

David A. Paterson
Governor



Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

May 12, 2009

This is in response to your correspondence, which has been referred to me for a reply. Please excuse the delay in responding.

You mention that Mid State Management ("landlord") retained your firm to request a prior opinion from DHCR as to whether new Lamar Lighting, which has already been installed in the public areas of the subject premises, would qualify for a major capital improvement ("MCI"). You seek a prior opinion "[b]efore proceeding with the extensive paperwork associated with filing an MCI." Attached to your letter are copies of two invoices, which you state describe this installation.

Please be advised that an owner may apply for a non-binding advisory prior opinion as to whether specific proposed work would qualify for an increase in the legal regulated rent based upon the MCI requirements by filing a RA-86, *Owner's Request For A Prior Opinion On Major Capital Improvement(s)*.

Supplement 1 to Operational Bulletin 84-4 (MCI) provides in Section A that "[t]he prior opinion would permit the owner to know with certainty, prior to making any financial commitment or expenditure, whether the proposed work qualifies for a rent increase as an MCI...If an owner files an application for a prior opinion, tenants will be permitted to challenge the proposed cost and propriety of the planned installation." Therefore, since the owner has already made the installation, we believe that it would be more appropriate for the owner to file a RA-79, *Owner's Application for Rent Increase Based on Major Capital Improvements (MCI)*. Please note that improvements will be considered for an MCI increase provided the MCI application is filed within two years of the completion of the work, and all MCI filing criteria are met.

Rent increases for MCI's are authorized by Rent Stabilization Code ("RSC") Sec. 2522.4(a)(2)(i) for rent stabilized apartments and Rent and Eviction Regulations Section 2202.4(c) for rent controlled apartments. Under rent stabilization, an MCI relates to work done in common areas, in all apartments, or both. In order for the project you describe to qualify for an MCI rent increase, the standards set forth in RSC Sec. 2522.4(a)(2)(i) must be met. Such standards require the installation to be depreciable under the Internal Revenue Code, be for the operation, preservation and maintenance of the structure, inure to the benefit of all tenants, and replace an item whose useful life has expired, except DHCR may consider an owner's application for a waiver of the useful life requirement. In addition, under rent control, an increase is warranted where there has been since July 1, 1970 a major capital improvement required for the operation, preservation or maintenance of the structure.

The Schedule of Major Capital Improvements, which directly follows RSC Sec. 2522.4(a)(3), does not include lighting. However, other improvements or installations that are not included may also qualify, providing the above noted requirements have been met.

For your information, we enclose Fact Sheets #s 24 - Major Capital Improvements (MCI) Questions and Answers, and #33 - Useful Life Schedule For Major Capital Improvements; Op. Bull. 84-4, *Major Capital Improvements/Substantial Rehabilitation/Increased Services and Equipment*; Supp 1 to Op. Bull. 84-4 (MCI); Owner's Application for Rent Increase Based on Major Capital Improvements (MCI) (RA-79); and Instructions for RA-79. If you need additional information, you may visit any Borough Rent Office, call the RentInfo Line at (718) 739-6400 or visit the DHCR web site noted below.

We trust that we have responded as fully as possible to your inquiry under the circumstances.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,

Michael B. Rosenblatt
Assistant Commissioner/
Rent Administration



By: Cheryl King
Senior Attorney

MBR:CK

CC: Deputy Commissioner Torres
(col-2519)

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