

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting

September 23, 2021

The meeting began at 2:05 P.M.

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

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the September 23, 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 legislation S.50001/A.40001 signed by Governor Hochul. 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** began by correcting an error he had made at the conclusion of the July 15<sup>th</sup> meeting, when he erroneously stated that the next Loft Board meeting would take place on September 16<sup>th</sup> at 2pm, when the correct date was today's date: September 23<sup>rd</sup>. Immediately following the July 15<sup>th</sup> meeting, the Loft Board staff reinforced the correct information on its website, and a notation was made in the July 15<sup>th</sup>, 2021, meeting minutes, noting the correction of this error.

**VOTE ON MEETING MINUTES:**

**July 15, 2021 Meeting Minutes**

**Chairperson Hylton** asked if there were any comments on or corrections to the July 15, 2021 minutes. As there were none, he called for a motion to accept the minutes.

**Mr. Roche** moved to accept the July 15, 2021 meeting minutes.

**Mr. Hylton** seconded.

**The vote**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Barowitz

**Members absent:** 0

**Members recused:** 0

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**EXECUTIVE DIRECTOR'S REPORT**

**Mr. Schultz** reiterated Chairperson Hylton's announcement that in-person meetings were being suspended once again, through January of 2022, and mentioned that the staff was currently working to find spaces where in-person meetings can resume safely when the time comes.

**Bill A7667**

This bill, which more clearly grants tenants recourse to Housing Court, is still with the legislature; not presented to the Governor for signature yet.

**Loft Board Website and Brochure**

In addition to the names of the new Board members now posted, various other information and forms have been updated to make more information available to the public.

The Know Your Rights Guide for Loft Tenants brochure, which has been in production for quite some time, will also be added to the website soon, and Board members can receive some hard copies if they wish.

#### SoHo-NoHo Rezoning

As of earlier this week, it remained under the Borough President's review, and the environmental impact statement had been submitted. City Planning Commission, City Council, Mayoral reviews, and votes have not officially started, according to the ULURP (Uniform Land Use Review Procedure) pipeline.

#### Revenue

Due to the summer recess, two months were reported, which also comprise the annual registration period.

The unofficial Loft Board revenue for July was \$992,235.

The unofficial Loft Board revenue for August was \$222,744.80.

Mr. Schultz gave special thanks and credit to Ms. Rivera, who, among many other things, manages the receipt of these forms and funds every year – a tremendous amount of work, which she executes with remarkable professionalism and precision.

#### Enforcement

Mr. Schultz began by reminding building owners that now, with winter approaching, to make sure their buildings have heat and gas; that this is a life safety issue; that it is required; and will be enforced.

In July and August, there were a total of thirty-seven inspections. Two were related to housing maintenance; two were related to declarations of intent; and thirty-three were a version of a special

inspection, such as vacancy verifications and/or joint inspections with DOB (the Department of Buildings), or another form of Loft Board building inspection.

Before offering some examples of the kind of inspections that were done, Me. Schultz acknowledged the Loft Board's Inspector for his hard work and diligence in not only reporting violations, but also in following up to be sure they were corrected in a timely fashion. The Inspector also conducted a joint inspection with DOB regarding concerns about the structural aspects of the building, and played a vital role in facilitating communications and gaining access for the DOB, allowing them to make sure everything was safe.

### Litigation

**Decision:** *475 Owner LLC versus the New York City Loft Board and Coventry*, Index Number 151133/2021. Petitioner is an owner that filed an Article 78 challenging Loft Board Order 4943, issued in February 2020. In that Order, the Loft Board found that unit 1109 at 475 Kent should have been covered under the Loft Law and the occupant granted protected occupancy status. The Board found that the unit's exterior terrace and balcony space should be considered in determining whether the unit met the requirements of the Multiple Dwelling Law, specifically, the at-least-four-hundred-square-feet-in-area section of that rule. The owner argued that the Loft Board's interpretation was inconsistent with what the legislature intended, but the court denied the petition, finding that the Loft Board's determination was supported by a rational basis; that the Board abided by the plain language of the statute; and was not found to be irrational, arbitrary, or capricious. Mr. Schultz believes notice has been filed for appeal.

**New Case:** *Stream versus New York City Loft Board*. Petitioners are owners of a building at 257 West 19<sup>th</sup> Street in Manhattan, New York. They filed an Article 78 challenge to Loft Board Order 5039, issued March 18, 2021, in which the Loft Board granted coverage and protected occupancy for Ronald Pichler, occupant of the fourth floor. In finding that the fourth-floor unit was eligible for Loft Board coverage, the Board had determined that, although the unit itself was never used commercially, it still met the criteria for an IMD because a portion of the building had been used commercially. The Board further found that Mr. Pichler was the protected occupant of the fourth floor and rejected the owners' argument that he didn't have a valid tenancy.

The owners' argument was that he executed a lease with only one of two owners in common. The owners now, in this new case, argued that the March 2021 Order should be annulled because the fourth-floor unit is not eligible for coverage due to its longtime residential use, claiming that Mr. Pichler does not qualify as a protected occupant. The owners also noted that the validity of his lease was already the subject of a pending action in New York County Supreme Court, in March, when the Order was issued. So, their argument is that the Loft Board lacked jurisdiction to make a determination relating to that lease.

#### Quarterly Update

In response to a request from the Board at one of Mr. Schultz's first meetings, he agreed to prepare quarterly reports on the status of the buildings under the Loft Board's jurisdiction, as well as some statistics on the staff's other regular responsibilities.

The aspects reported on year-to-date were the Narrative Statement Conferences and certifications; Letters of No Objection (There was some discussion of what the figures actually represented, and Mr. Schultz agreed to clarify the format going forward by showing how many were received in a month. But what could be extrapolated from the current chart was that, at any given time, staff is processing between thirty-five and sixty-one LONO's)

#### Summary of the status of buildings:

Total buildings currently registered as IMDs: 327

Those with Alt-1's filed: 77 (just under 24%)

Those that have a permit: 117 (36%)

Those that have reached 7-B or TCO compliance: 73 (22%)

Those with Certificate of Occupancy: 17 (5%)

Those who have not filed for any permit: 28 (9%)

**Chairperson Hylton** had two questions. 1. Confirming that the report he just presented was public and would be filed with the minutes, and 2. If the Know Your Rights brochure was published in multiple languages.

**Mr. Schultz** replied that yes, like the last report, this one was also for public consumption, and that the brochure was available in thirteen languages. He did not know exactly which they were, but said they are noted on the website.

**Mr. DeLaney** asked if Mr. Schultz could send a PDF version of the brochure to the Board members, and Mr. Schultz said he would.

**Mr. DeLaney** then offered some clarification regarding SoHo-NoHo: The Borough President has made her recommendations known on the SoHo-NoHo plan, and it's now before the City Planning Commission. So far, it seems it was pretty resoundingly rejected by the Community Board, whose opinion is advisory, and Borough President Brewer was not terribly enthusiastic either.

