

**A new section 9 NYCRR 2522.11 is added as follow:**

Schedule

(a) The reasonable costs that may be recovered for qualified major capital improvements (MCI) may not exceed the recoverable costs, as determined by DHCR. In making such determination, DHCR shall refer to such reasonable costs as specified in the Reasonable Cost Schedule found in Operational Bulletin 2020-1. The Reasonable Cost Schedule shall provide the recoverable cost of MCIs that fall within the following main three categories:

1. Major Systems;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Plumbing; (b) Gas Repipe; (c) Wiring; (d) Windows; (e) Boiler/Burner; (f) Hot Water Heater; (g) Elevator Replacement; and (h) Elevator Modernization.

2. Façade, Parapet, Roof;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Façade; (b) Parapet; and (c) Roof.

3. Other Systems.

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Chimney; (b) Doors; (c) Security System; and (d) Intercom; and may include such other systems as DHCR may determine.

(b) Each class of MCI may list more detailed types of capital improvement work. Each class of MCI described in the Schedule may be inclusive of additional cost that can be associated with the type of improvements listed within such class.

(c) The costs of each type of MCI work will be listed as per unit, per unit of measurement or per piece of equipment as is appropriate given the nature of the improvement.

(d) The maximum recoverable costs for each type of MCI specified in the initial Reasonable Cost Schedule shall be based on a survey of such construction costs undertaken for such installation.

The maximum recoverable costs listed in the Reasonable Cost Schedule shall be initially published and made available for public review and comment in conjunction with the promulgation process required for adoption of this regulation.

(e) Periodic Review of Reasonable Cost Schedule

Every year after adoption of this regulation, DHCR shall conduct a new survey to assess the categories of major capital improvements, the classes of work within categories eligible for major capital improvements and the maximum recoverable costs listed for the types of MCI costs identified in the Reasonable Cost Schedule.

(f) Procedure

(1) When applying for a temporary MCI rent increase, owners are required to submit an itemized list of work performed with a description or explanation of the reason or purpose of such work. Costs may be granted for related expenses that are not specified in the actual schedule, if they are found to be within or below the maximum costs for the class of work, are necessary for the claimed improvement, and eligible for reimbursement as an MCI. Costs will not be granted for expenses which are ineligible for MCI rent increases. Only the actual amounts expended by owners for qualifying MCI costs will be the basis for any temporary MCI rent increase. Qualifying owners will, therefore, be awarded a temporary MCI rent increase on the lesser of either: (i) the actual amount expended, or (ii) the maximum reasonable cost from the schedule, and such other additional items that are eligible as an MCI but are not listed as part of the Reasonable Cost Schedule.

(2) The schedule provides a maximum of costs that can be granted for eligible MCIs. All costs granted for a temporary MCI rent increase must be actual, reasonable, verifiable, and meet all other regulatory requirements.

(g) Waiver of Application of Reasonable Cost Schedule

Owners may apply for a waiver of application of the Reasonable Cost Schedule. Pursuant to the requirements specified below, such application must demonstrate that: (a) the claimed costs underlying the temporary MCI rent increase either: (i) are not identified in the Reasonable Cost Schedule, or are necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule, and such costs are accurate and reasonable under the circumstances; or (ii) that use of the Reasonable Cost Schedule will cause an undue hardship and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public, and the costs of such improvement are reasonable and accurate under the circumstances. Owners must request a waiver of the use of the Reasonable Cost Schedule in writing and accompany the application with the information and documentation as specified in subparagraph (i).

(h) Categories of Waiver

At the time of initial application for an MCI, an owner may apply for, and the DHCR may grant, a waiver of application of the Reasonable Cost Schedule where the owner meets any of the following criteria:

(1) Non-Landmarked Buildings (Buildings not designated by the Landmark Commission)

- i) A licensed engineer or architect must certify that:
  - a. The MCI costs for which owner seeks a temporary MCI rent increase are accurate and reasonable under the circumstances; and
  - b. There is no common ownership or other financial interest between the contractor installing the replacement or upgrade and the ownership entity of the owner; and
  - c. A bid process was conducted and supervised by a licensed architect or engineer.

