

# **Future MCI Costs: How High Can They Go?**

## **Update on the Hearing of Sept. 9, 2020: Reasonable Cost Schedule for MCIs**

**SUMMARY** On September 9, 2020, state agency DHCR (Division of Housing and Community Renewal) held a public hearing on the **Reasonable Cost Schedule** they put out in June 2020 for MCI (major capital improvement) costs that get added to rent-stabilized rents. All apartments in Stuyvesant Town and Peter Cooper Village are rent-stabilized.

Tenants, tenant advocates, at least one expert, and several elected officials made strong cases why the cost schedule was **inaccurate** and **unreasonable** and **needed to be completely redone**. Despite all the testimony and requests to Commissioner RuthAnne Visnauskas, there has been no response from DHCR. As recently as this week we have been in touch with our state representatives, Senator Brad Hoylman and Assembly Member Harvey Epstein, who also have received no response.

**RECAP** As part of 2019's historic new housing law, state agency DHCR (Division of Housing and Community Renewal) was required within a year to come up with, among other things, a Reasonable Cost Schedule for MCIs—maximum costs for eligible work. They hired a New Jersey firm to determine the costs.

Tenants and their advocates knew we had to make sure that the costs were accurate and reasonable. We couldn't let DHCR set costs in stone—costs that **tenants would pay for 30 years**. We couldn't let DHCR undermine the protections tenants fought so hard for and got in the new law.

On June 16, 2020, DHCR issued an [operational bulletin](#) listing the maximum costs for items the agency deemed eligible for MCIs.

The Tenants Association knew we had to act:

1. We retained expert estimator Lewis Finkel to review the costs and produce a report, which we submitted as testimony. Mr. Finkel found the costs to be even higher than those in Manhattan, the most expensive in the state. He also testified at the hearing.
2. We wrote up three pages of talking points to prepare ourselves and our elected representatives.
3. We enlisted the support of State Senator Brad Hoylman, Assembly Member Harvey Epstein, and Council Member Keith Powers, who immediately agreed to help.
  - a) Sen. Hoylman contacted Senate Housing Committee Chair Brian Kavanaugh, and they sent a letter signed by nine other colleagues to DHCR commissioner RuthAnne Visnauskas.
  - b) AM Epstein sent his own letter, which 15 of his Assembly colleagues also signed.
  - c) All three electeds agreed to testify at the hearing.

4. We wrote our own letter to the commissioner, eblasted it to the community, and collected about 330 signatures from tenants. This letter became part of the testimony we submitted.
5. Two TA board members testified in person, and others submitted written testimony.
6. We let you know how to submit your own testimony and how to watch the hearing online.

Other tenant advocates also mobilized and attacked the Reasonable Cost Schedule from another perspective: the cost schedule should not have been issued in the form of an operational bulletin, which is not a legally valid vehicle for this purpose (see AM Epstein's letter below).

There are many more details to this issue, but we suggest you read the testimony below of TA president Susan Steinberg, vice president Anne Greenberg, expert Lewis Finkel, and attorney Seth Miller, as well as letters sent to Comm. Visnauskas by Sens. Kavanagh and Hoylman, AM Epstein, and the TA.

#### **[Video of the hearing and times of testimony](#)**

Lewis Finkel 0:23:37

Sen. Gustavo Rivera 0:42:09

Seth Miller (of Collins, Dobkin & Miller, the TA's attorney) 1:10:55

Sen. Brian Kavanagh 1:23:12

TA president Susan Steinberg 1:34:00

TA vice president Anne Greenberg 1:52:25

Sen. Brad Hoylman 1:58:00

AM Harvey Epstein 2:03:50

CM Keith Powers 5:29:52

#### **Submitted testimony and correspondence (see below)**

TA letter to Brad Hoylman and Harvey Epstein 8/25/20

Testimony of expert estimator Lewis Finkel

Testimony of attorney Seth Miller

Testimony of TA president Susan Steinberg

Testimony of TA vice president Anne Greenberg

TA and tenant letter to DHCR commissioner Visnauskas

Brian Kavanagh, Brad Hoylman and 9 senators' letter to Visnauskas

Harvey Epstein and 15 assembly members' letter to Visnauskas

#### **[Summary of the new rent law](#)**

# STUYVESANT TOWN–PETER COOPER VILLAGE TENANTS ASSOCIATION

August 25, 2020

NYS Senator Brad Hoylman  
Legislative Office Building, Room 310  
Albany, NY 12247

NYS Assembly Member Harvey Epstein  
Legislative Office Building, Room 427  
Albany, NY 12248

Re: HCR Operational Bulletin 2020-1, Reasonable Cost Schedule (MCIs)

Dear Honorables Hoylman and Epstein:

We want to bring to your attention a matter of serious concern regarding Operational Bulletin 2020-1, Reasonable Cost Schedule, dated June 16, 2020, issued by the New York State Division of Housing and Community Renewal, Office of Rent Administration.

As you know, under the HSTPA, DHCR was charged with establishing a schedule of reasonable costs for Major Capital Improvements that sets a ceiling for what can be recovered through temporary MCI increases, based on type of improvement and its rate of depreciation. To come up with the costs, they issued a Request for Proposal and retained an outside firm, O&S Associates, a full-service architectural and engineering firm located in New Jersey.