**Mr. DeLaney** then asked if the registration fee was based on the payment of \$500 per unit.

**Chairperson Hylton** confirmed that was correct.

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## THE CASES:

### Appeal and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
1	Thomas Brigham, Clara Kim, Ingo Gunther, David Kelley	72 Warren Street, NY, NY	AD-0114, AD-0115
<i>Tenants filed an appeal to challenge multiple actions taken by Loft Board Staff that were premised on the validity of a Department of Buildings filing (filed as Job No. 123697963). The appeal sought that the Board Staff's actions relating to that filing be annulled. Tenants' appeal was granted based on Net Lessee's insufficient amended narrative statement, which failed to list non-compliant conditions and code citations as required by RCNY 2-01(d)(2)(v).</i>			

**Mr. Clarke** presented this case.

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

**Mr. DeLaney** moved to accept this case, and **Ms. Roslund** seconded.

**Chairperson Hylton** asked if there were any comments on this case.

**Mr. DeLaney:** I would just add that this is a very complicated and interesting case. It's worthy of study in terms of how the Board's rules and the Department of Buildings procedures interact with each other. I commend Mr. Clarke for going through all this and writing up what is eight pages of fine print and explaining why some arguments did not prevail, but why one argument did prevail. And if the forty-day clock notice for Job 963 is annulled, am I correct that that means there will be a subsequent Narrative Statement Conference?

**Mr. Clarke:** It doesn't necessarily mean there will be another Narrative Statement Conference. However, the Loft Board staff will not issue a Certification Letter until a valid, forty-day clock expires or the owner submits waivers of the Narrative Statement process. So, it basically means the process is not complete, and the Loft Board staff will not issue a Certification Letter for that job until the process is complete.

**Mr. DeLaney:** Thank you.

### The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** Ms. Roslund

**The Summary Calendar**

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
2	Bamboo Hills Corp.	255-265 McKibbin Street, Brooklyn, NY	LS-0275
<p><i>The net lessee of the building filed an access application for Unit 314. After the matter was transferred to OATH for adjudication, the net lessee withdrew its access application. The net lessee's access application is deemed to be resolved.</i></p>			
3	Matthew Virtue	250 Moore Street, Brooklyn, NY	PO-0099
<p><i>Matthew Virtue, the residential tenant of Unit 407, filed a protected occupancy application. The owner opposed the protected occupancy application. The parties ultimately reached an agreement whereby, among other things, Mr. Virtue withdrew his protected occupancy application with prejudice. In addition, the owner recognized Mr. Virtue as the protected occupant of Unit 407. The protected occupancy application is deemed to be resolved. The remaining terms of the agreement are neither accepted nor rejected. The Loft Board staff is directed to update the Loft Board's records to reflect Mr. Virtue as the protected occupant of Unit 407.</i></p>			
4	Scott Dennis	1087 Flushing Avenue, Unit 302, Brooklyn, NY	PO-0141; TA-0278
<p><i>Scott Dennis, the residential tenant of Unit 302, filed a protected occupancy application and a rent dispute application. The owner opposed both applications. The parties ultimately reached an agreement whereby, among other things, Mr. Dennis withdrew both applications with prejudice. In addition, among other concessions, the owner recognized Mr. Dennis as the protected occupant of Unit 302 and agreed to pay a certain amount to Mr. Dennis in full settlement of his claims. Both applications are deemed to be resolved. The remaining terms of the agreement are neither accepted nor rejected. The Loft Board staff is directed to update the Loft Board's records to reflect Mr. Dennis as the protected occupant of Unit 302.</i></p>			

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

**Mr. Barowitz** moved to accept these cases, and **Mr. Hylton** seconded.

**Chairperson Hylton** asked if there were any comments on these cases.



**Mr. DeLaney:** Yes, I just wanted to note that case number 3, 250 More Street, and case number 4, 1087 Flushing Avenue, are both cases that were settled by stipulation, and yet again, the Loft Board uses that stipulation as a reason to determine that the case is settled but takes the delicate position of neither accepting nor rejecting the remaining terms of the stipulation of settlement. One of these was a case that included protected occupancy and a rent adjustment; the other was a protected occupancy case. In both instances, the stipulation speaks to issues of rent and various other things; and I still think that this process is not fully under the Loft Board's control and that if there are things we don't accept about a stipulation, we should highlight what those are rather than leave the parties guessing exactly what we mean by neither accepting or rejecting. I think it's a bit too coy.

**Chairperson Hylton:** I think this has come up just about every month, and I know the contents of stipulations are sometimes private and so on. But what was the suggestion that came up before about what the Loft Board could possibly do to make it clear? Put a list out of certain things that are not acceptable in stipulations?

**Mr. Delaney:** I don't recall that thorough a discussion. I know we discussed deeming things withdrawn in terms of a way to dispose of them on the calendar, but I don't know if we've had that discussion.

**Chairperson Hylton:** We've never had it.

**Mr. Barowitz:** I would second that. It's a little frustrating for the stipulation agreements to not be terribly clear. It's been going on as long as I can remember, and I don't know what to do about it. Maybe we could get together at some point privately with the lawyers on the Board and see whether we could make this more explicit for us.

**Chairperson Hylton:** Thank you, Mr. Barowitz.

### The vote

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

**Members dissenting:** 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar

	Applicant(s)	Address	Docket No.
5	269 Meserole Realty, LLC	269-271 Meserole Street in Brooklyn, NY	LE-0726
<i>Owner's application seeking to remove the building from the Loft Board's jurisdiction was granted. The order finds that the owner was in compliance with MDL § 284(1) and grants Owner's request to remove the building. On August 8, 2019, the Department of Buildings issued a final residential certificate of occupancy showing six residential units on each of the first, second, and third floors, consistent with Loft Board's records for IMD spaces. The order also finds that these first, second, and third floor units (18 in all) are not subject to rent regulation as Loft Board records reflect valid sales of rights and improvements for these units.</i>			

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

Mr. Barowitz moved to accept this case, and Mr. Hylton seconded.

Chairperson Hylton asked if there were any comments on this case. (None)

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

	Applicant(s)	Address	Docket No.
6	Julian Bozeman	475 Kent Avenue in Brooklyn, NY	PO-0075
<i>Tenant of Unit 905 filed a protected occupancy application that was opposed by Owner on the grounds that the unit had been deregulated by a sale of rights by the prior tenant. The order found that the prior tenant's sale of rights to be invalid and found tenant to be the protected occupant of the unit. The order also found that a purported waiver of rent regulation in Tenant's lease was invalid.</i>			

**Ms. Lin** presented this case.

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

**Mr. DeLaney** moved to accept this case, and **Mr. Barowitz** seconded.

**Chairperson Hylton** asked if there were any comments on this case. (None)

**The vote**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Hylton

**Members absent:** 0

**Members recused:** 0

	Applicant(s)	Address	Docket No.
7	108-114 Wooster Street Corp.	108-114 Wooster Street, NY, NY	LE-0603
<i>Owner's application seeking to remove the building from the Loft Board's jurisdiction was granted. The order finds that the owner was in compliance with MDL § 284(1) and grants Owner's request to remove the building. On October 4, 2010, the Department of Buildings issued a final residential certificate of occupancy consistent with Loft Board's records for IMD spaces. The order</i>			

*finds that IMD tenants of eighteen units (formerly six units before being divided) sold their Loft Law rights to become shareholder owners of the building. The order also finds that these eighteen units are not subject to rent regulation as Loft Board records reflect valid sales of rights and improvements.*

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

Ms. Hayashi moved to accept this case, and Ms. Rajan seconded.

