

STATE OF NEW YORK

4948

2021-2022 Regular Sessions

IN SENATE

February 19, 2021

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

AN ACT to amend the administrative code of the city of New York, the
emergency tenant protection act of nineteen seventy-four and the emer-
gency housing rent control law, in relation to requiring the state
division of housing and community renewal to verify there are no hous-
ing code violations prior to authorizing a rent increase 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. Paragraph 1 of subdivision g of section 26-405 of the
2 administrative code of the city of New York is amended by adding a new
3 subparagraph (p) to read as follows:

4 (p) Adjustments made pursuant to subparagraph (g) of this paragraph
5 shall be collectible upon the landlord's filing of a report with the
6 city rent agency, subject to the provisions of subparagraph (e) of para-
7 graph two of subdivision a of this section and verification by the city
8 rent agency, in collaboration with local authorities responsible for
9 inspecting buildings, that the applicant does not have more than thirty
10 class A housing code violations or a class B or C housing code violation
11 on the property. Outstanding housing code violations that are found
12 shall be cleared, corrected or abated by the landlord and verified by
13 the city rent agency prior to authorization of a rent increase under
14 subparagraph (g) of this paragraph.

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

19 (6) provides criteria whereby the commissioner may act upon applica-
20 tions by owners for increases in excess of the level of fair rent

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

LBD09298-01-1

1 increase established under this law provided, however, that such crite-
2 ria shall provide (a) as to hardship applications, for a finding that
3 the level of fair rent increase is not sufficient to enable the owner to
4 maintain approximately the same average annual net income (which shall
5 be computed without regard to debt service, financing costs or manage-
6 ment fees) for the three year period ending on or within six months of
7 the date of an application pursuant to such criteria as compared with
8 annual net income, which prevailed on the average over the period nine-
9 teen hundred sixty-eight through nineteen hundred seventy, or for the
10 first three years of operation if the building was completed since nine-
11 teen hundred sixty-eight or for the first three fiscal years after a
12 transfer of title to a new owner provided the new owner can establish to
13 the satisfaction of the commissioner that he or she acquired title to
14 the building as a result of a bona fide sale of the entire building and
15 that the new owner is unable to obtain requisite records for the fiscal
16 years nineteen hundred sixty-eight through nineteen hundred seventy
17 despite diligent efforts to obtain same from predecessors in title and
18 further provided that the new owner can provide financial data covering
19 a minimum of six years under his or her continuous and uninterrupted
20 operation of the building to meet the three year to three year compar-
21 ative test periods herein provided; and (b) as to completed building-
22 wide major capital improvements, for a finding that such improvements
23 are deemed depreciable under the Internal Revenue Code and that the cost
24 is to be amortized over a twelve-year period for a building with thir-
25 ty-five or fewer housing accommodations, or a twelve and one-half-year
26 period for a building with more than thirty-five housing accommodations,
27 for any determination issued by the division of housing and community
28 renewal after the effective date of the the chapter of the laws of two
29 thousand nineteen that amended this paragraph and shall be removed from
30 the legal regulated rent thirty years from the date the increase became
31 effective inclusive of any increases granted by the applicable rent
32 guidelines board. Temporary major capital improvement increases shall be
33 collectible prospectively on the first day of the first month beginning
34 sixty days from the date of mailing notice of approval to the tenant.
35 Such notice shall disclose the total monthly increase in rent and the
36 first month in which the tenant would be required to pay the temporary
37 increase. An approval for a temporary major capital improvement increase
38 shall not include retroactive payments. The collection of any increase
39 shall not exceed two percent in any year from the effective date of the
40 order granting the increase over the rent set forth in the schedule of
41 gross rents, with collectability of any dollar excess above said sum to
42 be spread forward in similar increments and added to the rent as estab-
43 lished or set in future years. Upon vacancy, the landlord may add any
44 remaining balance of the temporary major capital improvement increase to
45 the legal regulated rent. Notwithstanding any other provision of the
46 law, for any renewal lease commencing on or after June 14, 2019, the
47 collection of any rent increases due to any major capital improvements
48 approved on or after June 16, 2012 and before June 16, 2019 shall not
49 exceed two percent in any year for any tenant in occupancy on the date
50 the major capital improvement was approved or based upon cash purchase
51 price exclusive of interest or service charges. The division of housing
52 and community renewal shall require the submission of a report by land-
53 lords applying for a rent increase for major capital improvements pursu-
54 ant to this paragraph and subject to verification by the division of
55 housing and community renewal, in collaboration with local authorities
56 responsible for inspecting buildings, certifying that there are not more

