79-6/30/80	7.73	154.65	0.64
4/1/79-3/31/80	17.0	116.61	7/1/80-9/30/81	10.28	170.55	0.68
4/1/80-3/31/81	14.6	133.64	10/1/81-9/30/82	10.11	187.79	0.71
4/1/81-3/31/82	2.8	137.38	10/1/82-9/30/83	3.52	194.40	0.71
4/1/82-3/31/83	2.6	140.95	10/1/83-9/30/84	4.93	203.98	0.69
4/1/83-3/31/84	6.3	149.83	10/1/84-9/30/85	5.82	215.86	0.69
4/1/84-3/31/85	5.4	157.92	10/1/85-9/30/86	6.55	229.99	0.69
4/1/85-3/31/86	6.4	168.03	10/1/86-9/30/87	6.18	244.21	0.69
4/1/86-3/31/87	2.1	171.56	10/1/87-9/30/88	5.87	258.54	0.66
4/1/87-3/31/88	6.4	182.54	10/1/88-9/30/89	6.39	275.06	0.66
4/1/88-3/31/89	6.7	194.77	10/1/89-9/30/90	6.16	292.01	0.67
4/1/89-3/31/90	10.9	216.00	10/1/90-9/30/91	4.15	304.13	0.71
4/1/90-3/31/91	6.0	228.96	10/1/91-9/30/92	3.93	316.08	0.72
4/1/91-3/31/92	4.0	238.12	10/1/92-9/30/93	3.11	325.91	0.73
4/1/92-3/31/93	4.7	249.31	10/1/93-9/30/94	2.93	335.46	0.74
4/1/93-3/31/94	2.0	254.30	10/1/94-9/30/95	2.73	344.62	0.74
4/1/94-3/31/95	0.1	254.55	10/1/95-9/30/96	4.10	358.74	0.71
4/1/95-3/31/96	6.0	269.82	10/1/96-9/30/97	5.72	379.26	0.71
4/1/96-3/31/97	2.4	276.30	10/1/97-9/30/98	3.66	393.16	0.70
4/1/97-3/31/98	0.1	276.58	10/1/98-9/30/99	3.71	407.75	0.68
4/1/98-3/31/99	0.03	276.65	10/1/99-9/30/00	3.91	423.70	0.65
4/1/99-3/31/00	7.8	298.23	10/1/00-9/30/01	5.04	445.04	0.67
4/1/00-3/31/01	8.7	324.18	10/1/01-9/30/02	4.78	466.29	0.70
4/1/01-3/31/02	-1.6	318.99	10/1/02-9/30/03	3.61	483.10	0.66
4/1/02-3/31/03	16.9	372.90	10/1/03-9/30/04	5.72[17]	510.72	0.73
4/1/03-3/31/04	6.9	398.63	10/1/04-9/30/05	4.75[18]	534.96	0.75

[14] Source: Price Index of Operating Costs 1970 – 2004, NYC Housing and Vacancy Surveys.

[15] Estimate of percentage increases are based on the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City for the relevant year and adjustments made by the Rent Guidelines Board; detailed explanations are available in the individual Explanatory Statements of the Board.

[16] For explanation of the derivation of individual percentage rent increases see the Explanatory Statements of the Board's previous Orders.

[17] The **5.72%** increase in rent roll estimated for leases signed during the period 10/1/03-9/30/04 under Order 35 reflects the following: (1) Renewal guidelines are estimated to contribute a **1.313%** and **2.196%** increase in the rent roll with 29.2% of all units experiencing a one-year lease signing (4.5%) and 29.3% of all units experiencing two-year lease signings (7.5%). These figures are derived from the 1999 Housing and Vacancy Survey (HVS), Table 58, which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These figures for renewal leases (33% of stabilized households have a one-year lease and 67% have two-year leases) were reduced by the turnover rate of 12.3%, derived from the average households who moved in the 1999 HVS (125,134 is the average number of stabilized households that moved annually1996-98) and taken as percentages of all stabilized lease signers (1,020,588); (2) the vacancy allowance of 18.0%, which is the median vacancy increase found in the 2001 annual DHCR rent registration data for apartments is estimated to increase overall rent rolls by **2.207%** when multiplied by the HVS turnover rate (12.3%), which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 35.

