

TAKEROOT JUSTICE

Intro 1796-2019, Regulation of Commercial Rent Intro 2299-2021, Lease Agreements Concerning Storefront Premises

September 17, 2021

My name is Paula Z. Segal. I am Senior Staff Attorney in TakeRoot Justice's Equitable Neighborhoods practice. Thank you very much for the opportunity to testify today.

TakeRoot works with grassroots groups, neighborhood organizations and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of "progress." As part of SBS's Commercial Lease Assistance Program, our Equitable Neighborhoods and Capacity Building practices provide direct representation to small minority-owned businesses on commercial lease matters, including new leases, renewals, amendments, and disputes over past-due rents.

TakeRoot is also a member of United for Small Business NYC (USBnyc), a coalition of organizations and community groups in NYC fighting to protect small businesses and non-residential tenants from the threat of displacement.¹ Under the threat of landlord harassment, impending displacement, and a lack of city resources, USBnyc aims to create strong, lasting protections for commercial tenants. We believe these goals must be implemented to protect our city's vibrant and integral small businesses.

Unregulated Commercial Rents Regularly Result in Rent Increases of Over 100%

A current client of mine that is in the middle of negotiating a renewal lease – a small family-owned restaurant that has weathered the pandemic – is being offered a lease that locks in

¹ USBnyc members are Asian American Federation, Association for Neighborhood & Housing Development (ANHD), Bridge Street Development Corporation, Brooklyn Legal Services Corporation A, Chhaya CDC, Cooper Square Committee, League of Independent Theater of New York (LITNY), Legal Aid Society, NYC Artist Coalition, NYC Network of Worker Cooperatives, Street Vendor Project, TakeRoot Justice, Volunteers of Legal Service (VOLS), and Women's Housing and Economic Development Corporation (WHEDCo).



a reasonable rent of \$3000 for the first year, then more than doubles it to \$6500 in year two, and then adds subsequent escalations in years three through ten. My client knows that his business will never be able to sustain a rent increase like that, though he wants to stay and continue to be a part of the community that the restaurant has helped nurture for decades. **There is no law that requires his landlord to limit the amount of money she can demand in exchange for letting the business stay.**

Another client – an African hair braider renting a salon in Harlem – agreed to a rent increase from \$1100 to \$2800 just four months after the pandemic emergency was declared so that she would be able to stay in the neighborhood where she had developed her business. She had developed a stable clientele during the term of her initial five-year lease, which she had negotiated with the family that owned the building when she decided to set up her business there; she was hopeful that her customers would come back to her as NYC reopened, and sure that if she moved, she would have to start building her business anew. By the time she renegotiated the last July her landlord had sold the building to a hedge-fund-backed portfolio. When she agreed to the new rent, she knew that she would be cutting wages, raising prices, and cutting into her own proceeds from the business, on which her family relies for its survival.² **Again, there is no limit to how much the new landlord was able to demand that my client pay to keep her business in its community.**

I *have* seen some landlords give our clients temporary breaks on rent, but nothing prevents them from increasing rent again at any time or writing huge jumps into leases after the concession period expires. The concessions we have been seeing all ended last summer when the State started providing re-opening guidelines. We are seeing rents on both new and renewal leases that are at least as high as they were before the pandemic. The pandemic has not reset the market for commercial spaces,³ but with commercial rent stabilization, we have an opportunity to completely re-align the power structure and give small businesses a chance in the post-COVID world.

Commercial Rent Stabilization, Intro 1796

Intro 1796 will create a level playing field by establishing a Commercial Rent Guidelines Board. Each year, after a public hearing and consideration of relevant factors, this Board would set the maximum amount the rent on smaller commercial spaces can be increased, taking away

² These impacts are typical. See ANHD, *The Forgotten Tenants: New York City's Immigrant Small Business Owners* (March 6, 2019), <https://anhd.org/report/forgotten-tenants-new-york-city-immigrant-small-business-owners> (52% reported having to raise prices to make rent; 38% of businesses in Kingsbridge, Bronx reported having to fire workers in order to make rent).

