DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

GABRIEL FINEMAN, Tenant/Appellant, v. SMITH PROPERTY HOLDINGS VAN NESS L.P., Housing Provider/Appellee.	Case No.: 2016 DHCD TP 30,842 3003 Van Ness Street, N.W., Apt. W-1131

MOTION FOR RECONSIDERATION OR MODIFICATION
OF DECISION AND ORDER DATED JANUARY 18, 2018

Smith Property Holdings Van Ness L.P. ("Housing Provider/Appellee"), by undersigned counsel, hereby submits its Motion for Reconsideration or Modification of the Decision and Order dated January 18, 2018 ("Decision"), which Housing Provider received on January 24, 2018. For the reasons hereinafter set forth, the Decision should be vacated and the Final Order of the Office of Administrative Hearings ("OAH") reinstated and affirmed. Alternatively, the Decision should be modified to clarify the scope and meaning of the Decision as discussed in this Motion.

I. LEGAL STANDARD

The Commission's Regulations permit the filing of a motion for reconsideration or modification. 14 D.C.M.R. § 3823. The Motion "[s]hall set forth specific grounds on which the applicant considers the decision and order to be erroneous or unlawful." 14 D.C.M.R. § § 3823.2. In this case, the Commission has committed an error in its analysis of the applicable law.

There are three major issues:[1]

1. The first issue is whether under the Rental Housing Act of 1985, as amended, by the Rent Control Amendment Act of 2006 (the "Reform Act" or "2006 Amendments", collectively the "Act"), there can exist a maximum legal rent which is greater than the amount actually paid by the tenant.

2. The second issue is whether the Act requires increases to be calculated on the amount the tenant pays rather than based on the maximum legal rent.

3. The third issue is whether the Commission's decision affects Voluntary Agreements and Petition-based increases granted by the Rent Administrator or the Office of Administrative Hearings. The Commission's decision cannot be interpreted to mean that a housing provider must take an entire increase or lose it, as to voluntary agreements and petition-based increases. Attached to this Memorandum as Exhibit 1 is the exchange of correspondence and legislative history demonstrating that there was no intention in the 2006 Amendments to require that a voluntary agreement or petition-based increase must be fully utilized at one time or lost.[2]

[1] A fourth issue is that the Commission is not permitted to engage in fact finding, which it appears the Commission did in addressing the terms of the lease agreement at issue in this case. *See Meier v. District of Columbia Rental Accommodations Commission,* 372 A. 2d 566 (D.C. 1977).

[2] The correspondence references a DVD of the October 26, 2005 Public Hearing before the Committee on Consumer and Regulatory Affairs. A copy of that DVD is attached to the filing before the Commission as Exhibit 2. Unfortunately that DVD is the sole copy that was in the possession of Greenstein DeLorme & Luchs, P.C. ("GDL"). Efforts made to copy the DVD by both GDL and an outside vendor were unsuccessful. A request has been made to the Office of Cable Television, Film and Entertainment for additional copies of the October 26, 2005 Public Hearing. A copy will be provided to Mr. Fineman upon receipt. In the meantime, attached as Exhibit 3 is a copy of a transcript of the October 26, 2005 Public Hearing.

II. ARGUMENT

A. THE RENT CONTROL LAW PERMITS A MAXIMUM LEGAL RENT WHICH EXCEEDS THE AMOUNT ACTUALLY PAID.

The term "rent charged", as used in the Act is not ambiguous. When the Reform Act was adopted, the Bill was very clear in stating that wherever the term "rent ceiling" appeared in the Act, it was stricken and the term "rent charged" was inserted in its place. See Exhibit 4, Enrolled Original, at Section 2 (a) (identifying sections that "are amended by striking the phrase 'rent ceiling' wherever it appears and inserting the phrase 'rent charged' in its place."). *See also D.C. Code 42-3502.06, Notes* (Effects of amendments.-D.C. Law 16-145, in subsec. (a), inserted the first three sentences; and, in subsecs. (b), (c) and (f)(3), substituted "rent charged" for "rent ceiling").

As a consequence, whatever rent was being charged on the effective date of the Reform Act (August 5, 2006) effectively became the new base rent from which future rent adjustments are to be calculated. Thereafter, increases in the "rent charged" were to be calculated pursuant to the provisions of Section 206 of the Act, starting with Section 206(a). An analysis of that section of the Act proves beyond doubt that there was no intent on the part of the Council to require that rents be re-established periodically at the amounts that tenants are asked to pay (which is the effect of the Commission's Decision), as opposed to being a continuing calculation of maximum allowable rent charged, as described in Section 206.

The term "rent charged" cannot be read in isolation, but must be read together with related provisions of the Act. *See James S. Parreco & Sons v. District of Columbia Rental Housing Commission,* 567 A.2d 43, 49, fn 9 (D.C. 1987). Read together with the other provisions of the Act concerning permitted rent increases, it is clear that the Act does not limit

validly implemented increases in the rent charged, simply because the housing provider and tenants agree to lower monthly payments.[3]

B. THE FIRST ISSUE IS WHETHER UNDER THE RENT CONTROL LAW AS AMENDED BY THE REFORM ACT THERE CAN EXIST A MAXIMUM LEGAL RENT WHICH IS GREATER THAN THE TENANT'S MONTHLY PAYMENT.

Section 206(a) provides in pertinent part that:

> "Except to the extent provided in subsections (b) and (c) of this Section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after September 30, 1985 for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws and by a court of competent jurisdiction." (emphasis supplied)

By use of the terms "in excess of", "authorized", and "by this chapter", the Act makes clear that the rent charged is a maximum amount established by the authorized increases stated in the Act, not what a tenant is asked to pay. This avoids the constantly fluctuating upward and downward rent charged which would be the result of the Commission's Decision.

The language of Section 206 clearly establishes that housing provider may not charge rent in excess of the amount computed under the rent control law. In its Decision, the Commission stated that: "Similarly, Section 206 of the Act, which formerly established and now abolishes rent ceilings, is also suggestive, though not explicit, that rent stabilization operates by establishing a maximum legal limit and authorizing periodic adjustments to that limit." There is

[3] The Commission, in its Decision, focused on an analysis of the Report by Committee on Consumer & Regulatory Affairs, Addendum to the Committee Report, including summaries of testimony (not the testimony itself) by Patrick Canavan, Psy.D., the director of DCRA at that time, and Michael Hodge, of the Office of the Deputy Mayor for Planning and Economic Development. As an initial matter, these specific individuals have no specific expertise in the Act. Neither of them was ever the Rent Administrator nor a member of the Rental Housing Commission. They were not members of the Council. Nevertheless, their statements that calculating caps on rent increases based upon the rent charged is consistent with the analysis stated above in this Motion: rent charged means the amount calculated pursuant to Section 206 of the Act. Likewise, the statement by Councilmember Graham again depends on what he meant by "rent charged", which he does not explain.

nothing "suggestive" about it. That is, in fact, how the rent control law and Section 206 have always worked. The Commission further stated that: "a maximum legal limit on rent appears to be established by subsection (a)." Decision at 23-24. Accordingly, Section 206(a) establishes a maximum legal rent which may not be exceeded. The Commission recognized that this is how the rent stabilization program continues to operate, and then ignored that fundamental meaning. Thus, the answer to the question "Does the rent control law allow a maximum legal rent which exceeds the amount actually paid by a tenant is yes. Nothing in the rent control law prohibits a housing provider from having a tenant pay less than the maximum and nothing in the rent control law changes the calculation of rent charged if the housing provider charges less than that maximum. Section 206 (b) provides that the CPI adjustment unambiguously is "an adjustment...in the rent charged established by subsection (a) of this section [206]" (emphasis and brackets added). The suggestion that the Act provides a "use it or lose it" approach for CPI adjustments is not found anywhere in the Act. Even if it were part of the statutory scheme, at most, it would mean that the CPI adjustment must be included in the prescribed filings with the 12-month eligibility period, or it is lost and not that the amount paid by the tenant must be equal to the amount that can be legally charged.. Nothing in Section 206 remotely supports this latter interpretation. To the contrary, the subject of section 206 is the maximum limit, not the amount paid.[4]

The Commission also construes Section 901 of the Act as using "the term 'applicable rent' in reference to a maximum legal limit, but uses 'rent' above in reference to the amount of money actually demanded or received...." Decision at 25.This demonstrates that the

[4] It is certainly no answer to say that the Act is intended to be remedial and to protect low and moderate income tenants. The maximum allowable rent in this case was $3,274, which under no circumstances can be considered typical of low and moderate income housing, and the Decision does not protect low and moderate income tenants by forcing housing providers to not give discounted rents, which is the result of the Decision.

