

STATE OF NEW YORK

6322

2019-2020 Regular Sessions

IN ASSEMBLY

March 5, 2019

Introduced by M. of A. BARNWELL, JOYNER -- read once and referred to the
Committee on Housing

AN ACT eliminating rent increases based on major capital improvements;
to amend chapter 274 of the laws of 1946, constituting the emergency
housing rent control law, the emergency tenant protection act of nine-
teen seventy-four and the administrative code of the city of New York,
in relation to eliminating rent increases to pay for major capital
improvements

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

1 Section 1. Legislative findings and declaration of emergency. The
2 legislature hereby finds and declares that the serious public emergency
3 which led to the enactment of the existing laws regulating residential
4 rents and evictions continues to exist. The legislature further finds
5 that a majority of households currently occupying housing accommodations
6 subject to rent laws are rent-burdened; that permanent increases in
7 rents are no longer necessary to incentivize rental property owners to
8 make, or to compensate landlords for, necessary major capital improve-
9 ments; that publicly funded tax incentives and other subsidies are
10 available to rental property owners to support major capital improve-
11 ments; that value from major capital improvements accrues to rental
12 property owners through increased property values and sale prices; that,
13 due to market conditions in localities subject to rent laws, rental
14 property owners are already able to realize a reasonable return on their
15 investments in major capital improvements through increased property
16 values and sale prices alone; and that provisions for hardship increases
17 under existing rent laws already ensure that rental property owners are
18 able to operate rent regulated housing without incurring undue losses.
19 The legislature further declares and finds that a substantial number of
20 the rent increases previously granted for major capital improvements
21 were tainted by inflated costs, particularly in the last seven years;

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

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1 that the provision of permanent rent increases for major capital
2 improvements in existing rent laws has resulted in exactions of unjust,
3 unreasonable and oppressive rents, as well as profiteering, speculation
4 and other disruptive practices tending to produce tenant dislocation and
5 threats to the public health, safety and general welfare; that such
6 results were contrary to the intent and purpose of the existing rent
7 laws; that it is therefore necessary to amend the rent laws to remove
8 any provision of a permanent rent increase based upon major capital
9 improvements; and that it is additionally necessary to repeal rent
10 increases based upon major capital improvements that became effective
11 within the previous seven years.

12 § 2. (a) The division of housing and community renewal, the "divi-
13 sion", shall administer the elimination of rent increases based upon
14 major capital improvements pursuant to this act. The division shall no
15 longer grant rent increases on the basis of major capital improvements
16 at buildings subject to rent regulation or rent stabilization pursuant
17 to the emergency rent control law, the emergency tenant protection act
18 and/or the administrative code of the city of New York. All pending
19 applications for rent increases based upon major capital improvements
20 shall be denied, and the division shall issue orders disposing of pend-
21 ing applications as necessary.

22 (b) Any rent increase based upon major capital improvements previously
23 ordered by the division, pursuant to the emergency rent control law, the
24 emergency tenant protection act and/or the administrative code of the
25 city of New York, with an effective date within the seven years prior to
26 the effective date of this act shall be repealed effective immediately
27 unless the division finds a basis for limiting the repeal pursuant to
28 subdivision (d) of this section. For all affected housing accommo-
29 dations, the division shall determine what the present legal rent would
30 be for each such accommodation if the division had not ordered any rent
31 increases based upon major capital improvements during the repeal peri-
32 od, and this amount shall be the proposed new legal rent.

33 (c) Within 180 days of the effective date of this act, the division of
34 housing and community renewal shall determine the proposed new legal
35 rents for all affected housing accommodations pursuant to subdivision
36 (b) of this section and shall also provide written notification to all
37 current owners and tenants of affected accommodations as to the amount
38 of the proposed new legal rents, the basis for the department's determi-
39 nation, and the time for each affected party to submit additional infor-
40 mation that the division shall consider before issuing a final order
41 determining the new legal rents, which shall not be less than 45 days.
42 Unless an owner of an affected building has submitted a timely applica-
43 tion to the division for a limitation pursuant to subdivision (d) of
44 this section, the division shall issue a final order determining the new
45 legal rents for affected housing accommodations within 365 days of the
46 effective date of this act.

47 (d) (1) Within 90 days of receiving written notice of proposed new
48 legal rents from the division pursuant to subdivision (c) of this
49 section, a building owner may apply to the commissioner of housing and
50 community renewal for an order limiting the amount of the repeal of rent
51 increases under this act based upon a finding by the commissioner of
52 housing and community renewal that the proposed new legal rents are not
53 sufficient to enable the owner to maintain an annual gross rent income
54 for such building which exceeds the annual operating expenses of such
55 building by a sum equal to at least five percent of such gross rent. In
56 buildings for which the commissioner of housing and community renewal

1 finds that the proposed new legal rents are not sufficient to enable the
2 owner to maintain an annual gross rent income for such building which
3 exceeds the annual operating expenses of such building by a sum equal to
4 at least five percent of such gross rent, the repeal amount of rent
5 increases based upon major capital improvements shall be limited to an
6 amount such that the annual operating expenses of the building do not
7 exceed ninety-five percent of the new proposed annual gross rent income
8 for such building.