1 than thirty class A housing code violations nor a class B or C housing
2 code violation on the property, prior to receiving approval for such
3 rent increase. Where an application for a temporary major capital
4 improvement increase has been filed, a tenant shall have sixty days from
5 the date of mailing of a notice of a proceeding in which to answer or
6 reply. The state division of housing and community renewal shall provide
7 any responding tenant with the reasons for the division's approval or
8 denial of such application. Notwithstanding anything to the contrary
9 contained herein, no hardship increase granted pursuant to this para-
10 graph shall, when added to the annual gross rents, as determined by the
11 commissioner, exceed the sum of, (i) the annual operating expenses, (ii)
12 an allowance for management services as determined by the commissioner,
13 (iii) actual annual mortgage debt service (interest and amortization) on
14 its indebtedness to a lending institution, an insurance company, a
15 retirement fund or welfare fund which is operated under the supervision
16 of the banking or insurance laws of the state of New York or the United
17 States, and (iv) eight and one-half percent of that portion of the fair
18 market value of the property which exceeds the unpaid principal amount
19 of the mortgage indebtedness referred to in subparagraph (iii) of this
20 paragraph. Fair market value for the purposes of this paragraph shall be
21 six times the annual gross rent. The collection of any increase in the
22 stabilized rent for any apartment pursuant to this paragraph shall not
23 exceed six percent in any year from the effective date of the order
24 granting the increase over the rent set forth in the schedule of gross
25 rents, with collectability of any dollar excess above said sum to be
26 spread forward in similar increments and added to the stabilized rent as
27 established or set in future years;

28 § 3. Subdivision d of section 6 of section 4 of chapter 576 of the
29 laws of 1974, constituting the emergency tenant protection act of nine-
30 teen seventy-four, is amended by adding a new paragraph 6 to read as
31 follows:

32 (6) adjustments made pursuant to paragraph (3) of this subdivision
33 shall be collectable upon the landlord's filing of a report with the
34 state division of housing and community renewal and subject to verifica-
35 tion by the state division of housing and community renewal, in collab-
36 oration with local authorities responsible for inspecting buildings,
37 that the applicant does not have more than thirty class A housing code
38 violations or a class B or C housing code violation on the property.
39 Outstanding housing code violations that are found shall be cleared,
40 corrected or abated by the landlord and verified by the state division
41 of housing and community renewal prior to authorization of a rent
42 increase under paragraph (3) of this subdivision.

43 § 4. The second undesignated paragraph of paragraph (a) of subdivision
44 4 of section 4 of chapter 274 of the laws of 1946, constituting the
45 emergency housing rent control law, as amended by section 25 of part B
46 of chapter 97 of the laws of 2011, subparagraph 5 as amended by section
47 36 of part Q of chapter 39, subparagraph 7 as separately amended by
48 section 25 of part Q of chapter 39 and section 14 of part K of chapter
49 36 and subparagraph 8 as amended by section 8 of part K of chapter 36 of
50 the laws of 2019, is amended to read as follows:

51 No application for adjustment of maximum rent based upon a sales price
52 valuation shall be filed by the landlord under this subparagraph prior
53 to six months from the date of such sale of the property. In addition,
54 no adjustment ordered by the commission based upon such sales price
55 valuation shall be effective prior to one year from the date of such
56 sale. Where, however, the assessed valuation of the land exceeds four

