

Rent Guidelines Board Submission Order 32

May 2000

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Summary

This year, the Rent Guidelines Board is confronted with extraordinary circumstances which call for an extraordinary response.

During the past three years, the Board witnessed a benign inflationary environment and responded accordingly with minimal guidelines of 2% and 4% for one- and two-year renewal leases. At the same time, the Board established certain important principles: it provided that the two year lease

"The underprediction of maintenance and administrative costs [by the Price Index] is consistent with the owners' claims of an increased regulatory burden."

Anthony J. Blackman
 Consultant to the RGB

renewal be double that of the one year renewal; it adjusted the level of the low rent adjustment to keep pace with the increase in minimal operating costs for rental properties; it endorsed the concept of a "minimum" rent needed to sustain rental apartments; and it established the notion of a "fair market rent" upon the vacancy of a decontrolled apartment.

The Board now confronts an unusually high run-up in the price index of operating costs, largely driven by a dramatic increase in fuel oil prices. Even more significantly, the "core" price index also shows a significant increase driven not only by increased real estate taxes and water and sewer charges, but also by broader inflationary pressures reflected in increases in contractor services and administrative costs.

But even the dramatic increases in the regular and core price indexes fail to reflect the actual cost increases faced by property owners. This year, the Board heard testimony from its own consultant that the price index (since it has not been updated in 17 years) has underestimated the increased maintenance and administrative costs resulting from an aging housing stock and the imposition of regulatory burdens and governmental requirements. This finding totally vindicates the position presented to the Board by the Rent Stabilization Association in past years.

The consultant's findings were based on data which did not even take into account the imposition of recent legislative requirements which are projected to have an extraordinary impact on increasing owners' operating and maintenance costs. In the past year alone, the City Council enacted lead paint abatement regulations, broadened façade inspection requirements and imposed new fire safety requirements which represent totally new cost categories not reflected in the price index of operating costs, and which will continue to drive maintenance costs ever higher.

In short, even absent the dramatic increase in fuel prices, a high level of rent increase is needed to compensate owners for an underlying increase in inflationary pressures coupled with the large increase in operating costs required by government mandate and the aging of the housing stock.

Operating Costs Are On An Inflationary Trend

Aside from the dramatic increase in fuel costs, the key facts emerging from this year's Price Index of Operating Costs are the less dramatic but broadbased increase in the "core" PIOC and the projection for the next PIOC indicating that core inflationary trends will remain robust.

Renewal Guidelines Must Reflect Increased Fuel Costs

Last year, heating oil costs rose 55%. This increase in costs is not a one-time spike likely to evaporate. In fact, the RGB staff projects that fuel costs will increase by another 7% next year, above the already increased base.

In other words, the increases in fuel costs this year must be dealt with as all other increases and decreases in the components of the Price Index have traditionally been handled – they must be viewed as a component of the overall increase in the Price Index.

A suggestion has been made that the increase in fuel prices could perhaps be handled by the imposition of a surcharge. However, this would be a substantial deviation from the RGB's traditional practice with extremely adverse potential consequences. Because of the serious ramifications such a decision would entail, the arguments against a fuel surcharge are presented in an appendix to this submission ("Appendix," pps. 21-24).

Costs Other Than Fuel Have Increased Substantially

Not only have fuel costs increased dramatically, but non-fuel related costs as represented by the "core" PIOC have also increased. The core PIOC, which excludes fuel and fuel-related costs, this year stands at 3.8%, a significant increase from 2.5% last year. This increase results from increased costs for contractor services such as painting and plumbing and from administrative costs including fees for accountants and attorneys.

The increase in the core PIOC appears to be part of a pattern of inflationary pressures demonstrated by a rise in the Consumer Price Index to

a level of 3.4% from March, 1999, to March, 2000, following a CPI rise of only 1.4% in the comparable period during the prior year. The RGB staff, seeing no abatement in these inflationary pressures, projects the core PIOC will rise an additional 3.4% next year.

Moreover, there are other cost increases on the horizon which are not adequately reflected in the current PIOC or the future projections. For example, the recent union labor settlement provided for a first year increase of 3.3%, not the 2.7% projected in the staff report. Additionally, we understand that the insurance industry has already begun one of its cyclical increases in rates, which appear to be substantial but are not yet reflected in the current or projected price indices.

