

4423

2015-2016 Regular Sessions

I N S E N A T E

March 19, 2015

Introduced by Sen. KRUEGER -- 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 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 chapter 749 of the laws of 1990, is amended to read as follows:
4 (g) (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSU-
5 ANT TO ITEM (II) OF THIS SUBPARAGRAPH SHALL CEASE WHEN THE OWNER HAS
6 RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;
7 (II) There has been since July first, nineteen hundred seventy, a
8 major capital improvement [required for the operation, preservation or
9 maintenance of the structure. An adjustment under this subparagraph (g)
10 shall be in an amount sufficient to amortize the cost of the improve-
11 ments pursuant to this subparagraph (g) over a seven-year period];
12 PROVIDED THAT THE COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE
13 DEEMED DEPRECIABLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS
14 ARE REQUIRED FOR THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEV-
15 ER, NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE
16 DIVISION OF HOUSING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS
17 AN ENHANCEMENT OR UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN;
18 OR IS AN ADDITION TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE
19 ACCORDING TO THE PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT
20 INCREASES. ANY REPAIR OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING
21 SERVICE SHALL NOT BE ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT

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

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

44 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section
45 26-405 of the administrative code of the city of New York, as amended by
46 chapter 749 of the laws of 1990, is amended to read as follows:

47 (k) The landlord has incurred, since January first, nineteen hundred
48 seventy, in connection with and in addition to a concurrent major capi-
49 tal improvement pursuant to subparagraph (g) of this paragraph, other
50 expenditures to improve, restore or preserve the quality of the struc-
51 ture. An adjustment under this subparagraph shall be granted only if
52 such improvements represent an expenditure equal to at least ten per
53 centum of the total operating and maintenance expenses for the preceding
54 year. An adjustment under this subparagraph shall be in addition to any
55 adjustment granted for the concurrent major capital improvement and
56 shall be [in an amount sufficient to amortize the cost of the improve-

1 ments pursuant to this subparagraph over a seven-year period] IMPLE-
2 MENTED IN THE SAME MANNER AS SUCH MAJOR CAPITAL IMPROVEMENT AS A FURTHER
3 SURCHARGE TO THE MAXIMUM RENT.

4 S 3. Paragraph 6 of subdivision c of section 26-511 of the administra-
5 tive code of the city of New York, as amended by chapter 116 of the laws
6 of 1997, is amended to read as follows:

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

54 S 4. Subdivision c of section 26-511 of the administrative code of the
55 city of New York is amended by adding three new paragraphs 6-b, 6-c and
56 6-d to read as follows:

1 (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-
2 TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT
3 INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-
4 RIA SHALL PROVIDE THAT:

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

9 (II) HOWEVER, NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE WILL BE
10 APPROVED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL UNLESS THE
11 WORK PERFORMED IS AN ENHANCEMENT OR UPGRADE TO A HOUSING ACCOMMODATION
12 OR SERVICE THEREIN; OR IS AN ADDITION TO SUCH HOUSING ACCOMMODATION AND
13 OTHERWISE ELIGIBLE ACCORDING TO THE PREREQUISITES FOR MAJOR CAPITAL
14 IMPROVEMENT RENT INCREASES. ANY REPAIR OR REPLACEMENT INTENDED TO MAIN-
15 TAIN AN EXISTING SERVICE SHALL NOT BE ELIGIBLE FOR A MAJOR CAPITAL
16 IMPROVEMENT RENT INCREASE;

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

31 (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTANTIAL INTEREST IN THE
32 PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSORING THE IMPROVEMENT;
33 AND

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

39 UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT PROVIDED FOR HEREIN,
40 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS
41 IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMATION. THE DIVISION OF
42 HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION, IMPLEMENT PROCEDURES
43 INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT COMMENTS TO DETERMINE
44 WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION WORK HAS BEEN SATISFAC-
45 TORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT RENT INCREASE SHALL
46 BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT REHABILITATION WORK
47 HAS BEEN CURED.

48 (6-C) THE INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE
49 COLLECTED AS A MONTHLY SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL
50 BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED
51 BY ANY ANNUAL ADJUSTMENT OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER
52 SUBDIVISION B OF SECTION 26-510 OF THIS LAW. THE SURCHARGE ALLOCABLE TO
53 EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT
54 DIVIDED BY EIGHTY-FOUR DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING,
55 AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED
56 THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT, IN ANY ONE YEAR MAY NOT

1 EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY
2 THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS
3 RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED FORWARD AND
4 COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDI-
5 TIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE
6 EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT
7 LIMITATION DID NOT APPLY.

8 (6-D) COLLECTION OF SURCHARGES IN EXCESS OF THE LEVEL OF FAIR RENT
9 AUTHORIZED PURSUANT TO PARAGRAPH SIX-B AND SIX-C OF THIS SUBDIVISION
10 SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
11 IMPROVEMENT.

