Brianne K. Nadeau

Councilmember Brianne K. Nadeau

Trayon White

Councilmember Trayon White, Sr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Rental Housing Act of 1985 to clarify the definitions of rent surcharge and various definitions associated with hardship petitions, to limit the exemption for newly-constructed rental units to those built in the prior 15 years, to limit the exemption for small housing providers to housing providers who own three or fewer rental units, to amend references to rent adjustments to rent surcharges, to eliminate any rent adjustment based on a rental unit vacancy, to clarify that a proposed capital improvement must be depreciable under Internal Revenue Service standards, to clarify that the cost of a proposed capital improvement must be recoverable over the useful life of the proposed improvement under Internal Revenue Service standards, to change the formula for a hardship petition to ensure a housing provider recovers a minimum profit rate based on the current yield rate for 10-year U.S. Treasury notes, to change hardship rent adjustments to rent surcharges reviewable after a three-year period, to cap hardship rent surcharges at 5% per year, to add required qualifications for auditors of hardship petitions, to eliminate any rent adjustment based on a voluntary agreement, to change substantial rehabilitation rent adjustments to rent surcharges, to clarify that a proposed substantial rehabilitation must be depreciable under Internal Revenue Service standards, to clarify that the cost of a proposed substantial rehabilitation must be recoverable over the useful life of the proposed improvement under Internal Revenue Service standards, to clarify the ability to enforce orders approving petitions or voluntary agreements through the petition process, to require that a housing provider seeking a rent surcharge or rent adjustment by petition must establish compliance with District housing regulations, to require that a housing provider seeking a rent surcharge or rent adjustment by petition must have established and maintained a replacement reserve account for at least 3 years, and to require a housing provider seeking a rent surcharge or rent adjustment by petition to provide accounting and other records as part of the petition review process.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Rent Stabilization Program Reform and Expansion Amendment Act of 2020".

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3502.01 *et seq.*)), is amended as follows:

(a) Section 103 (D.C. Official Code § 42-3501.03) is amended as follows:

(1) Paragraphs (1), (8A), (13A), (22), and (33A) are redesignated paragraphs (1B), (8B), (12B), (13B), (23), and (33B), respectively.

(2) Paragraphs (20), (23), (29C), and (38) are amended to read as follows:

"(20) "Maximum possible rental income" means the sum of the rents charged plus all unexpired rent surcharges and all unexpired but unimplemented rent adjustments and rent surcharges for all rental units in the housing accommodation, whether occupied or not, computed over a base period of 12 consecutive months within the 15 months preceding the date of any hardship petition filed under this chapter.".

"(23) "Miscellaneous income" means any income, other than rents charged plus unexpired and implemented rent surcharges, which a housing provider earns because of his or her interest in a housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.".

"(29C) "Rent surcharge" means a temporary charge added to the rent charged for a rental unit pursuant to a capital improvement, hardship, or substantial rehabilitation petition that is not included as part of the rent charged.".

"(38) "Vacancy loss" means the amount of rent charged plus unexpired and implemented rent surcharges not collectable due to vacant rental units in a housing accommodation. No amount shall be included in vacancy loss for rental units occupied by a housing provider or his or her employees or otherwise not offered for rent.".

(3) New paragraphs (1A), (8A), (13A), (24A), and (33A) are added to read as follows:

"(1A) "American Society for Testing and Materials International" or "ASTM" means the organization that develops test methods, specifications, classifications, guides, and practices in support of voluntary standards for the metal, construction, petroleum, consumer products, and other industries or a successor or similar organization that provides comparable services.

"(8A) "Depreciation" means the allocation of the cost of a tangible asset over its useful life.

"(13A) "Guaranteed profit margin" means the percent equal to the average daily yield curve rate on a 10-year United States Treasury note for the month of January of each current year, as published by the United States Treasury Department and as annually computed by the Rental Housing Commission pursuant to section 202(a)(3).

"(24A) "Property condition assessment" means a due diligence commercial property inspection that evaluates the condition of a property based on ASTM's E2018 guidelines or other comparable standards as updated or developed by ASTM.

"(33A) "Replacement reserve" means an account established and maintained to provide funding for the extraordinary maintenance, repair, or replacement of capital items in a housing accommodation."

(b) Section 202(a)(3) (D.C. Official Code § 42-3502.02(a)(3) is amended as follows:

(1) Subparagraph (C) is amended by striking the word "unit" and inserting the phrase "rental unit" in its place and by striking the word "and".

(2) Subparagraph (D) is amended by adding the phrase "; and" at the end of the subparagraph.