9 (2) For the purposes of this subdivision, operating expenses shall
10 consist of the actual, reasonable, costs of fuel, labor, utilities,
11 taxes, other than income or corporate franchise taxes, fees, permits,
12 necessary contracted services and noncapital repairs, insurance, parts
13 and supplies, management fees and other administrative costs and mort-
14 gage interest. For the purposes of this subdivision, mortgage interest
15 shall be deemed to mean interest on a bona fide mortgage including an
16 allocable portion of charges related thereto. Criteria to be considered
17 in determining a bona fide mortgage other than an institutional mortgage
18 shall include: condition of the property, location of the property, the
19 existing mortgage market at the time the mortgage is placed, the term of
20 the mortgage, the amortization rate, the principal amount of the mort-
21 gage, security and other terms and conditions of the mortgage. For the
22 purposes of this subdivision, gross annual rent income for a building
23 shall include a rental value set by the commissioner of housing and
24 community renewal for any unit occupied by the owner or a person related
25 to the owner or unoccupied at the owner's choice for more than one month
26 at the last regulated rent plus the minimum number of guidelines
27 increases or, if no such regulated rent existed or is known, the commis-
28 sioner shall impute a rent consistent with other proposed new legal
29 rents in the building.

30 (e) The division shall require that owners refund any increase in a
31 tenant's security deposit amount collected in excess of a new legal rent
32 established under this act within thirty days of the department's issu-
33 ance of an order determining new legal rents. Such excess security
34 deposit amount may be refunded in the form of a rent credit applied
35 toward the affected tenant's next monthly rent payment, and affected
36 tenants are entitled to self-deduct the refund amount from future rent
37 payments.

38 (f) The new legal rent shall be the legal rent beginning on the date
39 rent is required to be paid next succeeding the issuance of a final
40 order determining new legal rents under this act.

41 (g) Any lease agreement executed after the issuance of a final order
42 determining new legal rents under this act shall be deemed to incorpo-
43 rate the rent amounts and effective dates set forth in such order.

44 (h) Any tenant residing in an affected housing accommodation may
45 assert their entitlement to the repeal of prior rent under subdivision
46 (b) of this section, as a defense or counterclaim in any legal proceed-
47 ing predicated upon a landlord's claim of default in the payment of rent
48 pursuant to an agreement. Any court with jurisdiction over a landlord's
49 claim as to a tenant's default in the payment of rent shall also adjudi-
50 cate and have primary jurisdiction over the tenant's assertion of a
51 defense or counterclaim under this provision if the department has not
52 yet issued an order determining the new legal rent. A court order made
53 under this subdivision shall not in any way be deemed to impair a build-
54 ing owner's right or time to apply for a limitation under subdivision
55 (d) of this section.

(i) All final orders issued by the department pursuant to subdivisions (b), (c), and (d) of this section shall be subject to appeal pursuant to existing procedures for administrative review before the division.

§ 3. Paragraph 2 of subdivision 3-a of section 4, subparagraphs 7, 8, 9 and 10 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4, and subdivision 9 of section 5 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, paragraph 2 of subdivision 3-a of section 4 as amended by chapter 337 of the laws of 1961, subparagraphs 8, 9 and 10 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 as amended by section 25 of part B of chapter 97 of the laws of 2011, subparagraph 7 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 as amended by section 32 of part A of chapter 20 of the laws of 2015, and subdivision 9 of section 5 as added by chapter 116 of the laws of 1997, are amended to read as follows:

(2) the amount of increases in maximum rent authorized by order because of increases in dwelling space, services, furniture, furnishings or equipment[, or major capital improvements].

(7) [~~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 (8)~~] there has been since March first, nineteen hundred fifty, in structures containing more than four housing accommodations, other improvements made with the express consent of the tenants in occupancy of at least seventy-five per centum of the housing accommodations, provided, however, that no adjustment granted hereunder shall exceed fifteen per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; or [~~(9)~~] (8) there has been, since March first, nineteen hundred fifty, a subletting without written consent from the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant, and the landlord has not been compensated therefor by adjustment of the maximum rent by lease or order of the commission or pursuant to the federal act; or [~~(10)~~] (9) the presence of unique or peculiar circumstances materially affecting the maximum rent has resulted in a maximum rent which is substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations.

9. Notwithstanding any provision of this law to the contrary in the case where all tenants occupying the housing accommodation on the effective date of this subdivision have vacated the housing accommodation and a family member of such vacating tenant or tenants is entitled to and continues to occupy the housing accommodation subject to the protections of this law, if such accommodation continues to be subject to this law after such family member vacates, on the occurrence of such vacancy the maximum collectable rent shall be increased by a sum equal to the allowance then in effect for vacancy leases for housing accommodations covered by the rent stabilization law of nineteen hundred sixty-nine, including the amount allowed by paragraph five-a of subdivision c of section 26-511 of such law. This increase shall be in addition to any other increases provided in this law including an adjustment based upon [~~a major capital improvement, or~~] a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or

1 equipment provided in the housing accommodation, pursuant to section
2 four of this law and shall be applicable in like manner to each second
3 subsequent succession.

4 § 4. Paragraphs 3, 4, and 5 of subdivision d and subdivision g of
5 section 6 of section 4 of chapter 576 of the laws of 1974, constituting
6 the emergency tenant protection act of nineteen seventy-four, paragraph
7 3 of subdivision d as amended by section 30 of part A of chapter 20 of
8 the laws of 2015, paragraph 4 of subdivision d as amended by chapter 403
9 of the laws of 1983, paragraph 5 of subdivision d as amended by chapter
10 102 of the laws of 1984, and subdivision g as added by chapter 116 of
11 the laws of 1997, are amended to read as follows:

12 (3) ~~[there has been since January first, nineteen hundred seventy four~~
13 ~~a major capital improvement required for the operation, preservation or~~
14 ~~maintenance of the structure. An adjustment under this paragraph shall~~
15 ~~be in an amount sufficient to amortize the cost of the improvements~~
16 ~~pursuant to this paragraph over an eight year period for a building with~~
17 ~~thirty five or fewer housing accommodations, or a nine year period for a~~
18 ~~building with more than thirty five housing accommodations, for any~~
19 ~~determination issued by the division of housing and community renewal~~
20 ~~after the effective date of the rent act of 2015, or~~

