



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
NEW YORK REGIONAL OFFICE

**COMMISSION AUTHORIZED**

OFFICE OF THE REGIONAL DIRECTOR

150 William Street, 13th FL

New York, N.Y. 10038

(212) 264-1200

July 25, 1989

Mr. Steven Rosenberg  
General Counsel  
The City of New York  
Office of Business Development  
17 John Street  
New York, N.Y. 10038

Dear Mr. Rosenberg:

The staff of the Federal Trade Commission is pleased to respond to your request for our views on proposed legislation, Int. No. 1245 ("Bill 1245"), concerning the regulation of certain commercial rentals in New York City.<sup>1</sup> Bill 1245 would grant certain retail tenants seeking lease renewal a "right of first refusal" to accept the rent obligation and length of lease negotiated with any prospective new tenant.<sup>2</sup> While we believe that this measure may be preferable to more restrictive commercial rent control proposals that were considered by the City Council in the past two years, you may want to consider whether the New York City economy and the interests of consumers would be better served by allowing the market for commercial rental space to function without the encumbrances reflected in the proposed legislation.

Interest and Experience of the Staff  
of the Federal Trade Commission

The Federal Trade Commission is charged under 15 U.S.C. § 45 with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Pursuant to this mandate, the staff of the Federal Trade Commission often submits comments, upon request, to federal, state and local governmental bodies to help assess the competitive and consumer implications of pending policies. The staff has a long and

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<sup>1</sup> This letter presents views of the staffs of the New York Regional Office and the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Commission or of any individual Commissioner.

<sup>2</sup> If the right is exercised and unless the parties agree otherwise, all the other terms of the current tenant's existing lease, except for the rent obligation and the lease duration up to ten years, will be contained in the new lease.

varied experience in analyzing the effects of price controls, including rent controls.<sup>3</sup>

The Federal Trade Commission staff commented on March 12, 1987, to the New York City Office for Economic Development on earlier and generally more stringent commercial rent control bills that had been considered by the City Council.<sup>4</sup> This prior comment expressed our view that commercial rent control is likely to injure competition and reduce consumer welfare.<sup>5</sup>

Our earlier comment, a copy of which is attached, discusses in detail the likely adverse effects of commercial rent control. It points out that these effects may include the diversion of investment capital away from commercial rental space, resulting in a reduction in available commercial space and a deterioration of commercial rental properties.<sup>6</sup> In addition, we noted the

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<sup>3</sup> For example, on March 14, 1985, the Commission staff testified before the District of Columbia City Council on the proposed Rental Housing Act of 1985.

<sup>4</sup> Bills 581 and 204 would have required mandatory lease extensions for a minimum of five years and binding arbitration to establish renewal rents for commercial tenants. A less intrusive proposal, Bill 734, would have required non-binding mediation concerning lease renewal and a one-time one-year lease extension at no more than a 15% rent increase if other terms could not be agreed upon.

<sup>5</sup> The views contained therein were also expressed in the form of FTC staff testimony before the New York City Council's Committee on Economic Development on December 1, 1987. The bills that were the subject of the testimony were the same as or successors to those considered in our March 12th comment.

<sup>6</sup> Our 1987 comment references studies of rent control (at page 4, n. 6), primarily in the residential context, which reflect a consensus that any benefits derived from rent control are generally far outweighed by the costs imposed on the market and on consumers, particularly over the long run. More recent commentaries lend additional support to the conclusion that residential rent control carries with it serious harmful effects (including reduction in the supply of rental space and the deterioration of the space that is subject to regulation, as well as increased costs for prospective renters) and that commercial rent control, by analogy, gives rise to similar costs without any offsetting benefits. See, e.g., Anthony Downs, Residential Rent Controls: An Evaluation (The Urban Land Institute, 1988) (As this analysis states, at page 1, n. 1, "[T]his study does not address commercial rent controls, which have recently begun to  
(continued...)

tendency of rent regulation to stimulate landlords' incentives to discriminate in choosing tenants and to encourage some tenants to extract lump-sum payments from landlords in return for the surrender of tenant rights created by the rent control regime. Finally, we observed that a 1985-86 study of New York City's commercial rental market yielded results that did not appear to justify a regulatory response that would risk these serious negative consequences, and urged exploration of alternatives to commercial rent control to assist tenants whose leases have expired and who may need special assistance to relocate within the city. Below, we discuss the general provisions of Bill 1245, concerns that may underlie a desire to protect incumbent tenants, some potential problems if Bill 1245 is passed, and, finally, alternatives to the regulation of commercial lease renewal.

