

# STATE OF NEW YORK

8089

## IN SENATE

March 27, 2018

Introduced by Sen. BAILEY -- 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 approving major capital improvement rent increases and extending the length of time over which major capital improvement expenses may be recovered

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

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by section 31 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(g) (i) Collection of surcharges to the maximum rent authorized pursuant to item (ii) of this subparagraph shall cease when the owner has recovered the cost of the major capital improvement and no adjustment shall be allowed for any building in which more than fifty percent of the habitable units are not subject to rent stabilization or rent control;

(ii) There has been since July first, nineteen hundred seventy, a major capital improvement [~~required for the operation, preservation or maintenance of the structure. An adjustment under this subparagraph (g) for any order of the commissioner issued after the effective date of the rent act of 2015 shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph (g) over an eight year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than thirty-five units,~~]; provided that the commissioner first finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation or preservation of the structure and; provided further, that such improvements are not required by law, as the collection of surcharges to the maximum rent authorized are not permitted for such improvements. However, no 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 will be approved by the division of housing and community  
2 renewal unless the work performed is an enhancement or upgrade to a  
3 housing accommodation or service therein; or is an addition to such  
4 housing accommodation and otherwise eligible according to the prerequi-  
5 sites for major capital improvement rent increases. Any repair or  
6 replacement intended to maintain an existing service shall not be eligi-  
7 ble for a major capital improvement rent increase. No application for a  
8 major capital improvement rent increase may be approved if there exist  
9 any outstanding hazardous violations at the time of the consideration of  
10 such application, as determined pursuant to regulations of the division  
11 of housing and community renewal or any agency administering and enforc-  
12 ing a building code in the jurisdiction in which the property is  
13 located, unless it is determined by the division of housing and communi-  
14 ty renewal that such work is essential to the alleviation of the  
15 violations and such approval is consistent with the provisions of this  
16 section. Except in the case of emergency or good cause, the owner of the  
17 property shall file, not less than thirty days before the commencement  
18 of the improvement, with the division of housing and community renewal a  
19 statement containing information outlining the scope of work, expected  
20 date of completion for such work and an affidavit setting forth the  
21 following information: (a) every owner of record and owner of a substan-  
22 tial interest in the property or entity owning the property or sponsor-  
23 ing the improvement; and (b) a statement that none of such persons had,  
24 within the five years prior to the improvement, been found to have  
25 harassed or unlawfully evicted tenants by judgment or determination of a  
26 court or agency under the penal law, any state or local law regulating  
27 rents or any state or local law relating to harassment of tenants or  
28 unlawful eviction. Upon receipt of the scope of work and affidavit  
29 provided for herein, the division of housing and community renewal shall  
30 provide the tenants in occupancy in such buildings with such informa-  
31 tion. The division of housing and community renewal shall, in addition,  
32 implement procedures including, but not limited to, eliciting tenant  
33 comments to determine whether major capital improvement rehabilitation  
34 work has been satisfactorily completed. No major capital improvement  
35 rent increase shall become effective until any defective or deficient  
36 rehabilitation work has been cured. The increase permitted for such  
37 capital improvement shall be collected as a monthly surcharge to the  
38 maximum rent. It shall be separately designated and billed as such and  
39 shall not be compounded by any other adjustment to the maximum rent. The  
40 surcharge allocable to each apartment shall be an amount equal to the  
41 cost of the improvement divided by eighty-four, divided by the number of  
42 rooms in the building, and then multiplied by the number of rooms in  
43 such apartment; provided that the surcharge allocable to any apartment  
44 in any one year may not exceed an amount equal to six percent of the  
45 monthly rent collected by the owner for such apartment as set forth in  
46 the schedule of gross rents. Any excess above said six percent shall be  
47 carried forward and collected in future years as a further surcharge not  
48 to exceed an additional six percent in any one year period until the  
49 total surcharge equals the amount it would have been if the aforemen-  
50 tioned six percent limitation did not apply; or

51 § 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

expenditures to improve, restore or preserve the quality of the structure. An adjustment under this subparagraph shall be granted only if such improvements represent an expenditure equal to at least ten per centum of the total operating and maintenance expenses for the preceding year. An adjustment under this subparagraph shall be in addition to any adjustment granted for the concurrent major capital improvement and shall be ~~[in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph over a seven-year period]~~ implemented in the same manner as such major capital improvement as a further surcharge to the maximum rent.

