STATE OF NEW YORK

3693

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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 nineteen 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 Assembly, do enact as follows:

Section 1. Legislative findings and declaration of emergency. The legislature hereby finds and declares that the serious public emergency which led to the enactment of the existing laws regulating residential rents and evictions continues to exist. The legislature further finds that a majority of households currently occupying housing accommodations subject to rent laws are rent-burdened; that permanent increases in rents are no longer necessary to incentivize rental property owners to make, or to compensate landlords for, necessary major capital improvements; that publicly funded tax incentives and other subsidies are available to rental property owners to support major capital improvements; that value from major capital improvements accrues to rental property owners through increased property values and sale prices; that, due to market conditions in localities subject to rent laws, rental property owners are already able to realize a reasonable return on their investments in major capital improvements through increased property values and sale prices alone; and that provisions for hardship increases under existing rent laws already ensure that rental property owners are able to operate rent regulated housing without incurring undue losses. The legislature further declares and finds that a substantial number of the rent increases previously granted for major capital improvements

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

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

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

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

(c) Within 180 days of the effective date of this act, the division of housing and community renewal shall determine the proposed new legal rents for all affected housing accommodations pursuant to subdivision (b) of this section and shall also provide written notification to all current owners and tenants of affected accommodations as to the amount of the proposed new legal rents, the basis for the department's determination, and the time for each affected party to submit additional information that the division shall consider before issuing a final order determining the new legal rents, which shall not be less than 45 days. Unless an owner of an affected building has submitted a timely application to the division for a limitation pursuant to subdivision (d) of this section, the division shall issue a final order determining the new legal rents for affected housing accommodations within 365 days of the effective date of this act.

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

buildings for which the commissioner of housing and community renewal finds that the proposed new legal rents are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent, the repeal amount of rent increases based upon major capital improvements shall be limited to an amount such that the annual operating expenses of the building do not exceed ninety-five percent of the new proposed annual gross rent income for such building.

(2) For the purposes of this subdivision, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and noncapital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this subdivision, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include: condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. For the purposes of this subdivision, gross annual rent income for a building shall include a rental value set by the commissioner of housing and community renewal for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated 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 proposed new legal rents in the building.

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

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

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

(h) Any tenant residing in an affected housing accommodation may assert their entitlement to the repeal of prior rent under subdivision (b) of this section, as a defense or counterclaim in any legal proceeding predicated upon a landlord's claim of default in the payment of rent pursuant to an agreement. Any court with jurisdiction over a landlord's claim as to a tenant's default in the payment of rent shall also adjudicate and have primary jurisdiction over the tenant's assertion of a defense or counterclaim under this provision if the department has not yet issued an order determining the new legal rent. A court order made under this subdivision shall not in any way be deemed to impair a building owner's right or time to apply for a limitation under subdivision (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 thiry-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

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

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

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

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

[~~(5)~~] **(4)** as an alternative to the hardship application provided under paragraph [~~four~~] **three** of this subdivision, owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include; condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated 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

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 for 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 equipment provided in the housing accommodation, pursuant to section 26-405 of this law and shall be applicable in like manner to each second subsequent succession.

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

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

~~(h) There have been since March first, nineteen hundred fifty-nine, 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 whenever the city rent agency has determined that the improvements proposed were part of a plan designed for overall improvement of the structure or increases in services, it may authorize increases in maximum rents for all housing accommodations affected upon the express consent of the tenants in occupancy of at least fifty-one per centum of the housing accommodations, and provided further 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~~

~~(i)~~] There has been, since March first, nineteen hundred fifty-nine, 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 city rent agency or pursuant to the state rent act or the federal act; or

[~~(j)~~] (h) 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.

[~~(k) The landlord has incurred, since January first, nineteen hundred seventy, in connection with and in addition to a concurrent major capital improvement pursuant to subparagraph (g) of this paragraph, other expenditures to improve, restore or preserve the quality of the structure. An adjustment under this subparagraph shall be granted only if such improvements represent an expenditure equal to at least ten per centum of the total operating and maintenance expenses for the preceding~~

~~year. An adjustment under this subparagraph shall be in addition to any adjustment granted for the concurrent major capital improvement and shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph over a seven-year period.~~

~~(l)~~] (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 [~~(l)~~], 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 [~~(l)~~] 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 [~~(l)~~] 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 [~~(l)~~], 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.