### Bill 1245

Bill 1245 would grant to each member of a defined class of retail merchants<sup>7</sup> a "right of first refusal" to renew its lease for essentially the same rental obligation and lease term (up to a ten-year period) that the landlord has negotiated with a prospective new tenant.<sup>8</sup> This right would be forfeited if the

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<sup>6</sup>(...continued)  
appear in a few American cities. Such controls, as viewed in this book, are even less justified than residential controls . . . .") (emphasis added); Margery Austin Turner, Rent Control and the Availability of Affordable Housing in the District of Columbia: A Delicate Balance (The Urban Institute for the District of Columbia's Department of Consumer and Regulatory Affairs, October 1988) (although this study finds that rent control resulted in reduced rents for most households without a significant demonstrated adverse impact on the housing supply, the study also states, at page 78, that "[b]ecause the existing system of controls is designed to generate benefits for those who remain in their units, poor households that are newly forming or mobile may actually have greater difficulty finding affordable housing than they would in an uncontrolled market.")

<sup>7</sup> The bill essentially applies to non-franchised retail merchants renting as primary lessees premises that are not located within a shopping mall, that are no larger than two thousand five hundred square feet, and that generate gross incomes of no more than \$1 million.

<sup>8</sup> Certain specific provisions of the bill apply where the amount of rent negotiated with a prospective tenant includes an estimate of the dollar value, expressed as additions to or  
(continued...)

tenant fails to negotiate "in good faith." Exceptions to this right of first refusal include cases in which the expiring lease is for less than one year, the premises are converted to the landlord's business use, or the structure containing the rented premises is sold to a bona fide purchaser.<sup>9</sup> The proposal also provides, among other things, for the tenant's right to a five year lease renewal and binding arbitration regarding the amount of rent to be paid if the landlord fails to negotiate lease renewal "in good faith" or fails to satisfy certain notice requirements. The good faith determination is to be made by an arbitrator, but the proposal does not delineate what constitutes failure to negotiate in good faith.

In comparison to the commercial rent control proposals addressed in our prior comment, Bill 1245 would subject a more limited segment of the commercial rental market to controls. Further, the controls that would be established under Bill 1245, which does not directly limit rental rate increases, would have a lesser tendency to supplant market-determined lease renewal terms with regulated renewal terms. Nevertheless, like prior commercial rent control proposals, Bill 1245 would interfere--albeit less radically -- with the market's allocation of commercial real estate between competing prospective renters. Similarly, Bill 1245 would interfere -- again, less radically than previous commercial rent control proposals -- with the market's allocation of resources between commercial real estate development and other uses. Although preferable to more intrusive prior proposals, the commercial rent controls embodied in Bill 1245 still would likely reduce market incentives to supply and maintain commercial rental property, ultimately working to the detriment of those whom the legislation seeks to assist.

Bill 1245 creates benefits for a particular group (namely, incumbent tenants). When negotiating lease renewal terms, a landlord might be able to take advantage of the fact that the value of a tenant's business might depend critically upon continued operation at a specific location. Bill 1245 provides the tenant with some protection against this. Whether such

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<sup>8</sup>(...continued)  
subtractions from the rent, of other contingencies such as physical improvements to the retail premises agreed to be performed by the landlord or tenant. The proposed bill would allow the tenant to initiate binding arbitration to challenge the landlord's valuation of any or all terms of the proposed lease reflected in such an estimate.

<sup>9</sup> The bill provides that the tenant may initiate arbitration to challenge the validity of the termination of the right of first refusal.



legislative protection is necessary, however, is unclear. Tenants are likely to foresee such behavior on the part of landlords, and seek contractual protection at the time the initial lease is negotiated.<sup>10</sup> Additionally, property owners often make investments that have value only to incumbent tenants (e.g., adopting a particular interior design), which further reduces landlords' ability to exploit incumbent tenants. Unless landlords and tenants are somehow unable to negotiate contracts that protect their own interests, it seems unlikely that Bill 1245 would help property markets to operate more efficiently.