§ 3. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as amended by section 29 of part A of chapter 20 of the laws of 2015, 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 an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015, 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

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 § 4. Paragraph 6-a of subdivision c of section 26-511 of the adminis-  
10 trative code of the city of New York, is amended to read as follows:

11 (6-a) provides criteria whereby as an alternative to the hardship  
12 application provided under paragraph six of this subdivision owners of  
13 buildings acquired by the same owner or a related entity owned by the  
14 same principals three years prior to the date of application may apply  
15 to the division for increases in excess of the level of applicable  
16 guideline increases established under this law based on a finding by the  
17 commissioner that such guideline increases are not sufficient to enable  
18 the owner to maintain an annual gross rent income for such building  
19 which exceeds the annual operating expenses of such building by a sum  
20 equal to at least five percent of such gross rent. For the purposes of  
21 this paragraph, operating expenses shall consist of the actual, reason-  
22 able, costs of fuel, labor, utilities, taxes, other than income or  
23 corporate franchise taxes, fees, permits, necessary contracted services  
24 and non-capital repairs, insurance, parts and supplies, management fees  
25 and other administrative costs and mortgage interest. For the purposes  
26 of this paragraph, mortgage interest shall be deemed to mean interest on  
27 a bona fide mortgage including an allocable portion of charges related  
28 thereto. Criteria to be considered in determining a bona fide mortgage  
29 other than an institutional mortgage shall include; condition of the  
30 property, location of the property, the existing mortgage market at the  
31 time the mortgage is placed, the term of the mortgage, the amortization  
32 rate, the principal amount of the mortgage, security and other terms and  
33 conditions of the mortgage. The commissioner shall set a rental value  
34 for any unit occupied by the owner or a person related to the owner or  
35 unoccupied at the owner's choice for more than one month at the last  
36 regulated rent plus the minimum number of guidelines increases or, if no  
37 such regulated rent existed or is known, the commissioner shall impute a  
38 rent consistent with other rents in the building. The amount of hardship  
39 increase shall be such as may be required to maintain the annual gross  
40 rent income as provided by this paragraph. The division shall not grant  
41 a hardship application under this paragraph or paragraph six of this  
42 subdivision for (i) a period of three years subsequent to granting a  
43 hardship application under the provisions of this paragraph or (ii) to  
44 the owner of any building in which more than fifty percent of the habi-  
45 table units are not subject to rent stabilization or rent control. The  
46 collection of any increase in the rent for any housing accommodation  
47 pursuant to this paragraph shall not exceed six percent in any year from  
48 the effective date of the order granting the increase over the rent set  
49 forth in the schedule of gross rents, with collectability of any dollar  
50 excess above said sum to be spread forward in similar increments and  
51 added to the rent as established or set in future years. No application  
52 shall be approved unless the owner's equity in such building exceeds  
53 five percent of: (i) the arms length purchase price of the property;  
54 (ii) the cost of any capital improvements for which the owner has not  
55 collected a surcharge; (iii) any repayment of principal of any mortgage  
56 or loan used to finance the purchase of the property or any capital

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

15 § 5. Subdivision c of section 26-511 of the administrative code of the  
16 city of New York is amended by adding three new paragraphs 6-b, 6-c and  
17 6-d to read as follows:

18 (6-b) provides criteria whereby the commissioner may act upon applica-  
19 tion by owners for increases in excess of the level of fair rent  
20 increase established under this law provided, however, that such crite-  
21 ria shall provide that:

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

26 (ii) however, no major capital improvement rent increase will be  
27 approved by the division of housing and community renewal unless the  
28 work performed is an enhancement or upgrade to a housing accommodation  
29 or service therein; or is an addition to such housing accommodation and  
30 otherwise eligible according to the prerequisites for major capital  
31 improvement rent increases. Any repair or replacement intended to main-  
32 tain an existing service shall not be eligible for a major capital  
33 improvement rent increase;

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

48 (A) every owner of record and owner of a substantial interest in the  
49 property or entity owning the property or sponsoring the improvement;  
50 and

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



1 Upon receipt of the scope of work and affidavit provided for herein,  
2 the division of housing and community renewal shall provide the tenants  
3 in occupancy in such buildings with such information. The division of  
4 housing and community renewal shall, in addition, implement procedures  
5 including, but not limited to, eliciting tenant comments to determine  
6 whether major capital improvement rehabilitation work has been satisfac-  
7 torily completed. No major capital improvement rent increase shall  
8 become effective until any defective or deficient rehabilitation work  
9 has been cured.