(2) Landmarked Buildings (Buildings designated by the Landmark Commission)

Any eligible MCI work and the costs therefore were the result of any law, regulation, rule, or requirement under which the premises have been designated a landmark building.

(3) Capital Improvement Work Performed While Also Under Another Governmental Agency's Supervision

DHCR will also accept the cost of contract where: (1) the building is subject to both (a) the Rent Stabilization Law, and (b) another housing program; and (2) the contract is approved by or awarded under the supervision of a state, city or local housing entity in conjunction with that affordable housing program, and (3) such supervision includes a process by which such supervising agency reviews the costs to assure they are reasonable.

(4) Emergency Capital Improvements

DHCR will also accept the cost of contract where capital improvements were performed to remedy an emergency condition and for which the owner paid more than the reasonable costs due to such emergency situation, but the costs are actual and verifiable.

(5) Interim Rules

An owner may apply for a waiver of application of the Reasonable Cost Schedule if, prior to the effective date of this subsection (h), it has either entered a contract for the performance of MCI work within two years before final promulgation of this regulation, or submitted to DHCR an application for a temporary MCI rent increase. The recoverable costs will be determined according to the Reasonable Cost Schedule and these provisions, but the owner need not submit evidence of compliance with the bidding requirements set forth in subparagraph (i)(2); owner may instead use alternative means of establishing the reasonableness of the MCI costs sought to be recovered as directed by DHCR as part of the processing of such application.

- (6) For pending MCI applications, an owner must make this waiver application within 60 days of the final promulgation of this regulation, unless in the context of processing the MCI application the owner is directed by DHCR to submit an application for waiver at an earlier date.

(i) Waiver Procedure

As part of the written Waiver application for non-emergency capital improvements, owners must submit the following:

- (1) A certification by a licensed architect or engineer stating that:

- i) The purchases and contracts, whose costs owner seeks to recover have been awarded on the basis of analysis and bidding to the fullest extent possible, but with no less than three bidders having been solicited to perform the work unless the owner can demonstrate that the work is so highly specialized that such bids cannot be extended;
- ii) List of items for which owner solicited bids were necessary;
- iii) The costs claimed by owner for the MCI work are accurate and reasonable, provided that the architect or engineer's basis for such conclusion is credibly supported;
- iv) All changes to the original agreed upon scope of work were necessary to the underlying MCI and reasonably priced; and
- v) The owner selected the lowest responsible bidder or the bidder best suited to perform the MCI work, provided that the architect or engineer's basis for such conclusion is credibly supported.

(2) Certification by owner that it has complied with bid process requirements including submission of:

- i) Tabulation of all bids received; and
- ii) Copies of all bids received; and
- iii) A certification by each bidder disclosing whether the owner or any board member, general partner, officer or employee of owner, and/or principal or employee of any managing agent retained by owner, has a direct or indirect interest in the bidder or in the compensation to be received by the bidder pursuant to the proposed contract. Failure to accurately and fully complete this certification may result in the rejection of the bid for purposes of determining owner's application for waiver of the use of the Reasonable Cost Schedule, as well as rejection and a dismissal of the MCI application; and
- iv) Detailed description of the items for which owner initially solicited bids.

(3) A certification by the owner's architect or engineer certifying the necessity, appropriateness, and reasonableness of the costs of all changes to the original agreed upon scope of work that were performed in connection with the MCI, along with a description of the changes in the scope, price, or time of completion of the work related to each change order.

(j) For Emergency Capital Improvement MCI Applications

The owner must submit a statement from an independent engineer or architect describing the emergency, why the costs were greater than those in the schedule, that the costs were reasonable

for the situation, and why the owner could not obtain three bids in a timely manner due to the exigent circumstances.

(k) Notice

As part of the MCI application process, any request by an owner for a waiver of application of the Reasonable Cost Schedule, shall be made available to the tenants of the subject building(s) with an opportunity to comment on and contest the waiver.

