

**MINUTES OF PUBLIC MEETING**  
**New York City Loft Board Public Meeting Held at**  
**Department of Buildings**  
**280 Broadway, Third Floor**

**September 28, 2017**

The meeting began at 2:15 p.m.

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, Fire Department ex officio; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative and Chairperson Designee Renaldo Hylton.

## **INTRODUCTION**

**Chairperson Hylton** welcomed those present to the September 28, 2017 public meeting of the New York City Loft Board.

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**Chairperson Hylton** stated this meeting is primarily going to involve discussing changes to the Loft Board rules and we will first move to the discussion of the last issues of Chapter 1. He stated the way he is going to do this is he is going to ask the Board Members in order of seating to make comments in that order so everyone can get a chance to go around the room and voice their comments or concerns on the rules.

**Ms. Balsam** stated starting with the document that she distributed for Chapter 1, this document incorporates the changes the Board requested. She stated there are still a couple of open issues so if you just proceed through the document on the top of page 3, we added the definition of administrative determination. She further stated that after we go through Chapter 2, we will probably add more definitions. So she thinks we will revisit the section later on once we're through with Chapter 2 as well.

**Mr. DeLaney** asked how do we plan to proceed given that we've made a lot of progress on Chapter 1? He asked if it is just going to sit and wait and have one public hearing and adopt everything at once. He asked Ms. Balsam if she thought that far in the process. **Ms. Balsam** stated we will add them and we will revisit it again for approval before we publish. She added she envisions having one public hearing.

**Chairperson Hylton** asked Mr. DeLaney if he thinks it's too much for one public hearing. **Mr. DeLaney** answered maybe, I don't know. **Ms. Balsam** stated she thinks we're not even close to that yet, so when we get closer we can make that determination. **Mr. DeLaney** asked would it be reasonable to expect that we would get another marked up draft in terms of Chapter 1, after we go through it today. **Ms. Balsam** responded she can certainly do that if you'd like. **Mr. DeLaney** stated he thinks that'll be good if you could just have it all consolidated into one. **Ms. Balsam** stated Sure.

**Mr. Barowitz** asked are we going to strike out the language that we are no longer going to use and insert the new language. **Ms. Balsam** responded no, the old rules will be repealed, so they'll be bracketed and the new rules will be underlined which is why she has the charts for where they come from.

**Ms. Balsam** stated that as far as grandfathering, we still have a memo that was prepared by our intern and it is very good, but we haven't actually discussed it internally so, we are not ready to go ahead on that so she skipped that and went to page 4, where we have our definition of prime lessee. **Mr. DeLaney** asked if taking the original loft law, he was a prime lessee and the prime lease expired in 1985, is he still the prime lessee. **Ms. Balsam** responded under this definition, yes. **Mr. DeLaney** stated he did not like Ms. Balsam's answer. **Ms. Balsam** stated she is not wedded to this definition, he raised an issue, these are the Board's rules, if you have a problem with it you should voice that to the Board and discuss it.

**Mr. DeLaney** stated so much turns on Chapter 2 and on the whole degree in which in the past couple years the Board worked toward finding who's a protected occupant that whether or not one is consider a

prime lessee of a unit becomes highly significant under the Board's proposed scheme. He stated he is trying to understand how far we would look back to determine if someone was the prime lessee. He stated for example, if he's a net lessee and he has a net lease in effect and if his net lease runs out, he doesn't think he's the net lessee anymore. **Ms. Balsam** stated she doesn't know why this language was inserted originally. It's a definition that's in §2-09 and she doesn't know why it was inserted there originally. **Mr. DeLaney** stated that he thinks it had to do with a subdivided space where the prime lessee might have divided a large space into 4 units, resided in 1, and sublet the other 3 units that he or she might have developed themselves. So at that point if the prime lease and maybe all the subleases had expired by the time it got to what at that time was a loft board rule on subletting subdivisions of assignment, then the Board starting in 1983, was tasked with a difficult choice. If the prime lessee is paying the owner \$1,000.00 for the space and the three subtenants of the prime lessee are each paying the prime lessee \$1,000.00, the prime lessee is living rent free and making \$1000.00 a month albeit having perhaps incurred cost in developing the other space. In that instance identifying who is or was the prime lessee was very important in terms of sorting out your rights. What the Loft Board did was it decreed that the former subtenants of the prime lessee would become tenants and have the privy relationship with the landlord thereby bypassing the prime lessee. He stated now that we have started to create what in recent case is called the primary residence test when we look at coverage, that's where he has a problem with once a prime lessee always a prime lessee. **Ms. Balsam** asked if Mr. DeLaney wants this language deleted and if so, the other Board members should weight in. **Mr. DeLaney** asked the Board to delete "whether the lease remains in effect." **Mr. Carver** stated it seems premature until we actually get into the substance as he hasn't seen this defined term used in the two sections that we are going to be talking about today and we should come back to these issues and definitions when we are into the subject. He stated we can call it an open issue.