In its “Statement of necessity for Emergency Adoption of Reasonable Cost Schedule,” DHCR noted that the Clean-Up Legislation directed that any rule or regulation necessary for implementation had to be completed on or before June 14, 2020. Consequently, the agency determined that they had to adopt the Reasonable Cost Schedule on an emergency basis. Therefore, this schedule was effective the date it was issued, and the agency stated that *compliance with the minimum periods of notice, public comment and other requirements of State Administrative Procedure Act (section 202(1) would be contrary to the public interest.*

Nevertheless, the agency has **scheduled a public hearing on these costs for September 9, 2020**. We are concerned that this public hearing is window dressing, a box for the agency to tick off as having discharged its obligation, and that the agency intends to stick with the costs in its operational bulletin no matter what testimony we provide. **We are asking for your support and hope you will work with other legislative members to delay finalization of the costs until a neutral third party not selected by DHCR reviews these costs.** Our reasons for this request are enumerated below.

# STUYVESANT TOWN–PETER COOPER VILLAGE TENANTS ASSOCIATION

## Excessive Costs

The allegedly reasonable costs set by O&S Associates, which has mostly commercial and non-rent-regulated projects, are anything but. Some of the costs are truly excessive when compared to costs approved for previous MCIs. Moreover, many of the costs listed for individual installations on the schedule do not take into account the varieties of actual construction installations.

## No Geographic Distinction

Now that rent regulation is no longer limited to Downstate New York, the proposed schedule of reasonable costs does not take into account the difference in costs paid by architects, engineers, and contractors in Syracuse or Elmira, for example, which are lower than those paid by firms in the New York City area. How is the difference to be accounted for?

## Items Not IRS Depreciable

The foremost qualification for MCI repair, improvements, or installations is that they be depreciable according to the Internal Revenue Service. The schedule of costs lists items such as pressure washing (which is purely cosmetic), sidewalk sheds, site safety managers, adjusting and fixing lockset in an apartment entry, for example.

## Examples of Items that Should Be IAIs

HSTPA is clear that work done inside of apartments does not qualify for MCIs, and further must be for *“Preservation, energy efficiency, functionality or infrastructure of the entire building including heating, windows, plumbing and roofing...that directly or indirectly benefit all tenants.”* Therefore, we feel that apartment doors (these never need to be replaced in an entire building at once, except for cosmetic reasons) and door locks, electrical wiring, outlets and circuit breaker panels inside apartments, bathroom GFI outlets, and windows inside apartments as opposed to lot-line (hallway and lobby windows) should be IAIs. Apartment window replacement could only be considered *essential for the energy efficiency of the entire building* if single-pane windows were replaced with double-pane windows or double-pane windows were replaced with triple-pane. Broken window pane or gasket replacement in individual apartments falls into the ordinary repairs category and does not qualify for an MCI. Actual full window replacement if needed in an individual apartment would fall into the IAI category.

## Examples of Items that Should Not Be MCIs

- A/C brackets are now appearing in the cost schedule at \$202 per bracket; they should be neither MCI nor IAI. Landlords are prohibited from charging for them per DHCR Fact Sheet #44.
- Window Child Guards are now appearing in the cost schedule at \$50 per guard; they should be neither MCI nor IAI. DHCR Fact Sheets #25 and 44 allow \$10 per guard collectible as a one-time surcharge fee. Also, Fact Sheet #25 states that the cost of window guards installed in public areas may NOT be passed along to tenants.
- Caulking at \$13 per linear foot is now appearing in the cost schedule; this should not be an MCI, it is general maintenance.

## **STUYVESANT TOWN–PETER COOPER VILLAGE TENANTS ASSOCIATION**

Adding these items into the cost schedule at this point indicates DHCR's attempt to find a way to bolster the landlord's return on investment.

### **Labor Costs**

Do the costs proposed by O&S Associates reflect prices based on prevailing wages or non-union costs? The high costs proposed by O&S would seem to cover union contractor work. As we all know, MCI work, particularly in New York City, is completed by non-union shops. Under the cover of the costs listed in this schedule, property owners will be able to hire non-union shops and be reimbursed at the substantially higher rate of union contractors.

### **Lack of Transparency**

The community does not have access to the O&S proposal and, therefore, no way to determine just how the company came up with their schedule. Filing a FOIL request would not give us enough time to engage a neutral professional to review the costs before the hearing.

### **Circumventing the 2% Cap and Increased Rate of Amortization**

We are concerned that the proposed Schedule of Reasonable Costs is a device to allow property owners to recoup what they lost in annual collectibility with the passage of HSTPA. It would allow landlords undue gain at the expense of the many thousands of rent regulated tenants, who are already desperately stretched beyond any reasonable rent burden.

Because of our concerns that these costs provide a loophole for an end-run by developers to circumvent the 2% annual cap on MCIs, the STPCV TA retained the services of Lewis Finkel, F.C.P.E., a professional, highly regarded cost estimator, who will provide a neutral third-party analysis. His report will be available September 4, and we intend to submit it to the DHCR and use it as the basis for our testimony. We will, of course, provide you with a copy as well.

We know how tirelessly you are working for tenants and the three important bills now percolating in the legislature. However, we do not want to see the HSTPA undermined. Time is of the essence. We need an opportunity to reasonably counter the DHCR's schedule before it becomes set in stone. May we hear from you on this issue?