Chairperson Hylton asked if there were any comments on this case. (None)

The vote

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

	Applicant(s)	Address	Docket No.
8	Alyosha Smolarski, Nicholas Palun, Scott Tumulty	239 Banker Street, Unit 4A Brooklyn, NY	PO-0142

*In September 2020, Alyosha A. Smolarski, Nicholas Palun, and Scott Tumulty, the then-residential occupants of Unit 4A, filed a joint protected occupancy application. No answers were filed in response to the protected occupancy application. After the matter was transferred to OATH for adjudication, Mr. Smolarski reached an agreement with the owner whereby, among other things, the owner recognized Mr. Smolarski as the protected occupant of Unit 4A. Mr. Palun withdrew his protected occupancy claims, and Mr. Tumulty's protected occupancy claims were scheduled for trial. Mr. Tumulty failed to appear at trial, which OATH had marked as final against him. In addition, Mr. Tumulty neither contacted OATH nor submitted a written request for reinstatement of his claims*

*within 30 calendar days of the trial date pursuant to 29 RCNY § 1-06(k)(4). Mr. Tumulty's protected occupancy claims are dismissed with prejudice for failure to prosecute, and the protected occupancy claims of Mr. Smolarski and Mr. Palun are deemed to be resolved. The remaining terms of the agreement between Mr. Smolarski and the owner are neither accepted nor rejected. The Loft Board staff is directed to update the Loft Board's records to reflect Mr. Smolarski as the protected occupant of Unit 4A.*

**Ms. Lee** presented this case.

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

**Ms. Rajan** moved to accept this case, and **Mr. DeLaney** seconded.

**Chairperson Hylton** asked if there were any comments on this case. (None)

**The vote**

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

**Members dissenting:** 0

**Members abstaining:** Ms. Roslund

**Members absent:** 0

**Members recused:** 0

**Chairperson Hylton:** The final fourteen cases are all failure-to-register cases.

	Applicant(s)	Address	Docket No.
09	Vestry Holding Corp.	37 Vestry Street, NY, NY	FO-0916
10	Jay Hudson, LLC	15 Jay Street, NY, NY	FO-0917
11	120 Prince Street, LLC	128 Wooster Street, NY, NY	FO-0924
12	Empsrggreene LLC	47-49 Greene Street, NY, NY	FO-0925

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13	47 West 28th Street LLC	47 West 28th Street, NY, NY	FO-0937
14	Camilla Shah, President	354 Bowery, NY, NY	FO-0938
15	17 Leonard Properties, LLC	17 Leonard Street, NY, NY	FO-0939
16	Soho Towers, LLC	475 Broadway, NY, NY	FO-0944
17	Haimil Realty Corp.	209 East 2nd Street, NY, NY	FO-0945
18	Bridge Associates of Soho, Inc.	533 Greenwich Street, NY, NY	FO-0952
19	Redsky JZ Roebling, LLC	143-153 Roebling Street, Brooklyn, NY	FO-0969
20	Regency 175, LLC	360 Jefferson Street, Brooklyn, NY	FO-0972
21	223 15th Street, LLC	223 15th Street, Brooklyn, NY	FO-0978
22	450 Broadway Owners, LLC	450 Broadway, NY, NY	FO-0983
<i>The Loft Board passed fourteen orders which call for fines between \$5,000 and \$17,500 from property owners pursuant to 29 RCNY § 2-11.1(b)(3) based upon failure to submit a mandatory annual registration with the Loft Board.</i>			

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

**Mr. Barowitz** moved to accept these cases, and **Mr. Roche** seconded.

**Chairperson Hylton** asked if there were any comments on these cases.

**Mr. DeLaney:** First, I want to commend the staff for being able to bring so many failure-of-owner-to-register cases to the Board at its September meeting. The deadline for registration is pegged to the fiscal year beginning July 1<sup>st</sup>, which is why we see the income just announced in July and August. And in past years, these cases have not made it to the Board until October, November, or even December, which in essence, gives owners a free pass to not register or renew in a timely fashion. And I'm of the opinion that registration is essential. That if you're expected to perform code compliance, and draw up plans, and pull a permit, and participate in a Narrative Statement Conference, then the place to start is by registering the building. And it's important because the registrant is required to provide a twenty-four-hour contact number and other information about the ownership that can be crucial in certain circumstances.

This year, and I don't think it's the first year, the most egregious offender is 533 Greenwich Street, which last registered in fiscal year 2008. That's an extraordinarily long period of time to thumb your nose at the Loft Board. And there are two from 2018. Most of them just missed this year, a few missed two years. The fines run anywhere from \$5,000, up to \$17,500 for three of the buildings that have gone for an extended period of time. So, my first question is, are there more buildings that have failed to register, or is this the entire universe?

**Mr. Schultz:** There are, I believe, two or three, maybe four or five, that are not on this list because there was some response that warranted review. So that response will be reviewed, and then a recommendation will be made to the Board. These represent cases where we've received, basically, nothing at all. Certainly nothing meritorious, or mitigating, or compelling.

**Mr. DeLaney:** Fine. My concern is just if there were forty more that hadn't registered, I'd have a higher level of concern.

**Mr. Schultz:** If there are more, it's a single digit more, depending on the circumstances.

**Mr. DeLaney:** And those are cases where there are wrinkles and plotlines to reconsider. My second question is, would you consider the three -- the gold, silver, and bronze of foot-draggers, namely 533 Greenwich at FY08, and 354 Bowery, and 209 East Second -- as cases where some kind of extraordinary enforcement action, like specific enforcement, might be warranted? Would you be willing to take a look at that?

**Mr. Schultz:** Yes, I would be willing to take a look at that.

**Mr. DeLaney:** Okay

**Ms. Roslund:** Are there outstanding fees beyond these fees? Is this just the currently imposed fees? Are there ever unpaid fees in the background?

**Mr. Schultz:** Mr. Argov, who deserves so much credit for doing the work here, is nodding. Mr. Argov, do you want to answer that question?

**Mr. Argov:** Sure. Very briefly, as an example, 533 Greenwich Street, I believe the total fees they owe are somewhere in the ballpark of a quarter-million dollars. This fine being imposed now is a penalty for not registering for three years or more, but they have previous penalties from past FO's we've issued; other summonses they've been issued; and the registration fee. So, this is just what is currently being imposed on them for their violation. It is not an encapsulation of all the amounts they owe to the Loft Board.

**Mr. Barowitz:** That's really interesting to hear. Also, I thought that the maximum fee went from \$17,500 to \$25,000. Am I wrong about that?

**Mr. Schultz:** No, you're not wrong. The MDL changed it to \$25,000, but the rules, for this at least, and maybe for all so far, have not been increased. So, we are bound by what the rules say, at this time.

**Chairperson Hylton:** So, just to clarify, Mr. Barowitz, the maximum penalties have been authorized to go up to \$25,000. But our rules need to be changed to effect that, if the Board wants, so that we can impose more stringent penalties. You may or may not want that. Mr. Argov, thank you. I appreciate your efforts on that. I have another question, though, for you or Mr. Schultz. When we write the Orders for the recalcitrants who do this every year, why can't the latest Order we generate be for the cumulative amount of the debt?

**Mr. Schultz:** We'll look into that. I think probably because we're enforcing one specific action, and so the cumulative enforcement or collection might be a different question, which I'm happy to look into.

**Chairperson Hylton:** I see. And to follow up on Mr. DeLaney's question about additional enforcement, what were you thinking?

**Mr. Schultz:** Of looking into it. I'd rather not brainstorm enforcement actions on the fly, because I want to make sure they're done properly. But I certainly would imagine that, if there is an avenue -- and I confess, I don't know.... Law Department, I believe, has some avenues for collections that I think would be worth looking into. But I say that without really making any promises or being sure. To the extent that these are buildings our Inspector could make a visit to, that is another action that could be taken; to



review their code compliance status to see if there are any failings there. So, I said I wouldn't brainstorm, but I just did it.

**Chairperson Hylton:** I'm sure collections would be part of the enforcement. We could probably pursue that. But when folks are not paying their debt or registering their buildings as required, that could indicate the broken windows theory; that there are most likely other issues out there. So, we may want to step up enforcement, surveillance, that kind of thing, to see if they are failing in other areas.