³ See also Oscar Abello, *Can NYC's Storefront Registry Help Level the Playing Field for Embattled Commercial Tenants?* (July 20, 2021), <https://nextcity.org/daily/entry/can-nyc-storefront-registry-level-the-playing-field-for-commercial-tenants>; M. Egkolfopoulou & C. Ballentine, *New York Renters Face 70% Increases as Pandemic Discounts Expire*, Bloomberg News (Sept. 15, 2021), <https://www.bloomberg.com/news/articles/2021-09-15/new-york-city-rents-landlords-jack-up-prices-70-in-lease-renewals-post-covid>.

the incentive for landlords to kick out small businesses in favor of large chains or, worse yet, vacancy. After this bill becomes law, tenant in smaller spaces will have one clear lease and one clear number with which to plan their future: property taxes or other fees will need to be incorporated in the rent instead of being included elsewhere in leases as “pass-alongs” that often result in unwelcome surprise bills to small businesses that never negotiated over these additional fees.

We urge the City to use its powers under the New York State municipal home rule and its police powers to regulate the commercial leasing market.⁴ In stark contrast with the regulation and control of housing accommodations,⁵ there is no state statute like the Urstandt law forbidding the City from regulating commercial leases and no current State regulation of that area of the economy. Absent such law or regulation the City is free to act; in the current climate, where rent escalations are forcing small businesses out daily, it is imperative that it does.

To make the framework even stronger, we urge the Council to make changes before enacting Intro 1796 as recommended by USBnyc, attached as Appendix A. These include:

1. Requiring that Mayoral appointments to the Guidelines Board be approved by the Council.
2. Adding small entertainment venues and places of assembly, and all commercial spaces where grocery stores are permitted, to covered spaces.
3. Setting initial rent for a space that is vacant when the bill becomes law at the amount of rent and pass-alongs paid by the last tenant of record.
4. Adding a robust appeal process through which both tenants and owners can file for an adjustment of the rent to bring rent into line with neighborhood norms.
5. Clarifying that the rent-setting agency will be a new agency, called the Commercial Rent Guidelines board, and *another* agency will be designated by the Mayor for enforcement (e.g. to oversee compliance with rent orders and handle overcharges and appeals);

⁴ See legal memo, attached as Appendix B, laying out the City’s power to enact commercial rent stabilization. Note that the memo was written in December 2019. Since then, federal courts have affirmed that the City has the right to regulate landlord behavior by upholding the personal guarantee limits that this Council created to limit landlord’s ability to collect past-due business rents from business owners’ personal assets during the COVID-19 pandemic. *See Melendez v City of NY*, Ind. 20-CV-5301 (S.D.N.Y. Nov. 25, 2020), available in full at <https://media2.mofo.com/documents/opinion-re-nyc-guaranty-law.pdf>. This recent decision is the only one in which any court addresses regulation of commercial tenancies by the City within our present-day statutory framework.

⁵ N.Y. Uncons. Laws § 8605 (sometimes referred to as “the Urstandt law”).

6. Requiring landlords to register leases and all riders to the enforcement agency every year and requiring the agency to send copies of registration and a complete rent history to tenants every year.

Storefront Bill of Rights, Intro 2299

When combined with Commercial Rent Stabilization and expanded to cover all the commercial spaces covered by Intro 1796 covers (not just retail stores that sell goods), the Storefront Bill of Rights will be part of a robust framework for stabilizing New York City's smallest businesses. We these elements of that bill as well:

1. Requiring a written lease for any tenancy longer than 1 year; though such a requirement needs to clarify that the lack of written lease will not be cause to terminate a tenancy and evict a tenant who wants to stay.
2. Requiring landlords to use a standard vacancy lease.
3. Requiring commercial landlords to provide tenants with the Certificate of Occupancy, a record of violations issued or construction done during the 10 years before they move in.
4. Requiring continuously updated contact information for the landlord.
5. Allowing commercial tenants reasonable time to cure lease violations.
6. Providing a process for lease renewal and an option to extend the lease for up to one year in the event renewal negotiations fail, coupled with the rent protections in Intro 1796.