Commission's focus on the term "rent" and a requirement for "demand or receipt" is incorrect. Decision at 31. The term "rent" and the term "rent charged"(or maximum legal rent) are two different concepts, the latter of which establishes a maximum amount and the former of which ("rent") may be less than the maximum amount. The Commission's painting Section 901 as "unique" (Decision at 32) is erroneous because, as discussed above, Section 206, the fundamental premise of rent control, also establishes a maximum legal rent. There is nothing in the Act which empowers the Rental Housing Commission to disallow or eliminate any differential between the "rent charged" and a lower amount which a housing provider and tenant negotiate to be paid. To the contrary, upon making the required filings with the Office of the Rent Administrator (at this time, Certificates of Adjustment in Rent Charged), these increases in rent charged are preserved and vested. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96 (D.C. 2005).[5]

This intention is strikingly shown by the draft Committee Print by the Committee of Consumer and Regulatory Affairs dated April 13, 2006. A copy of the draft Committee Print is attached as Exhibit 5. At the bottom of page 5, Subsection (B) reads as follows:

> " (B) Any unimplemented portion of such percentages during the applicable year shall not be carried over to a subsequent year."

Significantly, this language did not appear in the subsequent Committee Prints, demonstrating that the concept that increases were "use it or lose it" was rejected.

C. THE SECOND ISSUE IS WHETHER THE ACT REQUIRED INCREASES TO BE RECALCULATED ON THE AMOUNT THE TENANT PAYS RATHER THAN ON THE MAXIMUM LEGAL RENT.

That the meaning of the term "rent charged" refers to the calculation under Section 206 also answers the question of how increases are to be calculated. On its face by its very language

[5] There is no dispute in the instant case that the requisite filings to preserve the rent increases at issue were made.

Section 206 prescribes a continuing calculation for the rental unit based on additions to the maximum legal rent under Section 206. In this case, the maximum legal rent had already been established and "implemented" at the time that the tenant moved into the subject unit. What was then negotiated was the amount payable by the Tenant pursuant to a private agreement. There is no other calculation in the Act based on the amount payable by the tenant. [6]

D. THE COMMISSION'S DECISION CANNOT AFFECT VOLUNTARY AGREEMENTS OR PETITION BASED INCREASES.

The third issue is whether the decision affects Voluntary Agreements or Petition Based Increases.

Although this case does not involve a Voluntary Agreement or Petition-based increase, the legislative history and statutory construction regarding Voluntary Agreements and Petition-based increases are instructive in interpreting legislative intent regarding CPI adjustments and vacancy increases as well.

The 2006 Amendments were never intended to, and did not, change the law regarding how rent increases granted by a Voluntary Agreement or a Petition are to be used. As to all of these increases, including CPI adjustments and vacancy increases, nothing in the Rental Housing Act, as amended in 2006, says that a housing provider is required to implement at once the entire amount of an increase or lose it. To the contrary, Section 206(a) as amended states that the maximum rent charged may not be exceeded. It does not say that the tenant's payment must equal the maximum rent charged.

For example, in the context of a hardship petition,, Section 206(a) expressly says:

> In considering a hardship petition pursuant to section 212, any unimplemented rent charged increase pursuant to a petition or voluntary agreement approved by the Rent Administrator shall be

[6] The Commission's unsubstantiated finding that the rent could have been increased by $992 ignores the fact that that never happened. Decision at 29, fn. 21. The only increase was $47. Decision at 4.

included in the maximum possible rental income." (Emphasis added.)[7]

Thus, Section 206 provides for future implementation of rent increases, in whole or in part, and the Commission's interpretation finds no support in the statute.

The legislative history makes clear that the Mayor and Council did not intend to affect Voluntary Agreements and Petition based increases by the 2006 Amendments. When then Mayor Anthony A. Williams submitted to the Council the Executive Branch Bill "Rental Control Reform Amendment Act of 2006" (copy of Executive Summary is attached as Exhibit 6) the Executive Summary stated at page 2: "The District's petition processes and voluntary agreement programs remain intact" under the Executive Branch's rent control bill. This was a fundamental premise that carried through the enactment of the 2006 Amendments.

The legislation continued to be modified in the legislative process, but the rule that increases are not on a "use it or lose it basis" remained unchanged. Included in Exhibit 1 to this Motion is a wealth of citations to the statements by key Councilmembers that Voluntary Agreements and Petition based increases remained unaffected by the 2006 Amendments.

The pre-2006 law that Voluntary Agreement increases and Petition based increases may be implemented in part while reserving the remainder did not change. That fact (and the meaning of Section 206(a)) is demonstrated by the rent increase notice forms which the Department of Consumer and Regulatory Affairs (the agency which then administered rent control) adopted soon after the 2006 Amendments were enacted. These forms were adopted specifically to implement the provisions of those 2006 Amendments. The adopted form bears a

[7] Pre-2006 granted Petitions and Voluntary Agreements remained rent ceiling increases and the sentence of Section 206 (a) quote above expressly says "unimplemented rent charged" increase, which is what post-2006 Voluntary Agreement and Petition based increases are.

revision date (Rev 8/06) (the month and year the 2006 Amendments became effective) and states with respect to petition based increases and voluntary agreements:

> "Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now, the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

[section of Act]	[type of increase]	[increase authorized]
[effective date of authorization]	[case number, if applicable]	[date of decision, if applicable

(Emphasis added.) See Exhibit 7.

Thus, soon after the enactment of the 2006 Amendments it was the clear understanding of all concerned that the law with respect to Petition based increases and Voluntary Agreements had not changed from the law prior to the 2006 Amendments: a Voluntary Agreement or Petition based increase in the rent charged is not required to be implemented all at one time. It may be partially implemented and the remainder may be carried over for implementation at a future time.

This fundamental premise – that rent increases granted by Voluntary Agreements and Petitions were not being changed by the 2006 Amendments– was the basis on which the legislation proceeded.

Apart from Section 206, other provisions of the Act support this conclusion. Section 208(g)(1) deals directly with implementing rent increases, and it provides that:

> "An increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any one section of this title ..."

(emphasis added.)

This language does not say that the entire amount of a Voluntary Agreement or Petition-based increase must be implemented at one time; rather, it says on its face that an increase may not exceed the amount of a Voluntary Agreement or Petition-based increase. How much less than that maximum is actually implemented has always been up to the housing provider and the tenants and the balance has never been held to be "lost". This prior practice, as the Mayor stated (quoted supra) "remain[s] intact" under the 2006 Amendments.

The correctness of this view is also apparent from the statutory language of the petition-based sections of the Act.

Section 210 (Petitions for Capital Improvements) was not affected by the 2006 Amendments, and it states that the rent increase is abated only

> "upon recovery of all costs of the capital improvement, including interest and service charges. ... When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charge to reflect the abatement of the capital improvement increase."

This language clearly says that the rent increase granted by a Capital Improvement Petition ends only when the cost of the improvements, interest and service charges have been fully recovered. It is not a "use it or lose it" rent increase.

Section 211, entitled Services and Facilities, is not a "use it or lose it" increase in the rent charge, but is rather a continuing "increase or decrease [in] the rent charged, as applicable, to reflect proportionally the value of the change in services or a facilities". The increased services continue, so how would it make any sense to say that the rent increase ends to the extent it is not immediately taken?

Section 212, the Hardship Petition section, is perhaps the clearest example of the nonsensical nature of espousing a "use it or lose it" approach to Petition-based increases. The Hardship Petition is designed to "generate no more than a 12 percent rate of return computed

according to subsection (b) of [Section 212]." To require the housing provider to implement in one fell swoop the rent increase necessary to generate the 12 percent return, or lose it, is contrary to the statutory language which does assure a 12% rate of return, and would raise a serious Constitutional infirmity in the rent control law.