(3) A new subparagraph (E) is added to read as follows:

"(E) The annual guaranteed profit margin applicable to rent surcharges authorized by a hardship petition pursuant to section 212.".

(c) Section 205(a)(2) (D.C. Official Code § 42-3502.05(a)(2)) is amended to read as follows:

"(2) Any rental unit in any newly constructed housing accommodation for which the building permit was issued any time after the 15-year period that ended on or before January 1 of the current year, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued any time after the 15-year period that ended on or before January 1 of the current year; provided, however, that this exemption shall not apply to any housing accommodation, the construction of which required the demolition of an housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units;".

(d) Section 205(a)(3) (D.C. Official Code § 42-3502.05(a)(3)) is amended to read as follows:

"(3) Except as provided by subsection (a-1), any rental unit in any housing accommodation of 3 or fewer rental units, including any aggregate of 3 rental units whether within the same structure or not, provided:

"(A) The housing accommodation is owned by not more than 4 natural persons;

"(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

"(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

"(D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt under the terms of clauses (3)(A)(i) and (ii) of this subsection; and

"(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this subparagraph, § 42-3404.13(a)(3), or § 42-4016(a)(3) [expired], a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.".

(e) Section 205(g-1) (D.C. Official Code § 42-3502.05(g-1)) is amended by adding a new subparagraph (3) to read as follows:

"(3) With regard to any rental unit or housing accommodation that was previously exempt from the Rent Stabilization Program under section 205(a)(2) or 205(a)(3) but is later subject to that program under section 205(a)(2) or 205(a)(3), as amended, the housing provider shall file a registration statement and the Rent Stabilization Program shall apply to all rental units affected by the expiration or termination of that exemption within 120 days of the date of such expiration or termination. The registration statement shall contain, at a minimum, the information required under section 205(f)(3).".

(f) Section 206 (D.C. Official Code § 42-3502.06) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1) For any petition approved pursuant to sections 210, 211, 212, or 214, a housing provider shall not preserve for future implementation all or any portion of an authorized rent charged increase or rent surcharge, except to the extent that section 208(g) prohibits the immediate implementation of the authorized rent charged increase or rent surcharge."

(g) Section 208(g) (D.C. Official Code § 42-3502.08(g)) is amended to read as follows:

"(g)(1)The amount of rent charged for any rental unit subject to the Rent Stabilization Program shall not be increased by a rent adjustment, and a new rent surcharge shall not be imposed, until a full 12 months have elapsed since any prior increase in the rent charged or prior imposition of a rent surcharge; provided, that the amount of a rent adjustment or a rent surcharge shall not exceed the amount of any single rent adjustment or rent surcharge pursuant to any one section of the Rent Stabilization Program;

"(2) If the housing provider does not implement a rent adjustment or a rent surcharge in full within 30 days of first becoming eligible to do so, the housing provider shall forfeit in its entirety any portion of the authorized rent adjustment or rent surcharge that has not been implemented by that date except as otherwise provided pursuant to section 212.".

(h) Section 208(h) (D.C. Official Code § 42-3502.08(h)) is amended to read as follows:

"(h) Unless the adjustment in the amount of rent charged is implemented pursuant to section 211, an adjustment in the amount of rent charged:

"(1) Shall not exceed the current rent charged for the unit, plus the adjustment of general applicability, taken as a percentage of the current allowable amount of rent charged; provided, that the total adjustment shall not exceed 5%;

"(2) Shall be pursuant to section 224 if the rental unit is occupied by an elderly tenant or tenant with a disability; and

"(3) Shall not exceed the lesser of 5% or the adjustment of general applicability if the rental unit is leased or co-leased by a home and community-based services waiver provider.".

(i) Section 210 (D.C. Official Code § 42-3502.10) is amended as follows:

(1) Subsections (a), (b), (c), (d), and (e) are amended to read as follows:

"(a) On a petition by a housing provider, if, upon a determination by the Rent Administrator that a capital improvement is in the interest of the affected tenants, then the Rent Administrator may approve a rent surcharge to cover the cost of the capital improvement for one or more rental units or the entire housing accommodation, contingent upon completion of the capital improvement.".

"(b) The Rent Administrator shall only approve a rent surcharge if:

"(1) The cost of the capital improvement is established to the satisfaction of the Rent Administrator;

"(2) Only items that are depreciable under the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.) are included in the capital improvement;

"(3) The cost of the capital improvement is recovered over the projected useful life of the improvement as provided by the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code 26 U.S.C.;

"(4) The cost of the capital improvement is recovered over the projected useful life of the type of property with the longest projected useful life in any case where the capital improvement includes types of property with different projected useful lives under the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.); and

"(5) The housing provider secured the required governmental permits and approvals prior to commencing any construction work associated with the proposed capital improvement, secured final approval of the capital improvement petition, and perfected the rent surcharge before imposing a rent surcharge.".

