

STATE OF NEW YORK

1430

2023-2024 Regular Sessions

IN SENATE

January 11, 2023

Introduced by Sens. BAILEY, SEPULVEDA -- read twice and ordered printed,
and when printed to be committed to the Committee on Housing,
Construction and Community Development

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 approving major capital
improvement rent increases and extending the length of time over which
major capital improvement expenses may be recovered

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

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section
26-405 of the administrative code of the city of New York, as amended by
section 27 of part Q of chapter 39 of the laws of 2019, is amended to
read as follows:

(g) (i) Collection of surcharges to the maximum rent authorized pursu-
ant to item (ii) of this subparagraph shall cease when the owner has
recovered the cost of the major capital improvement;

(ii) There has been since July first, nineteen hundred seventy, a
major capital improvement [essential for the preservation energy effi-
ciency, functionality, or infrastructure of the entire building,
improvement of the structure including heating, windows, plumbing and
roofing but shall not be for operational costs or unnecessary cosmetic
improvements. The temporary increase based upon a major capital improve-
ment under this subparagraph for any order of the commissioner issued
after the effective date of the chapter of the laws of two thousand
nineteen that amended this subparagraph shall be in an amount sufficient
to amortize the cost of the improvements pursuant to this subparagraph
(g) over a twelve year period for buildings with thirty five or fewer
units or a twelve and one half year period for buildings with more than
thirty-five units, and shall be removed from the legal regulated rent
thirty years from the date the increase became effective inclusive of

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

LBD04533-01-3

~~any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2010, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2010 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved,];~~ provided that the commissioner first finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation or preservation of the structure. However, no major capital improvement rent increase will be approved by the division of housing and community renewal unless the work performed is an enhancement or upgrade to a housing accommodation or service therein; or is an addition to such housing accommodation and otherwise eligible according to the prerequisites for major capital improvement rent increases. Any repair or replacement intended to maintain an existing service shall not be eligible for a major capital improvement rent increase. No application for a major capital improvement rent increase may be approved if there exist any outstanding hazardous violations at the time of the consideration of such application, as determined pursuant to regulations of the division of housing and community renewal or any agency administering and enforcing a building code in the jurisdiction in which the property is located, unless it is determined by the division of housing and community renewal that such work is essential to the alleviation of the violations and such approval is consistent with the provisions of this section. Except in the case of emergency or good cause, the owner of the property shall file, not less than thirty days before the commencement of the improvement, with the division of housing and community renewal a statement containing information outlining the scope of work, expected date of completion for such work and an affidavit setting forth the following information: (a) every owner of record and owner of a substantial interest in the property or entity owning the property or sponsoring the improvement; and (b) a statement that none of such persons had, within the five years prior to the improvement, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction. Upon receipt of the scope of work and affidavit provided for herein, the division of housing and community renewal shall provide the tenants in occupancy in such buildings with such information. The division of housing and community renewal shall, in addition, implement procedures including, but not limited to, eliciting tenant comments to determine whether major capital improvement rehabilitation

work has been satisfactorily completed. No major capital improvement rent increase shall become effective until any defective or deficient rehabilitation work has been cured. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the maximum rent. It shall be separately designated and billed as such and shall not be compounded by any other adjustment to the maximum rent. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply; or

§ 2. Subparagraph (k) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(k) The landlord has incurred, since January first, nineteen hundred seventy, in connection with and in addition to a concurrent major capital improvement pursuant to subparagraph (g) of this paragraph, other expenditures to improve, restore or preserve the quality of the structure. An adjustment under this subparagraph shall be granted only if such improvements represent an expenditure equal to at least ten per centum of the total operating and maintenance expenses for the preceding year. An adjustment under this subparagraph shall be in addition to any adjustment granted for the concurrent major capital improvement and shall be [~~in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph over a seven-year period~~] implemented in the same manner as such major capital improvement as a further surcharge to the maximum rent.