21 ~~(4)]~~ an owner by application to the state division of housing and
22 community renewal for increases in the rents in excess of the rent
23 adjustment authorized by the rent guidelines board under this act estab-
24 lishes a hardship, and the state division finds that the rate of rent
25 adjustment is not sufficient to enable the owner to maintain approxi-
26 mately the same ratio between operating expenses, including taxes and
27 labor costs but excluding debt service, financing costs, and management
28 fees, and gross rents which prevailed on the average over the immediate
29 preceding five year period, or for the entire life of the building if
30 less than five years, or

31 ~~[(5)]~~ (4) as an alternative to the hardship application provided under
32 paragraph ~~[four]~~ three of this subdivision, owners of buildings acquired
33 by the same owner or a related entity owned by the same principals three
34 years prior to the date of application may apply to the division for
35 increases in excess of the level of applicable guideline increases
36 established under this law based on a finding by the commissioner that
37 such guideline increases are not sufficient to enable the owner to main-
38 tain an annual gross rent income for such building which exceeds the
39 annual operating expenses of such building by a sum equal to at least
40 five percent of such gross rent. For the purposes of this paragraph,
41 operating expenses shall consist of the actual, reasonable, costs of
42 fuel, labor, utilities, taxes, other than income or corporate franchise
43 taxes, fees, permits, necessary contracted services and non-capital
44 repairs, insurance, parts and supplies, management fees and other admin-
45 istrative costs and mortgage interest. For the purposes of this para-
46 graph, mortgage interest shall be deemed to mean interest on a bona fide
47 mortgage including an allocable portion of charges related thereto.
48 Criteria to be considered in determining a bona fide mortgage other than
49 an institutional mortgage shall include; condition of the property,
50 location of the property, the existing mortgage market at the time the
51 mortgage is placed, the term of the mortgage, the amortization rate, the
52 principal amount of the mortgage, security and other terms and condi-
53 tions of the mortgage. The commissioner shall set a rental value for any
54 unit occupied by the owner or a person related to the owner or unoccu-
55 pied at the owner's choice for more than one month at the last regulated
56 rent plus the minimum number of guidelines increases or, if no such

regulated rent existed or is known, the commissioner shall impute a rent consistent with other rents in the building. The amount of hardship increase shall be such as may be required to maintain the annual gross rent income as provided by this paragraph. The division shall not grant a hardship application under this paragraph or paragraph ~~four~~ three of this subdivision for a period of three years subsequent to granting a hardship application under the provisions of this paragraph. The collection of any increase in the rent for any housing accommodation pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. No application shall be approved unless the owner's equity in such building exceeds five percent of: (i) the arms length purchase price of the property; (ii) the cost of any capital improvements for which the owner has not collected a surcharge; (iii) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not collected a surcharge; and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner. For the purposes of this paragraph, owner's equity shall mean the sum of (i) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property, (ii) the cost of any capital improvement for which the owner has not collected a surcharge less the principal of any mortgage or loan used to finance said improvement, (iii) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected a surcharge, and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

g. Notwithstanding any provision of this act to the contrary in the case where all tenants named in a lease have permanently vacated a housing accommodation and a family member of such tenant or tenants is entitled to and executes a renewal lease for the housing accommodation if such accommodation continues to be subject to this act after such family member vacates, on the occurrence of such vacancy the legal regulated rent shall be increased by a sum equal to the allowance then in effect for vacancy leases, including the amount allowed by subdivision (a-1) of section ten of this act. Such increase shall be in addition to any other increases provided for in this act including an adjustment based upon ~~a major capital improvement, or~~ a substantial modification or increase of dwelling space or services, or installation of new equipment or improvements or new furniture or furnishings provided in or to the housing accommodation, pursuant to section six of this act and shall be applicable in like manner to each second subsequent succession.

§ 5. Subdivision (a-1) of section 10 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by section 16-b of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(a-1) provides that, notwithstanding any provision of this act, the legal regulated rent for any vacancy lease entered into after the effective date of this subdivision shall be as hereinafter set forth. The previous legal regulated rent for such housing accommodation shall be increased by the following: (i) if the vacancy lease is for a term of

two years, twenty percent of the previous legal regulated rent; or (ii) if the vacancy lease is for a term of one year the increase shall be twenty percent of the previous legal regulated rent less an amount equal to the difference between (a) the two year renewal lease guideline promulgated by the guidelines board of the county in which the housing accommodation is located applied to the previous legal regulated rent and (b) the one year renewal lease guideline promulgated by the guidelines board of the county in which the housing accommodation is located applied to the previous legal regulated rent. However, where the amount charged and paid by the prior tenant pursuant to paragraph fourteen of ~~this~~ subdivision c of section 26-511 of the administration code of the city of New York, was less than the legal regulated rent, such increase to the legal regulated rent shall not exceed: five percent of the previous legal regulated rent if the last vacancy lease commenced less than two years ago; ten percent of the previous legal regulated rent if the last vacancy commenced less than three years ago; fifteen percent of the previous legal regulated rent if the last vacancy lease commenced less than four years ago; twenty percent of the previous legal regulated rent if the last vacancy lease commenced four or more years ago. In addition, if the legal regulated rent was not increased with respect to such housing accommodation by a permanent vacancy allowance within eight years prior to a vacancy lease executed on or after the effective date of this subdivision, the legal regulated rent may be further increased by an amount equal to the product resulting from multiplying such previous legal regulated rent by six-tenths of one percent and further multiplying the amount of rent increase resulting therefrom by the greater of (A) the number of years since the imposition of the last permanent vacancy allowance, or (B) if the rent was not increased by a permanent vacancy allowance since the housing accommodation became subject to this act, the number of years that such housing accommodation has been subject to this act. Provided that if the previous legal regulated rent was less than three hundred dollars the total increase shall be as calculated above plus one hundred dollars per month. Provided, further, that if the previous legal regulated rent was at least three hundred dollars and no more than five hundred dollars in no event shall the total increase pursuant to this subdivision be less than one hundred dollars per month. Such increase shall be in lieu of any allowance authorized for the one or two year renewal component thereof, but shall be in addition to any other increases authorized pursuant to this act including an adjustment based upon ~~a major capital improvement, or~~ a substantial modification or increase of dwelling space or services, or installation of new equipment or improvements or new furniture or furnishings provided in or to the housing accommodation pursuant to section six of this act. The increase authorized in this subdivision may not be implemented more than one time in any calendar year, notwithstanding the number of vacancy leases entered into in such year.