10 (6-c) the increase permitted for such capital improvement shall be  
11 collected as a monthly surcharge to the legal regulated rent. It shall  
12 be separately designated and billed as such and shall not be compounded  
13 by any annual adjustment of the level of fair rent provided for under  
14 subdivision b of section 26-510 of this law. The surcharge allocable to  
15 each apartment shall be an amount equal to the cost of the improvement  
16 divided by eighty-four divided by the number of rooms in the building,  
17 and then multiplied by the number of rooms in such apartment; provided  
18 that the surcharge allocable to any apartment, in any one year may not  
19 exceed an amount equal to six percent of the monthly rent collected by  
20 the owner for such apartment as set forth in the schedule of gross  
21 rents. Any excess above said six percent shall be carried forward and  
22 collected in future years as a further surcharge not to exceed an addi-  
23 tional six percent in any one year period until the total surcharge  
24 equals the amount it would have been if the aforementioned six percent  
25 limitation did not apply.

26 (6-d) collection of surcharges in excess of the level of fair rent  
27 authorized pursuant to paragraph six-b and six-c of this subdivision  
28 shall cease when the owner has recovered the cost of the major capital  
29 improvement.

30 § 6. Paragraph 3 of subdivision d of section 6 of section 4 of chapter  
31 576 of the laws of 1974, constituting the emergency tenant protection  
32 act of nineteen seventy-four, as amended by section 30 of part A of  
33 chapter 20 of the laws of 2015, is amended to read as follows:

34 (3) (i) collection of surcharges in addition to the legal regulated  
35 rent authorized pursuant to subparagraph (ii) of this paragraph shall  
36 cease when the owner has recovered the cost of the major capital  
37 improvement and no adjustment shall be allowed for any building in which  
38 more than fifty percent of the habitable units are not subject to rent  
39 stabilization or rent control;

40 (ii) there has been since January first, nineteen hundred seventy-four  
41 a major capital improvement [~~required for the operation, preservation or~~  
42 ~~maintenance of the structure. An adjustment under this paragraph shall~~  
43 ~~be in an amount sufficient to amortize the cost of the improvements~~  
44 ~~pursuant to this paragraph over an eight-year period for a building with~~  
45 ~~thirty-five or fewer housing accommodations, or a nine-year period for a~~  
46 ~~building with more than thirty-five housing accommodations, for any~~  
47 ~~determination issued by the division of housing and community renewal~~  
48 ~~after the effective date of the rent act of 2015,]; provided that the~~  
49 commissioner first finds that such improvements are deemed depreciable  
50 under the internal revenue code and such improvements are required for  
51 the operation or preservation of the structure. However, no major capi-  
52 tal improvement rent increase will be approved by the division of hous-  
53 ing and community renewal unless the work performed is an enhancement or  
54 upgrade to a housing accommodation or service therein; or is an addition  
55 to such housing accommodation and otherwise eligible according to the  
56 prerequisites for major capital improvement rent increases. Any repair

1 or replacement intended to maintain an existing service shall not be  
2 eligible for a major capital improvement rent increase. No application  
3 for a major capital improvement rent increase may be approved if there  
4 exist any outstanding hazardous violations at the time of the consider-  
5 ation of such application, as determined pursuant to regulations of the  
6 division of housing and community renewal or any agency administering  
7 and enforcing a building code in the jurisdiction in which the property  
8 is located, unless it is determined by the division of housing and  
9 community renewal that such work is essential to the alleviation of the  
10 violations and such approval is consistent with the provisions of this  
11 section. Except in the case of emergency or good cause, the owner of the  
12 property shall file, not less than thirty days before the commencement  
13 of the improvement, with the division of housing and community renewal a  
14 statement containing information outlining the scope of work, expected  
15 date of completion for such work and an affidavit setting forth the  
16 following information: (a) every owner of record and owner of a substan-  
17 tial interest in the property or entity owning the property or sponsor-  
18 ing the improvement; and (b) a statement that none of such persons had,  
19 within the five years prior to the improvement, been found to have  
20 harassed or unlawfully evicted tenants by judgment or determination of a  
21 court or agency under the penal law, any state or local law regulating  
22 rents or any state or local law relating to harassment of tenants or  
23 unlawful eviction. Upon receipt of the scope of work and affidavit  
24 provided for herein, the division of housing and community renewal shall  
25 provide the tenants in occupancy in such buildings with such informa-  
26 tion. The division of housing and community renewal shall, in addition,  
27 implement procedures including, but not limited to, eliciting tenant  
28 comments to determine whether major capital improvement rehabilitation  
29 work has been satisfactorily completed. No major capital improvement  
30 rent increase shall become effective until any defective or deficient  
31 rehabilitation work has been cured. The increase permitted for such  
32 capital improvement shall be collected as a monthly surcharge to the  
33 legal regulated rent. It shall be separately designated and billed as  
34 such and shall not be compounded by any annual rent adjustment author-  
35 ized by the rent guidelines board under this act. The surcharge alloca-  
36 ble to each apartment shall be an amount equal to the cost of the  
37 improvement divided by eighty-four, divided by the number of rooms in  
38 the building, and then multiplied by the number of rooms in such apart-  
39 ment; provided that the surcharge allocable to any apartment in any one  
40 year may not exceed an amount equal to six percent of the monthly rent  
41 collected by the owner for such apartment as set forth in the schedule  
42 of gross rents. Any excess above said six percent shall be carried  
43 forward and collected in future years as a further surcharge not to  
44 exceed an additional six percent in any one year period until the total  
45 surcharge equals the amount it would have been if the aforementioned six  
46 percent limitation did not apply, or

