

1 A Bill

2
3 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

4
5 To amend the Rental Housing Act of 1985 to clarify various definitions associated with
6 substantial rehabilitation petitions, to permit a substantial rehabilitation rent surcharge
7 only if the petition is in the interest of the affected tenants, to require that the Rent
8 Administrator approve a substantial rehabilitation petition only if all the items covered by
9 the substantial rehabilitation petition are depreciable under the General Depreciation
10 System for residential rental property of the Internal Revenue Service, to require that the
11 cost of the substantial rehabilitation must be recovered over the projected useful life of
12 the type of property covered by the substantial rehabilitation petition with the longest
13 useful life under Internal Revenue Service standards, to require that the housing provider
14 secure the required governmental permits prior to commencing construction work or
15 imposing a monthly rent surcharge, and that the substantial rehabilitation satisfies certain
16 sustainability requirements, to establish the formula to determine the rent surcharge for a
17 substantial rehabilitation as a per square foot rent surcharge for each rental unit, to
18 require that the plans, contracts, specifications, projected costs, and permit applications
19 for the substantial rehabilitation be made available to the Rent Administrator and to any
20 affected tenant at the housing accommodation, to require the Rent Administrator when
21 making a finding that the substantial rehabilitation is in the interest of the tenants to
22 consider whether the rehabilitation will have an adverse impact on the tenants in terms of
23 rent increases, inconvenience, or relocation, whether the rehabilitation can safely and
24 reasonably be accomplished while the affected rental units are occupied, whether
25 alternatives to temporary relocation exist, whether existing conditions endanger the
26 health, welfare, and safety of the tenants, and whether the housing provider can correct
27 those conditions by improved maintenance, repair, replacement, or more limited
28 improvements, to require the substantial rehabilitation of a housing accommodation of
29 10,000 square feet or more of gross floor area to fulfill or exceed the standard for
30 certification as a Green Communities project, to require that a substantial rehabilitation
31 rent surcharge be temporary, to limit any substantial rehabilitation rent surcharge to
32 125% of the rent charged to an affected tenant and preclude other rent surcharges to the
33 extent they cause the 125% limit to be exceeded, to require the total expenditure on the
34 substantial rehabilitation to equal or exceed 50% of the greater of the assessed value of
35 the property or the value established by a professional appraisal, to subject a housing
36 provider that commences a substantial rehabilitation or attempts to collect or collects a
37 substantial rehabilitation rent surcharge without prior approval or after expiration of the
38 recovery period to penalties, including treble damages, and civil fines, 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 "Substantial Rehabilitation 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) Paragraphs (8A) and (13A) are redesignated as paragraphs (8B) and (13C), respectively.

(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), (13A), (13B), and (35A) are added to read as follows:

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

“(13A) “Energy Star” means the voluntary labeling program designed by the U.S. Environmental Protection Agency to identify and promote energy-efficient products.

“(13B) “Green Communities” means the sustainable building program established by Enterprise Community Partners or a successor organization that establishes criteria for the sustainable design, construction, and operation of healthy, energy efficient, and environmentally responsible affordable housing.

“(35A) “Sustainable building” means the practice of creating and using healthy and resource-efficient methods of construction, renovation, operation, maintenance, and demolition.”.

(b) 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.”.

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

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

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

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

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

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

112 “(5) The housing provider secured the required governmental permits and
113 approvals and final approval of the substantial rehabilitation petition prior to commencing any
114 construction work associated with the proposed substantial rehabilitation or imposing a monthly
115 rent surcharge and surcharge before imposing a rent surcharge perfected the rent;

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

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

124 “(8) The substantial rehabilitation satisfies the sustainability requirements of
125 subsection (e).

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

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

136 “(2) Then subtracting from the monthly gross cost of the substantial rehabilitation
137 the average monthly savings in operating and maintenance costs resulting from any greater
138 efficiencies or other cost savings provided by the substantial rehabilitation to establish the
139 monthly net cost for the substantial rehabilitation;

140 “(3) Then dividing the monthly net cost of the substantial rehabilitation by the

141 total number of square feet of all affected rental units in the housing accommodation to establish
142 the monthly per-square foot rent surcharge;

143 “(4) Then multiplying the total square footage of each affected rental unit by the
144 monthly net cost per square foot of the rental space covered by the substantial rehabilitation
145 petition to determine the monthly net cost of the substantial rehabilitation for each affected rental
146 unit; and

147 “(5) Then calculating the monthly rent surcharge for the substantial rehabilitation
148 for each affected rental unit based on the monthly net cost of the substantial rehabilitation for the
149 rental unit but subject to the limits established by subsection (f).”.