Very truly yours,

Susan Steinberg, President

Anne Greenberg, Vice President

Stuyvesant Town-Peter Cooper Village Tenants Association

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September 8, 2020

New York State Division of Housing and Community Renewal (DHCR) Office  
of Rent Administration

Reference: Reasonable Cost Schedule Operational Bulletin 2020-1 (June 16,  
2020)

## **TESTIMONY OF LEWIS FINKEL F.C.P.E.**

Hi my name is Lewis Finkel and I want to thank you for allowing me to  
speak about the proposed Reasonable Cost Schedule.

My company Professional Construction Services has been in business over  
30 years serving Municipalities, Architects, Engineers and Facility  
Departments with their construction estimating requirements.

I am a certified professional estimator with 50 years in the design and  
construction industry. I have been an expert witness on legal cases ranging  
from commercial to residential disputes.

I have taught construction estimating for over 30 years at local Community  
Colleges and for the last ten years in the bachelor's degree Construction  
Management program at Central Connecticut State University.

I have served as National President of both the American Society of  
Professional Estimators (ASPE) and the Consulting Estimators Round Table  
(CERT).

I am what some call a displaced New Yorker having grown up in Brooklyn  
and Staten Island and graduated from Brooklyn Tech.

My first job in construction was in Manhattan doing scheduling, site  
supervision, layout and estimating on a high rise downtown.

I have estimated many projects in the tri-state area including the original budgeting for the Pathmark at 125<sup>th</sup> Street and numerous multifamily housing projects from luxury condominiums to affordable and public housing.

The Stuyvesant Town-Peter Cooper Village Tenants Association has retained me to analyze the Reasonable Cost Schedule to see whether the costs were fair and reasonable.

I reviewed all the items in the Reasonable Cost Schedule some did not have enough information to evaluate and most appeared to be inflated by an average of over 20 percent.

**The Reasonable Cost Schedule should be rejected in its current form.**

Please let me explain:

1. A “one size fits all” theory does not work, there are significant variations in cost depending on the actual work required. There can be wide fluctuations in the dollars depending on the quantities involved and the specifications. An example would be the electrical rewiring of a unit. Since units vary in size the amount of money needed to rewire a studio apartment would be substantially less than rewiring a five-bedroom apartment. Just think about how many switches and outlets there are in each room of an apartment. Yet, the schedule has one number for the rewiring of a unit with no allowance for size of the apartment.
2. If this schedule is planned for use in the entire State of New York, the numbers just do not work. Since labor is always a significant portion of any project, the labor rates throughout the state vary greatly. As an example, a non-union Carpenter in Manhattan might have an hourly rate of \$83.58 including additions for Workers’ Compensation, Social Security, etc. but might be only \$43.47 in Oswego County. If the tradesperson was a union worker, the Manhattan rate might be \$139.45 and the Oswego rate might be \$63.38 – note that the Manhattan rate is over double the Oswego County rate.
3. It appears that the unit prices in the schedule are based on union or prevailing labor rates in Manhattan while much of the work on rent

regulated housing is actually completed by non-union tradespeople according to the tenant association. In completing the analysis, labor rates were established for most of the pertinent trades that might be performing the work involved. The general theory in developing the “selling rate” for the non-union trades was that the person would be netting the same amount of money as a union tradesperson. The biggest difference in union vs. non-union would be that the non-union tradespeople would not be subject to the dollars per hour that would be sent to the union hall for fringes. Therefore, in evaluating the various items material and equipment would be about the same dollars as on a union project, however the labor would be less expensive.

4. To give some examples:

The hourly cost for tradespeople in Manhattan:

A bricklayer	union \$143.00	non-union \$109.19	the union cost is 30% more
An electrician	union \$156.13	non-union \$84.48	the union cost is 85% more

Note that the union rates include the hourly fringes going to the union hall for the bricklayer of \$28.51 while for the electrician it is calculated at 76.725% of the hourly rate plus \$16.25 or \$59.22 per hour.

There are several items that have dollars per unit without an appropriate description of the work actually involved. Waterproofing – what type of material? In Heating Systems is the asbestos on pipes or on boiler breaching, or somewhere else?

**The bottom line based on the above, this Reasonable Cost Schedule should be rejected, and the process restarted.**

Thank you for allowing me to represent my point of view. Please consider it in your deliberations. I know you have a long day ahead of you.



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September 9, 2020

Via E-Mail ([michael.berrios@nyshcr.org](mailto:michael.berrios@nyshcr.org))

Michael Berrios, Executive Assistant  
Office of Rent Administration  
New York State Division of Housing  
and Community Renewal  
Gertz Plaza  
92-31 Union Hall Street, 6th Floor  
Jamaica, New York 11433

Re: *Comments on “Reasonable Cost Schedule” and Related Regulations*

Dear Mr. Berrios:

This firm represents a large number of tenants’ associations, including the Stuyvesant Town-Peter Cooper Village Tenants’ Association, in responding to MCI applications by owners. I submit these comments in an effort to urge the New York State Division of Housing and Community Renewal (“DHCR”) to rescind the “Reasonable Cost Schedule” that was adopted, as Operational Bulletin 2020-1, on an emergency basis, in June 2020, together with new sections of the Rent Stabilization Code (2522.11); the NYC Rent and Eviction Regulations (2502.10) and the Emergency Tenant Protection Regulations (2202.28).