Expert Witness Testifies That Price Index Underestimates Costs

This year, the RGB heard testimony from an expert witness regarding the desirability of updating the PIOC which has not been revised in the last seventeen years. This consultant to the RGB strongly suggested that the Price Index should be updated, in no small part because it underestimated the increase in certain cost components over time. Specifically, the consultant found that maintenance and administrative costs had been substantially underestimated by the Price Index.

This finding is not surprising because the PIOC by its nature measures the increased cost of a *constant* quantity and quality of goods and services. However, as buildings age, they require an *increased* quantity of goods and services to be maintained in good condition. This increase is not captured by the Price Index.

The consultant's report vindicates the position long maintained by RSA and other owner representatives: because it has not been updated for seventeen years, the Price Index has failed to capture increased maintenance and administrative costs over which owners have no control. Increases in maintenance costs are driven primarily by the increasing infrastructure needs of an old and aging housing stock. Administrative and maintenance costs are driven upward by mandates and requirements imposed by legislative and executive bodies. Highlighted herein are some of the cost items imposed on owners over the years but not accounted for in the Price Index.

Items Not Included In The Price Index:

- ♦ Local Law 10 Facade Inspection costs
- ◆ Code Enforcement Re-inspection fees
- DOH lead paint abatement costs
- ♦ DEP recycling regulation costs
- HPD annual building registration fees
- NYS DEC oil tank registration fees
- DHCR annual registration fee
- Local Law 11 of 1998

In addition to these cost items, in the last year alone, the City Council has enacted additional lead paint abatement requirements, imposed fire safety requirements and broadened the scope of building façade inspection and repair laws. While these requirements serve a commendable public service and owners are obligated by law to implement them in the interests of public safety, they also impose significant costs on owners, costs not captured in the Price Index.

The RGB consultant concluded that while some components were underestimated, the Price Index as a whole appeared to be on target. We would argue that the Price Index is underestimated. We explain how and why in the following section.

Income and Expense Data Is Off Target

The Rent Guidelines Board is presented with a great deal of data and information each year. Unfortunately, it is often incomplete, misleading or subject to a wide range of interpretation. This is particularly true of the income and expense data analyzed by the RGB staff, data derived from filings which some, but not all, owners are required to produce for the Department of Finance.

Over the years, RSA has presented a number of objections to the nature of the income and expense data as well as its best use and interpretation. In general, we have argued that the income and expense database is itself biased toward lower operating expenses and higher income because it excludes a significant portion of the stabilized stock, *e.g.*, smaller buildings which typically have higher operating costs and lower rents. We have also taken issue with the interpretation of the data, points which are still valid and are reiterated below.

However, it is noteworthy that this year's testimony by RGB's consultant lends increased credence to our contention in the first instance, that the income and expense database is non-representative. What remains at issue is the degree to which this data is non-representative and what to do about it.

Income and Expense Data Is Not Representative

The Board's consultant acknowledges that the income and expense database is non-representative in two ways: it excludes buildings with 10 or fewer units and under-represents buildings in distressed areas of the City. While the RGB staff attempts to adjust the data to make it more representative, RGB does not adjust for those smaller buildings which are not required to file reports. Also, RGB's geographic adjustments may actually further distort the data.

RGB's consultant reported that just 10% of the universe of stabilized buildings (representing 10% of aggregate operating cost) is excluded from the universe of income and expense filers. However, this estimate seems low and, with all due respect, this consultant was commissioned to specifically examine the accuracy of the Price Index, not of the income and expense filings.

It should be noted that the income and expense filers represent just 569,000 apartments out of a total of approximately

Smaller Buildings Have Higher Operating Ratios 61% 100+ Number of Apartments 69% 20 to 99 79% 11 to 19 6 to 10 all (11+) 67% all (6+) 40% 60% 80% 100% **Operating Ratios**

Figure 1 Source: RGB 2000 Income & Expense Study - Appendix 3

one million stabilized apartments, in other words, just over half of all rent stabilized apartments. Moreover, the income and expense filers represent just over 12,000 buildings, or barely more than one quarter of the 42,000 buildings registered with DHCR. While this is a large sample, the admitted nonrepresentation may also be very large. In fact, an analysis of the RSA database indicates that approximately 40% of the to-

tal number of stabilized apartments are in buildings containing from 6 to 10 apartments.