**Ms. Balsam** stated on the bottom of page 5, the Board was concerned with the amount of times an extension can be granted for filing deadlines so we added the language "for a reasonable amount of time." She asked if the Board was ok with that. **Mr. Barowitz** stated the language is very vague. **Chairperson Hylton** stated he does not think he is going to get it more specific than that. **Mr. Barowitz** was concerned the extension can be forever. **Mr. Hernandez** stated he thinks the language was written to give some flexibility because if you put in 90 days, you could create a myriad of situations. **Ms. Balsam** stated that for example if someone's records were entirely destroyed by Hurricane Sandy and they do not know how long it would take them to reconstruct, there you might want to give a little more time as opposed to someone having outpatient surgery and needs another week. She stated that is why the flexibility needs to be built in. **Mr. Barowitz** stated he thinks the word discretion is probably a better term. **Mr. Hernandez** stated that in this case, the Executive Director has the decision making ability, so if someone is trying to play the system, the Executive Director can at some point say this conversation ends with regards to extension. **Mr. Barowitz** stated that if we can define reasonable in that way then he can go along with it. **Chairperson Hylton** stated we would not be able to define reasonable in any other way, because it says "reason for request," so it's taking that into consideration. **Mr. Hernandez** suggested using the language "reason to be determined by." **Mr. Roche** stated "reason to be determined by" seems to be a little more definitive. He then asked what are we concerned about. **Mr. Hernandez** responded the vagueness of the language. **Mr. Roche** stated a reasonable amount of time is in the eyes of the person that is asking for it, and that his definition of it may be different from others. **Mr. DeLaney** stated he is sure there are some people on vacation in Puerto Rico that have no idea when they will be able to get back, if the concern is that somehow people are going to stretch this out, maybe it should be up to a period of days, and then they have to reapply.

**Mr. Hernandez** stated this gives discretion to the Executive Director, so if anything he thinks it is good for anyone trying to extend the deadline and if someone is deemed to be abusive, the Executive Director has the ability to stop that from being renewed. He said he thinks this gives a lot of flexibility and gives the Executive Director the ability to determine whether something can be extended or not. So if we get to the point where someone says my grandmother is sick again, after the 14<sup>th</sup> version of the story, the Executive Director can make the determination that this is not going to continue. **Mr. DeLaney** stated he might say wait a minute, how did we get to 14. **Ms. Balsam** stated it would never get to 14. **Mr. Hernandez** stated that the point is that the Executive Director makes that decision. It gives the Executive Director the flexibility to make an informed decision and provides flexibility for anyone asking for the extension. He

stated that he sees it as a win for everybody. If the concern is it is taking too long, we can look at the Executive Director and say hey at some point let's move on from this. **Mr. Roche** questioned wouldn't the terminology "to be determined by the Executive Director" be more definitive that the Executive Director has the power. **Mr. DeLaney** asked how someone would make the request. He stated leaving aside if he was stranded in Puerto Rico with no electricity, in which case he would have no way to make the request, but if his mother broke her leg, does someone call or does he have to make the request in writing. **Ms. Balsam** stated she would expect the request to be in writing, to have a record. And if somebody calls, she would say send an email or a letter because we need to have a record.

**Chairperson Hylton** stated we need to move on. He said he is going around the room. **Robinson Hernandez** said he thinks this is fine. **Mr. Roche** stated he is indifferent and we can move on. **Mr. Barowitz** stated he would like to move on. **Mr. Carver** stated all good. **Mr. DeLaney** stated he would not mind adding some requirement that there be some documentation of what the reason for the delay is. **Chairperson Hylton** stated that is not the issue. **Ms. Balsam** state you make it into a lot of issues with medical documentation so I don't know. **Mr. Hernandez** stated now you're making the Director the decision maker on a medical reason and he does not know if the Director is supposed to make that decision. **Charles DeLaney** said OK.

**Helaine Balsam** stated on page 6 we had a whole discussion way back in June about calendar days and at the time I said we do have a rule about it. Here is the rule. Its 1-16. "Unless otherwise specified in the rules, days means calendar days." She stated she deleted all the references to calendar days and she just wanted to point that out. She stated there is nothing to actually discuss over it unless someone has objections. **Charles DeLaney** said there are some cases where we do use the term business days. **Helaine Balsam** responded there may be one or two that use business days yes. **Charles DeLaney** said so we will use calendar days. **Helaine Balsam** responded right, if it just says days it means calendar days. If it says business days then it means business days.