The HSTPA of 2019 mandated that DHCR promulgate new regulations that limited both the type of work that would qualify for a temporary MCI rent increase and the amount that an owner could recover for MCI work. New regulations were required in order to (a) “establish a schedule of reasonable costs for major capital improvements, which shall set a ceiling for what can be recovered”; (b) apply that schedule to a limited list of eligible improvements “based on the type of improvement and its rate of depreciation”; (c) require that MCI work can only be performed by licensed contractors, (d) require that work not be permitted to qualify unless the contractor is not owned in common with the owner of the building, and (e) require that violations be removed of record before any MCI work could qualify. There were therefore *five* subjects that the legislature required to be included in DHCR’s regulations.

Of the five mandatory subjects for MCI regulation, DHCR has now enacted regulations covering only one: an Operational Bulletin, not a regulation, setting forth supposedly reasonable costs on some but not all of the work that DHCR regards as eligible for rent increases. This incomplete regulation should not have been adopted independently of the regulations that the legislature has required to be

Michael Berrios, Executive Assistant  
Office of Rent Administration  
New York State Division of Housing  
and Community Renewal  
September 9, 2020  
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promulgated to govern MCI eligibility in general. The “reasonable cost” regulations and Operational Bulletin make it clear that DHCR has *not* adopted an exhaustive list of the items that would be eligible for an increase, which is exactly what the legislature required: a schedule of the cost ceiling for each eligible “type of improvement.”

As noted in the expert report submitted by the Stuyvesant Town-Peter Cooper Village Tenants Association, the “reasonable costs” listed in the Operational Bulletin generally run from 150% to 200% of the actual costs prevailing in the industry in New York City. DHCR arrived at these costs by relying exclusively upon its single contractor. According to its Regulatory Impact Statement, DHCR only reviewed its database of prior decisions to “identify the types and categories of MCI applications” and not for cost data. DHCR has not made public the underlying data used by its contractor. Nor has DHCR given the public an opportunity to submit specific cost data for purposes of developing a reasonable cost schedule. For this reason alone, the schedule is premature, and should be rescinded.

Neither the regulations nor the Operational Bulletin ever say what DHCR now interprets the phrase “reasonable cost” to mean. In the context of the excessive costs now embodied in the Operational Bulletin, and in the context of the open ended “waiver” process that contemplates the continued availability of rent increases for work not set forth in any schedule, DHCR’s view of the meaning of “reasonable cost” can be inferred. DHCR appears to believe that MCI costs are “reasonable” if it is not shockingly obvious that they are padded.

By “reasonable cost” the legislature evidently meant something different. The legislature meant to limit rent increases to the amount that a building should reasonably be expected to pay, for improvements that are on a pre-selected list, and not for any other improvements.

Because the underlying data used by its contractor in developing OB 2020-1 are not public, it is impossible to tell what parts of “the industry”, and in what locations, are included in the averages that supposedly led to the regulation. This missing information is critical, because the legislature clearly did not mean to include, when assessing the “reasonable cost” of exterior work, the price of restoring custom terra cotta figurines on Park Avenue. It meant to compel the agency to come up with an exclusive list of the kinds of work that owners of regulated housing, implementing best practices, should be expected to do, and to take an average of the cost of performing that work *in rent regulated buildings*, not in every building in New York City.

Put another way, the reasonable cost schedule should reflect the cost of doing eligible work in those buildings in which 65% or more of the tenants are rent regulated, and the data from *no other buildings* should be included in the average. Because OB 2020-1 reflects costs that clearly exceed that standard, it should be rescinded.

The legislative command to proceed by promulgating regulations, and to allow increases only

Michael Berrios, Executive Assistant  
Office of Rent Administration  
New York State Division of Housing  
and Community Renewal  
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for work appearing on a schedule including “the type of improvement”, necessarily means that the portion of OB 2020-1 that contemplates a “waiver” process is *ultra vires*. One of the purported grounds for an owner to obtain a waiver is that the work for which an increase is sought does not appear on the schedule. But the legislature specifically prohibited any rent increase for any work not appearing on DHCR’s schedule. There is no authority for the agency to allow waivers at all. For that matter, there is no authority for DHCR to resurrect the idea, buried by the HSTPA, that an owner can invent new and ever more creative categories of major capital improvements.

DHCR’s “waiver” procedure appears to be entirely *ex parte*, as though the affected tenants would have nothing to say about whether DHCR’s already excessive cost schedule should be set aside. A waiver process that contemplates no input from affected tenants would violate fundamental standards of due process and fairness, and threaten to circumvent the entire legislative intent of having a schedule that limits costs and limits the types of qualifying improvements.

The details of the regulations and Operational Bulletin show that the agency has not fully coordinated its “reasonable cost” schedule with the other mandates of the HSTPA. Numerous items of work that can only be performed in individual apartments, such as terrace work, apartment doors, and intercoms, are included in the schedule, despite the legislative command that “no increase shall be approved for group work done in individual apartments.” The regulations allow “related expenses” not specified in the schedule, despite the legislative intent that the schedule be an exhaustive list of all MCI eligible work.<sup>1</sup>

The flaws in the survey data that led to OB 2020-1 are amplified by DHCR’s proposal to perform a new survey every year, evidently so that the “reasonable costs” can increase on an annual basis. The legislature clearly did not contemplate that the limits that it placed on MCI increases would themselves increase on an annual basis. Rather, the legislature mandated a single set of regulations, promulgated through ordinary notice-and-comment rulemaking under the Administrative Procedure Act, to govern the reasonable costs of all MCI-eligible improvement work.