APPENDIX A

USBnyc Recommendations for How To Improve Intro 1796 to Get Strong Commercial Rent Stabilization in NYC

Covered Properties

- Rewrite definition of covered commercial spaces so that it focuses on uses permitted by Certificate of Occupancy or lease in a particular space, as opposed to what any particular tenant is engaged in at any given time
- Add entertainment venues and places of assembly to covered spaces
- Add all commercial spaces where grocery stores are permitted to covered spaces
- Clarify that leasing where written lease is for less than year, but tenancy survives after written lease expires, are covered

Appointees to the Rent Guidelines Board

- The chair should have expertise in community development or community organizing, in addition to finance and economics
- None of the public members should be commercial landlords
- Mayoral appointments (and removals) should be approved by city council
- Add a definition of “chain business” for purposes of limiting appointee representing tenant perspective

Initial Rents

- The initial rent for an occupied space should be the rent 60 days before the law becomes effective (otherwise landlords will raise rents in the interim).
- The initial rent for a space that is vacant when the bill becomes law should be set based on the last lease for the space prior to the law going into effect.
- We would like to see a robust appeal process in place: tenants and owners should have 60 days after the notice of registration to file for an adjustment of the rent, with an opportunity for the other party to respond.

Operations of the Guidelines Board

- Add definition of “affected area:” an area defined by the board each year for the purpose of setting a uniform rent adjustment policy for that year. Each affected area defined shall be no larger than the entire City of New York, and no smaller than a community district.
- Clarify that the administering agency will be a new agency established by the Mayor, the Commercial Rent Guidelines board.
- Clarity that the Mayor will need to designate another agency to oversee compliance with the guidelines set by the board.



- Require landlords to register leases and all riders to the enforcement agency every year. Rents should be frozen after any year where a registration is missing, false, or incomplete. The freeze should be lifted only when all missing registrations are filed and all false registrations are corrected.
- The enforcement agency should send a complete rent history to the tenant every year. The history should include, if applicable, any overcharges, rent adjustments won through appeals or court cases, the effective date of any new and collectible rents, and any tax benefits or financing programs that apply to the building.
- The board must establish, and landlords of all covered commercial spaces must use, a standard vacancy lease (this is also in the Storefront bill of rights bill).

APPENDIX B

From: Paula Z. Segal, Senior Staff Attorney, TakeRoot Justice
Date: December 3, 2019
Re: **New York City’s Authority to Regulate Rents of Commercial Spaces**

Commercial Rent Regulation in NYC in 2019

There is currently no City or State agency that monitors, licenses or otherwise regulates commercial landlords or the relationship between such landlords and their current or potential tenants. New York State regulated such relationships between 1945 and 1962¹ but has since ceased. Commercial spaces are not a “housing accommodation” and thus not subject to the complicated State system of regulation in that arena.²

The State controls the courts, where landlord-tenant relationships at the end of a tenancy are sometimes adjudicated in the form of holdover proceedings. N.Y. Municipal Home Rule Law, § 11(1)(e) (McKinney 1969 & Supp. 1987) (State retains power over legislation which applies to or affects the courts); *see also* Real Prop. Law § 228 (McKinney 1968 & Supp. 1987) (codifying landlords’ rights to terminate tenancies at will); Real Prop. Law § 232-a (McKinney 1968 & Supp. 1987) (codifying landlords’ rights to terminate month-to-month tenancies); Real Prop. Law § 229 (McKinney 1968 & Supp. 1987) (codifying recovery from holdover tenants).

¹ See 1945 N.Y. Laws 3; *see 20th C Associates v. Waldman*, 294 NY 571 (1945) (commercial rent regulation by the State was a valid exercise of its police powers).