RGB's consultant suggests that "statistical analysis of the relationship between building size and expenditure patterns would support a simple adjustment to remove what relatively little bias might be introduced by the unavailability of data on the smallest stabilized buildings" (Anthony J. Blackburn, What To Do With The Price Index, page 11; March 28, 2000).

Figure 1 indicates the significant effect that building size has on economic factors in terms of operating ratios. We strongly urge the RGB to carry out the building size adjustment to the income and expense data in order to generate a more realistic picture of the economics of the stabilized universe.

We also urge the RGB to implement another suggestion of its consultant with regard to geographic representation. Currently, the staff only adjusts the data to ensure the correct proportion of units for each borough. For example, if the sample for Brooklyn contains only 30,000 stabilized units, but it is known that Brooklyn has 300,000 units, then the weight of those 30,000 units is increased ten-fold.

However, we know that distressed areas of Brooklyn are underrepresented in this 30,000-unit sample; so, by over-weighting the sample, the economic situation in Brooklyn looks rosier than it should, as does the whole rent stabilized housing market.

We strongly urge the Board to implement a further suggestion of its consultant by disaggregating the income and expense data and weighting it on the basis of the 55 sub-borough areas used in the Housing and Vacancy Survey. This necessary change will enable the Board to view a more accurate picture of the prevalence of distressed stabilized properties in the City, and the degree to which these distressed properties should influence our overall view of the economic condition of housing.

These necessary changes in the analysis of the income and expense data are independent of any plans to update the PIOC. They can and should be implemented independently for next year's analysis of the income and expense data.

Income and Expense Data Overstates Health of the Housing Market

Aside from its lack of accurate representation, the other major drawback in the use of the income and expense database is the reliance on data collected over only one decade to gauge the relative strength or condition of the housing market. For instance, viewed in such an abbreviated time frame, it would appear that the industry is in its best condition since 1989 in terms of net operating income.

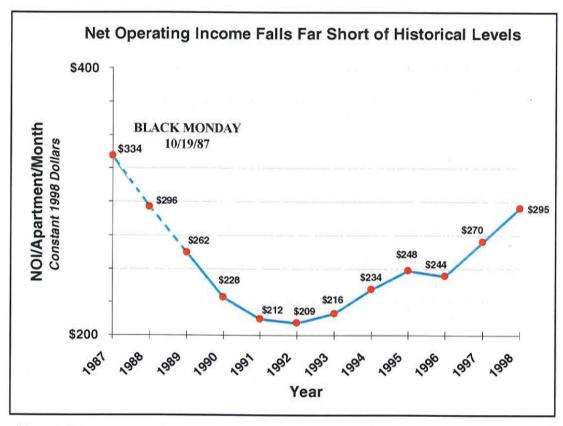


Figure 2
Source: RGB 2000 Income and Expense Study
(projected)

Missing from this limited range of data is the necessary sense of relativity that would result from reliance on a longer period of time. The current time frame begins in 1989, less than two years after the 1987 stock market collapse that severely reduced housing values, rents and demand—an almost immediate collapse from

which the housing market would not begin to recover for years. In other words, the 1989 base year for the income and expense data was, as acknowledged by the RGB staff report at that time, a dismal one for the stabilized housing market.

Economic conditions continued to deteriorate after 1989, before slowly showing improvement in the mid-90's. In the broader historical context, to say that the housing market is now in its best position is less than accurate. In fact, when viewed in its proper perspective, it is extremely doubtful that the housing market has ever regained the profitability it enjoyed when stabilization was first instituted.

There are other flaws in the RGB's presentation of income and expense data which should be noted since they cast a rosier light on the health of the housing market than is appropriate. The first of these items involves the consistent use of income to operating cost ratios which are higher than the more appropriate rent to operating cost ratios. Less than 15% of stabilized buildings derive income from sources other than rent, so this measure is really not a true reflection of the typical rent stabilized building. The lower rent to operating cost ratio should really be the standard by which we measure the absolute health of the regulated market.