"(c) The Rent Administrator shall determine a rent surcharge pursuant to a capital improvement petition by:

"(1) Dividing the gross cost of the capital improvement, including interest costs and service charges directly associated with a loan to finance the capital improvement but only to the extent the loan is used to pay for the capital improvement and the interest costs and service

charges are calculated as provided in section 216(p), by the number of months included in the recovery period for the projected useful life of the improvement as provided by the General Depreciation System for residential rental property established pursuant to 26 U.S.C. but not to exceed 96 months for a building-wide capital improvement or 64 months for a capital improvement that is limited to 1 or more rental units;

"(2) In the case of a building-wide capital improvement, calculating the monthly rent surcharge per rental unit by dividing the amount calculated pursuant to paragraph (1) by the number of rental units in the housing accommodation but the rent surcharge may not exceed 20% of the current rent charged for any affected tenant.

"(3) In the case of a capital improvement limited to 1 or more rental units in a housing accommodation, calculating the monthly rent surcharge per affected rental unit by dividing the amount calculated pursuant to paragraph (1) by the number of rental units in the housing accommodation affected by the capital improvement but the rent surcharge may not exceed 15% of the current rent charged for any affected tenant.".

"(d) In determining whether to approve a capital improvement petition, the Rent Administrator shall examine the plans, contracts, specifications, permit applications, and projected costs for the capital improvement.

"(1) The housing provider or its designated agent shall retain the plans, contracts, specifications, permit applications, and projected costs for the capital improvements for the period in which the rent surcharge is in effect.

"(2) Any affected tenant may inspect the plans, contracts, specifications, permit applications, and projected costs at the housing accommodation at a mutually convenient time during the period in which the rent surcharge is in effect.".

"(e)(1) The Rent Administrator shall dismiss a capital improvement petition or transfer the case to the District of Columbia Office of Administrative Hearings for an adjudicatory hearing within 60 days of receipt of a completed capital improvement petition.

"(2) The housing provider may start the capital improvement if the Rent Administrator fails to transfer the case or the District of Columbia Office of Administrative Hearings has not issued a final decision on a capital improvement petition within 180 days of receipt of a completed capital improvement petition by the Rent Administrator, but the housing provider may not impose a rent surcharge until a final decision is issued and the rent surcharge is perfected.".

(2) A new subsection (e-1) is added to read as follows:

"(e-1) A rent surcharge imposed on a tenant pursuant to an approved capital improvement petition shall be temporary and shall not be included in or calculated as part of the rent charged;

"(1) The housing provider shall not continue to impose a capital improvement rent surcharge after the recovery period established pursuant to subsection (c)(1) or (h)(1) or after its termination under this subsection unless otherwise provided in this subsection;

"(2) If prior to expiration of the applicable recovery period, the housing provider has recovered all costs of the capital improvement, then the housing provider shall cease to charge the rent surcharge to the tenant;

"(3) If after expiration of the applicable recovery period, the housing provider has not recovered all costs of the capital improvement, then the housing provider may petition the

Rent Administrator for an extension of the rent surcharge;

"(4) The rent surcharge shall not continue after expiration of the recovery period unless the Rent Administrator approves an extension of the recovery period;

"(5) The housing provider:

"(A) Shall be deemed to have recovered all costs within the approved cost recovery period or where applicable the shorter cost recovery period; and

"(B) Shall not continue to impose the rent surcharge or request an extension of the cost recovery period, if the housing provider:

"(i) Due to selective implementation of the approved rent surcharge, has not recovered all costs of the capital improvement within the cost recovery period established pursuant to subsection (c) or (h); or

"(ii) Would have recovered all such costs within a shorter cost recovery period if the housing provider had fully implemented the rent surcharges on all eligible rental units; and

"(6) Any combination of two or more unexpired capital improvement rent surcharges that are in effect at the same time shall not exceed 20% of the current rent charged to an affected tenant.

(3) Subsections (g), (h), and (i) are amended to read as follows:

"(g)(1) The housing provider may make capital improvements to the housing accommodation before filing a capital improvement petition if the capital improvement is immediately necessary to maintain and protect the health or safety of the tenants.

"(2) The housing provider may petition the Rent Administrator under this subsection for approval of a rent surcharge if the petition is filed with the Rent Administrator within 10 calendar days of completion of the capital improvement.".