Thank you for doing that. And I want to thank the staff, actually, from Ms. Rivera on up to you, Mr. Schultz, for taking swift action in getting these out in, I think, the earliest time ever. This is great. And I think we did have a talk about this and those that are remaining do have to be looked into, right? We couldn't actually put them here because we still have some research to do, is that right?

**Mr. Schultz:** Yes

**Chairperson Hylton:** And do you think we'll be able to get this quickly? Ms. Rivera's already nodding her head, that we would be able to get this done by the next Board meeting.

**Mr. Schultz:** The goal would be to have those resolved for next meeting, yes. And I thank you for the gratitude. I won't be humble. It wasn't easy. It's not easy at all. Mr. Argov and other members of staff worked very, very hard to make this happen.

**Mr. DeLaney:** I have one more point. And by the way, Ms. Roslund, thank you for raising the question you did. That's certainly pertinent, and some of these buildings, as Mr. Argov pointed out in the case of 533 Greenwich, are just letting the meter run and the fines rack up. So, my final request is, one thing we don't do with the failure-of-owner cases is, we do not treat the IMD tenants in these buildings as parties to the case. So, the tenants in these buildings -- and there may be a significant number, because we've got about thirteen or fourteen buildings here -- are unaware that their building's not registered; the tenants are unaware that their owner's being fined; the tenants are unaware of those circumstances. I discussed this a couple of years ago with the then Executive Director, but it seems to me IMD tenants that we know of in these buildings should be notified of this action.

**Mr. Hylton:** Regarding 533 Greenwich, my understanding is the building's in bankruptcy. It's actually scheduled to be auctioned soon, and part and parcel of their bankruptcy is they haven't been able to keep up payments to the Loft Board process. So, that is a reason why they're behind. I think the Loft Board is a part of, or that there's some awareness of, the proceedings.

**Chairperson Hylton:** Thank you, Mr. Hylton. Mr. Schultz, have you gotten any kind of notice from the Law Department?

**Mr. Schultz:** No. I got one about six months ago, but I don't recall it being that one. But I'll look again.

**Chairperson Hylton:** I sure don't want the action to go with our debts not included in there.

**Mr. Schultz:** Yes, I'll attend to that.

**Chairperson Hylton:** Thank you for that, Mr. Hylton. If you know of anymore, please let us know.

**Mr. DeLaney:** I agree with Mr. Hylton, and I appreciate him bringing that point to the floor. And it's my understanding the building's been kind of marinating in the bankruptcy tub for four or five years. This is not news. I don't think this building is chock full of loft tenants, but whatever their financial problems are, I'm sure owing the Loft Board plus or minus a quarter of a million dollars is one of them. It would be very interesting to know how this building got into such a sad state, given that it's in Tribeca, and one would think there'd be a way to bring it to a healthier state of being. But I'd like to go back to my question regarding notification of the IMD tenants in these buildings.

**Chairperson Hylton:** Are you asking that they be parties to the action or just copied on the notice?

**Mr. DeLaney:** When I raised this a couple of years ago, I was told they're not parties to the case, and I agree. That makes sense. They have nothing to do with it. However, it does have an effect on the nature of their tenancy, so I think they have a right to be informed.

**Mr. Schultz:** I'm not too ashamed to admit that this was my first registration rodeo. So, between now and my second one, we'll work to get an answer to that question.

**Mr. DeLaney:** Well, I guess I'd be a little more impatient and say, if we get a chance to research the request, and three weeks from now, you find out that, hey, there's no reason we can't notify the tenants and send them a copy of the Order....It's a public document, and if our goal is to try to make these buildings work for both the owners and the residents, having the residents know that the owner hasn't registered seems relevant to me.

**Mr. Schultz:** It will be looked into.

**Mr. DeLaney:** Thank you.

**Mr. Hylton:** In terms of 533 Greenwich, it also would appear that rents had not been paid for over twenty years. Past litigation and that probably precipitated the default.

**Chairperson Hylton:** Mr. Schultz, when there's any kind of action in an IMD, and it affects another tenant or another party in the building, Loft Board has to give notice to the affected parties, right? Whether or not they're part of the action?

**Mr. Schultz:** Affected parties are defined in our rules in a few different places, and I'm going to say in a few different ways, and then I'm going to ask my staff to jump in and correct me, as they are so good at doing. So, part of my answer depends on the circumstance, but the short answer is yes. Building occupants are required to be notified of various actions, plans, filings, clocks, things like that.

**Chairperson Hylton:** Right. So, I'm just wondering if this fits into that in terms of notice.

**Mr. Schultz:** I'll take a sharp look at the rules. It might be there; I've never looked at it before. It might not be there, which also might be the answer. If any of my truly brilliant staff know the answer, they can throw it out there. We'll give it a look.

**Chairperson Hylton:** I also want to mention that there are payment plans available to the Loft Board, so folks don't have to build up such a backlog of money owed. So, if an owner is really conscientious about doing right by the city, by the tenants, and so on, they can come into a payment agreement with us. Otherwise, it turns out to be what it is now, where you lose everything. So, do I have any other comments on these cases? (None)

**The vote**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**Chairperson Hylton:** Again, I want to commend the Loft Board staff for getting these out and for raising awareness. I think the Executive Director did send out a notice already to the owners saying that this is coming up, and we're going to enforce quickly, is that right?

**Mr. Schultz:** Yes, there was a letter included in the registration materials that hasn't traditionally been there, spelling out what the rules say about enforcement of the registration.

**Chairperson Hylton:** Right. I thank you and the staff your efforts here. Before commencing the rulemaking section, we'll take a two-minute break.

Returning from break....

**Chairperson Hylton:** We have a quorum, so we're back on the record. And the next item on the Agenda is rulemaking updates. Mr. Schultz will lead the discussion with the help of Ms. Lin and Mr. Clarke.

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**RULEMAKING:**

**Mr. Schultz:** Thank you Chairperson. Picking up where the Board left off in May, we're looking at the exact same document that we passed in May. This is what will be referenced throughout this session. No additional changes have been made to it, but certain sections are noted and highlighted. I didn't want to make any changes to the document we voted on, lest it create confusion over what we've

already agreed and not agreed to. Instead, I've expressed the proposed changes in talking points for review. And those points are the result of feedback from the Law Department. But there is more. What we hope to get through today is less than half, I would say, of the additional comments we need to work through, based on what the Law Department had to say.

**Chairperson Hylton:** I'm sorry to interrupt, but maybe for the public, we can first summarize how we got to where we are right now.

**Mr. Schultz:** Yes, that's fine. My next comment might be to have someone else explain how we got here, because I was about to say I only arrived here in April; so, I can tell you where I started from, which is really just polishing up a few items so that by the tail end of May, the Board had a draft set of rules. Prior to that, everyone else had worked very hard for years getting to that point. I know enough to know that the Board spent many, many years going over the rules to make changes to our rules so that they reflect changes made to the Multiple Dwelling Law. And while doing so, certain items were updated for format and others were reviewed for various substantive updates or changes.

So, a very long path led to May, when a draft version was passed by the Board, which then went to the Law Department for review. The Law Department had been reviewing it throughout the entire process, which is part of rulemaking procedure. The draft also went to City Hall for review, and now we are back, after the Law Department's review of the May draft, and they have more to say. It's relatively small compared to the huge amount of material the Board dealt with for years, but I can't say it's insubstantial. Some of the things we will look at here today are just formatting issues, but I didn't want to take for granted a single change in these rules without making it known to the Board and the public. Now, I'll leave it to anyone else to do a better update.

