

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.