(l) Denial of Waiver

If an owner's application for a waiver is denied, the owner's recoupment shall be limited to that required by the Reasonable Cost Schedule together with such other relief as may be appropriate. Approval of the waiver does not assure that the application will be granted, that it will not be modified, or that items submitted will not be disallowed, in whole or in part, as all other requirements and proof set forth in this paragraph must be met.

(m) Operational Bulletin

The initial Operational Bulletin 2020-1 including all amendments, shall be issued pursuant to this paragraph and Section 2527.11 of this Title. The Operational Bulletin 2020-1 and all amended versions shall be available in hardcopy form at 92-31 Union Hall Street, Jamaica, Queens, New York, and will be available on DHCR's website at [www.hcr.state.ny.us](http://www.hcr.state.ny.us) ([www.hcr.ny.gov](http://www.hcr.ny.gov))

**A new section 9 NYCRR 2502.10 is added as follow:**

Schedule

(a) The reasonable costs that may be recovered for qualified major capital improvements (MCI) may not exceed the recoverable costs, as determined by DHCR. In making such determination, DHCR shall refer to such reasonable costs as specified in the Reasonable Cost Schedule found in Operational Bulletin 2020-1. The Reasonable Cost Schedule shall provide the recoverable cost of MCIs that fall within the following main three categories:

1. Major Systems;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Plumbing; (b) Gas Repipe; (c) Wiring; (d) Windows; (e) Boiler/Burner; (f) Hot Water Heater; (g) Elevator Replacement; and (h) Elevator Modernization.

2. Façade, Parapet, Roof;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Façade; (b) Parapet; and (c) Roof.

### 3. Other Systems.

- i. The maximum recoverable costs shall be presented for the following classes of work: (a) Chimney; (b) Doors; (c) Security System; and (d) Intercom; and may include such other systems as DHCR may determine.
- (b) Each class of MCI may list more detailed types of capital improvement work. Each class of MCI described in the Schedule may be inclusive of additional cost that can be associated with the type of improvements listed within such class.
- (c) The costs of each type of MCI work will be listed as per unit, per unit of measurement or per piece of equipment as is appropriate given the nature of the improvement.
- (d) The maximum recoverable costs for each type of MCI specified in the initial Reasonable Cost Schedule shall be based on a survey of such construction costs undertaken for such installation.

The maximum recoverable costs listed in the Reasonable Cost Schedule shall be initially published and made available for public review and comment in conjunction with the promulgation process required for adoption of this regulation.

#### (e) Periodic Review of Reasonable Cost Schedule

Every year after adoption of this regulation, DHCR shall conduct a new survey to assess the categories of major capital improvements, the classes of work within categories eligible for major capital improvements and the maximum recoverable costs listed for the types of MCI costs identified in the Reasonable Cost Schedule.

#### (f) Procedure

(1) When applying for a temporary MCI rent increase, owners are required to submit an itemized list of work performed with a description or explanation of the reason or purpose of such work. Costs may be granted for related expenses that are not specified in the actual schedule, if they are found to be within or below the maximum costs for the class of work, are necessary for the claimed improvement, and eligible for reimbursement as an MCI. Costs will not be granted for expenses which are ineligible for MCI rent increases. Only the actual amounts expended by owners for qualifying MCI costs will be the basis for any temporary MCI rent increase. Qualifying owners will, therefore, be awarded a temporary MCI rent increase on the lesser of either: (i) the actual amount expended, or (ii) the maximum reasonable cost from the schedule, and such other additional items that are eligible as an MCI but are not listed as part of the Reasonable Cost Schedule.

(2) The schedule provides a maximum of costs that can be granted for eligible MCIs. All costs granted for a temporary MCI rent increase must be actual, reasonable, verifiable, and meet all other regulatory requirements.

