

**TESTIMONY PRESENTED BEFORE THE NEW YORK CITY LOFT BOARD
PUBLIC MEETING ON RULE 2-06 (INTERIM RENT GUIDELINES)
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Chairman LiMandri, members and staff of the loft board, I appreciate the opportunity to provide this testimony relative to Loft Board Rule 2-06, the Interim Rent Guidelines.

My name is Laura Braslow. I am a PhD Candidate in Sociology at the CUNY Graduate Center, working in the area of urban sociology. I also teach in the Department of Urban Studies at Queens College. Much of my research is focused on understanding socio-spatial change and the determinants of locational choice in New York City neighborhoods – my work, which is largely ethnographic in nature, engages with issues of housing sustainability and real estate markets, among many other issues. While my research is not limited to these areas, much of my work has focused on Williamsburg and Bushwick, neighborhoods with a substantial number of loft buildings that are likely to come under the loft board’s jurisdiction.

In addition to my research, I have also been personally engaged with these issues since moving to Bushwick in 2005. First, I am involved as a community organizer in my own neighborhood of Bushwick – I have served as a member of Brooklyn Community Board 4 for three years, and I am a Co-Founder and Co-Lead organizer of Arts In Bushwick, an all-volunteer community group that has worked with thousands of artists in North Brooklyn since 2007. Finally, I have been a loft tenant myself, first in South Williamsburg starting in 2002, and now in Bushwick from 2005 to the present. A small disclaimer: while I cannot claim to be entirely unbiased about the implementation of the loft law, I am not personally affected by the loft board’s decision in the Interim Rent Guidelines as I have had regular annual rent increases throughout my tenancy.

I would like to take this opportunity to describe a number of differences between the environment and conditions of lofts which came under the Loft Board’s jurisdiction in the 1980s, compared to the lofts which are eligible for coverage today. I will focus particularly on issues relevant to the Board’s decision on the Interim Rent Guidelines, but my discussion is bit more broad at times to provide context when necessary.

I very much appreciate the opportunity to submit this written testimony, and I appreciate the attention of the loft board and staff to these complex and challenging issues.

The most critical piece of context underlying any decision about the Interim Rent Guidelines – or in fact any other provision from the 1982 loft law that pertains to setting the legal rents for tenants in loft apartments – is that the market for residential and live-work loft spaces in New York City changed

profoundly between the 1980s and the late 2000s. One of the core purposes of the loft law is to help loft tenants – who have played an instrumental role in the process of converting disinvested former industrial buildings into a new stock of affordable housing – to stay in their homes. A full understanding of the conditions and context of loft living in the 2000s, and how they differ from the period addressed in the initial loft law, is crucial to insuring equity for tenants and owners, and to achieving high take-up and coverage of current loft buildings.

Loft Living in the 1960s – early 1980s

Loft living in New York City in the 1960s and 1970s arose from a combination of factors, most notably de-industrialization. The well-documented exponential decline of the City's manufacturing employment base from its peak in the 1940s was steepest from the late 1960s to the early 1980s, leaving large amounts of formerly industrial space suddenly vacant. This effect was exacerbated in some industrial areas, particularly in lower Manhattan, which had been slated for demolition and re-development which never came to pass. In this context, some owners were open to any uses that would generate income from their buildings, including allowing (either explicitly or tacitly) tenants to live in these spaces which were not built or zoned for residential use.

However, there was essentially no established practice of living in industrial spaces New York City prior to this point, and no established market for residential lofts. Tenants and owners typically found each other through word of mouth and social networks, and both loft living opportunities and arrangements were not typically visible to the general public. Both parties, but especially tenants, had to be quite risk tolerant to enter into these sorts of arrangements. Tenants typically took on full responsibility of converting often entirely raw loft spaces for residential use – during this period, especially given low prevailing residential rents and the lack of an established market for loft residential space, there was little incentive for owners to make these investments and convert their buildings for residential use themselves. Moreover, prior to the implementation of artist loft policies of the 1970s, landlords had no expectation that any policies would be implemented to legalize their buildings for residential use.

The combination of all of these prevailing conditions lead to prices for loft units during this first phase of loft living that were often extremely low. These circumstances created new opportunities for entrepreneurial individuals – and particularly for artists and craftspeople who needed large, flexible spaces to make their work – to obtain large amounts of space at low prices, assuming that they were willing take on substantial risk and responsibility. Given the relatively weak real estate market and low prevailing residential rent levels at the time, loft living was generally limited to tenants with the most need or desire for this type of arrangement, and had little appeal to other groups of potential residents.