DHCR’s proposal for an annual survey makes it plain that DHCR does not welcome data from the community in advance of promulgating its annual schedule. The proposal contains no procedure whatsoever for soliciting data. It says nothing about which apartments’ data should be included in a survey, and which ones should be excluded. It therefore threatens to include the renovation costs that apply only to luxury housing, in coming up with an industry standard to apply to regulated housing. It provides the public with no advance opportunity to demonstrate the reasonable costs of any particular item. Rather, it appears to be an elaborate work-around to avoid the requirement that major capital

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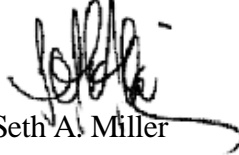
<sup>1</sup> Moreover, the “related expenses” provision seems to allow for increases that go beyond what was allowed under prior law, which required that related work be contemporaneous with and necessary to a qualifying MCI.

Michael Berrios, Executive Assistant  
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New York State Division of Housing  
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improvement increases be limited to the “reasonable costs” of a list of limited types of improvements.

For those reasons, OB 2020-1 should be rescinded.

Very truly yours,



Seth A. Miller

## TESTIMONY OF SUSAN STEINBERG BEFORE THE DHCR ON THE SCHEDULE OF REASONABLE COSTS

Good morning. My name is Susan Steinberg and I am the president of the Stuyvesant Town–Peter Cooper Village Tenants Association, representing 11,242 units of rent-regulated housing. I am here today to testify as to why the June 2020 Schedule of Reasonable Costs should be rejected and reissued.

But first I want to say what Major Capital Improvements have meant to me and our community.

On a monthly basis, I have nine current MCI charges for my one-bedroom apartment, including, among others, Elevator, Intercom, Electrical Reno, Security, Hot Water Heater, Window Replacement, Heat Exchanger, and Roof Replacement, totaling 16% of my rent.

And the MCIs are still coming. Our community has 50 outstanding MCIs and 50 PARs. While the new rent laws cap MCIs at 2% annually, 2% is still a significant amount, particularly in this time of COVID, when many tenants are struggling to pay for the basics.

In addition to my individual testimony, the Tenants Association is submitting testimony signed by more than 330 tenants. One of those tenants perfectly summarized the problems with the Reasonable Cost Schedule as follows:

“The DHCR has a moral obligation to protect hard working tenants...by taking a tougher stance against fraud, waste and abuse in MCI rent increases. MCI increases must be strictly limited to truly long-term capital improvements....and the permissible costs for such improvements must be limited to truly reasonable levels. Landlords should not be able to inflate rents by over-paying...for capital improvements. Moreover, landlords must not be allowed to get MCI rent increases for replacing equipment that does not need replacing or doing work that does not need to be done....”

My association first became suspicious of the reasonableness of the costs in the RCS when we compared what we paid for sidewalk sheds to the new maximum. For 645 East 14th St., Manhattan, our landlord claimed to DOB an estimated cost of \$8,000 for a heavy-duty steel and wood sidewalk shed for 125 linear feet. That works out to \$64/linear foot. The RCS cap of \$190/linear foot meant we would have paid \$23,750, nearly four times more.

Seeing that, we retained a professional estimator, Lewis Finkel, from whom you heard earlier, to provide an analysis of actual and reasonable costs in comparison to yours. In nearly all instances, his costs were lower—and these were with Manhattan labor rates.

In short, with the new, higher costs, property owners will be able to circumvent the 2% annual cap on collectability and recoup some of what they believe they lost as a result of the HSTPA. At a pre-COVID face-to-face meeting with the DHCR, a DHCR attorney expressed concern that with a 2% annual cap on MCIs, landlords just won't get a decent or acceptable return on their investment. The business of the DHCR is not to ensure owner's profitability. It is to administer rent regulations in a fair manner.

There are other issues besides cost. I include details in my written testimony but don't have time to enumerate them here, but other testifiers will speak to them. However, I will speak to unconscionable waivers and lack of transparency.

## TESTIMONY OF SUSAN STEINBERG BEFORE THE DHCR ON THE SCHEDULE OF REASONABLE COSTS

### **Unconscionable Waivers**

The waiver feature of the RCS pretty well ensures that the owners can apply for approval of just about any cost they might not recoup normally. Why buy a Pinto if you can be reimbursed for a Mercedes? It makes a mockery of the 2% annual MCI cap on collectability.

### **Lack of Transparency**

By adopting the Reasonable Cost Schedule on an emergency basis without public comment, the agency basically robbed the public of timely input.

### **Conclusion**

The Reasonable Cost Schedule of June 16, 2020, is anything but, will do real harm to tenants, and needs to be revised to be truly real-world and truly reasonable.

Thank you for listening.

