

FACT SHEET



Andrew M. Cuomo, Governor

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION

#24 Major Capital Improvements (MCI)

Definitions

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.

Application and Documentation

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.

Case Processing

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.

Municipal Approvals and Tenant Responses

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.

Record Keeping and Proof of Payment

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 cancelled check(s) with related bank statement(s) showing negotiation contemporaneous with the completion of the work or proof of electronic payment, copies of negotiated bank checks and/or negotiated money orders made payable to the contractor, invoice receipt(s) marked paid in full contemporaneous with the completion of the work, signed contract agreement(s), signed change orders, and 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.

Further information may be found under DHCR Operational Bulletin 2017-1 available at www.nyshcr.org/Rent/OperationalBulletins/orao20171.pdf regarding proof of payment, lump sum costs, identity of interest, and cash payments.

Violations

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.

J-51 Tax Benefits

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.

MCI Rent Increases and Vacancy and Renewal Leases

If an apartment 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 allowed 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." When an MCI becomes collectible during a lease term of a prior tenant, the subsequent tenant is not responsible for any temporary retroactive increase not collected from the prior tenant.

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. Any portion of the temporary retroactive rent increase that became collectible between the effective date of the reduction order and the effective date of the restoration order is lost and cannot be collected prospectively.

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

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

1. What is an MCI?

A Major Capital Improvement (MCI) is an improvement or installation that improves the overall condition of a building that is subject to the rent stabilization or rent control laws. Examples of MCIs include new roofs, boiler, windows, plumbing or electrical rewiring. A comprehensive list of other examples of MCIs can be found under DHCR Fact Sheet #33 available at www.nyshcr.org/Rent/FactSheets/orafac33.pdf. The verified costs of MCIs can be passed onto rent regulated tenants through a permanent rent increase to your monthly rent. The building owner can only charge the MCI rent increase to tenants after they receive approval from the NYS Division of Housing and Community Renewal (DHCR) by meeting various required criteria.

2. What type of work qualifies for an MCI rent increase?

MCIs must satisfy several requirements. The work must benefit the entire building, not just a few apartments, and it must involve the replacement of one of the building's major systems. The MCI work must be for the operation, preservation, and maintenance of the building. MCIs must be depreciable as provided by the Internal Revenue Code. DHCR will not grant a MCI rent increase for ordinary repairs which only maintains the building in adequate working order. In addition, the building owner also must make sure that the MCI item being replaced or work being completed has outlived the DHCR's "Useful Life Schedule" which can be found under DHCR Fact Sheet #33 available at www.nyshcr.org/Rent/FactSheets/orafac33.pdf. The "Useful Life Schedule" provides the number of years a utility or structure within the building should last before it is replaced and thus eligible for a MCI rent increase. For example, a package or steel boiler can only be eligible for an MCI rent increase if the owner replaces it after 25 years, the typical estimated life span found in the Useful Life Schedule, and not every 5 years.

3. How will I know if my building owner applied for an MCI increase?

If the building owner applied for an MCI rent increase, all rent regulated tenants in the building will be mailed a notice by DHCR that summarizes the application in detail. This notice will contain information about the improvement, including the work dates and the claimed costs. In addition, this notice will include the number of rooms in your apartment. Note that at this stage, DHCR has not yet determined if the MCI will be granted, partially granted, or denied.

4. Do I get to respond to and challenge my building owner’s MCI application?

Yes. Tenants may individually and/or as part of a Tenant’s Association challenge and oppose this application before the MCI rent increase is granted and added to a tenant’s monthly rent. Tenants will get 45 days from the date on the notice to answer the building owner’s MCI rent increase application.

5. May I examine my building owner’s MCI application?

Tenants can review the copy of the owner’s MCI application that is in the possession of the DHCR and can do so by filling out a Records Access (REC-1) request form, available with instructions at: www.nyshcr.org/Forms/Rent/rec-1.pdf. Submit the request to:

NYS Division of Housing & Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street, 6th Floor
Jamaica, NY 11433
Attn.: Records Access Unit

Tenants can request to review the owner’s MCI application at DHCR’s Gertz Plaza office at the address listed above or request that a copy be mailed to them. In addition, if the owner placed a copy with all supporting documents at the subject building, the tenants can review it on site.

