

STATE OF NEW YORK

3993

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

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

AN ACT to amend the administrative code of the city of New York, in
relation to rent adjustments 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. Subparagraph (g) of paragraph 1 of subdivision g of section
2 26-405 of the administrative code of the city of New York, as amended by
3 section 27 of part Q of chapter 39 of the laws of 2019, is amended to
4 read as follows:

5 (g) There has been since July first, nineteen hundred seventy, a major
6 capital improvement essential for the preservation energy efficiency,
7 functionality, or infrastructure of the entire building, improvement of
8 the structure including heating, windows, plumbing and roofing but shall
9 not be for operational costs or unnecessary cosmetic improvements. The
10 temporary increase based upon a major capital improvement under this
11 subparagraph for any order of the commissioner issued after the effec-
12 tive date of the chapter of the laws of two thousand nineteen that
13 amended this subparagraph shall be in an amount sufficient to amortize
14 the cost of the improvements pursuant to this subparagraph [~~(g)~~] over a
15 twelve-year period for buildings with thirty-five or fewer units or a
16 twelve and one-half year period for buildings with more than thirty-five
17 units, and shall be removed from the legal regulated rent thirty years
18 from the date the increase became effective inclusive of any increases
19 granted by the applicable rent guidelines board. Temporary major capital
20 improvement increases shall be collectible prospectively on the first
21 day of the first month beginning sixty days from the date of mailing
22 notice of approval to the tenant. Such notice shall disclose the total
23 monthly increase in rent and the first month in which the tenant would
24 be required to pay the temporary increase. An approval for a temporary
25 major capital improvement increase shall not include retroactive

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

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1 payments. The collection of any increase shall not exceed two percent in
2 any year from the effective date of the order granting the increase over
3 the rent set forth in the schedule of gross rents, with collectability
4 of any dollar excess above said sum to be spread forward in similar
5 increments and added to the rent as established or set in future years.
6 Upon vacancy, the landlord may add any remaining balance of the tempo-
7 rary major capital improvement increase to the legal regulated rent. A
8 rent adjustment for a major capital improvement may only be granted if
9 the owner or agent of the subject building first applies for and
10 receives benefits pursuant to section 11-243 of this code for the build-
11 ing for which they are seeking a major capital improvement for,
12 provided, however, an owner or agent of the subject building that is
13 denied benefits pursuant to section 11-243 of this code for reasons
14 unrelated to an untimely or improperly completed application shall still
15 be eligible to receive a rent adjustment for a major capital improve-
16 ment. Notwithstanding any other provision of the law, for any renewal
17 lease commencing on or after June 14, 2019, the collection of any rent
18 increases due to any major capital improvements approved on or after
19 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
20 any year for any tenant in occupancy on the date the major capital
21 improvement was approved[7]; or

22 § 2. Paragraph 6 of subdivision c of section 26-511 of the administra-
23 tive code of the city of New York, as separately amended by section 12
24 of part K of chapter 36 and section 28 of part Q of chapter 39 of the
25 laws of 2019, is amended to read as follows:

26 (6) provides criteria whereby the commissioner may act upon applica-
27 tions by owners for increases in excess of the level of fair rent
28 increase established under this law provided, however, that such crite-
29 ria shall provide (a) as to hardship applications, for a finding that
30 the level of fair rent increase is not sufficient to enable the owner to
31 maintain approximately the same average annual net income (which shall
32 be computed without regard to debt service, financing costs or manage-
33 ment fees) for the three year period ending on or within six months of
34 the date of an application pursuant to such criteria as compared with
35 annual net income, which prevailed on the average over the period nine-
36 teen hundred sixty-eight through nineteen hundred seventy, or for the
37 first three years of operation if the building was completed since nine-
38 teen hundred sixty-eight or for the first three fiscal years after a
39 transfer of title to a new owner provided the new owner can establish to
40 the satisfaction of the commissioner that he or she acquired title to
41 the building as a result of a bona fide sale of the entire building and
42 that the new owner is unable to obtain requisite records for the fiscal
43 years nineteen hundred sixty-eight through nineteen hundred seventy
44 despite diligent efforts to obtain same from predecessors in title and
45 further provided that the new owner can provide financial data covering
46 a minimum of six years under his or her continuous and uninterrupted
47 operation of the building to meet the three year to three year compar-
48 ative test periods herein provided; and (b) as to completed building-
49 wide major capital improvements, for a finding that such improvements
50 are deemed depreciable under the Internal Revenue Code and that the cost
51 is to be amortized over a twelve-year period for a building with thir-
52 ty-five or fewer housing accommodations, or a twelve and one-half-year
53 period for a building with more than thirty-five housing accommodations,
54 for any determination issued by the division of housing and community
55 renewal after the effective date of the the chapter of the laws of two
56 thousand nineteen that amended this paragraph and shall be removed from