² The City is particularly not restricted by limits that the State has put on its activity in the regulation of housing:

No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision shall hereafter be by local law or ordinance or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal subjected to more stringent or restrictive provisions of regulation and control than those presently in effect.

N.Y. Uncons. Laws § 8605 (sometimes referred to as “the Urstandt law”) (enacted July 2, 1971). Cases in which the courts interpret this housing-specific provision are likewise irrelevant to an analysis of commercial rent regulation, *e.g.* *241 E. 22nd Street v. City Rent Agency*, 33 N.Y.2d 134 (1973); *210 E. 68th Street v. City Rent Agency*, 76 Misc. 2d 425, (Sup. Ct. N.Y. 1973), *aff’d*, 34 N.Y.2d 560 (1974); as are pre-1963 cases regarding conflicts between State and City regulation of rents for housing accommodations, *e.g.* *Gennis v. Milano*, 135 Misc. 209 (1st Dep’t 1929).

Commercial Rent Regulation Local Law
Proposed by the New York City Council, Intro. 1976

The system that this potential Local Law would establish is based on a Commercial Rent Guidelines Board (“Board”) that will control how much rent can go up for commercial tenants in some spaces³ in the City of New York by setting annual rental rate adjustments that apply to both the base rent and any additional charges.⁴ The Board would be established within a city agency tasked with enforcing the law, and where complaints and tenant harassment claims would be filed. Each owner of a commercial space would register with the agency and pay an annual fee to support enforcement.

The proposed legislation does not impact the rights of landlords and tenants at the end of a tenancy. It simply creates a system of price controls.

N.Y.S. Home Rule

New York State’s basic system of local governance is set forth in Article IX of the State Constitution.⁵ Adopted in 1963, a year after the expiration of commercial rent controls in the City by the State of New York, Article IX was intended to expand and secure the powers enjoyed by local governments. The powers of local governments to act in their own jurisdiction are meant to be construed broadly by the courts. N.Y. Mun. Home Rule L. § 51 (providing that home rule powers “shall be liberally construed”); N.Y. Stat. Local Gov. § 20(5) (same). Article IX authorizes local governments to adopt local laws in a wide range of fields including the government, protection, order, conduct, safety, health and well-being of persons or property within the locality. N.Y. Const. art. IX, § 2(c)(ii)(10); Municipal Home Rule Law § 10(1)(ii)(a)(12); N.Y. City Charter § 28(a).⁶

³ All retail stores of 10,000 square feet or less, manufacturing establishments of 25,000 square feet or less, and professional services or other offices of 10,000 square feet or less.

⁴ Initial rental rates upon which annual adjustments would henceforth be based would be set by agreement between landlord and tenant after the implementation of the Law for vacant properties, or the most recent agreement before implementation for those that have tenants.

⁵ See generally, N.Y. State Bar Association, *Report and Recommendations Concerning Constitutional Home Rule* (April 2, 2016), available at <https://www.nysba.org/homerulereport/>.

⁶ Municipalities have expanded sovereignty when their local laws address their own “property, affairs and government,” N.Y. Municipal Home Rule Law §10(1) (ii); see *Adler v. Deegan*, 251 N.Y. 467, 472 (1929). While the presently-proposed Local Law would likely be found to be part of this set of laws, there is no need to rely on such a finding when the broader Home Rule grant easily applies. The Court of Appeals has been clear that N.Y. Municipal Home Rule Law §10 authority can go

further than structuring the organization and administration of town government ... No such limitation is apparent from the plain language of [section 10\(1\)\(ii\)\(d\)\(3\)](#), which refers not only to ‘the property, affairs or government of the town’ but also to ‘other matters in relation to which and to the extent to which [a town] is authorized to adopt local laws by this section.’ Moreover, we find nothing in the Bill Jacket that compels such a cramped construction of the section; indeed, the Bill Jacket

This legal structure does not require New York State to expressly delegate or enable local government action that is encompassed in the Home Rule grant of authority. *See People v. New York Trap Rock Corp.*, 57 N.Y.2d 371, 378 (1981) ("[i]t is, therefore, well settled that if a town or other local government is otherwise authorized to legislate, it is not forbidden to do so unless the state, expressly or impliedly, has evinced an unmistakable desire to avoid the possibility that the local legislation will not be on all fours with that of the state").

