

4423

2015-2016 Regular Sessions

I N   S E N A T E

March 19, 2015

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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.

LBD09355-01-5

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-

ments 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.

S 3. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, 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 predecessors 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 seven-year period, based upon cash purchase price exclusive of interest or service charges]. 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 schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

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

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

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

(II) 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;

(III) 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.

(6-C) 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 ADJUSTMENT OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER SUBDIVISION B OF SECTION 26-510 OF THIS LAW. 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

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

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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  
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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  
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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.