

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

April 15, 2021

The meeting began at 2:02 PM

**Attendees:** Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Kei Hayashi, Manufacturers' Representative; Christian Hylton, Owners' Representative; Samira Rajan, Public Member; Richard Roche, Fire Department's *ex officio*; Heather Roslund, Public Member; Renaldo Hylton, Chairperson Designee; Kevin Schultz, Executive Director

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the April 15, 2021, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to the Governor's Executive Order 202.1. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board, and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

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**OPENING COMMENTS**

**Chairperson Hylton** introduced a new member of the Loft Board and a new member of the Loft Board staff: Kei Hayashi, a Brooklyn resident, joins the Board as the new Manufacturers' Representative. A twenty-year veteran of federal and New York City government, having focused on economic and industrial manufacturing policies, she formed a real estate and economic development firm in 2010; is on the Brooklyn Navy Yard Board; and still a part of the New York City industrial community.

Joining the Board staff as the new Executive Director and General Counsel, is Kevin Schultz. A native of central Illinois, Kevin migrated to New York City and was admitted to the New York Bar in 2006. His interest in law grew from his fascination with New York City itself. He chose a legal career specifically to

become a New York City government attorney. During all three years of his law school career, Kevin interned with the New York Law School Center for New York City Law, writing for City Law, City Land, and City Admin. Upon graduating, he received the Center's postgraduate fellowship, where he worked full-time for over a year, researching and reporting on significant land use and municipal law developments in the city. Kevin's work with the Center for New York City Law cemented his interest in and enthusiasm for city government, and in 2007, Kevin began as an agency attorney with the New York City Department of Buildings Office of Internal Affairs and Discipline. He worked with IAD for fourteen years, ultimately serving as the unit's Deputy Director and also serving as Acting Director on some occasions. Kevin is tremendously enthusiastic to now be working with the New York City Loft Board and its staff on the Board's important, unique, and challenging work.

**Chairperson Hylton** extended a special welcome to both new members; said that Kevin would be addressing the Board later; and invited Ms. Hayashi to say a few words if she wished.

**Ms. Hayashi** thanked the Board for welcoming her and said she looked forward to the important work ahead.

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**VOTE ON MEETING MINUTES:**

**January 21, 2021 Meeting Minutes**

**Mr. DeLaney** noted a few minor adjustments and also that, on page 13, in the self-certification discussion, "irregular" construction should be "regular" construction. He also asked if there was an update yet on the executive session held in November on a pending legal issue.

**Mr. Schultz** explained they had reached out to the Law Department on that case this week and were told staff would hear back from them this week. As of yet, there was no response, and if the week were to conclude without a reply, he would follow up. He also added that when those comments are received, staff may circulate them in an email for individual comment; discuss whether another session is necessary; and presumably vote on them at the next meeting, if required.

**Chairperson Hylton** asked if there were any additional comments on the minutes (none).

**The vote**

**Members concurring:** Mr. Barowitz, Mr. Roche, Ms. Hayashi, Mr. DeLaney, Mr. Hylton, Ms. Roslund, Ms. Rajan, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**Mr. Barowitz** asked if there was a reason why the March minutes had not been included.

**Chairperson Hylton** ask the Board for patience at this time and said they would try to always send the minutes a week in advance of the next Board meeting.

**Chairperson Hylton** continued: Ms. Nicole Oddo, our new public member, was supposed to join us today but was unable to due to a conflict. She'll be joining the Board next month.

**Mr. DeLaney** asked if there was a thumbnail biography available for Ms. Oddo.

**Mr. Schultz** explained that she is an accountant, who has worked with nonprofits a good part of her professional career, and that a proper bio would be emailed to the Board.

**Mr. Barowitz** pointed out that, of the nine Board members, only two are actually loft tenants, and he felt that was not the right ratio.

**Chairperson Hylton** acknowledged Mr. Barowitz's point and then introduced Kevin Schultz, who would address the Board before giving the Executive Director's report.

**Mr. Schultz:** Thank you, Chairperson. I want the first thing I say to be an expression of my appreciation for the Loft Board staff. They deserve the compliment publicly, because for the last year, they have been

working on the Loft Board's important work without an Executive Director. The Loft Board's work is challenging in the best of circumstances, with the most available resources, and they have successfully advanced the Board's business during this trying time period. Some of these folks you see at these meetings, but many of them you don't, and for the last year, both the ones who are at the meetings and the ones who aren't have been doing an amazing job. And then I showed up, and now they've kindly, and patiently, and diligently, and skillfully worked to onboard me. So, I would be remiss if I didn't start with that appreciation and that recognition, which they all deserve. They are a team in the truest sense, and I'm honored to join that team. I really am. We all owe them a lot for their dedication during this past year, and in the coming year, as I know we'll all see.

I also want to thank the Board members in advance for helping me make this transition onto the Loft Board, and I'll be relying on your expertise as we go forward. I've spoken with most of you already, one-on-one, which was wonderful and enlightening, and I look forward to more one-on-one conversations, as much as you'll have me. But despite these conversations with Board members and staff, joining public meetings, and listening to these meetings for some time, it's probably too early to have a clear vision of exactly what the goals and priorities will be while I'm here. But I can certainly identify a few items of importance. One, which we'll be talking about a good deal today, is rulemaking. I can't claim much credit for this victory, but we're very close to finishing rulemaking, and that will be a huge milestone that I'm very happy just to be here for. But the credit will go to all of you here before me.