**Ms. Balsam** stated on page 7, since the majority of the Loft Law did not pass we do not have to worry about changing that language. On page 8, the Board has asked us to insert a provision about recording the public meetings in digital or video format. So we put that there. This language comes from the open meetings law. She asked if anyone has an issue with that. **Mr. Barowitz** stated there used to be video tape live. **Helaine Balsam** stated on the next page there was a question on why there is a 4 year deadline on page 9. She asked what is a 4 year limit on the overcharge. She stated our legal intern did some research on it and I sent you all a copy of the memo and it does have to do with the statute of limitations and sort of being in line with the regular rent stabilization world. So that's where it comes from. The next section 5, 121(a) 5, that statute of limitation could be longer but we want to move things along and get people out of the jurisdiction so we gave 9 months. So that's the explanation there. She asked if there is any problems or questions. **Mr. DeLaney** stated that having read through the memo which was prepared by your intern, if I suddenly discover I've been overcharged for 6 years, I can still apply for years of overcharge correct. **Ms. Balsam** stated yes. **Mr. DeLaney** asked if what we are really saying is an allegation of overcharge can only look back 4 years. **Ms. Balsam** responded, right. **Mr. DeLaney** asked rather than if I file for the overcharge, after 4 years and 1 month, the adversary will say oh no you're estopped. **Ms. Balsam** responded, right. **Mr. DeLaney** asked if that is clear enough in the way that it is written. **Ms. Balsam** responded, I think it is. If not we can redraft, but I think it's pretty good. She stated it is kind of a rolling deadline. **Mr. Barowitz** stated he thinks it is alright but the language is not totally clear. He does not know if any lawyer can pick it up and say well, 5 years have gone by, you're out of luck. **Mr. DeLaney** responded that in the rent stabilization rule, if a tenant pays the rent for a period of time, even if it exceeds the amount permissible under rent stabilization, then it becomes the rent. **Ms. Balsam** responded what if we change the word "such" to "any." An application must be filed "within 4 years of any overcharge." She stated that means you can go back and that if you were overcharged, 4 years ago you could go back because you're within 4 years of that overcharge. **Mr. DeLaney** responded that is the way we have been treating this. **Ms. Balsam** responded yeah, so should we change such to any. **Martha Cruz** stated we would keep the first sentence and add "an award of rent overcharge may only include any overcharge within 4 years from the date of the application." **Mr. DeLaney** responded he thinks that would make it painfully clear.

**Ms. Balsam** stated so now 1-21(b), affected parties. She stated there was a question raised about whether staff should send copies of the FO orders, which are orders that say renew your registration, to the tenants. We are suggesting that we post a list of owners that haven't renewed on the website and that would serve notice provisions. She said we could incorporate design after the rule changes but we could do it before if the Board feels strongly about it. She said she thinks that is a better solution than doing lots of mailings. **Mr. DeLaney** responded he thinks listing them on the website is fine, but had concerns about updates to the website. **Ms. Balsam** stated there is no question the website needs updates. The question is how much work are you going to do on something that you know is outdated if it's going to have to have major revisions and IT resources are scarce. **Mr. DeLaney** asked if there is any content management system in place for example when you come up with the agenda for the month, what do you have to do to get that up on the website. **Ms. Balsam** stated you have to send it to someone in Word format and then IT updates it on the website. **Mr. DeLaney** asked if IT is a DOB person. **Ms. Balsam** responded yes, DOIT. **Mr. DeLaney** asked when you send that one page agenda to DOIT, how long does it take DOIT to do it. **Ms. Balsam** responded 24 hrs. She stated she is in favor of doing major changes and so is DOB. But having gone through major changes with OATH, she knows that it is a big job. She suggested an announcement or using an existing page to try to get it up there. But for now the issue is whether or not it is ok to have staff put a list of owners that haven't registered on the websites as opposed to sending out FO orders. **Mr. DeLaney** stated the problem is it is pegged to an indeterminate future. **Ms. Balsam** responded if we can do it sooner rather than later we can explore that.