The second dissimulation occurs with regard to "adjustment" of operating costs submitted by owners to reflect an audit which was conducted by the Department of Finance in 1992. Based on those audit results, operating costs have consistently been reduced by 8% across the board, even though it is clear that the majority of owners actually expended the disallowed costs but misallocated those costs in the course of a filing procedure which was totally new at the time. It is likely that a current audit would have markedly different results, yet the result of the "adjustment" is that net operating margins appear higher and operating ratios appear lower than they really are.

A third problem relates to the presentation of income and expense data as aggregate averages rather than building averages. The practice of the RGB has been to present averages which encompass and gloss over the vast differences which we know exist in the stabilized stock and are most evident as differences in building size and location.

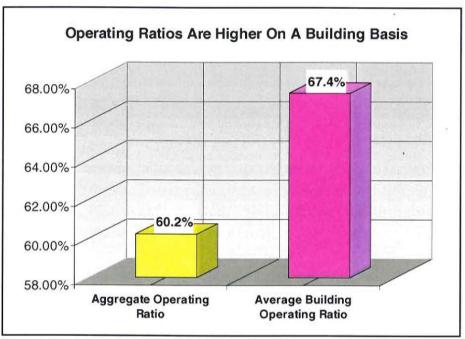


Figure 3Source: Department of Finance 1998 Real Property Income & Expense Statements

This year, the Board engaged in a discussion on this matter, in the context of the Price Index, with the Board's consultant, who conceeded that there is a significant difference in results when data is viewed on a building basis rather than an aggregate basis, but maintained that the aggregate data is the appropriate methodology for the construction of the Price Index. This may be correct, but it should not prevent the Board from examining the data in other ways which shed greater light on the underlying economic reality of the housing market than the singular indication conveyed by the use of aggregate, rather than building average data in both the Price Index and the income and expense analysis.

Tenants' Economic Position Continues To Improve

The Board has often taken the position that its role is to balance the interests of tenants and owners, even though such a legislative mandate is difficult to read into the law. Nevertheless, this year's review of the economic position of tenants reveals that their financial security is at its highest level in more than a decade, and they need no additional protections from the level of rent increase required by high fuel prices and escalating inflation measured in the 2000 Price Index of Operating Costs.

The RGB's 2000 *Income and Affordability Study* includes the following highlights:

- housing affordability improved for stabilized renters with the median contract rent to income ratio dropping from 27.6% in 1996, to 27.2% in 1999, well within the Federal affordability standards;
- the unemployment rate dropped further in 1999, to 6.7%, from 8% in the prior year, achieving the lowest rate in more than a decade;
- the City added another 93,000 jobs in 1999, a 2.6% increase, after adding 113,000 jobs in 1998;
- wages adjusted for inflation increased 4.4% in 1998 after a 3.5% increase in the prior year;
- a continued reduction in the number of Housing Court actions filed against tenants, indicating that tenants are well able to pay their current rents;
- an increase in inflation adjusted stabilized rents of just 1.9% from 1996 to 1999, from \$636 to \$650.

In light of vastly improved conditions for the City's renters, there is no reason why the required level of rent adjustment this year should be tempered by considerations of the affordability of those increases. Clearly, tenants have seen several years in which increases in income outstripped increases in rent (some anomalous findings for the stabilized sector can be explained by turnover of apartments from higher to lower income households).

Unfortunately, there will always be a sector of the renter population which cannot afford any rent increase whatsoever. This sector must be protected by government subsidies, not by general prohibitions or limitations on rent increases which might threaten owners' abilities to meet operating costs and maintain buildings in adequate condition.

Guideline Recomendations

In view of the complex housing market it contemplates and the multiple factors affecting that market, the Rent Guidelines Board must adopt not only renewal guidelines for one- and two-year leases, but also a special guideline for de-controlled apartments, a supplemental adjustment for low rents, and vacancy factors. All of these elements of the guidelines are necessary for the health of the housing market.