Another item I want to mention, because I've heard it so many times, is enforcement. Enforcement is one of the tools that not only moves us toward our final goals of legalization, but also helps keep people safe and healthy. So, increasing enforcement effectiveness was pointed out to me several times as a priority.

There are two other related points I've heard about a few times. One is our public face and accessibility to our constituents. Some progress has already been made here. The website is very good; I think our processes and forms are excellent; and the rulemaking, itself, is moving in the right direction. We're trying to make it simpler for people and more accessible. And certainly, letting people who need us know we're here will always be a priority.

The last priority is obvious, but I'd be a fool not to mention it, and that's legalization itself. It's getting these buildings across the finish line. It's easier said than done, but with the things I've mentioned, and I've heard about so many others, we're going to get there with these buildings. And maybe we put ourselves out of business by successfully transitioning all the buildings. But then maybe we'll get more customers.

That's all by way of introduction, and other than that, to say I'm very honored; I'm very excited; I'm very enthusiastic; and I look forward to this meeting and many, many others.

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## **EXECUTIVE DIRECTOR'S REPORT**

### Executive Order

Due to the ongoing public health crisis and in accordance with the Governor's Executive Order 202.1, the suspension of required, in-person Board meetings has been extended through May 6, 2021.

### Revenue

The unofficial Loft Board revenue from March 2021 was \$13,150.

### Violations

On March 19, 2021, one violation was issued at 517-525 West 45th Street, unit 3C, New York, NY, for no heat. On March 29, 2021, one violation was issued at 83 Meserole Street, aka 132 Leonard, Brooklyn, for no gas and partial electricity.

### Litigation

There's one litigation update, which is a decision in *Amicus Associates LP versus the New York City Loft Board*. In this case, the owner had filed an Article 78 challenging the Board's determination in a September 2019 Loft Board Order. The Order supported the then-Executive Director's denial of the owner's second request for an extension related to code compliance deadlines. The court dismissed the owner's petition and found that the Loft Board's denial was rational. The owner had failed to

demonstrate the circumstances required under the statutes that it was beyond his or her control and in good faith. There was also an argument by the owner that the Loft Board Executive Director could issue multiple extensions, and that argument was rejected by the court as well. The court also rejected the claim that this Board had improperly discussed the matter in an executive session. There was no evidence of the executive session that was alleged. And the court finally determined that the Loft Board's decision was not beyond its authority in the Order it issued. And that is the end of the report.

**Chairperson Hylton** thanked Mr. Schultz and asked if there were any questions for him. There were none, so Chairperson Hylton continued: Welcome aboard, Kevin. Well done. And thank you for your preparedness. Kevin's approval has been in the works for almost a year, and during that time, he was keeping abreast with Loft Board activities to familiarize himself, even though he was not officially on board. That's really commendable, and I appreciate your coming on board so well prepared.

I also want to especially thank Ms. Lin for taking the reins of the Loft Board for these months, after she had only recently joined the staff herself. Her hard work and the level of professionalism she maintained kept the Loft Board functioning even through the pandemic. It was very much a baptism by fire and during a very challenging period. So, thank you again, Ms. Lin, for your leadership and for holding it together. And to all the staff of course. They all did great.

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## SELF-CERTIFICATION

**Chairperson Hylton** asked Mr. DeLaney if he wanted to present on this today.

**Mr. DeLaney** said he'd prefer to move it up a month, until the new Board member, Nicole Oddo, is in attendance, but he did provide a summary for the benefit of Ms. Hayashi and Mr. Schultz: The issue is summarized very well in the November 2020 and January 2021 meeting minutes. This initiative stems from a letter written by former Board member, Julie Torres-Moskovitz, several years ago and focuses on the fact that there have been some egregious examples of dubious behavior on the part of some practitioners, where Certificates of Occupancy were issued in loft buildings where there were clear conditions that should have prevented that. Therefore, the general idea is that we should request that

the Department of Buildings make it a regular practice to look into self-certification filings in IMD units as a matter of course.

We learned from Mr. Rebholz of DOB that they audit about twenty percent of all self-certifications and professional certifications. They always audit when there's a complaint, but of course, a lot of times, a tenant in a loft building is not going to know that something has gone amiss; and I think relying on complaints as a way to treat this issue is not sufficient. And if we did ask the Department of Buildings, and they agreed, to look at all cases of professional self-certification in IMD buildings, it would not eat up a significant portion of that twenty percent. It's not like we'd be elbowing everybody else out of the way. So that's the general thought behind my intention to draft a resolution for the Board to vote on. And if it were approved by the Board, it would ask the Department of Buildings to make that a practice.

**Chairperson Hylton:** Thank you, Mr. DeLaney. Mr. Schultz, we're going to have a formal presentation in our May meeting. Mr. DeLaney, are you planning on presenting the resolution at that point also?

**Mr. DeLaney:** I think it would be useful to have it available for review, if not a vote. So, I will send something to the Executive Director to review at least two weeks prior to our May meeting. And if anybody has any questions or comments at this point, I'd be happy to entertain them.