## ANNE GREENBERG

September 8, 2020

### Testimony to HCR Regarding Operational Bulletin 2020-1: Reasonable Cost Schedule

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My name is Anne Greenberg, and I'm a rent-stabilized tenant in Peter Cooper Village. I'm also on the board of the Stuyvesant Town–Peter Cooper Village Tenants Association for my community of 11,240 apartments, and I've participated in in-person meetings with you as part of the Housing Justice for All HCR Working Group. I appreciated your meeting with us, and I'm sure you recall that MCIs were of particular concern to the working group. Thank you for taking my testimony today.

#### **THE PROBLEM WITH MCIs**

Although MCIs are now considered temporary because they come off the base rent in 30 years, for most people that is forever. Since unamortized MCIs are added to the base rent when a tenant vacates—and most people won't stay in their apartments for 30 years following an MCI—they are still a tool for landlords to increase the rent, especially if they can “encourage” tenants to leave. Given DHCR's history of approving MCIs despite tenant challenges and its current short staffing, tenants can expect to continue to pay—and get rent increases on—MCIs that are too high.

MCIs are certainly personal for me. The rent bill for my one-bedroom apartment currently itemizes seven MCIs, one of which is \$118.95—and that's forever.

#### **COMPLYING WITH HSTPA**

HSTPA required the agency to come up with a new Reasonable Cost Schedule by mid-June 2020. COVID-19 has upended all our lives, and no doubt your work was affected. That's why it appears that to meet the deadline, this RCS was thrown together hastily.

This is alarming because you have been using these costs *for a couple of months already* to approve MCIs, and if they're too high or for items that aren't even eligible, tenants will be under even more financial pressure than they already are, and unjustly so. **Any MCI granted using this schedule must be reconsidered when a fair and accurate Reasonable Cost Schedule is in place.**

#### **COMING UP WITH COSTS**

The costs in the RCS were provided by New Jersey firm O&S Associates. Since HCR didn't make their report public, the agency put tenants at a disadvantage in responding to the cost schedule.

- Did any other firms respond to the RFP?
- Did HCR accept the O&S cost schedule as presented?
- Did the agency modify it?

- Did the agency get guidance from owners and owner groups as to costs?

We need transparency on these questions.

## **RESEARCH AND EVALUATING THE COSTS**

My tenants association realized we needed to get a neutral, third-party evaluation of the costs, so we retained respected expert Lewis Finkel—you heard from him this morning—to analyze them. Overall, where there was a difference, the costs he found were 79.47% of those on the RCS with one as low as 47% of your cost. In seven instances, he agreed with your costs. For 18 others, the schedule didn't provide enough detail for him to do an analysis.

**High caps encourage landlords to submit the highest possible costs—regardless of what they actually paid. They encourage upstate landlords to use downstate prices.**

I've checked my files, looking for an MCI item with wide application. I found that for 645 East 14th St., Manhattan, Blackstone/Beam Living submitted to the DOB a possibly lowball estimate of \$8,000 for a heavy-duty steel and wood sidewalk shed for 125 linear feet, live load 300 lbs. per square foot. That works out to \$64/linear foot. (Permit issued 8/13/19.) Your RCS has a cap of \$190/linear foot for a sidewalk shed, and Mr. Finkel put the cost at \$171/linear foot.

Aside from the huge price discrepancy, sidewalk sheds are not depreciable to the landlord and shouldn't even be eligible for an MCI, but you have subsumed them under one of your loopholes in the operational bulletin: "Costs may be approved for related expenses if necessary, for the claimed improvement, and eligible for reimbursement as an MCI."

**RCS and the Useful Life Schedule.** Many items on the RCS do not appear on the Useful Life Schedule and vice-versa. Sometimes the descriptions vary.

### **Examples:**

- Boilers: Four types listed in ULS. No listing of types in RCS.
- Elevators: Major Upgrade or Controllers and Selector in ULS. Elevator replacement or Elevator Modernization in RCS.
- Windows: ULS lists five different types of windows. RCS lists just "windows." Shouldn't the cost for vinyl windows (15 years) be different from that of steel windows (25 years)?

A revised, accurate RCS must include prices for items made of different materials in the same category.

## **WAIVER AND LOOPHOLE**

I've already pointed out one loophole in the operational bulletin: "Costs may be approved for related expenses if necessary, for the claimed improvement, and eligible for reimbursement as an MCI." This works in direct contradiction to the foremost requirement of an MCI: that it be depreciable under the IRS code.



# STUYVESANT TOWN–PETER COOPER VILLAGE TENANTS ASSOCIATION

September 8, 2020

RuthAnne Visnauskas  
Commissioner and Chief Executive Officer  
New York State Homes and Community Renewal  
38-40 State Street  
Albany, NY 12207

Via email

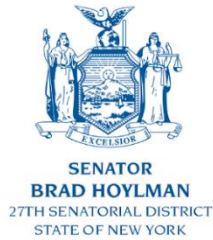
The undersigned residents of Stuyvesant Town and Peter Cooper Village have read and support the following letter to you regarding Operational Bulletin 2020-1, Reasonable Cost Schedule. This letter is being submitted as testimony for the public hearing of Wednesday, September 9, 2020. Some residents have also left pertinent comments.