It appears likely that enactment of the Bill may impair the ability of the market to allocate rental property efficiently. As discussed below, the potential negative effects of Bill 1245 relate primarily to the increased costs imposed on the lease negotiation process and the tendency of the bill to reduce incentives to supply commercial rental space.

Bill 1245's creation of an incumbent tenants' right of first refusal might subject each covered landlord, tenant, and prospective new tenant to uncertainties that impose planning delays and other costs. In particular, under Bill 1245, prospective tenants' investments in negotiations for commercial rental space may be rendered valueless if an incumbent tenant exercises its right of first refusal. Delays are likely if arbitration is called into play, or if it is difficult to evaluate the offer of a prospective tenant that an incumbent tenant has to (at worst) meet. These resulting delays, and other related costs, may impair the efficient relocation of existing businesses and the establishment of new businesses, to the detriment of those businesses and the consumers that would be served by them.

Moreover, despite a (difficult to enforce) requirement that incumbent tenants negotiate for lease renewal in good faith, Bill 1245 may compound the possibility of thwarted negotiations by inducing incumbent tenants to defer serious negotiation of new lease terms. If, in effect, the last word in the negotiations is reserved for incumbents by Bill 1245, they may frequently adopt a "wait-and-see" negotiating style.

Thus, in sum, Bill 1245 favors the interests of incumbent tenants over those of prospective tenants (and their customers) because in a variety of ways it would allow incumbents to impose higher total negotiating costs on landlords and prospective tenants than would be the case if negotiations were governed by market forces.

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<sup>10</sup> For example, tenants may include options to renew on specified terms in their initial lease.

Bill 1245's right of first refusal provision also may frustrate landlords' interest in changing the uses to which commercial rental properties are put. Landlords may be prevented from substituting a prospective tenant engaged in one kind of business for an incumbent tenant engaged in an enterprise that causes higher costs to the landlord -- for example in the form of greater wear-and-tear on the premises. Insofar as the incumbent tenant need only match the central elements of the prospective tenant's offer in order to retain the premises, this too may contribute to reduced maintenance and slower expansion of commercial rental stock, to the detriment of the public at large.<sup>11</sup>

Some landlords likely will seek ways around commercial rent controls resulting from passage of Bill 1245. These efforts likely would result in other costs to the public. For example, landlords may negotiate leases of less than one year's duration to avoid application of Bill 1245, even in circumstances where leases of longer duration would, other things being equal, be of greater value to the prospective tenant and the landlord. Moreover, the relative unavailability of multi-year leases may result in tenants foregoing efficient investments in their businesses where the costs of those investments must be amortized over several years of operation from a single location.<sup>12</sup> As a result of unnecessary churning of leases and foregone investment opportunities, landlords and tenants -- and ultimately consumers -- are likely to incur additional costs.<sup>13</sup>

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<sup>11</sup> This constriction of well-maintained commercial rental stock may be exacerbated by provisions of Bill 1245 that provide for mandatory lease extension and binding arbitration of terms under certain ambiguously defined circumstances, for example where a landlord fails to negotiate with an incumbent tenant in good faith.

<sup>12</sup> For example, tenants might have made substantial investments in special fixtures or in certain types of promotion, e.g., advertising regarding "our convenient location at . . . ."

<sup>13</sup> At the margin, more drastic measures to avoid application of Bill 1245 could result, such as the otherwise inefficient use or sale of the commercial premises by the landlord.

In one apparent effort to ensure landlord good faith, Bill 1245 may be read to provide that if a lease has not been renewed and, among other contingencies, the premises are unoccupied or undemolished three months after the tenant has vacated them, the tenant would be entitled to a five-year renewal lease. The passing of three months between a tenant's quitting of the premises and the premises occupation or demolition,  
(continued...)

## Alternatives to Regulation of Lease Renewal Terms


We continue to believe, as we indicated in our comment regarding prior commercial rent control proposals,<sup>14</sup> that there exist alternatives to regulation of commercial lease terms should New York City wish to aid small retail merchants whose leases have expired and who need special assistance to relocate within the city. Concentrating on stimulating the supply of well-maintained commercial rental space, such measures might include relaxation of zoning restrictions to permit more second story retail establishments and the adoption of measures to make more underutilized city-owned property available to small retail merchants.