47 § 7. The second undesignated paragraph of paragraph (a) of subdivision  
48 4 of section 4 of chapter 274 of the laws of 1946, constituting the  
49 emergency housing rent control law, as amended by section 25 of part B  
50 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section  
51 32 of part A of chapter 20 of the laws of 2015, is amended to read as  
52 follows:

53 No application for adjustment of maximum rent based upon a sales price  
54 valuation shall be filed by the landlord under this subparagraph prior  
55 to six months from the date of such sale of the property. In addition,  
56 no adjustment ordered by the commission based upon such sales price

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



ty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the commission of any such adjustment pursuant to this clause; or (6) there has been, since March first, nineteen hundred fifty, an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements; or (7) (i) collection of surcharges to the maximum rent authorized pursuant to item (ii) of this clause shall cease when the owner has recovered the cost of the major capital improvement and no adjustment shall be allowed for any building in which more than fifty percent of the habitable units are not subject to rent stabilization or rent control; (ii) there has been since March first, nineteen hundred fifty, a major capital improvement ~~[required for the operation, preservation or maintenance of the structure, which for any order of the commissioner issued after the effective date of the rent act of 2015 the cost of such improvement shall be amortized over an eight year period for buildings with thirty five or fewer units or a nine year period for buildings with more than thirty five units, or]~~; provided that the commissioner first finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation or preservation of the structure. However, no major capital improvement rent increase will be approved by the division of housing and community renewal unless the work performed is an enhancement or upgrade to a housing accommodation or service therein; or is an addition to such housing accommodation and otherwise eligible according to the prerequisites for major capital improvement rent increases. Any repair or replacement intended to maintain an existing service shall not be eligible for a major capital improvement rent increase. No application for a major capital improvement rent increase may be approved if there exist any outstanding hazardous violations at the time of the consideration of such application, as determined pursuant to regulations of the division of housing and community renewal or any agency administering and enforcing a building code in the jurisdiction in which the property is located, unless it is determined by the division of housing and community renewal that such work is essential to the alleviation of the violations and such approval is consistent with the provisions of this section. Except in the case of emergency or good cause, the owner of the property shall file, not less than thirty days before the commencement of the improvement, with the division of housing and community renewal a statement containing information outlining the scope of work, expected date of completion for such work and an affidavit setting forth the following information: (a) every owner of record and owner of a substantial interest in the property or entity owning the property or sponsoring the improvement; and (b) a statement that none of such persons had, within the five years prior to the improvement, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency under the penal law, any state or local law regulating rents or any state or local law relating to harass-

