

4423--A

2015-2016 Regular Sessions

I N S E N A T E

March 19, 2015

Introduced by Sens. KRUEGER, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law in relation to approval of major capital improvement rent increases and in relation to 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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section
2 26-405 of the administrative code of the city of New York, as amended by
3 section 31 of part A of chapter 20 of the laws of 2015, is amended to
4 read as follows:
5 (g) (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSU-
6 ANT TO ITEM (II) OF THIS SUBPARAGRAPH SHALL CEASE WHEN THE OWNER HAS
7 RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;
8 (II) There has been since July first, nineteen hundred seventy, a
9 major capital improvement [required for the operation, preservation or
10 maintenance of the structure. An adjustment under this subparagraph (g)
11 for any order of the commissioner issued after the effective date of the
12 rent act of 2015 shall be in an amount sufficient to amortize the cost
13 of the improvements pursuant to this subparagraph (g) over an eight-year
14 period for buildings with thirty-five or fewer units or a nine year
15 period for buildings with more than thirty-five units,]; PROVIDED THAT
16 THE COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIA-
17 BLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED
18 FOR THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR

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

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1 CAPITAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF
2 HOUSING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCE-
3 MENT OR UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN
4 ADDITION TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING
5 TO THE PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY
6 REPAIR OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT
7 BE ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICA-
8 TION FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF
9 THERE EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE
10 CONSIDERATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS
11 OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINIS-
12 TERING AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE
13 PROPERTY IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING
14 AND COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF
15 THE VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF
16 THIS SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER
17 OF THE PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE
18 COMMENCEMENT OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMU-
19 NITY RENEWAL A STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF
20 WORK, EXPECTED DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING
21 FORTH THE FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF
22 A SUBSTANTIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR
23 SPONSORING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH
24 PERSONS HAD, WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND
25 TO HAVE HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMI-
26 NATION OF A COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW
27 REGULATING RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF
28 TENANTS OR UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND
29 AFFIDAVIT PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY
30 RENEWAL SHALL PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH
31 SUCH INFORMATION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL,
32 IN ADDITION, IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICIT-
33 ING TENANT COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHA-
34 BILITATION WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL
35 IMPROVEMENT RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR
36 DEFICIENT REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR
37 SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO
38 THE MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH
39 AND SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO THE MAXIMUM RENT.
40 THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO
41 THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE
42 NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF
43 ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY
44 APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT
45 OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET
46 FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT
47 SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER
48 SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD
49 UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE
50 AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY; or

51 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section
52 26-405 of the administrative code of the city of New York, as amended by
53 chapter 749 of the laws of 1990, is amended to read as follows:

54 (k) The landlord has incurred, since January first, nineteen hundred
55 seventy, in connection with and in addition to a concurrent major capi-
56 tal improvement pursuant to subparagraph (g) of this paragraph, other

1 expenditures to improve, restore or preserve the quality of the struc-
2 ture. An adjustment under this subparagraph shall be granted only if
3 such improvements represent an expenditure equal to at least ten per
4 centum of the total operating and maintenance expenses for the preceding
5 year. An adjustment under this subparagraph shall be in addition to any
6 adjustment granted for the concurrent major capital improvement and
7 shall be [in an amount sufficient to amortize the cost of the improve-
8 ments pursuant to this subparagraph over a seven-year period] IMPLE-
9 MENTED IN THE SAME MANNER AS SUCH MAJOR CAPITAL IMPROVEMENT AS A FURTHER
10 SURCHARGE TO THE MAXIMUM RENT.

11 S 3. Paragraph 6 of subdivision c of section 26-511 of the administra-
12 tive code of the city of New York, as amended by section 29 of part A of
13 chapter 20 of the laws of 2015, is amended to read as follows:

14 (6) provides criteria whereby the commissioner may act upon applica-
15 tions by owners for increases in excess of the level of fair rent
16 increase established under this law provided, however, that such crite-
17 ria shall provide [(a) as] IN REGARD to hardship applications, for a
18 finding that the level of fair rent increase is not sufficient to enable
19 the owner to maintain approximately the same average annual net income
20 (which shall be computed without regard to debt service, financing costs
21 or management fees) for the three year period ending on or within six
22 months of the date of an application pursuant to such criteria as
23 compared with annual net income, which prevailed on the average over the
24 period nineteen hundred sixty-eight through nineteen hundred seventy, or
25 for the first three years of operation if the building was completed
26 since nineteen hundred sixty-eight or for the first three fiscal years
27 after a transfer of title to a new owner provided the new owner can
28 establish to the satisfaction of the commissioner that he or she
29 acquired title to the building as a result of a bona fide sale of the
30 entire building and that the new owner is unable to obtain requisite
31 records for the fiscal years nineteen hundred sixty-eight through nine-
32 teen hundred seventy despite diligent efforts to obtain same from prede-
33 cessors in title and further provided that the new owner can provide
34 financial data covering a minimum of six years under his or her contin-
35 uous and uninterrupted operation of the building to meet the three year
36 to three year comparative test periods herein provided[; and (b) as to
37 completed building-wide major capital improvements, for a finding that
38 such improvements are deemed depreciable under the Internal Revenue Code
39 and that the cost is to be amortized over an eight-year period for a
40 building with thirty-five or fewer housing accommodations, or a nine-
41 year period for a building with more than thirty-five housing accommo-
42 dations, for any determination issued by the division of housing and
43 community renewal after the effective date of the rent act of 2015,
44 based upon cash purchase price exclusive of interest or service charg-
45 es]. Notwithstanding anything to the contrary contained herein, no
46 hardship increase granted pursuant to this paragraph shall, when added
47 to the annual gross rents, as determined by the commissioner, exceed the
48 sum of, (i) the annual operating expenses, (ii) an allowance for manage-
49 ment services as determined by the commissioner, (iii) actual annual
50 mortgage debt service (interest and amortization) on its indebtedness to
51 a lending institution, an insurance company, a retirement fund or
52 welfare fund which is operated under the supervision of the banking or
53 insurance laws of the state of New York or the United States, and (iv)
54 eight and one-half percent of that portion of the fair market value of
55 the property which exceeds the unpaid principal amount of the mortgage
56 indebtedness referred to in subparagraph (iii) of this paragraph. Fair

1 market value for the purposes of this paragraph shall be six times the
2 annual gross rent. The collection of any increase in the stabilized rent
3 for any apartment pursuant to this paragraph shall not exceed six
4 percent in any year from the effective date of the order granting the
5 increase over the rent set forth in the schedule of gross rents, with
6 collectability of any dollar excess above said sum to be spread forward
7 in similar increments and added to the stabilized rent as established or
8 set in future years;

9 S 4. Subdivision c of section 26-511 of the administrative code of the
10 city of New York is amended by adding three new paragraphs 6-b, 6-c and
11 6-d to read as follows:

12 (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-
13 TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT
14 INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-
15 RIA SHALL PROVIDE THAT:

16 (I) AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVEMENTS, FIRST,
17 THAT A FINDING THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE
18 INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE OPERA-
19 TION OR PRESERVATION OF THE STRUCTURE;

20 (II) HOWEVER, NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE WILL BE
21 APPROVED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL UNLESS THE
22 WORK PERFORMED IS AN ENHANCEMENT OR UPGRADE TO A HOUSING ACCOMMODATION
23 OR SERVICE THEREIN; OR IS AN ADDITION TO SUCH HOUSING ACCOMMODATION AND
24 OTHERWISE ELIGIBLE ACCORDING TO THE PREREQUISITES FOR MAJOR CAPITAL
25 IMPROVEMENT RENT INCREASES. ANY REPAIR OR REPLACEMENT INTENDED TO MAIN-
26 TAIN AN EXISTING SERVICE SHALL NOT BE ELIGIBLE FOR A MAJOR CAPITAL
27 IMPROVEMENT RENT INCREASE;

28 (III) NO APPLICATION FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY
29 BE APPROVED IF THERE EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE
30 TIME OF THE CONSIDERATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO
31 REGULATIONS OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY
32 AGENCY ADMINISTERING AND ENFORCING A BUILDING CODE IN THE JURISDICTION
33 IN WHICH THE PROPERTY IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVI-
34 SION OF HOUSING AND COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE
35 ALLEVIATION OF THE VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE
36 PROVISIONS OF THIS SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD
37 CAUSE, THE OWNER OF THE PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS
38 BEFORE THE COMMENCEMENT OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING
39 AND COMMUNITY RENEWAL A STATEMENT CONTAINING INFORMATION OUTLINING THE
40 SCOPE OF WORK, EXPECTED DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDA-
41 VIT SETTING FORTH THE FOLLOWING INFORMATION:

42 (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTANTIAL INTEREST IN THE
43 PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSORING THE IMPROVEMENT;
44 AND

45 (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD, WITHIN THE FIVE YEARS
46 PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE HARASSED OR UNLAWFULLY
47 EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A COURT OR AGENCY UNDER
48 THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING RENTS OR ANY STATE OR
49 LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR UNLAWFUL EVICTION.

50 UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT PROVIDED FOR HEREIN,
51 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS
52 IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMATION. THE DIVISION OF
53 HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION, IMPLEMENT PROCEDURES
54 INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT COMMENTS TO DETERMINE
55 WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION WORK HAS BEEN SATISFAC-
56 TORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE SHALL

1 BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT REHABILITATION WORK
2 HAS BEEN CURED.

3 (6-C) THE INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE
4 COLLECTED AS A MONTHLY SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL
5 BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED
6 BY ANY ANNUAL ADJUSTMENT OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER
7 SUBDIVISION B OF SECTION 26-510 OF THIS LAW. THE SURCHARGE ALLOCABLE TO
8 EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT
9 DIVIDED BY EIGHTY-FOUR DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING,
10 AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED
11 THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT, IN ANY ONE YEAR MAY NOT
12 EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY
13 THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS
14 RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED FORWARD AND
15 COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDI-
16 TIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE
17 EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT
18 LIMITATION DID NOT APPLY.

19 (6-D) COLLECTION OF SURCHARGES IN EXCESS OF THE LEVEL OF FAIR RENT
20 AUTHORIZED PURSUANT TO PARAGRAPH SIX-B AND SIX-C OF THIS SUBDIVISION
21 SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
22 IMPROVEMENT.

23 S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
24 576 of the laws of 1974, constituting the emergency tenant protection
25 act of nineteen seventy-four, as amended by section 30 of part A of
26 chapter 20 of the laws of 2015, is amended to read as follows:

27 (3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED
28 RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL
29 CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
30 IMPROVEMENT;

31 (II) there has been since January first, nineteen hundred seventy-four
32 a major capital improvement [required for the operation, preservation or
33 maintenance of the structure. An adjustment under this paragraph shall
34 be in an amount sufficient to amortize the cost of the improvements
35 pursuant to this paragraph over an eight-year period for a building with
36 thirty-five or fewer housing accommodations, or a nine-year period for a
37 building with more than thirty-five housing accommodations, for any
38 determination issued by the division of housing and community renewal
39 after the effective date of the rent act of 2015,]; PROVIDED THAT THE
40 COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE
41 UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR
42 THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPI-
43 TAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUS-
44 ING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR
45 UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION
46 TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE
47 PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR
48 OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE
49 ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION
50 FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE
51 EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDER-
52 ATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE
53 DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING
54 AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY
55 IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND
56 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE

1 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
2 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
3 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
4 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
5 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
6 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
7 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
8 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
9 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
10 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
11 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
12 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
13 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
14 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
15 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
16 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
17 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
18 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
19 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
20 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
21 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
22 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
23 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE
24 LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS
25 SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL RENT ADJUSTMENT AUTHOR-
26 IZED BY THE RENT GUIDELINES BOARD UNDER THIS ACT. THE SURCHARGE ALLOCA-
27 BLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE
28 IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF ROOMS IN
29 THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APART-
30 MENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT IN ANY ONE
31 YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT
32 COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE
33 OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED
34 FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO
35 EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL
36 SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX
37 PERCENT LIMITATION DID NOT APPLY, or

38 S 6. The second undesignated paragraph of paragraph (a) of subdivision
39 4 of section 4 of chapter 274 of the laws of 1946, constituting the
40 emergency housing rent control law, as amended by section 25 of part B
41 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section
42 32 of part A of chapter 20 of the laws of 2015, is amended to read as
43 follows:

44 No application for adjustment of maximum rent based upon a sales price
45 valuation shall be filed by the landlord under this subparagraph prior
46 to six months from the date of such sale of the property. In addition,
47 no adjustment ordered by the commission based upon such sales price
48 valuation shall be effective prior to one year from the date of such
49 sale. Where, however, the assessed valuation of the land exceeds four
50 times the assessed valuation of the buildings thereon, the commission
51 may determine a valuation of the property equal to five times the equal-
52 ized assessed valuation of the buildings, for the purposes of this
53 subparagraph. The commission may make a determination that the valuation
54 of the property is an amount different from such equalized assessed
55 valuation where there is a request for a reduction in such assessed
56 valuation currently pending; or where there has been a reduction in the

1 assessed valuation for the year next preceding the effective date of the
2 current assessed valuation in effect at the time of the filing of the
3 application. Net annual return shall be the amount by which the earned
4 income exceeds the operating expenses of the property, excluding mort-
5 gage interest and amortization, and excluding allowances for obsoles-
6 cence and reserves, but including an allowance for depreciation of two
7 per centum of the value of the buildings exclusive of the land, or the
8 amount shown for depreciation of the buildings in the latest required
9 federal income tax return, whichever is lower; provided, however, that
10 (1) no allowance for depreciation of the buildings shall be included
11 where the buildings have been fully depreciated for federal income tax
12 purposes or on the books of the owner; or (2) the landlord who owns no
13 more than four rental units within the state has not been fully compen-
14 sated by increases in rental income sufficient to offset unavoidable
15 increases in property taxes, fuel, utilities, insurance and repairs and
16 maintenance, excluding mortgage interest and amortization, and excluding
17 allowances for depreciation, obsolescence and reserves, which have
18 occurred since the federal date determining the maximum rent or the date
19 the property was acquired by the present owner, whichever is later; or
20 (3) the landlord operates a hotel or rooming house or owns a cooperative
21 apartment and has not been fully compensated by increases in rental
22 income from the controlled housing accommodations sufficient to offset
23 unavoidable increases in property taxes and other costs as are allocable
24 to such controlled housing accommodations, including costs of operation
25 of such hotel or rooming house, but excluding mortgage interest and
26 amortization, and excluding allowances for depreciation, obsolescence
27 and reserves, which have occurred since the federal date determining the
28 maximum rent or the date the landlord commenced the operation of the
29 property, whichever is later; or (4) the landlord and tenant voluntarily
30 enter into a valid written lease in good faith with respect to any hous-
31 ing accommodation, which lease provides for an increase in the maximum
32 rent not in excess of fifteen per centum and for a term of not less than
33 two years, except that where such lease provides for an increase in
34 excess of fifteen per centum, the increase shall be automatically
35 reduced to fifteen per centum; or (5) the landlord and tenant by mutual
36 voluntary written agreement agree to a substantial increase or decrease
37 in dwelling space or a change in the services, furniture, furnishings or
38 equipment provided in the housing accommodations; provided that an owner
39 shall be entitled to a rent increase where there has been a substantial
40 modification or increase of dwelling space or an increase in the
41 services, or installation of new equipment or improvements or new furni-
42 ture or furnishings provided in or to a tenant's housing accommodation.
43 The permanent increase in the maximum rent for the affected housing
44 accommodation shall be one-fortieth, in the case of a building with
45 thirty-five or fewer housing accommodations, or one-sixtieth, in the
46 case of a building with more than thirty-five housing accommodations
47 where such permanent increase takes effect on or after September twen-
48 ty-fourth, two thousand eleven, of the total cost incurred by the land-
49 lord in providing such modification or increase in dwelling space,
50 services, furniture, furnishings or equipment, including the cost of
51 installation, but excluding finance charges provided further that an
52 owner who is entitled to a rent increase pursuant to this clause shall
53 not be entitled to a further rent increase based upon the installation
54 of similar equipment, or new furniture or furnishings within the useful
55 life of such new equipment, or new furniture or furnishings. The owner
56 shall give written notice to the commission of any such adjustment

