

# STATE OF NEW YORK

4312

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## IN SENATE

February 8, 2017

Introduced by Sens. KRUEGER, HAMILTON, HOYLMAN, MONTGOMERY, SERRANO --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Housing, Construction and Community Development

AN ACT to amend the administrative code of the city of New York, the  
emergency tenant protection act of nineteen seventy-four and the emer-  
gency housing rent control law in relation to approval of major capi-  
tal 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 Assem-  
bly, do enact as follows:

1 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section  
2 26-405 of the administrative code of the city of New York, as amended by  
3 section 31 of part A of chapter 20 of the laws of 2015, is amended to  
4 read as follows:

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

8 (ii) There has been since July first, nineteen hundred seventy, a  
9 major capital improvement [~~required for the operation, preservation or~~  
10 ~~maintenance of the structure. An adjustment under this subparagraph (g)~~  
11 ~~for any order of the commissioner issued after the effective date of the~~  
12 ~~rent act of 2015 shall be in an amount sufficient to amortize the cost~~  
13 ~~of the improvements pursuant to this subparagraph (g) over an eight year~~  
14 ~~period for buildings with thirty five or fewer units or a nine year~~  
15 ~~period for buildings with more than thirty-five units,]; provided that~~  
16 the commissioner first finds that such improvements are deemed deprecia-  
17 ble under the internal revenue code and such improvements are required  
18 for the operation or preservation of the structure. However, no major  
19 capital improvement rent increase will be approved by the division of  
20 housing and community renewal unless the work performed is an enhance-  
21 ment or upgrade to a housing accommodation or service therein; or is an

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

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

48 § 2. Subparagraph (k) of paragraph 1 of subdivision g of section  
49 26-405 of the administrative code of the city of New York, as amended by  
50 chapter 749 of the laws of 1990, is amended to read as follows:

51 (k) The landlord has incurred, since January first, nineteen hundred  
52 seventy, in connection with and in addition to a concurrent major capi-  
53 tal improvement pursuant to subparagraph (g) of this paragraph, other  
54 expenditures to improve, restore or preserve the quality of the struc-  
55 ture. An adjustment under this subparagraph shall be granted only if  
56 such improvements represent an expenditure equal to at least ten per

1 centum of the total operating and maintenance expenses for the preceding  
2 year. An adjustment under this subparagraph shall be in addition to any  
3 adjustment granted for the concurrent major capital improvement and  
4 shall be [~~in an amount sufficient to amortize the cost of the improve-~~  
5 ~~ments pursuant to this subparagraph over a seven-year period]~~ imple-  
6 mented in the same manner as such major capital improvement as a further  
7 surcharge to the maximum rent.

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

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

1 percent in any year from the effective date of the order granting the  
2 increase over the rent set forth in the schedule of gross rents, with  
3 collectability of any dollar excess above said sum to be spread forward  
4 in similar increments and added to the stabilized rent as established or  
5 set in future years;

6 § 4. Subdivision c of section 26-511 of the administrative code of the  
7 city of New York is amended by adding three new paragraphs 6-b, 6-c and  
8 6-d to read as follows:

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

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

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

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

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

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

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

1 (6-c) the increase permitted for such capital improvement shall be  
2 collected as a monthly surcharge to the legal regulated rent. It shall  
3 be separately designated and billed as such and shall not be compounded  
4 by any annual adjustment of the level of fair rent provided for under  
5 subdivision b of section 26-510 of this law. The surcharge allocable to  
6 each apartment shall be an amount equal to the cost of the improvement  
7 divided by eighty-four divided by the number of rooms in the building,  
8 and then multiplied by the number of rooms in such apartment; provided  
9 that the surcharge allocable to any apartment, in any one year may not  
10 exceed an amount equal to six percent of the monthly rent collected by  
11 the owner for such apartment as set forth in the schedule of gross  
12 rents. Any excess above said six percent shall be carried forward and  
13 collected in future years as a further surcharge not to exceed an addi-  
14 tional six percent in any one year period until the total surcharge  
15 equals the amount it would have been if the aforementioned six percent  
16 limitation did not apply.