#### (g) Waiver of Application of Reasonable Cost Schedule

Owners may apply for a waiver of application of the Reasonable Cost Schedule. Pursuant to the requirements specified below, such application must demonstrate that: (a) the claimed costs underlying the temporary MCI rent increase either: (i) are not identified in the Reasonable Cost Schedule, or are necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule, and such costs are accurate and reasonable under the circumstances; or (ii) that use of the Reasonable Cost Schedule will cause an undue hardship and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public, and the costs of such improvement are reasonable and accurate under the circumstances. Owners must request a waiver of the use of the Reasonable Cost Schedule in writing and accompany the application with the information and documentation as specified in subparagraph (i)

(h) Categories of Waiver

At the time of initial application for an MCI, an owner may apply for, and the DHCR may grant, a waiver of application of the Reasonable Cost Schedule where the owner meets any of the following criteria:

(1) Non-Landmarked Buildings (Buildings not designated by the Landmark Commission)

- ii) A licensed engineer or architect must certify that:
  - a. The MCI costs for which the owner seeks a temporary MCI rent increase are accurate and reasonable under the circumstances; and
  - b. There is no common ownership or other financial interest between the contractor installing the replacement or upgrade and the ownership entity of the owner; and
  - c. A bid process was conducted and supervised by a licensed architect or engineer.

(2) Landmarked Buildings (Buildings designated by the Landmark Commission)

Any eligible MCI work and the costs therefore were the result of any law, regulation, rule, or requirement under which the premises have been designated a landmark building.

(3) Capital Improvement Work Performed While Also Under Another Governmental Agency's Supervision

DHCR will also accept the cost of contract where: (1) the building is subject to both (a) the Rent Stabilization Law, and (b) another housing program; and (2) the contract is approved by or awarded under the supervision of a state, city or local housing entity in conjunction with that affordable housing program, and (3) such supervision includes a process by which such supervising agency reviews the costs to assure they are reasonable.

(4) Emergency Capital Improvements

DHCR will also accept the cost of contract where capital improvements were performed to remedy an emergency condition and for which the owner paid more than the reasonable costs due to such emergency situation, but the costs are actual and verifiable.

(5) Interim Rules

An owner may apply for a waiver of application of the Reasonable Cost Schedule if, prior to the effective date of this subsection (h), it has either entered a contract for the performance of MCI work within two years before final promulgation of this regulation, or submitted to DHCR an application for a temporary MCI rent increase. The recoverable costs will be determined according to the Reasonable Cost Schedule and these provisions, but the owner need not submit evidence of compliance with the bidding requirements set forth in subparagraph (i)(2); the owner may instead use alternative means of establishing the reasonableness of the MCI costs sought to be recovered as directed by DHCR as part of the processing of such application.

- (6) For pending MCI applications, an owner must make this waiver application within 60 days of the final promulgation of this regulation, unless in the context of processing the MCI application the owner is directed by DHCR to submit an application for waiver at an earlier date.

(i) Waiver Procedure

As part of the written Waiver application for non-emergency capital improvements, owners must submit the following:

- (1) A certification by a licensed architect or engineer stating that:

i) The purchases and contracts, whose costs the owner seeks to recover have been awarded on the basis of analysis and bidding to the fullest extent possible, but with no less than three bidders having been solicited to perform the work unless the owner can demonstrate that the work is so highly specialized that such bids cannot be extended;

ii) List of items for which owner solicited bids were necessary;

iii) The costs claimed by owner for the MCI work are accurate and reasonable, provided that the architect or engineer's basis for such conclusion is credibly supported;

iv) All changes to the original agreed upon scope of work were necessary to the underlying MCI and reasonably priced; and

v) The owner selected the lowest responsible bidder or the bidder best suited to perform the MCI work, provided that the architect or engineer's basis for such conclusion is credibly supported.

- (2) Certification by owner that it has complied with bid process requirements including submission of:

- i) Tabulation of all bids received; and
  - ii) Copies of all bids received; and
  - iii) A certification by each bidder disclosing whether the owner or any board member, general partner, officer or employee of owner, and/or principal or employee of any managing agent retained by owner, has a direct or indirect interest in the bidder or in the compensation to be received by the bidder pursuant to the proposed contract. Failure to accurately and fully complete this certification may result in the rejection of the bid for purposes of determining owner's application for waiver of the use of the Reasonable Cost Schedule, as well as rejection and a dismissal of the MCI application; and
  - iv) Detailed description of the items for which owner initially solicited bids.
- (3) A certification by the owner's architect or engineer certifying the necessity, appropriateness, and reasonableness of the costs of all changes to the original agreed upon scope of work that were performed in connection with the MCI, along with a description of the changes in the scope, price, or time of completion of the work related to each change order.

