

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on proposed rule changes to Section 2-12 of the Loft Board Rules which relate to rent adjustments under Multiple Dwelling Law (“MDL”) § 286(2)(ii).

**Date / Time:** May 16, 2013 at 1:00 PM

**Location:** 22 Reade Street  
Spector Hall, 1<sup>st</sup> Floor  
New York, NY 10007

**Contact:** New York City Loft Board  
280 Broadway, 3<sup>rd</sup> 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 amend section 2-12 of Title 29 of the Rules of the City of New York to conform the Loft Board’s rules regarding rent adjustments under MDL § 286(2)(ii) to the 2010 and 2013 amendments to Article 7-C.

### 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 NYCRULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by May 16, 2013.
- 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 May 13, 2013.
- Copies of the written comments and summaries of the oral comments received at the hearing will be available by May 23, 2013 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 amended Article 7-C of the Multiple Dwelling Law (“Loft Law”) to add, among other things, MDL § 281(5) which expanded the criteria for Article 7-C coverage. In Chapter 4 of the Laws of 2013, the New York State Legislature further amended MDL § 281(5) and, among other things, modified the amount of rent adjustments that owners may receive pursuant to MDL § 286(2)(ii), commonly referred to as “milestone increases.”

Pursuant to MDL § 286(2)(ii), owners of interim multiple dwelling (“IMD”) buildings, including those owners of the buildings covered pursuant to MDL § 281(5), may seek rent adjustments upon achieving three legalization milestones. The legalization milestones are: 1) the filing of an alteration application with the Department of Buildings for conversion of the building from commercial to residential use; 2) the issuance of a permit for the alteration application; and 3) achieving Article 7-B compliance. An IMD owner may collect the rent adjustment for achieving one or more milestones the month immediately following compliance.

The proposed rule describes the procedure for obtaining the rent adjustments in MDL § 286(2)(ii) for units subject to the Loft Law pursuant to MDL § 281(5) and refers to MDL § 286(2)(ii) for the rent adjustment percentages for achieving each legalization milestone. Finally, the proposed rule includes new section headings and minor clarifying revisions.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this Board, unless otherwise specified or unless the context clearly indicates otherwise.

New matter in the following rule is underlined, and deleted material is in [brackets.]

**Section 2-12 of Title 29 of the Rules of the City of New York is amended to read as follows:**

### **§\_2-12 MDL §\_286(2)(ii) Rent Adjustments.**

#### *(a) Definitions.*

**[Alteration application.] "Alteration application"** [shall mean an application accepted for filing by the Department of Buildings of the City of New York ("DOB") specifying the work to be undertaken to obtain a] means, for the purposes of these Rules, the work application form submitted for filing to the Department of Buildings of the City of New York (“DOB”), which describes the work to be undertaken that will result in obtaining a final certificate of occupancy for an interim multiple dwelling ("IMD") unit, as defined in MDL §\_281 and these rules [of the Multiple Dwelling Law, ("covered

unit")) for residential use or joint living-work quarters for artists usage [("residential certificate of occupancy").

[**Alteration permit.**] "**Alteration permit**" [shall mean] means a building permit issued by the DOB authorizing the owner to make the alterations set forth in the approved alteration application which are necessary to obtain a residential certificate of occupancy for an [covered] IMD unit.

[**Article 7-B compliance.**] "**Article 7-B compliance**" [shall mean] means compliance with the fire protection and safety standards of Article 7-B of the MDL [Multiple Dwelling Law], or alternative building codes as authorized by MDL § 287. Article 7-B compliance [shall] must be evidenced by:

- (i) DOB's issuance of a [final] temporary residential certificate of occupancy;
- (ii) DOB's issuance of a final residential certificate of occupancy after June 21, 1992;
- (iii) DOB records demonstrating that the alterations necessary for issuance of a residential certificate of occupancy have been completed; or
- (iv) [the] The filing with the Loft Board of a sworn statement by a registered architect or professional engineer licensed in the State of New York stating that the IMD has achieved Article 7-B compliance and the date of such compliance on the Loft Board approved form.

**“Maximum permissible rent,”** or **“maximum rent permissible,”** for purposes of this rule, means “total rent” plus any permissible rent adjustments, as provided in § 2-06 for units subject to Article 7-C pursuant to § 281(1), or § 2-06.1 for units subject to Article 7-C pursuant to § 281(4). For units subject to Article 7-C pursuant to § 281(5), “maximum permissible rent” is defined in § 2-06.2 of these Rules. If one or more rent adjustments pursuant to this section have already been applied, “maximum permissible rent” includes such adjustments.

