

STATE OF NEW YORK

4711--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 22, 2023

Introduced by M. of A. L. ROSENTHAL, RAGA -- read once and referred to the Committee on Housing -- recommitted to the Committee on Housing in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, 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 Assembly, 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 effective date of the chapter of the laws of two thousand nineteen that~~
12 ~~amended this subparagraph~~] June 14, 2019 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
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-

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

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1 rary major capital improvement increases shall be collectible prospec-
2 tively on the first day of the first month beginning sixty days from the
3 date of mailing notice of approval to the tenant. Such notice shall
4 disclose the total monthly increase in rent and the first month in which
5 the tenant would be required to pay the temporary increase. An approval
6 for a temporary major capital improvement increase shall not include
7 retroactive payments. The collection of any increase shall not exceed
8 two percent in any year from the effective date of the order granting
9 the increase over the rent set forth in the schedule of gross rents,
10 with collectability of any dollar excess above said sum to be spread
11 forward in similar increments and added to the rent as established or
12 set in future years. Upon vacancy, the landlord may add any remaining
13 balance of the temporary major capital improvement increase to the legal
14 regulated rent. No landlord shall deny access to a professional engi-
15 neer licensed to practice in the state of New York or a registered
16 architect licensed to practice in the state of New York hired by any
17 tenant, tenants or tenant association representing tenants for the
18 purpose of conducting an inspection of a major capital improvement for
19 which an application for adjustment of maximum rent has been filed. Such
20 inspection shall be conducted after notice to the landlord and during
21 normal business hours. Such tenant may file the report of the inspection
22 with the city rent agency for consideration in the determination of such
23 application. Notwithstanding any other provision of the law, for any
24 renewal lease commencing on or after June 14, 2019, the collection of
25 any rent increases due to any major capital improvements approved on or
26 after June 16, 2012 and before June 16, 2019 shall not exceed two
27 percent in any year for any tenant in occupancy on the date the major
28 capital improvement was approved, or

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

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

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

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

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

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

§ 4. Subparagraph 7 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law as separately amended by section 14 of part K of chapter 36 and section 25 of part Q of chapter 39 of the laws of 2019, is amended to read as follows:

(7) there has been since March first, nineteen hundred fifty, 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; which for any order of the commissioner issued after ~~[the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph]~~ June 14, 2019 the cost of such improvement shall be amortized 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 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 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 state division of housing and community renewal 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; provided, however, 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; or

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; 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

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