(j) For Emergency Capital Improvement MCI Applications

The owner must submit a statement from an independent engineer or architect describing the emergency, why the costs were greater than those in the schedule, that the costs were reasonable for the situation and why the owner could not obtain three bids in a timely manner due to the exigent circumstances.

(k) Notice

As part of the MCI application process, any request by an owner for a waiver of application of the Reasonable Cost Schedule, shall be made available to the tenants of the subject building(s) with an opportunity to comment on and contest the waiver.

(l) Denial of Waiver

If an owner's application for a waiver is denied, the owner's recoupment shall be limited to that required by the Reasonable Cost Schedule together with such other relief as may be appropriate. Approval of the waiver does not assure that the application will be granted, that it will not be modified, or that items submitted will not be disallowed, in whole or in part, as all other requirements and proof set forth in this paragraph must be met.

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versions shall be available in hardcopy form at 92-31 Union Hall Street, Jamaica, Queens, New York, and will be available on DHCR's website at [www.hcr.state.ny.us](http://www.hcr.state.ny.us) ([www.hcr.ny.gov](http://www.hcr.ny.gov))

**A new section 9 NYCRR 2102.11 is added as follow:**

Schedule

(a) The reasonable costs that may be recovered for qualified major capital improvements (MCI) may not exceed the recoverable costs, as determined by DHCR. In making such determination, DHCR shall refer to such reasonable costs as specified in the Reasonable Cost Schedule found in Operational Bulletin 2020-1. The Reasonable Cost Schedule shall provide the recoverable cost of MCIs that fall within the following main three categories:

1. Major Systems;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Plumbing; (b) Gas Repipe; (c) Wiring; (d) Windows; (e) Boiler/Burner; (f) Hot Water Heater; (g) Elevator Replacement; and (h) Elevator Modernization.

2. Façade, Parapet, Roof;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Façade; (b) Parapet; and (c) Roof.

3. Other Systems.

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Chimney; (b) Doors; (c) Security System; and (d) Intercom; and may include such other systems as DHCR may determine.

(b) Each class of MCI may list more detailed types of capital improvement work. Each class of MCI described in the Schedule may be inclusive of additional cost that can be associated with the type of improvements listed within such class.

(c) The costs of each type of MCI work will be listed as per unit, per unit of measurement or per piece of equipment as is appropriate given the nature of the improvement.

(d) The maximum recoverable costs for each type of MCI specified in the initial Reasonable Cost Schedule shall be based on a survey of such construction costs undertaken for such installation.

The maximum recoverable costs listed in the Reasonable Cost Schedule shall be initially published and made available for public review and comment in conjunction with the promulgation process required for adoption of this regulation.

(e) Periodic Review of Reasonable Cost Schedule

Every year after adoption of this regulation, DHCR shall conduct a new survey to assess the categories of major capital improvements, the classes of work within categories eligible for major capital improvements and the maximum recoverable costs listed for the types of MCI costs identified in the Reasonable Cost Schedule.

(f) Procedure

(1) When applying for a temporary MCI rent increase, owners are required to submit an itemized list of work performed with a description or explanation of the reason or purpose of such work. Costs may be granted for related expenses that are not specified in the actual schedule, if they are found to be within or below the maximum costs for the class of work, are necessary for the claimed improvement, and eligible for reimbursement as an MCI. Costs will not be granted for expenses which are ineligible for MCI rent increases. Only the actual amounts expended by owners for qualifying MCI costs will be the basis for any temporary MCI rent increase. Qualifying owners will, therefore, be awarded a temporary MCI rent increase on the lesser of either: (i) the actual amount expended, or (ii) the maximum reasonable cost from the schedule, and such other additional items that are eligible as an MCI but are not listed as part of the Reasonable Cost Schedule.

(2) The schedule provides a maximum of costs that can be granted for eligible MCIs. All costs granted for a temporary MCI rent increase must be actual, reasonable, verifiable, and meet all other regulatory requirements.