## Conclusion

In summary, passage of Bill 1245 may impair the efficient allocation of resources to and within the commercial rental market. As a result, landlords, prospective, and sometimes incumbent, tenants, and the public at large likely would be injured by the adoption of inefficient commercial leasing practices. Accordingly, we urge that measures to stimulate the availability of well-maintained commercial space be considered instead of lease renewal regulations such as Bill 1245.

We appreciate your invitation to comment on this legislation and hope that our comments will be of assistance.

Very truly yours,

  
Michael Joel Bloom  
Regional Director

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<sup>13</sup>(...continued)  
however, may not be indicative of landlord bad faith. For example, a landlord of a building housing several tenants may want, or need, to await the expiration of several non-coincident leases prior to rehabilitating or demolishing the building. The operation of the five-year renewal lease entitlement provision may prevent such rehabilitations and demolitions, despite their potential social utility.

<sup>14</sup> Our comment, attached, cites the 1986 report of the Small Retail Business Study Commission which examined the commercial tenancy situation in the city.



**Federal Trade Commission**

**Office of the Regional Director**

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March 12, 1987

Eli Dickson, Director  
Policy Analysis Division  
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Development  
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Dear Ms. Dickson:

The staff of the Federal Trade Commission is pleased to accept your invitation to comment on Int. No. 734, a proposed local law to amend the administrative code of the City of New York.<sup>1</sup> The bill would allow certain commercial retail and service tenants whose leases are due to expire to obtain a one-year lease extension at no more than a 15% rent increase in the event renewal terms cannot successfully be negotiated. This measure reflects an alternative to Int. Nos. 581 and 204, which are more stringent rent control proposals requiring longer term lease extensions and binding arbitration to establish renewal rents for commercial premises.

We urge rejection of all three legislative proposals, although Bill 734 is less troublesome than the other two. Rent control in any form will not promote consumer welfare and will serve only to assure that the actual demand for rental space will not be met.

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<sup>1</sup> This letter presents the comments of the New York Regional Office and the Bureaus of Competition, Economics and Consumer Protection of the Federal Trade Commission. The views expressed are not necessarily those of the Commission or of any individual Commissioner, although the Commission has authorized the presentation of these comments.

## I. Introduction

The Federal Trade Commission is charged under 15 U.S.C. § 45 with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Pursuant to this congressional mandate, the Commission seeks to serve the public interest and protect the marketplace from unreasonable restraints of trade. Our efforts include providing comments to federal, state and local legislative and administrative bodies to advocate competition-based approaches to various policy issues. The Commission has had a long and varied experience in analyzing the effects of price controls, including rent controls.<sup>2</sup> Accordingly, we offer our comments to assist you in identifying how the various legislative proposals may affect the commercial rental market in New York City.

## II. Background

Three commercial rent regulation bills are currently before the City Council. The most stringent proposals are reflected in Int. Nos. 581 and 204. These bills would require mandatory lease extensions for a minimum of five years and binding arbitration to establish renewal rents for commercial tenants.<sup>3</sup> The most recent proposal, Bill 734, was introduced to the New York City Council at Mayor Koch's request by Council Member Jay O'Donovan on November 20, 1986. It would require that landlords engage in negotiation and non-binding mediation concerning lease renewal for certain retail and service premises, and, in the event renewal terms cannot be agreed upon, that tenants covered by the proposal have a right to a one-time one-year lease extension at no more than a 15% rent increase. We

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<sup>2</sup> For example, the Commission staff testified before the District of Columbia Council on the proposed Rental Housing Act of 1985.

<sup>3</sup> Int. No. 581 was introduced to the City Council by Council Member Ruth Messinger on April 10, 1986. A related proposal, Int. No. 204, had been introduced earlier by Council Member Gerges on January 22, 1986, and denominated the "Small Business Preservation Act." Proposal 204 would provide, in addition to "last offer binding arbitration" administered through a commercial rent mediation panel, that commercial tenants seeking lease renewal receive a "right of first refusal." This right, which would arise if the landlord has secured an agreement with a new tenant, would entitle the existing tenant to renew the lease by matching the rent agreed to by the prospective tenant.



understand that this proposal is intended as a transitional measure primarily to aid<sup>4</sup> small merchants facing possible non-renewal of their leases.