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**THE CASES:**

**Summary Calendar**

**Chairperson Hylton:** There were eleven cases on the summary calendar, and they're voted on as a group.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
1.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0257

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<i>The owner filed an access application for Unit 509. The parties ultimately executed a stipulation of settlement whereby they agreed upon terms of access to Unit 509. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
2.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0265
<i>The owner filed an access application for Unit 301. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 301, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
3.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0266
<i>The owner filed an access application for Unit 306. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 306, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
4.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0267
<i>The owner filed an access application for Unit 409. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 409, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
5.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0268
<i>The owner filed an access application for Unit 412. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 412, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
6.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0269
<i>The owner filed an access application for Unit 503. The parties executed an agreement, pursuant to which the matter was settled. The owner subsequently withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the agreement.</i>			
7.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0270
<i>The owner filed an access application for Unit 908. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 908, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			

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8.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0271
<i>The owner filed an access application for Unit 1001. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 1001, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
9.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0272
<i>The owner filed an access application for Unit 1004. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 1004, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
10.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0273
<i>The owner filed an access application for Unit 1007. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 1007, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			
11.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	LS-0274
<i>The owner filed an access application for Unit 902/903. After the parties executed a stipulation of settlement whereby they agreed upon, among other things, terms of access to Unit 902/903, the owner withdrew its application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.</i>			

Chairperson Hylton asked for a motion to accept these cases and for a second.

Mr. Hylton moved to accept these cases, and Ms. Roslund seconded.

Chairperson Hylton asked if there were any comments on these cases (none).

The vote

**Members concurring:** Mr. Barowitz, Mr. Roche, Ms. Hayashi, Mr. DeLaney, Mr. Hylton, Ms. Roslund, Ms. Rajan, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

Master Calendar

Chairperson Hylton introduced the one case on the Master Calendar, which was a removal case.

	Applicant(s)	Address	Docket No.
12.	Quay Plaza LLC	79 Quay St., Brooklyn, New York	LE-0721; RG-0210

Chairperson Hylton asked for a motion to accept this case and for a second.

Ms. Hayashi moved to accept this case, and Mr. Hylton seconded.

Chairperson Hylton asked if there were any comments on the case (none).

The vote

**Members concurring:** Mr. Barowitz, Mr. Roche, Ms. Hayashi, Mr. DeLaney, Mr. Hylton, Ms. Roslund, Ms. Rajan, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

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**RULEMAKING**

Chairperson Hylton introduced Mr. Clarke, who would lead the session.

Mr. Clarke thanked Chairperson Hylton and said: We have some updates for the Board. The first is in response to the Board's asking why the Law Department had deleted the table of contents. The Law Department replied that there is no need to create a table of contents, especially since the official rules are online.

Mr. DeLaney: The position of the Law Department is that it's not needed; not that it could not be included?

Mr. Clarke: Correct

**Chairperson Hylton** explained that if the Law Department is saying it's not needed, then it most likely means that standard rulemaking practice today omits tables of contents. But he asked Mr. Schultz if he could add to that.

**Mr. Schultz:** I haven't spoken with the Law Department, but at least one upside is that no table of contents means less content people might use to try to change the meaning of our rules. Honestly, having a table of contents, even if it's perfect, is just another place where people might try to utilize an argument. So, I think, often, less is more. Again, I didn't speak with the Law Department on this point, but I could guess that part of the thinking is a table of contents is another area where parties looking to use the rules in their favor might find something there they can use.

**Mr. DeLaney:** I can see the argument on both sides. And as someone who spends a not-inconsiderable amount of time referring lay people to sections of the rules, I can definitely see reason why having a table of contents is helpful for lay people. But I also understand the problem of the sharks trying to use it to mess with things. And we've certainly seen some pretty remarkably conflated arguments recently about small points; so, I guess there's good reason to not include it. And I guess what I would do in that case is just create my own outside-the-document table of contents to help guide tenants through. Because if you want to know the rules of access, or what should I expect at a narrative statement conference, and the answer is, here pal; here's two hundred pages; lawyers are \$500 an hour; you figure it out --- that's neither user-friendly nor transparent. So, maybe that's just something I need to create as a concordance, so to speak.

**Chairperson Hylton:** Mr. Clarke, I would just ask you to revisit Law and find out if this is something they're strongly opposed to. Meaning, would they withhold final approval of the rules if they contained a table of contents? Is this something they've decided is never going to happen in modern rules citywide? Or is this just something they feel strongly about? If you can come back to us by next month on that, I'd appreciate it.

**Mr. Clarke:** Sure. The second update is from our discussion about if/when the time comes that the Loft Board must take responsibility for the notices that OATH is currently mailing out. The Board created a carve-out for that, so that staff, rather than the parties, would take that on; however, there was concern

about how exactly that transfer of responsibility would work. Executive Director Schultz was kind enough to reach out to OATH and have a discussion with them about what that might look like, and I will let Executive Director Schultz speak on that.

**Mr. Schultz:** Thank you, Mr. Clarke. So, just to get everyone up to speed, according to our rules, the Loft Board is responsible for certain notice requirements. The Loft Board staff more specifically, of course. However, OATH staff has been, benevolently, handling that for us thus far and doing it very well. So if any of them are listening, thank you. It's much appreciated. But quite understandably, OATH made it clear it was not realistic for them to be endowed, officially, with that responsibility in our rules. So, as a group, the Board confronted this the question: If this ever were to happen, how would it happen? And from my conversation with OATH, the answers are, hopefully, fairly simple.

The Board does not want anything to hit us unexpectedly, so OATH will give us a heads-up. They will talk about a time in the future when a transition might happen. They will provide us with examples and templates they use for various scenarios. And to the perhaps unspoken question -- will they do this in a fair and proper manner? -- I'll add that we, as different units in different agencies, have a fantastic rapport; a very good relationship; excellent communication; a history; and related connections. I have every reason to know that they will handle this with the utmost professionalism if it happens. It was a very positive conversation, where it was clear that if they had to do this, they would do it with an understanding that the transition would take some time.