Home Rule addresses two basic questions: (1) can the State legislate in a way that impacts the City? and (2) can the City legislate in a particular arena? First, the Proposed Local Law is a City law, not a State imposition onto municipal sovereignty. New York law, since 1963, has balanced municipal sovereignty with New York State's interests in the welfare of its residents while answering both of these questions.

Second, for the purposes of analyzing whether the City can legislate in the arena of commercial rent regulation, it is important to distinguish between the line of cases that arose out of State legislative actions and those that arose out of the actions of municipalities and other local governments. For example, in *City of New York v. State of New York*, 67 Misc.2d 513, 514 (Sup. Ct. N.Y. 1971), *aff'd*, 31 N.Y. 2d 804 (1972) the City of New York attempted to restrain the State of New York from implementing Residential Vacancy Decontrol Law. No City law was before the Court. The City hadn't exercised its own home rule powers but was instead attempting to assert its sovereignty to overturn a State law. The Court of Appeals affirmed this, in light of the fact that the state had legislated in residential vacancy decontrol and therefore that the City was clearly precluded from legislating in this arena; here, the specific legislative action was the subject of the case.

The Proposed Local Law is Not Preempted by of In Conflict with Any State Law

When the question is whether a City can properly enact a local law per its Constitutional powers, courts look to specific conflict and preemption doctrines in the context of N.Y. State Home Rule.

A local law will be preempted either where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field

reflects a recognition, voiced as a criticism, that the legislation could 'enable drastic changes and lead to unusual innovations in local government which cannot be foreseen.'

Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 434 (1989). Thus, under Home Rule, courts treat local laws designed to address specifically local conditions with deference. *See e.g. Board of Elections v. Mostofi*, 108 N.Y.S.3d 819, 830 (Sup. Ct. N.Y. Co. Sept. 19, 2019) ("while there are municipalities in other parts of the state that have [limited English proficiency ("LEP")] voters who would benefit from having interpreters, given the sheer number of LEP voters in the City who need language assistance the scope of the need for interpreter services is unique to the City, and supports this local initiative to address the issue" (emphasis added)).

preemption).

Eric M. Berman, P.C. v. City of New York, 25 N.Y.3d 684, 690 (2015).

Local laws that do not prohibit what State law expressly allows or that allow what State law expressly prohibits are not viewed by the courts as unlawfully in conflict. *See e.g. Wholesale Laundry Bd. v. City of New York*, 17 A.D.2d 327, 329 (1st Dept.), *aff'd*, 12 N.Y.2d 998 (1963) (State law permitted paying workers a minimum wage; City law that raised that wage was not lawful because it prohibited paying workers an hourly amount that State law explicitly permitted); *Chwick v. Mulvey*, 81 A.D.3d 161, 169 (2d Dep't 2010) (“without a ‘head-on collision’ between the [State] Law and the amended ordinance, conflict preemption does not apply;” local ordinance regulating colored guns upheld even though State Penal Law regulates gun ownership). The *Chwick* court explained,

the mere fact that the Legislature's silence appears to allow an act that a local law prohibits does not automatically invoke the preemption doctrine. ‘If this were the rule, the power of local governments to regulate would be illusory. Any time that the State law is silent on a subject, the likelihood is that a local law regulating that subject will prohibit something permitted elsewhere in the State. That is the essence of home rule.

81 A.D.3d 168-9 (quoting *People v. Cook*, 34 N.Y.2d 100, 109 (1974)).

As there is no State law that explicitly regulates the rental pricing of commercial space, the proposed Local Law does not conflict with any State law as the State (i) has no system in place to regulate commercial rents at all and (ii) has not had one since before the codification of Home Rule.

