

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)

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 (DHCR) for approval to raise the rents of the tenants. When the improvement or installation meets certain requirements it will be considered a Major Capital Improvement (MCI). 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 essential for the preservation, energy efficiency, functionality or infrastructure of the entire 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.

Some examples of MCI items include boilers, windows, electrical rewiring, plumbing and roofs. Unnecessary cosmetic improvements or work done in individual apartments that is not otherwise an improvement to the entire building are not eligible for MCIs. DHCR may grant a rent increase based upon the actual, verified and reasonable cost of the improvement and installation.

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. an itemized list of the work performed and a description or explanation of the reason or purpose of such work;
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 that the building is free of any hazardous or immediately hazardous violations with the applicable local municipalities;
6. 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 along with the total amount that is applicable to each apartment in addition to the related terms and conditions in a written order.

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/reasonable cost will be disallowed.

Further information may be found under DHCR Operational Bulletin 2017-1 available on our website at www.hcr.ny.gov/rent-operational-bulletins 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 hazardous or immediately hazardous violations outstanding pursuant to the NYC Housing Maintenance Code (HPD), NYC Building Code (DOB), NYC Fire Code (FDNY), Uniform Fire Prevention & Building Code (ETPA Counties). 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.”

How did the Housing Stability & Tenant Protection Act of 2019 affect MCI case processing and rent increases?

- Tenants have 60 days to respond to the owner’s MCI application.
- MCI increases are prohibited for buildings with 35% or fewer rent regulated units.
- MCI increases are prohibited if there are hazardous violations on file with the local municipality in addition to immediately hazardous violations.
- MCI increases may be granted based upon reasonable costs.
- Buildings with 35 or fewer units are amortized over 12 years, buildings with more than 35 units are amortized over 12 ½ years.
- MCI increases are effective and collectible on the first day of the first month following 60 days from the mailing date of the order.
- MCI increases are temporary and must be removed from the rent 30 years after the date the increase became effective inclusive of any increases granted by the local rent guidelines board.
- MCI increases, which were previously capped at either 6% or 15%, are now capped at 2% per year.

**#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.hcr.ny.gov/fact-sheets

The verified costs of MCIs can be passed onto rent regulated tenants through a 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. In addition, the improvement must be essential for the preservation, energy efficiency, functionality or infrastructure of the entire building and not for operational costs or unnecessary cosmetic improvements or for any group work done in individual apartments that is not otherwise an improvement to the entire building.

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.hcr.ny.gov/fact-sheets. 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 60 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.hcr.ny.gov/tenant-owner-forms

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.hcr.ny.gov/fact-sheets for further information and file a report if necessary with DHCR.
- There were hazardous or immediately hazardous violations on file with the local municipality on the date the owner filed the MCI application. You may visit HPD's website or DOB's website showing these violations.
- 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 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 either the amount of the Claimed Cost minus the deductions made by DHCR or the reasonable cost of the installation. 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 (144 months for buildings of 35 or fewer units and 150 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 144 months	÷144
Subtotal (total building per month increase)	\$1,200
5. Building has 120 rooms (40 apartments with 3 rooms each) so total increase divided by 120	÷120
Total (per room per month increase)	\$10

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.hcr.ny.gov/tenant-owner-forms

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 rent increase.

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 MCI rent increase is limited to 2% 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 2% of the rent may only be collected in future 12-month periods.

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, you may visit your Borough Rent Office.

Queens
92-31 Union Hall Street
6th Floor
Jamaica, NY 11433

Lower Manhattan
25 Beaver Street
New York, NY 10004

Brooklyn
55 Hanson Place
6th Floor
Brooklyn, NY 11217

Bronx
1 Fordham Plaza
4th Floor
Bronx, NY 10458

Upper Manhattan
163 W. 125th Street
5th Floor
New York, NY 10027

Westchester
75 South Broadway
3rd Floor
White Plains, NY 10601