§ 6. Section 26-403.2 of the administrative code of the city of New York, as added by chapter 116 of the laws of 1997, is amended to read as follows:

§ 26-403.2 Increase in maximum collectable rent. Notwithstanding any provision of this law to the contrary in the case where all tenants occupying the housing accommodation on the effective date of this section have vacated the housing accommodation and a family member of such vacating tenant or tenants is entitled to and continues to occupy the housing accommodation subject to the protections of this law, if such accommodation continues to be subject to this law after such family

1 member vacates, on the occurrence of such vacancy the maximum collecta-
2 ble rent shall be increased by a sum equal to the allowance then in
3 effect for vacancy leases for housing accommodations covered by the rent
4 stabilization law of nineteen hundred sixty-nine, including the amount
5 allowed by paragraph five-a of subdivision c of section 26-511 of such
6 law. This increase shall be in addition to any other increases provided
7 for in this law including an adjustment based upon ~~[a major capital~~
8 ~~improvement, or]~~ a substantial increase or decrease in dwelling space or
9 a change in the services, furniture, furnishings or equipment provided
10 in the housing accommodation, pursuant to section 26-405 of this law and
11 shall be applicable in like manner to each second subsequent succession.

12 § 7. Subparagraphs (g), (h), (i), (j), (k), (l), (m), (n) and (o) of
13 paragraph 1 of subdivision g of section 26-405 of the administrative
14 code of the city of New York, subparagraph (g) as amended by section 31
15 of part A of chapter 20 of the laws of 2015, subparagraph (k) as amended
16 by chapter 749 of the laws of 1990, and clause 7 of subparagraph (n) as
17 amended by local law number 76 of the city of New York for the year
18 2005, are amended to read as follows:

19 (g) ~~[There has been since July first, nineteen hundred seventy, a~~
20 ~~major capital improvement required for the operation, preservation or~~
21 ~~maintenance of the structure. An adjustment under this subparagraph (g)~~
22 ~~for any order of the commissioner issued after the effective date of the~~
23 ~~rent act of 2015 shall be in an amount sufficient to amortize the cost~~
24 ~~of the improvements pursuant to this subparagraph (g) over an eight-year~~
25 ~~period for buildings with thirty five or fewer units or a nine year~~
26 ~~period for buildings with more than thirty five units, or~~

27 ~~(h) There have been since March first, nineteen hundred fifty-nine, in~~
28 ~~structures containing more than four housing accommodations, other~~
29 ~~improvements made with the express consent of the tenants in occupancy~~
30 ~~of at least seventy five per centum of the housing accommodations,~~
31 ~~provided, however, that whenever the city rent agency has determined~~
32 ~~that the improvements proposed were part of a plan designed for overall~~
33 ~~improvement of the structure or increases in services, it may authorize~~
34 ~~increases in maximum rents for all housing accommodations affected upon~~
35 ~~the express consent of the tenants in occupancy of at least fifty one~~
36 ~~per centum of the housing accommodations, and provided further that no~~
37 ~~adjustment granted hereunder shall exceed fifteen per centum unless the~~
38 ~~tenants have agreed to a higher percentage of increase, as herein~~
39 ~~provided; or~~

40 ~~(i)~~ [There has been, since March first, nineteen hundred fifty-nine, a
41 subletting without written consent from the landlord or an increase in
42 the number of adult occupants who are not members of the immediate fami-
43 ly of the tenant, and the landlord has not been compensated therefor by
44 adjustment of the maximum rent by lease or order of the city rent agency
45 or pursuant to the state rent act or the federal act; or

46 ~~(j)~~ (h) The presence of unique or peculiar circumstances materially
47 affecting the maximum rent has resulted in a maximum rent which is
48 substantially lower than the rents generally prevailing in the same area
49 for substantially similar housing accommodations.

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

~~(1)]~~ (i) (1) The actual labor expenses currently incurred or to be incurred (pursuant to a collective agreement or other obligation actually entered into by the landlord) exceed the provision for payroll expenses in the current applicable operating and maintenance expense allowance under subdivision a of this section. No application pursuant to this subparagraph may be granted within one year from the granting of an adjustment in maximum rent pursuant to this subparagraph ~~[(1)]~~, or pursuant to subparagraph (a) of this paragraph. Any rent increase the applicant would be entitled to, or such portion thereof, shall not exceed a total increase of seven and one-half per centum per annum of the maximum rent as provided in paragraph five of subdivision a of this section.