1 pursuant to this clause; or (6) there has been, since March first, nine-
2 teen hundred fifty, an increase in the rental value of the housing
3 accommodations as a result of a substantial rehabilitation of the build-
4 ing or housing accommodation therein which materially adds to the value
5 of the property or appreciably prolongs its life, excluding ordinary
6 repairs, maintenance and replacements; or (7)(I) COLLECTION OF
7 SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSUANT TO ITEM (II) OF THIS
8 CLAUSE SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR
9 CAPITAL IMPROVEMENT; (II) there has been since March first, nineteen
10 hundred fifty, a major capital improvement [required for the operation,
11 preservation or maintenance of the structure; which for any order of the
12 commissioner issued after the effective date of the rent act of 2015 the
13 cost of such improvement shall be amortized over an eight-year period
14 for buildings with thirty-five or fewer units or a nine year period for
15 buildings with more than thirty-five units, or]; PROVIDED THAT THE
16 COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE
17 UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR
18 THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPI-
19 TAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUS-
20 ING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR
21 UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION
22 TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE
23 PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR
24 OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE
25 ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION
26 FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE
27 EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDER-
28 ATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE
29 DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING
30 AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY
31 IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND
32 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE
33 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
34 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
35 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
36 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
37 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
38 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
39 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
40 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
41 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
42 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
43 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
44 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
45 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
46 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
47 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
48 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
49 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
50 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
51 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
52 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
53 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
54 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
55 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE
56 MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND

1 SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO THE MAXIMUM RENT. THE
2 SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE
3 COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF
4 ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN
5 SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT
6 IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE
7 MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN
8 THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE
9 CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT
10 TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE
11 TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMEN-
12 TIONED SIX PERCENT LIMITATION DID NOT APPLY; or (8) there has been since
13 March first, nineteen hundred fifty, in structures containing more than
14 four housing accommodations, other improvements made with the express
15 consent of the tenants in occupancy of at least seventy-five per centum
16 of the housing accommodations, provided, however, that no adjustment
17 granted hereunder shall exceed fifteen per centum unless the tenants
18 have agreed to a higher percentage of increase, as herein provided; or
19 (9) there has been, since March first, nineteen hundred fifty, a sublet-
20 ting without written consent from the landlord or an increase in the
21 number of adult occupants who are not members of the immediate family of
22 the tenant, and the landlord has not been compensated therefor by
23 adjustment of the maximum rent by lease or order of the commission or
24 pursuant to the federal act; or (10) the presence of unique or peculiar
25 circumstances materially affecting the maximum rent has resulted in a
26 maximum rent which is substantially lower than the rents generally
27 prevailing in the same area for substantially similar housing accommo-
28 dations.

29 S 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
30 576 of the laws of 1974, constituting the emergency tenant protection
31 act of nineteen seventy-four, as amended by chapter 102 of the laws of
32 1984, is amended and a new paragraph 6 is added to read as follows:

33 (5) as an alternative to the hardship application provided under para-
34 graph four of this subdivision, owners of buildings acquired by the same
35 owner or a related entity owned by the same principals three years prior
36 to the date of application may apply to the division for increases in
37 excess of the level of applicable guideline increases established under
38 this law based on a finding by the commissioner that such guideline
39 increases are not sufficient to enable the owner to maintain an annual
40 gross rent income for such building which exceeds the annual operating
41 expenses of such building by a sum equal to at least five percent of
42 such gross rent. For the purposes of this paragraph, operating expenses
43 shall consist of the actual, reasonable, costs of fuel, labor, utili-
44 ties, taxes, other than income or corporate franchise taxes, fees,
45 permits, necessary contracted services and non-capital repairs, insur-
46 ance, parts and supplies, management fees and other administrative costs
47 and mortgage interest. For the purposes of this paragraph, mortgage
48 interest shall be deemed to mean interest on a bona fide mortgage
49 including an allocable portion of charges related thereto. Criteria to
50 be considered in determining a bona fide mortgage other than an institu-
51 tional mortgage shall include[:]: condition of the property, location of
52 the property, the existing mortgage market at the time the mortgage is
53 placed, the term of the mortgage, the amortization rate, the principal
54 amount of the mortgage, security and other terms and conditions of the
55 mortgage. The commissioner shall set a rental value for any unit occu-
56 pied by the owner or a person related to the owner or unoccupied at the

