



Legislation Text

File #: Res 0540-2010, **Version:** *

Res. No. 540

Resolution authorizing the Council to file an amicus brief in the New York Court of Appeals in support of the Plaintiffs-Appellees in the litigation captioned *Casado v. Markus*, for the purpose of supporting the Plaintiffs-Appellees' petition to annul and vacate certain provisions of 2008 Apartment and Loft Law # 40 and 2009 Apartment and Loft Law # 41.

By The Speaker (Council Member Quinn) and Council Members Dromm, James, Palma, Rodriguez, Williams and Jackson

Whereas, In 1969, the Council enacted the Rent Stabilization Law (RSL) to protect long-term residents of local communities, and created the New York City Rent Guidelines Board (RGB) to establish fair rent adjustments for rent stabilized units; and

Whereas, In 1974, the State Legislature enacted the Emergency Tenant Protection Act (ETPA), which authorized local rent guidelines boards to promulgate rates of rent adjustment for various classes of accommodation; and

Whereas, ETPA Section 3 provided that it was the local legislative body, not the local rent guidelines board, that must establish the "classes of accommodation" subject to the RSL; and

Whereas, The Legislature amended the ETPA in 2003 to provide that the Council could no longer add a new class of housing accommodation; and

Whereas, At no point since the adoption of the RSL or the ETPA did the RGB have the power to create a new class of housing accommodation; and

Whereas, On June 19, 2008, the RGB adopted a final order, "2008 Apartment and Loft Law # 40" (Order No. 40), which provides for rent renewal increases of 4.5 and 8.5 percent for one- and two-year renewal increases, respectively; and

Whereas, Order No. 40 further provided for a supplemental increase applicable to tenants who have resided in their apartments for more than six years and whose rents are less than \$1,000 per month as follows: in units where the landlord is required to provide heat to tenants, the greater of 4.5% or \$45 for one-year renewal leases and the greater of 8.5% or \$85 for two-year renewals; and in units where the landlord is not required to provide heat, the greater of 4% or \$40 for one-year renewals and 8% or \$80 for two-year renewals; and

Whereas, On June 23, 2009, the RGB adopted another order, "2009 Apartment and Loft Law # 41," (Order No. 41), which provided for rent renewal increases of 3 and 6 percent for one- and two-year renewal increases respectively; and

Whereas, Order No. 41 also provided for a supplemental increase applicable to tenants who have resided in their apartments for more than six years and whose rents are less than \$1,000 per month, as follows: for units where the landlord is required to provide heat, the greater of 3% or \$30 for one-year renewals and the greater of 6% or \$60 for two-year renewals; and for units where heat is not required to be provided, the greater of 2.5% or \$25 for one-year leases and the greater of 5% or \$50 for two-year leases; and

Whereas, By approving the provisions of Orders No. 40 and 41 that impose supplemental increases on long-term tenants, the RGB created a class of accommodation based upon longevity of occupancy and instituted a "poor tax" by imposing a substantially greater percentage increase on tenants who pay lower rents; and

Whereas, The RGB had no authority to enact these provisions because since 2003 the State, and not the RGB, has had the power to create classes of accommodations; and

Whereas, In addition to exceeding its authority, the RGB undermined the Council's longstanding intent to protect long-term tenants; and

Whereas, In 2008, individual tenants and organizations representing tenants filed a lawsuit against the RGB in New York Supreme Court captioned *Casado v. Markus*, Index No. 402267/08, seeking to annul and

vacate certain provisions of Order No. 40 and, after Order No. 41 was adopted in 2009, to annul and vacate certain of its provisions as well; and

Whereas, A central issue raised by the plaintiffs is that the RGB, through Orders No. 40 and 41, has acted ultra vires; and

Whereas, On January 20, 2010, New York State Supreme Court Justice Emily Jane Goodman struck down the longevity penalties imposed by Orders No. 40 and 41, holding that the RGB exceeded its authority in enacting such provisions; and

Whereas, On June 22, 2010, the Appellate Division, First Department, affirmed Justice Goodman's ruling; and

Whereas, The case is currently on appeal to the New York State Court of Appeals; now, therefore, be it

Resolved, That the Council of the City of New York authorizes the filing of an amicus brief in the New York Court of Appeals in support of the Plaintiffs-Appellees in the litigation captioned *Casado v. Markus*, for the purpose of supporting the Plaintiffs-Appellees' petition to annul and vacate certain provisions of 2008 Apartment and Loft Law # 40 and 2009 Apartment and Loft Law # 41.

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