The Evolution of Loft Living from the 1980s to Today

Since the 1980s, the market for residential lofts has grown and evolved substantially. While live-work lofts continue to be a critical resource for thousands of artists and craftspeople in New York City, the demand for loft spaces and the spectrum of loft living arrangements has expanded beyond this core

constituency. These developments are a result of both economic and cultural changes that have occurred in New York City from the 1980s to today, changes which affect both loft living specifically and housing in New York City more broadly.

Perhaps the most significant change that has affected loft living arrangements is a severe tightening of the housing market and shortage of affordable housing. The key statistics have been well-documented from analyses of the Housing and Vacancy Survey, Census, and real estate market data – since the 1980s and particularly since the mid-1990s, rents have increased much faster than incomes, housing is becoming “unaffordable” for an increasing number of families (defined as rent greater than 30% of household income as a baseline threshold of affordability, or rent greater than 50% of household income as a severe threshold of affordability), and there has been a rapid decline in the number of renters in regulated apartments due largely to vacancy decontrol provisions in the rent stabilization law. Unsurprisingly given these statistics, the vacancy rate remains very low in New York City, putting additional pressure on renters to maintain their existing housing arrangements rather than seek new housing under such adverse circumstances.

Recent policy initiatives designed to spur new housing development have yielded a disproportionate share of new luxury buildings, rather than housing that is affordable for low and moderate income residents. Given the greater “upside potential” of this housing in the long run given projected growth patterns, in the absence of much stronger policy interventions requiring or incentivizing the development of affordable housing it is unsurprising that many developers will opt for the type of building that they believe will yield the highest possible returns. As such, and as the data shows, there remains a significant unmet need for housing that is affordable for low and moderate income families.

For a city where more than two-thirds of households are occupied by renters rather than owners, these changes in the housing market and the failure of recent policy to moderate them have produced severe challenges for the majority of New Yorkers, and particularly low and moderate income residents who have no hope of being able to purchase housing under current market conditions.

Loft living fits into this tightening housing market in a number of ways, most notably through an increase in the volume and market price of loft residential units. Both the supply of and demand for lofts have increased for a number of independent but interrelated reasons, including tenants’ search for affordable housing in an increasingly tight market, and owners’ low barrier to entry into the residential housing market through conversion relative to the cost of new housing development. As more loft buildings have become available for residential use, the practice has become more well-known and loft units are generally marketed alongside legal residential units in a regularized market.

That said, loft units still confer a unique mix of costs and benefits for tenants and owners relative to the market for “regular” residential units. First, although some of the new loft units that have become available are offered as fully converted, and unlike in the early lofts most owners do offer units that include basic amenities such as kitchens and bathrooms, it remains the case that there are often significant limitations in the maintenance and services provided by landlords, and most loft tenants do

invest in making improvements to their own spaces. Second, some (although by no means all) potential loft tenants are aware that they would be taking on some risk relative to the legal status of the space and their rights as tenants by moving into a loft, which serves to suppress prices to some extent.

On other hand, loft spaces they still confer a key benefit – flexibility. Loft tenants typically have the opportunity configure and make use of their spaces as they see fit, which presents the opportunity for entrepreneurial tenants – including, most commonly, artists and other small businesspeople seeking space for live-work uses, as well as and groups of roommates seeking to subdivide spaces into smaller and more affordable rooms – to carve out an affordable niche for themselves and their specific needs for space in a tightening market for both living and working space. In short, while artists still rely disproportionately on loft spaces for live-work, a broader group of tenants are occupying loft spaces today, and these tenants choose loft spaces for a range of different reasons.

It is also important to take cultural factors into account when attempting to understand the price points at which loft units are now offered for residential use. Despite the continued precariousness of loft living arrangements for tenants, through the 1990s and escalating in the 2000s, living in a loft has been taken up by some as a marker of distinction among certain new residents. While most loft tenants – and particularly longer-term tenants - were not primarily attracted to loft living on this basis, beginning as early as the 1980s, real estate developers and owners have increasingly engaged in an explicit branding of loft living as part of a valorized “creative” lifestyle. This framework is pervasive in the marketing of regular residential units in neighborhoods with a reputation as creative districts, many of which are described as “loft-style living” in a “creative community” despite being either new construction or renovated residential housing, and not appropriate for live-work uses.