12 S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
13 576 of the laws of 1974, constituting the emergency tenant protection
14 act of nineteen seventy-four, as amended by chapter 749 of the laws of
15 1990, is amended to read as follows:

16 (3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED
17 RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL
18 CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
19 IMPROVEMENT;

20 (II) there has been since January first, nineteen hundred seventy-four
21 a major capital improvement [required for the operation, preservation or
22 maintenance of the structure. An adjustment under this paragraph shall
23 be in an amount sufficient to amortize the cost of the improvements
24 pursuant to this paragraph over a seven-year period]; PROVIDED THAT THE
25 COMMISSIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE
26 UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR
27 THE OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPI-
28 TAL IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUS-
29 ING AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR
30 UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION
31 TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE
32 PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR
33 OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE
34 ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION
35 FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE
36 EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDER-
37 ATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE
38 DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING
39 AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY
40 IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND
41 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE
42 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
43 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
44 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
45 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
46 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
47 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
48 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
49 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
50 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
51 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
52 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
53 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
54 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
55 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
56 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL

1 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
2 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
3 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
4 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
5 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
6 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
7 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
8 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE
9 LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS
10 SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL RENT ADJUSTMENT AUTHOR-
11 IZED BY THE RENT GUIDELINES BOARD UNDER THIS ACT. THE SURCHARGE ALLOCA-
12 BLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE
13 IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF ROOMS IN
14 THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APART-
15 MENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT IN ANY ONE
16 YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT
17 COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE
18 OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED
19 FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO
20 EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL
21 SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX
22 PERCENT LIMITATION DID NOT APPLY, or

23 S 6. The second undesignated paragraph of paragraph (a) of subdivision
24 4 of section 4 of chapter 274 of the laws of 1946, constituting the
25 emergency housing rent control law, as amended by section 25 of part B
26 of chapter 97 of the laws of 2011, is amended to read as follows:

27 No application for adjustment of maximum rent based upon a sales price
28 valuation shall be filed by the landlord under this subparagraph prior
29 to six months from the date of such sale of the property. In addition,
30 no adjustment ordered by the commission based upon such sales price
31 valuation shall be effective prior to one year from the date of such
32 sale. Where, however, the assessed valuation of the land exceeds four
33 times the assessed valuation of the buildings thereon, the commission
34 may determine a valuation of the property equal to five times the equal-
35 ized assessed valuation of the buildings, for the purposes of this
36 subparagraph. The commission may make a determination that the valuation
37 of the property is an amount different from such equalized assessed
38 valuation where there is a request for a reduction in such assessed
39 valuation currently pending; or where there has been a reduction in the
40 assessed valuation for the year next preceding the effective date of the
41 current assessed valuation in effect at the time of the filing of the
42 application. Net annual return shall be the amount by which the earned
43 income exceeds the operating expenses of the property, excluding mort-
44 gage interest and amortization, and excluding allowances for obsoles-
45 cence and reserves, but including an allowance for depreciation of two
46 per centum of the value of the buildings exclusive of the land, or the
47 amount shown for depreciation of the buildings in the latest required
48 federal income tax return, whichever is lower; provided, however, that
49 (1) no allowance for depreciation of the buildings shall be included
50 where the buildings have been fully depreciated for federal income tax
51 purposes or on the books of the owner; or (2) the landlord who owns no
52 more than four rental units within the state has not been fully compen-
53 sated by increases in rental income sufficient to offset unavoidable
54 increases in property taxes, fuel, utilities, insurance and repairs and
55 maintenance, excluding mortgage interest and amortization, and excluding
56 allowances for depreciation, obsolescence and reserves, which have