(2) Any adjustment in the maximum rents pursuant hereto shall be subject to:

(i) The adjustment in maximum rent for any twelve-month period for any housing accommodation shall not exceed four percent of the maximum rent in effect on December thirty-first, nineteen hundred seventy-three.

(ii) Where the increase in labor costs compensable herein is the result of an industry-wide collective bargaining agreement or a specific agreement in anticipation of, or subsequent to, an industry-wide collective bargaining agreement, the adjustment shall be in such amount (subject to the above limitation) that the increased rental income from January first, nineteen hundred seventy-four to December thirty-first, nineteen hundred seventy-six shall reflect the increased labor costs for the period from April thirtieth, nineteen hundred seventy-three to April thirtieth, nineteen hundred seventy-six.

(3) For the purpose of this subparagraph ~~[(1)]~~ the increase in labor costs shall be the amount by which the labor costs (a) actually in effect and paid, or (b) actually in effect and paid or payable and fixed and determined pursuant to agreement on the date of the filing of the application and projected over the period ending April thirtieth, nineteen hundred seventy-six, exceed the labor costs for the twelve calendar months immediately preceding the last day of the month in which the wage agreement became effective.

(4) Notwithstanding any other provision of this chapter, the adjustment pursuant to this subparagraph shall be collectible upon the landlord's filing of a report with the city rent agency, subject to the provisions of subparagraph (e) of paragraph two of subdivision a of this section.

(5) No increase in the maximum rent for any housing accommodation may be granted under this subparagraph ~~[(1)]~~ if on the date when the application is sought to be filed, less than the full term of such agreement has elapsed since the date of the filing of the last prior application for an increase with respect to such property under this subparagraph ~~[(1)]~~, which application resulted in the granting of an increase. Where, however, the landlord establishes the existence of unique or peculiar circumstances affecting an increase in labor costs for the property, the agency may accept such application where it determines that such acceptance is not inconsistent with the purposes of this local law.

(6) The increase authorized herein shall be apportioned equitably among all the housing accommodations in the property whether or not subject to control under this chapter.

1 ~~(n)~~ (j) Where the rehabilitation or improvement of sub-standard or
2 deteriorated housing accommodations has been financed under a govern-
3 mental program providing assistance through loans, loan insurance or tax
4 abatement or has been undertaken under another rehabilitation program
5 not so financed but approved by the commissioner.

6 ~~(n)~~(k)(1) The city rent agency shall hereafter promulgate in January
7 of each year;

8 (i) findings regarding the price increase or decrease, respectively,
9 for all types of heating fuel, including numbers two, four and six home
10 heating oils, utility supplied steam, gas, electricity and coal, togeth-
11 er with the sales and excise taxes thereon, on December thirty-first as
12 compared to the January first in any year; and

13 (ii) standards for consumption of heating fuel, which shall be no more
14 than two hundred twenty-five gallons per year per room commencing Janu-
15 ary first, nineteen hundred eighty-one, for buildings using heating oils
16 for heat with comparable unit limitations to be established by the city
17 rent agency for utility supplied steam, gas, electricity, coal and any
18 other types of heating systems, provided that such consumption standards
19 for heating fuels shall be reduced by five gallons per room per year for
20 heating oils and a comparable amount for other heating fuels for the
21 next succeeding year and ten gallons per room per year for heating oils
22 and a comparable amount for other heating fuels for two succeeding years
23 thereafter.

24 Such findings and consumption standards shall be published in the City
25 Record.

26 (2) To obtain a rental adjustment pursuant to this subparagraph ~~(n)~~,
27 the landlord shall file a report with the agency on forms prescribed by
28 the agency and shall:

29 (i) certify the amount of heating fuel consumed in the calendar year
30 immediately prior to the filing of the report;

31 (ii) state the type of fuel used and the number of rooms in the build-
32 ing;

33 (iii) certify that (a) all essential services required to be provided
34 have been and will continue to be maintained and (b) there has been no
35 rent reduction order issued pursuant to this chapter based on the land-
36 lord's failure to provide heat or hot water during the prior twelve
37 months;

38 (iv) certify on information and belief, in order to qualify for an
39 additional rent increase pursuant to this subparagraph ~~(n)~~, that for
40 an individual housing accommodation, if the maximum rent collectible
41 pursuant to paragraph five of subdivision a of this section plus actual
42 rent adjustments pursuant to this subparagraph ~~(n)~~ and such additional
43 rent increase, is equal to or exceeds the maximum rent established
44 pursuant to paragraphs three and four of subdivision a of this section
45 plus the amount calculated pursuant to subitem (i) of item three and
46 subitem (i) of item four of this subparagraph ~~(n)~~, each to be allo-
47 cated to such housing accommodation pursuant to subitem (ii) of item
48 four of this subparagraph ~~(n)~~, that the landlord will not be earning
49 an amount in excess of the statutory return specified in subparagraph
50 (a) of this paragraph ~~one of subdivision g of this section~~ after
51 collection of a rent increase pursuant to this subparagraph ~~(n)~~, with
52 respect to a building or buildings serviced by a single heating plant;

53 (v) report any funds received with respect to the housing accommo-
54 dations from any governmental grant program compensating such landlord
55 for fuel price increases during the period for which an adjustment is
56 obtained pursuant to this subparagraph ~~(n)~~;

1 (vi) provide such other information as the agency may require.