6. Can I get a time extension to answer the MCI application?

Tenants may request, for good cause, an additional 30 days extension to reply to the application. Tenants must list the reason why an extension is needed. Submit the request to:

NYS Division of Housing & Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street, 6th Floor
Jamaica, NY 11433
Attn.: MCI Unit

Be sure to include your docket number in your request.

7. What tenant responses/challenges will DHCR consider?

DHCR will review all tenant responses. Tenants can challenge the approval of the application for a number of reasons such as: defects in the installation of the new equipment, improper cost documentation, complaints of harassment by the owner, outstanding maintenance or building violations of record, lack of building registration, the issuance of DHCR rent reduction orders, failure to meet useful life requirements for the item being replaced, improper apartment room count. Some specific grounds for challenging an MCI may include, but are not limited to:

- The work doesn't benefit all tenants or doesn't benefit the whole building. EXAMPLE: The windows were only replaced on the third floor of a six-floor building.
- The work was not necessary and is cosmetic in nature only.
- The work was done on a system that has not out-lived its Useful Life, the owner previously received a MCI rent increase for this installation, and the building owner has not received a waiver from DHCR to replace the system.
- The work is for ordinary repairs and not for the operation, preservation, and maintenance of the building. Example, the owner patches over certain areas of the roof and does not replace the entire roofing system.
- The work is not depreciable under the Internal Revenue Code.
- The MCI item is defective, incomplete or completed in an unworkmanlike manner.
- The building owner did not properly document costs or did not properly calculate the costs.
- The building owner has harassed tenants. See DHCR Fact Sheet #17 available at www.nyshcr.org/Rent/FactSheets/orafac17.pdf for further information and file a report if necessary with DHCR.
- There were immediately hazardous violations on file with the local municipality on the date the owner filed the MCI application, such as Class C HPD violations or Class 1 severity DOB violations. You may visit HPD's website or DOB's website showing these violations.

HPD violations are available at:

https://hpdonline.hpdnyc.org/HPDOnline/provide_address.aspx

DOB violations are available at:

<http://a810-bisweb.nyc.gov/bisweb/bispi00.jsp>

- The owner’s MCI application was filed more than two years after the work was completed.
- Owner did not obtain the appropriate approvals from the local municipality as required by law.
- Owner received a government grant or insurance proceeds to pay for some of the work.
- The work claimed by the owner benefitted a commercial entity and the owner did not properly allocate the MCI costs to the commercial space.
- The building owner is not maintaining all required services in the the building, such as providing gas, heat, hot water, etc.
- The owner completed the MCI work in different stages spread out over many years.
- Some or all of the work was done by the Superintendent or someone related to the owner.
- The owner’s MCI application did not include a signed affidavit from all of the contractors to prove they finished the work and were fully paid.
- Some of the MCI costs were ineligible or filing fees.

8. Can I add challenges to an MCI application after I have submitted my initial answer?

Yes. Tenants can continue to submit evidence to DHCR on grounds to reject the MCI application even after they have filed their initial answer, until a DHCR order is issued. Be sure to include the Docket Number so that the DHCR office is aware of which MCI application you are referring to.

9. Can my building owner raise my rent prior to DHCR approval?

No. The owner must submit an application to DHCR and it must be thoroughly reviewed. DHCR must issue a written order to the tenants and the owner granting or denying the application and the order states the amount of the MCI rent increase.

10. How is the MCI rent increase calculated?

The MCI rent increase is calculated as follows:

The cost claimed by an owner (Claimed Cost) is audited and verified by DHCR and is reduced by: any items that do not qualify as MCIs, costs that the owner cannot prove, and insurance payments and/or government grants that paid for part of the MCI.

This arrives at the Approved Cost, which is the amount of the Claimed Cost minus the deductions made by DHCR. The Approved Cost is then adjusted if the MCI benefitted any commercial space at the building by the square feet of the commercial space in relation to the whole building.

