

# STATE OF NEW YORK

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4948

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

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Introduced by M. of A. ROSENTHAL -- read once and referred to the  
Committee on Housing

AN ACT to amend the administrative code of the city of New York, the  
emergency tenant protection act of nineteen seventy-four and the emer-  
gency housing rent control law, in relation to limiting adjustments  
for major capital improvements where the improvement generates revenue  
for the landlord

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 26-405 of the administrative code of the city of  
2 New York is amended by adding a new subdivision n to read as follows:

3 n. Notwithstanding anything to the contrary contained herein, a rent  
4 increase shall be prohibited for a landlord applying for a rent increase  
5 for major capital improvements where the improvement generates revenue  
6 for the landlord.

7 § 2. Paragraph 6 of subdivision c of section 26-511 of the administra-  
8 tive code of the city of New York, as amended by section 29 of part A of  
9 chapter 20 of the laws of 2015, is amended to read as follows:

10 (6) provides criteria whereby the commissioner may act upon applica-  
11 tions by owners for increases in excess of the level of fair rent  
12 increase established under this law provided, however, that such crite-  
13 ria shall provide (a) as to hardship applications, for a finding that  
14 the level of fair rent increase is not sufficient to enable the owner to  
15 maintain approximately the same average annual net income (which shall  
16 be computed without regard to debt service, financing costs or manage-  
17 ment fees) for the three year period ending on or within six months of  
18 the date of an application pursuant to such criteria as compared with  
19 annual net income, which prevailed on the average over the period nine-  
20 teen hundred sixty-eight through nineteen hundred seventy, or for the  
21 first three years of operation if the building was completed since nine-  
22 teen hundred sixty-eight or for the first three fiscal years after a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 transfer of title to a new owner provided the new owner can establish to  
2 the satisfaction of the commissioner that he or she acquired title to  
3 the building as a result of a bona fide sale of the entire building and  
4 that the new owner is unable to obtain requisite records for the fiscal  
5 years nineteen hundred sixty-eight through nineteen hundred seventy  
6 despite diligent efforts to obtain same from predecessors in title and  
7 further provided that the new owner can provide financial data covering  
8 a minimum of six years under his or her continuous and uninterrupted  
9 operation of the building to meet the three year to three year compar-  
10 ative test periods herein provided; and (b) as to completed building-  
11 wide major capital improvements, for a finding that such improvements  
12 are deemed depreciable under the Internal Revenue Code and that the cost  
13 is to be amortized over ~~[an eight-year]~~ a seven-year period ~~[for a~~  
14 ~~building with thirty-five or fewer housing accommodations, or a nine-~~  
15 ~~year period for a building with more than thirty-five housing accommo-~~  
16 ~~dations, for any determination issued by the division of housing and~~  
17 ~~community renewal after the effective date of the rent act of 2015]~~,  
18 based upon cash purchase price exclusive of interest or service charges.  
19 Notwithstanding anything to the contrary contained herein, a rent  
20 increase shall be prohibited for a landlord applying for a rent increase  
21 for major capital improvements where the improvement generates revenue  
22 for the landlord. Notwithstanding anything to the contrary contained  
23 herein, no hardship increase granted pursuant to this paragraph shall,  
24 when added to the annual gross rents, as determined by the commissioner,  
25 exceed the sum of, (i) the annual operating expenses, (ii) an allowance  
26 for management services as determined by the commissioner, (iii) actual  
27 annual mortgage debt service (interest and amortization) on its indebt-  
28 edness to a lending institution, an insurance company, a retirement fund  
29 or welfare fund which is operated under the supervision of the banking  
30 or insurance laws of the state of New York or the United States, and  
31 (iv) eight and one-half percent of that portion of the fair market value  
32 of the property which exceeds the unpaid principal amount of the mort-  
33 gage indebtedness referred to in subparagraph (iii) of this paragraph.  
34 Fair market value for the purposes of this paragraph shall be six times  
35 the annual gross rent. The collection of any increase in the stabilized  
36 rent for any apartment pursuant to this paragraph shall not exceed six  
37 percent in any year from the effective date of the order granting the  
38 increase over the rent set forth in the schedule of gross rents, with  
39 collectability of any dollar excess above said sum to be spread forward  
40 in similar increments and added to the stabilized rent as established or  
41 set in future years;

42 § 3. Section 6 of section 4 of chapter 576 of the laws of 1974,  
43 constituting the emergency tenant protection act of nineteen seventy-  
44 four, is amended by adding a new subdivision h to read as follows:

45 h. Notwithstanding anything to the contrary contained herein, a rent  
46 increase shall be prohibited for a landlord applying for a rent increase  
47 for major capital improvements where the improvement generates revenue  
48 for the landlord.