1 owner's choice for more than one month at the last regulated rent plus
2 the minimum number of guidelines increases or, if no such regulated rent
3 existed or is known, the commissioner shall impute a rent consistent
4 with other rents in the building. The amount of hardship increase shall
5 be such as may be required to maintain the annual gross rent income as
6 provided by this paragraph. The division shall not grant a hardship
7 application under this paragraph or paragraph four of this subdivision
8 for a period of three years subsequent to granting a hardship applica-
9 tion under the provisions of this paragraph. The collection of any
10 increase in the rent for any housing accommodation pursuant to this
11 paragraph shall not exceed six percent in any year from the effective
12 date of the order granting the increase over the rent set forth in the
13 schedule of gross rents, with collectability of any dollar excess above
14 said sum to be spread forward in similar increments and added to the
15 rent as established or set in future years. No application shall be
16 approved unless the owner's equity in such building exceeds five percent
17 of: (i) the arms length purchase price of the property; (ii) the cost of
18 any capital improvements for which the owner has not collected a
19 surcharge; (iii) any repayment of principal of any mortgage or loan used
20 to finance the purchase of the property or any capital improvements for
21 which the owner has not collected a surcharge; and (iv) any increase in
22 the equalized assessed value of the property which occurred subsequent
23 to the first valuation of the property after purchase by the owner. For
24 the purposes of this paragraph, owner's equity shall mean the sum of (i)
25 the purchase price of the property less the principal of any mortgage or
26 loan used to finance the purchase of the property, (ii) the cost of any
27 capital improvement for which the owner has not collected a surcharge
28 less the principal of any mortgage or loan used to finance said improve-
29 ment, (iii) any repayment of the principal of any mortgage or loan used
30 to finance the purchase of the property or any capital improvement for
31 which the owner has not collected a surcharge, and (iv) any increase in
32 the equalized assessed value of the property which occurred subsequent
33 to the first valuation of the property after purchase by the owner[.];
34 OR

35 (6) NOTWITHSTANDING PARAGRAPH THREE OF THIS SUBDIVISION THERE SHALL BE
36 NO ADJUSTMENT FOR ANY MAJOR CAPITAL IMPROVEMENT FUNDED IN ANY PART FROM
37 MONEYS PROVIDED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
38 AUTHORITY.

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

42 (P) NOTWITHSTANDING SUBPARAGRAPH (G) OR (K) OF THIS PARAGRAPH, THERE
43 SHALL BE NO ADJUSTMENT FOR ANY MAJOR CAPITAL IMPROVEMENT OR FOR ANY
44 OTHER EXPENDITURES TO IMPROVE, RESTORE OR PRESERVE THE QUALITY OF A
45 STRUCTURE IF SUCH MAJOR CAPITAL IMPROVEMENT OR SUCH OTHER EXPENDITURE IS
46 FUNDED IN ANY PART FROM MONEYS PROVIDED BY THE NEW YORK STATE ENERGY
47 RESEARCH AND DEVELOPMENT AUTHORITY.

48 S 9. This act shall take effect immediately; provided that the amend-
49 ments to section 26-405 of the city rent and rehabilitation law made by
50 sections one, two and eight of this act shall remain in full force and
51 effect only so long as the public emergency requiring the regulation and
52 control of residential rents and evictions continues, as provided in
53 subdivision 3 of section 1 of the local emergency housing rent control
54 act; provided that the amendments to section 26-511 of the rent stabili-
55 zation law of nineteen hundred sixty-nine made by sections three and
56 four of this act shall expire on the same date as such law expires and

1 shall not affect the expiration of such law as provided under section
2 26-520 of such law, as from time to time amended; provided that the
3 amendments to section 6 of the emergency tenant protection act of nine-
4 teen seventy-four made by sections five and seven of this act shall
5 expire on the same date as such act expires and shall not affect the
6 expiration of such act as provided in section 17 of chapter 576 of the
7 laws of 1974, as from time to time amended; and provided that the amend-
8 ments to section 4 of the emergency housing rent control law made by
9 section six of this act shall expire on the same date as such law
10 expires and shall not affect the expiration of such law as provided in
11 subdivision 2 of section 1 of chapter 274 of the laws of 1946.