

FACT SHEET



Andrew M. Cuomo, Governor

A PUBLICATION OF NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#24 Major Capital Improvements (MCI) *Questions and Answers*

What is an MCI?

When owners make improvements or installations to a building subject to the rent stabilization or rent control laws, they can apply to the Division of Housing and Community Renewal for approval to raise the rents of the tenants based on the actual, verified cost of improvement or installation. Some examples of MCI items include boilers, windows, electrical rewiring, plumbing and roofs.

To qualify as an MCI, the improvement or installation must:

1. be depreciable pursuant to the Internal Revenue Code, other than for ordinary repairs;
2. be for the operation, preservation and maintenance of the building;
3. directly or indirectly benefit all tenants; and,
4. meet the requirements set forth in the useful life schedule contained in the applicable Rent Regulations.

To be eligible for a rent increase, the MCI must be a new installation and not a repair to old equipment. Some procedures qualify as MCI's as well, such as "pointing" a building. DHCR Fact Sheet #33, "Useful Life Schedule" includes a partial list of installations that qualify for MCI rent adjustments. All applications for MCI rent adjustments must be filed within two years of the installation.

How does an owner apply for an MCI and what kind of documentation is needed?

An owner must file an OWNER'S APPLICATION FOR RENT INCREASE BASED ON MAJOR CAPITAL IMPROVEMENTS (DHCR form RA-79) available from DHCR Borough Rent Offices or from the main office at Gertz Plaza, 92-31 Union Hall Street, Jamaica, NY 11433, or from the DHCR website.

Small building owners are encouraged to contact the DHCR's SBO Unit for technical assistance prior to filing the application. **All owners and the managing agent in cooperative/condominium corporations need to carefully review the MCI Instructions (RA-79 Instructions) while completing the application (RA-79) as they are more detailed than this Fact Sheet, which contains general information.**

The completed application must contain:

1. a list of the work performed;
2. certifications provided by the owner and contractors regarding the cost of the work and dates the work started and ended;
3. proof of payment;
4. copies of all necessary approvals from applicable government agencies for the work done;
5. an affirmation of maintenance of services and a list of tenants with their respective rent-regulated status.

How does DHCR process an MCI application?

1. When an owner submits an MCI application, DHCR notifies the tenants and gives them an opportunity to submit written responses to the application. They are instructed to comment on the subject installation(s) as specifically as possible. Tenants can request an extension of time to respond to the application.
2. The owner may keep a copy of the application with all supporting documentation on the premises so that tenants may examine it. However, a complete copy of the MCI application with all the supporting documentation will always be available at the DHCR for tenant review upon written request. DHCR will review the application, consider the tenant responses and may request additional documentation if deemed necessary.
3. When processing is complete, DHCR will issue an order either granting a rent increase for the total amount requested, a partial amount, or denying the request. The owner and the tenants will be notified by DHCR of the amount of the rent increase per room and related terms and conditions in a written order. The rent increase is a permanent addition to the rent.

Does DHCR consider tenant responses that state that the installation is defective?

1. If the installation received the required approval from another government agency, tenant responses will be considered but may not result in a denial of the application. In such instances, the tenants may be referred to the other government agency for appropriate action.

Examples: In New York City, installations of boilers, plumbing and rewiring require Department of Buildings approval.

2. If the installation did not require approval from another government agency, the owner can respond to the tenant complaints by submitting an affidavit by an independent licensed architect or engineer that the installation is free of any defects. The tenants can rebut the affidavit by submitting a statement by at least 51% of those that originally complained, that the installation is still defective or they can submit a counter affidavit by a licensed architect or engineer. The affidavit must contain the original signature and professional stamp of the architect or engineer, not a copy.

DHCR will consider the statement by at least 51% of the original complainants or the tenants counter affidavit in deciding to approve or deny the MCI application. DHCR may conduct an inspection to help it reach its decision.

Example: Installation of windows, roofs and lobby doors do not require approval from other government agencies.

How should the cost records for the MCI be kept?

In order to speed processing, owners are strongly urged to pay for all MCI costs by check. If cash payments are made for allowable MCI expenses, they must be supported by adequate documentation. Any claimed MCI cost must be supported by adequate documentation which should include at least one of the following: cancelled check(s) contemporaneous with the completion of the work, invoice receipt marked paid in full contemporaneous with the completion of the work, signed contract agreement, contractor's affidavit indicating that the installation was completed and paid in full.