Once it happens, we'd have the examples and templates they use. And as this is about notice of hearing dates at OATH, OATH calendaring staff would still communicate with the parties to set the dates. The Loft Board would not have to try to coordinate schedules. OATH has a calendaring unit that will do that. And then they'll share with us the dates that are determined in the same way they share it with their unit that currently sends out all the mailings. We would prepare the documents and put them in the mail according to our rules if that responsibility is transferred over to us. We would have the information about the parties to receive notices, because the list of affected parties is in the application, which we also give to OATH. So, we would have the parties; we would have the form templates; and we would get the dates from OATH.

So, again, OATH assured me that if this were ever to transfer, it would be smooth, communicative, patient, kind, and respectful. And I do trust the people there. I hope that answers the question. If it doesn't, I'm happy to hear other thoughts and try to answer or get the answer.

**Chairperson Hylton:** I've said this before and I'm going to repeat it. The Loft Board is a city agency and so is OATH. There is no way that another city agency is going to just drop a responsibility that affects another agency without some coordination through the Mayor's Office. So, as Mr. Schultz said, I completely trust that any transition will be a smooth one, and there will be adequate time to make it happen. So, trust me. We may not all be here when this happens, but when it does, it will not be a dump, jeopardizing any of these cases.

**Mr. DeLaney:** I'd like to thank the Executive Director. That's a significant piece of information, because from my vantage point, one of the key questions was the calendaring piece of this, which would seem to require knowing the OATH judge's schedule, as well as the parties, and us calling back and forth several times. But if they're going to continue to do the calendaring, and in essence, we're going to become the mailroom, that strikes me as more workable.

**Mr. Schultz:** And it's consistent with the rules that way. The rules don't say we have to calendar. And the Chairperson is right, with the kind of mayoral assurance that they're not going to try to push more off than we're required to do. So yes, thank you, Chairperson. That is a key distinction.

**Mr. Clarke** directed the Board's attention to the document concerning the next issue, which was the extension rule, and said: The Board members recently held a vote with respect to the extension rule. There was a modification to the current rule in the proposed rules, but the Board members voted to go back to the current rule. So, we're modifying what we had in the proposed rules and just going back to the current rule.

We also had to make some changes in the current rule, specifically, in the global definitions. If a word is capitalized, that means it is defined in the global definitions. We also added some sections which, basically, just correlate to the change of 281(6). We had to include that in the rule. And highlighted in pink are two deletions. The definition of new owner is removed because it's already defined in the global definitions. The second deletion pertains to when an owner can obtain an extension, reflecting

the change in the law that shortened the time for an extension by six months. We decided to delete that because for owners that could have taken advantage of that particular section, that time has long expired, so it's not realistic that any owner could actually get an extension under that particular rule.

**Chairperson Hylton:** Is that realistic? Or is it not possible?

**Mr. Clarke:** I'm going to say not possible, but the Deputy General Counsel is an expert at catching minor details -- a scenario where that might be possible -- so...

**Mr. Hylton:** Why is that not possible? Can you run through that with me?

**Mr. Clarke:** I'm going to allow Deputy General Counsel, Tina Lin, to respond first, because I don't want to confuse anyone.

**Ms. Lin:** I don't know if it's not legally impossible; I wouldn't say it's not possible. It's just that the rationale for this rule existing in the first place is no longer applicable. At the time, this applied to a shortening of the extension back when they changed the law in 2012, 2013. That's a very long time ago. I'm not sure if the Board would have a rationale to offer owners who were prejudiced by the six-months' shortening another opportunity. Of course, if the Board members disagree, we can certainly discuss it, but it seems like the time for that -- the reason for granting that extension -- has already passed.

**Mr. Hylton** said he was willing to move along for now, but that he might want to revisit this in the future.

**Mr. Clarke:** Are there any questions about the extension rule?

**Mr. DeLaney:** Yes. If I understand correctly, what you did is revisit the existing 2-01(b) and bring it into conformity with the changes we've made in the rules, such as capitalizing lots of words because we've now formally defined them. But basically, this is designed, number one, to bring the existing extension rule into the same stylistic pattern that we're using for the new rules, is that correct?

**Mr. Clarke:** That's correct. And bringing it into alignment with the new law.

**Mr. DeLaney:** Right. And you then removed the two sections that you've discussed. But you haven't added anything? Any content, correct?

**Mr. Clarke:** That's correct.

**Mr. DeLaney:** Okay, so my last question is, are you reserving (iii), and, therefore, the text in (b)(1), the last sentence, which says, except as provided in (i) through (iv) below -- that remains (i) through (iv), rather than renumbering?

**Ms. Lin:** That's correct. This is the style the Board adopted throughout these proposed rules, so we kept the format going. Wherever it says "deletion" throughout these proposed rules, the Board had put down "reserved" instead of renumbering.

**Mr. DeLaney:** Okay, so we're just adhering to that.

**Ms. Lin:** Yes

**Mr. DeLaney:** Fine. Thank you.

**Chairperson Hylton:** And the advantage of that, Ms. Lin, is just to show that you won't have to renumber? Find all the places they're cross-referenced?