**Chairperson Hylton:** That's fine, Mr. Schultz. That's just what I wanted. Thank you.

**Mr. Schultz:** Great. So, this list of roughly fourteen items are amongst the simpler of the items the Law Department has commented upon. I'm still working with the Law Department to further clarify some items, so the valuable time spent in these meetings is as efficient as it can be. I would also state that, as one of the newer people here, I wasn't party to a lot of conversations. So, if some of this is familiar territory to any of you, please speak up. I did go through records as best I could, but if any of these items

are considered already resolved, at least as far as the Law Department is concerned, or if there's still more to be said, I'm all ears.

Before I start going through the notes page-by-page, are there any questions or broad comments any of the Board members want to make on rulemaking? Okay. And Ms. Lin and Mr. Clarke, you have carte blanche to speak up, to correct me, to step on me, and make sure whatever I'm saying is right, because you certainly have more experience than I do on the history of this.

Starting with the draft that was passed in May, on page 15, and then throughout, about nine or ten more times, the words "affected party" were not capitalized. So, the Law Department recommendation is to change it throughout for consistency. It is a term of art that is capitalized in some places and not others. I'll pause for any thoughts or comments on that, but as a lawyer, I don't have much to say about it other than the material should be consistent.

The next one, on page 17, is a little meatier. It concerns section (d) at the bottom of the page, and the title as stated, the drafting of it, I think, was largely built from what existed already. The language stated says, "A Waiver of Service Due to Financial Hardship." This is about applicants who might have substantial hardship, so the service requirements may be more than they can handle financially. So, this provides an opportunity for the Loft Board to review that circumstance and relieve them of having to do the service.

The reason this was flagged by Law Department is because they believe, and I agree, that saying it's being waived isn't really an appropriate description, because what's really happening is we're doing it for them. So, the language suggested is, "*Service by Loft Board Staff, Based on Financial Hardship.*" And then I edited the language below to reflect that. Does anyone have any thoughts or comments on that description of what's happening?

**Chairperson Hylton:** Is it a waiver of fees, due to financial hardship?

**Mr. Schultz:** There are no fees.

**Chairperson Hylton:** So, this Waiver of Service is the proposed....?

**Mr. Schultz:** No. The proposed is in the notes I shared. What you see in yellow is unchanged from what we had. To reduce the chance of confusion, I wanted to explain it in talking points, and then share with you a written version that can actually be voted on. That is in the material in the bullet list in my email, if you want to look at it. The title I think more accurately describes what's happening here is, *“Service by Loft Board Staff Based on Financial Hardship.”* So, the service isn’t being waived; it’s just being executed by us instead. And to be clear, this isn't really a change in the way things are done. This is, I think, just a better description of what's actually happening, as opposed to service being waived. The service still has to happen and is still happening.

**Mr. DeLaney:** I think it's a very logical change. And I think we drafted it poorly back in, probably, 2000 or 2001. Prior to that time, the Loft Board had done the service. So, the responsibility for service was transferred from the Loft Board to the applicant. And the concern arose that, what if the applicant can’t afford all the postage and copies. To my knowledge, I don't think this has ever been invoked. But certainly, describing it as a service by Loft Board staff, rather than a waiver, makes all the sense in the world.

**Mr. Schultz:** Thank you. That kind of history is very helpful. So, following that, the line underneath in (1) similarly changes the language. Whereas the current version says, “The Loft Board staff may waive the requirement,” now the recommendation is to say, *“The Loft Board staff may serve all Affected Parties if the applicant proves that the applicant does not have sufficient funds to complete service.”* So, it's a change that’s consistent with the title I’m proposing.

Are there any comments on that? So now, what I will do is present a version that incorporates this change and any others we decide upon today. And you will know where to find them, and you will know what they are from the context of this conversation. And then, I believe I’ll be able to put the suggested language right on top of this version in a PDF. Are there any other questions about what's on page 17, the service by Loft Board for financial hardship?

Okay. There is another item on page 17, and it's in the next section, (d)(2):

“To request a waiver, the applicant must submit a hard copy of the Application containing an original signature, an electronic copy of the Application, and a written request asking the Loft Board staff....”

The way this reads, the electronic copy sounds like it's a requirement of the submission, and Law Department has said, unequivocally, that requiring an electronic submission does not comply with the state law. And so, as there's a desire by many to do things electronically because it's easier, I don't think there would be an objection to making it an "or" type of statement. And then there are some other parts in this section, but I'll stay with this piece for now.

Does anyone have thoughts on the difference between requiring an electronic submission and allowing electronic submission? I think allowing it, as opposed to requiring it, is a little more egalitarian. You'd like to think everyone has technology, but if they don't, I don't think you'd want to dismiss their application over it.

**Ms. Hayashi:** It's definitely good to encourage less use of paper, from an environmental standpoint. But, yes, I understand technology issues.

**Mr. Schultz:** So, as we were looking at this, we actually started dissecting it, and the other changes you see to the language aren't a reflection of Law Department's comments, but of our staff looking at it and feeling that the way it's written is a little muddled. I'll read it aloud, but you might need to look at it a few times. It's been reworded to say:

*"To request service by the Loft Board, the applicant must submit a written request, asking the Loft Board staff to serve each Affected Party attached to a hard copy of the Application containing an original signature or electronic copy of the Application."*

It takes more words than it should, but the way the words were organized, it wasn't clear where the signature is supposed to go. And so even if it's a little more dense, it makes clear where the signature goes and which document is which. I can try to explain it better, but I'll need to take a few minutes.

Our goal is to have it say the same thing in a way that is not ambiguous, and I think we achieved that. This has not been run by the Law Department yet; this is something that the Board's staff identified. Ms. Lin, Mr. Clarke, do you have any other helpful comments on that piece? Okay, thanks, everyone.

**Mr. DeLaney:** This is in section two, at the bottom of page 17? We would be changing the first sentence?



**Mr. Schultz:** And the second sentence.

**Mr. DeLaney:** So, this would be the total of section (2)?

**Mr. Schultz:** No, the first sentence. The second sentence remains. The second and third sentences remain.

**Mr. DeLaney:** Right. Okay.

**Mr. Schultz:** Thank you for that. I wasn't clear. Replacement of the whole of (d)(1) and the first sentence of (d)(2). And again, at this point, I think I might regret my strategy. I hesitated to put edits into the edits, lest it be confusing. And later, it becomes more important because it does get confusing.

So, what I will do after this meeting is incorporate into a new version of the draft rules whatever changes we discuss and agree upon today. On to page 18, which completes (d)(2), but there are no changes in that highlighted portion.

**Mr. DeLaney:** I'm sorry to interrupt, but before we go on, are there other places beyond this particular instance of what we were then calling a waiver, where we require the filing of both a hard copy and electronic copy?

**Mr. Schultz:** Yes, I think it comes up in two other places.

**Mr. DeLaney:** And we'll be getting to those?

**Mr. Schultz:** Yes

**Mr. DeLaney:** Okay

**Mr. Schultz:** On page 55 and on page 51, a similar fix. In fact, I think a simpler discussion, because we didn't revise the language separately to try to make it more clear. So yes, it comes up two more times. On page 18 of our draft, in the same section (d), but now we're in (4)....

**Mr. Clarke:** I'm sorry. Before we move on, I was looking at that section again and considering why we reworded it. It was because it made the reader think that they had to submit an electronic copy. And the

reason why we wanted the change was to make it clear that they don't have to submit an electronic copy.

**Mr. Schultz:** Yes, thank you. Then later on page 18, in the same section, there's a section (4) that states, "The Loft Board staff will notify the applicant of its decision...." And then in the last sentence, it discusses, "If the Loft Board staff denies the request...." -- a request for service by financial hardship, that is -- it says the Loft Board staff "...will return the hard copy of the Application to the applicant so that the applicant can serve each Affected Party."