**Mr. DeLaney** stated he thinks it is great that people that came to the meeting today were able to pick up copies of documents which is a tremendous step towards transparency and thanked the staff for it. He asked when it comes to FOIL, is there a way that things can be sent electronically. **Ms. Balsam** responded of course and it is free unless you have to put it on a CD in which case it is the cost of the CD. **Mr. DeLaney** asked about the landlords blueprints. **Ms. Balsam** responded that is a different section of the rules, but in terms of the FOIL request, yes we can send it electronically. **Mr. DeLaney** stated his interest is once an owner has been fined for failure to register, it is an official acknowledgement, which already exists where if the owner is not registered might allow the tenants to sell their fixtures under §286(6), but how do they know. **Ms. Balsam** asked if we can get it on the websites sooner somehow, is everyone ok with this. **Mr. DeLaney** asked if he can take that as a commitment to find a way to do it. **Ms. Balsam** responded yes.

**Ms. Balsam** stated on the top of page 10, Mr. Carver had raised an issue about whether or not we are going to add additional mailing if service was by email or fax and she believes the consensus was no, but she was not sure. **Mr. Carver** stated he threw it out there thinking we might want to have better proof that service happened but doesn't feel strongly either way. Whatever the staff thinks is fine for him. **Ms. Balsam** stated she would ask to leave it if it is ok with everybody else. **Mr. DeLaney** stated email can be unpredictable at times and that is going to create problems moving forward because one of the parties was not given notice. **Ms. Balsam** stated I think that is why we added a current and valid email address. So we are talking about people that email each other on a regular basis. Could something happen where the email doesn't go through, I guess that is possible. **Mr. Barowitz** stated the Loft Board can send an email confirmation that the email was received, but the applicant might not know that they will get a response. He stated that traditionally by mail you get a return receipt. **Ms. Balsam** responded that we do not do that now, what we actually do is proof of mailing so here, what we are saying is proof of email, so it's the delivery receipt from an email server. So maybe it's the electronic version of what we do on paper. **Mr. Barowitz** reiterated sometimes the server gets screwed up. **Mr. DeLaney** stated that the concern is we see a lot of cases where the documents have been emailed, printed out and scanned, between OATH and the attorneys but sometimes an email gets spammed after the 19<sup>th</sup> or 20<sup>th</sup> time and he does not know why. **Mr. Hernandez** stated the same problems present themselves for first class mail. He stated email, regular mail, fax, all have risks and that the hope is that 99.9% of the time they go through. **Mr. DeLaney** responded that at this point in time using fax and first class mail, we don't run into those problems. **Ms. Balsam** responded that no, we still do get those types of challenges, regarding whether or not it was sent, was it sent to the right place. You will always get those types of challenges.

**Ms. Balsam** stated we added some language in 1-22(b) and (c) at the request of the Board members. **Mr. DeLaney** asked if we could go back to 1-21 we added language "electronic copy of the application in

the format listed on the Boards website.” **Ms. Balsam** responded you wanted that language. **Mr. DeLaney** responded yes, the question is do you think we can accomplish that within a reasonable period of time. **Ms. Balsam** responded yes, but you don’t have to accomplish it until the rules go into effect. She stated 1-22 we did already. She stated 1-26 is on page 14. There was a question raise about (b), the sentence about the Chair to notify the Board of communications and staff about administrative matters and whether or not we should keep it in. She asked if anyone has an objection to deleting it. **Mr. Barowitz** asked about the “may” in the last sentence. **Ms. Balsam** responded the “may” should be changed to “must.”

**Ms. Balsam** stated at the bottom of page 15 in 1-29(c), it actually should say if the applicant fails to appear at a hearing. Factors were added based on Loft cases as to what factors to consider to dismiss with or without prejudice. She stated those come straight from cases that have been decided over the years. She asked if everyone was ok with that.

**Ms. Balsam** stated we have the rule about settlements, and that the Board might recall the idea was to draft the settlements through staff, and if the staff had a problem with it, submit it to the Board. She stated changes were made to the language but there were some Board members that were against the process. So the Board needs to vote on whether or not to adopt the process.

**Chairperson Hylton** asked Mr. Hernandez for his vote. **Mr. Hernandez** responded (inaudible). **Chairperson Hylton** asked Mr. Roach for his vote. **Mr. Roche** responded yes. **Chairperson Hylton** asked Mr. Barowitz for his vote. **Mr. Barowitz** responded yes. **Chairperson Hylton** asked Mr. Carver for his vote. **Mr. Carver** asked if we are using his changes. **Ms. Balsam** responded yes she is incorporating Mr. Carver’s changes but she still wanted to throw it out there again. **Mr. Carver** responded yes. **Chairperson Hylton** asked Mr. DeLaney for his vote. **Mr. DeLaney** responded he is opposed. He stated the summary calendar process has worked fine for 30 plus years and he does not see a compelling reason to change it. He said he is troubled by the stance the Loft Board takes with regards to the Loft Board neither accepts nor rejects the terms of the stipulation and he wants to see the crazy stuff being cooked up by the parties. He stated that in reviewing some summary calendar cases that the Board found some things that were rejected because of public policy and that as the tenant representative and the public representative, they have a right and a duty to examine. **Chairperson Hylton** asked Mr. DeLaney what about the second sentence in 1-30(d).

