CONSOLIDATED – REVISED REGULATORY IMPACT STATEMENT

1. STATUTORY AUTHORITY:

Section 26-511(b) of the Administrative Code of the City of New York, ("Rent Stabilization Law" "RSL") and RSL §26-518(a) authorize the Division of Housing and Community Renewal ("DHCR") to amend the Rent Stabilization Code) ("RSC"); the Emergency Tenant Protection Act of 1974 ("ETPA"), Laws of 1974, Ch. 576, section 10a authorizes DHCR to amend the Tenant Protection Regulations ("TPR"); the Omnibus Housing Act, Laws of 1983, Ch. 403, section 28, and section 26-405g(1) of the Administrative Code of the City of New York, (also known as the "City Rent and Rehabilitation Law") ("CRRL") authorize DHCR to amend the City Rent and Eviction Regulations ("CRER"); the Emergency Housing Rent Control Law ("RCL"), Laws of 1946, Chap 274, subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, by the Laws of 1964, Ch. 244, authorizes DHCR to amend the State Rent and Eviction Regulations ("SRER"); the Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), Part K, further empowered and required DHCR to promulgate rules and regulations to implement and enforce all provisions of Part K, specifically as implemented herein, to establish a schedule of reasonable costs for major capital improvements ("MCI") that shall set a cap for what costs can be recovered through a temporary major capital improvement increase, based on the type of improvement and its rate of depreciation. As amended by Chapter 39 of the laws of 2019, with respect to the provisions of Part K, the addition, amended and/or repeal of any rule or regulation necessary for the implementation of this act [HSTPA] on and after June 14, 2019 are directed to be made immediately and

completed on or before June 14, 2020 provided, however, that in the absence of such rules and regulations, the division shall immediately commence and continue implementation of all provisions of this act.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in Sections 26-501 and 26-502 of the RSL, Section 2 of the ETPA, section §8581(1) of the RCL and section 26-401(a) of the CRRL. The Legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. Each legislation also has an objective to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions.

3. NEEDS AND BENEFITS

DHCR has engaged in this amendment process with respect to these regulations to implement the Legislature's directive regarding the establishment of a schedule of reasonable costs for major capital improvements.

As more fully explained in other required documents submitted herewith, DHCR's use of this emergency regulatory process: (1) is consistent with the directory time limits for the implementation of HSTPA Part K; (2) reduces the uncertainty caused by having no rule, given the necessity of continued MCI processing required by law; (3) gives all regulated parties the benefit of their substance and procedures at the earliest opportunity; and (4)

preserves the opportunity for notice and comment to act in a manner consistent with the directory time limits for implementation of HSTPA Part K.

In light of the requirements of HSTPA Part K, DHCR has been resolving the reasonability of costs solely on a case by case basis where credible allegations regarding costs have been raised in the context of each individual MCI application. Articulated standards, even on an interim basis while final regulations are further framed through the full SAPA process, will be an obvious help to all regulated parties.

4. COSTS

The regulated parties are residential tenants and the owners of the rent regulated accommodations in which such tenants reside. There are no additional direct costs imposed on tenants or owners by these amendments. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. In the main, any additional costs are less based on the regulatory choices made by DHCR in implementation of this statutory directive but on this statutory directive itself, which is an added overlay on the pre-existing Major Capital Improvement process. These additional costs need to be weighed against the already significant outlay by owners and the rent impact on tenants, as well as DHCR's responsibility leading to supervise, monitor, and make the major capital improvement process more transparent.

Owners of regulated housing accommodations voluntarily apply for an MCI rent increase within two years after finishing an MCI. Going forward, the owners of regulated housing accommodations who seek to receive an MCI rent increase, will need to be more vigilant to assure their compliance with these changes to the regulations and in their selection of pricing

for major capital improvements. Compliance costs are already a generally accepted expense of owning regulated housing. Costs may be associated with conforming present business practices to this change in processing standards in that owners will often need to ensure that in contracting for major capital improvements that the costs do not exceed the schedule of reasonable costs or request a waiver of these requirements based on the good cause alternative procedures set forth in these regulations. DHCR has worked with experts in the field and reviewed historical data in an effort to assure that the schedule is reflective of the actual, reasonable costs for the major capital improvements. The majority of owners who operate in good faith and who do not attempt to inflate the costs of major capital improvements will be largely unaffected by the regulation. Moreover, the cost related to compliance in seeking to pay no more than reasonable costs are expenses that are consistent with good business practices of exercising due diligence to obtain a quality product and installation at a competitive price. Thus, even for applications pending before DHCR's rent administrator on the effective date of these regulations where the owner decides to seek a waiver the documentation required for that process is consistent with the business records an owner would maintain to justify paying the contract price in the first instance.

Tenants will largely not incur any additional costs through implementation of the proposed regulations and may incur less costs based on the ceiling for recovery of costs of major capital improvements.