I think I need to consult with Law Department a little more on this because they suggested that this be stricken, and I disagree. I haven't yet spoken with them about it, but I did keep it on this list to note for the Board in case anyone had thoughts as to why the rule is better without it; or if I'm misunderstanding the suggestion; or if there's some history on this language that anyone remembers. I think, and again, Ms. Lin, you can help me decode this, but it seems to me this is there so that once we say we won't do it, it's clear that you must do it. And I think striking it eliminates that clarity. But perhaps Law Department wants to avoid unnecessary language. I'm not sure, so I feel inclined to go back and ask them why they recommend deleting it. If anyone has any thoughts, I invite you to share them, please.

All right. If it turns out Law Department says, fine, keep it, you won't hear another word about it. But if they articulate something I need to share, I will.

**Mr. Schultz:** On page 24 and page 27, there are instances of affected party that need to be capitalized. On page 29, a formatting concern. The words Code Compliance Deadline are bolded, and it's not consistent with the rest. Taking nothing for granted, if anyone remembers why it was bolded or thought it was important to be bolded, I invite that conversation. If not, Law Department recommends it be unbolded.

**Chairperson Hylton** commented that defined terms are usually bolded.

**Mr. Schultz:** Yes, if you look above, there are many items that are bolded and in quotes, consistent with a series of definitions. And then this one is consistent with kind of a new section. It's not enumerated in any way, and I think we're in section (2) now, where we're not starting from scratch; we're working with

what's already there. I think to keep the feedback minimal, we say bolding is defined words; but this is not defined. Italics would be called for with a section heading. Which, if you look below, is what you see.

**Chairperson Hylton:** Okay. So be it then.

**Mr. DeLaney:** I'm a little confused now. At the top of page 27 and the very bottom of page 28, we had an entire section called definitions, and what we were proposing to do, originally, was remove all the definitions and then go to Code Compliance Deadlines, which is not a definition. Right?

**Mr. Schultz:** Yes. You've hit on something I did not put on today's agenda because it's big, and I need more clarity. But I'm actually glad you brought it up because I'm happy to talk about it briefly. Throughout the rules, there are sections where words are defined, and the Law Department is of the opinion that those definitions don't belong anywhere but in the definition section at the top. And my understanding is that the Board preferred definitions be placed in places where they are accessible and useful, whether new or repeated. That is the version we have passed. And I think Law Department still wants to talk about that. So, since you brought it up, I'll share that, but I did not put it on the list to discuss today.

**Mr. DeLaney:** My recollection is we've been down this road and discussed this many times in the past few years. And we kind of opted to put everything that's always the same in definitions. But there are still a few places where, in a particular section of the rules, a word means something different than that which it generally means.

**Mr. Schultz:** Okay, that's very helpful. I'm glad you raised it, because I think that sentiment might just resolve many of the comments that Law Department had. Because they did ask, for example, why we are repeating this definition. So, if we don't need or want to repeat a definition, which I think is the rulemaking way, I think we benefit. Now, if a definition belongs in a place, or differs for specific reasons, perhaps, then yes, I think a repetition is called for. And those need to be dissected case by case.

**Ms. Roslund:** Well, it does say, "When used in this section, the following definitions apply, unless context clearly dictates otherwise." So, does that mean we have to go back and compare these eight definitions against the definition of the same word in the general definitions section?

**Mr. Schultz:** What Mr. DeLaney said is accurate here. Those definitions have been removed by the brackets in this space. So, they're not there. They won't be there in the final edit. I suppose that I referenced them, and I regret that. I was referencing them as a point of comparison, even though when it's passed, they won't be there anymore. If that makes sense.

So, the way definitions look at the beginning, starting on page 5, is what they will look like. And I think that's what they look like here, too. If I'm making sense. They do not have quotations on them. If you go to the definitions section on page 5, quotations have been taken out, but bolding remains. And so yes, I apologize for referencing the quotations because that will not be the way the definitions are up here.

Ms. Roslund, you mentioned that language, "unless otherwise defined," and that does appear on page 5 in the new version. "As used in this title, unless otherwise defined, the terms below have the following meanings." And so that speaks to what Mr. DeLaney mentioned; that it's being moved. It's being moved up, except for places where it might need a special definition.

**Ms. Roslund:** So, to be clear then, this whole section -- "...is amended to read as follows" -- is all part of (a)? We're looking at a comment on page 29, but if you take out the definitions, the paragraph that begins with Code Compliance Deadlines would be right after the paragraph that begins with Code Compliance Timetable.

**Mr. Schultz:** Yes, it would be below the words "and regulations."

**Ms. Roslund:** Which is all part of subdivision (a), of section 2-01, of Chapter 2, of Title 29.

**Mr. Schultz:** Yes. Whether or not it deserves a (b) or something, if that's the question that's being begged, I can look into that. I honestly don't know.

**Ms. Roslund:** That's kind of where I was going with it, yes.

**Mr. Schultz:** Unless anyone has the answer at this moment, I will return with a recommendation as to whether or not to add a (b) before Code Compliance Deadlines in italics. I honestly don't know. It seems fine to do so, but I don't know what I don't know. Are there any other thoughts on what we talked about on page 29? Italicizing and potentially putting a (b) there?

**Chairperson Hylton:** I'm curious as to why the Law Department wouldn't have picked up on that.

**Mr. Schultz:** There's a lot to look at. Thank you for that fruitful discussion. It does beg for maybe a letter there. Moving on, then to page 43, where there are three instances of this. The word "reserved" is supposed to be in capital letters. There are other issues with the word reserved, that we may or may not get to today, but to keep it simple for right now, if and when we're going to use the word reserved, it is not to be in all capital letters. If anyone has a concern, please speak up, but to me, it seems fine. It occurs on page 126 and 144 of the draft. I'm going to move on to page 50, and if anyone wants to speak up, please do.

**Mr. Barowitz** recommended moving the word reserved, caps or no caps, to the center of the page, and Mr. Schultz said he would have clear it with the Law Department.

**Mr. Schultz:** And obviously, if we do it there, we do it elsewhere. On page 50 is another event of the words affected party not being capitalized. So again, with it being a defined term of art, we are inclined to capitalize it throughout. There are three more instances of the same at the top of page 51. In the middle, where you see section (c), is the second place where we seem to be requiring an electronic document; and here, the change was simpler: just changing the "and" to an "or." "...Party must file one hard copy or one electronic copy..." Which would be consistent with what we've already discussed.

**Ms. Roslund:** Is there ever a situation where someone would file both; or would want to file both; or we would want them to file both? Or we wouldn't want them to file both?

**Mr. Schultz:** Probably not. Currently, people who email it to us also send it to us through the mail because they're required to. But they email it, I think, because they know it'll get to us quicker, and hopefully, we'll get to their business quicker, which is true and fine. And I don't think we've lost an email application yet. So, if it only comes via email, we're good with that. And if it only comes in hard copy, we're already handling things that way. So, I'm inclined to say I think either/or is fine. And both are superfluous to our process.

**Mr. DeLaney:** I have two questions on this. Number one, in response to the very valid point that Ms. Hayashi made earlier, is there a way we can express that we would prefer an electronic copy?

**Mr. Schultz:** The short answer is absolutely, but probably not in the rules; probably on the form. I think our form could say, you are encouraged to send email rather than mail, if possible, to save the trees. Our form is ours to create, and as long as it's not a requirement, I don't think that would be a problem.

**Chairperson Hylton:** What's wrong with putting language like, file an electronic copy; or if you are unable to, then you may file a hard copy?