We do not believe that rent control in any form is consistent with consumer welfare, even if it is intended to be temporary in nature.<sup>5</sup> Rather, rent control gives rise to market distortions which have negative long-term economic consequences that may be more serious than any short-term problems it seeks to resolve. Rent control reduces market incentives to increase the supply of rental units. It ultimately works to the detriment of those sought to be aided by the legislation and produces a negative impact on the competitive environment.

As discussed more fully below, the effects of commercial rent control may include the diversion of investment capital, artificial reduction in the space available for new businesses, and deterioration of commercial rental properties. Additionally, if rent control legislation is enacted, uncertainty could exist as to whether such measures will be retained or extended, further exacerbating these market distortions. Moreover, to the extent that legislation stems from a concern for those merchants who are facing special financial hardships as a result of lease termination, a public policy response that would avoid the unintended costs associated with rent control should be considered. (See discussion in Section V.)

### III. Impact of Rent Control on the New York City Economy

Rent control artificially reduces the rate of return on investments in rental space, thus reducing incentives to supply and maintain such space. Investors are likely to respond to such measures by seeking other locations or types of investment where they can expect a higher rate of return. This could adversely affect the economic growth and well-being of the city, eroding

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<sup>4</sup> The measure applies only to retail leases where the premises do not exceed 10,000 square feet. (Int. Nos. 581 and 204, in contrast, would apply stringent regulatory measures to all non-residential leases including offices.) Bill 734 also expressly limits the scope of its requirements, containing a sunset provision that excludes from its coverage any retail lease expiring after January 1, 1992 (Sec. 22-605).

<sup>5</sup> While our comments here are directed primarily to Int. No. 734, our views supporting a free market are equally applicable to Int. Nos. 581 and 204.

the tax base, skewing investments away from the commercial rental market, and leaving demand for such space unsatisfied.<sup>6</sup>

To the extent that landlords are locked-in to regulated commercial rentals, they can be expected to respond to what they perceive as a less than adequate rate of return by reducing costs. Cost reduction often takes the form of reduced maintenance or renovation. Such reductions harm the community, and work particularly to the detriment of tenants who would be willing to pay for better quality space that is unavailable in sufficient quantities. This also tends to increase costs to prospective tenants who must search longer for rental space. Shortages of rental space will deter efficient relocations and formation of new businesses.

Another problem associated with rent control relates to reduction of local tax revenues. Controlling the income earned by commercial rental property will make it less valuable. Because the land is less valuable, total tax revenues raised at a given property tax rate will be reduced.

Further, when leases expire in a context in which lease extension is required by law, some landlords can be expected to react by reducing the duration of any lease they negotiate to the minimum term permissible. In addition, where tenants have the right to mandatory lease extension, they may be able to extract lump-sum payments from landlords in return for surrendering that right. Such distorting forces not only interfere with freedom of contract, but also with the market

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<sup>6</sup> The market distorting effects of rent control have been recognized by economists for many years, primarily in relation to residential rent control. The consensus among those who have studied the subject is that rent control in any context injures competition and consumers, imposing costs that far outweigh any benefits that some individuals receive. See, e.g., W. Block & E. Olsen (eds.), Rent Control: Myths and Realities (The Fraser Institute, 1981) (this compilation includes a chapter by T. Dienstfrey discussing residential and commercial rent control initiatives in California); C. Baird, Rent Control: The Perennial Folly (Cato Institute, 1980); Moorhouse, "Optimal Housing Maintenance Under Rent Control," The Southern Economic Journal (July 1972); Olsen, "An Econometric Analysis of Rent Control," Journal of Political Economy (Nov./Dec. 1972).

considerations that ought to govern lease negotiation. Rent control may, for instance, create an incentive for landlords to discriminate in choosing tenants, since characteristics other than a willingness to pay become more important in the relationship between the parties.<sup>7</sup> In addition to these undesirable effects, there are the costs associated with administering the rent regulation program, which are usually passed on at least in part to taxpayers.