[~~(m)~~] **(j)** Where the rehabilitation or improvement of sub-standard or deteriorated housing accommodations has been financed under a governmental program providing assistance through loans, loan insurance or tax abatement or has been undertaken under another rehabilitation program not so financed but approved by the commissioner.

[~~(n)~~]**(k)**(1) The city rent agency shall hereafter promulgate in January of each year;

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

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

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

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

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

(ii) state the type of fuel used and the number of rooms in the building;

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

(iv) certify on information and belief, in order to qualify for an additional rent increase pursuant to this subparagraph [~~(n)~~], that for an individual housing accommodation, if the maximum rent collectible pursuant to paragraph five of subdivision a of this section plus actual rent adjustments pursuant to this subparagraph [~~(n)~~] and such additional rent increase, is equal to or exceeds the maximum rent established pursuant to paragraphs three and four of subdivision a of this section plus the amount calculated pursuant to subitem (i) of item three and subitem (i) of item four of this subparagraph [~~(n)~~], each to be allocated to such housing accommodation pursuant to subitem (ii) of item four of this subparagraph [~~(n)~~], that the landlord will not be earning an amount in excess of the statutory return specified in subparagraph (a) of **this** paragraph [~~one of subdivision g of this section~~] after collection of a rent increase pursuant to this subparagraph [~~(n)~~], with respect to a building or buildings serviced by a single heating plant;

(v) report any funds received with respect to the housing accommodations from any governmental grant program compensating such landlord for fuel price increases during the period for which an adjustment is obtained pursuant to this subparagraph [~~(n)~~];

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

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

(i) the increase or decrease in heating fuel prices found by the agency for that year shall be multiplied by the actual consumption, not to exceed that year's consumption standard established pursuant to subitem (ii) of item one of this subparagraph; and

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

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

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

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

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

(5) A landlord who files a report pursuant to this subparagraph and who falsely certifies shall not be eligible to collect any rent adjustment pursuant to this subparagraph for two years following a determination of a false certification and, in addition, any adjustments obtained pursuant to this subparagraph for up to two years prior to such determination shall not be collectible for that same two year period. Such landlord shall also be subject to any additional penalties imposed by law.

(6) A landlord annually may file a report pursuant to this subparagraph [~~(n)~~] after promulgation by the agency of the findings and consumption standards set forth in item one of **this** subparagraph [~~(n)~~]. A rent adjustment pursuant to such report shall be prospectively collectible upon the landlord's serving and filing the report, provided, however, that if a landlord files such report within sixty days of the promulgation of such findings and consumption standards, such rent

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

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

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

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

(10) Any rent adjustment obtained pursuant to this subparagraph [~~(n)~~] shall not be included in the maximum rent established pursuant to paragraph four or five of subdivision [~~(a)~~] **a** of this section.

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

[~~(o)~~] **(l)** (1) There has been an increase in heating and heating fuel expenditures in a property resulting from a city-wide rise in heating fuel costs such that the verifiable expenditures for heating or heating fuel in a property for nineteen hundred seventy-four exceeds the verifiable expenditures for such heating or heating fuel during nineteen hundred seventy-three.

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

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

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

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

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

(6) Any adjustment pursuant to this subparagraph [~~(o)~~] shall be effective for all or part of the period July first, nineteen hundred seventy-five through June thirtieth, nineteen hundred seventy-six. Any adjustment pursuant to this subparagraph shall automatically expire no later than June thirtieth, nineteen hundred seventy-six.

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

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

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

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

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

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

(5-a) provides that, notwithstanding any provision of this chapter, the legal regulated rent for any vacancy lease entered into after the effective date of this paragraph shall be as hereinafter provided in this paragraph. 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 city of New York applied to the previous legal regulated rent and (b) the one year renewal lease guideline promulgated by the guidelines board of the city of New York 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, 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 lease 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 paragraph, 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 chapter, the number of years that such housing accommodation has been subject to this chapter. 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 paragraph 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 chapter 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 this section. The increase authorized in this paragraph may not be implemented more than one time in any calendar year, notwithstanding the number of vacancy leases entered into in such year.

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

maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided[~~; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost is to be amortized over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015, based upon cash purchase price exclusive of interest or service charges~~]. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment 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 stabilized rent as established or set in future years;

§ 10. Subdivision f of section 26-512 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:

f. Notwithstanding any provision of this law 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 law 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 paragraph [~~(five-a)~~] **five-a** of subdivision c of section 26-511 of this law. Such increase shall be in addition to any other increases provided for in this law 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 26-511 of this law and shall be applicable in like manner to each second subsequent succession.

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

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

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

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

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

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

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

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