**Mr. Schultz:** Because that language will get misused in some way by lawyers. Someone will weaponize it.

**Chairperson Hylton:** Okay

**Mr. Barowitz:** Then just put the electric copy first, and the hard copy afterwards.

**Mr. Schultz:** One electronic copy or one hard copy. That seems doable.

**Chairperson Hylton:** That's perfect, Mr. Barowitz. I think people remember what they read first, right?

**Mr. DeLaney:** And I said I had two points. The first one we've covered. Thank you, and I agree. The second one is, in the materials you sent for this meeting, Mr. Schultz, you included a draft of the Business Analysis and Risk Assessment, and this kind of touches on that. Are we going to go over that document at some point?

**Mr. Schultz:** Yes, if you'd like, and as time allows. I shared it, even though I'm not sure I had to; but I was happy to. I was going to mention that document, so thanks for bringing it up. It is a requirement of the Electronic Signature Act, the ERSa, and it's something that Law Department has been saying every time, as they're making these comments: Did you finish your BARA? Do you have your BARA? And so, what this is -- the Business Analysis and Risk Assessment -- is something that is required of government agencies when they have decided in rulemaking to accept electronic documents; because, and appropriately so, what the state has said is, if you're going to do that, you need to have a process to do it in an effective way. Mostly looking at signatures. Beyond that, there isn't much of a requirement other than having one. The draft that you have is crafted from examples we saw, some guidance that the state gave, and the realities of the way I've come to understand our unit works. It is not part of rulemaking

per se, so it does not need to be passed by the Board. It does not have to go through CAPA or the Law Department. It's amendable as needed. It's basically a protocol for our unit, for our staff, so we can change it if we need to, based on reality. But I did decide to share it in this context, because if you're interested, I wanted you to know.

**Mr. DeLaney:** I'm glad you did; and having read it, when we have the time in the next few meetings, I would like to review it, because to me, it raises some interesting questions.

**Mr. Schultz:** I'm glad you brought it up because that document was sitting there without much context. But it's an outcrop of the comments made about electronic signatures. Page 51, again, we're going to switch the words electronic and hard copy; change the "and" with "or"; and then we can move on to page 55, which is the same issue. And we can, I think, do the same thing. So, file one electronic copy or one hard copy. There is also several instances of affected parties there.

Page 56 includes another incident of the word affected parties. Page 61 is an issue of rulemaking markups, and what Law Department identified was that hyphens were added without indicating their addition. And so, this is to me evidence of the meticulousness of our lawyers, and I appreciate it. You shouldn't add a hyphen without flagging it appropriately in rulemaking. So, the change would be to underline the deleted word; delete the word nonresidential, no hyphen; and replace it with the word non-residential, hyphen. And the hyphen is consistent with other parts of the rules. That occurs three other times.

If you're rolling your eyes, it's understandable. But again, I didn't want to leave out any change, no matter how small.

**Mr. DeLaney:** We had a Loft Board Chair some years ago who used what I guess is a legal term of art and referred to this kind of minute examination as fly-specking.

**Mr. Schultz:** Fly-specking?

**Mr. DeLaney:** Yes, fly-specking.

**Mr. Barowitz:** Well, here's some fly-specking. I have no idea what non-residential occupants means. Non-residing occupants maybe?

**Mr. DeLaney:** No, I think this goes back to commercial manufacturing.

**Mr. Barowitz:** If you're not a resident, how could you be an occupant?

**Mr. DeLaney:** I think it's commercial or manufacturing tenants.

**Mr. Barowitz:** Okay. So, it refers to people that are working in the building but don't live there.

**Mr. Schultz:** Yes, it's really just meant to refer to everyone who's not a residential occupant. And residential occupants are the people who live there. So yes, the people who work there. And I think it's meant to be as broad as it can be, rather than specifying manufacturing and commercial, lest there's some other word that's being missed. I think it's just meant to mean everyone who's not those people who live there. And this is not a new word that we're adding or changing.

**Mr. Barowitz:** All right, I agree.

**Mr. DeLaney:** This was tied into the legalization plan. The concern was, if something's going to happen to the elevator, or the heat ducts are going to be moved around, notice should be given to everybody who uses the building, not just the residential occupants.

**Chairperson Hylton:** If you go to page 62, you'll see the reason why. Occupants of non-residential units are non-residential occupants.

**Mr. Schultz:** Page 62, now that I'm looking at it, is a little bit different.

**Mr. Barowitz:** To replace Occupants with units would be much better, clearer.

**Mr. Schultz:** That's a conversation we're set to have at the very end, and I put it at the end on purpose, because the Law Department has some concerns about the word units, in that context. So put a pin in that suggestion because it invokes the Law Department comments in another section. Maybe I'm misapprehending what you're saying, but suffice it to say, when you're talking about people, and you



start talking about units, the Law Department doesn't care for that. But maybe it's not as big a problem here. Actually, on page 62, it does refer to non-residential units.

Page 83 has some yellow highlighting not done by me. This is just to flag that when we finally pass the rule, we'll need to include the effective date of the rule, because that's the operative date for that section. So, there's nothing to discuss there until we pass the rule. No, wait. Why is that highlighted? I don't think that's what I highlighted. I'm going to get back to you on that one, folks. I apologize. I do not remember highlighting that.

**Mr. Clarke:** I think you were correct. Once this is all passed, you're going to insert a specific date there. You didn't highlight that.

**Mr. Schultz:** But it's bracketed, which means it's going away, which does confuse me. So, I need to understand that better.

**Chairperson Hylton:** It means that you will not say, "effective date of the amended rule." You will be putting in a specific date.

**Mr. Schultz:** But then I don't understand why September 11, 2013, is there without a comma after it.

**Mr. DeLaney:** Because that's the last time we amended the harassment rule. And unlike the various timetables and things that apply to different sections of coverage, like to 281, 281.4, 281.5, for the harassment rule, all cases filed after whatever that date will be, these rules will apply to all future cases.

**Mr. Schultz:** I understand now. I'm not sure it needs to be highlighted then, because we're not going to be adding a date in there. This is just going to be stricken, because it will no longer be the effective date of this rule.

**Chairperson Hylton:** That's right. So, what should be highlighted there is September 11, 2013.

**Mr. Schultz:** I don't know if we want to change that date. And when I say, I don't know, I literally don't know.

**Chairperson Hylton:** We're just initially saying that you don't need to have the words, "the effective date of this amended rule" in referencing September 11, 2013. That's why they're taking that phrase out.

**Mr. Schultz:** Okay

**Chairperson Hylton:** That sounds like the Law Department to me. But maybe it's just not necessary.

**Mr. Schultz:** Yes, that's my takeaway. I'll flag it and take a look at it with staff to make sure we're doing that right. And if there's nothing to highlight, we'll un-highlight it. If there's something to talk about, we'll make a talking point on it.

**Mr. DeLaney:** Just to, again, provide a little historical context. It's my impression that in these revisions, there is no substantive change to the harassment rule, as it currently exists. That we've got a lot of capitalization for terms and all that good stuff for form, but many years ago, when the harassment application was first adopted -- in 85, or 86 -- it had a bunch of different requirements that we did make substantive changes to. So, I think the purpose of that September 11, 2013 date that's currently in the rules was to make clear that the newer rule that came into effect on September 11<sup>th</sup>, 2013, would be the version by which all cases filed after that would be decided, but that there were probably some that were in the pipeline.

**Mr. Schultz:** And if I'm following, there's no desire to change that date. As of today, and tomorrow, and next year, it can remain September 11, 2013.