The net approved cost is then amortized (spread out) over the time period specified by law (96 months for buildings of 35 or fewer units and 108 months for a building larger than 35 units). This amount is further divided by the total number of rooms in the building. This gives us the per room, per month rent increase. The apartment rent increase is found by multiplying this amount by the number of rooms in the apartment.

MCI CALCULATION CHART

Description	Calculation
1. Owner claims \$227,000 of capital work	\$227,000
Subtotal (claimed cost)	\$227,000
2. Audit shows \$35K of ineligible costs (i.e. not substantiated, paid for by insurance, paid for by gov't grants, etc.); claim reduced by \$35K	-\$35,000
Subtotal (approved cost)	\$192,000
3. Commercial space accounts for 10% of area of building; claim further reduced by 10%	-\$19,200
Subtotal (net approved cost)	\$172,800
4. Building has 30 units so, as specified in law, net approved cost amortized over 96 months	÷96
Subtotal (total building per month increase)	\$1,800
5. Building has 120 rooms (40 apartments with 3 rooms each) so total increase divided by 120	÷120
Total (per room per month increase)	\$15

11. DHCR granted the MCI rent increase and I don't agree with DHCR's decision. What can I do?

Tenants can file an appeal within 35 days of the date on the DHCR order that granted the MCI rent increase. Specify any errors or mistakes that DHCR may have made in issuing this order. The review in the appeal proceeding is generally limited to the facts or evidence presented to DHCR during the MCI case processing. If you are seeking to submit new facts or evidence on appeal such material should be identified with your reason why it should now be accepted and reviewed. The application to file the appeal, DHCR's Petition for Administrative Review form RAR-2, is available at www.nyshcr.org/Forms/Rent/rar2.pdf.

12. Does the filing of the appeal stop the owner from collecting the rent increase?

No. The owner is entitled by law to collect the prospective/permanent rent increase. However, the owner cannot collect the retroactive/temporary rent increase until the appeal is decided.

13. How does this increase apply to my rent?

DHCR's MCI order will specify the rent increase for your apartment and when such increase is collectible. The order will include a prospective/permanent rent increase to your monthly rent and may in addition, include a temporary/retroactive rent increase. The temporary/retroactive increase generally covers the period between the time the owner filed the application, known as the effective date on the order, and the collectible date on the order.

If your apartment is rent stabilized and you live in New York City, any MCI rent increase (permanent and temporary combined) is limited to 6% of your rent that was in effect when the owner filed the application (in the MCI order, DHCR refers to this as the rent roll date) during any 12-month period from the collectible date on the order. Any amount that is more than 6% of the rent may only be collected in future 12-month periods. If DHCR ordered a permanent and temporary increase, the permanent increase must be collected first. If the amount that is collected in the future 12-month periods is less than 6%, the owner may start collecting the temporary increase at the same time that the permanent increase is being collected, limited to the 6% cap.

For rent stabilized apartments outside of New York City, this limitation is 15% of your rent that was in effect when the owner filed the application. For rent controlled apartments statewide, this limitation is 15% of the rent in effect on the date the MCI order was issued.

For an example on how the MCI rent increase is applied to the rent, see example below:

On December 20, 2016, Mrs. Smith, whose rent is \$800, received an MCI rent increase order that increased her NYC rent-stabilized 4-room apartment's legal rent permanently by \$60 (\$15 a room for 4 rooms), raising her legal rent to \$860. The order had an effective date of September 1, 2016, resulting in an additional retroactive temporary increase of \$240 (\$60 x 4) for the months of September, October, November and December. The MCI rent increases can begin to be collected on January 1, 2017, subject to a 6% per year rent increase cap based on the rent roll date cited in the order, at which time Mrs. Smith's rent was \$800.

Mrs. Smith's MCI rent increase is capped by 6% and therefore limited to \$48 (6% of \$800). This 6% cap is for the entire MCI rent increase, and thus applies to the permanent and temporary increase combined. (For example: if the permanent increase would amount to a 7% rent increase and temporary increase would amount to a 2% rent increase, the tenant can still only be charged a maximum 6% rent increase that year, not a 9% increase). Therefore, on January 1, 2017, Mrs. Smith's collectible rent is increased by \$48 to \$848.