§ 3. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as separately amended by section 12 of part K of chapter 36 and section 28 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide [~~(a) as~~] in regard to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from prede-

cessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided[; and (b) as to ~~completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over a twelve-year period for a building with thirty-five or fewer housing accommodations, or a twelve and one-half-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the the chapter of the laws of two thousand nineteen that amended this paragraph and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved or based upon cash purchase price exclusive of interest or service charges. Where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application].~~ Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the

1 schedule of gross rents, with collectability of any dollar excess above
2 said sum to be spread forward in similar increments and added to the
3 stabilized rent as established or set in future years;

4 § 4. Subdivision c of section 26-511 of the administrative code of the
5 city of New York is amended by adding three new paragraphs 6-b, 6-c and
6 6-d to read as follows:

7 (6-b) provides criteria whereby the commissioner may act upon applica-
8 tion by owners for increases in excess of the level of fair rent
9 increase established under this law provided, however, that such crite-
10 ria shall provide that:

11 (i) as to completed building-wide major capital improvements, first,
12 that a finding that such improvements are deemed depreciable under the
13 internal revenue code and such improvements are required for the opera-
14 tion or preservation of the structure;

15 (ii) however, no major capital improvement rent increase will be
16 approved by the division of housing and community renewal unless the
17 work performed is an enhancement or upgrade to a housing accommodation
18 or service therein; or is an addition to such housing accommodation and
19 otherwise eligible according to the prerequisites for major capital
20 improvement rent increases. Any repair or replacement intended to main-
21 tain an existing service shall not be eligible for a major capital
22 improvement rent increase;

23 (iii) no application for a major capital improvement rent increase may
24 be approved if there exist any outstanding hazardous violations at the
25 time of the consideration of such application, as determined pursuant to
26 regulations of the division of housing and community renewal or any
27 agency administering and enforcing a building code in the jurisdiction
28 in which the property is located, unless it is determined by the divi-
29 sion of housing and community renewal that such work is essential to the
30 alleviation of the violations and such approval is consistent with the
31 provisions of this section. Except in the case of emergency or good
32 cause, the owner of the property shall file, not less than thirty days
33 before the commencement of the improvement, with the division of housing
34 and community renewal a statement containing information outlining the
35 scope of work, expected date of completion for such work and an affida-
36 vit setting forth the following information:

37 (A) every owner of record and owner of a substantial interest in the
38 property or entity owning the property or sponsoring the improvement;
39 and

40 (B) a statement that none of such persons had, within the five years
41 prior to the improvement, been found to have harassed or unlawfully
42 evicted tenants by judgment or determination of a court or agency under
43 the penal law, any state or local law regulating rents or any state or
44 local law relating to harassment of tenants or unlawful eviction.

45 Upon receipt of the scope of work and affidavit provided for herein,
46 the division of housing and community renewal shall provide the tenants
47 in occupancy in such buildings with such information. The division of
48 housing and community renewal shall, in addition, implement procedures
49 including, but not limited to, eliciting tenant comments to determine
50 whether major capital improvement rehabilitation work has been satisfac-
51 torily completed. No major capital improvement rent increase shall
52 become effective until any defective or deficient rehabilitation work
53 has been cured.

54 (6-c) the increase permitted for such capital improvement shall be
55 collected as a monthly surcharge to the legal regulated rent. It shall
56 be separately designated and billed as such and shall not be compounded

1 by any annual adjustment of the level of fair rent provided for under
2 subdivision b of section 26-510 of this chapter. The surcharge allocable
3 to each apartment shall be an amount equal to the cost of the improve-
4 ment divided by eighty-four divided by the number of rooms in the build-
5 ing, and then multiplied by the number of rooms in such apartment;
6 provided that the surcharge allocable to any apartment, in any one year
7 may not exceed an amount equal to six percent of the monthly rent
8 collected by the owner for such apartment as set forth in the schedule
9 of gross rents. Any excess above said six percent shall be carried
10 forward and collected in future years as a further surcharge not to
11 exceed an additional six percent in any one year period until the total
12 surcharge equals the amount it would have been if the aforementioned six
13 percent limitation did not apply.

14 (6-d) collection of surcharges in excess of the level of fair rent
15 authorized pursuant to paragraphs six-b and six-c of this subdivision
16 shall cease when the owner has recovered the cost of the major capital
17 improvement.

