Councilmember Anita Bonds

A Bill

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Rental Housing Act of 1985 to clarify various definitions associated with capital improvement petitions, to permit a capital improvement rent surcharge only if the petition is in the interest of the affected tenants, to require that the Rent Administrator approve a proposed capital improvement only if all the items covered by the capital improvement petition are depreciable under the General Depreciation System for residential rental property of the Internal Revenue Service, to require that the cost of a proposed capital improvement must be recovered over the useful life of the type of property covered by the proposed capital improvement with the longest useful life under Internal Revenue Service standards, to change the rent increase under a capital improvement petition from a flat per-rental unit amount to a per-square foot rent surcharge for each rental unit and establish the formula for the calculation of capital improvement rent surcharges, to reduce the maximum capital improvement rent surcharge from 20% to 15%, to require the Rent Administrator to examine the plans, contracts, specifications, permit applications, and projected costs for the capital improvement and make those documents available for examination to tenants, to require the Rent Adminstrator to issue a decision on the 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 petition, to permit a housing provider to 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, to preclude the automatic pass through to tenants of the capital costs associated with implementing building performance standards, to require the housing provider to include evidence that the capital improvement will not undermine the Act's legislative purposes, will protect or enhance the health, safety, and security of the tenants, is not intended to cause displacement of tenants, is not retaliatory, does not unreasonably interfere with the use and enjoyment of a rental unit by a tenant, will not directly result in a violation of the Housing Code, and will not result in the violation of applicable environmental regulations, and construction resulting from the capital improvement petition will use Energy Star products and will result in a net savings in the use of energy that will be passed on to the tenant, to subject a housing provider that attempts to collect or collects a capital improvement rent surcharge without the prior approval of a petition or after expiration of the recovery period to penalties, including treble damages, and civil fines, to clarify that a rent increase to pay for a capital improvement is a temporary rent surcharge, to increase the waiting period for the commencement of an unapproved capital

improvement from 60 days to up to 180 days, to clarify the authority of the Rent Administrator to enforce orders relating to petitions and voluntary agreements, to clarify requirements to serve petitions and voluntary agreements on tenants and other affected parties and establish a 30-day deadline for the submission of objections to the Rent Administrator, to establish standards for the Rent Administrator to approve a petition or voluntary agreement including: all rental units were inspected for housing code violations within 30 days and all housing code violations have been abated, the petition or voluntary agreement will not undermine the Act's legislative purposes, will protect or enhance the health, safety, and security of the tenants, is not intended to cause displacement of tenants, is not retaliatory, will not violate the Housing Code, and will not result in the violation of applicable environmental regulations, and construction resulting from the petition or voluntary agreement will use Energy Star products and will result in a net savings in the use of energy that will be passed on to the tenants, to require that interest costs and service charges recoverable under a capital improvement, hardship, or substantial rehabilitation petition are limited to the amount that would be charged in an arm's length transaction, to permit the Rent Administrator to require a housing provider to obtain an independent audit of the books and records of a housing provider who has filed a petition or voluntary agreement, to require the Rent Administrator to consider whether the property is listed by the housing provider for sale or is the subject of a contract for sale at the time of the filing of the petition or voluntary agreement, to require the Rent Administrator to serve a copy of a petition or voluntary agreement on the Office of Tenant Advocate and on each agency included on a list of agencies designated by the Rent Administrator, to require the District of Columbia Office of Administrative Hearings to comply with the same legal standards applicable to the Rent Administrator in exercising jurisdiction and deciding any case transferred to it for an adjudicatory hearing, to clarify that the District of Columbia Office of Administrative Hearings is required to issue an order on a petition or voluntary agreement within 120 days of the transfer of the case to its jurisdiction, and to permit the Attorney General for the District of Columbia to intervene in a proceeding involving a petition or voluntary agreement before the Rent Administrator or the District of Columbia Office of Administrative Hearings.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Capital Improvement Petition Reform 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) Paragraph (8A) is redesignated as paragraph (8B).

(2) Paragraph (29C) is amended to read as follows:

"(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.".

(6) New paragraphs (8A) and (12A) are added to read as follows:

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

"(12A) "Energy Star" means the voluntary labeling program designed by the U.S. Environmental Protection Agency to identify and promote energy-efficient products.