(g) Waiver of Application of Reasonable Cost Schedule

Owners may apply for a waiver of application of the Reasonable Cost Schedule. Pursuant to the requirements specified below, such application must demonstrate that: (a) the claimed costs underlying the temporary MCI rent increase either: (i) are not identified in the Reasonable Cost Schedule, or are necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule, and such costs are accurate and reasonable under the circumstances; or (ii) that use of the Reasonable Cost Schedule will cause an undue hardship and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public, and the costs of such improvement are reasonable and accurate under the circumstances. Owners must request a waiver of the use of the Reasonable Cost Schedule in writing and accompany the application with the information and documentation as specified in subparagraph (i)

(h) Categories of Waiver

At the time of initial application for an MCI, an owner may apply for, and the DHCR may grant, a waiver of application of the Reasonable Cost Schedule where the owner meets any of the following criteria:

(1) Non-Landmarked Buildings (Buildings not designated by the Landmark Commission)

iii) A licensed engineer or architect must certify that:

- a. The MCI costs for which the owner seeks a temporary MCI rent increase are accurate and reasonable under the circumstances; and
- b. There is no common ownership or other financial interest between the contractor installing the replacement or upgrade and the ownership entity of the owner; and
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(2) Landmarked Buildings (Buildings designated by the Landmark Commission)

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(3) Capital Improvement Work Performed While Also Under Another Governmental Agency's Supervision

DHCR will also accept the cost of contract where: (1) the building is subject to both (a) the Rent Stabilization Law, and (b) another housing program; and (2) the contract is approved by or awarded under the supervision of a state, city or local housing entity in conjunction with that affordable housing program, and (3) such supervision includes a process by which such supervising agency reviews the costs to assure they are reasonable.

(4) Emergency Capital Improvements

DHCR will also accept the cost of contract where capital improvements were performed to remedy an emergency condition and for which the owner paid more than the reasonable costs due to such emergency situation, but the costs are actual and verifiable.

(5) Interim Rules

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- (6) For pending MCI applications, an owner must make this waiver application within 60 days of the final promulgation of this regulation, unless in the context of processing the MCI application the owner is directed by DHCR to submit an application for waiver at an earlier date.

(i) Waiver Procedure

As part of the written Waiver application for non-emergency capital improvements, owners must submit the following:

- (1) A certification by a licensed architect or engineer stating that:
  - i) The purchases and contracts, whose costs the owner seeks to recover have been awarded on the basis of analysis and bidding to the fullest extent possible, but with no less than three bidders having been solicited to perform the work unless the owner can demonstrate that the work is so highly specialized that such bids cannot be extended;
  - ii) List of items for which the owner solicited bids were necessary;
  - iii) The costs claimed by the owner for the MCI work are accurate and reasonable, provided that the architect or engineer's basis for such conclusion is credibly supported;
  - iv) All changes to the original agreed upon scope of work were necessary to the underlying MCI and reasonably priced; and
  - v) The owner selected the lowest responsible bidder or the bidder best suited to perform the MCI work, provided that the architect or engineer's basis for such conclusion is credibly supported.
- (2) Certification by owner that it has complied with bid process requirements including submission of:
  - i) Tabulation of all bids received; and
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  - iv) Detailed description of the items for which the owner initially solicited bids.
- (3) A certification by the owner's architect or engineer certifying the necessity, appropriateness, and reasonableness of the costs of all changes to the original agreed upon scope of work that were performed in connection with the MCI, along with a description of the changes in the scope, price, or time of completion of the work related to each change order.

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The owner must submit a statement from an independent engineer or architect describing the emergency, why the costs were greater than those in the schedule, that the costs were reasonable for the situation, and why owner could not obtain three bids in a timely manner due to the exigent circumstances.

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(l) Denial of Waiver

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(m) Operational Bulletin

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**A new section 9 NYCRR 2202.28 is added as follow:**

Schedule

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1. Major Systems;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Plumbing; (b) Gas Repipe; (c) Wiring; (d) Windows; (e) Boiler/Burner; (f) Hot Water Heater; (g) Elevator Replacement; and (h) Elevator Modernization.