The net effect of these various factors is that in some neighborhoods, loft spaces are not only equivalent in price with legal residential housing, but by the 2000s may in fact have tipped over the line and in fact become marginally more expensive than prevailing housing prices. In Bushwick for example, it is quite possible to rent a legal two-bedroom apartment in the range of \$1000-\$1200 per month, while few if any loft spaces large enough for two people to live in are available in that price range (note: a rent of \$1000 per month is roughly equivalent to the city-wide median price for all rental apartments, including those under rent stabilization and rent control). In Williamsburg and Greenpoint, “true” loft spaces – when they are available on the market, which is relatively rare – generally rent for more than traditional residential housing units, though this picture is complicated by the dramatic increase in new high-priced luxury developments in the area.

Artists and other new residents seeking live-work space entering the market under these conditions are forced to accept these prevailing higher prices, or else sacrifice the benefits of flexibility and the opportunity to use their home spaces for live-work. For long-term residents, given that loft tenants have historically had few rights, there is substantial opportunity for abuse and neglect on the part of owners, and few mechanisms for tenants to protect themselves or their investment in their spaces. The rapid increase in market prices and the sense that there is a large “upside” potential to loft buildings, combined with the lack of protection for tenants, has led to many loft tenants being forced to accept

large rent increases to keep their spaces, or when they could not afford to meet these increases being pushed out of their spaces entirely by landlords seeking to capitalize on the “loft boom.” This displacement is of particular concern given that the increased market value of these spaces was largely produced by the initial tenants who took on substantial risk and costs in the initial conversion process.

In summation, the only way to broadly characterize the change in loft living arrangements and populations is that we see a proliferation of diversity of spaces and uses, beyond the classic case of artist live-work spaces contemplated in the original loft law. It is also important to remember that these are descriptions of trajectories of change – the conditions of any given loft unit will fall somewhere along a continuum, depending on when a given building or tenant entered the market and the specifics of the arrangements and uses. However, the broad trajectory of the market is clear. When considering the application of provisions of the loft law relative to the increases that tenants will be expected to pay, it is critical to understand that, while prevailing “market” prices do not necessarily perfectly reflect the prices paid by current loft tenants. However, given the transitions in and regularization of the loft market over the past three decades it is also the case that few if any loft tenants remain in situations where they are paying extremely low rents. Few current tenants had extremely low rents to begin with, as the market became relatively regularized by the 1990s (or even earlier by some accounts), and those tenants who did initially have very low rents have largely been forced to accept rent increases or forced out during the loft boom in the 2000s.

Finally, given the complexity of the current loft market and the circumstances of tenants, it is important not to lose sight of the key commonality among them – all loft living arrangements that will come under the jurisdiction of the loft board involve people living in spaces that are not zoned for residential use, and where tenants do not have the rights and protections that are standard for all other renters.

Loft Owners and the Market for Loft Buildings

While the current population of loft tenants likely to come under the jurisdiction of the loft board has generally been paying substantial rents as a result of the various processes detailed above, and in addition have contributed their time and resources to converting their spaces for residential use, there is no doubt that loft owners have been able to take advantage of the tightening residential real estate market to reap windfall profits over the past several decades through the process of loft conversion.

First, while many loft building owners have invested in converting or upgrading their buildings for residential use, many others simply made buildings that they already owned available for residential or live-work use on an “as-is” basis. In either case, even disregarding the issue of improvements made by tenants. In addition, loft buildings generally operate in a culture wherein landlords expect to provide lower levels of maintenance and services than would be standard in regular residential buildings, and tenants lack the capacity or leverage to demand such services. Loft building owners also rarely pay for any utilities (and in fact tenants regularly bear costs for additional services such as commercial garbage collection). As such, the operating costs associated with loft buildings are generally substantially lower as a share of the rents collected than in standard residential buildings.

Second, while there is a regularized market for loft rentals, there is little regularity in the market for the purchase of loft buildings. While I cannot claim expertise in the financial circumstances of loft owners today, a review of Department of Finance records for a sample of converted loft buildings in Williamsburg and Bushwick reveals that most have either been held by one owner for decades, or else were purchased before the loft conversion “boom” at very low prices. Based on a review of these records and real estate listings, buildings suitable for loft conversion – let alone those already occupied by residential tenants - are rarely sold, and even more rarely openly listed for sale. In addition, it is likely that opportunities to finance loft buildings at a level that would realistically reflect the ROI of operating such a building would be relatively limited relative to the regularized market for legal residential buildings, given that these buildings are operating outside of the prevailing zoning.