Renewal Guidelines

In deliberating one-and two-year renewal guidelines, the Board has considered various "commensurate" rent methodologies over the years. Some of the older methodologies (the "traditional" and "net revenue" models) are clearly inappropriate in that they resulted in rent guidelines which were lower than the price index and, therefore, over time resulted in the loss of net operating income and a rise in the operating cost ratio.

More recently, additional commensurate rent methodologies were introduced by RGB staff to provide alternative considerations for the Board. The additional models were intended to remedy the fact that the traditional methodology did not take into account the effects of inflation on net operating income. The traditional methodology did not even take into account the fact that not all leases are renewed every year.

The inflation adjusted net operating income model is a vast improvement over the traditional methodology and is the model the Board should use to establish a base level of rent increase before consideration of the qualitative factors outlined above.

It should be noted that even the inflation-adjusted model makes very conservative assumptions about maintaining profitability in the stabilized housing market. If rent guidelines are based on this model, profits in the industry will not increase. Instead, the level of profitability will remain constant, adjusted for inflation. This result should be viewed in the context of an overall high-growth economy in which corporate shareholders expect earnings and prof-

its not just to remain stable, but to increase steadily. Economic investment in the stabilized housing stock certainly will not increase until profitability becomes competitive with other investments.

This year the inflation-adjusted model has been augmented to provide commensurate rent increases depending on whether or not vacancy allowances are factored into the equation. For a number of reasons, we would argue that the income resulting from vacancy increases should not be factored into the equation.

Since a State vacancy allowance was enacted in 1997, the RGB has not provided its own vacancy allowance on the theory that its consideration of vacancy increases had been pre-empted by the State. If that is so, then neither should the RGB consider the effect of vacancy increases in determining the renewal guidelines.

More important, the ability and the extent to which owners can collect vacancy allowances varies widely. The RGB staff report on recent movers, which resulted in a finding of a 12% overall increase on vacancies, clearly shows that the market does not automatically allow rents to rise by the 20% level allowed under State law. Outside the Manhattan core, most owners cannot collect a 20% vacancy allowance, if any at all.

Finally, it is equally important to note that owners of smaller buildings tenanted by long-term occupants very rarely have vacancies. These owners, who may well be a majority, must maintain their buildings on the basis of renewal guidelines alone.

In light of the substantial increase in costs this year, the inadequacy of the Price Index in capturing all cost increases, and the factors outlined above, the RSA is asking the Board to approve a 9% increase in rent for a one-year lease renewal. And in light of the underlying inflationary trends which are now becoming evident, as well as the risks of unexpected cost increases which owners incur when they enter into longer term leases, we ask that the Board approve a 15% increase for two-year leases.

Low Rent Adjustment Must Be Maintained

The supplemental adjustment for low rent apartments reflects the realization by the Board that a percentage increase translates into a lower dollar amount for low rent apartments than for higher rent apartments. This supplemental dollar amount added to the guideline percentage increases the likelihood that all apartments will derive the intended benefits of the rent increases deemed necessary by the RGB.

Even though a low rent adjustment has been authorized by the Board for the last five years, a significant number of apartments still rent for \$500 or less per month. This is an indication that a substantial number of apartments started out with such inordinately low rents that even the prior supplemental adjustments have failed to raise these rent levels significantly.

As an indication of this continuing problem, we have tracked the portfolio of one large provider of low- and moderate-income housing. 50% of the apartments in the portfolio rented below \$500 in 1997. 40% of the apartments rented below \$500 in 1999.

The average cost of operating and maintaining an apartment was \$459 per month, according to Income and Expense filings for 1998. Factoring in the cost of financing and a provision for profit, there really should not be any privately owned, unsubsidized housing renting for less than \$500 per month.

In consideration of these factors, we strongly urge the Board to maintain the current supplemental adjustment for low rent apartments, and to consider restoring the adjustment to its prior level of \$20.

We must note, as we have demonstrated in prior years, that low rents do not correlate with low incomes, and that a majority of households in low rent apartments can well afford increases necessary to maintain their apartments.

We reiterate also that while an unfortunate sector of the rental population cannot afford any rent increase at all, protection for this sector must come from all taxpayers. Property owners, who already bear a disproportionate share of the societal burden, should not be forced to subsidize this sector.

