

# STATE OF NEW YORK

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3974

2021-2022 Regular Sessions

## IN ASSEMBLY

January 29, 2021

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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 and the  
emergency tenant protection act of nineteen seventy-four, in relation  
to inspection of major capital improvements for which rent increases  
are requested and in relation to extending the provisions of the rent  
stabilization law

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 chapter 39 of the laws of 2019, is amended to read  
4 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~~] June 14, 2014 shall be in an amount suffi-  
14 cient to amortize the cost of the improvements pursuant to this subpara-  
15 graph [~~(g)~~] over a twelve-year period for buildings with thirty-five or  
16 fewer units or a twelve and one-half year period for buildings with more  
17 than thirty-five units, and shall be removed from the legal regulated  
18 rent thirty years from the date the increase became effective inclusive  
19 of any increases granted by the applicable rent guidelines board. Tempo-  
20 rary major capital improvement increases shall be collectible prospec-  
21 tively on the first day of the first month beginning sixty days from the  
22 date of mailing notice of approval to the tenant. Such notice shall

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

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1 disclose the total monthly increase in rent and the first month in which  
2 the tenant would be required to pay the temporary increase. An approval  
3 for a temporary major capital improvement increase shall not include  
4 retroactive payments. The collection of any increase shall not exceed  
5 two percent in any year from the effective date of the order granting  
6 the increase over the rent set forth in the schedule of gross rents,  
7 with collectability of any dollar excess above said sum to be spread  
8 forward in similar increments and added to the rent as established or  
9 set in future years. Upon vacancy, the landlord may add any remaining  
10 balance of the temporary major capital improvement increase to the legal  
11 regulated rent. No landlord shall deny access to a professional engi-  
12 neer licensed to practice in the state of New York or a registered  
13 architect licensed to practice in the state of New York hired by any  
14 tenant, tenants or tenant association representing tenants of a multiple  
15 dwelling of six units or more for the purpose of conducting an  
16 inspection of a major capital improvement for which an application for  
17 adjustment of maximum rent has been filed. Such inspection shall be  
18 conducted after notice to the landlord and during normal business hours.  
19 Such tenant may file the report of the inspection with the city rent  
20 agency for consideration in the determination of such application.

21 Notwithstanding any other provision of the law, for any renewal lease  
22 commencing on or after June 14, 2019, the collection of any rent  
23 increases due to any major capital improvements approved on or after  
24 June 16, 2012 and before June 16, 2019 shall not exceed two percent in  
25 any year for any tenant in occupancy on the date the major capital  
26 improvement was approved, or

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

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

ty-five or fewer housing accommodations, or a twelve and one-half-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 the chapter of the laws of two thousand nineteen that amended this paragraph]~~ June 14, 2019 and shall be removed from the legal regulated rent thirty years from the date the increase became effective inclusive of any increases granted by the applicable rent guidelines board. Temporary major capital improvement increases shall be collectible prospectively on the first day of the first month beginning sixty days from the date of mailing notice of approval to the tenant. Such notice shall disclose the total monthly increase in rent and the first month in which the tenant would be required to pay the temporary increase. An approval for a temporary major capital improvement increase shall not include retroactive payments. The collection of any increase shall not exceed two 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. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. No landlord shall deny access to a professional engineer licensed to practice in the state of New York or a registered architect licensed to practice in the state of New York hired by any tenant, tenants or tenant association representing tenants of a multiple dwelling of six units or more for the purpose of conducting an inspection of a major capital improvement for which an application for adjustment of maximum rent has been filed. Such inspection shall be conducted after notice to the landlord and during normal business hours. Such tenant may file the report of the inspection with the city rent agency for consideration in the determination of such application. Notwithstanding any other provision of the law, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved or based upon cash purchase price exclusive of interest or service charges. Where an application for a temporary major capital improvement increase has been filed, a tenant shall have sixty days from the date of mailing of a notice of a proceeding in which to answer or reply. The state division of housing and community renewal shall provide any responding tenant with the reasons for the division's approval or denial of such application. 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

