

**SOLIDATED LAWS**

*Conciliation and Control of the Development of the Division of ... nt to L.1983, c. on 8582.*

Rent and Rehabilitation accommodations cover- ative Code<sup>2</sup> shall be .w and these regula- on Code and regula- e City of New York, post.

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**CHAPTER 4—LOCAL EMERGENCY HOUSING RENT CONTR**

**Section**

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**Cross References**

- Cooperative and condominium conversions in New York City, see section 26 et seq. of the Administrative Code of the City of New York, set following section 8617.
- Emergency Housing Rent Control Law, see section 8581 et seq.
- Emergency Tenant Protection Act of 1974, see section 8621 et seq.
- Exemption from taxation of alterations and improvements to multiple dwell to eliminate fire and health hazards, see RPTL § 489.
- New York City Rent and Rehabilitation Law, see section 26-401 et seq. of Administrative Code of the City of New York, set out following sec 8617.
- New York City Rent Stabilization Law, see section 26-501 et seq. of the Admi trative Code of the City of New York, set out following section 8617.
- Property subject to rent control; tax exemptions, see Private Housing Fina Law § 405 and Public Housing Law § 214-a.
- Rent increases in New York City—
  - Generally, see section 26-530 of the Administrative Code of the City of N York, set out following section 8617.
  - Exemption for low income elderly persons, see section 26-601 et seq. of Administrative Code of the City of New York, set out following secti 8617.
- Rent regulation of rehabilitated multiple dwellings aided by certain fede housing assistance programs, see Private Housing Finance Law § 6
- Tax abatements for rent controlled and rent regulated property occupied senior citizens, see RPTL § 467-b.
- Unlawful eviction in New York City, see section 26-521 et seq. of the Administ tive Code of the City of New York, set out following section 8617.

**New York Codes, Rules and Regulations**

Rent and eviction regulations of the Division of Housing and Communi Renewal, see 9 NYCRR Parts 2100 et seq. and 2200 et seq., set o following section 8597.

Tenant protection regulations of the Division of Housing and Community Renewal, see 9 NYCRR Parts 2500 to 2510, set out following section 8634.

#### Law Review Commentaries

Rent control in New York City: another look, 47 N.Y.S.B.J. 193 (1975).

#### WESTLAW Electronic Research

WESTLAW supplements McKinney's Unconsolidated Laws and is useful for additional research. Enter a citation in INSTA-CITE for display of any parallel citations and case history. Enter a constitution or statute citation in a case law database for cases of interest.

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Example query for statute: Unconsol! /7 8625

#### § 8601. Short title

This section<sup>1</sup> shall be known and may be cited as the "local emergency housing rent control act".

(L.1962, c. 21, § 1(1).)

<sup>1</sup> Section 1 of L.1962, c. 21; containing 17 subdivisions set out herein as sections 8601 to 8617.

#### Historical Note

**Effective Date.** Section effective Feb. 13, 1962, pursuant to L.1962, c. 21, § 7.

**Regulation and Control of Residential Rents and Evictions Within New York City on and after May 1, 1962.** The preamble of section 1 of L.1962, c. 21, eff. Feb. 17, 1962, provided: "The regulation and control of resi-

dential rents and evictions within cities having a population of one million or more on and after May first, nineteen hundred sixty-two shall be governed by the provisions of this section, [set out as sections 8601 to 8617], notwithstanding the provisions of the emergency housing rent control law [sections 8581 to 8597]."

#### Library References

##### American Digest System

Statutory regulation of rents in general, see Landlord & Tenant ¶200.10.  
Title of acts in general, see Statutes ¶109 et seq.

##### Encyclopedia

Matters covered by title of statute, see C.J.S. Statutes § 200.  
Regulation of rents in general, see C.J.S. Landlord & Tenant § 551.1 et seq.

#### § 8602. Legislative finding

The legislature hereby finds that a serious public emergency continues to exist in the housing of a considerable number of

persons in the state of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the legislature continues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health; that in order to prevent uncertainty, hardship and dislocation, the provisions of this section<sup>1</sup> are necessary and designed to protect the public health, safety and general welfare, that the transition from regulation to a normal market of free bargaining between landlord and tenant, while still the objective of state policy, must be administered with due regard for such emergency; and that the policy herein expressed should now be administered locally within cities having a population of one million or more by an agency of the city itself.

(L.1962, c. 21, § 1(2).)

<sup>1</sup> Section 1 of L.1962, c. 21; containing 17 subdivisions set out herein as sections 8601 to 8617.