**Mr. Barowitz** stated that the point is that with these stipulation agreements, there is no way to read between the lines and it has always bothered him that with the stipulation agreements, he has no idea what was going on. He said he assumes we should go ahead with this but it is a noise that’s it. He stated it is annoying that we have to read all of these things and we pass them in a matter of minutes. **Mr. Carver** asked what about if any Board member has the option of looking at it. **Ms. Balsam** responded that of course, any Board member can always looking at any file. **Mr. Carver** responded if you have the option, I guess nothing is taken from you. **Mr. DeLaney** stated that he wants things to remain the same and that with speaking with loft tenants and other interested parties, they are increasingly feeling that somehow things are working against them. **Ms. Balsam** responded these are settlements and the parties reached an agreement. She stated she does not see how somebody can say well I shouldn’t have reached the agreement. They entered into the agreement. That is the whole point. **Mr. Barowitz** stated there are a lot of cases where people have pleaded guilty when they are innocent. **Chairperson Hylton** asked Mr. Barowitz if he is still in favor. **Mr. Barowitz** stated he does not see any way out of this dilemma. **Mr. Hernandez** asked Mr. Barowitz what he perceives to be the dilemma. **Mr. Barowitz** stated he has no idea what is in the stipulation. **Mr. Roche** stated that once the case is settled, he is not going to read a stipulation and call a tenant and say the tenant got a bad deal so what benefit is there to say I see something in there I didn’t like. He questioned if there is a responsibility to inform someone if he sees something he does not like. **Mr. Hernandez** stated that consenting adults are agreeing to this and now we are second guessing them. **Ms. Balsam** stated, if it’s an issue of public policy the Board could not approve the settlement. It’s not a question of if it’s a good deal or a bad deal for either side. **Mr. DeLaney** stated there might be deals that are being made that might need to be brought to OATH’s attention and that such deals should not be replicated. He also stated that over the past 20 yrs, a lot of times in his view OATH does not get it right and many times we need to sit with OATH judges and say hey this is how it

happens. **Mr. Roche** asked isn't that what the staff is doing anyway. **Mr. DeLaney** responded that his job is to represent tenants and sometimes he might have a different viewpoint than what the staff may. **Mr. Roche** stated the staff also has a responsibility to the tenants and that he would just like to know what is his due diligence.

**Chairperson Hylton** stated we have to move on so asked for a motion.

**Motion:** Chairperson Hylton moved to accept the rule. Ms. Carver seconded the motion.

**Members Concurring:** Mr. Carver, Mr. Barowitz, Mr. Hernandez, Chairperson Hylton (4).

**Members Abstaining:** Mr. Roche (1)

**Members Dissenting:** Mr. DeLaney (1)

**Mr. DeLaney** stated he does not see why at this point in time a significant change such as this with no unanimity on the Board, the question is not left open where it is addressed by the public. **Chairperson Hylton** responded the Board has to approve the rules to bring to the public. **Ms. Balsam** stated obviously if there was a public outcry, the Board would consider that and make a determination based on that. **Chairperson Hylton** stated we will table that discussion until the next meeting.

**Ms. Balsam** stated that this brings us up to the last substantive change in Chapter 1 which is on page 17. She stated the Board asked us to make some changes to the rule about the decisions. We were going to post the proposed order on the website, but then after the meeting it was pointed out that sometimes there is a lot of personal information in the LE orders which are the removal orders, so she added language about redacting some of that information to protect the tenants. She asked if that's ok and stated the other changes are all changes the Board wanted. **Chairperson Hylton** asked a question about the language "will" under section (e). **Mr. Carver** asked if the order is binding. **Ms. Balsam** responded yes, it is meant to be binding. She then stated she will change the language "will" to "must." **Mr. DeLaney** asked how we currently send out proposed orders. **Ms. Balsam** responded snail mail. **Mr. DeLaney** asked if this gives the option of sending orders electronically to attorneys that request them. **Ms. Balsam** responded yes. She also stated that anyone that sees typos, please send them in. **Mr. Barowitz** asked if this is now going back to the law department for final language. **Ms. Balsam** responded yes as well as the Mayor's Office of Operations.