**Ms. Lin:** I think so. I wasn't here for the beginning of this, but my understanding was that there's meant to be an overhaul of section two sometime down the road. So, this is just a placeholder to try and bring section two into conformity with the 2019 laws. Going back and overhauling section two just to fix cross-references would require a huge amount of effort. So, for now, we're putting "reserved" in to keep the cross-references as they are, bearing in mind that section two is, hopefully, going to be overhauled at some point.

**Mr. DeLaney** pointed out a place where a bracket was incorrectly placed, which **Ms. Lin** made note of.

**Mr. Clarke** directed the Board's attention to the document concerning the next topic and explained: This document was prepared because in our discussions of the differences between OATH and Loft Board procedural rules, the Board decided to adopt some of OATH's rules. So, we've prepared language for

two sections to present to the Board. The first is §1-25, Amended Pleadings. At the top of the page in all black is the current rule, the old version. Below that, with some red text, is the new language that Ms. Lin worked on. We all reviewed it, and we all agreed that this language is, in essence, what the Board members want to say in this particular rule. Are there any comments or concerns or questions about this new language for § 1-25 on Amended Pleadings?

**Mr. DeLaney:** Are you going to walk us through it?

**Mr. Clarke:** If the Board members recall, the current rule, in black, is what we already had. When we were going over OATH's procedural rules relating to the amended pleadings, the Board members wanted us to mirror OATH's version of the rule. I didn't include that here, but I can read OATH's Amended Pleadings, which, coincidentally, is the same number: 1-25:

"Amendments of pleadings must be made as promptly as possible. If a pleading is to be amended less than twenty-five days before the commencement of the trial, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion."

So, what we tried to do, if you look at the bottom section with the revisions, is to incorporate that language of allowing the parties to amend up until the first conference date. If the parties are going to amend twenty-five days before that first conference date, then the parties would need consent or motion of the adjudicator. So, we're trying to mirror that language. There are some differences between the language in OATH's procedural rules and our rules. OATH talks about the administrative law judge, and we're saying the adjudicator. Also, OATH's language states twenty-five days before the day of the trial, and our language says up to and including twenty-five days before the first conference, because the Loft Board may not necessarily be holding the trial. In that rule, we also have to consider section (d) of our current rule. This is part (b) of the corrections that we made. We wanted to make sure that the parties had an opportunity to answer any amended pleading, so we fashioned some language which, basically, says the adjudicator assigned to the case will afford the applicant or affected party an opportunity to respond to the amended pleading.

So, basically, the heart of it is, the parties can still amend at any time up to and including twenty-five days before the first conference. If it's in that window of twenty-five days before the first conference,

then the parties are going to need consent, or they're going to need the permission of the adjudicator. And then, after that happens, any pleadings that the adjudicator permits, the adjudicator will allow the parties to enter. But after the first conference, the parties can submit amended pleadings only if permitted by the adjudicator.

So, it's really three sections: before twenty-five days before the first conference; then you have a window period twenty-five days before the first conference; and then after the first conference. So before, parties can amend at any time. If it's in that window period, twenty-five days before the first conference, they need consent. And if it's after the first conference, then it can only be permitted by the adjudicator.

**Mr. DeLaney:** Thank you. That's very helpful.

**Mr. Clarke:** We're now finished with that document, which brings us to the outline.

**Mr. Clarke** circled back to § 1-27, which he had missed and said: This one is more straightforward. Both the new language and deleted language were suggested by the Board members, so it should look familiar to everyone. We simply added that the parties may be represented by counsel or by a duly authorized representative; we took out the language that the parties may issue a subpoena; and we left that the parties can request a subpoena be issued. Are there any questions or comments?

**Chairperson Hylton** required some clarification.

**Mr. Clarke:** Board members thought that our language should mirror some of OATH's, but there were some questions about who can appear before OATH. Board members wanted a duly authorized representative to also be able to appear. There was also some confusion about whether or not a party can issue subpoenas on their own, and Mr. DeLaney suggested the fix of just taking out the issuing of subpoenas, so there's no confusion. And we left the language that the parties can request that a subpoena be issued. Are there any questions about § 1-27(c)? Okay, then we can move to the outline.

This outline is a continuation of the one from last month. We've already discussed 1 through 18, so today, we're starting with 19, which is § 2-06(a). Number 19, can be found on page 115 of the rules.

If we're all on page 115, and we're on issue number 19 in the outline, you can see that the change we made was the addition of paragraph three on that page in all red. And the added text guides anybody reading these rules. If they had a question about time limitations on filing applications for rent overcharge, we added a reference to § 1-21(a)(4). So, that's just added language.

**Chairperson Hylton:** Mr. Clarke, for the edification of the public, who don't have this document, could you read the additional language?

**Mr. Clarke:** Sure. It says, for time limitations on filing Applications for rent overcharges, see 29 RCNY § 1-21(a)(4). Are there any comments or questions about item 19?

**Mr. DeLaney:** I have one question, and I'll need a little help here. It's my recollection that the Rent Stabilization Law changes in 2019 affected the time period for overcharge claims?

**Mr. Clarke and Ms. Lin:** Yes, it did.

**Mr. DeLaney:** And I recall we discussed bringing our rules into conformity with that. Has that been looked at?

**Ms. Lin:** We have not. I don't know if that discussion was had when current staff was working on these rules. Is that something that was supposed to be in the draft?