#### Historical Note

**Effective Date.** Section effective Feb. 13, 1962, pursuant to L.1962, c. 21, § 7.

#### Library References

##### American Digest System

Nature and scope of police power in general, see Constitutional Law ¶8  
Regulation of rents, validity of regulations, see Landlord & Tenant ¶200.1

##### Encyclopedia

Validity of statutory provisions, see C.J.S. Constitutional Law § 61.

#### Notes of Decisions

Constitutionality 1  
Construction with other laws 2  
Local administration 4  
Purpose 3

##### 1. Constitutionality

Landlords, who had processed applications for rent increases to point where

favorable action was imminent, had "vested" rights to increase orders or continuation of rules or formulae which their applications had been based and statute transferring rent control administration from state to cities having population of one million or more prohibiting any increase in rents, unless consented to by tenant, during peri

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from effective date of statute until May 1 on which date the city was to take over, was not unconstitutional. *I.L.F.Y. Co. v. Temporary State Housing Rent Commission*, 1962, 11 N.Y.2d 259, 228 N.Y.S.2d 814, 183 N.E.2d 220.

### 2. Construction with other laws

Rent control statute applicable to any city with population of 1,000,000 is a general, rather than special law, although there might be but one city to which it could apply, and, since rent control is primarily a matter of state concern and function of state at large, statute did not relate to property, affairs, or government of city of New York within home rule provisions, Const. Art. 9, § 2(b)(2), requiring that special legislation be enacted only upon request, etc., of local government. *241 East 22nd St. Corp. v. City Rent Agency*, 1973, 33 N.Y.2d 134, 350 N.Y.S.2d 631, 305 N.E.2d 760.

Within this section requiring that policy be administered locally by an agency of the city itself, "of the city itself" was expression of contrast in implementation of policy between state regulation, which had theretofore been in effect, and local control, which was then being promoted, and did not interdict provision of the New York City Rent Stabilization Law of 1969 integrating real estate industry stabilization association, a private corporation, into the scheme of rent regulation. *8200 Realty Corp. v. Lindsay*, 1970, 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

Optional self-regulatory scheme provided in New York City rent stabilization

### § 8603. Local determination as to continuation of emergency

The continuation, after May thirty-first, nineteen hundred sixty-seven, of the public emergency requiring the regulation and control of residential rents and evictions within cities having a population of one million or more shall be a matter for local determination within each such city. Any such determination shall be made by the local legislative body of such city on or before April first, nineteen hundred sixty-seven and at least once in every third year thereafter following a survey which the city shall cause to be made of the supply of housing accommodations within such city, the condition of such accommodations and the need for continuing the regulation and control of residential rents and evictions within such

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law requiring property to be governed by rent control legislation or requiring owner to join real estate industry stabilization association and follow its rules on rent did not violate this section transferring rent control functions from state to city. *8200 Realty Corp. v. Lindsay*, 1969, 60 Misc.2d 248, 304 N.Y.S.2d 384, reversed 34 A.D.2d 79, 309 N.Y.S.2d 443, reversed 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

### 3. Purpose

Objective of rent control law and policy of administering it is to continue controls over those areas of housing where rent controls are needed and to discontinue controls where possible without danger of undue increases in rent, dislocation and hardship. *Gauthier v. Gabel*, 1964, 44 Misc.2d 887, 255 N.Y.S.2d 200, affirmed 16 N.Y.2d 720, 262 N.Y.S.2d 105, 209 N.E.2d 723.

### 4. Local administration

This section permitting cities to establish agency to administer regulation and control of residential rents grants local legislature full power and discretion in determining form and composition of instrumentality administering rent control, but such instrumentality must be an official, bureau, board, commission or agency of city established or designated as such by local legislature. *8200 Realty Corp. v. Lindsay*, 1969, 60 Misc.2d 248, 304 N.Y.S.2d 384, reversed 34 A.D.2d 79, 309 N.Y.S.2d 443, reversed 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

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city. Such survey shall be submitted to such legislative body not less than thirty nor more than sixty days prior to the date of any such determination.

(L.1962, c. 21, § 1(3); amended L.1963, c. 393, § 1; L.1965, c. 318, § 1; L.1966, c. 13, § 1; L.1967, c. 657, § 1.)

### Historical Note

**Effective Date.** Section effective Feb. 13, 1962, pursuant to L.1962, c. 21, § 7.

### Notes of Decisions

#### Exempt accommodations 2 Local legislative body 1

##### 1. Local legislative body

It was province of city council to ascertain continued existence of public emergency with respect to rental facilities. *Gauthier v. Gabel*, 1964, 44 Misc.2d 887, 255 N.Y.S.2d 200, affirmed 16 N.Y.2d 720, 262 N.Y.S.2d 105, 209 N.E.2d 723.