Section 214 regarding Substantial Rehabilitation is designed to provide to the housing provider a monthly mortgage payment sufficient to pay for the substantial rehabilitation. It is well-known that a rent increase based on a granted Substantial Rehabilitation Petition does not end, but is rather a permanent part of the rent. The "use or lose it" approach would be entirely contrary to the well-understood purpose of the Substantial Rehabilitation Petition which is to allow recovery of all of the costs invested in substantially rehabilitating a housing accommodation. Nothing in the 2006 Amendments changed that well-understood law.

Finally, Section 215, regarding Voluntary Agreements, is a permanent agreement between the housing provider and 70% or more of the tenants. The terms of the agreement, as agreed upon by the parties, determine how and when the rent is increased. A mandatory "use it or lose it" rule would inject into the Voluntary Agreement of the parties a term to which they never agreed. That would be contrary to the purpose of Voluntary Agreements and contrary to the statutory language. *See Youssef v. Cowan,* 687 A.2d 594 (D.C. 1996) ("The Act further provides that, "if approved by the Rent Administrator, [a voluntary] agreement shall be binding on the [landlord] and on all tenants." D.C. Code § 45-2525 (b)".)

In short, the Petition and Voluntary Agreement processes were designed to allow the Rent Administrator to set a rent increase sufficient for the housing provider to recover an amount of rent over a period of time. That is the very purpose of the Voluntary Agreement and Petition processes. To say, that the housing provider "loses" the ability to recoup that amount of rent for

any reason, whether by a delay in implementation or otherwise, is contrary to the nature of the Voluntary Agreement and Petition processes.

A housing provider's ability to preserve a Voluntary Agreement increase for future implementation was in fact applied by the prior Acting Rent Administrator in granting Voluntary Agreements after the 2006 Amendments. For example, *see In Re: 70% Voluntary Agreement, WRF 1921 Kalorama Road, LP Successors by Deed to Southwest Properties, Inc. & New Kaloram Tenants Association, Inc.*, VA 08-011, (HRA May 7, 2009), Order Granting Joint Motion to Approve Voluntary Agreement attached as Exhibit 8. At pages 5-6, the then-Acting Rent Administrator confirmed that in that case the Voluntary Agreement rent increase is not imposed on the current tenants of the housing accommodation, is permitted to be imposed on future tenants (that is, delayed or implemented in the future), and provided an excellent explanation of why doing so is entirely consistent with the purposes of the rent control law as amended in 2006. There was no "use it or lose it" approach imposed and no objection to holding the rent increases for future implementation, because those prohibitions do not exist under the Act.

Likewise, as discussed *supra* there is no legislative history that supports the concept of doing away with CPI or vacancy adjustments which are properly preserved simply because the Housing Provider and the tenant negotiate a discount to the maximum legal rent..

The exchange of correspondence and legislative history attached to this Memorandum as Exhibit 1 also demonstrates that there was no intention of the Council to change how further increases were to be calculated or to change any of the existing rights or procedures with respect to adjustments under Voluntary Agreements and Petitions. Except for capital improvement surcharges, further rent increases are calculated based on the full amount of the Voluntary

Agreement or Petition-based increase and have been so calculated since the enactment of the 2006 Amendments. The Commission's Decision therefore cannot be read to apply at all to Voluntary Agreements and Petition-based increases.

E. THE COMMISSION IS NOT PERMITTED TO IMPOSE ITS OWN INTERPRETATION ON THE TERM "RENT CHARGED" BASED ON SUPPOSED AMBIGUITY OR TO SUPPLANT A PRIVATE AGREEMENT THAT DOES NOT VIOLATE THE LAW

At page 22 of the Decision, the Commission states that it finds the statute to be ambiguous as to the definition of the term "rent charged" and ultimately appears to base its conclusions on its "reconciliation" of the ambiguity with the purposes of the Act. The Commission is not empowered to do so. While the Commission decision cites multiple maxims of statutory construction, it recites no maxim which permits it to resolve alleged statutory ambiguities by speculation.[8] Just as the amendments to the Act in 2006 required action by the Council, any new definition of "rent charged" would require legislative action. An important maxim which the Commission did not cite, however, is pertinent here: a statute in derogation of common law should be strictly construed. *See Columbia Plaza Tenants Asso. v. Antonelli,* 462 A.2d 433, 437 (D.C. 1983).

As the Court stated in James Parreco & Sons v. District of Columbia Rental Housing Commission, 567 A. 2d 43, 44 (D.C. 1987):

> In the present case, however, the agency has adopted an interpretation of a provision of the statute relating to hardship rent increases which is incompatible with its plain language, and we are not persuaded that a literal construction produces absurd or manifestly unjust results antagonistic to the statutory purposes. Neither the Commission nor this court is authorized to read into an unambiguous statute language that is not there, or to rewrite

[8] It is particularly noteworthy that the Commission only relies upon the Addendum to the Committee Report – a brief summary of the legislative history – and no other portion of the legislative history, to support its findings. For instance, the Commission states:

- "It does not appear, from the Commission's review of the 2006 Committee Report, that the Council intended the statutory use of rent charged' to function in the same or similar manner as 'rent ceilings." Decision at 28.

> legislation to make it more "equitable" or "fair." Accordingly, we reverse the Commission's decision and remand for further proceedings.

That being the case, the Commission is bound to follow the method for determining "rent charged" as it is prescribed in the Act and not impose its own definition.

Housing Provider has demonstrated above that the Commission's interpretation is irreconcilable with Section 206 and 901 of the Act. The Commission's discussion of the vacancy increase exposes the fundamental flaw in the Commission's analysis which is reflected by the following statement at page 22 of the Decision: "Inherently no rent is actually, presently charged, demanded or received as a condition of occupancy of a rental unit while it is vacant". Based on this statement, it is clear that the Commission has read into the Act something that has never been the case and which the Act does not provide after the 2006 Amendments, i.e., the Commission's view that rents are to be adjusted based on the rent *charged to the tenant* as opposed to the *rent charged for the unit.* This is simply wrong, as reflected by reviewing the language of Sections 208 (g) and 208 (h) of the Act, which read in pertinent part:

> (g) The amount of rent charged for <u>any rental unit</u> subject to this subchapter shall not be increased until a full 12 months have elapsed since any prior increase; provided, that:
>
> (1) An increase in the amount of rent charged <u>shall not exceed</u> the amount of any single adjustment pursuant to any one section of this subchapter;
>
> (h) Unless the adjustment in the amount of rent charged is implemented pursuant to § 42-3502.10, § 42-3502.11, § 42-3502.12, § 42-3502.14, or § 42-3502.15, an adjustment in the amount of rent charged:
>
> (1) If the <u>unit</u> is vacant, shall not exceed the amount permitted under § 42-3502.13(a); or
>
> (2) If the <u>unit</u> is occupied:

(A) Shall not exceed the current allowable amount of rent charged for the unit, plus the adjustment of general applicability plus 2%, taken as a percentage of the current allowable amount of rent charged; provided, that the total adjustment shall not exceed 10%;

(B) Shall be pursuant to § 42-3502.24, if occupied by an elderly tenant or tenant with a disability; and

(C) Shall not exceed the lesser of 5% or the adjustment of general applicability if the unit is leased or co-leased by a home and community-based services waiver provider.[9] (emphasis added)

Subsection (g)(1) establishes unambiguously that an adjustment is on the rental unit and may not exceed a single adjustment "pursuant to any one section of this subchapter." Subsection (h) specifically states that the "rent charged" is adjusted for either a vacant or occupied unit, referencing the *rent charged for the unit*, not the *rent charged to the tenant.*

Where the housing provider and tenant agree to a concession, then, that is purely a private agreement, not controlled by the provisions of the Act. The rent charged for the rental unit remains the amount calculated pursuant to the Act. It would be virtually impossible to administer rent increases under the Act otherwise, because if increases are what the tenants pay as governed by private agreements rather than the provisions of the Act, there is no concrete manner to determine what is the permitted rent, as it will constantly change.[10] And the Rent Administrator has never been in the business of administering private agreements. The inadvisability of the Commission venturing into contract law is demonstrated by its erroneous conclusion that in the "pre-concession amount of 'Monthly Apartment Rent', $3,114 was not at any time an 'actual condition of occupancy or use of [the] rental unit.' Decision at 35. The Monthly Apartment Rent was included in, and a prominent part of, the contract into which the

[9] As stated above, Section 206 establishes the "rent charged for the rental unit".
[10] The only place where the Act focuses on tenants in terms of establishing rent limitations are the provisions relating to elderly and disabled tenants.

parties entered, and the Commission's attempt to read it out of the contract is contrary to basic principles of contract law that all provisions included in a contract are to be given meaning. [11] *See Independence Management Co. Inc. v. Anderson Summers*, 874 A. 2d 862 (D.C. 2005). The inclusion of Monthly Apartment Rent had an obvious importance to the Housing Provider, without which the deal with the tenant would have been unacceptable.