1 times the assessed valuation of the buildings thereon, the commission
2 may determine a valuation of the property equal to five times the equal-
3 ized assessed valuation of the buildings, for the purposes of this
4 subparagraph. The commission may make a determination that the valuation
5 of the property is an amount different from such equalized assessed
6 valuation where there is a request for a reduction in such assessed
7 valuation currently pending; or where there has been a reduction in the
8 assessed valuation for the year next preceding the effective date of the
9 current assessed valuation in effect at the time of the filing of the
10 application. Net annual return shall be the amount by which the earned
11 income exceeds the operating expenses of the property, excluding mort-
12 gage interest and amortization, and excluding allowances for obsoles-
13 cence and reserves, but including an allowance for depreciation of two
14 per centum of the value of the buildings exclusive of the land, or the
15 amount shown for depreciation of the buildings in the latest required
16 federal income tax return, whichever is lower; provided, however, that
17 (1) no allowance for depreciation of the buildings shall be included
18 where the buildings have been fully depreciated for federal income tax
19 purposes or on the books of the owner; or (2) the landlord who owns no
20 more than four rental units within the state has not been fully compen-
21 sated by increases in rental income sufficient to offset unavoidable
22 increases in property taxes, fuel, utilities, insurance and repairs and
23 maintenance, excluding mortgage interest and amortization, and excluding
24 allowances for depreciation, obsolescence and reserves, which have
25 occurred since the federal date determining the maximum rent or the date
26 the property was acquired by the present owner, whichever is later; or
27 (3) the landlord operates a hotel or rooming house or owns a cooperative
28 apartment and has not been fully compensated by increases in rental
29 income from the controlled housing accommodations sufficient to offset
30 unavoidable increases in property taxes and other costs as are allocable
31 to such controlled housing accommodations, including costs of operation
32 of such hotel or rooming house, but excluding mortgage interest and
33 amortization, and excluding allowances for depreciation, obsolescence
34 and reserves, which have occurred since the federal date determining the
35 maximum rent or the date the landlord commenced the operation of the
36 property, whichever is later; or (4) the landlord and tenant voluntarily
37 enter into a valid written lease in good faith with respect to any hous-
38 ing accommodation, which lease provides for an increase in the maximum
39 rent not in excess of fifteen per centum and for a term of not less than
40 two years, except that where such lease provides for an increase in
41 excess of fifteen per centum, the increase shall be automatically
42 reduced to fifteen per centum; or (5) the landlord and tenant by mutual
43 voluntary written informed agreement agree to a substantial increase or
44 decrease in dwelling space, furniture, furnishings or equipment provided
45 in the housing accommodations; provided that an owner shall be entitled
46 to a rent increase where there has been a substantial modification or
47 increase of dwelling space, or installation of new equipment or improve-
48 ments or new furniture or furnishings provided in or to a tenant's hous-
49 ing accommodation. The temporary increase in the maximum rent for the
50 affected housing accommodation shall be one-one hundred sixty-eighth, in
51 the case of a building with thirty-five or fewer housing accommodations,
52 or one-one hundred eightieth, in the case of a building with more than
53 thirty-five housing accommodations where such increase takes effect on
54 or after the effective date of the chapter of the laws of two thousand
55 nineteen that amended this subparagraph, of the total actual cost
56 incurred by the landlord up to fifteen thousand dollars in providing

1 such reasonable and verifiable modification or increase in dwelling
2 space, furniture, furnishings, or equipment, including the cost of
3 installation but excluding finance charges and any costs that exceed
4 reasonable costs established by rules and regulations promulgated by the
5 division of housing and community renewal. Such rules and regulations
6 shall include: (i) requirements for work to be done by licensed
7 contractors and a prohibition on common ownership between the landlord
8 and the contractor or vendor; and (ii) a requirement that the owner
9 resolve within the dwelling space all outstanding hazardous or imme-
10 diately hazardous violations of the uniform fire prevention and building
11 code (Uniform Code), New York city fire code, or New York city building
12 and housing maintenance codes, if applicable. Provided further that an
13 owner who is entitled to a rent increase pursuant to this clause shall
14 not be entitled to a further rent increase based upon the installation
15 of similar equipment, or new furniture or furnishings within the useful
16 life of such new equipment, or new furniture or furnishings. Provided
17 further that the recoverable costs incurred by the landlord, pursuant to
18 this subparagraph, shall be limited to an aggregate cost of fifteen
19 thousand dollars that may be expended on no more than three separate
20 individual apartment improvements in a fifteen year period beginning
21 with the first individual apartment improvement on or after June four-
22 teenth, two thousand nineteen. Provided further that increases to the
23 legal regulated rent pursuant to this paragraph shall be removed from
24 the legal regulated rent thirty years from the date the increase became
25 effective inclusive of any increases granted by the applicable rent
26 guidelines board. The owner shall give written notice to the commission
27 of any such adjustment pursuant to this clause; or (6) there has been,
28 since March first, nineteen hundred fifty, an increase in the rental
29 value of the housing accommodations as a result of a substantial reha-
30 bilitation of the building or housing accommodation therein which mate-
31 rially adds to the value of the property or appreciably prolongs its
32 life, excluding ordinary repairs, maintenance and replacements; or (7)
33 there has been since March first, nineteen hundred fifty, a major capi-
34 tal improvement essential for the preservation, energy efficiency, func-
35 tionality, or infrastructure of the entire building, improvement of the
36 structure including heating, windows, plumbing and roofing, but shall
37 not be for operational costs or unnecessary cosmetic improvements; which
38 for any order of the commissioner issued after the effective date of the
39 chapter of the laws of two thousand nineteen that amended this paragraph
40 the cost of such improvement shall be amortized over a twelve-year peri-
41 od for buildings with thirty-five or fewer units or a twelve and one-
42 half year period for buildings with more than thirty-five units, and
43 shall be removed from the legal regulated rent thirty years from the
44 date the increase became effective inclusive of any increases granted by
45 the applicable rent guidelines board. Temporary major capital improve-
46 ment increases shall be collectible prospectively on the first day of
47 the first month beginning sixty days from the date of mailing notice of
48 approval to the tenant. Such notice shall disclose the total monthly
49 increase in rent and the first month in which the tenant would be
50 required to pay the temporary increase. An approval for a temporary
51 major capital improvement increase shall not include retroactive
52 payments. The collection of any increase shall not exceed two percent in
53 any year from the effective date of the order granting the increase over
54 the rent set forth in the schedule of gross rents, with collectability
55 of any dollar excess above said sum to be spread forward in similar
56 increments and added to the rent as established or set in future years.