18 § 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
19 576 of the laws of 1974, constituting the emergency tenant protection
20 act of nineteen seventy-four, as amended by section 26 of part Q of
21 chapter 39 of the laws of 2019, is amended to read as follows:

22 (3) (i) collection of surcharges in addition to the legal regulated
23 rent authorized pursuant to subparagraph (ii) of this paragraph shall
24 cease when the owner has recovered the cost of the major capital
25 improvement;

26 (ii) there has been since January first, nineteen hundred seventy-four
27 a major capital improvement [essential for the preservation, energy
28 efficiency, functionality, or infrastructure of the entire building,
29 improvement of the structure including heating, windows, plumbing and
30 roofing, but shall not be for operation costs or unnecessary cosmetic
31 improvements. An adjustment under this paragraph shall be in an amount
32 sufficient to amortize the cost of the improvements pursuant to this
33 paragraph over a twelve year period for a building with thirty five or
34 fewer housing accommodations, or a twelve and one-half period for a
35 building with more than thirty-five housing accommodations and shall be
36 removed from the legal regulated rent thirty years from the date the
37 increase became effective inclusive of any increases granted by the
38 applicable rent guidelines board, for any determination issued by the
39 division of housing and community renewal after the effective date of
40 the chapter of the laws of two thousand nineteen that amended this para-
41 graph. Temporary major capital improvement increases shall be collecta-
42 ble prospectively on the first day of the first month beginning sixty
43 days from the date of mailing notice of approval to the tenant. Such
44 notice shall disclose the total monthly increase in rent and the first
45 month in which the tenant would be required to pay the temporary
46 increase. An approval for a temporary major capital improvement increase
47 shall not include retroactive payments. The collection of any increase
48 shall not exceed two percent in any year from the effective date of the
49 order granting the increase over the rent set forth in the schedule of
50 gross rents, with collectability of any dollar excess above said sum to
51 be spread forward in similar increments and added to the rent as estab-
52 lished or set in future years. Upon vacancy, the landlord may add any
53 remaining balance of the temporary major capital improvement increase to
54 the legal regulated rent. Notwithstanding any other provision of the
55 law, the collection of any rent increases for any renewal lease commenc-
56 ing on or after June 14, 2019, due to any major capital improvements

~~approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved];~~ provided that the commissioner first finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation or preservation of the structure. However, no major capital improvement rent increase will be approved by the division of housing and community renewal unless the work performed is an enhancement or upgrade to a housing accommodation or service therein; or is an addition to such housing accommodation and otherwise eligible according to the prerequisites for major capital improvement rent increases. Any repair or replacement intended to maintain an existing service shall not be eligible for a major capital improvement rent increase. No application for a major capital improvement rent increase may be approved if there exist any outstanding hazardous violations at the time of the consideration of such application, as determined pursuant to regulations of the division of housing and community renewal or any agency administering and enforcing a building code in the jurisdiction in which the property is located, unless it is determined by the division of housing and community renewal that such work is essential to the alleviation of the violations and such approval is consistent with the provisions of this section. Except in the case of emergency or good cause, the owner of the property shall file, not less than thirty days before the commencement of the improvement, with the division of housing and community renewal a statement containing information outlining the scope of work, expected date of completion for such work and an affidavit setting forth the following information: (a) every owner of record and owner of a substantial interest in the property or entity owning the property or sponsoring the improvement; and (b) a statement that none of such persons had, within the five years prior to the improvement, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction. Upon receipt of the scope of work and affidavit provided for herein, the division of housing and community renewal shall provide the tenants in occupancy in such buildings with such information. The division of housing and community renewal shall, in addition, implement procedures including, but not limited to, eliciting tenant comments to determine whether major capital improvement rehabilitation work has been satisfactorily completed. No major capital improvement rent increase shall become effective until any defective or deficient rehabilitation work has been cured. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the legal regulated rent. It shall be separately designated and billed as such and shall not be compounded by any annual rent adjustment authorized by the rent guidelines board under this act. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total

surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply, or

§ 6. The second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 25 of part B of chapter 97 of the laws of 2011, subparagraph 5 as amended by section 36 of part Q of chapter 39 of the laws of 2019, subparagraph 7 as separately amended by section 25 of part Q of chapter 39 and section 14 of part K of chapter 36 of the laws of 2019 and subparagraph 8 as amended by section 8 of part K of chapter 36 of the laws of 2019, is amended to read as follows:

No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale. Where, however, the assessed valuation of the land exceeds four times the assessed valuation of the buildings thereon, the commission may determine a valuation of the property equal to five times the equalized assessed valuation of the buildings, for the purposes of this subparagraph. The commission may make a determination that the valuation of the property is an amount different from such equalized assessed valuation where there is a request for a reduction in such assessed valuation currently pending; or where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of the application. Net annual return shall be the amount by which the earned income exceeds the operating expenses of the property, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the value of the buildings exclusive of the land, or the amount shown for depreciation of the buildings in the latest required federal income tax return, whichever is lower; provided, however, that (1) no allowance for depreciation of the buildings shall be included where the buildings have been fully depreciated for federal income tax purposes or on the books of the owner; or (2) the landlord who owns no more than four rental units within the state has not been fully compensated by increases in rental income sufficient to offset unavoidable increases in property taxes, fuel, utilities, insurance and repairs and maintenance, excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the property was acquired by the present owner, whichever is later; or (3) the landlord operates a hotel or rooming house or owns a cooperative apartment and has not been fully compensated by increases in rental income from the controlled housing accommodations sufficient to offset unavoidable increases in property taxes and other costs as are allocable to such controlled housing accommodations, including costs of operation of such hotel or rooming house, but excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the landlord commenced the operation of the property, whichever is later; or (4) the landlord and tenant voluntarily enter into a valid written lease in good faith with respect to any housing accommodation, which lease provides for an increase in the maximum rent not in excess of fifteen per centum and for a term of not less than

1 two years, except that where such lease provides for an increase in
2 excess of fifteen per centum, the increase shall be automatically
3 reduced to fifteen per centum; or (5) the landlord and tenant by mutual
4 voluntary written informed agreement agree to a substantial increase or
5 decrease in dwelling space, furniture, furnishings or equipment provided
6 in the housing accommodations; provided that an owner shall be entitled
7 to a rent increase where there has been a substantial modification or
8 increase of dwelling space, or installation of new equipment or improve-
9 ments or new furniture or furnishings provided in or to a tenant's hous-
10 ing accommodation. The temporary increase in the maximum rent for the
11 affected housing accommodation shall be one-one hundred sixty-eighth, in
12 the case of a building with thirty-five or fewer housing accommodations,
13 or one-one hundred eightieth, in the case of a building with more than
14 thirty-five housing accommodations where such increase takes effect on
15 or after the effective date of the chapter of the laws of two thousand
16 nineteen that amended this subparagraph, of the total actual cost
17 incurred by the landlord up to fifteen thousand dollars in providing
18 such reasonable and verifiable modification or increase in dwelling
19 space, furniture, furnishings, or equipment, including the cost of
20 installation but excluding finance charges and any costs that exceed
21 reasonable costs established by rules and regulations promulgated by the
22 division of housing and community renewal. Such rules and regulations
23 shall include: (i) requirements for work to be done by licensed
24 contractors and a prohibition on common ownership between the landlord
25 and the contractor or vendor; and (ii) a requirement that the owner
26 resolve within the dwelling space all outstanding hazardous or imme-
27 diately hazardous violations of the uniform fire prevention and building
28 code (Uniform Code), New York city fire code, or New York city building
29 and housing maintenance codes, if applicable. Provided further that an
30 owner who is entitled to a rent increase pursuant to this clause shall
31 not be entitled to a further rent increase based upon the installation
32 of similar equipment, or new furniture or furnishings within the useful
33 life of such new equipment, or new furniture or furnishings. Provided
34 further that the recoverable costs incurred by the landlord, pursuant to
35 this subparagraph, shall be limited to an aggregate cost of fifteen
36 thousand dollars that may be expended on no more than three separate
37 individual apartment improvements in a fifteen year period beginning
38 with the first individual apartment improvement on or after June four-
39 teenth, two thousand nineteen. Provided further that increases to the
40 legal regulated rent pursuant to this paragraph shall be removed from
41 the legal regulated rent thirty years from the date the increase became
42 effective inclusive of any increases granted by the applicable rent
43 guidelines board. The owner shall give written notice to the commission
44 of any such adjustment pursuant to this clause; or (6) there has been,
45 since March first, nineteen hundred fifty, an increase in the rental
46 value of the housing accommodations as a result of a substantial reha-
47 bilitation of the building or housing accommodation therein which mate-
48 rially adds to the value of the property or appreciably prolongs its
49 life, excluding ordinary repairs, maintenance and replacements; or (7)
50 (i) collection of surcharges to the maximum rent authorized pursuant to
51 item (ii) of this clause shall cease when the owner has recovered the
52 cost of the major capital improvement; (ii) there has been since March
53 first, nineteen hundred fifty, a major capital improvement [essential
54 for the preservation, energy efficiency, functionality, or infrastruc-
55 ture of the entire building, improvement of the structure including
56 heating, windows, plumbing and roofing, but shall not be for operational