1 the legal regulated rent thirty years from the date the increase became
2 effective inclusive of any increases granted by the applicable rent
3 guidelines board. Temporary major capital improvement increases shall be
4 collectible prospectively on the first day of the first month beginning
5 sixty days from the date of mailing notice of approval to the tenant.
6 Such notice shall disclose the total monthly increase in rent and the
7 first month in which the tenant would be required to pay the temporary
8 increase. An approval for a temporary major capital improvement increase
9 shall not include retroactive payments. The collection of any increase
10 shall not exceed two percent in any year from the effective date of the
11 order granting the increase over the rent set forth in the schedule of
12 gross rents, with collectability of any dollar excess above said sum to
13 be spread forward in similar increments and added to the rent as estab-
14 lished or set in future years. Upon vacancy, the landlord may add any
15 remaining balance of the temporary major capital improvement increase to
16 the legal regulated rent. Notwithstanding any other provision of the
17 law, for any renewal lease commencing on or after June 14, 2019, the
18 collection of any rent increases due to any major capital improvements
19 approved on or after June 16, 2012 and before June 16, 2019 shall not
20 exceed two percent in any year for any tenant in occupancy on the date
21 the major capital improvement was approved or based upon cash purchase
22 price exclusive of interest or service charges. Where an application for
23 a temporary major capital improvement increase has been filed, a tenant
24 shall have sixty days from the date of mailing of a notice of a proceed-
25 ing in which to answer or reply. The state division of housing and
26 community renewal shall provide any responding tenant with the reasons
27 for the division's approval or denial of such application. A rent
28 adjustment for a major capital improvement may only be granted if the
29 owner or agent of the subject building first applies for and receives
30 benefits pursuant to section 11-243 of this code for the building for
31 which they are seeking a major capital improvement for, provided, howev-
32 er, an owner or agent of the subject building that is denied benefits
33 pursuant to section 11-243 of this code for reasons unrelated to an
34 untimely or improperly completed application shall still be eligible to
35 receive a rent adjustment for a major capital improvement. Notwithstand-
36 ing anything to the contrary contained herein, no hardship increase
37 granted pursuant to this paragraph shall, when added to the annual gross
38 rents, as determined by the commissioner, exceed the sum of, (i) the
39 annual operating expenses, (ii) an allowance for management services as
40 determined by the commissioner, (iii) actual annual mortgage debt
41 service (interest and amortization) on its indebtedness to a lending
42 institution, an insurance company, a retirement fund or welfare fund
43 which is operated under the supervision of the banking or insurance laws
44 of the state of New York or the United States, and (iv) eight and one-
45 half percent of that portion of the fair market value of the property
46 which exceeds the unpaid principal amount of the mortgage indebtedness
47 referred to in subparagraph (iii) of this paragraph. Fair market value
48 for the purposes of this paragraph shall be six times the annual gross
49 rent. The collection of any increase in the stabilized rent for any
50 apartment pursuant to this paragraph shall not exceed six percent in any
51 year from the effective date of the order granting the increase over the
52 rent set forth in the schedule of gross rents, with collectability of
53 any dollar excess above said sum to be spread forward in similar incre-
54 ments and added to the stabilized rent as established or set in future
55 years;

1 § 3. This act shall take effect immediately, provided, however that
2 the amendments to section 26-405 of the city rent and rehabilitation law
3 made by section one of this act shall remain in full force and effect
4 only so long as the public emergency requiring the regulation and
5 control of residential rents and evictions continues, as provided in
6 subdivision 3 of section 1 of the local emergency housing rent control
7 act; and provided, further, that the amendments to section 26-511 of the
8 rent stabilization law of nineteen hundred sixty-nine made by section
9 two of this act shall expire on the same date as such law expires and
10 shall not affect the expiration of such law as provided under section
11 26-520 of such law, as from time to time amended; and provided, further,
12 that the provisions of sections one and two of this act shall only apply
13 to those buildings that commence work on a major capital improvement 45
14 days or later than the effective date of this act.