

STATE OF NEW YORK

8089--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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
22 addition to such housing accommodation and otherwise eligible according
23 to the prerequisites for major capital improvement rent increases. Any

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

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

46 § 2. Subparagraph (k) of paragraph 1 of subdivision g of section
47 26-405 of the administrative code of the city of New York, as amended by
48 chapter 749 of the laws of 1990, is amended to read as follows:

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

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

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

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

1 collectability of any dollar excess above said sum to be spread forward
2 in similar increments and added to the stabilized rent as established or
3 set in future years;

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

7 (6-b) provides criteria whereby the commissioner may act upon applica-
8 tion by owners for increases in excess of the level of fair rent
9 increase established under this law provided, however, that such crite-
10 ria shall provide that:

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

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

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

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

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

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

54 (6-c) the increase permitted for such capital improvement shall be
55 collected as a monthly surcharge to the legal regulated rent. It shall
56 be separately designated and billed as such and shall not be compounded

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

14 (6-d) collection of surcharges in excess of the level of fair rent
15 authorized pursuant to paragraph six-b and six-c of this subdivision
16 shall cease when the owner has recovered the cost of the major capital
17 improvement.

18 § 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
19 576 of the laws of 1974, constituting the emergency tenant protection
20 act of nineteen seventy-four, as amended by section 30 of part A of
21 chapter 20 of the laws of 2015, is amended to read as follows:

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

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

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

33 § 6. The second undesignated paragraph of paragraph (a) of subdivision
34 4 of section 4 of chapter 274 of the laws of 1946, constituting the
35 emergency housing rent control law, as amended by section 25 of part B
36 of chapter 97 of the laws of 2011, subparagraph 7 as amended by section
37 32 of part A of chapter 20 of the laws of 2015, is amended to read as
38 follows:

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

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

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

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

24 § 7. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
25 576 of the laws of 1974, constituting the emergency tenant protection
26 act of nineteen seventy-four, as amended by chapter 102 of the laws of
27 1984, is amended and a new paragraph 6 is added to read as follows:

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

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

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

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

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

43 § 9. This act shall take effect immediately; provided that the amend-
44 ments to section 26-405 of the city rent and rehabilitation law made by
45 sections one, two and eight of this act shall remain in full force and
46 effect only so long as the public emergency requiring the regulation and
47 control of residential rents and evictions continues, as provided in
48 subdivision 3 of section 1 of the local emergency housing rent control
49 act; provided that the amendments to section 26-511 of the rent stabili-
50 zation law of nineteen hundred sixty-nine made by sections three and
51 four of this act shall expire on the same date as such law expires and
52 shall not affect the expiration of such law as provided under section
53 26-520 of such law, as from time to time amended; provided that the
54 amendments to section 6 of the emergency tenant protection act of nine-
55 teen seventy-four made by sections five and seven of this act shall
56 expire on the same date as such act expires and shall not affect the

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