That the Decision prohibiting rent concessions is contrary to the purpose of the Act is demonstrated further by a prior Commission decision in *Borger Management, Inc., Housing Provider/Appellant v. Dyaz Godfrey And Winchester Van Buren Tenants' Association, Tenants/Appellees*, TP 20,116 (RHC September 4, 1987):

> There are other aids to construction which reinforce our conclusion. *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 754-755 (D.C. 1983) One of these is that whenever possible the words of a statute are to be construed to effectuate the legislative purpose and to avoid obvious injustice. Id. The construction proposed by tenants would certainly produce results not in keeping with the statutory purpose. If housing providers were forced to limit rent increases to the amount of a single rent ceiling adjustment within any six month period they would have a strong incentive to immediately raise the rent to the new rent ceiling as soon as the ceiling increase was authorized. The statutory purpose of protecting tenants would not be well served if the present practice was discontinued whereby housing providers frequently postpone raising the rent in response to a ceiling increase, in whole or in part, for business reasons. They do this knowing that the rent may be increased to the new rent ceiling at a later time of their own choosing so long as at least 180 days have elapsed since any prior increase in rent. In the interim, tenants maintain the benefit of the lower existing rents.

Significantly the definition of "rent" was not amended in the Reform Act. Both before and after its passage, the term "rent" is defined to mean: "the entire amount of money, money, money's worth, benefit, bonus or gratuity demanded, received, or charged by a housing provider..." D.C. Code § 42-3501.03(28). As the District of Columbia Court of Appeals stated

[11] The Commission engaged in fact-finding, even though the parties had agreed there were not disputes of fact.

in *Akassy v. William Penn Apts., L.P.*, 891 A. 2d 291 (D.C. 2003), "This definition has been interpreted to mean the amount the housing provider charges or demands, rather than the amount that the tenant actually pays." *Id.* at 299. The rent control law has long provided that a housing provider could charge as rent less than the full legal amount and not lose the remainder. For example, 14 D.C.M.R. § 4205.3 provided since 1985 (and still provides): "A housing provider may charge as rent for a rental unit an amount less than the authorized rent ceiling [which the 2006 Amendments Act changed to rent charged] without waiving or forfeiting the right to later implement a rent increase...to an amount equal to or less than the authorized rent ceiling... ." (brackets added).

More recently, in the context of a rent-controlled unit under the Rental Housing Act, the Court upheld the finding that "[a] discount in the amount of legal rent charged in return for a lease is not illegal. . ." *Wilson v. Rental Housing Commission*, 159 A.3d, 1211, 1214 (D.C. 2017). This holding recognizes that the "legal rent charged" may exceed the discounted rent. The Court, unlike the Commission in the present case, found no conflict with the purposes or provisions of the Rental Housing Act.

In its very direct pronouncement on the issue of the negotiation of preferential rents/concessions, the Court of Appeals stated in *Double H. Housing Corp. v. David,* 947 A.2d 38 (D.C. 2008):

> We therefore cannot agree that Double H was precluded from offering to charge David a discounted rent amount if he signed a new lease but charging him a higher monthly rent if he continued his month-to-month tenancy. To hold otherwise would, we think, encroach on the landlord's - and tenant's - "'basic freedom to contract as he will,'" which we have said remains one of the "rather basic rights incident to the ownership of property [that] ought not to be summarily dismissed as obsolete" even under our modern statutory rental housing law. *Goodman v. District of Columbia*

> *Rental Hous. Comm'n,* 573 A.2d 1293, 1297 (D.C. 1990) (quoting *White v. Allan,* 70 A.2d 252, 255 (D.C. 1949)).

It is also no answer to say that *Double H Housing Corp.* involved an exempt rental unit. The question is whether anything in the Act prohibits discounts in rent on a rent-controlled unit and, as demonstrated above, the answer is no.

As the court stated in *Missionary Sisters of the Sacred Heart III. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 283 S.D. 2d 264, 724 N.Y.S. 2d 742 (2001), in its common sense analysis of the use of preferential (discounted) rents in New York, which has a long history of rent control:

> Surely, requiring a tenant to pay less than the full legal rent, no matter for how short a term, cannot possibly violate any public policy prohibiting the exaction of "unjust, unreasonable and oppressive rents," especially where the tenant is aware of the concession and the limitation on its duration. Moreover, requiring the tenant to pay a temporarily discounted rent cannot be said to constitute a waiver of a benefit provided by the Code. To hold, as did the DHCR, that any and all agreed upon limited concessions are, in fact, not limited at all but survive to the termination of the tenancy will serve no other purpose but to foreclose any informed landlord from providing such a limited preference, whether such preference inures solely to the benefit of the tenant, or to both the tenant and landlord.

III. CONCLUSION

Throughout the market place, it is common for the price tag of an item to state one price only to be discounted (e.g., a "sale"). That does not make the price tag something less when the discount is no longer offered. Given the purposes of the rent control law to keep rents down, it is irrational for the Commission to say that housing providers cannot offer temporary discounts without suffering the adverse consequence of making the discount permanent.

For the foregoing reasons, the Decision should be vacated and the Final Order of the Office of Administrative Hearings should be reinstated and affirmed. Alternatively, the Commission's Decision should be clarified so as to exclude Voluntary Agreements and Petition-based increases.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

Dated: February 6, 2018

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1620 L Street, N.W., Suite 900
Washington, D.C. 20036-5605
Telephone: (202) 452-1400
E-mail: rwl@gdllaw.com
Counsel for Housing Provider/Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration and attachments thereto was served via first class mail, this 6th day of February, 2018 on:

Gabriel Fineman
7270 Ashford Place
Apartment 206
Delray Beach, Florida 33446-2954

Debra F. Leege

Debra F. Leege

EXHIBIT 1

Vincent M. Policy

From: Vincent M. Policy
Sent: Wednesday, February 08, 2012 3:46 PM
To: 'jeff.miller@dc.gov'
Subject: FW: Rent Control
Attachments: Letter re Rent Control.pdf

Jeff- VERY IMPORTANT. Please refer to the DVD beginning at approximately 2:00 (after Patterson) where Graham reviews ALL types of petitions and says that a voluntary agreement increase can be "in any amount" (which Rent Administrator Zapata confirms) and he says "and we are not disturbing any of that" with the legisation. He encourages landlords to use these petitons rather than the vacancy increase. VMP

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From: Vincent M. Policy
Sent: Wednesday, February 08, 2012 1:51 PM
To: 'jeff.miller@dc.gov'
Subject: Rent Control

Jeff- I don't want to overburden you on this subject, but I think that this letter contains addititonal information which is important. Please advise if you need anything further. The original with the DVD is being sent to you by messenger. VMP

-----Original Message-----
From: Deborah Hebb
Sent: Wednesday, February 08, 2012 1:47 PM
To: Vincent M. Policy; Deborah Hebb
Subject: Scanned document from Deborah Hebb (DLH@gdllaw.com)

Vincent M. Policy

From: Vincent M. Policy
Sent: Wednesday, February 08, 2012 4:50 PM
To: 'jeff.miller@dc.gov'
Subject: FW: Rent Control
Attachments: Letter re Rent Control.pdf

And starting at approximately 3:30, Graham once again discusses how petiton increases are not being changed and flat out says that a voluntary agreement "has no cap on the rent ceiling increase" and that the legisation is not disturbing any of that.

Sorry to be coming back with this, but listening to the entire hearing is taking time between other matters. VMP

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Sent: Wednesday, February 08, 2012 3:46 PM
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GREENSTEIN DELORME & LUCHS, P.C.