On January 1, 2018, the collectible rent can be increased by \$12 to \$860 which is now equal to the legal rent. In addition, the owner can begin to collect a portion of the temporary increase owed. The owner can bill her a separate MCI arrears charge of \$36 for 6 months (\$216), January - June. Her total monthly payment becomes \$896.

On July 1, 2018, the owner will only be able to collect a final \$24 arrears charge. The total monthly payment is reduced to \$884.

On August 1, 2018, the tenant can be billed \$860 as all arrears have been paid and only the monthly rent can be billed and paid.

Further examples are provided below:

MCI increase with a lease renewal calculation

On December 20, 2016, Mrs. Smith, whose rent is \$800, received an MCI rent increase order that increased her NYC rent-stabilized apartment's legal rent permanently by \$60 (\$15 a room for 4 rooms), raising her legal rent to \$860. The order had an effective date of September 1, 2016, resulting in an additional retroactive temporary increase of \$240 (\$60 x 4) for the months of September, October, November and December.

The MCI rent increases can begin to be collected on January 1, 2017, subject to a 6% per year rent increase cap based on the rent roll date cited in the order, at which time Mrs. Smith's rent was \$800. Mrs. Smith's rent increase is limited to \$48 (6% of \$800). This 6% cap applies to the permanent and temporary increase. The cap is not equal to 12%.

On January 1, 2017, her collectible rent is increased by \$48 to \$848.

On April 1, 2017, Mrs. Smith is offered a lease renewal that will commence on August 1, 2017. She chooses the two year lease renewal option.

On August 1, 2017, the legal rent is increased by \$17.20 to \$877.20 and the collectible rent of \$848 is increased by \$17.20 to \$865.20.

The \$877.20 was calculated as follows:

The subject MCI increase was effective on September 1, 2016* which preceded the September 30, 2016 rent that the renewal lease increase is based on.

Thus, \$800 plus \$60 equals \$860. The two year option is an increase of 2% which equals \$17.20. \$860 plus \$17.20 equals \$877.20.

* (If the MCI increase had been effective on or after October 1, 2016, the calculations would have been as follows: \$800 plus 2%, which is \$16 equals \$816. \$816 plus the MCI increase of \$60 equals a legal rent of \$876).

On January 1, 2018, the collectible rent can be increased by \$12 to \$877.20 which is now equal to the legal rent. In addition, the owner can begin to collect a portion of the temporary increase owed. The owner can bill her a separate MCI arrears charge of \$36 for 6 months (\$216), January - June. Her total monthly payment becomes \$913.20.

On July 1, 2018, the owner will only be able to collect a final \$24 arrears charge. The total monthly payment is reduced to \$901.20.

On August 1, 2018, the tenant can be billed \$877.20 as all arrears have been paid and only the monthly rent can be billed and paid.

14. Why do I have to pay the MCI increase when my rent is already set in my lease?

Even if your rent is set by your lease, the owner may still increase the rent based on an MCI rent increase ordered by DHCR. The DHCR issued standard lease renewal form contains language that states “The rent, separate charges and total payment provided for in this renewal lease may be increased or decreased by order or annual updates of the DHCR or Rent Guidelines Board.”

15. Do I have to pay a rent increase if I receive SCRIE/DRIE?

No. Tenants in New York City who receive Senior Citizen Rent Increase Exemption (SCRIE) or Disability Rent Increase Exemption (DRIE) should call 311 to receive information about their rent exemption after an MCI order. Tenants outside of New York City should contact their local SCRIE/DRIE office to receive information about their rent exemption after an MCI order. Tenants should make a copy of the MCI order and send it to their SCRIE/DRIE office so that their exemption can be updated.

For more information or assistance, call the DHCR Rent InfoLine, or visit your Borough or County Rent Office.

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Jamaica, NY 11433
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55 Hanson Place
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