"(h) A housing provider may impose a rent surcharge to recover the cost of any capital improvement that is required by a federal or District statute or regulation and that takes effect after October 30, 1980, not including any building energy performance standards established by, or pursuant to, section 301 of the CleanEnergy DC Omnibus Amendment Act of 2018 (D.C. Official Code § 8-1772.21).

"(1) The cost of the rent surcharge provided by this subsection shall be recovered over the projected useful life of the improvement as provided in subsection (b);

"(2) The rent surcharge shall be imposed on rental units within the housing accommodation on an equal basis based on the extent to which each rental unit benefits from the improvement;

"(3) A housing provider may, following perfection of the rent surcharge, impose the rent surcharge under this subsection by filing with the Division a certificate of calculation for a mandated capital improvement increase that establishes that:

"(A) The improvement is required by a federal or District statute or regulation that takes effect after October 30, 1980, and is not required by any building energy performance standards established by, or pursuant to, section 301 of the CleanEnergy DC Omnibus Amendment Act of 2018 (D.C. Official Code § 8-1772.21);

"(B) The cost of the improvement and the benefit to each rental unit; and

"(C) The housing provider has secured the required governmental permits

and approvals.

"(i) No construction work associated with a capital improvement petition shall commence prior to securing the required governmental permits and approvals and no rent surcharge pursuant to a capital improvement petition shall be imposed prior to securing approval of the petition and perfecting the rent surcharge.".

(2) New subsection (j) is added to read as follows:

"(j) A housing provider that attempts to collect or collects a capital improvement rent surcharge without the prior approval of a petition pursuant to this section or after expiration of the recovery period specified in the approval or an approved extension, shall be deemed to have acted in bad faith and shall be subject to a penalty pursuant to section 901(a) and to civil fines pursuant to section 901(f).".

(j) Section 212 (D.C. Official Code § 42-3502.12) is amended as follows:

(1) Subsections (a) and (b) are amended to read as follows:

"(a) On a petition by a housing provider, if upon a determination by the Rent Administrator that the petition demonstrates that the housing accommodation has a profit margin that is less than the guaranteed profit margin, then the Rent Administrator may approve a rent surcharge that in the aggregate would produce a profit margin of not more than the guaranteed profit margin".

"(b) The following calculations shall be used to determine the rent surcharge:

"(1) Calculate adjusted gross income as follows:

"(A) First calculate gross income by adding together maximum possible rental income and miscellaneous income;

"(B) Then subtract from gross income actual vacancy losses not to exceed 6% of the maximum possible rental income.

"(2) Calculate expenses by adding together the following:

"(A) Operating expenses; provided, that the following items shall not be included as operating expenses:

"(i) Membership fees in organizations established to influence legislation and regulations;

"(ii) Contributions to lobbying efforts;

"(iii) Contributions for legal fees in the prosecution of class action cases;

"(iv) Political contributions to candidates for office;

"(v) Mortgage principal payments;

"(vi) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method;

"(vii) Attorney's fees charged for services that are not ordinary, reasonable, necessary, and related to the normal operation and management of the housing accommodation, including attorney's fees charged for services connected with counseling or litigation related to actions brought by the District government due to the repeated failure of a housing provider to comply with applicable housing regulations; and

"(viii) Any expenses for which the tenant has lawfully paid directly;

"(B) Actual management fees; provided, that the fees do not exceed 6% of the maximum possible rental income of the housing accommodation;

"(C) Property taxes;

"(D) Depreciation expenses; provided, that depreciaton expenses may only be included to the extent reflected in decreased real property tax assessments; and

"(E) Interest payments;

"(3) Calculate whether the housing accommodation has a profit or deficit by subtracting expenses from adjusted gross income; and

"(4) Then calculate the profit margin by dividing the profit or deficit by adjusted gross income.".

(2) New subsections (b-1), (d), (e), (f), (g), (h), and (i) are added to read as follows:

"(b-1)(1) If for a housing accommodation, the profit margin of the housing accommodation is less than the guaranteed profit margin, the Rent Administrator shall determine the monthly rent surcharge for each rental unit as follows:

"(A) Calculate the amount of future adjusted gross income needed to achieve the guaranteed profit margin by subtracting the guaranteed profit margin from 100 percent and then dividing expenses by the result;

"(B) Then calculate the amount of additional adjusted gross income needed to achieve the guaranteed profit margin by subtracting the adjusted gross income from the quotient calculated pursuant to subparagraph (A) of this paragraph;

"(C) Then calculate the rent surcharge for each rental unit by dividing the

amount of additional adjusted gross income calculated pursuant to subparagraph (B) of this paragraph by the adjusted gross income.