The Sublet Allowance Should Be Reinstated

Last year, the Board inexplicably dropped the 5% vacancy allowance for sublets which it had adopted in each of the two prior years. It should be restored and increased this year.

The genesis of this issue began in 1997 when the State Legislature enacted a statutory vacancy allowance. In response, the RGB eliminated its traditional across-the-board vacancy allowance under the theory that it had been pre-empted from action in this area by the Legislature. However, since the law permits owners to obtain a rent increase upon a sublet equal to the vacancy allowance authorized by the RGB, the Board adopted a vacancy allowance of 5% for the purpose of enabling owners to get a temporary rent increase for the term of a sublet.

A sublet allowance was appropriately contemplated by the Legislature, since owners incur administrative and possibly legal costs in the subletting process, which is detailed in the law. In addition, owners incur the risk of accepting a tenancy which is not of their own choosing.

It should also be noted that the law allows the prime tenant to charge the sub-tenant an extra 10% for the term of the sublet. Any sublet allowance provided by the Board is also presumably passed on to the sub-tenant.

In light of these considerations, we ask that the Board grant a vacancy allowance in the amount of 10% for sublets, an amount equal to the bonus which accrues to the prime tenant in a sublet situation.

The Special Guideline Should Be Expanded

Each year the RGB establishes a Special Guideline which is required by law in order to provide guidance for DHCR in the event that an initial stabilized rent for a formerly rent controlled apartment is challenged by the new tenant. Last year the Board rationally tried to cast the Special Guideline as what it was intended to be: a guideline for fair market rents. We support the formulation the Board arrived at last year and believe it should be adopted again.

We would also suggest that this same formulation be applied to another universe of buildings, those apartments which become vacant with rents of \$500 or less. Such apartments are similar to decontrolled apartments in that they were generally subject to long term occupancies and have disproportionately low rents as a result.

However, low rent apartments do not enjoy the option of rising to comparable market levels because the Legislature, seeking to ensure minimum rent increases for low rent apartments, established maximums which are unrealistically low. Apartments renting for less than \$300 are entitled to \$100 in addition to the regular vacancy allowance. Apartments between \$300 and \$500 are entitled to the regular vacancy allowance or \$100, whichever is greater.

As an example of the application of the State vacancy allowance, an apartment which rented for \$325 would rise to all of \$425 upon vacancy. Such a vacancy increase obviously leaves the apartment below the threshold level of the supplemental adjustment and at a rent level which will not sustain normal maintenance and operating costs.

To correct this situation, we suggest the Board allow the formulation of the special guideline to apply to these apartments. It should be noted that the Board is not precluded from providing vacancy increases in addition to those authorized by the State Legislature, as indicated by actions taken by other County Rent Guidelines Boards since 1997.

APPENDIX

The Case Against Fuel Surcharges For Rent Stabilized Apartments

Due to the recent surge in heating fuel costs and the associated spike in this year's Price Index of Operating Costs (PIOC) for rent stabilized apartments, it has been suggested that such costs could be passed along as a temporary surcharge on rents rather than as a permanent increase in rents associated with the regular one-and two-year rent guidelines.

Any such proposal should be viewed in the context of the lengthy history of fuel surcharges, litigation and legislative amendments which strongly suggest that any newly enacted fuel surcharge would be legally challenged either by owners or tenants. Such litigation would almost certainly leave the appropriate level of rent increase unresolved for a lengthy period of time, imposing uncertainty and potential financial burdens on both tenants and owners.

With or without litigation, any benefits of a fuel surcharge should also be weighed against the confusion, administrative complexity and additional costs which would certainly be imposed on owners, tenants and government agencies.

Any arguments in support of factoring fuel costs out of the general formula for rent adjustments should also be viewed in the context of the history of rent guidelines orders in which the RGB has attempted to adjust levels of rent increase above or below the actual increase in operating costs in order to provide for a more stable and moderate level of rent increase over time. This year, a significant increase in the "core" Price Index, which excludes fuel-related costs and is a general indicator of rising inflationary trends, as well as the increase in the overall Price Index, strongly argues for renewal guidelines substantially higher than in recent years.