Simply legislating in an area is not sufficient to occupy the field. Even where there are some State interests, where the State’s interests are “minor” and its regulation limited, courts have allowed local laws that supplement the State’s limited engagement in particular arenas. For example, in *Council for Owner-Occupied Housing, Inc. v. Koch*, 119 Misc. 2d 241 (Sup. Ct. N.Y. 1983), the court found that since existing State laws in the area of cooperative and condominium conversions were primarily disclosure statutes, there was no conflict with a City ordinance that added a new requirement that a three percent reserve fund be established in cooperative or condominium conversions. Even where there is some State law that seems to overlap with a local law, but the court finds that State enforcement is limited, local legislation will survive a challenge. *See e.g. Ambulance and Medical Transp. Ass'n v. City of New York*, 98 Misc. 2d 537, 539 (Sup. Ct. N.Y. 1979) (more exacting City regulation of wheelchair-accessible transportation upheld given evidence of less-than-forceful State enforcement of a parallel provisions); *see also People v. Judi*, 38 N.Y.2d 529, 531 (1976) (Court of Appeals upheld a City ordinance criminalizing possession of toy guns without intent to use unlawfully even though State law required that possession with intent to be used unlawfully be proven); *People v. Lewis*, 295 N.Y. 42 (1945) (City penalties for black market activities which exceeded State penalties were found not to create unlawful inconsistency). State laws governing the process of

termination of tenancy will likely be found to be evidence of a minor interest in the relationship between commercial landlords and tenants, insufficient to establish a conflict.

The proposed local law will not impact the termination-of-tenancy and holdover processes established by State law. Thus *Tartaglia v. McLaughlin*, 190 Misc. 266 (Sup. Ct. Kings 1947), *aff'd* 273 A.D. 821, *rev'd on other grounds* 297 N.Y. 419 (1948) and *F.T.B. Realty Corp. v. Goodman*, 300 N.Y. 140 (1949), *Haque v. Pocchia*, 186 Misc.2d 806 (App. T. 2d Dep't 2000) and related cases are inapposite as they address an explicit limit on Home Rule power that is written into the statute,

The proposed local law is not an attempt to establish a regulatory agency which parallels a State agency as there is no current State agency that controls commercial leasing. *Compare People v. Kelsey's Seafood*, 112 Misc. 2d 927, 930 (Dist. Ct. Suffolk 1982) (local law that required shellfish wholesalers to obtain local permit in addition to the permit that the State already required found to be preempted).

In order for a court to find that a local law is preempted by State law, there must be evidence that the State desired to preempt the field. "A desire to pre-empt may be implied from a declaration of State policy by the Legislature or from the fact that the Legislature has enacted a *comprehensive and detailed regulatory scheme* in a particular area. *Consol. Edison Co. of New York v. Town of Red Hook*, 60 N.Y.2d 99, 105 (1983) (emphasis added). *See Board of Elections v. Mostofi*, 108 N.Y.S.3d at 830 (no conflict preemption for local law mandating the provision of interpreters at polling places despite the State Election Law providing a comprehensive regulatory scheme as no provision of the Election Law expressly governs the ability to provide interpreter services to voters; "[t]he Election Law contains no express legislative statement of an intent to preempt municipal action"); *New York Bankers Ass'n, Inc. v. City of New York*, 119 F.Supp.3d 158, 194 (S.D.N.Y. 2015) (local law regulating state-chartered banks found to be preempted by State law where that State "evinces an intent to preempt the field of regulating state-chartered banks" by including language in the statute creating a State regulatory agency that it is "the policy of the state of New York that the business of all... banking organizations shall be supervised and regulated through the" State agency which will "have broad powers of regulation to control and police the banking institutions under their supervision" (internal citations and quotations omitted)). *Chwick*, 81 A.D.3d at 170 (detailed Penal Law scheme for firearms licensing preempts local law licensing provisions).

Here, the State has neither made a declaration of its intention to occupy the field of commercial leasing, nor enacted any regulatory scheme that applies to the field.