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

(1) Subsections (a), (b), (c), (d), (e), (g), (h), (i), and (j) 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 capital 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.);

"(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; and

"(6) The rent surcharge pursuant to a capital improvement petition shall not exceed 15% of the monthly rent charged prior to implementation of the 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 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 capital improvement as provided by the

General Depreciation System for residential rental property established pursuant to 26 U.S.C. and by subsection (b)(4) to establish the monthly gross cost of the capital improvement;

"(2) Then subtracting from the monthly gross cost of the capital improvement the average monthly savings in operating and maintenance costs resulting from any greater efficiencies or other cost savings provided by the capital improvement to establish the monthly net cost for the capital improvement;

"(3) Then dividing the monthly net cost of the capital improvement by the total number of square feet of all affected rental units in the housing accommodation to establish the monthly per-square foot rent surcharge;

"(4) Then multiplying the total square footage of each affected rental unit by the monthly net cost per square foot of rental space covered by the capital improvement petition to determine the monthly net cost of the capital improvement for each affected rental unit; and

"(5) Then calculating the monthly rent surcharge for the capital improvement for each affected rental unit based on the monthly net cost of the capital improvement for the rental unit but subject to the limits established by subsection (e-1).

"(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 issue a decision on a capital improvement petition or transfer the case to the District of Columbia Office of Administrative Hearings for an adjudicatory hearing if such a hearing is required within 60 days of receipt of a completed capital improvement petition.

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

"(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 a 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; and

"(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) The housing provider shall include evidence that the capital improvement will fulfill the requirements of subsection 216(o) in its submission to the Rent Administrator of plans, contracts, specifications, permit applications, and projected costs for the capital improvement pursuant to subsection (d).

"(1) The Rent Administrator shall not approve the capital improvement if the evidence presented does not establish to its satisfaction that upon completion, the capital

improvement will fulfill the requirements of subsection 216(o).

"(2) If upon completion of the capital improvement, the Rent Administrator determines that the capital improvement does not fulfill the requirements of subsection 216(o), the housing provider shall terminate the capital improvement rent surcharge and immediately return to the affected tenants any capital improvement rent surcharge that has been collected.

"(j) 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 subsections (e-1) and (k) are 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) (A) No capital improvement rent surcharge shall exceed 15% of the current rent charged to an affected tenant.

"(B) The 15% cap on the increase in the rent charged shall apply to any combination of two or more unexpired capital improvement rent surcharges that are in effect at the same time.

"(k) 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).".

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, 211 or 215, 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 or voluntary agreement.

"(1) The petition or voluntary agreement 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 or voluntary agreement with the Rent Administrator shall serve the petition or voluntary agreement 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 or voluntary agreement.

"(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 or voluntary agreement 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), (p), (q), (r), (s), (t), and (u) 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 section 215 or for 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 or the voluntary agreement, 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 or any voluntary agreement filed pursuant to section 215.

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

"(o) The Rent Administrator shall not approve a petition for a rent adjustment pursuant to section 211, a rent surcharge pursuant to section 210, 212, or 214, or a voluntary agreement pursuant to section 215 unless the Rent Administrator determines that:

"(1) The petition or voluntary agreement will not undermine the legislative purposes of the Act, including the need to prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments;

"(2) The petition or voluntary agreement will protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation;

"(3) The petition or voluntary agreement is not intended to cause displacement of tenants from the housing accommodation;

"(4) The petition or voluntary agreement is not retaliatory, as defined in section 502 of the Act;

"(5) The housing provider is not pursuing the petition or voluntary agreement for the purpose of unreasonably interfering with the use and enjoyment of a rental unit by a tenant;

"(6) The petition or voluntary agreement will not directly result in a violation of the Housing Code;

"(7) The petition or voluntary agreement will not result in the violation of applicable environmental regulations; and

"(8) Construction resulting from a petition filed pursuant to section 210, 211, 212, or 214 or any voluntary agreement filed pursuant to section 215 shall:

"(1) Use Energy Star products whenever available for the product type; and

"(2)(A) Result in a net savings in the use of energy by the affected rental units and the housing accommodation to the maximum extent practicable;

"(B) Pass on to the tenants all savings in energy costs.

"(p) 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.

"(q) 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 or voluntary agreement 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 or 215.

"(r) In making an affirmative finding that any petition filed pursuant to section 210, 211, 212, or 214 or a voluntary agreement filed pursuant to section 215 is in the interest of the tenants, the Rent Administrator shall consider whether the property is listed by the housing provider for sale or is the subject of a contract for sale at the time of the filing of the petition or voluntary agreement or during its pendency.

"(s)(1) The Rent Administrator shall serve a copy of any petition filed pursuant to section 210, 211, 212, or 214 or a voluntary agreement filed pursuant to section 215 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.

"(t)(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 or a voluntary agreement filed pursuant to section 215, 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)(2) shall not start to run until the case is transferred to OAH for adjudication.

"(u) 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 or a voluntary agreement filed pursuant to section 215.".

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.