Dear Commissioner Visnauskas,

As a rent-regulated tenant, I am concerned about the Reasonable Cost Schedule released in June 2020. I have multiple MCIs in my rent already, and there will be more. **IT IS IMPERATIVE THAT YOU RECONSIDER THE COST SCHEDULE** so that it truly reflects the costs landlords incur in New York City and doesn't allow owners to gouge tenants for 30 years. My tenants association has presented you with an expert's evaluation of your schedule. Furthermore,

- Major capital improvements are supposed to be depreciable according to the IRS code. But the Reasonable Cost Schedule includes things that aren't depreciable to the property owner, such as sidewalk sheds, or pressure washing, or site safety managers.
- MCI work is often done by nonunion labor. Those wages should result in lower costs.
- Window child guards are not MCIs, according to Fact Sheet #25.
- Broken windowpane or gasket replacement in individual apartments falls into the ordinary repairs category and does not qualify for an MCI. Actual full window replacement if needed in an individual apartment would be an Individual Apartment Improvement, requiring the tenant's consent.
- DHCR has come up with a very broad waiver for improvements that don't fit neatly into the list of items they already have. The agency has given itself wide discretion to approve costs.

Signed (see attached)



September 9, 2020

RuthAnne Visnauskas  
Commissioner and Chief Executive Officer  
New York State Homes and Community Renewal  
38-40 State Street  
Albany, NY 12207

VIA EMAIL

Dear Commissioner Visnauskas:

We write to express our concerns with Operational Bulletin 2020-1, Reasonable Cost Schedule, dated June 16, 2020, which DHCR issued pursuant to the requirements of the Housing Stability and Tenant Protection Act of 2019 (HSTPA). We believe many of the proposed allowable costs to be inconsistent with current law or other DHCR guidance, and we believe that the Bulletin improperly provides for a waiver of the costs specified in the proposed Schedule, as discussed below.

We have also been informed by organizations representing tenants that some of the costs listed on the proposed Schedule significantly exceed those that have been approved for similar projects in the past. In order to ensure that the proposed Schedule appropriately protects tenants from unnecessary or unreasonable expenses while covering reasonable and necessary expenses, we urge DHCR to publish the data and estimates that were used to determine the costs listed.

Additionally, despite the fact that the HSTPA extended counties across the state the ability to opt into rent regulation, the proposed Schedule makes no geographical distinction in allowable maximum costs. Given that rates charged by contractors in New York City can be up to twice the rates charged in other areas of the state, DHCR should consider creating a series of alternative cost schedules for each area to more fairly reflect local costs.

The proposed Schedule also includes items that appear not to qualify as MCIs under current law. For example, pressure washing is not IRS depreciable and therefore should

not qualify as an MCI. Other items appear to contravene the HSTPA, which states: “no increase shall be approved for group work done in individual apartments that is otherwise not an improvement to an entire building” (Emergency Tenant Protection Act 576/74 §10-b (2)). These items include:

- Apartment doors and door locks
- Electrical wiring
- Outlets and circuit breaker panels inside apartments
- Bathroom GFI outlets
- Windows inside apartments (unless they’re being upgraded to meet energy efficiency standards)

Perhaps these items would qualify as Individual Apartment Improvements (IAIs), but they should not qualify as MCIs.

Additionally, several items appearing on the proposed Schedule contradict guidance in DHCR fact sheets and should not be MCIs or IAIs, including:

- A/C brackets (see DHCR Fact Sheet #44)
- Window Child Guards (see Fact Sheets #25 and #44, which permit a one-time \$10 surcharge only)
- Caulking, which is general maintenance and should not qualify as an MCI

Finally, the Bulletin provides significant opportunity for a building owner to obtain a waiver of their duty to comply with the proposed Schedule, meaning that tenants could still face unforeseen costs outside the scope of what is contemplated in the Schedule or the HSTPA. Specifically, the Bulletin contemplates a waiver if a building owner claims costs that “are necessarily and appropriately priced higher than” those included in the Schedule or when “use of the 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.”

We believe that these waiver provisions are inconsistent with the statutory requirement enacted in the HSTPA, which states that the “schedule of reasonable costs ... shall set a ceiling for what can be recovered through a temporary major capital improvement increase, based on the type of improvement and its rate of depreciation.” The statutory language does not appear to authorize DHCR to waive this requirement based on the circumstances of an individual building owner.

As the representatives of hundreds of thousands of rent-regulated tenants, we urge you to delay the finalization of the proposed Reasonable Cost Schedule, make the report upon which these costs were determined available for public review, and engage in further discussion to address the issues we have raised. As written, the proposed Schedule would negatively impact rent-regulated tenants and undermine the intent of the HSTPA.

Thank you for your consideration of our request. Should you wish to discuss this matter, please do not hesitate to contact any of us directly or via Andra Stanley in Senator Kavanagh's office at 212-298-5565 or Kendall Jacobsen in Senator Hoylman's office at 518-455-2451.

Sincerely,



Brad Hoylman  
Chair, Senate Committee on Judiciary  
27<sup>th</sup> Senate District



Brian Kavanagh  
Chair, Senate Committee on Housing  
26<sup>th</sup> Senate District



Alessandra Biaggi  
34<sup>th</sup> Senate District



Michael Gianaris  
12<sup>th</sup> Senate District



Robert Jackson  
31<sup>st</sup> Senate District



Liz Krueger  
28<sup>th</sup> Senate District



Gustavo Rivera  
33<sup>rd</sup> Senate District



Roxanne J. Persaud  
19<sup>th</sup> Senate District



Julia Salazar  
18<sup>th</sup> Senate District



Luis R. Sepúlveda  
32<sup>nd</sup> Senate District



José M. Serrano  
29<sup>th</sup> Senate District



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

September 17<sup>th</sup>, 2020

RuthAnne Visnauskas  
Commissioner and Chief Executive Officer  
New York State Homes and Community Renewal  
38-40 State Street Albany, NY 12207

VIA EMAIL

Dear Commissioner Visnauskas,

We write to express our concerns with Operational Bulletin 2020-1, Reasonable Cost Schedule, dated June 16<sup>th</sup>, 2020.