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Vincent Mark J. Policy
VMP@gdllaw.com

February 8, 2012

BY ELECTRONIC MAIL AND BY MESSENGER

Mr. M. Jeffrey Miller
Director of Real Estate
Government of the District of Columbia
Office of the Deputy Major for
Planning and Economic Development
1350 Pennsylvania Avenue, N.W.
Room 317
Washington, D.C. 20004

Re: Rent Control

Dear Director Miller:

Further to my letter of February 6, 2012, I would like to bring to your attention a video of a Committee Hearing on the 2205-2006 rent control bills which is on the D.C. Office of Cable Television Website, and to provide further observations specifically related to the sections of the Rental Housing Act of 1985 prescribing petitions and voluntary agreements.

As before, this letter relates to the interpretation by the Acting Rent Administrator that a petition based and voluntary agreement based increase is on a "use it or lose it" basis, i.e., that it must be used at the earliest possible time and that the entire amount of the rent increase must be imposed on the tenants or the remainder is lost.

This interpretation displays a basic misunderstanding of the rent control law, and the 2006 Amendments. The "abolition" of rent ceilings, as it applies after the 2006 Amendments became effective, simply had to do with how the maximum permissible rent is now calculated. It does not prescribe when and to what extent petition based and voluntary agreement based rent charged

increases must be imposed on tenants, and it does not impose a loss on the housing provider if they are not.

A. October 26, 2005 Public Hearing, Committee on Consumer and Regulatory Affairs

On October 26, 2005, there was a hearing on the then pending rent control bills which began the process leading to the 2006 Amendments. A video of the hearing is available through the Council's Website by accessing the hearings portion of the Website and then entering the archives of hearings through the Office of Cable Television Website. I have attached a page from the Office of Cable Television Website showing the location of the October 26, 2005 hearing. I have enclosed a DVD of the Committee Hearing for convenient reference.

This hearing is important in several respects.

First, Committee Chairman Jim Graham states repeatedly that the changes to rent control "are not touching the hardship petition process" and also refers to capital improvements (at 15:04 on the counter), that "we do not in any way disturb" the hardship process (counter at 1:17), that "we don't disturb that at all" (counter at 1:20:51), and the petition process generally is discussed at 1:19:42 (all counter locations are approximate). We have already provided to you the Executive Summary by the Mayor stating that the petition and voluntary agreement programs were to remain the same. The statements at this Committee Hearing show that the intention of the Council was the same.

Second, this Committee Hearing video shows that petitions and voluntary agreements were not viewed as a problem requiring change; rather, the problems being addressed were rent ceilings resulting from the highest comparable vacancy increase and to a lesser extent the CPI increase.[1]

[1] We do not focus on the vacancy increase or the CPI increase, because they are not the subjects of the current discussion with DHCD. Suffice it to say that the legislative history on that subject is different than with respect to petitions and voluntary agreements.

Third, at this Committee Hearing, there was great concern expressed by the Councilmembers (for instance, Councilmember Catania) about changing the rent control law in ways that would discourage housing providers from investing in and preserving rental housing.

It is difficult to think of a more discouraging effect on investment in rental housing than making the petition and voluntary agreement process an unpredictable "use it or lose it" scenario. Housing providers will not take such a risk, and banks will not finance improvements if a loss of the income to pay a loan is a distinct possibility.

B. The Petition and Voluntary Agreement Process

There is no provision of the Act after the 2006 Amendments which says that a petition based or voluntary agreement based increase is on "a use it or lose it" basis. To interpret the statute that way (based on what "abolition of rent ceilings" means, or otherwise) would be wrong. A petition based or voluntary agreement based rent increase is an authorization to increase the rent, not a command to do so. Thus, § 206(a) of the Act, as amended in 2006, provides:

> "Except to the extent provided in subsections (b) and (c) of this section [regarding CPI and hardship increases], no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. No tenant may sublet a rental unit at a rent

> greater than that tenant pays the housing provider." (Emphasis added.)[2]

"This chapter" in the above quote refers to the current rent control law after the 2006 Amendments. Each of the petition based sections and the voluntary agreement section of the rent control law provide for an "approval" of a rent adjustment. Act, Section 210 (capital improvements), Section 211 (services and facilities, as amplified by regulations), Section 212 (hardship), Section 214 (substantial rehabilitation), and Section 215(b) (voluntary agreement).

The language of Section 206(a) and 208(g), and the specific provisions for petitions and voluntary agreements, thus does not say that the entire amount of a petition based or voluntary agreement based increase must be implemented at one time; rather, these sections say that an increase may not exceed the amount of a petition-based increase or voluntary agreement increase. How much less than that maximum is actually implemented and when that is done has always been up to the housing provider (or the terms of the 70% Voluntary Agreement) and the balance has never been held to be "lost". See discussion of 14 D.C.M.R. § 4205.3 in my prior letter.

The correctness of this view is apparent from the statutory language of the petition based and voluntary agreement based sections of the Act.

Section 210 (Petitions for Capital Improvements) was not affected by the 2006 Amendments, other than to base the allowed increase on the rent charged, and it states that the rent increase is abated only

---

[2] Section 208(g)(1) of the Act also deals with implementing rent increases, and it provides that:

> "An increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any one section of this title ..." (Emphasis added.)

> "upon recovery of all costs of the capital improvement, including interest and service charges. ... When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charge to reflect the abatement of the capital improvement increase."

This language clearly says that the rent increase granted by a Capital Improvement Petition ends only when the cost of the improvements, interest and service charges have been fully recovered. It is not a "use it or lose it" rent increase. It is noteworthy that the rent increase may be taken only after the work is completed and the funds to do that have been spent. What rational housing provider would spend the money for the capital improvements, do the work, and then risk losing recovery of the expenditure by a "gotcha" such as "use it or lose it", and what bank would lend money for such a venture?

Section 211, entitled Services and Facilities, is not a "use it or lose it" increase in the rent charged, but is rather a continuing "increase or decrease [in] the rent charged, as applicable, to reflect proportionally the value of the change in services or a facilities". Section 211. The increased services continue, so how would it make any sense to say that the rent increase ends to the extent it is not immediately taken?

Section 212, the Hardship Petition section, is perhaps the clearest example of the nonsensical nature of espousing "use it or lose it" approach to petition-based increases. The hardship petition is designed to "generate no more than a 12 percent rate of return computed according to subsection (b) of [Section 212]." To say that the housing provider must implement in one fell swoop the rent increase necessary to generate the 12 percent return, or lose it, is saying nothing less than the housing provider who charges less rent than granted by the hardship petition does not get the 12 percent rate of return. That is contrary to the statutory language

which does provide for a 12% rate of return, and it would raise a serious Constitutional issue.

Section 214 regarding Substantial Rehabilitation is designed to provide to the housing provider a monthly mortgage payment sufficient to pay for the substantial rehabilitation. To say that when the petition is granted and the "mortgage payment" is set, if the housing provider chooses to implement less than the full rent increase all at one time, the housing provider loses the remainder of the rent increase and the ability to pay the mortgage payment is, again, nonsensical. It is well-known that a rent increase based on a granted substantial rehabilitation petition does not end, but is rather a permanent part of the rent. The interpretation posed by the Acting Rent Administrator (that the entire amount has to be implemented or lost) would be entirely contrary to the well-understood purpose of the substantial rehabilitation petition, which is to allow recovery of all of the costs invested in substantially rehabilitating a housing accommodation. Nothing in the Reform Act changed that well-understood law.

Finally, Section 215, regarding Voluntary Agreements, is a permanent agreement between the housing provider and 70% or more of the tenants. The terms of the agreement, as agreed upon by the parties, determine how and when the rent is increased. A mandatory "use it or lose it" rule would inject into the voluntary agreement of the parties a term to which they never agreed. That would be contrary to the purpose of voluntary agreements and contrary to the statutory language.

In summary, the petition process remains designed to allow a rent increase sufficient for the housing provider to recover an amount of rent. How and when that rent increase occurs is left to the particular circumstances of the housing provider, the tenants and the market, as has always been the case under rent control. That is the very purpose of the petition and voluntary agreement processes. To say that the housing provider must impose the rent increase or "lose" the ability to recoup that amount of rent for any reason, whether by a delay in

implementation or otherwise, is contrary to the nature of the petition and voluntary agreement processes. And to say that the housing provider must impose the entire increase on tenants all at one time is contrary to the very purpose of rent control.