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

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

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

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

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

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

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

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

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

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

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

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

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

181 (5) New subsections (e), (f), (g), and (h) are added to read as follows:

182 “(e) A substantial rehabilitation of a housing accommodation of 10,000 square feet or
183 more of gross floor area shall fulfill or exceed the standard for certification as a Green

Communities project included in the then-current edition of the Green Communities standard or another substantially comparable or more stringent standard for sustainable multi-unit housing.

“(1) The housing provider shall include evidence that the substantial rehabilitation will fulfill the requirements of this subsection in its plans, contracts, specifications, permit applications, and projected costs for the substantial rehabilitation.

“(2) The Rent Administrator shall not approve the substantial rehabilitation if the evidence presented does not establish to its satisfaction that, upon completion, the substantial rehabilitation will fulfill the requirements of this subsection.

“(3) If, upon completion, the Rent Administrator determines that the substantial rehabilitation does not fulfill the requirements of this subsection, the housing provider shall not impose a rent surcharge pursuant to this section or otherwise adjust the rents of the housing accommodation to cover the cost of a substantial rehabilitation.

“(4) The Rent Administrator or any person challenging a substantial rehabilitation petition may consult green building specialists at the Department of Consumer and Regulatory Affairs to aid in the determination of whether a housing provider has fulfilled the requirements of this subsection.

“(f)(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;

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

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

212 “(5) The rent surcharge shall not continue after expiration of the recovery period
213 unless the Rent Administrator approves an extension of the recovery period;

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

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

224 “(B) Any other rent surcharge that is in effect at the time of the
225 implementation of the substantial rehabilitation rent surcharge shall be invalidated to the extent
226 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.

“(g)(1) The housing provider shall include evidence that the substantial rehabilitation will fulfill the requirements of section 216(o) in its submission to the Rent Administrator of plans, contracts, specifications, permit applications, and projected costs for the substantial rehabilitation pursuant to subsection (b). The Rent Administrator shall not approve the substantial rehabilitation if the evidence presented does not establish to its satisfaction that, upon completion, the substantial rehabilitation will fulfill the requirements of that subsection.

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

“(h) 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).”.

(c) 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.

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

273 (2) New subsections (n), (o), (p), (q), (r), (s), (t), and (u) are added to read as
274 follows:

275 “(n)(1) Notwithstanding any other provision of the Rent Stabilization Program, the Rent
276 Administrator shall not accept for filing any petition for a rent adjustment pursuant to section
277 211 or section 215 or for a rent surcharge pursuant to section 210, 212, or 214, unless:

278 “(A) The housing provider presents proof that, no more than 30 days prior
279 to the date of filing the petition or the voluntary agreement, all rental units and the common areas
280 of the housing accommodation were inspected for housing code violations as required by section
281 208(b)(2) or re-inspected as necessary to certify the abatement of any such violation; and

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

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

286 “(3) The failure of a housing provider to comply with this subsection shall be an
287 independent basis for dismissal of any petition filed pursuant to section 210, 211, 212, or 214 or
288 any voluntary agreement filed pursuant to section 215.

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

291 “(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

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

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

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

322 “(q) The Rent Administrator may require the housing provider to obtain an independent
323 audit of the books and records of the housing provider and the proposal included in its petition or
324 voluntary agreement application and shall require the housing provider to produce any and all
325 documents necessary to determine the accuracy and lawfulness of any rent surcharge proposed
326 pursuant to a petition filed under section 210, 212, or 214 or any rent adjustment proposed
327 pursuant to section 211 or 215.

328 “(r) In making an affirmative finding that any petition filed pursuant to section 210, 211,
329 212, or 214 or a voluntary agreement filed pursuant to section 215 is in the interest of the tenants,
330 the Rent Administrator shall consider whether the property is listed by the housing provider for
331 sale or is the subject of a contract for sale at the time of the filing of the petition or voluntary
332 agreement or during its pendency.

333 “(s)(1) The Rent Administrator shall serve a copy of any petition filed pursuant to section
334 210, 211, 212, or 214 or a voluntary agreement filed pursuant to section 215 on the Office of
335 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)(3) 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).

358 Sec. 4. Effective date.

359 This act shall take effect following approval by the Mayor (or in the event of veto by the
360 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
361 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
362 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
363 Columbia Register.