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Subcommittee on Affordable Housing

Lanny Alexander
Executive Director
New York City Loft Board
22 Reade Street
New York City, NY
10014

November 16th, 2011

Dear Ms. Alexander,

Good afternoon, I would like to thank you and your staff for this on-going process of open dialogue in discussing the proposed rules for loft tenancies in New York City. As we continue this discussion, I would like to bring to your attention three main issues: how these proposed rules do not reflect the current economic climate, the interpretation of certain statutory language and how it will affect the loft tenants and owners and how the increases as proposed are of particular concern.

Economic Implausibility

The Loft Board is merely looking to actualize the same rules that were promulgated for tenants under the 1982 statute, when the application of rental protections were some of the first offered to loft tenants in Manhattan. However, this is inappropriate for various reasons. It is impossible to conflate the economic climate of 1982 with that of 2010. . As an example, there was a serious problem with massive rent strikes in 1982, however, this is no longer the case. The majority of loft tenants today have been consistently paying rent, other than a handful of tenants who have stopped paying rent in lieu of paying legal fees during IMD coverage disputes. Another difference between these two time periods is that, in the 1980s, there was a clear goal of promulgating rules towards rehabilitating abandoned warehouses and encouraging both tenants and owners to actively build up neighborhoods in a feasible way to further develop this city. The current proposed rule for 2-06 however, should be more responsive to current needs. This is an opportunity for the Loft Board to maintain affordable housing through a process that reasonably allows owners to profit while not displacing a significant population from their homes. Another aspect that cannot be ignored is that during the course of the past 29 years, the population of New York has increased by close to 1.1 million people. This growth in sheer number of residents has significantly outpaced the affordable housing stock. As such, the need for the development, creation, and maintainence of safe, affordable housing which underpins the 2010 amendment should be met with the same vigor and probity as the 1982 need for development in underutilized commercial districts. This shift of focus requires a serious reevaluation the rules. The Board, as well as the State of New York, has always adjusted its role to serve the public in the capacity in which it needs. Currently, the needs of the people are

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for affordable housing. By reiterating rules over a quarter of a century old, current needs are not only being ignored, they are actively being frustrated.

Linguistic Apprehension

Certain interpretations need readjustments under this new economic climate. An overarching concern with what the Loft Board seeks to accomplish is the use of the term, "rental agreements" in the Multiple Dwelling Law Section 286(2)(i), as interpreted by the Loft Board, completely ignores a huge tenant population, those who live as "month-to-month" tenants. Month-to-month tenancies are defined by the Attorney General of New York, using the New York Real Property Law (232-C), as tenancies where "tenants do not have leases and pay rent on a monthly basis." In essence, by not accepting these as "rental agreements," the Loft Board is ignoring that protections under Article 7-C of the Multiple Dwelling Law seek to protect not only those with leases, but also, those with rental agreements. If the statute did not intend to offer protection to those with other types of agreements, besides leases, the statute would not have explicitly sought to protect those with a "lease or rental agreement." It would have simply read "lease." The way in which these month-to-month tenancies are being ignored is that there seems to be an implied definition of market value as something different than what these tenants are paying. In a month-to-month tenancy, a landlord may increase the rent rather easily at whatever rate they would like, or, alternatively, evict the tenant with a 30 day notice requirement. As such, any month-to-month tenancy is *at* market rent, because both parties have agreed to it without any regulation.

The board further needs to realize that the use of the word "adjustments" in the Multiple Dwelling Law can mean both increases as well as decreases. It is not a secret that the city, state and country have suffered from the extreme economic downturn over the past few years. As such, it is crucial that the Loft Board realizes that while in some economic circumstances it is appropriate to adjust the rent upwards, sometimes, it is also critical that we must be prepared to adjust the rent downwards as well. Even within rent stabilization, landlords often choose to elect a preferential rent opposed to the legal rent when the market spirals downward.

New Proposed Increases

The proposed increases for the new Interim Rent Guidelines based on previous increases set by the Rent Guidelines Board (RGB) are misguided. The RGB determines its increases with an eye towards maintaining a ratio between expenses and income for rent stabilized buildings constant at about 70%. Every year, rent-stabilized building owners spend about $.70 of every dollar they make to maintain their buildings. In setting the increases, , the RGB refers, in part, to the Real Property Income Expense Statements (RPIE) filed annually by property owners with NYC Department of Finance. A quick comparison of RPIE data for 2009 (which was used to calculate 2012 RGB increases) shows that in the same year owners of illegal loft buildings spent only about $.30 of every dollar of income on building maintenance. While this amount

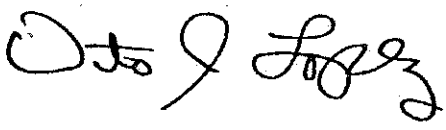
has changed according to fluctuations in the real estate market, it has been consistently much lower that that for rent-stabilized buildings since at least 2004.

I do not believe that the Loft Board, which is tasked with the dual purpose of providing safe and affordable loft housing, should argue that landlords that have already made about 70% profit need retroactive increases to act as an additional incentive for them to legalize their buildings. This is especially true since it would constitute an unfair windfall from having failed to maintain their buildings in habitable conditions and/or without essential services for years into the past.

Further, these increases seem to fly in the face of other housing regulations already being implemented. For instance, Housing & Community Renewal in determining correct rent, may only go back four years for rent stabilized units, and the guidelines are even stricter in rent control where there is a two year limitation. In an analogous system retroactive "adjustments" would be limited to either only half or a quarter of the amount of time that the current proposed rules seek to enact.

Thank you for your attention to these important issues as we move forward in implementing a set of rules that protects all interests. If you have any questions please feel free to contact my Chief of Staff, Leah Hebert at 718-963-7029 or hebertl@assembly.state.ny.us.

Sincerely,



Assemblyman Vito J Lopez

Cc: Council Member Stephen Levin, Council Member Erik Dilan, Robert LiMandri, Chuck Delany, Matthew Mayer, Daniel E Schachter, LeAnn Shelton, Elliott Barowitz, Ronald Spadafora and Gina Bolden-Rivera