5. LOCAL GOVERNMENT MANDATES

The proposed rulemaking will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments may, in a limited fashion, increase the paperwork burden. There may be additional required documentation to establish compliance with the schedule of reasonable costs, but it is relatively minimal. There will be more instances where an owner may need to provide additional proof of the reasonable costs of major capital improvements, but owners must already provide documentation with its application to DHCR for a rent increase based on a major capital improvement. There may be more significant paperwork required from an owner associated with seeking an individualized assessment of reasonable costs either based on a waiver or a major capital improvement not covered by the schedule.

However, this kind of paperwork is not unique as a somewhat similar process is already extant in Major Capital Improvement processing with respect to the implementation of the useful life schedule in DHCR's regulations. From the viewpoint of an owner, any related paperwork and regulatory compliance expense must be balanced against what it will be seeking, which is a more particularized analysis of the reasonability of its expenditures. Presumably the owner by making such an application, particularly for a waiver, has decided the benefits outweigh the additional paperwork and regulatory burden. In this context it should be noted that the absence of an item on the schedule that is MCI eligible does not meant that the reasonableness of its cost is not subject to review. Instead it will be subject to a more particularized review.

For certain items that may be MCI eligible, DHCR assessed that there was insufficient data available to determine a reasonable cost ceiling. In those instances, DHCR is not accepting costs without a reasonable cost review. That review will be included as part of case-by-case processing and is already encompassed in the waiver and alternative means process set forth in the regulations.

Where there is a particularized request, tenants will have an additional paperwork and regulatory burden of response if they choose and the non-substantive change to the regulation clarifies this previously implicit right of tenant notice of any waiver request and an opportunity to respond as part of the process which leads to a DHR determination on the owner's application for an increase. Primarily the reasonable cost schedule is designed to reduce the present burden on all parties and reduce most specifically tenants of particularized responses in establishing reasonable costs.

Case specific claims that the application of the changed regulations may require even greater flexibility or a different remedy, will be best handled in the context of the administrative applications where such factual claims can best be assessed.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements, nor any known City requirements. New York City, in the context of its J-51 program does have a reasonable cost schedule for improvements. However, the schedule has not been the subject of an update contemporaneous with the passage of the HSTPA and is used to calculate a tax incentive rather than for actual compensation of the costs of an MCI installation. In short, J-51 reflects one of many instances where a rent regulated property may also participate in another State, City or Federal housing program. In those instances, there is usually a need to comply with the DHCR regulations as well as the mandates of that City, State or Federal program.

8. ALTERNATIVES

DHCR considered a number of alternative methodologies in creating this schedule. As each alternative had its respective strengths and weaknesses, DHCR reviewed all of them in creating its final work product.

DHCR did start out by reviewing the HPD J-51 schedule. However, for the reasons stated above, it could not be the sole source for review. Even updating those costs by any standard projection or index would be prone to some inaccuracies. Therefore, DHCR retained an expert engineering firm selected through a competitive bid process to consult with in the formulation of the reasonable cost schedule. DHCR also used its own staff with experience in MCI processing and its database of determinations as a source of data primarily to identify the types and categories of MCI applications. This work was augmented by construction management and its architecture and engineering staff, other state construction experts as well as certain data from the state affordable housing portfolio. DHCR did also examine the potential use of standardized industry accepted cost estimation software for new construction and reviewed information and input presented as well as listened to tenant and industry advocates and reviewing their submissions, a standard method of compliance indicated by a SAPA regulatory flexibility analysis.

DHCR determined that the reasonable cost schedule developed in conjunction with the outside consulting engineering firm augmented by the other reviews undertaken gave the most informed and comprehensive reflection of costs. DHCR created as part of these regulations, the possibility of gauging reasonable costs for major capital improvements not contained in the cost schedule as well as alternative submissions, even for those on the schedule, where it can be established that such an individualized project assessment is still necessary and appropriate. The experience of the outside consulting engineering firm and

DHCR's own affordable housing and its rehabilitation staff concurred with that assessment of the cost of replacing major systems in buildings here of significant age and not constructed based on a single standard configuration can reasonably vary. As noted previously, the use of an individualized process where appropriate mirrors DHCR procedure in implementing useful life/depreciation schedule already part of DHCR's regulations and the safeguards to obtain reasonable costs reflect a competitive bidding procedures patterned after that used by DHCR in its Mitchell-Lama portfolio. Moreover, it almost goes without saying, that the present COVID-19 pandemic has created a level of uncertainty in the construction industry that makes reliance on historical data and projections by themselves, without acknowledging the possibility of the need for other alternatives, problematic.

DHCR of course welcomed this immediate and broader test of its assessments through notice and comment period as required for the regulation's promulgation as a final rule but with implementation of this necessary provision of the statute in place, while that process is ongoing.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE

It is anticipated that for pending cases, regulated parties may require additional time to comply with the proposed rules. Where such time is necessary it will be reasonably provided in the context of these pending proceedings. As these new regulations will not be applied to cases which on their effective date have already been issued by the Rent Administrator but are on appeal, (whether in Appellate Courts, Supreme Court or PAR) the need for more complex compliance periods should be reduced significantly.