##### 2. Exempt accommodations

Section 8601 et seq. does not prohibit city from excluding from control dwelling units already controlled by self-regulation, provided self-regulatory standards are defined and legal, and such exclusion is permissible. *8200 Realty Corp. v. Lindsay*, 1969, 60 Misc.2d 248, 304 N.Y.S.2d 384, reversed 34 A.D.2d 79, 309 N.Y.S.2d 443, reversed 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

### § 8604. Establishment of city housing rent agency

On or before April first, nineteen hundred sixty-two, the mayor of each city having a population of one million or more shall establish or designate an official, bureau, board, commission or agency of such city (referred to in this section as the "city housing rent agency") to administer the regulation and control of residential rents and evictions within such city unless such city, acting through its local legislative body, shall have enacted, prior to April first, nineteen hundred sixty-two, a local law or ordinance pursuant to subdivision five of this section,<sup>1</sup> prescribing a different method of establishing or designating a city housing rent agency and in such case such agency shall be established or designated in accordance with said local law or ordinance.

(L.1962, c. 21, § 1(4).)

<sup>1</sup> Section 8605.

### Historical Note

**Effective Date.** Section effective Feb. 13, 1962, pursuant to L.1962, c. 21, § 7.

### Library References

#### American Digest System

Regulation of housing, administrative regulations, see *Landlord & Tenant* §200.13.

## Encyclopedia

Administration of rent control, rules and regulations, see C.J.S. Landlord & Tenant § 551.8.

## Notes of Decisions

Construction with other laws 1  
Power of mayor 2

## 1. Construction with other laws

Within this section authorizing mayor to designate an official or unit of city as city housing agency and requiring that policy be administered locally by an agency of the city itself, "of the city itself" was expression of contrast in implementation of policy between state regulation, which had theretofore been in effect, and local control, which was then being promoted, and this section did not interdict provision of the New York City Rent Stabilization Law of 1969, Admin. Code, § YY51-6.0 [now § 26-511], integrating real estate industry stabilization association, a private

corporation, into the scheme of rent regulation. 8200 Realty Corporation v. Lindsay, 1970, 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

## 2. Power of mayor

Provision of this section authorizing mayor to designate an official or unit of city as city housing agency was not limitation of power of city to enact rent control legislation but rather dealt with administrative power of mayor to designate agency to perform an additional function. 8200 Realty Corporation v. Lindsay, 1970, 27 N.Y.2d 124, 313 N.Y.S.2d 733, 261 N.E.2d 647, appeal dismissed 91 S.Ct. 367, 400 U.S. 962, 27 L.Ed.2d 381.

## § 8605. Authority for local rent control legislation

Each city having a population of one million or more, acting through its local legislative body, may adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions in order to carry out the purposes of this section,<sup>1</sup> such city, except as hereinafter provided, acting through its local legislative body and not otherwise, may adopt and amend local laws or ordinances in respect of the regulation and control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the state emergency housing rent control law<sup>2</sup> or with rules and regulations of the state division of housing and community renewal.<sup>3</sup>

Notwithstanding any local law or ordinance, housing accommodations which became vacant on or after July first, nineteen hundred seventy-one or which hereafter become vacant shall be subject to the provisions of the emergency tenant protection act of nineteen seventy-four,<sup>4</sup> provided, however, that this provision shall not apply or become effective with respect to housing accommodations

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which, by local law or ordinance, are made directly subject to regulation and control by a city housing rent agency and such agency determines or finds that the housing accommodations became vacant because the landlord or any person acting on his behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including but not limited to, interruption or discontinuance of essential services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of the housing accommodations. The removal of any housing accommodation from regulation and control of rents pursuant to the vacancy exemption provided for in this paragraph shall not constitute or operate as a ground for the subjection to more stringent regulation and control of any housing accommodation in such property or in any other property owned by the same landlord, notwithstanding any prior agreement to the contrary by the landlord. The vacancy exemption provided for in this paragraph shall not arise with respect to any rented plot or parcel of land otherwise subject to the provisions of this act,<sup>5</sup> by reason of a transfer of title or possession occurring on or after July first, nineteen hundred seventy-one of a dwelling located on such plot or parcel and owned by the tenant where such transfer of title or possession is made to a member of the tenant's immediate family regardless of whether the member of the tenant's immediate family occupies the dwelling with the tenant prior to the transfer of title or possession or thereafter took occupancy pursuant to such transfer of title or possession.