1 ment of tenants or unlawful eviction. Upon receipt of the scope of work  
2 and affidavit provided for herein, the division of housing and community  
3 renewal shall provide the tenants in occupancy in such buildings with  
4 such information. The division of housing and community renewal shall,  
5 in addition, implement procedures including, but not limited to, eliciting  
6 tenant comments to determine whether major capital improvement reha-  
7 bilitation work has been satisfactorily completed. No major capital  
8 improvement rent increase shall become effective until any defective or  
9 deficient rehabilitation work has been cured. The increase permitted for  
10 such capital improvement shall be collected as a monthly surcharge to  
11 the maximum rent. It shall be separately designated and billed as such  
12 and shall not be compounded by any other adjustment to the maximum rent.  
13 The surcharge allocable to each apartment shall be an amount equal to  
14 the cost of the improvement divided by eighty-four, divided by the  
15 number of rooms in the building, and then multiplied by the number of  
16 rooms in such apartment; provided that the surcharge allocable to any  
17 apartment in any one year may not exceed an amount equal to six percent  
18 of the monthly rent collected by the owner for such apartment as set  
19 forth in the schedule of gross rents. Any excess above said six percent  
20 shall be carried forward and collected in future years as a further  
21 surcharge not to exceed an additional six percent in any one year period  
22 until the total surcharge equals the amount it would have been if the  
23 forementioned six percent limitation did not apply; or (8) there has  
24 been since March first, nineteen hundred fifty, in structures containing  
25 more than four housing accommodations, other improvements made with the  
26 express consent of the tenants in occupancy of at least seventy-five per  
27 centum of the housing accommodations, provided, however, that no adjust-  
28 ment granted hereunder shall exceed fifteen per centum unless the  
29 tenants have agreed to a higher percentage of increase, as herein  
30 provided; or (9) there has been, since March first, nineteen hundred  
31 fifty, a subletting without written consent from the landlord or an  
32 increase in the number of adult occupants who are not members of the  
33 immediate family of the tenant, and the landlord has not been compen-  
34 sated therefor by adjustment of the maximum rent by lease or order of  
35 the commission or pursuant to the federal act; or (10) the presence of  
36 unique or peculiar circumstances materially affecting the maximum rent  
37 has resulted in a maximum rent which is substantially lower than the  
38 rents generally prevailing in the same area for substantially similar  
39 housing accommodations.

40 § 8. Paragraph 5 of subdivision d of section 6 of section 4 of chapter  
41 576 of the laws of 1974, constituting the emergency tenant protection  
42 act of nineteen seventy-four, as amended by chapter 102 of the laws of  
43 1984, is amended and a new paragraph 6 is added to read as follows:

44 (5) as an alternative to the hardship application provided under para-  
45 graph four of this subdivision, owners of buildings acquired by the same  
46 owner or a related entity owned by the same principals three years prior  
47 to the date of application may apply to the division for increases in  
48 excess of the level of applicable guideline increases established under  
49 this law based on a finding by the commissioner that such guideline  
50 increases are not sufficient to enable the owner to maintain an annual  
51 gross rent income for such building which exceeds the annual operating  
52 expenses of such building by a sum equal to at least five percent of  
53 such gross rent provided, that more than half of the habitable units in  
54 the building are subject to rent stabilization or rent control. For the  
55 purposes of this paragraph, operating expenses shall consist of the  
56 actual, reasonable, costs of fuel, labor, utilities, taxes, other than

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

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

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

55 (p) Notwithstanding subparagraph (q) or (k) of this paragraph, there  
56 shall be no adjustment for any major capital improvement or for any

1 other expenditures to improve, restore or preserve the quality of a  
2 structure if such major capital improvement or such other expenditure is  
3 funded in any part from moneys provided by the New York state energy  
4 research and development authority.

5 § 10. This act shall take effect immediately; provided that the amend-  
6 ments to section 26-405 of the city rent and rehabilitation law made by  
7 sections one, two and nine of this act shall remain in full force and  
8 effect only so long as the public emergency requiring the regulation and  
9 control of residential rents and evictions continues, as provided in  
10 subdivision 3 of section 1 of the local emergency housing rent control  
11 act; provided that the amendments to section 26-511 of the rent stabili-  
12 zation law of nineteen hundred sixty-nine made by sections three, four  
13 and five of this act shall expire on the same date as such law expires  
14 and shall not affect the expiration of such law as provided under  
15 section 26-520 of such law, as from time to time amended; provided that  
16 the amendments to section 6 of the emergency tenant protection act of  
17 nineteen seventy-four made by sections six and eight of this act shall  
18 expire on the same date as such act expires and shall not affect the  
19 expiration of such act as provided in section 17 of chapter 576 of the  
20 laws of 1974, as from time to time amended; and provided that the amend-  
21 ments to section 4 of the emergency housing rent control law made by  
22 section seven of this act shall expire on the same date as such law  
23 expires and shall not affect the expiration of such law as provided in  
24 subdivision 2 of section 1 of chapter 274 of the laws of 1946.