[18] The **4.75%** increase in rent roll estimated for leases signed during the period 10/1/04-9/30/05 under Order 36 reflects the following: (1) Renewal guidelines are estimated to contribute a **1.052%** and **1.960%** increase in the rent roll with 30.1% of all units experiencing a one-year lease signing (3.5%) and 30.2% of all units experiencing two-year lease signings (6.5%). These figures are derived from the 2002 Housing and Vacancy Survey (HVS), Table 58, which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These figures for renewal leases (33% of stabilized households have a one-year lease and 67% have two-year leases) were reduced by the turnover rate of 9.6%, derived from the average households who moved in the 2002 HVS (95,239 is the average number of stabilized households that moved annually1999-2001) and taken as percentages of all stabilized lease signers (988,393); (2) the vacancy allowance of 18.0%, which is the median vacancy increase found in the 2001 annual DHCR rent registration data for apartments is estimated to increase overall rent rolls by **1.734%** when multiplied by the HVS turnover rate (9.6%), which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 36.

For years the staff has expressed serious reservations about the usefulness and accuracy of "Table 14". With current longitudinal income and expense data staff has constructed a new and far more reliable index, using 1989 as a base year. Except for the most recent year and the coming year, this new index measures changes in building income and operating expenses as reported in annual income and expense statements. The second to last year in the table will reflect actual PIOC increases and projected rent changes. The last year in the table - projecting into the future - will include staff projections for both expenses and rents. The proposed new index is in Table 9.

While we believe this to be a more reliable index, it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Second, while the new table looks at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship. This new table is listed below as Table 9.

Table 9

Revised Calculation of Operating and Maintenance Cost Ratio for Rent Stabilized Buildings from 1989 to 2004

	Average Monthly O & M Per d.u.[19]	Average Monthly Income Per d.u.	Average O & M to Income Ratio
1989	$370 ($340)	$567	.65 (.60)
1990	$382 ($351)	$564	.68 (.62)
1991	$382 ($351)	$559	.68 (.63)
1992	$395 ($363)	$576	.69 (.63)
1993	$409 ($376)	$601	.68 (.63)
1994	$415 ($381)	$628	.66 (.61)
1995	$425 ($391)	$657	.65 (.59)
1996	$444 ($408)	$679	.65 (.60)
1997	$458 ($421)	$724	.63 (.58)
1998	$459 ($422)	$755	.61 (.56)
1999	$464 ($426)	$778	.60 (.55)
2000	$503 ($462)	$822	.61 (.56)
2001	$531 ($488)	$868	.61 (.56)
2002	$570 ($524)	$912	.63 (.57)
2003[20]	$666 ($612)	$951	.70 (.64)
2004[21]	$712 ($654)	$994	.72 (.66)
2005[22]	$738 ($678)	$1,047	.71 (.65)

Source: RGB *Income and Expense Studies*, 1989-2004, *Price Index of Operating Costs* 1992 - 2004, RGB Rent Index for 1992 - 2005 (see Table 8).

[19] Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research 1992, pages 40-44. Figures in parentheses are adjusted to reflect these findings.

[20] Estimated expense figure includes the 2002 I&E expense figure updated by the PIOC for the period from 4/1/02 through 3/31/03 (16.9%). Income includes the I&E income figure for 2002 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/02 through 3/31/03 (4.29% - i.e., the 10/1/01 to 9/30/02 rent projection (4.78) times (.583), plus the 10/1/02 to 9/30/03 rent projection (3.61) times (.417)).

[21] Estimated expense figure includes 2003 expense estimate updated by the PIOC for the period from 4/1/03 through 3/31/04 (6.9%). Income includes the income estimate for 2003 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/03 through 3/31/04 (4.49% - i.e., the 10/1/02 to 9/30/03 rent projection (3.61) times (.583), plus the 10/1/03 to 9/30/04 rent projection (5.72) times (.417)).

[22] Estimated expense figure includes 2004 expense estimate updated by the staff PIOC projection for the period from 4/1/04 through 3/31/05 (3.6%). Income includes the income estimate for 2004 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/04 through 3/31/05 (5.31% - i.e., the 10/1/03 to 9/30/04 rent projection (5.72) times (.583), plus the 10/1/04 to 9/30/05 rent projection (4.75) times (.417)).

CHANGES IN HOUSING AFFORDABILITY

For the third consecutive year, New York City's economy still struggled to recover from recession, rising unemployment rates, falling employment levels, and stagnant to declining real wages. The City's Gross City Product declined by 2.2% in 2003, despite growth of 2.2% in the fourth quarter. Unemployment rates also increased for the third year in a row, climbing .5 percentage points to 8.4%. Total employment levels in the City fell to 1998 levels, and both real and nominal wages fell to levels not seen in this decade. In addition, Housing and Vacancy Survey data published last year reveals that the vacancy rate remains well below the 5% threshold, at 2.94% citywide. But despite the poor economy, the number of persons receiving public assistance fell during Fiscal Year 2003, and rose again during the first four months of FY 2004. In addition, the number of homeless in City shelters grew to record numbers, especially among families, while non-payment filings in Housing Court decreased by 4.0%.