(b) *Eligibility requirements.*

The owner of an IMD is eligible for [one] 1 or more rent adjustments pursuant to MDL § 286(2)(ii) if all the following conditions are met:

- (1) The residential unit for which the rent adjustment is sought is covered under Article 7-C of the MDL [Multiple Dwelling Law];
- (2) The IMD building in which the covered residential unit is located is registered with the Loft Board;

(3) A final certificate of occupancy permitting residential occupancy of the covered unit was not issued on or before June 21, 1992;

(4) The residential unit was not rented at market value between June 21, 1982 and June 21, 1992 [as a result of a sale of improvements pursuant to MDL § 286(6) or sale of rights pursuant to MDL § 286(12) and Loft Board rules issued pursuant thereto], unless the IMD unit is covered under Article 7-C pursuant to MDL § 281(5); and

(5) The owner meets or has already met [one] 1 or more of the code compliance obligations [set forth] in MDL § 284(1) which requires that the owner file an alteration application[;], obtain an approved alteration permit[;], and achieve Article 7-B compliance.

An eligible owner is entitled to [one] 1 or more of the applicable rent adjustments [as set forth] in subdivisions (c) through (e) of § 2-12 of these rules.

*(c) Alteration application rent adjustment.*

(1) Filing prior to June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who filed an alteration application with the DOB prior to June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) Filing on or after June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who files an alteration application with the DOB on or after June 21, 1992 is entitled to [a six percent (6%)] an increase over the maximum rent permissible [under Loft Board rules] as provided in MDL § 286(2)(ii)(A) for the covered residential unit on the date the alteration application is filed.

*(d) Alteration permit rent adjustment.*

(1) Issuance prior to June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who obtained an alteration permit prior to June 21, 1992 is entitled to a fourteen percent (14%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) Issuance on or after June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who obtains an alteration permit from the DOB on or after June 21, 1992 is entitled to an [eight percent (8%)] increase over the maximum rent permissible [under Loft Board rules] as

provided in MDL § 286(2)(ii)(B) for the covered residential unit on the date the alteration permit is issued by the DOB.

(e) *Article 7-B compliance rent adjustment.*

(1) Compliance prior to June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who achieved Article 7-B compliance prior to June 21, 1992 is entitled to a twenty percent (20%) increase over the maximum rent permissible under Loft Board rules for a covered residential unit on June 21, 1992.

(2) Compliance on or after June 21, 1992. An owner who otherwise meets the eligibility requirements of § 2-12(b) of these rules and who achieves [article] Article 7-B compliance on or after June 21, 1992 is entitled to [a six percent (6%)] an increase over the maximum rent permissible [under Loft Board rules] as provided in MDL § 286(2)(ii)(C) for the covered residential unit on the date Article 7-B compliance is achieved.

(f) *Payment of rent adjustments.*

Payment of rent adjustments based on filing an alteration application, obtaining an alteration permit or achieving Article [7-b] 7-B compliance shall commence: (i) the month immediately after the month the alteration application is filed, the alteration permit is obtained or Article 7-B compliance is achieved, or (ii) on July 1, 1992, whichever is later.

(g) *Effect on other rent increases [and base rent].*

(1) Rent adjustments pursuant to this section [shall be] will be applied in addition to any rent increases which an owner is entitled to pursuant to §§ 2-06, [or §] 2-06.1, 2-06.2, or the Loft Board rules related to setting the initial legal regulated rent. [(Interim Rent Guidelines), or § 2-01(m) (Code Compliance Work-Initial legal regulated rents) of these rules].

(2) [The base rent for covered units shall be the amount of rent after rent adjustments pursuant to this section are implemented.] Any allowable rent adjustments pursuant to this section will be included in the calculation of the initial legal regulated rent.

(3) Rent adjustments pursuant to this section shall be effective upon filing an alteration application, obtaining an alteration permit or Article 7-B compliance regardless of the subsequent expiration of said alteration application, alteration permit or temporary certificate of occupancy, or the filing of a further qualifying alteration application for the building. If the Loft Board or a court of competent

jurisdiction determines the sworn statement of Article 7-B compliance was erroneous, all rent increases based on such statement shall be nullified.

**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:** Amendment of Fair Market Value Exception to Rent Adjustments, Loft Board Rule § 2-12

**REFERENCE NUMBER:** 2011 RG 094 (revised 4/10/13)

**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: April 10, 2013

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Fair Market Value Exception to Rent Adjustments,  
Loft Board Rule § 2-12**

**REFERENCE NUMBER: DOB-23**

**RULEMAKING AGENCY: Department of Buildings**

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

4/10/2013  
Date