

# STATE OF NEW YORK

5387

2021-2022 Regular Sessions

## IN SENATE

March 3, 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 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:

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 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 effec-  
tive date of the chapter of the laws of two thousand nineteen that  
amended this subparagraph]~~ June 14, 2014 shall be in an amount suffi-  
cient to amortize the cost of the improvements pursuant to this subpara-  
graph ~~[(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. Tempo-  
rary major capital improvement increases shall be collectible prospec-  
tively on the first day of the first month beginning sixty days from the

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

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

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

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

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

1 is to be amortized over a twelve-year period for a building with thir-  
2 ty-five or fewer housing accommodations, or a twelve and one-half-year  
3 period for a building with more than thirty-five housing accommodations,  
4 for any determination issued by the division of housing and community  
5 renewal after ~~[the effective date of the the chapter of the laws of two~~  
6 ~~thousand nineteen that amended this paragraph]~~ June 14, 2019 and shall  
7 be removed from the legal regulated rent thirty years from the date the  
8 increase became effective inclusive of any increases granted by the  
9 applicable rent guidelines board. Temporary major capital improvement  
10 increases shall be collectible prospectively on the first day of the  
11 first month beginning sixty days from the date of mailing notice of  
12 approval to the tenant. Such notice shall disclose the total monthly  
13 increase in rent and the first month in which the tenant would be  
14 required to pay the temporary increase. An approval for a temporary  
15 major capital improvement increase shall not include retroactive  
16 payments. The collection of any increase shall not exceed two percent in  
17 any year from the effective date of the order granting the increase over  
18 the rent set forth in the schedule of gross rents, with collectability  
19 of any dollar excess above said sum to be spread forward in similar  
20 increments and added to the rent as established or set in future years.  
21 Upon vacancy, the landlord may add any remaining balance of the tempo-  
22 rary major capital improvement increase to the legal regulated rent. No  
23 landlord shall deny access to a professional engineer licensed to prac-  
24 tice in the state of New York or a registered architect licensed to  
25 practice in the state of New York hired by any tenant, tenants or tenant  
26 association representing tenants of a multiple dwelling of six units or  
27 more for the purpose of conducting an inspection of a major capital  
28 improvement for which an application for adjustment of maximum rent has  
29 been filed. Such inspection shall be conducted after notice to the land-  
30 lord and during normal business hours. Such tenant may file the report  
31 of the inspection with the city rent agency for consideration in the  
32 determination of such application. Notwithstanding any other provision  
33 of the law, for any renewal lease commencing on or after June 14, 2019,  
34 the collection of any rent increases due to any major capital improve-  
35 ments approved on or after June 16, 2012 and before June 16, 2019 shall  
36 not exceed two percent in any year for any tenant in occupancy on the  
37 date the major capital improvement was approved or based upon cash  
38 purchase price exclusive of interest or service charges. Where an appli-  
39 cation for a temporary major capital improvement increase has been  
40 filed, a tenant shall have sixty days from the date of mailing of a  
41 notice of a proceeding in which to answer or reply. The state division  
42 of housing and community renewal shall provide any responding tenant  
43 with the reasons for the division's approval or denial of such applica-  
44 tion. Notwithstanding anything to the contrary contained herein, no  
45 hardship increase granted pursuant to this paragraph shall, when added  
46 to the annual gross rents, as determined by the commissioner, exceed the  
47 sum of, (i) the annual operating expenses, (ii) an allowance for manage-  
48 ment services as determined by the commissioner, (iii) actual annual  
49 mortgage debt service (interest and amortization) on its indebtedness to  
50 a lending institution, an insurance company, a retirement fund or  
51 welfare fund which is operated under the supervision of the banking or  
52 insurance laws of the state of New York or the United States, and (iv)  
53 eight and one-half percent of that portion of the fair market value of  
54 the property which exceeds the unpaid principal amount of the mortgage  
55 indebtedness referred to in subparagraph (iii) of this paragraph. Fair  
56 market value for the purposes of this paragraph shall be six times the

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

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

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

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