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Res. No. 547

Resolution calling upon the New York City Rent Guidelines Board to discontinue consideration of the Price Index of Operating Costs in assessing the economic condition of the residential real estate industry to determine the annual rent adjustments for dwelling units subject to the Rent Stabilization Law.

By Council Members Johnson, Chin, Gentile, Kallos, Levine, Mendez, Rose, Rosenthal and Garodnick.

Whereas, The New York City Rent Guidelines Board ("RGB") is mandated to establish rent adjustments for the approximately one million dwelling units subject to the Rent Stabilization Law in New York City; and

Whereas, According to the most recent Housing and Vacancy Survey conducted by the New York City Department of Housing Preservation and Development, rent-stabilized units make up approximately 46% of all rental units in the City; and

Whereas, According to the U.S. Department of Housing and Urban Development, households that spend more than 30% of their income for housing are considered to be cost-burdened and may have difficulty affording other necessities, such as food and medical care; and

Whereas, According to the most recent Housing and Vacancy Survey, rent-stabilized tenants have a median gross rent-to-income ratio of 34.9%, in other words, nearly 35% of tenants' income is spent on rent, which means that the majority of rent-stabilized tenants cannot afford their rent; and

Whereas, It is crucial that the City protects these tenants and ensures that increases in their rents, if any, are based upon accurate data that does not overinflate the property owners' true costs of operating and maintaining the units and considers the income received by property owners; and

Whereas, According to section 26-510(b) of the Administrative Code of the City of New York, in determining the appropriate rent adjustments the RGB is required to consider, among other factors, the

economic condition of the residential real estate industry including, but not limited to, the prevailing and projected real estate taxes, sewer and water rates, and gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs); and

Whereas, It is not possible to assess the economic condition of the residential real estate industry as required by both the Administrative Code and Rent Stabilization Law without considering the income collected by landlords from rent-stabilized apartments; and

Whereas, One data point used by the RGB to measure the change in operating and maintenance expenses incurred by property owners' of rent-stabilized units, as a marker to determine the economic condition of the residential real estate industry, is the Price Index of Operating Costs ("PIOC"), which it compiles annually; and

Whereas, The PIOC is a base-weighted index of the prices of nine cost components, including fuel oil, utilities, taxes, insurance, and labor costs as determined by an original expenditure survey conducted in 1970 by the federal Bureau of Labor Statistics; and

Whereas, The PIOC measures the price change over time in this nine-component "basket of goods and services" used in the maintenance and operation of rent-stabilized apartments in New York City; and

Whereas, The Bureau of Labor Statistics noted in its first PIOC report, "The index is a price index and not a cost index. To the degree that the base-period market basket becomes unrepresentative because landlords choose to purchase more or fewer units of the same item, the index would to some extent lose its appropriateness as a measure of changing cost,"; and

Whereas, For example, if the price of fuel increases over time then the PIOC would rise, but owners could have actually experienced fuel savings over that same period if they reacted to the increase in fuel costs by employing energy conservation methods or fuel efficient machinery that would require the purchase and use of less fuel; and

Whereas, The PIOC price changes may also not be representative of actual expenses over time if the

items in the "basket of goods and services" as determined in 1970 that serve as the basis for the PIOC are no longer representative of what owners actually buy; and

Whereas, In "An Introduction to the NYC Rent Guidelines Board and the Rent Stabilization System," a document prepared by the staff of the RGB, the RGB has recognized that both owners and tenants find fault with the PIOC with owners claiming that it fails to reflect true operating costs and tenants claiming that it does not provide data on actual expenditures and profits; and

Whereas, Despite the potential unreliability of the PIOC data and its critique by both owners and tenants, in that same document the RGB states that "the PIOC is perhaps the most influential figure affecting the final [rent adjustment] guidelines"; and

Whereas, The RGB also produces an annual Income and Expense Study ("I&E") as a second method for measuring the change in operating and maintenance expenses incurred by property owners' of rent-stabilized units; and

Whereas, By requiring property owners to file income data as well as expense data, the I&E has the additional benefit of providing a more complete picture of the economic health of the rent-stabilized housing stock; and

Whereas, The I&E analyzes owners' actual expenses as reported by the owners in the Real Property Income and Expense ("RPIE") statements submitted annually to the New York City Department of Finance pursuant to Local Law 63 of 1986; and

Whereas, Pursuant to section 11-208.1 of the Administrative Code of the City of New York, RPIE's must include all expenses attributable to the operation of the property and a declaration by the preparer that all the information in the RPIE is accurate to the best of his or her knowledge; and

Whereas, In 2000, in recognition of the PIOC's limitations and potential inaccuracy, the RGB commissioned a review of the use of the PIOC; and

Whereas, The review concluded that "[f]or the purpose of regulating rents, an index that directly

measures costs is clearly preferable to a price index, other things being equal,"; and

Whereas, The review also concluded that "there is now a potential for the PIOC to misestimate future changes in operating costs" and recommended various adjustments utilizing alternative income and expense data; and

Whereas, In 2014, the RGB commissioned another study comparing the PIOC and the I&E data; and

Whereas, The comparison demonstrated that in recent years the increase in overall operating costs from the I&E have been smaller than those shown by the PIOC, specifically that according to the PIOC owners' operating costs grew about 5.2% per year while according to the I&E owner's operating costs grew only 4.3% per year; and

Whereas, RGB's 2014 I&E report stated that from 1990 to 2012, the owner's costs as measured by the PIOC rose by 165.6% as compared to the costs measured by the I&E which rose by only 138.7% over the same period; and

Whereas, The disparity between projected and actual expenses is significant as it leads to an increase in net operating income for property owners; and

Whereas, The 2014 comparison study also demonstrated that the divergence between the two methods of measuring costs is accelerating and will only grow greater over time; and

Whereas, Because the PIOC has been found to be unreliable and less preferable to a cost index method that considers both income and expenditures, because it has been shown to overinflate the cost of operating and maintaining rent-stabilized units, and because it is based on this flawed data that the RGB makes rent increase determinations for hundreds of thousands of families struggling to pay their rents; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York City Rent Guidelines Board to discontinue consideration of the Price Index of Operating Costs in assessing the economic condition of the residential real estate industry to determine the annual rent adjustments for dwelling units subject to the Rent Stabilization Law.

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