**Mr. DeLaney** asked if we could go back to 1-17 public access to records on page 6. **Ms. Balsam** responded sure. **Mr. DeLaney** stated that's where "the public may obtain copies of all non-exempt records and charged \$0.25 per page. He asked if he wanted to make a FOIL request, how would he have to do it. **Ms. Balsam** responded you would have to file a document with the Loft Board and the document is available as a pdf which can be filled out and emailed or faxed to the New York City Loft Board. **Mr. DeLaney** asked if there was a requested document that could be emailed back to him, would there be a per page charge. **Ms. Balsam** responded yes, that's what the law says, unless it is electronically sent. But if the FOIL request requires more than 2 hours' worth of work, we have the right to charge a fee for the lowest paid employee that is capable of doing the work. She stated she does not see that happening here. **Mr. DeLaney** asked if in order for us to make it possible to provide more information by email, we don't need to make any changes here. **Ms. Balsam** responded she does not think we do. **Mr. DeLaney** responded Ok.

**Chairperson Hylton** thanked the Board and stated we will begin the discussion on 29 RCNY 2-17 & 2-18 protected occupants in the subleasing of the entire IMD unit. He stated Ms. Balsam has a presentation which includes the discussion of the petition from Dumbo Neighborhood Alliance. Once that discussion concludes, we will proceed through the rest of the rules containing substantive changes beginning with 29 RC 2-14. Then, if there is any time, we will discuss comments for other rules that incorporate plain language changes.

## **Presentation by Executive Director Helaine Balsam, Esq.**

**Ms. Balsam** stated in terms of protected occupancy the current rule is 2-09, and we split that into multiple rules. What was formerly 2-09(b) is become 2-17. What was formerly 2-09(c)4 became 2-18. What was formerly 2-09(c)5 became 2-19. The rent rules which were the beginning of (c) are going to be in a separate subchapter regarding rent. We reviewed the petition by the Dumbo Neighborhood Alliance which proposed changes to 2-09(b)1, (b)2, and (b)4. She stated the first problem she has with the proposed changes to 209(b)1 is it preserves the problematic language “except as otherwise provided herein.” This has not really proved to be a workable way to phrase the rule so preserving this language makes no sense. The second change was “primary residence shall not be a consideration for determining occupant qualified for protection status hereunder.” This is problematic because the petition quotes numerous pre 1992 cases and says primary residence is not a consideration in the loft law and if legislature intended to make primary residence a requirement, the legislature would have included it. But in 1992, the legislature did include it. The legislature amended §286-2(i) to insert the language “shall be entitled to continued occupancy provided that the unit is their primary residence.” So the legislature went out of their way to insert that into the protected occupancy section. It did not insert that language in §281 so in her opinion, there is no primary residence requirement for coverage of a unit, but protection of a person is a whole different animal. Ms. Balsam stated she believes it is ultra vires and is not what the rule is about.

**Ms. Balsam** state she believes the purpose of the Loft Law, which is stated in §280, is obviously health and safety, but also to prevent dislocation. She stated it makes no sense trying to prevent dislocation of people who are not living there. She stated another purpose is to ease the burden on the court system because of parties litigating on what their rights are. She stated a school of thought says the Loft Board has a rule, which was enacted prior to 1992, that says a landlord can evict someone for non-primary residence and landlords should go through the eviction process. She stated giving protection to someone that does not live there and then making the landlord sue to evict does not satisfy the purpose of easing litigation. She stated the 1992 amendment and its legislative history has references stating they want people to remain in their houses. She said “remain” means they live there. She stated there is also an analogy to the rent stabilization world where people don’t have to be a primary resident until they actually have a rent stabilized lease, but this is not the case under Loft Law. She mentioned added language in §286(2)(i) saying “continued occupancy,” means something has started and it gets to go on. She stated for 2-09(b)(2) we actually incorporate the thought that people who are actually living there should be protected occupants. We expanded our draft to include roommates. She also mentioned that sometimes a roommate files a protected occupancy application. She said the revised language is meant to include a greater number of people that are living in the unit and that we like our language better. She stated the second proposed change had a question mark at the end in terms of a date and she is not sure why that was there and that in terms of the dates, it would cause confusion.