Further, the fact that both the State and the City seek to legislate in the same area does not alone create an inconsistency. *Eric M. Berman, P.C. v. City of New York*, 796 F.3d 171, 174 (2d Cir. 2015) (finding "no express conflict between the broad authority accorded to [New York State] courts to regulate attorneys under the [New York] Judiciary Law and the [local] licensing of individuals as attorneys who are engaged in debt collection activity falling outside of the practice of law," and further finding that the "authority to regulate attorney conduct does not evince an intent to preempt the field of regulating" all services rendered by attorneys (internal citations and quotations omitted)); *see also People v. Webb*, 78 Misc. 2d 253, 256 (Crim. Ct. N.Y. 1974). The existence of State laws governing the process of termination of tenancy will not

likely be viewed as a bar to a finding that the Local Law creating a system for commercial rent regulation is lawful.

Police Powers

In addition to the Home Rule powers enumerated above and granted by the Constitution and specific State statutes, municipalities have police powers.

Legislation which has for its object the promotion of the public welfare and safety, falls within the scope of the police power and must be submitted to even though it imposes restraints and burdens on the individual.

People v. Ortiz, 479 NYS2d 613, 620 (2nd Dept 1984).

The police power has been defined generally as the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants *Village of Carthage v. Frederick*, 122 N.Y. 268 (1890) (affirming village law imposing responsibilities on owners of real property in its limits). The power is as old as is the organization of municipalities.

Price Controls are a Hallmark of Police Powers

In *People v. Cook*, the Court of Appeals affirmed that police powers of a local government give it the power to establish price controls. 34 N.Y.2d at 104 (“the leading New York cases interpreting the police power of municipalities support the validity of municipal price regulation in certain instances”).

It is a “a proper exercise of the City's police power to regulate ... businesses in the public interest,” *Short Stop Industrial Catering*, 485 N.Y.S.2d 921, 924 (Sup. Ct. N.Y. Co 1985), and there is no exclusion for the regulation of real estate businesses.

Rent Regulation is not a Taking that Requires Compensation

Every restriction upon the use of property, imposed in the exercise of the police power, deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the state of rights in property without making compensation. But restriction imposed to protect the public health, safety, or morals from dangers threatened is not a taking The state merely prevents the owner from making a use which interferes with paramount rights of the public.

Tirolerland, Inc. v. Lake Placid 1980 Olympic Games, Inc., 592 F.Supp. 304 (N.D. N.Y. 1984) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 417 (1922) (Brandeis, J., dissenting)).

The Supreme Court of the United States has recognized only two “relatively narrow” categories of regulatory takings: regulatory actions (1) that permanently invade the owner’s property, or (2) completely deprive an owner of “*all* economically beneficial us[e]” of the property.” *Lingle v Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (quoting *Lucas v S.C. Coastal Council*, 505 U.S. 1003 (1992)).

Where a property retains some of its value, courts will consider whether such action constitutes a partial taking. A government action that “merely adjust[s] the benefits and burdens of economic life,” is not a “taking.” *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). Denying the owner a “reasonable return” on the land does not prevent economically viable use, and is thus not a “taking.” *Rent Stabilization Ass’n v. Dinkins*, 805 F. Supp. 159, 163 (S.D.N.Y. 1992) (upholding New York City’s Rent Stabilization Law). The Supreme Court “has consistently affirmed that States have broad power to regulate [...] the landlord-tenant relationship without paying compensation for all economic injuries that such regulation entails.” *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419, 440 (1982). A court will not likely find that a reduction of potential future rental income through regulation of how much rents can be increased relative to rents at the time the Regulation law is enacted constitutes a reduction in a property’s value. Rent increase regulation does not destroy all economically beneficial or productive use, and thus is unlikely to be a “taking.” See *Dawson v. Higgins*, 610 N.Y.S.2d 200, 207 (App. Div. 1st Dept. 1994) (upholding regulatory rule permanently preventing certain evictions from rent-controlled units).