I hope that this is helpful, and I am of course available to discuss this subject further.

Sincerely,

Vincent Mark J. Policy

VMP:dlh
Enclosure

OCT HOME

OCT TV-13 SERVICES
Live Video
On Demand Video
Programming Schedule

OCT TV-16 SERVICES
Live Video
On Demand Video
Programming Schedule
Programming Description

INFORMATION

ONLINE SERVICE REQUESTS

2012 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2011 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2010 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2009 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2008 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2007 Monthly Listings
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2006 Monthly Listing
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2005 Monthly Listing
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2004 Monthly Listing
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

2003 Monthly Listing
Jan Feb Mar Apr
May Jun Jul Aug
Sep Oct Nov Dec

On-Demand Video - OCT TV-13
October 23 - October 29, 2005

On-Demand Video is presented in Microsoft Media Player Format*.

Click on a program segment to begin viewing.

Public Hearing / Council Meeting	Segments
10/24/2005 PUBLIC OVERSIGHT HEARING, SPECIAL COMMITTEE ON A COMPREHENSIVE POLICY FOR LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISES, Kwame Brown, Chairman	• View Meeting
10/24/2005 PUBLIC HEARING, COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT, Carol Schwartz, Chairwoman	• View Meeting
10/24/2005 PUBLIC HEARING, COMMITTEE ON THE JUDICIARY, Phil Mendelson, Chairman	• View Meeting
10/25/2005 PUBLIC HEARING, COMMITTEE OF THE WHOLE, Linda Cropp, Chairman	• View Meeting
10/25/2005 PUBLIC HEARING, COMMITTEE ON HUMAN SERVICES, Adrian Fenty, Chairman	• View Meeting
10/25/2005 PUBLIC HEARING, COMMITTEE ON EDUCATION, LIBRARIES AND RECREATION, Kathy Patterson, Chairwoman	• View Meeting
10/26/2005 Part 1 PUBLIC HEARING, COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS, Jim Graham, Chairman	• View Meeting
10/26/2005 Part 2 PUBLIC HEARING, COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS, Jim Graham, Chairman	• View Meeting
10/26/2005 Part 1 PUBLIC HEARING, COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT, Carol Schwartz, Chairwoman	• View Meeting
10/26/2005 Part 2 PUBLIC HEARING, COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT, Carol Schwartz, Chairwoman	• View Meeting
10/26/2005 Part 3 PUBLIC HEARING, COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT, Carol Schwartz, Chairwoman	• View Meeting
10/26/2005 PUBLIC HEARING, JOINT MEETING OF THE COMMITTEE OF HEALTH AND THE COMMITTEE ON EDUCATION, LIBRARIES AND RECREATION, David A. Catania, and Kathy Patterson, Chairpersons	• View Meeting
10/27/2005 PUBLIC HEARING, COMMITTEE ON HUMAN SERVICES, Adrian	• View Meeting

Carine Schaut

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Vincent Mark J. Policy
VMP@gdllaw.com

2012 FEB 07 PM 2:27

February 6, 2012

BY MESSENGER AND ELECTRONIC MAIL

Mr. M: Jeffrey Miller
Director of Real Estate
Government of the District of Columbia
Office of the Deputy Major for
Planning and Economic Development
1350 Pennsylvania Avenue, N.W.
Room 317
Washington, D.C. 20004

Re: Rent Control

Dear Director Miller:

Chuck Hathaway, in-house counsel for our client, suggested that I send to you the legislative materials to which I referred at the meeting at DHCD on February 2, 2012. The issue discussed was whether the 2006 amendments to the Rental Housing Act of 1985 changed the law such that a housing provider is required to at once increase the rent charged by the full amount of a petition or voluntary agreement based increase, or lose the unimplemented amount.

I have enclosed for convenient reference a copy of the Rental Housing Act, as amended by the 2006 Amendments.

A. Background

The rent control law has long provided that a housing provider could charge as rent less than the full legal amount and not lose the remainder. For example, 14 D.C.M.R. Section 4205.3 provided since 1985 (and still provides):

"A housing provider may charge as rent for a rental unit an amount less than the authorized rent ceiling without waiving or forfeiting the right to later implement a rent increase...to an amount equal to or less than the authorized rent ceiling... ." Thus, petition based increases and voluntary agreement based increases were not required to be implemented all at one time and were not forfeited.

B. The Acting Rent Administrator's Misinterpretation

The 2006 amendments were never intended to, and did not, change the law in this regard with respect to petitions or voluntary agreements. Nothing in the Rental Housing Act, as amended in 2006, says that a housing provider is required to implement at once the entire amount of a petition or voluntary agreement based increase or lose it. The Acting Rent Administrator bases this "use it or lose it" approach on the idea that, since rent ceilings were abolished, a voluntary agreement based increase (for example) cannot be preserved for future implementation. This was shown to be fallacious by the Acting Rent Administrator's own words at our February 2 meeting (at which you were present).

The Acting Rent Administrator acknowledged that the rent charged may be increased only once every 12 months, and thus, she explained, if the housing provider took a CPI rent increase and also was granted a voluntary agreement increase, the implementation of the voluntary agreement increase could permissibly be delayed until the 12 months had expired. This is nothing less than preserving a rent increase for future implementation. And if at the expiration of the 12-month period, the housing provider again took a CPI increase, the voluntary agreement increase would again be postponed and preserved for future implementation, and so on. The true vice, however, of the Acting Rent Administrator's theory is that the entire voluntary agreement increase, when it is implemented, has to be imposed in its entirety on the tenants, thus forcing greater rent increases. Not surprisingly, nothing in the rent

control law says that, and it would be contrary to the purposes of the rent control law to adopt such an interpretation.

To the contrary, Section 206(a) as amended states that the maximum rent charged may not be exceeded. It does not say that the rent must equal the maximum rent charged. How much below the maximum may be charged is left to the housing provider, and nothing in the Act says that the remainder is lost.

Section 206(a) expressly says:

> "In considering a hardship petition pursuant to section 212, any unimplemented rent charged increase pursuant to a petition or voluntary agreement approved by the Rent Administrator shall be included in the maximum possible rental income." (Emphasis added.)

The Acting Rent Administrator says that this only refers to the pre-2006 granted petitions referred to previously in Section 206(a). But that is not right: the pre-2006 granted petitions remained rent ceiling increases and the sentence of Section 206(a) quoted above expressly says "unimplemented rent charged" increase, which is what post-2006 voluntary agreement increases (and petition based increases) are.

Thus, Section 206 provides for future implementation of rent increases, in whole or in part, and the Acting Rent Administrator's interpretation finds no support in the statute.

C. Legislative Background

When then Mayor Anthony A. Williams submitted to the Council the Executive Branch Bill "Rental Control Reform Amendment Act of 2006" (copy of Executive Summary enclosed) the Executive Summary stated at page 2: "The District's petition processes and voluntary agreement programs remain intact" under the Executive Branch's rent control bill. This was a fundamental premise.

This intention is strikingly shown by the Committee Print by the Committee on Consumer and Regulatory Affairs dated April 13, 2006. A copy of the Committee Print is enclosed. At the top of page 6, Subsection (3) reads as follows:

> "(3) The limitations in paragraph (2) of this subsection, section 208(h), and section 213 [referring to limitations on automatic increases and vacancy increases] shall not apply to an adjustment in the rent charged that implements a decision of the Rent Administrator pursuant to a petition under section 210, section 211, section 212 or section 214, or a voluntary agreement under section 215, including any decision or voluntary agreement granted on or after the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), or any decision or voluntary agreement as to which the rent ceiling adjustment was granted prior to the effective date of the Rental Control Reform Amendment Act of 2006 (Enrolled version of Bill 16-457), to the extent the rent ceiling adjustment was not implemented prior to the adjustment in rent charged pursuant to this subsection. Such rent ceiling adjustments shall remain in effect. In proceedings under section 210, section 211, section 212, section 214 or a voluntary agreement under section 215, the Rent Administrator shall determine the adjustment to the rent charged, not the rent ceiling, according to the provisions of those sections. The percentages in section 210(c)(1) and (2) and section 214(a) shall be applied as percentages of the rent charged. Unimplemented portions of increases in the rent charged under all petitions approved by the Rent Administrator as set forth in this subsection may be carried over to subsequent years." (Brackets and Emphasis added.)