Measures that would regulate price and rate of return are normally justified only if there is a general market failure such as may occur under conditions of natural monopoly.<sup>8</sup> There is no evidence that this is the case in the New York City commercial rental market. In the absence of regulatory control, all market participants are appropriately subject to the risks and rewards of changing conditions in which the market over time will be most efficient and effective in achieving an equilibrium between supply and demand.

Legislatures sometimes adopt rent control proposals in order to protect or assist a special class of constituents, rather than maximize consumer welfare in the aggregate.<sup>9</sup> Such proposals may seem appealing by virtue of the fact that most of the direct costs of rent control are borne by private parties. Rent control, however, will fail to resolve and may seriously exacerbate economic problems over the long-term. We see no persuasive justification for risking this result.

#### IV. Report of the Small Retail Business Study Commission

In 1985 the Small Retail Business Study Commission ("SRBSC") was convened to examine the commercial lease situation in New York City. The SRBSC's efforts resulted in a Final

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<sup>7</sup> This effect of rent control - a tendency to encourage discrimination in the rental market - is often overlooked. It has, however, been recognized by many commentators. See, e.g., Ault, "The Presumed Advantages and Real Disadvantages of Rent Control," in Block & Olsen, supra note 6, at 61-62.

<sup>8</sup> See, e.g., F. Scherer, Industrial Market Structure and Economic Performance 482 (1980).

<sup>9</sup> See, e.g., Olsen & Walker, "Alternatives," at 268-69, and Dienstfrey, "The Politics of Rent Control in the United States: A Program at the Yellow Light," in Block & Olsen, supra note 6, at 6.

Report issued in June 1986 (hereafter "Final Report") reflecting the views of a majority of SRBSC Commissioners against rent control and in favor of the measures now embodied in Bill 734. A separate minority Report of the Dissenting Commissioners expressed the view that the commercial rent situation in New York City constituted an emergency that threatened the viability of many merchants<sup>10</sup> and warranted strong regulation (as reflected in Int. Nos. 581 and 204).

We believe that the market research undertaken by the SRBSC, which included a citywide survey of retail merchants and a survey of merchants and consumers in twelve selected city neighborhoods,<sup>11</sup> did not reveal an emergency warranting a broad market intrusive response. The surveys, which covered a variety of issues including merchant expectations concerning lease renewal, as well as merchant and consumer perceptions of their neighborhoods, disclosed a great deal of variation in market conditions in particular neighborhoods and divergent perceptions among both merchants and consumers of those conditions.

According to the Final Report, the surveys did not reveal a significant positive correlation between rates of merchant turnover and rent levels.<sup>12</sup> Turnover was comparatively low in some relatively high rent neighborhoods and comparatively high in some relatively low rent neighborhoods. Moreover, most

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<sup>10</sup> According to the Dissenting Report, almost half of the renting merchants in New York City face a lease expiration in the years 1986-1989. However, survey results presented in the SRBSC's Final Report suggest that most such merchants expect to renew their leases. See note 13, infra.

<sup>11</sup> The neighborhood survey covered retail merchants with leases due to expire in 1986, 1987 or 1988.

<sup>12</sup> According to the SRBSC, "[i]t seems clear, in short, that recent turnover rates cannot be explained exclusively, or perhaps even primarily, by rent levels. Nor can they easily be explained by recent rates of rent increases. . . ." Final Report at II-8. The Report's "Executive Summary" further states that "because of the relative similarity of rent as a proportion of sales across the twelve [surveyed] neighborhoods, we can say that rent as a proportion of sales does not appear to be a factor in intentions to move or go out of business. Other operating costs and profit levels appear to play a bigger role." Appendix C at 12.

merchants in the twelve neighborhoods surveyed expected to renew their leases.<sup>13</sup> There was no indication from the survey results that there would be widespread dislocation of neighborhood merchants as a result of rent increases or non-renewal.