**Mr. DeLaney:** It's my recollection that it came up tangentially. But it would seem that it would be appropriate for us to try to mirror those changes, or at least look at the difference between what we have and what those changes spelled out, so that if we don't want to bring it into conformity, we have a reason for doing it. We have a rationale for doing it. I'm inspired by the shark argument from earlier in the day.

**Ms. Lin:** Yes, okay. We'll take a look at that.

**Mr. Clarke:** Thank you, Mr. DeLaney. Are there any other comments or questions?

**Chairperson Hylton:** So, is 19 an open item? Or is it okay? Ms. Lin, you're looking into other things related to it?

**Ms. Lin:** That will be a different section. That would be § 1-21(a)(4). I'm looking at it now, and right now, we limit to six years. So, we have to revisit and do some research into § 1-21(a)(4).

**Chairperson Hylton:** Okay, so as far as this section goes, this is not an open item. Does anyone have any other comments on this piece? Thank you. Go ahead, Mr. Clarke.

**Mr. Clarke:** Next is item number 20, also on page 115. There were some questions from the Law Department as to why we were defining escalators again. So, we just modified the language, basically, removing the definition from escalators again, because it's already defined in the global definitions. I do see that there are some mark-outs on page 115 under this particular section, but there should be a little bit more. But the language in the outline is actually correct. On page 115, in the larger packet of rules, after where it says, both base rent and Escalators, we're going to be deleting everything up until where it says, Such Escalator. That's something that we will delete, but the language in the outline is exactly what it's going to be changed to.

**Chairperson Hylton:** So again, can you just read that change for the record?

**Mr. Clarke:** We'll change it to:

Amount of Increases. For purpose of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential Occupant, including both base rent and Escalators. Such Escalator provisions that relate to gas, and electricity, and steam charges are excluded from this definition of total rent, and these utility Escalators, when based on a fair calculation of the residential Occupant's usage, shall be the only Escalators permitted following the effective date of the rent increase, provided they were part of the lease or rental agreement in effect on December 21st, 1982.

If there are no additional comments or concerns, we'll move on to item number 21, which is on page 116.

**Chairperson Hylton** felt the sentence was a bit run-on and proposed the following instead, as long as it didn't change anything:

Such Escalator provisions that relate to gas, electricity, and steam charges are excluded from this definition of total rent. These utility escalators, when based on a fair calculation of the residential occupant usage, shall be the only escalators permitted following the effective date of the rent increase, provided they are part of the lease or total agreement in effect on December 21<sup>st</sup>, 1982.

**Mr. Clarke:** I can't see how that would change the substance of what the rule is trying to say. So, I don't see why we couldn't do that.

**Mr. Schultz:** I concur with Mr. Clarke. I don't think it changes the meaning. If after more reads, on another day, we realize it does, we'll bring it back up with the Board.

**Chairperson Hylton:** Okay. Thank you, Kevin.

**Mr. DeLaney:** I have one other question. And I guess it probably stems, in part, from working off this excerpted document. Because sometimes the play over the two hundred pages of rules can get a little confusing. This is all talking about escalators that were in effect on December 21 of 1982. So that's only relevant to the original Loft Law, as spelled out in 281(1) and 281(4) of the Multiple Dwelling Law. Without sitting down and reading through the whole section, is there an equivalent issue that comes up for 281(5) and 281(6)?

**Ms. Lin:** I don't think the Board ever revised those two sections, § 2-06.1 and § 2-06.2. My understanding is that the Board was only revising the portions of section two they needed to change. That would be sections that required updating of the law or a change to the cross-references. So, there are certain sections of section two that are not part of the revisions.

**Mr. DeLaney:** Okay

**Mr. Clarke:** Are there any other comments or concerns? Then we can move on to item number 21, which is § 2-06.3 at the bottom of page 116, for Coverage. What we're doing here is, we've already defined IMD, so we're using IMD in place of Interim Multiple Dwelling. We're also eliminating the reference to MDL § 281, which we spoke about. It's actually not necessary, because MDL § 281 doesn't define IMD. Are there any questions or concerns?

**Mr. DeLaney:** Is there a reason that you've changed it to this (1), (2), (3) format? Number (3), do not meet the safety and fire protection standards of Article 7-B. You also took out, of the MDL. Was that perceived as unnecessary?

**Ms. Lin:** It's actually a change by Operations. So, I think it just may be a stylistic choice by them. We did not make this change. I believe it conforms with the rest of the section. Now that I'm looking at it, it mirrors how the rest of the section is laid out.

**Chairperson Hylton:** Mr. DeLaney, the language police do have a real purpose.

**Mr. DeLaney:** They certainly seem to have some purpose. Though whether it's to make it clearer or more confusing, I'm not always sure. Again, for the lay person, if it said 7-B of the MDL, it would be more explicit.

**Chairperson Hylton:** Why can't we put that in? I don't see a problem with that. Just for clarification. I don't think there's any other 7-B. I don't think there's a problem with that.

**Ms. Lin:** The Law Department has gone through and removed references where we refer back to the MDL. I think this might be because the Law Department felt it was redundant.

**Mr. DeLaney:** I'm not so sure I buy that. It's not the world's biggest issue, but again, as somebody who spends a lot of time going over these rules with lay people, I know what Article 7-B is, and one would say the informed individual should probably say, oh, well, gee, the Loft Law is Article 7-C, so probably 7-B refers to something that's also in the MDL. But if it causes the plain-language police joy to remove it...