Although the Committee Print continued to be modified in the legislative process, the rule that petition based and voluntary agreement based increases are not on a "use it or lose it basis" remained the rule, as discussed in Section B above and Section D below in this letter. Much has been made of the reference in Section 206(a) to petitions and voluntary agreements which were granted or pending prior to the 2006 Amendments. However, the purpose of those provisions was to avoid a legal challenge if the 2006 Amendments applied retroactively. They had nothing to do with how the rent charged may be implemented under the 2006 Amendments, as is being claimed.

D. Actions Implementing the 2006 Amendments

That voluntary agreement increases and petition based increases may be implemented in part while reserving the remainder did not change. That fact (and the meaning of Section 206(a)) is demonstrated by the rent increase notice forms which the Department of Consumer and Regulatory Affairs (the agency which then administered rent control) adopted after the 2006 Amendments were enacted, and these forms were adopted specifically to implement the provisions of those 2006 Amendments. I have enclosed my January 18, 2012 letter to Director John E. Hall and Acting Rent Administrator Theresa Lewis explaining this background and attaching the rent increase forms. The Department of Consumer and Regulatory Affairs form bears a revision date (Rev 8/06) (the month and year the 2006 Amendments became effective) and states with respect to petition based increases and voluntary agreements:

> "Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now, the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

[section of Act]	[type of increase]	[increase authorized]
[effective date of authorization]	[case number, if applicable]	[date of decision, if applicable

(Emphasis added.)"

I was extensively involved in the agency's process of developing these forms, and any idea that this was a mistake is wrong. It was an intentional reflection of the rent control law inclusive of the 2006 Amendments.

Thus, after the enactment of the 2006 Amendments it was the clear understanding of all concerned that the law with respect to petition based increases and voluntary agreements had not changed from the law prior to the 2006 Amendments: a petition based or voluntary agreement based increase in the rent charged is not required to be implemented all at one time. It may be partially implemented and the remainder may be carried over for implementation at a future time.

A housing provider's ability to preserve a Voluntary Agreement increase for future implementation was in fact applied by prior Acting Rent Administrator Keith A. Anderson in granting Voluntary Agreements after the 2006 Amendments. For example, I have enclosed a May 7, 2009 Order Granting Joint Motion to Approve Voluntary Agreement. At pages 5-6, the then-Acting Rent Administrator confirms that in that case the voluntary agreement rent increase is not imposed on the current tenants of the housing accommodation, but is permitted to be imposed on future tenants, with an excellent explanation of why doing so is entirely consistent with the purposes of the rent control law as amended in 2006. There was no "use it or lose it" imposed and no objection to holding the rent increases for future implementation, because those prohibitions do not exist.

* * * *

The interpretation of Acting Rent Administrator Lewis would force the imposition of more and greater rent increases on tenants. That must not be the housing policy of the Gray Administration.

I hope that this is helpful, and please feel free to contact me if you have any questions or wish to discuss this matter.

Sincerely,

Vincent Mark J. Policy

VMP:dmc

Vincent M. Policy

From: Vincent M. Policy
Sent: Monday, February 06, 2012 3:33 PM
To: 'Charles T. Hathway'; 'tborger@borgermanagement.com'; 'johnr@wcsmith.com'; 'Nicola Whiteman'; 'Shaun Pharr'; Richard W. Luchs
Subject: FW: Rent Control

FYI below. Please call if you want to discuss this. VMP

From: Vincent M. Policy
Sent: Monday, February 06, 2012 3:30 PM
To: 'jeff.miller@dc.gov'
Subject: FW: Rent Control

Jeff- Please see below my letter and Exhibits. The original of this is coming to you by messenger. Please call me if you want to discuss this or require anything further. Thanks. VMP

From: Deborah Hebb
Sent: Monday, February 06, 2012 3:15 PM
To: Vincent M. Policy
Subject: Rent Control

Letter.pdf

Rental Housing Act with 2006 A...

Feb. 6, 2006 Letter from Mayor...

Apr. 13, 2006 Committee Print....

Jan. 18, 2012 Letter from Mr. ...

May 7, 2009 Order Granting Vol.

Deborah L. Hebb
Secretary to Vincent Mark J. Policy, Esq. and Gwynne L. Booth, Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, N.W. , Suite 900
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E-mail: dlh@gdllaw.com
www.gdllaw.com

Rental Housing Act
with 2006 Amendments

2006 law

Rent Housing Act of 1985, as Amended

D.C. Law 6-10 (DC ST § 42-3501.01 et seq.)

[This is a compilation of the law in statutory form including amendments through the Right of Tenants to Organize Amendment Act of 2006, which was prepared for an AOBA seminar.]

[This is not an official copy of D.C. law.]

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Sec. 902. Attorney's Fees
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Sec. 904. Service
Sec. 905. [Reserved]
Sec. 906. [Reserved]
Sec. 907. Termination

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Rental Housing Act of 1985".

Title I
FINDINGS; PURPOSES; DEFINITIONS

Sec. 101 (§42-3501.010). Findings.

The Council of the District of Columbia finds that:

(a) There is a severe shortage of rental housing available to citizens of the District of Columbia ("District").

(b) The shortage of housing is growing due to the withdrawal of housing units from the housing market, deterioration of existing housing units, and the lack of development of new or rehabilitation of vacant housing units.

(c) The shortage of housing is felt most acutely among low- and moderate-income renters, who are finding a shrinking pool of available dwellings.

(d) The cost of basic accommodation is so high as to cause undue hardship for many citizens of the District of Columbia.

(e) Many low- and moderate-income tenants need assistance to cover basic shelter costs, but the assistance should maximize individual choice.

(f) The Rent Stabilization Program ("Program") has a more substantial impact upon small housing providers than on large housing providers, and small housing providers find it more difficult to use the administrative machinery of the Program.

(g) Many small housing providers are experiencing financial difficulties and are in need of some special mechanisms to assist them and their tenants.

(h) The present Rent Stabilization Program should not be continued indefinitely and new approaches must be investigated to prevent the withdrawal of rental housing units from the market and the deterioration of existing rental housing units, and to increase the rental housing supply.

(i) The housing crisis in the District has not substantially improved since the passage of the Rental Housing Act of 1980.

(j) The Rent Stabilization Program should be extended for 6 years.

(k) This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare.

Sec. 102 (§42-3501.02). Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

(a) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;

(b) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;

(c) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;

(d) To protect the existing supply of rental housing from conversion to other uses; and

(e) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

Sec. 103 (§42-3501.03). Definitions.

For the purposes of this chapter, the term:

(1) "Annual fair market rental amount" means the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year, plus an amount equal to the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C. Standard Metropolitan Statistical Area, during each calendar year; provided, however, that if no rents were collected in the base calculation year because the housing accommodation was then under construction, the annual fair market rental amount shall be a sum equal to the rents which would have been collected during the base calculation year had the housing accommodation been 100% occupied during the entire base calculation year, the sum to be determined by appraisal, as increased by the Consumer Price Index increase under this paragraph.

(2) "Apartment improvement program" means the program which is administered with grant funds from title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), by the District of Columbia Department of Housing and Community Development, developed by the Neighborhood Reinvestment Corporation under the national Neighborhood Reinvestment Corporation Act (42 U.S.C. § 8101 et seq.), and operated under the supervision of the public-private Partnership Committee, which program has been established for the purpose of finding solutions to the economic and physical distress of moderate income rental apartment buildings by joining the tenants, housing provider, noteholder, and the District government in a collective effort.

(3) "Base calculation year" means the calendar year immediately preceding the first calendar year in which a given housing accommodation is made subject to §§ 42-3502.05(f) through 42-3502.19, or any future District law limiting the amount of rent which can lawfully be demanded or received from a tenant.

(4) "Base rent" means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

(5) "Building improvement plan" means the agreement executed between the parties of interest, including the tenants, housing provider, and the District government, at a property being treated under the apartment improvement program, which agreement sets forth the remedies to the property's distress, including, but not limited to:

(A) A schedule of repairs and capital improvements which, at a minimum, will bring the property into substantial compliance with the housing regulations;

(B) A schedule of services and facilities; and

(C) A schedule of rent ceilings and rent increases; and which agreement is monitored by the District government until it expires upon completion of all physical improvements and other scheduled activities included therein.