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

21 § 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter  
22 576 of the laws of 1974, constituting the emergency tenant protection  
23 act of nineteen seventy-four, as amended by section 30 of part A of  
24 chapter 20 of the laws of 2015, is amended to read as follows:

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

29 (ii) there has been since January first, nineteen hundred seventy-four  
30 a major capital improvement [~~required for the operation, preservation or~~  
31 ~~maintenance of the structure. An adjustment under this paragraph shall~~  
32 ~~be in an amount sufficient to amortize the cost of the improvements~~  
33 ~~pursuant to this paragraph over an eight-year period for a building with~~  
34 ~~thirty-five or fewer housing accommodations, or a nine-year period for a~~  
35 ~~building with more than thirty-five housing accommodations, for any~~  
36 ~~determination issued by the division of housing and community renewal~~  
37 ~~after the effective date of the rent act of 2015,]; provided that the~~  
38 commissioner first finds that such improvements are deemed depreciable  
39 under the internal revenue code and such improvements are required for  
40 the operation or preservation of the structure. However, no major capi-  
41 tal improvement rent increase will be approved by the division of hous-  
42 ing and community renewal unless the work performed is an enhancement or  
43 upgrade to a housing accommodation or service therein; or is an addition  
44 to such housing accommodation and otherwise eligible according to the  
45 prerequisites for major capital improvement rent increases. Any repair  
46 or replacement intended to maintain an existing service shall not be  
47 eligible for a major capital improvement rent increase. No application  
48 for a major capital improvement rent increase may be approved if there  
49 exist any outstanding hazardous violations at the time of the consider-  
50 ation of such application, as determined pursuant to regulations of the  
51 division of housing and community renewal or any agency administering  
52 and enforcing a building code in the jurisdiction in which the property  
53 is located, unless it is determined by the division of housing and  
54 community renewal that such work is essential to the alleviation of the  
55 violations and such approval is consistent with the provisions of this  
56 section. Except in the case of emergency or good cause, the owner of the

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

36 § 6. The second undesignated paragraph of paragraph (a) of subdivision  
37 4 of section 4 of chapter 274 of the laws of 1946, constituting the  
38 emergency housing rent control law, as amended by section 25 of part B  
39 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section  
40 32 of part A of chapter 20 of the laws of 2015, is amended to read as  
41 follows:

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

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

1 accommodations as a result of a substantial rehabilitation of the build-  
2 ing or housing accommodation therein which materially adds to the value  
3 of the property or appreciably prolongs its life, excluding ordinary  
4 repairs, maintenance and replacements; or (7)(i) collection of  
5 surcharges to the maximum rent authorized pursuant to item (ii) of this  
6 clause shall cease when the owner has recovered the cost of the major  
7 capital improvement; (ii) there has been since March first, nineteen  
8 hundred fifty, a major capital improvement [~~required for the operation,~~  
9 ~~preservation or maintenance of the structure, which for any order of the~~  
10 ~~commissioner issued after the effective date of the rent act of 2015 the~~  
11 ~~cost of such improvement shall be amortized over an eight year period~~  
12 ~~for buildings with thirty five or fewer units or a nine year period for~~  
13 ~~buildings with more than thirty-five units, or];~~ provided that the  
14 commissioner first finds that such improvements are deemed depreciable  
15 under the internal revenue code and such improvements are required for  
16 the operation or preservation of the structure. However, no major capi-  
17 tal improvement rent increase will be approved by the division of hous-  
18 ing and community renewal unless the work performed is an enhancement or  
19 upgrade to a housing accommodation or service therein; or is an addition  
20 to such housing accommodation and otherwise eligible according to the  
21 prerequisites for major capital improvement rent increases. Any repair  
22 or replacement intended to maintain an existing service shall not be  
23 eligible for a major capital improvement rent increase. No application  
24 for a major capital improvement rent increase may be approved if there  
25 exist any outstanding hazardous violations at the time of the consider-  
26 ation of such application, as determined pursuant to regulations of the  
27 division of housing and community renewal or any agency administering  
28 and enforcing a building code in the jurisdiction in which the property  
29 is located, unless it is determined by the division of housing and  
30 community renewal that such work is essential to the alleviation of the  
31 violations and such approval is consistent with the provisions of this  
32 section. Except in the case of emergency or good cause, the owner of the  
33 property shall file, not less than thirty days before the commencement  
34 of the improvement, with the division of housing and community renewal a  
35 statement containing information outlining the scope of work, expected  
36 date of completion for such work and an affidavit setting forth the  
37 following information: (a) every owner of record and owner of a substan-  
38 tial interest in the property or entity owning the property or spons-  
39 ing the improvement; and (b) a statement that none of such persons had,  
40 within the five years prior to the improvement, been found to have  
41 harassed or unlawfully evicted tenants by judgment or determination of a  
42 court or agency under the penal law, any state or local law regulating  
43 rents or any state or local law relating to harassment of tenants or  
44 unlawful eviction. Upon receipt of the scope of work and affidavit  
45 provided for herein, the division of housing and community renewal shall  
46 provide the tenants in occupancy in such buildings with such informa-  
47 tion. The division of housing and community renewal shall, in addition,  
48 implement procedures including, but not limited to, eliciting tenant  
49 comments to determine whether major capital improvement rehabilitation  
50 work has been satisfactorily completed. No major capital improvement  
51 rent increase shall become effective until any defective or deficient  
52 rehabilitation work has been cured. The increase permitted for such  
53 capital improvement shall be collected as a monthly surcharge to the  
54 maximum rent. It shall be separately designated and billed as such and  
55 shall not be compounded by any other adjustment to the maximum rent. The  
56 surcharge allocable to each apartment shall be an amount equal to the