2 (3) Rent adjustments for controlled housing accommodations for annual
3 heating fuel cost increases or decreases experienced after December
4 thirty-first, nineteen hundred seventy-nine, shall be determined as
5 follows:

6 (i) the increase or decrease in heating fuel prices found by the agen-
7 cy for that year shall be multiplied by the actual consumption, not to
8 exceed that year's consumption standard established pursuant to subitem

9 (ii) of item one of this subparagraph; and

10 (ii) seventy-five percentum of such amount shall be allocated among
11 all rental space in the building, including commercial, professional and
12 similar facilities, provided, for the purposes of this subparagraph
13 [~~(a)~~], that living rooms, kitchens over fifty-nine square feet in area
14 and bedrooms shall be considered rooms and that bathrooms, foyers and
15 kitchenettes shall not be considered rooms.

16 (4) Rent adjustments for controlled housing accommodations for heating
17 fuel cost increases or decreases experienced from April ninth, nineteen
18 hundred seventy-nine, through and including December thirty-first, nine-
19 teen hundred seventy-nine, shall be determined as follows:

20 (i) the increase or decrease in heating fuel prices found by the agen-
21 cy for that period shall be multiplied by seventy-five percentum of the
22 actual heating fuel consumption during the period from January first,
23 nineteen hundred seventy-nine, through and including December thirty-
24 first, nineteen hundred seventy-nine, which consumption shall not exceed
25 seventy-five percentum of that year's consumption standard established
26 by the agency; and

27 (ii) such amount shall be allocated among all rental space in the
28 building, including commercial, professional and similar facilities,
29 provided, for the purposes of this subparagraph [~~(a)~~], that living
30 rooms, kitchens over fifty-nine square feet in area and bedrooms shall
31 be considered rooms and that bathrooms, foyers and kitchenettes shall
32 not be considered rooms.

33 The city rent agency shall promulgate findings for heating fuel price
34 increases or decreases and standards for consumption for the periods set
35 forth in this item four thirty days after this local law is enacted. The
36 standard for consumption shall be no more than seventy-five percentum of
37 two hundred thirty gallons per room for buildings using heating oils for
38 heat with comparable unit limitations to be established by the city rent
39 agency for utility supplied steam, gas, electricity, coal and any other
40 types of heating systems.

41 (5) A landlord who files a report pursuant to this subparagraph and
42 who falsely certifies shall not be eligible to collect any rent adjust-
43 ment pursuant to this subparagraph for two years following a determi-
44 nation of a false certification and, in addition, any adjustments
45 obtained pursuant to this subparagraph for up to two years prior to such
46 determination shall not be collectible for that same two year period.
47 Such landlord shall also be subject to any additional penalties imposed
48 by law.

49 (6) A landlord annually may file a report pursuant to this subpara-
50 graph [~~(a)~~] after promulgation by the agency of the findings and
51 consumption standards set forth in item one of this subparagraph [~~(a)~~].
52 A rent adjustment pursuant to such report shall be prospectively collec-
53 tible upon the landlord's serving and filing the report, provided,
54 however, that if a landlord files such report within sixty days of the
55 promulgation of such findings and consumption standards, such rent

1 adjustment shall be retroactive to and shall be effective as of the
2 January first of the year in which the report is filed.

3 (7) A landlord demanding or collecting a rent adjustment pursuant to
4 this subparagraph ~~[(a)]~~ shall at the time of either the demand or
5 collection issue to the tenant either a rent bill or receipt separately
6 setting forth the amount of the adjustment pursuant to this subparagraph
7 ~~[(a)]~~ and the amount of the maximum rent otherwise demanded or
8 collected. If the tenant has been issued a valid senior citizen rent
9 exemption order or a valid disability rent exemption order, the owner
10 shall also separately state the amount payable by the senior citizen or
11 person with a disability after the exemption.

12 (8) In the event that a rent reduction order is issued by the city
13 rent agency based upon the landlord's failure to provide heat or hot
14 water to housing accommodations for which the landlord is collecting a
15 rent adjustment pursuant to this subparagraph ~~[(a)]~~, the rent adjustment
16 shall not be collected during the time such rent reduction order is in
17 effect and for twelve months following the date of the restoration of
18 the rent reduction. In addition, the landlord shall not be eligible to
19 collect any subsequent rent adjustment pursuant to this subparagraph
20 ~~[(a)]~~ until twelve months following the date of the restoration of the
21 rent reduction.

22 (9) In the event that the city rent agency promulgates a finding of a
23 price decrease, if any landlord who has obtained a rent adjustment
24 pursuant to this subparagraph ~~[(a)]~~ does not file a report for a rent
25 adjustment pursuant to this subparagraph ~~[(a)]~~ within sixty days of the
26 promulgation of such findings, then all rent adjustments obtained pursu-
27 ant to this subparagraph ~~[(a)]~~ shall not be collectible for a period of
28 twelve months.

29 (10) Any rent adjustment obtained pursuant to this subparagraph ~~[(a)]~~
30 shall not be included in the maximum rent established pursuant to para-
31 graph four or five of subdivision ~~[(a)]~~ a of this section.

32 (11) The city rent agency shall have the power to promulgate such
33 regulations as it may consider necessary or convenient to implement and
34 administer the provisions of this subparagraph ~~[(a)]~~. The regulations
35 shall also require that any rent adjustment granted pursuant to this
36 subparagraph ~~[(a)]~~ be reduced by an amount equal to any governmental
37 grant received by the landlord compensating the landlord for any fuel
38 price increases, but not required by the city, the agency or any grant-
39 ing government entity to be expended for fuel related repairs or
40 improvements.

41 ~~[(e)]~~ (1) (1) There has been an increase in heating and heating fuel
42 expenditures in a property resulting from a city-wide rise in heating
43 fuel costs such that the verifiable expenditures for heating or heating
44 fuel in a property for nineteen hundred seventy-four exceeds the verifi-
45 able expenditures for such heating or heating fuel during nineteen
46 hundred seventy-three.