**Chairperson Hylton:** Let's do this. Let's put it back and see if they take it out. Okay?

**Mr. Clarke:** Are you saying, specifically, for this section? Or wherever else they might have taken it out?

**Chairperson Hylton:** I don't want to go back throughout the entire document. Let's see if we can sneak this one in. And if the Law Department takes it out, all right. It does make it clear.

**Mr. Clarke:** Okay. Are there any other questions or concerns with 21? Actually, 21 has another section. It's on page 117, further down, number (4), for Garbage Escalators. And we discussed this last month.

But we just changed some of the language there a little bit for clarity. Are there any questions? Okay. So, with that, we'll move on to item number 22, which is § 2-07, Sales of Improvements, on page 119.

At the bottom of page 119, where we're defining unit, we were running into some issues, because in this particular section, we wanted to define unit in a way that included sales of improvements that could happen after the building is removed from the Loft Board's jurisdiction. Originally, when we brought this to the Board members' attention, we tried to modify unit and give it a new definition by saying, residential, I think it was. I don't remember the definition we were trying to use to replace unit, but the problem was that wherever we saw unit, it got a little bit confusing in terms of when we should use either the regular unit or the new term for unit, which included units that were removed from the Loft Board's jurisdiction. So instead of going back and trying to determine and change unit in all these different sections, here, we're just saying unit.

We believe that the Law Department's main issue and concern with this was that we already have kind of a definition for unit in our rules. And here it says, unit as referred to in this rule. So, they were confused as to why there's a different definition in this rule. So, we changed it from rule to section, to make clear that it applies only to this section and not to the entire rule. So, that is the change we made there. Are there any questions or concerns about that change?

Next is item 23 on page 133, § 2-08, Coverage, Occupants Qualifying for Protection, and Issues of Status. This was a minor change. For those who might not be familiar with the Latin term, we replaced the words inter alia with, among other things, which means the same. Are there any questions or comments about that?

Next, again, is under § 2-08, (a)(2), on page 134. Here, regarding grandfathering, we just modified the wording of grandfathering to make it consistent with the global definition of grandfathering.

**Chairperson Hylton:** Was anything inconsistent in the original language? Or was it just a simplification?

**Mr. Clarke:** I would say it's more of a simplification. Just making the words match, identically. Are there any questions about that change?

There is another change on this page in our outline, and it's section (a)(4)(iii) on page 137. We made some minor changes, mostly capitalizing words in the global definitions. But in the beginning of that sentence, it says, notwithstanding the foregoing. We deleted that and changed it to, in addition to the criteria set forth in subparagraph (i) of this paragraph. That adds clarity and was the main change there.

**Chairperson Hylton:** That was the Law Department?

**Ms. Lin:** I think it was Operations. We're not sure who made what changes to these sections.

**Mr. DeLaney:** I see in our new language we have, Family Living Independently, all capitalized. Is Family Living Independently now a definition unto itself?

**Mr. Clarke:** It should be.

**Ms. Lin:** I don't think it's in the global definitions at the top. But I think we can find it in the beginning of section two.

**Mr. Clarke:** Are there any other questions or concerns? Then we can move on to the next change, which is d of the same issue. It's (a)(4)(iv)(A) on page 139. So, some new language was actually included in this change. It's the language from MDL § 4(37), which defines a cellar. Instead of just saying, the space should not be located in a cellar, as such term is defined in MDL § 4(37), the new language actually includes MDL § 4(37)'s definition of cellar. Are there any questions or comments? If not, we can move on to the next section on page 140.

Section (a)(5) pertains to Study Area. And we just modified the language for clarity. Are there any questions or comments with the way that now reads?

The next is section (c)(7), page 145. And again, this is just some language for clarity. If you compare the original text to the change, the hope is that it's cleaner and less confusing. If there are any issues or any comments, please let us know.

**Chairperson Hylton:** I just wanted to make it clear, we're not changing any of these deadline dates, are we? This should be strictly for transparency and clarity.

**Mr. Clarke:** Correct. Okay, if there are no comments or concerns, then we're finished with everything we have with respect to rulemaking to bring to the Board. However, we do need to come back with some clarification on a few things mentioned today. One was going back to the Law Department about why they removed the table of contents, and if can we add it back in without consequence. Another was leaving the MDL in one section. And then there was a question about bringing the time to file an application for rent overcharge into conformity with the new rent laws. We'll double check that as well and get back to the Board. But with respect to everything that we needed to bring to the Board members, we have officially brought them to the Board. Congratulations. It's been a very long haul.

**Chairperson Hylton:** Thank you.

**Mr. Clarke:** We've been waiting for this moment.

**Chairperson Hylton:** Mr. Clarke, that was remarkable. I really appreciate this. I don't know if anybody's on the high that I'm on, but I really do appreciate your efforts here. So obviously, we'll get back next month on those two or three minor issues with the Law Department. And when is the party? Kevin?

**Mr. Schultz:** Yes, party planning was in the job description, right? I got here just in time. It's great to be so close. We'll definitely check those last things out, and then we'll party.

**Chairperson Hylton** recognized Mr. Barowitz.

**Mr. Barowitz** raised a few issues he felt required attention: Regarding New York City Loft Board, Notice of Public Hearing and Opportunity to Comment on Proposed Rules on page 27 -- and I think I had mentioned this before -- the word adjudicator is diminished, and hearing officer is used. And on page 8, hearing officer is used, in which case, you're really talking about the OATH judge. So, I don't understand why that language was put in there. I think I had mentioned to you previously that I didn't like that term, adjudicator. But okay, it's there. It's all over the place. But now when we're talking about the OATH judge, and we're calling him a hearing officer.