**Mr. DeLaney:** Well, that depends whether we think there are any substantive changes here that would make a case that's filed today different than the case that's filed whenever we've finally passed it.

**Mr. Schultz:** Right. And again, I'm working only like a detective here, and from what I see, the markings as indicated suggest that that's what this Board must have wanted at the time. And it's supported by a glance at the harassment section. It does look to have only fly-specking type of changes. So, I don't want to take it for granted here, especially since it was yellow-highlighted. And again, I'm not sure how, but it looks to me like there was not an intent to change the date to become the effective date, in this case. If any members or staff remember anything differently, let me know. Otherwise, I'm probably going to rely

on the marking as it shows. But also check it with Law Department to see if there's a reason why that was flagged.

Page 84 has another reference to the word non-residential. Again, the hyphen got added without the proper markings. That's something we can fix.

Page 85 is a weird one. So, what you see in front of you in yellow indicates neither what we should do, nor does it indicate what's actually in the rules right now. So oddly, the physical text of the rules includes brackets around the word "Reserved." And I don't want to belabor this too much because your time is valuable. But at the end of the day, the Law Department is going to work to let us know how to remove brackets, presumably by using brackets. So, I anticipate indication of a change on that. Because what you see in front of you represents a change made without indicating the change. It's not clear how to make the change, but it's all about brackets.

The word Reserved is the word that has the brackets around it in the current, active version, which is essentially, clearly, a mistake of prior drafters. That bracket shouldn't be here. So, it does beg the question -- and again, I don't know enough to know why there would be strong opinions on this -- whether or not we want the word Reserved in this space or not. If anyone recalls conversation as to why or why not the word Reserved is here, let me know.

**Chairperson Hylton:** Was something there before?

**Mr. Schultz:** The current rules show the word Reserved with brackets around it.

**Chairperson Hylton:** To be taken out.

**Mr. Schultz:** Which indicates to me that when the final rule got passed, someone forgot to delete bracket, Reserved, close bracket.

**Ms. Roslund:** The way this is written, with the original brackets around it now, it's saying (i) would be that first paragraph; and then (ii) was Reserved; and (iii) was, "...the Loft Board finds...". And now, "...the Loft Board finds..." is going to be (ii).

**Mr. Schultz:** So, if I'm looking at this correctly, there's no opening bracket.

**Ms. Roslund:** Right.

**Mr. Schultz:** And so, I think maybe I could have asked the question better. Do we want the word Reserved there? Why or why not? That will tell us where to put the first bracket.

**Chairperson Hylton:** It's kind of clear that that Reserved should be taken out. If you look, I think there's just a missing open bracket. It should have been over (ii), because the new text should read (ii) because that's underlined. Did I just confuse you? I think it's taken out because there's a closed bracket without an open bracket. You see that?

**Mr. Schultz:** Yes.

**Chairperson Hylton:** The missing open bracket needs to be before Reserved. And starting off with (ii).

**Mr. DeLaney:** It just so happens I've got a set of draft rules from about 2019. And in that instance, we were proposing to remove the (ii); we had a bracket on both sides; Reserved was crossed out; and that's because the Law Department had provided a comment saying, "Any reason we can't remember these provisions?" And Helaine's response was, and I'm paraphrasing, can we reserve this section, so we don't have to cross-check references? The changes are complicated enough as it is without making them more so in creating more chance of error. Law: "You can leave the sub-paragraph unused, though it is my understanding the publisher adds Reserved. The agency would just leave it out or just include (ii). But I will refer to Steve Golden on the forms issue. Given the fact that you only have to change one designation, I'm not sure why you wouldn't want to do this in this instance." So, there's a whole history.

**Mr. Schultz:** Thank you for that. That was helpful because I do remember seeing similar notes in other places. The value of keeping the word Reserved there is to keep the integrity of the ordering for referencing, because people have been referencing these things for years.

**Mr. DeLaney:** And I would just take a moment to add for those who are the newer members, who think that deciding cases is fun and interesting. We've spent hours doing exactly what we're doing now over the past two years. This has gone on so long and it's so, dare I say, tedious...

**Mr. Schultz:** So, I think for the reasons Mr. DeLaney mentioned, keeping the word Reserved there makes sense. I think it's easy enough to mark it that way, and I don't think Law Department will care.

**Chairperson Hylton:** So, if we do that, (ii) isn't underlined; it should be (iii).

**Mr. Schultz:** Yes

**Chairperson Hylton:** And do you need to tab over the (ii), in line with (i)?

**Mr. Schultz:** Yes. So, (ii) would be the word Reserved. And then (iii) would be the section that starts with the words, "If the Loft Board finds..."

**Chairperson Hylton:** Okay.

**Mr. Schultz:** But I'm not sure that answers the question. We want the word Reserved there, and the Law Department will help us make it happen because there is a weird bracket in the existing rules. But that can be worked around it. So essentially, we're going to be deleting brackets with brackets. I think that's what's going to happen. We're not done yet, but I'll say thank you now to everyone for hanging in with this.

**Chairperson Hylton** noted that it's close to the time to end the meeting.

**Mr. Schultz:** Sorry, I wasn't watching the clock. So, we can stop here because we're not going to finish. And there'll be more to talk about next time. What's more important is to announce that the Chairperson advised me that we'd like to try to do a special rulemaking meeting in late October or early November. I don't need to schedule that with you now but stand by for that outreach.

**Mr. Barowitz:** Before you end the meeting, I'd just like to ask Mr. DeLaney if he could clarify Gail Brewer's position is on Soho-NoHo. I didn't quite follow that.

**Mr. DeLaney:** She basically said it needs a lot of work, and rather than make a formal declaration during her review period, she kind of kept silent and then, herself, testified in front of City Planning, stating that she was fundamentally opposed to it in its current language.

**Mr. Barowitz:** All right. I did send a rather long note to her, which she hasn't responded to. I'm glad that you clarified that. Remember, it's not Soho-NoHo anymore. It's Soho-NoHo-Chinatown.

**Mr. DeLaney:** Chinatown east, right?

**Mr. Barowitz:** The area on Broadway that goes all the way down to Chinatown for one or two blocks west is the Chinatown area in the SoHo-NoHo-Chinatown rezoning area.

**Chairperson Hylton:** Thank you. And thank you, ladies and gentlemen, for a rather productive Board meeting. And again, I want to thank the staff, led by Mr. Schultz, for all this. I really appreciate all our hard work. And I didn't say this initially: Welcome back from the summer. It was quite a summer, but I really am happy that at least we could accommodate more people via this teleconference. So, while it's the exception to the rule, it does allow a lot more participation; more of the public can view these meetings. And I appreciate the hard work by everyone who makes this possible.

**Mr. DeLaney:** Mr. Chairman, before we adjourn for the day, I would like to make one request, which is we put on an agenda in the not-too-distant future a discussion of what the Board's policy should be with regard to unsolicited communications regarding cases before the Board.

**Chairperson Hylton:** Mr. Schultz?

**Mr. Schultz:** Yes

**Chairperson Hylton:** All right. So be it. Thank you, Mr. DeLaney.

This will conclude our September 23, 2021, Loft Board meeting. Our next public meeting will be held on October 21, 2021, at 2pm. The Governor's suspension of the in-person meetings requirement of the Open Meetings Law is in effect until January 15, 2022. So, at this time, we anticipate that the next meeting will be held virtually, as it is now. Information will be updated on the Loft Board's website and also an email update will be sent to the Loft Board announcement Listserv. Loft Board members, please sign and email in your attendance sheet. Or if you wish, you may present it in paper by dropping it off or mailing it in. Thank you very much and have a great rest of the month.