The lack of a regularized market for loft buildings makes it both difficult to ascertain the net effect of these factors, and little information is publicly available relative to the true financial conditions of loft owners in today’s market. However, it seems clear that relative to other residential building owners, loft owners have both low cost of entry to becoming residential landlords and low operating costs relative to the rents that they are able to collect.

Given these considerations relative to owners’ low entry and operating costs, and the relatively high rents being paid by tenants, it is clear that many loft owners have recouped far greater returns on investment than would be typical for legal residential landlords during this time period, and far greater returns than would have been available to them had they not engaged in residential conversion. In contrast, while it is possible that some loft tenants may also have been able to reap a net benefit from living in a loft during this period, either through the option for live-work or by subdividing their space among many tenants, these benefits are marginal at best and the possibility for such gains has been consistently eroded by upward pressure in loft rental prices which has been recouped by owners.

Conclusions and Recommendations on the Interim Rent Guidelines

Retrospective Rent Increases May Have Made Sense in 1982, But Do Not Make Sense Today.

One of the key functions of the interim rent guidelines in the 1982 loft law was to bring lofts with very low rents up to some level of parity with prevailing prices. This also occurred in a context where some tenants had been engaged in rent strike and had not been paying rent at all for a substantial period of time. Moreover, the 1982 loft law came after decades of disinvestment and decline in the real estate market. None of these factors apply in the current context. In contrast, over the past several decades loft owners today have been able to take advantage of a growing retail market and inadequate supply of affordable housing. As a result, they have benefitted from windfall profits as the market for loft apartments has expanded and prices have increased.

The argument that landlords should be able to collect retrospective rent increases from tenants is clearly not supported in light of prevailing loft rent levels. While it is possible that a small handful of

landlords might have legitimate grievances on this front, it is telling to note that no such landlords have come forward and detailed their circumstances to argue in favor of such retrospective increases. The belief that there are a substantial number of loft tenants paying very low rent – and thus the justification for applying retrospective rent increases – is little more than an artifact of the context that prevailed in 1982, and does not reflect the circumstances of lofts today.

Shared and Equitable Distribution of Costs and Benefits is Critical for Equity and Coverage

The loft law has the potential to benefit owners, tenants, and the City's housing market as a whole through expanding the base of legal, rent-protected housing. However, achieving these ends requires an equitable accounting and distribution of the costs and benefits of legalization. There is little doubt that in the vast majority of loft living arrangements, the balance of costs, benefits and risk has historically favored owners. Moreover, many provisions in the loft law also serve owners' financial benefit, including the 6-8-6 and pass-through costs for renovations which produce improvements to the building but which tenants will be expected to pay. The primary benefits of the loft law for tenants (rent stabilization and tenant protections) are certainly substantial, but they pale in comparison to the net benefit to owners of converting an industrial building with little value into a legal residential building with stabilized tenants paying reasonable or even relatively high rents. While the Loft Board does not have jurisdiction over many of these matters, in the case of the Interim Rent Guidelines the Board has the opportunity to balance the scales for some tenants.

Moreover, if the goal of the loft law is to bring as many eligible tenants and buildings as possible into coverage, and particularly to bring buildings in substandard conditions up to code, it is incumbent on the Loft Board to consider the impact of its decisions on the likelihood of tenants applying for coverage. It is a basic fact that the more rent increases tenants are asked to bear, the less likely they will be to apply for coverage. While owners may of course apply themselves, owners who have already shown a willingness to operate their buildings under subpar conditions are less likely to apply independently relative to owners who have already invested in upgrading their buildings. So, applying retrospective rent increases as part of the implementation of the loft law could significantly reduce the likelihood of tenants in the most precarious circumstances coming under the Board's jurisdiction.

Finally, it is important to keep in mind the greatest danger relative to equitable implementation of the loft law is the very real chance of loft tenants being priced out of the homes that they were instrumental in creating as livable residential spaces. Given prevailing rent levels in lofts today, the 6-8-6 and pass-through costs alone could push rents from being affordable to tenants to being unsustainable, and in some cases produce final legal rents at "luxury" levels. This outcome violates one of the core principles of the loft law – tenants' rights to stay in the homes they have created – and serves to further benefit owners who have already recouped substantial benefits over time and stand to be further enriched as a result of the law.