**An operational bulletin is a legally invalid vehicle for the Reasonable Cost Schedule**

The Housing Stability and Tenant Protection Act (HSTPA) of 2019 directs the Division of Housing and Community Renewal to "... promulgate rules and regulations applicable to all rent regulated units that shall: 1. establish a schedule of reasonable costs for major capital improvements." An Operational Bulletin is a legally invalid vehicle for the cost schedule because, as courts have previously opined, an Operational Bulletin is not a rule or regulation for purposes of the State Administrative Procedure Act.

**DHCR does not have the authority to implement a waiver process under the (HSTPA)**

The inclusion of the waiver process in the Reasonable Cost Schedule illegally creates a gaping loophole that circumvents the will of the Legislature in enacting the HSTPA. The HSTPA makes no mention of a waiver process, such a process would render the reasonable cost schedule required by the HSTPA useless, and DHCR does not have the legal authority to create one.

**The reasonable cost schedule does not consider the realities of MCI work**

While a Reasonable Cost Schedule as passed by the legislature is legally sound, the proposed costs are excessive, overly broad, ignorant of the nuances of construction and installation, and, in certain instances, illegal or contradictory of other formal DHCR guidances.

Since the expansion of rent regulation into other parts of the state, the proposed schedule ought to have considered the variation in fees paid to contractors in New York City versus other areas, where fees are much lower. A professional estimator retained by the Stuyvesant Town Peter Cooper Village Tenants Association (STPCVTA), which represents one of the largest apartment complexes in New York with over 11,200 units, found the costs to be inflated by 20% on average. In preparing the estimates, the estimator, Professional Construction Services Inc., used Manhattan non-union labor rates, some of the highest in the state. Some of the largest discrepancies between the Reasonable Cost Schedule and the estimates of the professional retained by STPCVTA are the following:

<b>DHCR Reasonable Cost Schedule</b>		<b>Estimate by Professional Construction Services Inc.</b>	
Item	Cost PSF		Cost PSF
3 ply asphalt roof	\$72		\$38
Flashing	\$45		\$22
Asbestos abatement	\$32		\$15

The estimates prepared by Professional Construction Services Inc. are almost uniformly lower, begging the question of how DHCR arrived at their much higher proposed costs.

**Items on the reasonable cost schedule do not qualify as MCIs**

Not only are the proposed costs excessive, the schedule also includes items that should not qualify as MCIs. For example, pressure washing, which is included in the proposed Reasonable Cost Schedule is not IRS depreciable and therefore should not qualify as an MCI.

Other items seemingly contravene the Housing Stability and Tenant Protection Act of 2019 (HSTPA), which is clear that work done inside units is not recoupable through an MCI: “no increase shall be approved for group work done in individual apartments that is otherwise not an improvement to an entire building.” These items include:

- Apartment doors and door locks
- Electrical wiring
- Outlets and circuit breaker panels inside apartments
- Bathroom GFI outlets
- Windows inside apartments (unless they’re being upgraded to meet energy efficiency standards)

These items should be Individual Apartment Improvements (IAIs), not MCIs.

**Items on the reasonable cost schedule contradict DHCR fact sheets**



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

Additionally, several items now appearing on the proposed Reasonable Cost Schedule contradict guidance in DHCR fact sheets and should not be MCIs or IAIs; these include:

- A/C brackets (see DHCR Fact Sheet #44)
- Window Child Guards (see Fact Sheets #25 and #44 which permit a one-time \$10 surcharge only)
- Caulking, which is general maintenance and does not qualify as an MCI

Together, we represent tens of thousands of rent regulated tenants and we urge you to delay the finalization of the proposed Reasonable Cost Schedule and address the problems I have identified. As written, it would negatively impact millions of rent regulated tenants and undermine the intent of the HSTPA. Thank you for considering our comments.

Sincerely,

Harvey Epstein  
Assemblymember  
District 74

Brian Barnwell  
Assemblymember  
District 30

Catalina Cruz  
Assemblymember  
District 39

Maritza Davila  
Assemblymember  
District 53

Carmen de la Rosa  
Assemblymember  
District 72

Inez Dickens  
Assemblymember  
District 70

Jeffrey Dinowitz  
Assemblymember  
District 81

Nathalia Fernandez  
Assemblymember  
District 80

Mathylde Frontus  
Assemblymember  
District 46

Richard N. Gottfried  
Assemblymember  
District 75

Ron Kim  
Assemblymember  
District 40

Walter T. Mosley  
Assemblymember  
District 57

Dan Quart  
Assemblymember  
District 73

Karines Reyes  
Assemblymember  
District 87

Jo Anne Simon  
Assemblymember  
District 52

Aravella Simotas  
Assemblymember  
District 36