The term "immediate family" shall include a husband, wife, son, daughter, stepson, stepdaughter, father, mother, father-in-law or mother-in-law.

Notwithstanding the foregoing, no local law or ordinance shall hereafter provide for the regulation and control of residential rents and eviction in respect of any housing accommodations which are (1) presently exempt from such regulation and control or (2) hereafter decontrolled either by operation of law or by a city housing rent agency, by order or otherwise. No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision<sup>6</sup> shall hereafter be by local law or ordinance or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal subjected to more stringent or restrictive provisions of regulation and control than those presently in effect.

Notwithstanding the foregoing, no local law or ordinance shall subject to such regulation and control any housing accommodation which is not occupied by the tenant in possession as his primary

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Note 7

cial or nonresidential purposes was too broad and would be modified so as to permit commercial renting of residential space validly vacant. Reichman v. Brause Realty, Inc., 1970, 34 A.D.2d 338, 311 N.Y.S.2d 629.

8. Reopening of proceedings

Administrator has authority to reopen and redetermine prior rent increase orders based upon subsequent discovery of fraudulent practices by landlord. Lucot, Inc. v. Gabel, 1963, 39 Misc.2d 332, 240 N.Y.S.2d 640, modified on other grounds 20 A.D.2d 94, 244 N.Y.S.2d 582, affirmed 15 N.Y.2d 774, 257 N.Y.S.2d 343, 205 N.E.2d 535.

9. Revocation of order

Landlord's proven fraud in his successful proceeding for rent increase, with respect to approximately .7 per cent of claimed annual operating expenses, together with other apparent irregularities and actions, formed reasonable basis for revocation of rent increase order. Vesey v. New York City Rent and Rehabilitation Administration, 1966, 26 A.D.2d 922, 274 N.Y.S.2d 756, affirmed 21 N.Y.2d 865, 288 N.Y.S.2d 1017, 236 N.E.2d 169.

Affirmative action by administrator was required to effectuate maximum rent increases based on furnishing of additional services and equipment with consent of tenant, and if application for such increases is not submitted honestly and in good faith or if statements in support thereof are fraudulent, application may be denied, or if fraud is discovered after rent increases are granted, they should be revoked. Lucot, Inc. v. Gabel, 1963, 20 A.D.2d 94, 244 N.Y.S.2d 582, affirmed 15 N.Y.2d 774, 257 N.Y.S.2d 343, 205 N.E.2d 535.

Where Local Rent Administrator of State Rent Administration increased

§ 26-414. Decontrol on basis of vacancy rate

Whenever the city rent agency shall find, after making such studies and investigations as it deems necessary for such purpose, or for processing an application supported by adequate proof filed by an interested party pursuant to regulation that the percentage of vacancies in all or any particular class of housing accommodations in the city, as such class is determined by the city rent agency, is five per centum or more, the controls imposed on rents and evictions by and pursuant to this chapter<sup>1</sup>, with respect to the housing

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rents of 87 apartments, four protests were filed by tenants, regulation and control of residential rents and evictions in New York City were transferred from Temporary State Rent Commission to city rent and rehabilitation administration, and city rent and rehabilitation administrator denied the protests, the matter ended there, and the city rent and rehabilitation administrator had no authority to revoke the rent increases in absence of showing of illegality, irregularity in vital matters, for fraud. Streg, Inc. v. Gabel, 1962, 39 Misc.2d 93, 240 N.Y.S.2d 303.

10. Attorney fees

Award of attorney fees to be paid directly to government funded legal services corporation, which provided free legal services to tenant in residential nonpayment summary proceeding brought by landlord, and which after investigation interposed successful defense and counterclaim for rental "overcharge," was appropriate under this section. Atamanuk v. Kwok Yui Wong, 1975, 82 Misc.2d 1059, 368 N.Y.S.2d 733.

Counsel fees to be awarded to tenant in action by tenant to recover willful overcharge are to be commensurate with the overcharge. Golding v. Bushek, 1972, 69 Misc.2d 370, 330 N.Y.S.2d 150.

11. Lifting sanctions

Once finding of harassment has been issued in form of an order against landlord, with sanctions imposed, there is affirmative duty on that landlord, or his successors, to come forward with convincing evidence that conditions of harassment which led to those sanctions no longer exist, before findings can be vacated and sanctions lifted. Meko Holding Inc. v. Joy, 1985, 107 A.D.2d 278, 486 N.Y.S.2d 201.