In addition, it should be noted that the RGB staff projects a further increase in fuel costs of 7% next year, above the current base. In other words, this year's 55% increase in fuel prices is not just a one-time spike. It is a cost which is projected to continue to escalate, but at a slower rate.

Finally, a fuel surcharge is particularly inappropriate in the stabilized universe. In contrast to the rent controlled universe, where every controlled apartment is subject to a fuel surcharge adjustment every year, in the stabilized universe only two-thirds of leases come up for renewal each year. This situation will ensure that a fuel surcharge will fall disproportionately on some tenants and that many owners will not receive any compensation for increased fuel costs.

For all of these reasons, the increase in fuel costs this year should be incorporated in the regular renewal guidelines in the same way that an unusual increase in fuel costs in 1996 and an unusual decrease in fuel costs in 1999 were both factored into the regular one-and two-year guidelines.

Fuel Surcharges Are Subject To Legal Challenges

When the oil embargo of the 1970's resulted in sharply higher oil prices, the Rent Guidelines Board enacted various fuel surcharges between 1978 and 1981. The authority of the RGB to reopen guidelines and impose surcharges was upheld in several legal challenges brought by tenant advocates. Unsuccessful in the courts, tenant advocates obtained a State legislative amendment of the Administrative Code [Sect. 26-510(i)] in 1983 which, in general, prohibited surcharges: "Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification."

This section of the law has commonly been interpreted as preventing the RGB from "re-opening" the guidelines once they have been enacted. Since its enactment, the RGB has not promulgated any guideline adjustment which has not become part of the base rent, despite several occasions when a component of the Price Index, usually fuel, has been anomalously low or high.

It may be argued that the current law does not preclude surcharges which are promulgated together with the guidelines for the period in question. Conversely, it may also be argued that a law intended to prevent unexpected upward rentadjustments for tenants should, in the interest of equity, also protect property owners from downward adjustments in rent, such as would result when rent surcharges drop off.

Surcharges Are Administratively Burdensome And Inequitable

Even if fuel surcharges were legally defensible, fuel surcharges have proven themselves to be administratively burdensome in the rent controlled universe and would certainly be far more onerous and unmanageable in the context of the rent stabilization system. Fuel costs have been permanently removed from the general rent increase calculation for rent controlled apartments and now require a separate and complex formula for calculation of fuel "passalongs." The formula requires a room count and depends upon the promulgation of annual rates of adjustment. Specific forms for these calculations must be completed and served. Owners are not penalized for failure to adjust fuel costs upward, but are penalized severely for failure to adjust costs downward.

Even if a fuel surcharge were a one-time event, thousands of small property owners who already have difficulty correctly calculating current rent guidelines would inevitably become subject to treble damages for rent overcharges because they will incorrectly apply such a surcharge or forget to roll back rents upon the expiration of the surcharge.

There is a final distinction between the stabilized universe and the rent controlled universe where a fuel surcharge applies to all apartments at the same time each year. In the stabilized universe, less than 60% of all apartment leases come up for renewal under each rent guideline order, so a fuel surcharge would fall disproportionately upon certain tenants and increase the likelihood that property owners would not be fully recompensed for the increase in fuel costs.

The "Core" Rate Of Inflation Argues For Higher Guidelines

For many years, the Rent Guidelines Board has recognized that the short term movement of operating costs as measured by the Price Index may vary widely. As a result, the RGB staff also calculates a "core PIOC" which excludes highly volatile cost elements such as fuel and fuel-related utilities, and provides a more consistent indicator of increased operating costs. This year, the core PIOC has also increased dramatically, driven higher not only by real estate taxes, but also by increases in contractor services and administrative costs which seem consistent with a broader inflationary trend.

RGB methodology this year should be consistent with past practice. An unusually high Price Index, coupled with an unusually high increase in non-fuel-related costs, strongly suggests that the regular one- and two-year rent guidelines should be significantly higher than the historically low guidelines of recent years. As usual, such considerations should be factored into the regular guidelines without incurring the potential litigation, certain confusion and monetary losses which would result from a fuel surcharge.