"(2) If the monthly rent surcharge calculated pursuant to paragraph (1) of this subsection exceeds 5% of the current rent charged, then the housing provider:

"(A) Shall only implement the rent surcharge in annual increments of no more than 5% of the current rent charged; and

"(B) Shall not implement annual increments of the rent surcharge once the rent surcharge is fully implemented, subject to subsection (g).

"(d) The Rent Administrator shall consider and review the hardship petition and supporting documents and, no sooner than within 60 days following the filing of a completed petition, shall issue and serve on the housing provider and all affected tenants an audit report with recommendations regarding accepting or denying expenditures and other financial claims and recommendations for the final disposition of the hardship petition. The audit report of the Rent Administrator shall:

"(1) Contain specific findings of fact and conclusions of law regarding the calculation of the amount of the rent surcharge, if any, to be recommended; and

"(2) Include specific findings of facts and conclusions of law with respect to whether the hardship petition meets the following standards:

"(A) The maximum possible rental income matches the rents charged specified in filings with the Rent Administrator and includes all increases of general applicability within the 3-year period prior to the filing of the petition, whether or not the housing provider implemented them;

"(B) The total expenses, actual gross income, and gross income claimed by the housing provider fall within a 12-month period within the past 15 months, as selected by the housing provider preceding the filing of a petition pursuant to this section, and conform to the accounting method, either cash or accrual, regularly used by the housing provider;

"(C) Capital expenses are only included if recovered in accordance with the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.); and

"(D) Extraordinary expenses shall not be included unless they are recovered under the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.); and

"(E) Mortgage interest payments associated with a mortgage secured within the 3-year period prior to the filing of the petition are not included.

"(e) At the same time as the Rent Administrator serves the audit report with recommendations on the housing provider and the affected tenants, the Rent Administrator shall notify the housing provider and affected tenants that:

"(1) Each party has 30 days in which to file with the Rent Administrator and serve written exceptions and objections to the audit report and its recommendations on all other parties;

"(2) In the absence of timely filed exceptions or objections, the audit report and recommendations shall become a final order 45 days after it is issued; and

"(3) If exceptions or objections are filed by an affected tenant or other party, the Rent Administrator shall transfer the case to the District of Columbia Office of Administrative

Hearings for adjudication of the exceptions or objections no later than 45 days after issuing the audit report with recommendations, but no sooner than 10 days after the deadline established pursuant to paragraph (1) for the submission of exceptions and objections.

"(f) Except for any conditional adjustment authorized under section 212(c), a housing provider shall not implement a rent surcharge or any other rent adjustment pursuant to a hardship petition until:

"(1) A final order is issued;

"(2) No appeal is pending; and

"(3) The time for appeal has expired.

"(g)(1) Rent surcharges authorized pursuant to this section are temporary surcharges and shall remain in effect for no more than three years following final approval of the hardship petition.

"(2) Notwithstanding paragraph (1), the Rent Administrator may authorize an extension if the housing provider shows that it has not recovered the rent surcharge authorized by subsection (b-1); provided that the housing provider has implemented the rent surcharge in the same percentage terms each year for each rental unit.

"(h) The Rent Administrator shall ensure that an auditor employed to perform audits of hardship petitions, including any contracted auditor, shall:

"(1) Be a certified public account;

"(2) Have expertise in rental housing; and

"(3) Have the experience and skills necessary to evaluate the auditing standards set forth in section 212(d).

"(i) A housing provider that attempts to collect or collects a hardship increase without the prior approval of a petition pursuant to this section shall be deemed to have acted in bad faith and to be liable to the affected tenants for treble damages pursuant to section 901(a) and subject to civil fines pursuant to section 901(f).".

(l) Section 213 (D.C. Official Code § 42-3502.13) is repealed.

(m) Section 214 (D.C. Official Code § 42-3502.14) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) On a petition by a housing provider, if, upon a determination by the Rent Administrator that a substantial rehabilitation is in the interest of the affected tenants, then, contingent upon completion of the substantial rehabilitation, the Rent Administrator may approve a rent surcharge to cover the cost of the substantial rehabilitation, contingent on completion of the substantial rehabilitation.".

