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 Assembly, do enact as follows:

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by section 27 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(g) There has been since July first, nineteen hundred seventy, a major capital improvement essential for the preservation energy efficiency, functionality, or infrastructure of the entire building, improvement of the structure including heating, windows, plumbing and roofing but shall not be for operational costs or unnecessary cosmetic improvements. The temporary increase based upon a major capital improvement under this subparagraph for any order of the commissioner issued after the effective date of the chapter of the laws of two thousand nineteen that amended this subparagraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph [~~(g)~~] over a twelve-year period for buildings with thirty-five or fewer units or a twelve and one-half year period for buildings with more than thirty-five units, 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

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

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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. **A rent adjustment for a major capital improvement may only be granted if the owner or agent of the subject building first applies for and receives benefits pursuant to section 11-243 of this code for the building for which they are seeking a major capital improvement for, provided, however, an owner or agent of the subject building that is denied benefits pursuant to section 11-243 of this code for reasons unrelated to an untimely or improperly completed application shall still be eligible to receive a rent adjustment for a major capital improvement.** 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

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

(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 a twelve-year period for a building with thirty-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 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. 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. **A rent adjustment for a major capital improvement may only be granted if the owner or agent of the subject building first applies for and receives benefits pursuant to section 11-243 of this code for the building for which they are seeking a major capital improvement for, provided, however, an owner or agent of the subject building that is denied benefits pursuant to section 11-243 of this code for reasons unrelated to an untimely or improperly completed application shall still be eligible to receive a rent adjustment for a major capital improvement.** 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;

§ 3. This act shall take effect immediately, provided, however that the amendments to section 26-405 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only so 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; and provided, further, that the amendments to section 26-511 of the rent stabilization law of nineteen hundred sixty-nine made by section two 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, as from time to time amended; and provided, further, that the provisions of sections one and two of this act shall only apply to those buildings that commence work on a major capital improvement 45 days or later than the effective date of this act.