1 Upon vacancy, the landlord may add any remaining balance of the tempo-
2 rary major capital improvement increase to the legal regulated rent.
3 Notwithstanding any other provision of the law, for any renewal lease
4 commencing on or after June 14, 2019, the collection of any rent
5 increases due to any major capital improvements approved on or after
6 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
7 any year for any tenant in occupancy on the date the major capital
8 improvement was approved; provided, however, where an application for a
9 temporary major capital improvement increase has been filed, a tenant
10 shall have sixty days from the date of mailing of a notice of a proceed-
11 ing in which to answer or reply. The state division of housing and
12 community renewal shall provide any responding tenant with the reasons
13 for the division's approval or denial of such application; or (8) there
14 has been since March first, nineteen hundred fifty, in structures
15 containing more than four housing accommodations, other improvements
16 made with the express informed consent of the tenants in occupancy of at
17 least seventy-five per centum of the housing accommodations, provided,
18 however, that no adjustment granted hereunder shall exceed two per
19 centum unless the tenants have agreed to a higher percentage of
20 increase, as herein provided; or (9) there has been, since March first,
21 nineteen hundred fifty, a subletting without written consent from the
22 landlord or an increase in the number of adult occupants who are not
23 members of the immediate family of the tenant, and the landlord has not
24 been compensated therefor by adjustment of the maximum rent by lease or
25 order of the commission or pursuant to the federal act; or (10) the
26 presence of unique or peculiar circumstances materially affecting the
27 maximum rent has resulted in a maximum rent which is substantially lower
28 than the rents generally prevailing in the same area for substantially
29 similar housing accommodations. Adjustments made pursuant to subpara-
30 graph (7) of this paragraph shall be collectible upon the landlord's
31 filing of a report with the commission and subject to verification by
32 the commission, in collaboration with local authorities responsible for
33 inspecting buildings, that the applicant does not have more than thirty
34 class A housing code violations or a class B or C housing code violation
35 on the property. Outstanding housing code violations that are found
36 shall be cleared, corrected or abated by the landlord and verified by
37 the commission prior to authorization of a rent increase under subpara-
38 graph (7) of this paragraph.

39 § 5. This act shall take effect on the sixtieth day after it shall
40 have become a law; provided that:

41 (a) the amendments to section 26-405 of the city rent and rehabili-
42 tation law made by section one of this act shall remain in full force
43 and effect only as long as the public emergency requiring the regulation
44 and control of residential rents and evictions continues, as provided in
45 subdivision 3 of section 1 of the local emergency housing rent control
46 act; and

47 (b) the amendments to section 26-511 of the rent stabilization law of
48 nineteen hundred sixty-nine made by section two of this act shall expire
49 on the same date as such law expires and shall not affect the expiration
50 of such law as provided under section 26-520 of such law, as from time
51 to time amended.