49 § 4. The second undesignated paragraph of paragraph (a) of subdivision  
50 4 of section 4 of chapter 274 of the laws of 1946, constituting the  
51 emergency housing rent control law, as amended by section 25 of part B  
52 of chapter 97 of the laws of 2011 and subparagraph 7 as amended by  
53 section 32 of part A of chapter 20 of the laws of 2015, is amended to  
54 read as follows:

55 No application for adjustment of maximum rent based upon a sales price  
56 valuation shall be filed by the landlord under this subparagraph prior

1 to six months from the date of such sale of the property. In addition,  
2 no adjustment ordered by the commission based upon such sales price  
3 valuation shall be effective prior to one year from the date of such  
4 sale. Where, however, the assessed valuation of the land exceeds four  
5 times the assessed valuation of the buildings thereon, the commission  
6 may determine a valuation of the property equal to five times the equal-  
7 ized assessed valuation of the buildings, for the purposes of this  
8 subparagraph. The commission may make a determination that the valu-  
9 ation of the property is an amount different from such equalized  
10 assessed valuation where there is a request for a reduction in such  
11 assessed valuation currently pending; or where there has been a  
12 reduction in the assessed valuation for the year next preceding the  
13 effective date of the current assessed valuation in effect at the time  
14 of the filing of the application. Net annual return shall be the amount  
15 by which the earned income exceeds the operating expenses of the proper-  
16 ty, excluding mortgage interest and amortization, and excluding allow-  
17 ances for obsolescence and reserves, but including an allowance for  
18 depreciation of two per centum of the value of the buildings exclusive  
19 of the land, or the amount shown for depreciation of the buildings in  
20 the latest required federal income tax return, whichever is lower;  
21 provided, however, that (1) no allowance for depreciation of the build-  
22 ings shall be included where the buildings have been fully depreciated  
23 for federal income tax purposes or on the books of the owner; or (2) the  
24 landlord who owns no more than four rental units within the state has  
25 not been fully compensated by increases in rental income sufficient to  
26 offset unavoidable increases in property taxes, fuel, utilities, insur-  
27 ance and repairs and maintenance, excluding mortgage interest and amor-  
28 tization, and excluding allowances for depreciation, obsolescence and  
29 reserves, which have occurred since the federal date determining the  
30 maximum rent or the date the property was acquired by the present owner,  
31 whichever is later; or (3) the landlord operates a hotel or rooming  
32 house or owns a cooperative apartment and has not been fully compensated  
33 by increases in rental income from the controlled housing accommodations  
34 sufficient to offset unavoidable increases in property taxes and other  
35 costs as are allocable to such controlled housing accommodations,  
36 including costs of operation of such hotel or rooming house, but exclud-  
37 ing mortgage interest and amortization, and excluding allowances for  
38 depreciation, obsolescence and reserves, which have occurred since the  
39 federal date determining the maximum rent or the date the landlord  
40 commenced the operation of the property, whichever is later; or (4) the  
41 landlord and tenant voluntarily enter into a valid written lease in good  
42 faith with respect to any housing accommodation, which lease provides  
43 for an increase in the maximum rent not in excess of fifteen per centum  
44 and for a term of not less than two years, except that where such lease  
45 provides for an increase in excess of fifteen per centum, the increase  
46 shall be automatically reduced to fifteen per centum; or (5) the land-  
47 lord and tenant by mutual voluntary written agreement agree to a  
48 substantial increase or decrease in dwelling space or a change in the  
49 services, furniture, furnishings or equipment provided in the housing  
50 accommodations; provided that an owner shall be entitled to a rent  
51 increase where there has been a substantial modification or increase of  
52 dwelling space or an increase in the services, or installation of new  
53 equipment or improvements or new furniture or furnishings provided in or  
54 to a tenant's housing accommodation. The permanent increase in the maxi-  
55 mum rent for the affected housing accommodation shall be one-fortieth,  
56 in the case of a building with thirty-five or fewer housing accommo-