(2) New subsections (a-1) and (a-2) are added to read as follows:

"(a-1) The Rent Administrator shall approve the rent surcharge only if:

"(1) The cost of the substantial rehabilitation is established to the satisfaction of the Rent Administrator;

"(2) Only items that are depreciable under the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.) are included in the substantial rehabilitation;

"(3) The cost of the substantial rehabilitation is recovered over the projected useful life of the substantial rehabilitation as provided by the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code 26 U.S.C.;

"(4) The cost of the substantial rehabilitation is recovered over the projected useful life of the type of property with the longest projected useful life in any case where the substantial rehabilitation includes types of property with different projected useful lives under the General Depreciation System for residential rental property established pursuant to the Internal Revenue Code (26 U.S.C.);

"(5) The housing provider secured the required governmental permits and approvals and final approval of the substantial rehabilitation petition prior to commencing any construction work associated with the proposed substantial rehabilitation, and perfected the rent surcharge before imposing a rent surcharge.";

"(6) The rent surcharge pursuant to a substantial rehabilitation petition is no greater than 125% of the rent charged for any affected rental unit prior to implementation of the rent surcharge;

"(7) The total expenditure on the substantial rehabilitation equals or exceeds 50% of the greater of the assessed value of the property for tax purposes or the value established by a professional appraisal of the property by a licensed appraiser provided by the housing provider or one or more tenants at any time prior to a hearing on the petition for substantial rehabilitation; and.

"(8) The substantial rehabilitation satisfies the sustainability requirements of subsection (e).

"(a-2) The Rent Administrator shall determine a rent surcharge pursuant to a substantial rehabilitation petition by:

"(1) Dividing the gross cost of the substantial rehabilitation, including interest costs and service charges directly associated with a loan to finance the substantial rehabilitation but only to the extent the loan is used to pay for the substantial rehabilitation and the interest costs and service charges are calculated as provided in section 216(p), by the number of months included in the recovery period for the projected useful life of the substantial rehabilitation as provided by the General Depreciation System for residential rental property established pursuant to 26 U.S.C. and by subsection (a-1)(4) to establish the monthly gross cost of the substantial rehabilitation; and

"(2) Calculating the monthly rent surcharge for the substantial rehabilitation for each rental unit by multiplying the rent charged for the rental unit on the date the petition was filed by the percentage calculated pursuant to paragraph (1).".

(3) Subsection (b) is amended to read as follows:

"(b) The plans, contracts, specifications, projected costs, and permit applications, whether or not filed, for the substantial rehabilitation:

"(1) Shall be made available to the Rent Administrator by the housing provider of the affected rental unit or units or housing accommodation;

"(2) Shall be examined by the Rent Administrator to determine whether to approve the substantial rehabilitation petition;

"(3) Shall be retained by the housing provider or its designated agent for the period in which the rent surcharge is in effect; and

"(4) Shall be made available for inspection to any affected tenant at the housing accommodation at a mutually convenient time.".

(4) Subsection (c)(2) is amended to read as follows:

"(c)(2) In making an affirmative finding that the substantial rehabilitation of a housing accommodation is in the interest of the tenants, the Rent Administrator shall consider the following factors:

"(A) Whether the rehabilitation will have an adverse impact on the tenants in terms of rent increases, inconvenience, or relocation;

"(B) Whether the rehabilitation can safely and reasonably be accomplished while the affected rental units are occupied;

"(C) Whether alternatives to temporary relocation exist, including relocating tenants during the construction process to other rental units in the housing accommodation or in a complex or set of buildings of which the housing accommodation is a part;

"(D) Whether the existing conditions of the housing accommodation, including any violations of the housing regulations, endanger the health, welfare, and safety of the tenants, and whether the housing provider can correct those conditions by improved maintenance, repair, replacement, or more limited improvements; and

"(E) Whether the plans, specifications, and costs are the minimum necessary to correct the conditions of the housing accommodation as shown by the testimony of the affected tenants, District of Columbia housing inspectors, licensed engineers, architects and contractors, or other qualified experts.".

(5) New subsections (e) and (f) are added to read as follows:

"(e)(1) A rent surcharge imposed on a tenant pursuant to an approved substantial rehabilitation shall be temporary and shall not be included in, or calculated as part of, the rent charged.

"(2) The housing provider shall not continue to impose the substantial rehabilitation rent surcharge after the recovery period established pursuant to subsection (a-2)(1) or after its termination under this subsection unless otherwise provided in this subsection;

"(3) If, prior to expiration of the applicable recovery period, the housing provider has recovered all costs of the substantial rehabilitation, then the housing provider shall cease to charge the rent surcharge;

"(4) If, after expiration of the applicable recovery period, the housing provider has not recovered all costs of the substantial rehabilitation, then the housing provider may petition the Rent Administrator for an extension of the rent surcharge;

"(5) The rent surcharge shall not continue after expiration of the recovery period unless the Rent Administrator approves an extension of the recovery period."; and

"(6) If the housing provider has not recovered all costs of the substantial rehabilitation within the cost recovery period established pursuant to subsection (a-1) due to selective or partial implementation of the approved rent surcharges or would have recovered all such costs within a shorter cost recovery period if it had fully implemented the rent surcharges on all eligible rental units, the housing provider shall be deemed to have recovered all costs within the approved cost recovery period or, where applicable, the shorter cost recovery period and shall not continue to impose the rent surcharge or request an extension of the cost recovery period; and

"(7)(A) No substantial rehabilitation rent surcharge shall exceed 125% of the current rent charged to an affected tenant prior.