**Ms. Balsam** stated we spent many hours talking about this. We wanted to simplify and get rid of problematic language. We wanted a scheme that was legal, comprehensive and fair. Our proposal says a protected occupant has to be a natural person and not a corporation. A primary occupant must use the unit as a primary residence and we listed factors from our cases. She stated they also have to reside in the unit prior to the effective date of the law. We took out the whole concept of prime lessee. She stated if you meet these requirements you are protected, and that includes roommates. She stated we also wanted to preserve a person that was there with the consent of a responsible party, after the effective date. She said they get to stay too, and some factors are listed to determine consent. She stated in 2-18 we have the subletting provisions. She believes that if there is a protected occupant in place and that person is choosing to sublet, as they have the right to do so under DRPL, then they don’t get to be a protected occupant. It’s the person that leased them the space that may or may not be a prime lessee. They get to stay and it’s up to the sublessor to reclaim the unit and they can only sublease for a certain period of time. She stated that this is pretty much what it says at this current time.

**Ms. Balsam** stated we talked about a deadline for a person to recover the unit. She stated 90 days, looking at the RPL was the right time period, but we are flexible on that if anyone disagrees. If the

protected occupant fails to act, the responsible party will then try to recover the IMD unit or whatever portion thereof. She stated we eliminated the term privity. She stated we wanted to incorporate the concept of privity, but put it in plain language so that anybody reading the rules would have a good shot at understanding.

## **End of Presentation**

**Chairperson Hylton** thanked Ms. Balsam. **Mr. Carver** asked if the impetus or source to change the rule to expand who is occupant protected is a tenants group. **Ms. Balsam** responded that she would not say that it is a tenants group. She further state we have not accepted public comment on this rule. **Mr. Carver** asked who filed the petition you are talking about. **Ms. Balsam** responded yes I'm sorry, the Dumbo Neighborhood Alliance. I guess they're a tenants group. **Mr. Carver** responded ok, so that is the source of the change that you're proposing. **Ms. Balsam** responded no. **Mr. Carver** responded I believe you said the staff accepted that concept in the new rule. **Ms. Balsam** responded she actually did say that but she would not say that it came because of the petition. She said this is something that we were talking about and thinking about before the petition and that it was based on cases really. **Mr. Carver** responded that Ms. Balsam's proposal was contrary to the vote of the Board one week ago in multiple cases. **Ms. Balsam** responded yes, because we have to impose the law the way the law is. If you don't like the way the law is then you should propose a change. She stated staff does not like the way the rule is so we think there should be a change. She said it would not change last week's case because they were filed under the old section. **Mr. Carver** responded he thinks the problem with the law is that staff interpreted it one way, then at some point in 2013 or 2012, staff then interpreted it as a prime lessee cuts off the rights of everyone else. He stated there have been multiple interpretations based on the cases pre 2012 and post. **Ms. Balsam** responded she would argue that that is not true. She stated she would argue the Board was sloppy in the past and when the first statute of limitations came in, there was a question on whether or not the Board could entertain a question of protected occupancy separate and apart from coverage applications. She stated that is really where the Board started looking closer at construing the language in the rules. **Mr. Carver** responded that there was no impetus to change the rule at that time. **Ms. Balsam** responded that she was not there so she does not know. She stated she thinks the question now is are we happy with how things are going or do we want to make a change. **Mr. Carver** responded that he is really trying to understand who is driving this train because Ms. Balsam proposes an entire repeal and replace of this very complex scheme, that's been alive a long time, has case law in court and the Loft Board and Ms. Balsam never ask the Board to vote on whether or not we even want to do this. **Ms. Balsam** responded the Chair asked her to look into this and the rules are a mess to be perfectly honest. They are an ad hoc bunch of provisions without any overarching scheme. She stated the bulk of the revisions, as she said at the outset are for reorganization and plain language, and she has tried very hard to propose substantive changes. **Mr. Carver** responded that he is not saying the rules are perfect but given the comprehensive scope of the revisions, he does not know if Ms. Balsam can succeed. He asked Ms. Balsam whether or not she thinks the Board should vote on whether or not to undertake the task. **Chairperson Hylton** stated the work the staff would be doing is done already. **Mr. Carver** stated the Board was not asked about the revisions and now Ms. Balsam proposed a change in substance that the Board affirmed no less than 7 days ago. **Ms. Balsam** stated that decision was based on the current rule and Mr. Carver did not have to vote in favor of that decision. **Mr. Carver** stated he supported that decision. **Ms. Balsam** stated if the Board does not want to go this way, that's perfectly fine. **Mr. Carver** stated that's one issue but the question is if the Board wants to do this entire rewrite. He stated we have a creaky structure that exists now but for all its faults, it works. **Ms. Balsam** stated she would argue it does not. **Mr. Carver** stated we have endless settlements and that people are working with what we have. He said he thinks we should work with the text that is in existence, that people are relying on already. He stated this is an enormous endeavor and he can't imagine we will do better than fixing whatever portions are broken and he reiterated the Board was not asked if it wanted to undertake this project.