~~costs or unnecessary cosmetic improvements; which for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph the cost of such improvement shall be amortized over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2010, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved; provided, however, where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application];~~ provided that the commissioner first finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation or preservation of the structure. However, no major capital improvement rent increase will be approved by the division of housing and community renewal unless the work performed is an enhancement or upgrade to a housing accommodation or service therein; or is an addition to such housing accommodation and otherwise eligible according to the prerequisites for major capital improvement rent increases. Any repair or replacement intended to maintain an existing service shall not be eligible for a major capital improvement rent increase. No application for a major capital improvement rent increase may be approved if there exist any outstanding hazardous violations at the time of the consideration of such application, as determined pursuant to regulations of the division of housing and community renewal or any agency administering and enforcing a building code in the jurisdiction in which the property is located, unless it is determined by the division of housing and community renewal that such work is essential to the alleviation of the violations and such approval is consistent with the provisions of this section. Except in the case of emergency or good cause, the owner of the property shall file, not less than thirty days before the commencement of the improvement, with the division of housing and community renewal a statement containing information outlining the scope of work, expected date of completion for such work and an affidavit setting forth the following information: (a) every

1 owner of record and owner of a substantial interest in the property or
2 entity owning the property or sponsoring the improvement; and (b) a
3 statement that none of such persons had, within the five years prior to
4 the improvement, been found to have harassed or unlawfully evicted
5 tenants by judgment or determination of a court or agency under the
6 penal law, any state or local law regulating rents or any state or local
7 law relating to harassment of tenants or unlawful eviction. Upon receipt
8 of the scope of work and affidavit provided for herein, the division of
9 housing and community renewal shall provide the tenants in occupancy in
10 such buildings with such information. The division of housing and commu-
11 nity renewal shall, in addition, implement procedures including, but not
12 limited to, eliciting tenant comments to determine whether major capital
13 improvement rehabilitation work has been satisfactorily completed. No
14 major capital improvement rent increase shall become effective until any
15 defective or deficient rehabilitation work has been cured. The increase
16 permitted for such capital improvement shall be collected as a monthly
17 surcharge to the maximum rent. It shall be separately designated and
18 billed as such and shall not be compounded by any other adjustment to
19 the maximum rent. The surcharge allocable to each apartment shall be an
20 amount equal to the cost of the improvement divided by eighty-four,
21 divided by the number of rooms in the building, and then multiplied by
22 the number of rooms in such apartment; provided that the surcharge allo-
23 cable to any apartment in any one year may not exceed an amount equal to
24 six percent of the monthly rent collected by the owner for such apart-
25 ment as set forth in the schedule of gross rents. Any excess above said
26 six percent shall be carried forward and collected in future years as a
27 further surcharge not to exceed an additional six percent in any one
28 year period until the total surcharge equals the amount it would have
29 been if the aforementioned six percent limitation did not apply; or (8)
30 there has been since March first, nineteen hundred fifty, in structures
31 containing more than four housing accommodations, other improvements
32 made with the express informed consent of the tenants in occupancy of at
33 least seventy-five per centum of the housing accommodations, provided,
34 however, that no adjustment granted hereunder shall exceed two per
35 centum unless the tenants have agreed to a higher percentage of
36 increase, as herein provided; (9) there has been, since March first,
37 nineteen hundred fifty, a subletting without written consent from the
38 landlord or an increase in the number of adult occupants who are not
39 members of the immediate family of the tenant, and the landlord has not
40 been compensated therefor by adjustment of the maximum rent by lease or
41 order of the commission or pursuant to the federal act; or (10) the
42 presence of unique or peculiar circumstances materially affecting the
43 maximum rent has resulted in a maximum rent which is substantially lower
44 than the rents generally prevailing in the same area for substantially
45 similar housing accommodations.