1 cost of the improvement divided by eighty-four, divided by the number of  
2 rooms in the building, and then multiplied by the number of rooms in  
3 such apartment; provided that the surcharge allocable to any apartment  
4 in any one year may not exceed an amount equal to six percent of the  
5 monthly rent collected by the owner for such apartment as set forth in  
6 the schedule of gross rents. Any excess above said six percent shall be  
7 carried forward and collected in future years as a further surcharge not  
8 to exceed an additional six percent in any one year period until the  
9 total surcharge equals the amount it would have been if the aforemen-  
10 tioned six percent limitation did not apply; or (8) there has been since  
11 March first, nineteen hundred fifty, in structures containing more than  
12 four housing accommodations, other improvements made with the express  
13 consent of the tenants in occupancy of at least seventy-five per centum  
14 of the housing accommodations, provided, however, that no adjustment  
15 granted hereunder shall exceed fifteen per centum unless the tenants  
16 have agreed to a higher percentage of increase, as herein provided; or  
17 (9) there has been, since March first, nineteen hundred fifty, a sublet-  
18 ting without written consent from the landlord or an increase in the  
19 number of adult occupants who are not members of the immediate family of  
20 the tenant, and the landlord has not been compensated therefor by  
21 adjustment of the maximum rent by lease or order of the commission or  
22 pursuant to the federal act; or (10) the presence of unique or peculiar  
23 circumstances materially affecting the maximum rent has resulted in a  
24 maximum rent which is substantially lower than the rents generally  
25 prevailing in the same area for substantially similar housing accommo-  
26 dations.

27 § 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter  
28 576 of the laws of 1974, constituting the emergency tenant protection  
29 act of nineteen seventy-four, as amended by chapter 102 of the laws of  
30 1984, is amended and a new paragraph 6 is added to read as follows:

31 (5) as an alternative to the hardship application provided under para-  
32 graph four of this subdivision, owners of buildings acquired by the same  
33 owner or a related entity owned by the same principals three years prior  
34 to the date of application may apply to the division for increases in  
35 excess of the level of applicable guideline increases established under  
36 this law based on a finding by the commissioner that such guideline  
37 increases are not sufficient to enable the owner to maintain an annual  
38 gross rent income for such building which exceeds the annual operating  
39 expenses of such building by a sum equal to at least five percent of  
40 such gross rent. For the purposes of this paragraph, operating expenses  
41 shall consist of the actual, reasonable, costs of fuel, labor, utili-  
42 ties, taxes, other than income or corporate franchise taxes, fees,  
43 permits, necessary contracted services and non-capital repairs, insur-  
44 ance, parts and supplies, management fees and other administrative costs  
45 and mortgage interest. For the purposes of this paragraph, mortgage  
46 interest shall be deemed to mean interest on a bona fide mortgage  
47 including an allocable portion of charges related thereto. Criteria to  
48 be considered in determining a bona fide mortgage other than an institu-  
49 tional mortgage shall include[+]: condition of the property, location of  
50 the property, the existing mortgage market at the time the mortgage is  
51 placed, the term of the mortgage, the amortization rate, the principal  
52 amount of the mortgage, security and other terms and conditions of the  
53 mortgage. The commissioner shall set a rental value for any unit occu-  
54 pied by the owner or a person related to the owner or unoccupied at the  
55 owner's choice for more than one month at the last regulated rent plus  
56 the minimum number of guidelines increases or, if no such regulated rent

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

32 or

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

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

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

46 § 9. This act shall take effect immediately; provided that the amend-  
47 ments to section 26-405 of the city rent and rehabilitation law made by  
48 sections one, two and eight of this act shall remain in full force and  
49 effect only so long as the public emergency requiring the regulation and  
50 control of residential rents and evictions continues, as provided in  
51 subdivision 3 of section 1 of the local emergency housing rent control  
52 act; provided that the amendments to section 26-511 of the rent stabili-  
53 zation law of nineteen hundred sixty-nine made by sections three and  
54 four of this act shall expire on the same date as such law expires and  
55 shall not affect the expiration of such law as provided under section  
56 26-520 of such law, as from time to time amended; provided that the

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