2. Façade, Parapet, Roof;

i. The maximum recoverable costs shall be presented for the following classes of work: (a) Façade; (b) Parapet; and (c) Roof.

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i. The maximum recoverable costs shall be presented for the following classes of work: (a) Chimney; (b) Doors; (c) Security Systems; and (d) Intercom; and may include such other systems as DHCR may determine.

(b) Each class of MCI may list more detailed types of capital improvement work. Each class of MCI described in the Schedule may be inclusive of additional cost that can be associated with the type of improvements listed within such class.

(c) The costs of each type of MCI work will be listed as per unit, per unit of measurement or per piece of equipment as is appropriate given the nature of the improvement.

(d) The maximum recoverable costs for each type of MCI specified in the initial Reasonable Cost Schedule shall be based on a survey of such construction costs undertaken for such installation.

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(e) Periodic Review of Reasonable Cost Schedule

Every year after adoption of this regulation, DHCR shall conduct a new survey to assess the categories of major capital improvements, the classes of work within categories eligible for major capital improvements and the maximum recoverable costs listed for the types of MCI costs identified in the Reasonable Cost Schedule.

(f) Procedure

(1) When applying for a temporary MCI rent increase, owners are required to submit an itemized list of work performed with a description or explanation of the reason or purpose of such work. Costs may be granted for related expenses that are not specified in the actual schedule, if they are found to be within or below the maximum costs for the class of work, are necessary for the claimed improvement, and eligible for reimbursement as an MCI. Costs will not be granted for expenses which are ineligible for MCI rent increases. Only the actual amounts expended by owners for qualifying MCI costs will be the basis for any temporary MCI rent increase. Qualifying owners will, therefore, be awarded a temporary MCI rent increase on the lesser of either: (i) the actual amount expended, or (ii) the maximum reasonable cost from the schedule, and such other additional items that are eligible as an MCI but are not listed as part of the Reasonable Cost Schedule.

(2) The schedule provides a maximum of costs that can be granted for eligible MCIs. All costs granted for a temporary MCI rent increase must be actual, reasonable, verifiable, and meet all other regulatory requirements.

(g) **Waiver of Application of Reasonable Cost Schedule**

Owners may apply for a waiver of application of the Reasonable Cost Schedule. Pursuant to the requirements specified below, such application must demonstrate that: (a) the claimed costs underlying the temporary MCI rent increase either: (i) are not identified in the Reasonable Cost Schedule, or are necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule, and such costs are accurate and reasonable under the circumstances; or (ii) that use of the Reasonable Cost Schedule will cause an undue hardship and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public, and the costs of such improvement are reasonable and accurate under the circumstances. Owners must request a waiver of the use of the Reasonable Cost Schedule in writing and accompany the application with the information and documentation as specified in subparagraph (i)

(h) **Categories of Waiver**

At the time of initial application for an MCI, an owner may apply for, and the DHCR may grant, a waiver of application of the Reasonable Cost Schedule where the owner meets any of the following criteria:

(1) Non-Landmarked Buildings (Buildings not designated by the Landmark Commission)

- iv) A licensed engineer or architect must certify that:
  - a. The MCI costs for which owner seeks a temporary MCI rent increase are accurate and reasonable under the circumstances; and
  - b. There is no common ownership or other financial interest between the contractor installing the replacement or upgrade and the ownership entity of the owner; and
  - c. A bid process was conducted and supervised by a licensed architect or engineer.

(2) Landmarked Buildings (Buildings designated by the Landmark Commission)

Any eligible MCI work and the costs therefore were the result of any law, regulation, rule, or requirement under which the premises have been designated a landmark building.

(3) Capital Improvement Work Performed While Also Under Another Governmental Agency's Supervision

DHCR will also accept the cost of contract where: (1) the building is subject to both (a) the Rent Stabilization Law, and (b) another housing program; and (2) the contract is approved by or awarded under the supervision of a state, city or local housing entity in conjunction with that affordable housing program, and (3) such supervision includes a process by which such supervising agency reviews the costs to assure they are reasonable.