46 § 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
47 576 of the laws of 1974, constituting the emergency tenant protection
48 act of nineteen seventy-four, as amended by chapter 102 of the laws of
49 1984, is amended and a new paragraph 6 is added to read as follows:

50 (5) as an alternative to the hardship application provided under para-
51 graph four of this subdivision, owners of buildings acquired by the same
52 owner or a related entity owned by the same principals three years prior
53 to the date of application may apply to the division for increases in
54 excess of the level of applicable guideline increases established under
55 this law based on a finding by the commissioner that such guideline
56 increases are not sufficient to enable the owner to maintain an annual

1 gross rent income for such building which exceeds the annual operating
2 expenses of such building by a sum equal to at least five percent of
3 such gross rent. For the purposes of this paragraph, operating expenses
4 shall consist of the actual, reasonable, costs of fuel, labor, utili-
5 ties, taxes, other than income or corporate franchise taxes, fees,
6 permits, necessary contracted services and non-capital repairs, insur-
7 ance, parts and supplies, management fees and other administrative costs
8 and mortgage interest. For the purposes of this paragraph, mortgage
9 interest shall be deemed to mean interest on a bona fide mortgage
10 including an allocable portion of charges related thereto. Criteria to
11 be considered in determining a bona fide mortgage other than an institu-
12 tional mortgage shall include[+]: condition of the property, location of
13 the property, the existing mortgage market at the time the mortgage is
14 placed, the term of the mortgage, the amortization rate, the principal
15 amount of the mortgage, security and other terms and conditions of the
16 mortgage. The commissioner shall set a rental value for any unit occu-
17 pied by the owner or a person related to the owner or unoccupied at the
18 owner's choice for more than one month at the last regulated rent plus
19 the minimum number of guidelines increases or, if no such regulated rent
20 existed or is known, the commissioner shall impute a rent consistent
21 with other rents in the building. The amount of hardship increase shall
22 be such as may be required to maintain the annual gross rent income as
23 provided by this paragraph. The division shall not grant a hardship
24 application under this paragraph or paragraph four of this subdivision
25 for a period of three years subsequent to granting a hardship applica-
26 tion under the provisions of this paragraph. The collection of any
27 increase in the rent for any housing accommodation pursuant to this
28 paragraph shall not exceed six percent in any year from the effective
29 date of the order granting the increase over the rent set forth in the
30 schedule of gross rents, with collectability of any dollar excess above
31 said sum to be spread forward in similar increments and added to the
32 rent as established or set in future years. No application shall be
33 approved unless the owner's equity in such building exceeds five percent
34 of: (i) the arms length purchase price of the property; (ii) the cost of
35 any capital improvements for which the owner has not collected a
36 surcharge; (iii) any repayment of principal of any mortgage or loan used
37 to finance the purchase of the property or any capital improvements for
38 which the owner has not collected a surcharge; and (iv) any increase in
39 the equalized assessed value of the property which occurred subsequent
40 to the first valuation of the property after purchase by the owner. For
41 the purposes of this paragraph, owner's equity shall mean the sum of (i)
42 the purchase price of the property less the principal of any mortgage or
43 loan used to finance the purchase of the property, (ii) the cost of any
44 capital improvement for which the owner has not collected a surcharge
45 less the principal of any mortgage or loan used to finance said improve-
46 ment, (iii) any repayment of the principal of any mortgage or loan used
47 to finance the purchase of the property or any capital improvement for
48 which the owner has not collected a surcharge, and (iv) any increase in
49 the equalized assessed value of the property which occurred subsequent
50 to the first valuation of the property after purchase by the owner[+];
51 or

52 (6) notwithstanding paragraph three of this subdivision there shall be
53 no adjustment for any major capital improvement funded in any part from
54 moneys provided by the New York state energy research and development
55 authority.

1 § 8. Paragraph 1 of subdivision g of section 26-405 of the administra-
2 tive code of the city of New York is amended by adding a new subpara-
3 graph (p) to read as follows:

4 (p) Notwithstanding subparagraph (g) or (k) of this paragraph, there
5 shall be no adjustment for any major capital improvement or for any
6 other expenditures to improve, restore or preserve the quality of a
7 structure if such major capital improvement or such other expenditure is
8 funded in any part from moneys provided by the New York state energy
9 research and development authority.

10 § 9. This act shall take effect immediately; provided that the amend-
11 ments to section 26-405 of the city rent and rehabilitation law made by
12 sections one, two and eight of this act shall remain in full force and
13 effect only so long as the public emergency requiring the regulation and
14 control of residential rents and evictions continues, as provided in
15 subdivision 3 of section 1 of the local emergency housing rent control
16 act; and provided that the amendments to section 26-511 of the rent
17 stabilization law of nineteen hundred sixty-nine made by sections three
18 and four of this act shall expire on the same date as such law expires
19 and shall not affect the expiration of such law as provided under
20 section 26-520 of such law, as from time to time amended.