**Chairperson Hylton:** Yes, I recall that the word adjudicator is a holdover from the days when the Loft Board was doing its own hearings. So, in order to differentiate between when they're done at OATH and when these rules refer to a Loft Board person presiding, OATH uses the word hearing officer. So,

whenever you see adjudicator -- correct me if I'm wrong, Mr. Clarke -- it is referring to any instance where the Loft Board would be doing such adjudication.

**Mr. Clarke:** Yes. The way adjudicator is defined, it encompasses an administrative law judge or hearing officer. So, adjudicator can mean either of those, and the reason why we leave it as adjudicator is in case the Loft Board ever goes back to conducting its own trials and hearings, we won't have to change the language. But as Chairperson Hylton said, if it does say hearing officer, it is something that is in front of a tribunal, such as OATH, where there's a hearing officer conducting the hearing or the trial. So that's the difference.

**Mr. Barowitz:** So, we're now calling the OATH judge a hearing officer?

**Mr. Clarke:** Yes. They are called administrative law judges but can also be an adjudicator.

**Mr. Barowitz** also pointed out a misspelling, which staff noted. And as there was difficulty for all parties to locate this because not everyone had the same document format...

**Mr. DeLaney** said: It would be great if we could get a new version, maybe a PDF, so it stays fixed and everyone has the same document. Doing these pull-outs has been expeditious, and I don't object to it, but before we vote to publish this, I want to read over everything from beginning to end. I'd like to have the opportunity to read through the entire document; to go from page 1 through the end with the ability to flip back and forth.

**Mr. Clarke:** We agree and we're drafting that.

**Mr. Barowitz:** I have a couple of other small points. But a larger one is that precertified is not really a word. And you can't precertify something that is certified. The word certified means that it's past and it's done; so, you can't pre it. So, probably the right word would be precertification.

**Chairperson Hylton** acknowledged that. There was discussion of what the proper form of the word would be, and its occurrences were located in the document.

**Mr. Barowitz:** The clearest language would be, has not been certified.

**Ms. Lin:** Mr. Barowitz, this is all language from our existing rules right now. If we want to go back and change things in section two, we can certainly do that. But as I mentioned, we're trying to change as little as possible in section two, because it's going to be overhauled down the line. Just so you're aware, that's where this language is coming from. It's part of our current, existing rules.

**Chairperson Hylton:** Ms. Lin, meaning if this language exists right now, it has existed forever? Mr. Barowitz, maybe before the language police were ever invented. So, we don't want to mess with it now because we're going to be looking at those rules later. Can you tolerate it for now, until we tackle chapter two in its entirety?

**Mr. Barowitz** assented.

**Chairperson Hylton:** Okay. Thank you. We can take other questions if you have any. Obviously, if there's anything substantive, we'll bring it back to the Board; but if there's a spelling error, we'll just make those changes.

**Mr. Clarke:** Yes. And as I was saying before, we will make a final version with all of the edits and all of the changes in one document. And we will try to get that to the Board members as quickly as possible, so they can review it one more time.

**Chairperson Hylton:** And could you PDF that version?

**Mr. Clarke:** Sure

**Chairperson Hylton:** Okay, is everyone satisfied? And pretty much all hearts are clear on the rules right now, where we stand? We've gone through all the revisions and comments back from Law, and OATH, and also Operations, and we believe we've covered just about everything with the few exceptions just mentioned, which we'll clarify for next meeting. Apart from that, Mr. Schultz or Ms. Lin, could you enlighten us on where we will go next month in terms of rules?

**Ms. Lin:** As Mr. Clarke mentioned, the plan right now is for us to deliver a cleaned-up version of the rules so that Board members have the opportunity to review everything in full. We're hoping to be able to do that in the next couple of weeks. So, the Board will have two weeks to review the rules before the

May meeting. We'll also get answers on those items the Board raised during this meeting. And hopefully, if nothing else is amiss, we can send it out in May -- the Board can decide to send it back to the Law Department. Assuming, of course, that everything looks okay to the Board.

**Chairperson Hylton:** So, in other words, Ms. Lin, if next month, we are able to agree and vote on a final draft, we will then send it over to the Law Department for review and....What do we call that? Initial certification?

**Ms. Lin:** Yes

**Chairperson Hylton:** Absent any significant comments that the Law Department may have that may need to come back to you. Or there may be substantive items; or there may be just other minor things that don't really need to come back to the Board, like a numbering issue.

I'm really proud of the staff and the effort that has gone into these rules for the past four years. We're confident that we can move forward now. It is the Chair's desire to move forward. And when I say Chair, I'm not talking about myself, but the Chair. We do need to move these things forward and bring this effort to conclusion. You may have noticed that you've had a light calendar of cases, and that was by design, so we could focus on completing these rules.

Are there any other comments from any Board member that we need to consider here today before we close the meeting?

This will conclude our April 15, 2021, Loft Board meeting. Our next public meeting will be held on Thursday, May 20, 2021, at 2pm. The Governor's suspension of the in-person meeting requirement of the Open Meetings Law is in effect until May 6, 2021. So, at this time, we do not know what the format of the May 20th Board meeting will be. When we do know the format of the next meeting, we will update the public through the website and on the Loft Board Listserv. And Board members, you will be made aware. Board members, please sign and email in your attendance sheets. And everyone, have a good afternoon. Thank you.