1 for any apartment pursuant to this paragraph shall not exceed six  
2 percent in any year from the effective date of the order granting the  
3 increase over the rent set forth in the schedule of gross rents, with  
4 collectability of any dollar excess above said sum to be spread forward  
5 in similar increments and added to the stabilized rent as established or  
6 set in future years;

7 § 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter  
8 576 of the laws of 1974, constituting the emergency tenant protection  
9 act of nineteen seventy-four, as amended by section 26 of part Q of  
10 chapter 39 of the laws of 2019, is amended to read as follows:

11 (3) there has been since January first, nineteen hundred seventy-four  
12 a major capital improvement essential for the preservation, energy effi-  
13 ciency, functionality, or infrastructure of the entire building,  
14 improvement of the structure including heating, windows, plumbing and  
15 roofing, but shall not be for operation costs or unnecessary cosmetic  
16 improvements. An adjustment under this paragraph shall be in an amount  
17 sufficient to amortize the cost of the improvements pursuant to this  
18 paragraph over a twelve-year period for a building with thirty-five or  
19 fewer housing accommodations, or a twelve and one-half period for a  
20 building with more than thirty-five housing accommodations and shall be  
21 removed from the legal regulated rent thirty years from the date the  
22 increase became effective inclusive of any increases granted by the  
23 applicable rent guidelines board, for any determination issued by the  
24 division of housing and community renewal after ~~[the effective date of~~  
25 ~~the chapter of the laws of two thousand nineteen that amended this para-~~  
26 ~~graph]~~ June 14, 2019. Temporary major capital improvement increases  
27 shall be collectable prospectively on the first day of the first month  
28 beginning sixty days from the date of mailing notice of approval to the  
29 tenant. Such notice shall disclose the total monthly increase in rent  
30 and the first month in which the tenant would be required to pay the  
31 temporary increase. An approval for a temporary major capital improve-  
32 ment increase shall not include retroactive payments. The collection of  
33 any increase shall not exceed two percent in any year from the effective  
34 date of the order granting the increase over the rent set forth in the  
35 schedule of gross rents, with collectability of any dollar excess above  
36 said sum to be spread forward in similar increments and added to the  
37 rent as established or set in future years. Upon vacancy, the landlord  
38 may add any remaining balance of the temporary major capital improvement  
39 increase to the legal regulated rent. No landlord shall deny access to  
40 a professional engineer licensed to practice in the state of New York or  
41 a registered architect licensed to practice in the state of New York  
42 hired by any tenant, tenants or tenant association representing tenants  
43 of a multiple dwelling of six units or more for the purpose of conduct-  
44 ing an inspection of a major capital improvement for which an applica-  
45 tion for adjustment of maximum rent has been filed. Such inspection  
46 shall be conducted after notice to the landlord and during normal busi-  
47 ness hours. Such tenant may file the report of the inspection with the  
48 city rent agency for consideration in the determination of such applica-  
49 tion. Notwithstanding any other provision of the law, the collection of  
50 any rent increases for any renewal lease commencing on or after June 14,  
51 2019, due to any major capital improvements approved on or after June  
52 16, 2012 and before June 16, 2019 shall not exceed two percent in any  
53 year for any tenant in occupancy on the date the major capital improve-  
54 ment was approved, or

55 § 4. This act shall take effect on the one hundred twentieth day after  
56 it shall have become a law, provided that the amendments to section

1 26-405 of the city rent and rehabilitation law made by section one of  
2 this act shall remain in full force and effect only so long as the  
3 public emergency requiring the regulation and control of residential  
4 rents and evictions continues, as provided in subdivision 3 of section 1  
5 of the local emergency housing rent control act; and provided further  
6 that the amendments to section 26-511 of the rent stabilization law of  
7 nineteen hundred sixty-nine made by section two of this act shall expire  
8 on the same date as such law expires and shall not affect the expiration  
9 of such law as provided under section 26-520 of such law. Effective  
10 immediately, the addition, amendment and/or repeal of any rule and regu-  
11 lation necessary for the implementation of this act on its effective  
12 date are authorized to be made on or before such date.