1 occurred since the federal date determining the maximum rent or the date
2 the property was acquired by the present owner, whichever is later; or
3 (3) the landlord operates a hotel or rooming house or owns a cooperative
4 apartment and has not been fully compensated by increases in rental
5 income from the controlled housing accommodations sufficient to offset
6 unavoidable increases in property taxes and other costs as are allocable
7 to such controlled housing accommodations, including costs of operation
8 of such hotel or rooming house, but excluding mortgage interest and
9 amortization, and excluding allowances for depreciation, obsolescence
10 and reserves, which have occurred since the federal date determining the
11 maximum rent or the date the landlord commenced the operation of the
12 property, whichever is later; or (4) the landlord and tenant voluntarily
13 enter into a valid written lease in good faith with respect to any hous-
14 ing accommodation, which lease provides for an increase in the maximum
15 rent not in excess of fifteen per centum and for a term of not less than
16 two years, except that where such lease provides for an increase in
17 excess of fifteen per centum, the increase shall be automatically
18 reduced to fifteen per centum; or (5) the landlord and tenant by mutual
19 voluntary written agreement agree to a substantial increase or decrease
20 in dwelling space or a change in the services, furniture, furnishings or
21 equipment provided in the housing accommodations; provided that an owner
22 shall be entitled to a rent increase where there has been a substantial
23 modification or increase of dwelling space or an increase in the
24 services, or installation of new equipment or improvements or new furni-
25 ture or furnishings provided in or to a tenant's housing accommodation.
26 The permanent increase in the maximum rent for the affected housing
27 accommodation shall be one-fortieth, in the case of a building with
28 thirty-five or fewer housing accommodations, or one-sixtieth, in the
29 case of a building with more than thirty-five housing accommodations
30 where such permanent increase takes effect on or after September twen-
31 ty-fourth, two thousand eleven, of the total cost incurred by the land-
32 lord in providing such modification or increase in dwelling space,
33 services, furniture, furnishings or equipment, including the cost of
34 installation, but excluding finance charges provided further that an
35 owner who is entitled to a rent increase pursuant to this clause shall
36 not be entitled to a further rent increase based upon the installation
37 of similar equipment, or new furniture or furnishings within the useful
38 life of such new equipment, or new furniture or furnishings. The owner
39 shall give written notice to the commission of any such adjustment
40 pursuant to this clause; or (6) there has been, since March first, nine-
41 teen hundred fifty, an increase in the rental value of the housing
42 accommodations as a result of a substantial rehabilitation of the build-
43 ing or housing accommodation therein which materially adds to the value
44 of the property or appreciably prolongs its life, excluding ordinary
45 repairs, maintenance and replacements; or (7) (I) COLLECTION OF
46 SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSUANT TO ITEM (II) OF THIS
47 CLAUSE SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR
48 CAPITAL IMPROVEMENT; (II) there has been since March first, nineteen
49 hundred fifty, a major capital improvement [required for the operation,
50 preservation or maintenance of the structure]; PROVIDED THAT THE COMMIS-
51 SIONER FIRST FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER
52 THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE
53 OPERATION OR PRESERVATION OF THE STRUCTURE. HOWEVER, NO MAJOR CAPITAL
54 IMPROVEMENT RENT INCREASE WILL BE APPROVED BY THE DIVISION OF HOUSING
55 AND COMMUNITY RENEWAL UNLESS THE WORK PERFORMED IS AN ENHANCEMENT OR
56 UPGRADE TO A HOUSING ACCOMMODATION OR SERVICE THEREIN; OR IS AN ADDITION

1 TO SUCH HOUSING ACCOMMODATION AND OTHERWISE ELIGIBLE ACCORDING TO THE
2 PREREQUISITES FOR MAJOR CAPITAL IMPROVEMENT RENT INCREASES. ANY REPAIR
3 OR REPLACEMENT INTENDED TO MAINTAIN AN EXISTING SERVICE SHALL NOT BE
4 ELIGIBLE FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE. NO APPLICATION
5 FOR A MAJOR CAPITAL IMPROVEMENT RENT INCREASE MAY BE APPROVED IF THERE
6 EXIST ANY OUTSTANDING HAZARDOUS VIOLATIONS AT THE TIME OF THE CONSIDER-
7 ATION OF SUCH APPLICATION, AS DETERMINED PURSUANT TO REGULATIONS OF THE
8 DIVISION OF HOUSING AND COMMUNITY RENEWAL OR ANY AGENCY ADMINISTERING
9 AND ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY
10 IS LOCATED, UNLESS IT IS DETERMINED BY THE DIVISION OF HOUSING AND
11 COMMUNITY RENEWAL THAT SUCH WORK IS ESSENTIAL TO THE ALLEVIATION OF THE
12 VIOLATIONS AND SUCH APPROVAL IS CONSISTENT WITH THE PROVISIONS OF THIS
13 SECTION. EXCEPT IN THE CASE OF EMERGENCY OR GOOD CAUSE, THE OWNER OF THE
14 PROPERTY SHALL FILE, NOT LESS THAN THIRTY DAYS BEFORE THE COMMENCEMENT
15 OF THE IMPROVEMENT, WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A
16 STATEMENT CONTAINING INFORMATION OUTLINING THE SCOPE OF WORK, EXPECTED
17 DATE OF COMPLETION FOR SUCH WORK AND AN AFFIDAVIT SETTING FORTH THE
18 FOLLOWING INFORMATION: (A) EVERY OWNER OF RECORD AND OWNER OF A SUBSTAN-
19 TIAL INTEREST IN THE PROPERTY OR ENTITY OWNING THE PROPERTY OR SPONSOR-
20 ING THE IMPROVEMENT; AND (B) A STATEMENT THAT NONE OF SUCH PERSONS HAD,
21 WITHIN THE FIVE YEARS PRIOR TO THE IMPROVEMENT, BEEN FOUND TO HAVE
22 HARASSED OR UNLAWFULLY EVICTED TENANTS BY JUDGMENT OR DETERMINATION OF A
23 COURT OR AGENCY UNDER THE PENAL LAW, ANY STATE OR LOCAL LAW REGULATING
24 RENTS OR ANY STATE OR LOCAL LAW RELATING TO HARASSMENT OF TENANTS OR
25 UNLAWFUL EVICTION. UPON RECEIPT OF THE SCOPE OF WORK AND AFFIDAVIT
26 PROVIDED FOR HEREIN, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
27 PROVIDE THE TENANTS IN OCCUPANCY IN SUCH BUILDINGS WITH SUCH INFORMA-
28 TION. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL, IN ADDITION,
29 IMPLEMENT PROCEDURES INCLUDING, BUT NOT LIMITED TO, ELICITING TENANT
30 COMMENTS TO DETERMINE WHETHER MAJOR CAPITAL IMPROVEMENT REHABILITATION
31 WORK HAS BEEN SATISFACTORILY COMPLETED. NO MAJOR CAPITAL IMPROVEMENT
32 RENT INCREASE SHALL BECOME EFFECTIVE UNTIL ANY DEFECTIVE OR DEFICIENT
33 REHABILITATION WORK HAS BEEN CURED. THE INCREASE PERMITTED FOR SUCH
34 CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE
35 MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND
36 SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO THE MAXIMUM RENT. THE
37 SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE
38 COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF
39 ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN
40 SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT
41 IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE
42 MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN
43 THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE
44 CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT
45 TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE
46 TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMEN-
47 TIONED SIX PERCENT LIMITATION DID NOT APPLY; or (8) there has been since
48 March first, nineteen hundred fifty, in structures containing more than
49 four housing accommodations, other improvements made with the express
50 consent of the tenants in occupancy of at least seventy-five per centum
51 of the housing accommodations, provided, however, that no adjustment
52 granted hereunder shall exceed fifteen per centum unless the tenants
53 have agreed to a higher percentage of increase, as herein provided; or
54 (9) there has been, since March first, nineteen hundred fifty, a sublet-
55 ting without written consent from the landlord or an increase in the
56 number of adult occupants who are not members of the immediate family of

