

STATE OF NEW YORK

6852--A

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2023-2024 Regular Sessions

IN SENATE

May 11, 2023

Introduced by Sens. PARKER, JACKSON, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 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
15 fewer units or a twelve and one-half year period for buildings with more
16

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

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

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

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

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

1 half percent of that portion of the fair market value of the property
2 which exceeds the unpaid principal amount of the mortgage indebtedness
3 referred to in subparagraph (iii) of this paragraph. Fair market value
4 for the purposes of this paragraph shall be six times the annual gross
5 rent. The collection of any increase in the stabilized rent for any
6 apartment pursuant to this paragraph shall not exceed six percent in any
7 year from the effective date of the order granting the increase over the
8 rent set forth in the schedule of gross rents, with collectability of
9 any dollar excess above said sum to be spread forward in similar incre-
10 ments and added to the stabilized rent as established or set in future
11 years;

12 § 3. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
13 576 of the laws of 1974, constituting the emergency tenant protection
14 act of nineteen seventy-four, as amended by section 26 of part Q of
15 chapter 39 of the laws of 2019, is amended to read as follows:

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

1 16, 2019 shall not exceed two percent in any year for any tenant in
2 occupancy on the date the major capital improvement was approved, or

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

8 (7) there has been since March first, nineteen hundred fifty, a major
9 capital improvement essential for the preservation, energy efficiency,
10 functionality, or infrastructure of the entire building, improvement of
11 the structure including heating, windows, plumbing and roofing, but
12 shall not be for operational costs or unnecessary cosmetic improvements;
13 which for any order of the commissioner issued after [~~the effective date~~
14 ~~of the chapter of the laws of two thousand nineteen that amended this~~
15 ~~paragraph~~] June 14, 2019 the cost of such improvement shall be amortized
16 over a twelve-year period for buildings with thirty-five or fewer units
17 or a twelve and one-half year period for buildings with more than thir-
18 ty-five units, and shall be removed from the legal regulated rent thirty
19 years from the date the increase became effective inclusive of any
20 increases granted by the applicable rent guidelines board. Temporary
21 major capital improvement increases shall be collectible prospectively
22 on the first day of the first month beginning sixty days from the date
23 of mailing notice of approval to the tenant. Such notice shall disclose
24 the total monthly increase in rent and the first month in which the
25 tenant would be required to pay the temporary increase. An approval for
26 a temporary major capital improvement increase shall not include retro-
27 active payments. The collection of any increase shall not exceed two
28 percent in any year from the effective date of the order granting the
29 increase over the rent set forth in the schedule of gross rents, with
30 collectability of any dollar excess above said sum to be spread forward
31 in similar increments and added to the rent as established or set in
32 future years. Upon vacancy, the landlord may add any remaining balance
33 of the temporary major capital improvement increase to the legal regu-
34 lated rent. No landlord shall deny access to a professional engineer

35 licensed to practice in the state of New York or a registered architect
36 licensed to practice in the state of New York hired by any tenant,
37 tenants or tenant association representing tenants for the purpose of
38 conducting an inspection of a major capital improvement for which an
39 application for adjustment of maximum rent has been filed. Such
40 inspection shall be conducted after notice to the landlord and during
41 normal business hours. Such tenant may file the report of the inspection
42 with the state division of housing and community renewal for consider-
43 ation in the determination of such application. Notwithstanding any
44 other provision of the law, for any renewal lease commencing on or after
45 June 14, 2019, the collection of any rent increases due to any major
46 capital improvements approved on or after June 16, 2012 and before June
47 16, 2019 shall not exceed two percent in any year for any tenant in
48 occupancy on the date the major capital improvement was approved;
49 provided, however, where an application for a temporary major capital
50 improvement increase has been filed, a tenant shall have sixty days from
51 the date of mailing of a notice of a proceeding in which to answer or
52 reply. The state division of housing and community renewal shall provide
53 any responding tenant with the reasons for the division's approval or
54 denial of such application; or

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

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