BUILDINGS WITH DIFFERENT FUEL AND UTILITY ARRANGEMENTS

The Board was also informed of the circumstances of buildings with different fuel and utility arrangements including buildings that are master-metered for electricity and that are heated with gas versus oil, and where heat is not a service provided by the owner but is paid for separately by tenants (see Table 10). Under some of the Board's Orders in the past, separate adjustments have been established for buildings in certain of these categories where there were indications of drastically different changes in costs in comparison to the generally prevailing fuel and utility arrangements. This year the Board made no distinction between guidelines for buildings with different fuel and utility arrangements under Order 36. However, the Board did make a distinction in guidelines for tenants who pay to heat their apartments as a separate expense from their rent.

Table 10

Changes in Price Index of Operating Costs for Apartments in Buildings with Various Heating Arrangements, 2003-04, and Commensurate Rent Adjustment

Index Type	2003-04 Price Index Change	One-Year Rent Adjustment Commensurate With Adjusted O&M to Income Ratio of .625
All Dwelling Units Individually Metered for Electricity:	6.86%	4.29%
Pre 1947	6.39	3.99
Post 1946	6.91	4.32
Oil Used for Heating	6.40	4.00
Gas Used for Heating	7.25	4.53
Master Metered for Electricity:	6.66	4.16

Note: The O&M to Income ratio is from the *2004 Income and Expense Study*.
Source: RGB's *2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City*.

ADJUSTMENTS FOR UNITS IN THE CATEGORY OF BUILDINGS COVERED BY ARTICLE 7-C OF THE MULTIPLE DWELLING LAW (LOFTS)

Section 286 sub-division 7 of the Multiple Dwelling Law states that the Rent Guidelines Board "shall annually establish guidelines for rent adjustments for the category of buildings covered by this article." In addition, the law specifically requires that the Board, "consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline."

In 1986, Abt Associates Inc. conducted an expenditure study of loft owners to construct weights for the Loft Board's index of operating costs and to determine year-to-year price changes. In subsequent years, data from the PIOC for stabilized apartments was used to compute changes in costs and to update the loft expenditure weights. This is the procedure used this year.

The increase in the Loft Index this year was 8.2%, 1.3 percentage points higher than the increase for apartments. This difference is explained primarily by the fact that Insurance Costs, which increased by 14.7%, are much more important for lofts than for apartments and placed more upward pressure on the Loft Index.

This year's guidelines for lofts are: **2.5%** for a one-year lease and **5.5%** for a two-year lease.

Table 11

Changes in the Price Index of Operating Costs for Lofts from 2003-04	
	Loft O & M Price Index Change
All Buildings	8.2%

Source: *2004 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.*

SPECIAL GUIDELINES FOR VACANCY DECONTROLLED UNITS ENTERING THE STABILIZED STOCK

Pursuant to Section 26-513(b) of the New York City Administrative Code, as amended, the Rent Guidelines Board establishes a special guideline in order to aid the State Division of Housing and Community Renewal in determining fair market rents for housing accommodations which enter the stabilization system. This year, the Board set the guidelines at the greater of the following:

(1) 50% above the Maximum Base Rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

The Board concluded that for units formerly subject to rent control, either an increase to rent levels reflecting the Fair Market Rent guidelines established by the U.S. Department of Housing and Urban Development (HUD), or 50% above the maximum base rent was a desirable minimum increase. Notably, the HUD guidelines differentiate minimum rents on the basis of bedroom count.

Increase for Units Receiving Partial Tax Exemption Pursuant to Section 421 and 423 of the Real Property Tax Law

The guideline percentages for 421-A and 423 buildings were set at the same levels as for leases in other categories of stabilized apartments.

This Order does not prohibit the inclusion of the lease provision for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 per cent per annum where the dwelling unit is receiving partial tax exemption pursuant to Section 421-A of the Real Property Tax Law. The cumulative but not compound charge of up to 2.2 per cent per annum as provided by Section 421-A or the rate provided by Section 423 is in addition to the amount permitted by this Order.

Vacancy Allowance

As of June 15, 1997, Vacancy Allowances are now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and in Chapter 82 of the Laws of 2003.

Supplemental Adjustment

There shall be **no supplemental adjustment** for apartments renting below any specified amount for renewal leases.

There shall be **no equalization allowance** for apartments continuously occupied for a specified period of time for renewal leases.

Sublet Allowance

The increase landlords are allowed to charge under Order 36 when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2004 and on or before September 30, 2005 shall be **10%**.

Votes

The votes of the Board on the adopted motion pertaining to the provisions of Order #36 were as follows:

	Yes	No	Abstentions
Guidelines for Apartment Order #36	6	3	-

Dated: June 30, 2004
Filed with the City Clerk: July 1, 2004

Marvin Markus, Chair
Rent Guidelines Board

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