Whenever it is found that a claimed cost warrants further inquiry, the DHCR may request that the owner provide additional documentation. Where proof is not adequately substantiated, the difference between the claimed cost and the substantiated cost will be disallowed.

If it is found that there is an equity interest or an identity of interest between the contractor and the building owner, then additional proof of cost and payment, specifically related to the installation, may be requested.

Will violations affect the granting of an MCI?

DHCR can deny the application in whole or in part, if the owner is not maintaining all required services, or if there are current immediately hazardous violations outstanding pursuant to any municipal, county, State or Federal law relating to the maintenance of such services. Certain tenant-caused violations may be excepted. An MCI rent increase will not be approved if there is a DHCR finding of harassment outstanding on the building or if there is a DHCR issued building-wide rent reduction order in effect, based upon a decrease in services. DHCR will expedite any owner filed rent restoration applications. A tenant whose apartment has an individual rent reduction order in effect, based upon a decrease in service will be exempt from the MCI rent increase until the rent is restored by DHCR.

Can an owner get an MCI if they have also received a J-51 Tax Abatement from the City of New York?

Yes, however, if the owner of apartments in New York City receives a tax abatement (J-51) for the MCI, the rent increase is reduced by a portion of the value of the tax abatement. The rent is temporarily reduced in the MCI proceeding or at a later date in a Tax Abatement Modification Proceeding. The rent is restored at the end of the tax abatement period pursuant to a DHCR issued rent restoration order for rent controlled apartments and an owner filed notice for rent stabilized apartments.

How much of an MCI rent increase can be collected?

For rent stabilized apartments, the rent increase collectible in any one year may not exceed 6% of the tenant's rent in NYC and 15% of the tenants rent outside NYC at the time the application was filed.

For all rent controlled apartments, the rent increase collectible in any one year may not exceed 15% of the tenant's rent as of the issue date of the order.

For rent stabilized apartments there is a permanent prospective increase, and a temporary retroactive increase. The permanent prospective increase, which becomes part of the legal rent, is collectible first. Retroactive payments are those amounts owed between the effective date and the issue date of the DHCR order granting the MCI. They apply only to rent stabilized tenants and represent a temporary increase. For rent controlled apartments, there is no retroactive portion.

A senior citizen with a valid Senior Citizen Rent Increase Exemption (SCRIE), or a disabled person with a valid Disability Rent Increase Exemption (DRIE) is exempt from paying any portion of the MCI adjustment that would raise their total rent to over 1/3 of their total disposable income. However, an increase in the security deposit resulting from the MCI rent increase must be paid by both SCRIE and DRIE tenants.

How does the MCI increase affect vacancy and renewal leases?

If an apartment(s) is vacant or becomes vacant while the MCI application is pending, the owner must notify any incoming tenant that the tenant's rent will be increased if the MCI application is approved. Failure to indicate this anticipated rent increase in the vacancy lease will result in no MCI increase being approved for this apartment until the lease is renewed. If an owner charges the rent increase without this proper notification, the owner risks overcharge penalties.

A vacancy lease clause that satisfactorily notifies an incoming tenant of a pending MCI application is one which provides as follows: "Application for a major capital improvement rent increase has been filed with DHCR based upon the following work: _____, Docket # _____. Should DHCR issue an order granting the rent increase, the rent quoted in this lease will be increased."

If the DHCR approves an application for a rent increase based on an MCI, the owner may adjust the rent during the term of an existing lease only if the lease contains a clause specifically authorizing the owner to do so. A satisfactory lease clause would provide as follows: "The rent established in this lease may be increased or decreased by an order of the DHCR or the Rent Guidelines Board."

How did the Rent Code Amendments of 2014 affect MCI case processing and rent increases?

- DHCR is no longer authorized to grant MCI rent increases for the equipment installed in conversions from master to individual metering (direct or sub-metering).
- DHCR will initiate its own search for immediately "hazardous" violations in a building when an MCI application is submitted. If these violations are found, the application will be rejected and can be refiled within 60 days with a related stay on the requirement to file the application within 2 years of the completion of the work.
- An owner cannot collect the portion of an MCI rent increase (permanent or temporary) that is scheduled to become collectible after the effective date of a DHCR Rent Reduction Order. Such portion will become collectible, prospectively only, from the effective date of the DHCR Rent Restoration Order.

Sources:

New York City Rent Stabilization Code, Section 2522.4

Tenant Protection Regulations, Section 2502.4

New York City Rent and Eviction Regulations, Section 2202.4

New York State Rent and Eviction Regulations, Section 2102.3