1 the tenant, and the landlord has not been compensated therefor by
2 adjustment of the maximum rent by lease or order of the commission or
3 pursuant to the federal act; or (10) the presence of unique or peculiar
4 circumstances materially affecting the maximum rent has resulted in a
5 maximum rent which is substantially lower than the rents generally
6 prevailing in the same area for substantially similar housing accommo-
7 dations.

8 S 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
9 576 of the laws of 1974, constituting the emergency tenant protection
10 act of nineteen seventy-four, as amended by chapter 102 of the laws of
11 1984, is amended and a new paragraph 6 is added to read as follows:

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

1 the equalized assessed value of the property which occurred subsequent
2 to the first valuation of the property after purchase by the owner. For
3 the purposes of this paragraph, owner's equity shall mean the sum of (i)
4 the purchase price of the property less the principal of any mortgage or
5 loan used to finance the purchase of the property, (ii) the cost of any
6 capital improvement for which the owner has not collected a surcharge
7 less the principal of any mortgage or loan used to finance said improve-
8 ment, (iii) any repayment of the principal of any mortgage or loan used
9 to finance the purchase of the property or any capital improvement for
10 which the owner has not collected a surcharge, and (iv) any increase in
11 the equalized assessed value of the property which occurred subsequent
12 to the first valuation of the property after purchase by the owner[.];
13 OR

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

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

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

27 S 9. This act shall take effect immediately; provided that the amend-
28 ments to section 26-405 of the city rent and rehabilitation law made by
29 sections one, two and eight of this act shall remain in full force and
30 effect only so long as the public emergency requiring the regulation and
31 control of residential rents and evictions continues, as provided in
32 subdivision 3 of section 1 of the local emergency housing rent control
33 act; provided that the amendment to section 26-511 of the rent stabili-
34 zation law of nineteen hundred sixty-nine made by sections three and
35 four of this act shall expire on the same date as such law expires and
36 shall not affect the expiration of such law as provided under section
37 26-520 of such law, as from time to time amended; provided that the
38 amendments to section 6 of the emergency tenant protection act of nine-
39 teen seventy-four made by sections five and seven of this act shall
40 expire on the same date as such act expires and shall not affect the
41 expiration of such act as provided in section 17 of chapter 576 of the
42 laws of 1974, as from time to time amended; and provided that the amend-
43 ment to section 4 of the emergency housing rent control law made by
44 section six of this act shall expire on the same date as such law
45 expires and shall not affect the expiration of such law as provided in
46 subdivision 2 of section 1 of chapter 274 of the laws of 1946.