

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed rule §2-06.2 which relate to the interim rent guidelines and rent adjustments in MDL § 286(2)(i) for units subject to Article 7-C pursuant to MDL § 281(5).
- Date / Time:** July 27, 2012 at 2PM
- Location:** 280 Broadway
3rd Floor
New York, NY 10007
- Contact:** New York City Loft Board
280 Broadway
3rd Floor
New York, NY 10007
(212) 566-5663

Proposed Rule Amendment

Pursuant to the authority vested in the New York City Loft Board by Article 7-C of the Multiple Dwelling Law and Mayor's Executive Order No. 129, dated May 22, 2009, and pursuant to and in accordance with the requirements of Section 1043 of the New York City Charter, the New York City Loft Board intends to add section 2-06.2 to Title 29 of the Rules of the City of New York regarding the interim rent guidelines and rent adjustments for units subject to Article 7-C pursuant to MDL § 281(5).

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment by mail to the New York City Loft Board at the address shown above or electronically through NYC RULES at www.nyc.gov/nycrules by July 27, 2012.
- To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact the New York City Loft Board at the phone number shown above by July 23, 2012.
- Summarized copies of the written and oral comments received at the hearing will be available August 2, 2012 between the hours of 10:00 A.M. and 4:00 P.M. at the offices of the New York City Loft Board.

Statement of Basis and Purpose

On June 21, 2010, the New York State Legislature enacted Section 281(5) of Article 7-C which expanded the criteria for coverage under the Loft Law. Multiple Dwelling Law (MDL) section 286(2)(i) directs the Loft Board to establish rent adjustments prior to Article 7-B compliance, also known as interim rent adjustments for interim multiple dwelling (IMD) units covered under MDL § 281(5).

On November 17, 2011, the Loft Board heard testimony from owner and tenant representatives, the Met Council on Housing and the Rent Stabilization Association, among others, about factors the Loft Board should consider in determining the rent adjustments pursuant to MDL section 286(2)(i). In addition, the Loft Board considered over 30 letters received from tenants and advocates for tenants and owners. The information provided was insightful and helpful in understanding the potential impact of these increases on the artist community, current trends in loft housing, and the effect of rent regulation on the housing market.

The following list represents a summary of the reoccurring points presented to the Loft Board in the oral and written comments:

- Tenants report that they are already paying market rent;
- Tenants report that most of them have had a recent increase in rent;
- A further increase in addition to the legalization milestone increases will result in the unit being over market rent and price-out the artist community;
- An increase prior to Article 7-B compliance after a lease expires may encourage an owner not to finish the Article 7-B work until after the lease expires to collect the increase;
- Tenants report that the buildings are in a state of disrepair and the owners fail to do proper maintenance; and
- Tenants have invested considerable sums of money by making improvements to make the loft spaces livable and owners should not reap the benefits of their financial investment prior to Article 7-B compliance.

After consideration of the comments received to date, the Loft Board determines that there should be no rent adjustment prior to Article 7-B compliance pursuant to MDL § 286(2)(i). The proposed rule sets forth this determination in the interim rent adjustments required in MDL § 286(2)(i) for interim multiple dwelling (IMD) units covered under MDL § 281(5).

Section 2-06.2 of Title 29 of the Rules of the City of New York is added to read as follows:

§ 2-06.2 Interim Rent Guidelines and Rent Adjustments pursuant to MDL § 286(2)(i).

(a) Coverage.

(1) These rent guidelines apply to interim multiple dwelling ("IMD") units, as defined in § 281 of Article 7-C of the Multiple Dwelling Law ("MDL"), which (i) are subject to Article 7-C solely pursuant to MDL § 281(5); (ii) are registered with the Loft Board; and (iii) do not meet the safety and fire protection standards of Article 7-B of the MDL.

(b) Definitions. For the purposes of this section, the following definitions apply:

(1) "**Lease or rental agreement**" means a written lease or rental agreement; or an oral agreement for a rental period of one year or less, provided that:

(i) There was a change in the rent for the IMD unit, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to June 21, 2010; or

(ii) There had been a substantial change in the level of services agreed to be provided within the year prior to June 21, 2010.

(2) "**Escalators**" are lease or rental agreement provisions that require a residential occupant to pay as rent or to pay additional rent charges based on, but not limited to: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; and any cost-of-living increase formulas.

(3) "**Use-Based Escalators**" are escalators that: 1) are based on a fair calculation of the occupant's usage; and 2) were part of the last lease or rental agreement in effect on or before June 21, 2010. Examples of use-based escalators may include, but are not limited to, gas, electricity and steam charges.

(4) "**Total rent**"

(i) Lease in effect on June 21, 2010. Total rent is the rent, including escalators that are not use-based escalators, specified in the lease in effect on June 21, 2010 which is paid by the tenant pursuant to said lease or rental agreement.

(ii) No lease in effect on June 21, 2010. Where no lease or rental agreement was in effect on June 21, 2010, the total rent is the rent, including escalators that are not use-based escalators, paid by the tenant to the landlord on or before June 21, 2010 pursuant to the last lease or rental agreement prior to June 21, 2010.

(c) Rent Adjustments Pursuant to § 286(2)(i). For purposes of determining rent adjustments pursuant § 286(2)(i), there will be no increase permitted above the total rent as defined above for any unit subject to Article 7-C pursuant to MDL § 281(5).

(d) Permissible Rent Levels. An owner of a unit subject to Article 7-C pursuant to MDL § 281(5) may not charge a residential occupant more than:

- (1) Total rent, as defined above; plus
- (2) Any other rent adjustments authorized pursuant to Article 7-C and these Rules, including allowable rent adjustments authorized pursuant to § 2-12 of these Rules; plus
- (3) Use-based escalators, if any.

(e) Overcharges and Penalties. Rent payments made prior to **October 14, 2012**, the effective date of this rule in excess of the permissible rent levels, as described above in subdivision (d), constitute an overcharge which may be paid at the owner's option either in a lump sum paid to the tenant or as a 20 percent reduction of the legal rent permitted under this rule as of **October 14, 2012**, the effective date of the rule until payment of the full overcharge is completed. No treble damages may be imposed for a violation of this section.

NEW YORK, NY 10007
212-788-1400

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Interim Rent Adjustments, Loft Board Rule § 2-06.2

REFERENCE NUMBER: DOB-30

RULEMAKING AGENCY: Department of Buildings (Loft Board)

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi
Mayor's Office of Operations

5/4/2012
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Interim Rent Adjustments, Loft Board Rule § 2-06.2

REFERENCE NUMBER: 2012 RG 008

RULEMAKING AGENCY: Loft Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: May 3, 2012