1 dations, or one-sixtieth, in the case of a building with more than thir-  
2 ty-five housing accommodations where such permanent increase takes  
3 effect on or after September twenty-fourth, two thousand eleven, of the  
4 total cost incurred by the landlord in providing such modification or  
5 increase in dwelling space, services, furniture, furnishings or equip-  
6 ment, including the cost of installation, but excluding finance charges  
7 provided further that an owner who is entitled to a rent increase pursu-  
8 ant to this clause shall not be entitled to a further rent increase  
9 based upon the installation of similar equipment, or new furniture or  
10 furnishings within the useful life of such new equipment, or new furni-  
11 ture or furnishings. The owner shall give written notice to the commis-  
12 sion of any such adjustment pursuant to this clause; or (6) there has  
13 been, since March first, nineteen hundred fifty, an increase in the  
14 rental value of the housing accommodations as a result of a substantial  
15 rehabilitation of the building or housing accommodation therein which  
16 materially adds to the value of the property or appreciably prolongs its  
17 life, excluding ordinary repairs, maintenance and replacements; or (7)  
18 there has been since March first, nineteen hundred fifty, a major capi-  
19 tal improvement required for the operation, preservation or maintenance  
20 of the structure; ~~which for any order of the commissioner issued after~~  
21 ~~the effective date of the rent act of 2015 the cost of such improvement~~  
22 ~~shall be amortized over an eight year period for buildings with thirty-~~  
23 ~~five or fewer units or a nine year period for buildings with more than~~  
24 ~~thirty-five units,~~ or (8) there has been since March first, nineteen  
25 hundred fifty, in structures containing more than four housing accommo-  
26 dations, other improvements made with the express consent of the tenants  
27 in occupancy of at least seventy-five per centum of the housing accom-  
28 modations, provided, however, that no adjustment granted hereunder shall  
29 exceed fifteen per centum unless the tenants have agreed to a higher  
30 percentage of increase, as herein provided; or (9) there has been,  
31 since March first, nineteen hundred fifty, a subletting without written  
32 consent from the landlord or an increase in the number of adult occu-  
33 pants who are not members of the immediate family of the tenant, and the  
34 landlord has not been compensated therefor by adjustment of the maximum  
35 rent by lease or order of the commission or pursuant to the federal act;  
36 or (10) the presence of unique or peculiar circumstances materially  
37 affecting the maximum rent has resulted in a maximum rent which is  
38 substantially lower than the rents generally prevailing in the same area  
39 for substantially similar housing accommodations. Notwithstanding  
40 anything to the contrary contained herein, adjustments shall be prohib-  
41 ited for a landlord applying for a rent increase for major capital  
42 improvements where the improvement generates revenue for the landlord.

43 § 5. This act shall take effect on the sixtieth day after it shall  
44 have become a law; provided that:

45 (a) the amendments to section 26-405 of the city rent and rehabili-  
46 tation law made by section one of this act shall remain in full force  
47 and effect only as long as the public emergency requiring the regulation  
48 and control of residential rents and evictions continues, as provided in  
49 subdivision 3 of section 1 of the local emergency housing rent control  
50 act;

51 (b) the amendments to section 26-511 of chapter 4 of title 26 of the  
52 administrative code of the city of New York made by section two of this  
53 act shall expire on the same date as such law expires and shall not  
54 affect the expiration of such law as provided under section 26-520 of  
55 such law;

1 (c) the amendment to section 6 of the emergency tenant protection act  
2 of nineteen seventy-four made by section three of this act shall expire  
3 on the same date as such act expires and shall not affect the expiration  
4 of such act as provided in section 17 of chapter 576 of the laws of  
5 1974, as from time to time amended; and  
6 (d) the amendment to section 4 of the emergency housing rent control  
7 law made by section four of this act shall expire on the same date as  
8 such law expires and shall not affect the expiration of such law as  
9 provided in subdivision 2 of section 1 of chapter 274 of the laws of  
10 1946.