Regarding consumer perceptions, surveyed consumers were generally more likely than not to view retailer turnover and the entry of new stores as a positive development that enhanced the neighborhood availability of retail services without resulting in price increases.<sup>14</sup> Dissatisfaction with price and the availability of services was more likely to be voiced by residents of low income neighborhoods where residents and merchants face complex economic constraints and problems that cannot be linked to retail rent levels and turnover.<sup>15</sup> It appears that incentives for investment and long-term economic change will be far more likely to enable these neighborhoods to

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13 The SRBSC's research disclosed that only a relatively small percentage of surveyed neighborhood merchants expected to sell or go out of business, or to relocate, as a result of landlord rent demands or refusals to renew. The percentage expecting to sell or go out of business exceeded 2% in five of the twelve surveyed neighborhoods: the Upper West Side (7%), Forest Hills (5%), the East Village (4%), Riverdale (4%), and Morningside-125th Street (3%). The percentage expecting to relocate exceeded 2% in two neighborhoods: the Upper West Side (8%) and Bay Ridge (3%). See Final Report at II-3-II-4 (June 1986).

14 See Final Report at I-7, II-15-II-16.

15 The "Executive Summary" contained in the Final Report states that "if there is a problem with the accessibility of goods, it appears to be occurring in the neighborhoods not associated with gentrification (i.e., Brownsville, Morningside, and Mott Haven), where residents are significantly more likely to complain about prices. . ." See Appendix C at 16. Note that these three communities were characterized by relatively low resident income, merchant perceptions that crime is the most serious problem they face, relatively high merchant turnover, and a range of rent levels (from below the median for the surveyed neighborhoods to above) as well as a range of rates of rent increase (0%, 9% and 11% respectively over a two year period - all substantially below the neighborhood and citywide medians).



experience the benefits of revitalization than measures that maintain the status quo.<sup>16</sup> Moreover, the SRBSC's survey results indicated that rent and non-renewal problems are "not likely" to affect the availability of essential goods and services in any of the surveyed neighborhoods.<sup>17</sup>

#### V. Alternatives to Rent Regulation

While the overall results of the research undertaken by the Small Retail Business Study Commission indicate that most merchants expect to renew their leases, a minority of retailers, especially smaller merchants with relatively low sales volume, anticipate difficulty. To the extent that relocation is desired or necessary for some merchants, the commercial market for rental property can provide a measure of accommodation.<sup>18</sup> Where special assistance, however, is needed to enable merchants to relocate within the city, we believe that alternatives to rent regulation will be more efficient and cheaper in the long run than a policy resulting in diminished and deteriorated rental stock.

In its report, the Small Retail Business Study Commission recommended supply expansion measures as the most sensible means of meeting market demand. Such measures include policies that would relax zoning restrictions and authorize second story retail uses in more neighborhoods, and measures to facilitate disposition of city-owned properties to retail merchants who would provide needed neighborhood services. We support these recommendations and believe they would benefit merchants, consumers and the community at large while avoiding the anticompetitive and anticonsumer effects associated with rent control legislation.<sup>19</sup>

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<sup>16</sup> See, e.g., Ault, "The Presumed Advantages and Real Disadvantages of Rent Control" in Block & Olsen, supra note 6, at 55.

<sup>17</sup> See the "Executive Summary" contained in the Final Report, Appendix C at 8.

<sup>18</sup> Eighteen percent of the retail businesses responding to the SRBSC's citywide survey and eight percent of those responding to the neighborhood survey had in fact moved within the past five years. See Final Report at I-11.

<sup>19</sup> See, e.g., Olsen & Walker, "Alternatives" in Block & Olsen, supra note 6, at 276-78; see also, Scherer, supra note 8, at 485-86.

Eli Dickson, Director

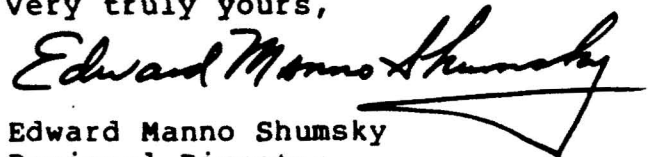
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VI. Conclusions

For all these reasons, we recommend against adoption of any rent control legislation. Of the three proposals, Bill 734 entails the least intrusion into the market for commercial rental properties, but even it may be expected to produce some undesirable distortions in market operations.

We hope that your office and the City Council will find these comments of assistance in your consideration of the proposed legislation. Please feel free to contact us if you have any questions or would like further information.

Very truly yours,



Edward Manno Shumsky  
Regional Director

cc: Ms. Leslie Garfield  
Counsel to the Committee on Economic Development  
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