(4) Emergency Capital Improvements

DHCR will also accept the cost of contract where capital improvements were performed to remedy an emergency condition and for which the owner paid more than the reasonable costs due to such emergency situation, but the costs are actual and verifiable.

(5) Interim Rules

An owner may apply for a waiver of application of the Reasonable Cost Schedule if, prior to the effective date of this subsection (h), it has either entered a contract for the performance of MCI work within two years before final promulgation of this regulation, or submitted to DHCR an application for a temporary MCI rent increase. The recoverable costs will be determined according to the Reasonable Cost Schedule and these provisions, but the owner need not submit evidence of compliance with the bidding requirements set forth in subparagraph (i)(2); the owner may instead use alternative means of establishing the reasonableness of the MCI costs sought to be recovered as directed by DHCR as part of the processing of such application.

- (6) For pending MCI applications, an owner must make this waiver application within 60 days of the final promulgation of this regulation, unless in the context of processing the MCI application the owner is directed by DHCR to submit an application for waiver at an earlier date.

(i) Waiver Procedure

As part of the written Waiver application for non-emergency capital improvements, owners must submit the following:

- (1) A certification by a licensed architect or engineer stating that:

- i) The purchases and contracts, whose costs owner seeks to recover have been awarded on the basis of analysis and bidding to the fullest extent possible, but with no less than three bidders having been solicited to perform the work unless the owner can demonstrate that the work is so highly specialized that such bids cannot be extended;
- ii) List of items for which owner solicited bids were necessary;
- iii) The costs claimed by owner for the MCI work are accurate and reasonable, provided that the architect or engineer's basis for such conclusion is credibly supported;
- iv) All changes to the original agreed upon scope of work were necessary to the underlying MCI and reasonably priced; and

v) The owner selected the lowest responsible bidder or the bidder best suited to perform the MCI work, provided that the architect or engineer's basis for such conclusion is credibly supported.

(2) Certification by owner that it has complied with bid process requirements including submission of:

i) Tabulation of all bids received; and

ii) Copies of all bids received; and

iii) A certification by each bidder disclosing whether the owner or any board member, general partner, officer or employee of owner, and/or principal or employee of any managing agent retained by owner, has a direct or indirect interest in the bidder or in the compensation to be received by the bidder pursuant to the proposed contract. Failure to accurately and fully complete this certification may result in the rejection of the bid for purposes of determining owner's application for waiver of the use of the Reasonable Cost Schedule, as well as rejection and a dismissal of the MCI application; and

iv) Detailed description of the items for which owner initially solicited bids.

(3) A certification by the owner's architect or engineer certifying the necessity, appropriateness, and reasonableness of the costs of all changes to the original agreed upon scope of work that were performed in connection with the MCI, along with a description of the changes in the scope, price, or time of completion of the work related to each change order.

(j) For Emergency Capital Improvement MCI Applications

The owner must submit a statement from an independent engineer or architect describing the emergency, why the costs were greater than those in the schedule, that the costs were reasonable for the situation, and why owner could not obtain three bids in a timely manner due to the exigent circumstances.

(k) Notice

As part of the MCI application process, any request by an owner for a waiver of application of the Reasonable Cost Schedule, shall be made available to the tenants of the subject building(s) with an opportunity to comment on and contest the waiver.

(l) Denial of Waiver

If an owner's application for a waiver is denied, the owner's recoupment shall be limited to that required by the Reasonable Cost Schedule together with such other relief as may be appropriate. Approval of the waiver does not assure that the application will be granted, that it will not be

modified, or that items submitted will not be disallowed, in whole or in part, as all other requirements and proof set forth in this paragraph must be met.

(m) Operational Bulletin

The initial Operational Bulletin 2020-1 including all amendments, shall be issued pursuant to this paragraph and Section 2527.11 of this Title. The Operational Bulletin 2020-1 and all amended versions shall be available in hardcopy form at 92-31 Union Hall Street, Jamaica, Queens, New York, and will be available on DHCR's website at [www.hcr.state.ny.us](http://www.hcr.state.ny.us) ([www.hcr.ny.gov](http://www.hcr.ny.gov))