"(B) Any other rent surcharge that is in effect at the time of the implementation of the substantial rehabilitation rent surcharge shall be invalidated to the extent that any such rent surcharge or combination of rent surcharges, in combination with the substantial rehabilitation rent surcharge, exceeds 125% of the current rent charged to an affected tenant.

"(C) After a substantial rehabilitation rent surcharge has been implemented and as long as the rent surcharge is in effect, the housing provider may not impose any other rent surcharge to the extent that any such rent surcharge, in combination with the substantial rehabilitation rent surcharge, exceeds 125% of the current rent charged to an affected tenant.

"(f) A housing provider that commences a substantial rehabilitation or attempts to collect or collects a substantial rehabilitation rent surcharge without the prior approval of a petition pursuant to this section or after expiration of the recovery period specified in the approval or an approved extension shall be deemed to have acted in bad faith and to be liable to the affected tenants for treble damages pursuant to section 901(a) and subject to civil fines pursuant to section 901(f).".

(n) Section 215 (D.C. Official Code § 42-3502.15) is repealed.

(o) Section 216 (D.C. Official Code § 42-3502.16) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) The Rent Administrator shall, upon a petition filed by the housing provider or a tenant, consider rent adjustments allowed by section 206, 208, or 211, rent surcharges allowed by sections 210, 212, and 214, and any other challenge under the Rent Stabilization Program to a rent charged, rent adjustment, or rent surcharge or enforcement of an order approving any such petition.

"(1) The petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator requiring the information that the Rent Administrator or the Rental Housing Commission may require.

"(2) The party filing the petition with the Rent Administrator shall serve the petition by first-class mail at the same time as it is filed with the Rent Administrator on the affected housing provider and tenants and shall provide notice to all tenants and other parties on a form provided by the Rent Administrator of the right to submit objections to the Rent Administrator within 30 days of receipt of the petition.

"(3) The Rent Administrator shall issue an order approving or denying, in whole or in part, each petition within 120 days after the completed petition is filed with the Rent Administrator except as may be otherwise provided by the Rent Stabilization Program.

"(4) The time for issuing an order may be extended only by written agreement between the housing provider and the affected tenant or tenants upon a finding of good cause by the Rent Administrator.".

(2) New subsections (n), (o), and (p) are added to read as follows:

"(n)(1) Notwithstanding any other provision of the Rent Stabilization Program, the Rent Administrator shall not accept for filing any petition for a rent adjustment pursuant to section 211 or a rent surcharge pursuant to section 210, 212, or 214 unless:

"(A) The housing provider presents proof that, no more than 30 days prior to the date of filing the petition, all rental units and the common areas of the housing accommodation were inspected for housing code violations as required by section 208(b)(2), or re-inspected as necessary to certify the abatement of any such violation; and

"(B) The housing provider has abated all substantial violations in the time set forth in the notice of violation and prior to filing the petition.".

"(2) Paragraph (1) of this subsection shall not apply to a rental unit if the tenant denied access to the rental unit for the inspection.

"(3) The failure of a housing provider to comply with this subsection shall be an independent basis for dismissal of any petition filed pursuant to section 210, 211, 212, or 214.

"(4) Nothing herein relieves or purports to relieve a housing provider from complying with the requirements of D.C.M.R. Title 14.

"(o) Whenever the cost of a loan is part of any petition filed pursuant to section 210, 212, or 214, the recoverable interest costs and service charges shall be limited to the amount that would be charged in an arm's length transaction for a similar contemporaneous transaction in the District of Columbia and shall be reduced over time as necessary to take into account any future reduction in interest payments or service charges.

"(p) The Rent Administrator may require the housing provider to obtain an independent audit of the books and records of the housing provider and the proposal included in its petition

application and shall require the housing provider to produce any and all documents necessary to determine the accuracy and lawfulness of any rent surcharge proposed pursuant to a petition filed under section 210, 212, or 214 or any rent adjustment proposed pursuant to section 211.

"(q)(1) The Rent Administrator shall serve a copy of any petition filed pursuant to section 210, 211, 212, or 214 on the Office of Tenant Advocate and on each agency included on a list of agencies designated by the Rent Administrator and updated from time to time that provide organizing, technical assistance, and legal services to tenants.