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1. Classes of h City rent anc tration and city not bound by ce particular class dation for purp rizing decontrol cent vacancy ra housing accomr v. City Rent and tration, 1966, 4 S.2d 474, affirr N.Y.S.2d 701.

accommodations as to which such finding has been made, shall be forthwith scheduled for orderly decontrol, with due regard to preventing uncertainty, hardship and dislocation, by order of such agency; provided, however, that notwithstanding any provision of this section to the contrary, such agency shall not order the decontrol of any particular class of housing accommodations as to which it shall find that the percentage of vacancies is less than five per centum; provided, further, that no such order shall be made unless such agency shall hold a public hearing on such proposal at which interested persons are given a reasonable opportunity to be heard. Notice of such hearing shall be provided by publication thereof, on at least five days during the period of fifteen days next preceding the date of the commencement of such hearing, in the City Record and in at least two daily newspapers having general circulation in the city.

(L.1985, c. 907, § 1.)

<sup>1</sup> Chapter 3 of Title 26 of the Administrative Code of the City of New York.

#### Historical Note

**Effective Date.** Section effective Sept. 1, 1986, pursuant to L.1985, c. 907, § 17. numbered and amended L.1963, c. 100, § 1541; amended Loc.L.1967, No. 60, and repealed L.1985, c. 907, § 1, eff. Sept. 1, 1986.

**Derivation.** Former New York City Administrative Code § Y51-12.0, added Loc.L.1962, No. 20, as § Y41-12.0, re-

#### Library References

##### American Digest System

Termination of rent control, see Landlord & Tenant ⇐200.83.

##### Encyclopedia

Termination of rent control, see C.J.S. Landlord & Tenant § 551.60.

#### Notes of Decisions

**Classes of housing accommodations** 1  
**Failure to issue decontrol order** 3  
**Studies and investigations** 2

##### 1. Classes of housing accommodations

City rent and rehabilitation administration and city rent administrator were not bound by census data in establishing particular classes of housing accommodation for purpose of this section authorizing decontrol in case there is a 5 percent vacancy rate for particular class of housing accommodations. *Campo Corp. v. City Rent and Rehabilitation Administration*, 1966, 49 Misc.2d 840, 268 N.Y. S.2d 474, affirmed 26 A.D.2d 771, 272 N.Y.S.2d 701.

##### 2. Studies and investigations

City rent and rehabilitation administration and city rent administrator were entitled to use results of research of person regardless of purpose for which he was engaged, his independent research might be taken into consideration in determining vacancy rates and his analysis might be used in determination of classifications contemplated by this section providing for decontrol in event there is 5 percent vacancy in a particular class of housing accommodations. *Campo Corp. v. City Rent and Rehabilitation Administration*, 1966, 49 Misc.2d 840, 268 N.Y. S.2d 474, affirmed 26 A.D.2d 771, 272 N.Y.S.2d 701.

## § 26-414

Note 3

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### 3. Failure to issue decontrol order

Mandamus was not available to compel rent administrator, who was required to decontrol rents upon occurrence of 5 percent vacancy rate, to issue decontrol order although petitioner claimed that vacancies were in excess of 5 percent of gross vacancy rate rather than net vacancy rate, used by administrator, were employed. *Lampert v. Berman*, 1967, 55 Misc.2d 99, 284 N.Y.S.2d 657.

Petitioners seeking order directing city rent and rehabilitation administration

and city rent administrator to find vacancy rate of 5 percent in certain housing accommodations and to compel them to schedule public hearing as precedent to decontrolling such housing accommodations failed to establish, even prima facie, that delay in fixing classes to be used for purposes of this section permitting decontrol under certain circumstances was unreasonable or due to bad faith. *Campo Corp. v. City Rent and Rehabilitation Administration*, 1966, 49 Misc.2d 840, 268 N.Y.S.2d 474, affirmed 26 A.D.2d 771, 272 N.Y.S.2d 701.

## § 26-415. Surveys of need for rent control

As provided in subdivision three of section one of the local emergency housing rent control act<sup>1</sup>, the mayor shall cause to be made, and shall present to the council a report of the results of, a survey of the supply of housing accommodations within the city, the condition of such accommodations and the need for continuing the regulation and control of residential rents and evictions within the city.

(L.1985, c. 907, § 1.)

<sup>1</sup> Section 8603, ante.

### Historical Note

**Effective Date.** Section effective Sept. 1, 1986, pursuant to L.1985, c. 907, § 17.

**Derivation.** Former New York City Administrative Code § Y51-16.0, added Loc.L.1962, No. 20, as § Y41-16.0, re-

numbered and amended L.1963, c. 100, § 1544; amended L.1963, c. 100, § 1544; Loc.L.1967, No. 50, July 14, 1967, and repealed L.1985, c. 907, § 1, eff. Sept. 1, 1986.