47 (2) To obtain a rental adjustment pursuant to this subparagraph ~~[(e)]~~,
48 the landlord must certify that he or she is presently maintaining all
49 essential services required to be furnished with respect to the housing
50 accommodations covered by such certification, and that he or she will
51 continue to so maintain such essential services for the period of any
52 such adjustment.

53 (3) To obtain a rental adjustment pursuant to this subparagraph ~~[(e)]~~,
54 the landlord must certify on information and belief that he or she will
55 not be earning an amount in excess of the statutory return specified in
56 subparagraph (a) of this paragraph ~~[one of subdivision g of this~~

1 ~~section~~] after collection of such rental adjustment, with respect to the
2 building or buildings serviced by a single heating plant; and where the
3 building, or buildings serviced by a single heating plant, contains
4 forty-nine or fewer housing accommodations, the landlord must certify
5 that the amount expended directly for heating or heating fuel in nine-
6 teen hundred seventy-four equalled or exceeded ten per cent of the total
7 rental income which was derived from the property during nineteen
8 hundred seventy-four; and, where the building, or buildings serviced by
9 a single heating plant, contains fifty or more housing accommodations
10 the landlord must certify that the amount expended directly for heating
11 or heating fuel in nineteen hundred seventy-four equalled or exceeded
12 seven and one-half percentum of the total rental income which was
13 derived from the property during nineteen hundred seventy-four.

14 (4) The total rental adjustments for a property to be allocated or
15 deemed allocated pursuant to this subparagraph ~~[(e)]~~ shall not exceed
16 one-half of the gross amount by which the total verifiable expenditures
17 for heating or heating fuel for nineteen hundred seventy-four exceeds
18 the total verifiable expenditures for such heating or heating fuel for
19 nineteen hundred seventy-three.

20 (5) Such total rental adjustments shall be allocated or deemed allo-
21 cated pursuant to this subparagraph ~~[(e)]~~ to all housing accommodations
22 subject to this chapter, to all other housing accommodations, and to all
23 commercial, professional and similar facilities in or associated with
24 the property in a manner to be determined by the agency. In no event
25 shall any adjustment in maximum rent pursuant to this subparagraph ~~[(e)]~~
26 for any housing accommodations subject to this chapter exceed a monthly
27 increase of two dollars per room, as defined by item eight below. In any
28 apartment containing five or more rooms, any increase shall not exceed
29 the total of nine dollars.

30 (6) Any adjustment pursuant to this subparagraph ~~[(e)]~~ shall be effec-
31 tive for all or part of the period July first, nineteen hundred seven-
32 ty-five through June thirtieth, nineteen hundred seventy-six. Any
33 adjustment pursuant to this subparagraph shall automatically expire no
34 later than June thirtieth, nineteen hundred seventy-six.

35 (7) The rental increases provided for herein shall be effective and
36 collectible upon the landlord's filing a report with the agency on forms
37 prescribed by the agency and upon giving such notice to the tenants as
38 the agency shall prescribe, subject to adjustments upon order of the
39 agency.

40 (8) In determining the amount of an adjustment allocation of an
41 adjustment pursuant to this subparagraph ~~[(e)]~~, only living rooms,
42 kitchens over fifty-nine square feet in area, dining rooms and bedrooms
43 shall be considered rooms; bathrooms, foyers, and kitchenettes shall not
44 be considered rooms.

45 § 8. Subdivision a of section 26-407 of the administrative code of the
46 city of New York is amended to read as follows:

47 a. Notwithstanding any provisions of this chapter, any labor cost
48 pass-along rent increase requested of, or received from, any tenant on
49 or after July first, nineteen hundred seventy-two, pursuant to the
50 provisions of subparagraph ~~[(1)]~~ (i) of paragraph one of subdivision g
51 of section 26-405 of this title, shall not exceed the maximum rent
52 adjustment as provided under this chapter after the effective date of
53 this section.

54 § 9. Paragraphs 5-a and 6 of subdivision c of section 26-511 of the
55 administrative code of the city of New York, paragraph 5-a as amended by
56 section 16-a of part A of chapter 20 of the laws of 2015 and paragraph 6

1 as amended by section 29 of part A of chapter 20 of the laws of 2015,
2 are amended to read as follows:

3 (5-a) provides that, notwithstanding any provision of this chapter,
4 the legal regulated rent for any vacancy lease entered into after the
5 effective date of this paragraph shall be as hereinafter provided in
6 this paragraph. The previous legal regulated rent for such housing
7 accommodation shall be increased by the following: (i) if the vacancy
8 lease is for a term of two years, twenty percent of the previous legal
9 regulated rent; or (ii) if the vacancy lease is for a term of one year
10 the increase shall be twenty percent of the previous legal regulated
11 rent less an amount equal to the difference between (a) the two year
12 renewal lease guideline promulgated by the guidelines board of the city
13 of New York applied to the previous legal regulated rent and (b) the one
14 year renewal lease guideline promulgated by the guidelines board of the
15 city of New York applied to the previous legal regulated rent. However,
16 where the amount charged and paid by the prior tenant pursuant to para-
17 graph fourteen of this subdivision, was less than the legal regulated
18 rent, such increase to the legal regulated rent shall not exceed: five
19 percent of the previous legal regulated rent if the last vacancy lease
20 commenced less than two years ago; ten percent of the previous legal
21 regulated rent if the last vacancy lease commenced less than three years
22 ago; fifteen percent of the previous legal regulated rent if the last
23 vacancy lease commenced less than four years ago; twenty percent of the
24 previous legal regulated rent if the last vacancy lease commenced four
25 or more years ago. In addition, if the legal regulated rent was not
26 increased with respect to such housing accommodation by a permanent
27 vacancy allowance within eight years prior to a vacancy lease executed
28 on or after the effective date of this paragraph, the legal regulated
29 rent may be further increased by an amount equal to the product result-
30 ing from multiplying such previous legal regulated rent by six-tenths of
31 one percent and further multiplying the amount of rent increase result-
32 ing therefrom by the greater of (A) the number of years since the im-
33 position of the last permanent vacancy allowance, or (B) if the rent was
34 not increased by a permanent vacancy allowance since the housing accom-
35 modation became subject to this chapter, the number of years that such
36 housing accommodation has been subject to this chapter. Provided that if
37 the previous legal regulated rent was less than three hundred dollars
38 the total increase shall be as calculated above plus one hundred dollars
39 per month. Provided, further, that if the previous legal regulated rent
40 was at least three hundred dollars and no more than five hundred dollars
41 in no event shall the total increase pursuant to this paragraph be less
42 than one hundred dollars per month. Such increase shall be in lieu of
43 any allowance authorized for the one or two year renewal component ther-
44 eof, but shall be in addition to any other increases authorized pursuant
45 to this chapter including an adjustment based upon [~~a major capital~~
46 ~~improvement, or~~] a substantial modification or increase of dwelling
47 space or services, or installation of new equipment or improvements or
48 new furniture or furnishings provided in or to the housing accommodation
49 pursuant to this section. The increase authorized in this paragraph may
50 not be implemented more than one time in any calendar year, notwith-
51 standing the number of vacancy leases entered into in such year.

52 (6) provides criteria whereby the commissioner may act upon applica-
53 tions by owners for increases in excess of the level of fair rent
54 increase established under this law provided, however, that such crite-
55 ria shall provide [~~(a)~~], as to hardship applications, for a finding that
56 the level of fair rent increase is not sufficient to enable the owner to

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

47 § 10. Subdivision f of section 26-512 of the administrative code of
48 the city of New York, as added by chapter 116 of the laws of 1997, is
49 amended to read as follows:

50 f. Notwithstanding any provision of this law to the contrary in the
51 case where all tenants named in a lease have permanently vacated a hous-
52 ing accommodation and a family member of such tenant or tenants is enti-
53 tled to and executes a renewal lease for the housing accommodation if
54 such accommodation continues to be subject to this law after such family
55 member vacates, on the occurrence of such vacancy the legal regulated
56 rent shall be increased by a sum equal to the allowance then in effect

1 for vacancy leases, including the amount allowed by paragraph [~~(five-a)~~]
2 ~~five-a~~ of subdivision c of section 26-511 of this law. Such increase
3 shall be in addition to any other increases provided for in this law
4 including an adjustment based upon [~~a major capital improvement, or~~] a
5 substantial modification or increase of dwelling space or services, or
6 installation of new equipment or improvements or new furniture or
7 furnishings provided in or to the housing accommodation pursuant to
8 section 26-511 of this law and shall be applicable in like manner to
9 each second subsequent succession.

10 § 11. If any clause, sentence, paragraph, subdivision, section or part
11 of this act shall be adjudged by any court of competent jurisdiction to
12 be invalid, such judgment shall not affect, impair, or invalidate the
13 remainder thereof, but shall be confined in its operation to the clause,
14 sentence, paragraph, subdivision, section or part thereof directly
15 involved in the controversy in which such judgment shall have been
16 rendered. It is hereby declared to be the intent of the legislature that
17 this act would have been enacted even if such invalid provisions had not
18 been included herein. It is further declared to be the intent of the
19 legislature that this act would have been enacted even if subdivisions
20 (b), (c), (d), (e), (f), (g), (h), and (i) of section two of this act
21 had not been included herein.

22 § 12. This act shall take effect immediately; provided:

23 (a) that the amendments to sections 4 and 5 of the emergency housing
24 rent control law made by section three of this act shall expire on the
25 same date as such law expires and shall not affect the expiration of
26 such law as provided in subdivision 2 of section 1 of chapter 274 of the
27 laws of 1946;

28 (b) that the amendments to sections 6 and 10 of section 4 of the emer-
29 gency tenant protection act of nineteen seventy-four made by sections
30 four and five of this act shall expire on the same date as such act
31 expires and shall not affect the expiration of such act as provided in
32 section 17 of chapter 576 of the laws of 1974;

33 (c) that the amendments to section 26-511 of chapter 4 of title 26 of
34 the administrative code of the city of New York made by section nine of
35 this act shall expire on the same date as such law expires and shall not
36 affect the expiration of such law as provided under section 26-520 of
37 such law;

38 (d) that the amendments to section 26-512 of chapter 4 of title 26 of
39 the administrative code of the city of New York made by section ten of
40 this act shall expire on the same date as such law expires and shall not
41 affect the expiration of such law as provided under section 26-520 of
42 such law; and

43 (e) that the amendments to sections 26-403.2, 26-405 and 26-407 of the
44 city rent and rehabilitation law made by sections six, seven, and eight
45 of this act shall remain in full force and effect only as long as the
46 public emergency requiring the regulation and control of residential
47 rents and evictions continues, as provided in subdivision 3 of section 1
48 of the local emergency housing rent control act.

49 (f) Effective immediately, the addition, amendment and/or repeal of
50 any rule or regulation necessary for the implementation of this act on
51 its effective date are authorized and directed to be made and completed
52 on or before such effective date.