"(2) The Rent Administrator shall publish or cause to be published all petitions in the electronic database established pursuant to section 203a.

"(r)(1) If an adjudicative hearing of any type is required to resolve a contested case in a proceeding arising from a petition filed pursuant to section 210, 211, 212, 214, or 216 the District of Columbia Office of Administrative Hearings ("OAH") shall have jurisdiction to hold such a hearing and make a final disposition of the case by order as provided in § 2-1831.03(b-1); provided, that OAH shall:

"(A) Be subject to all requirements of the Act applicable to the petition or the voluntary agreement; and

"(B) Act in strict accordance with the authority provided by the Act to the Rent Administrator in resolving the case.

"(2) The 120-day period for OAH to issue an order under section 216(a)(3) shall not start to run until the case is transferred to OAH for adjudication.

"(s) The Attorney General for the District of Columbia may intervene in a proceeding before the Rent Administrator or OAH involving a petition filed pursuant to section 210, 211,

212, 214, or 216.".

(p) A new section 225 is added to read as follows:

"Section 225. Replacement reserve accounts.

"(a) The Rent Administrator or, where applicable, the District of Columbia Office of Administrative Hearings shall disapprove any petition or voluntary agreement filed pursuant to section 210, 211, 212, or 214 (other than a petition for a reduction in the rent charged filed by a tenant pursuant to section 211) if the housing provider has not established and maintained a replacement reserve account as required by this section for at least 3 years or, if the housing provider has owned the housing accommodation for less than 3 years, has not established a replacement reserve account that contains an amount at least equal to the amount that would have been in the account if it had been in place for the past 3 years.

"(b) To be eligible for approval of any petition, a housing provider shall annually deposit $250 per unit, adjusted each year as provided in subsection (c) or such higher amount as may be required by the Mayor pursuant to subsection (d) in a replacement reserve account.

"(c) The per-unit deposit required by subsection (b) shall be adjusted annually, beginning on the February 1 following the effective date of this Act, by an amount equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

"(d) Notwithstanding subsections (b) and (c), the housing provider for each housing accommodation subject to the Rent Stabilization Program shall build up its replacement reserve

account to, and maintain it at, a level determined by the Mayor to be sufficient to meet projected maintenance requirements for the housing accommodation.

"(1) The Mayor shall determine the level sufficient to meet maintenance requirements for each housing accommodation subject to the Rent Stabilization Program based upon a property condition assessment conducted by a licensed property condition assessment consultant according to the then-current ASTM standard for property conditions assessments or other substantially comparable or more stringent standards established by a similar or successor organization. The property condition assessment shall assess property conditions for all relevant property elements, including:

"(A) Building site, including topography, drainage, retaining walls, paving, curbing, and lighting;

"(B) Building envelope, including windows and walls;

"(C) Structural, including foundation and framing;

"(D) Interior elements, including stairways, hallways, and common areas;

"(E) Roofing systems;

"(F) Mechanical, including heating, ventilation, and air conditioning;

"(G) Plumbing;

"(H) Electrical;

"(I) Vertical transport, including elevators and escalators;

"(J) Life safety, ADA, code compliance, and air quality, including fire codes, accessibility, water intrusion, and mold; and

"(K) Infrared thermography for energy loss, air leakage, roofing and

building envelope moisture intrusion.

"(2) If the replacement reserve account reaches the level required by this subsection, the Mayor may approve a reduction in the rate of deposit to the reserve account.

"(e) The replacement reserve account shall only be used for repairs to, or replacement of, items that have a useful life of more than 7 years pursuant to the IRS depreciation rules for residential rental property.

"(f) All earnings on funds in the reserve account, including interest, shall be added to the replacement reserve account.".

(q) A new section 226 is added to read as follows:

"Section 226. Rent increases for other rental units.

"(a) The amount of rent for any rental unit not subject to the Rent Stabilization Program shall not be increased until:

"(1) A full 12 months have elapsed since any prior increase in the rent; and

"(2) The housing provider has served the tenant with a written notice of rent increase at least 45 days prior to implementation of the rent increase that includes, at a minimum, the following information:

"(A) the current rent,

"(B) the increased rent,

"(C) the effective date of the rent increase, and

"(D) the justification for the rent increase.

"(b) If the residential lease or rental agreement between the housing provider and the tenant requires that the tenant provide more than a 30-day notice to the housing provider of the

tenant's intention to vacate the premises, then the housing provider must serve the tenant with a written notice of any rent increase that is at least 15 days more than that time period.

"(c) The notice of rent increase shall also include a summary of tenant rights under this chapter and a list of sources of technical assistance as published in the District of Columbia Register by the Mayor.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.