**Mr. Barowitz** asked Mr. Carver, what his proposal is. He stated we could leave the rewrite to the staff, but asked Mr. Carver what is the alternative. **Mr. Carver** stated he has endless alternative language that he can propose that we can talk about, but he was taking one step back. **Ms. Balsam** stated current 1-02 says draft rules and regulations may be modified at the direction of the Chair or by vote of the Board. She stated the Chair directed, at least her to do this. **Mr. Roche** gave an example of a corporate Board

entrusting in the Chair and the Executive Director authority to run their company, and the Chair and Executive Director tell the Board that we have something that needs to be improved upon. He stated the Board in some fashion has an obligation to go with the recommendation. He stated here, a suggestion was made by people we entrusted and it was followed through with by the Executive Director, so his ears and eyes are open to what they are proposing and he thinks we have an obligation to look at that. **Mr. Carver** stated he understands but he does not think the fix is going to make it better. **Chairperson Hylton** stated everyone has their input and we can debate this. **Mr. Carver** again stated no one asked the Board if it wants to undertake the project. **Chairperson Hylton** stated that he does. **Mr. Carver** asked if he is not interested in the opinions of the other members of the board. **Mr. Roche** stated he does not think the Chair is not interested in the Boards opinion, but rather he was entrusted and he took a look at some of the issues and determined improvement is needed. **Mr. Carver** stated ok. **Mr. Roche** asked where this conversation is going now. **Ms. Balsam** stated we are going to look at the proposed language in 2-17, start there, and get Board input on what changes you want, then eventually vote. **Mr. DeLaney** stated that a tremendous amount of time has been spent on this, not by us, perhaps we should have spent time sooner, we have seen three years with a lot of disagreement between the OATH judges and the Board staff. In addition to the staff taking this on, as the Executive Director referenced, there was a petition for rulemaking that was presented to the Board maybe six months ago, that at that point the Chair rejected on the grounds that we were going to look at this. It is an issue of some controversy. **Chairperson Hylton** stated he is glad Mr. DeLaney mentioned that because that is another issue that come up. He stated a petition came up and we rejected it with the presumption that we are going to address this issue later on, so there is an obligation there. **Mr. Carver** responded that he appreciates that and he does not know if that is responsive to his point about an entire rewrite. **Mr. DeLaney** stated this is a train wreck that has been a long time coming and it seems to have arrived. He stated he agrees that some of the rules are a mess, none greater than 2-09. **Ms. Balsam** stated it really was driven by the statute of limitations in the law for coverage and registration. That's really what was driving that train. **Mr. DeLaney** asked that Ms. Balsam distribute another copy of the Dumbo Neighborhood proposal. **Ms. Balsam** stated she can send it electronically.

**Chairperson Hylton** stated we are going to start with the comments on 2-17. **Mr. Roche** stated he does not have any comments at this time. **Chairperson Hylton** asked Mr. Barowitz. **Mr. Barowitz** stated Mr. Roche took his answer. **Chairperson Hylton** asked Mr. Carver. **Mr. Carver** stated his comments will take some time, but he would be more than happy to start them. He stated there is not that much time left so he is not sure if we want to break now and start fresh the next meeting. **Chairperson Hylton** asked Mr. DeLaney for comments and stated he is sure his comments will be much shorter. **Mr. DeLaney** stated we can use the final minutes to talk about how we see this process moving forward. He stated we held an extra meeting this month to focus on the rules. He asked if we are going to try to continue this in conjunction with cases in November and maybe take December off. **Chairperson Hylton** stated he may not take December off. **Mr. Roche** stated he liked the two meetings because he can have the correct mindset for the issues he will be dealing with, one for cases and one for rule making. **Chairperson Hylton** stated that with that said, we will pause here for the discussion of rules and talk about how we will meet. He stated we can look into getting approval for additional days and asked if that is something the Board would be interested in. **Mr. Barowitz** stated he thinks each of the Board members should be contacted to find out how much time they are able to give from now until the end of the year. **Chairperson Hylton** responded absolutely. He stated Ms. Balsam will send something out to the Board members. He then asked Ms. Balsam if she would send a copy of the PowerPoint presentation. **Ms. Balsam** stated she does not know how helpful that will be as it is mostly just the law, but that she would send it out.

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**Chairperson Hylton** then thanked everyone and concluded the September 28, 2017 Loft Board public meeting at 4:32 pm and thanked everyone for attending. The Loft Board's next public meeting will be held at 280 Broadway, third floor, on October 19, 2017 at 2:30p.m.