(6) "Capital improvement" means an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 U.S.C.).

(7) "Cooperative housing association" means an association incorporated for the purpose of owning and operating residential real property in the District, the shareholders or members of which, by reason of their ownership of stock or membership certificate, a proprietary lease, or evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

(8) "Council" means the Council of the District of Columbia.

(9) "Distressed property" means a housing accommodation that:

(A) Is experiencing, and has experienced for at least 2 years, a negative cash flow;

(B) Has been cited by the Department of Consumer and Regulatory Affairs as being in substantial noncompliance with the housing regulations;

(C) Has been subject to deferred maintenance as a result of negative cash flow; and

(D) Has been in arrears on either permanent mortgage loan-payments, property tax payments, fuel and utility payments, or water or sewer fee payments.

(10) "Division" means the Rental Accommodations and Conversion Division as continued by section 201.

(11) "Dormitory" means any structure or building owned by an institution of higher education or private boarding school, in which at least 95% of the units are occupied by presently matriculated students of the institution of higher education or private boarding school.

(12) "Elderly tenant" means a person who is 60 years of age or older and, for the purposes of subchapter III of this chapter, a person who meets the requirements of section 301(5) for eligible families and section 301(8) for lower-income families.

(13) "Equity" means the portion of the assessed value of a housing accommodation that exceeds the total value of all encumbrances on the housing accommodation.

(14) "Housing accommodation" means any structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by §47- 2001(n)(1)(C).

(15) "Housing provider" means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

(16) "Housing regulations" means the most recent edition of the Housing Regulations of the District of Columbia as established by Commissioner's Order No. 55-1503, effective August 11, 1955.

(17) "Initial leasing period" means that period for which the first tenant of a rental unit rents the rental unit. For units described in § 42-3502.19, the first tenant is the tenant who rents the rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this chapter.

(18) "Interest payments" means the amount of interest paid during a reporting period on a mortgage or deed of trust on a housing accommodation.

(19) "Management fee" means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the housing provider, if the duties of the personnel are connected with the operation of the housing accommodation.

(20) "Maximum possible rental income" means the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the 12 consecutive months within the 15 months preceding the date of any filing required or permitted under this chapter.

(21) "Mayor" means the Office of the Mayor of the District of Columbia.

(22) "Operating expenses" means the expenses required for the operation of a housing accommodation for the 12 consecutive months within the 15 months preceding the date of its use in any computation required by any provision of this chapter, including, but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(23) "Other income which is derived from the housing accommodation" means any income, other than rents, 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.

(24) "Person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

(25) "Property taxes" means the amount levied by the District government for real property tax on a housing accommodation during a tax year.

(26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

(28) "Rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(29) "Rent ceiling" means that amount defined in or computed under section 206.

(30) "Rental Accommodations Act of 1975" means the Rental Accommodations Act of 1975, effective November 1, 1975 (D.C. Law 1-33).

(31) "Rental Housing Act of 1977" means the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54).

(32) "Rental Housing Act of 1980" means the Rental Housing Act of 1980, effective March 4, 1981 (D.C. Law 3-131; Chapter 40 of this title).

(33) "Rental unit" means any part of a housing accommodation as defined in paragraph (14) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

(33A) "Single-room-occupancy housing" means a rental housing accommodation comprised of rental units, each of which is intended for occupancy and is occupied by a single adult either living alone or living with not more than 1 child of age 6 years or younger, and that may, but is not required to, contain sanitary and food-preparation facilities.

(34) "Substantial rehabilitation" means any improvement to or renovation of a housing accommodation for which:

(A) The building permit was granted after January 31, 1973; and

(B) The total expenditure for the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation.

(35) "Substantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

(36) "Tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

(37) "Uncollected rent" means the amount of rent and other charges due for at least 30 days but not received from tenants at the time any statement, form, or petition is filed under this chapter.

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

TITLE II
RENT STABILIZATION PROGRAM

Sec. 201 (§42-3502.01. Continuation of Rental Housing Commission; composition; appointment; qualifications; compensation; removal.

(a) The Rental Housing Commission established by section 202 of the Rental Housing act of 1980 (§42-4012) is continued and shall be composed of 3 members appointed by the Mayor with the advice and consent of the Council. The members' terms shall not exceed 3 years. Members may be appointed for successive terms. The terms of members of the Rental Housing Commission appointed under the Rental Housing Act of 1980 shall expire upon the confirmation of at least 2 new members appointed pursuant to this section but no later than 90 days after July 17, 1985, and the Mayor shall appoint the new members within 30 days of July 17, 1985. The Mayor shall designate 1 member of the Rental Housing Commission as the chairperson and administrative head. The date of swearing in for a majority of the members of the Rental Housing Commission appointed pursuant to this section shall become the anniversary date for all subsequent appointments.

(b) The Rental Housing Commission shall be composed of 3 persons admitted to practice before the District of Columbia Court of Appeals. All members of the Rental Housing Commission shall be residents of the District. No member shall be either a housing provider or a tenant.

(c) The Chairperson of the Rental Housing Commission shall receive annual compensation equivalent to that received by a District employee compensated at a grade 16 of the District schedule established under subchapter XI of Chapter 6 of Title 1 ("District schedule"). The other members of the Rental Housing Commission shall receive annual compensation equivalent to that received by a District employee at a grade 15 pursuant to the District schedule.

(d) Any person appointed to fill a vacancy on the Rental Housing Commission shall be appointed only for the unexpired term of the member whose vacancy is being filled.

(e) The Mayor shall remove any member of the Rental Housing Commission for good cause.

Sec. 202 (§42-3502.02). Powers and duties of Rental Housing Commission.

(a) The Rental Housing Commission shall:

(1) Issue, amend, and rescind rules and procedures for the administration of this chapter;

(2) Decide appeals brought to it from decisions of the Rent Administrator, including appeals under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980; and

(3) Certify and publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year the

annual adjustment of general applicability in the rent charged of a rental unit under section 206.

(b) (1) The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter.

(2) A majority of the Rental Housing Commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining Rental Housing Commissioners to exercise all the powers of the Rental Housing Commission.

(3) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rental Housing Commission, shall issue an order requiring the contumacious person to appear before the Rental Housing Commission, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that Court for contempt.

(c) Upon the written request of the chairperson of the Rental Housing Commission, each department or entity of the District government may furnish directly to the Rental Housing Commission any assistance and information necessary for the Rental Housing Commission to carry out effectively this chapter.

(d) The Department of Consumer and Regulatory Affairs shall employ the staff necessary to assist the Rental Housing Commission in carrying out its functions. Of the staff employed, 3 shall be law clerks who shall assist each member of the Rental Housing Commission in the preparation of decisions and orders.

Sec. 203 (§42-3502.03). Rental Accommodations and Conversion Division.

(a) There is continued as a division in the Department of Consumer and Regulatory Affairs, a Rental Accommodations and Conversion Division which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall possess experience of a technical nature in housing-provider or tenant affairs or in a field directly related to housing-provider or tenant affairs, shall be a resident of the District, and shall be entitled to receive annual compensation, payable in regular installments, at the rate of grade 15 of the District schedule established under subchapter XII of Chapter 6 of Title 1.

Sec. 204 (§42-3502.04). Duties of the Rent Administrator.

(a) The Rent Administrator shall draft rules and procedures for the administration of this chapter to be transmitted to the Rental Housing Commission for its action under section 202(a)(1).

(b) The Rent Administrator shall carry out, according to rules and procedures established by the Rental Housing Commission under section 202(a)(1), the rent stabilization program established under this subchapter, and shall perform other duties necessary and appropriate to, and consistent with this chapter.

(c) The Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapters II, IV, V, VI, and IX of this chapter and title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.

(d) (1) The Rent Administrator may employ, with funds available to the Rent Administrator, personnel and consultants, including hearing examiners, accountants, and legal counsel, reasonably necessary to carry out this chapter.

(2) In accordance with the regulations issued by the Rental Housing Commission, the Rent Administrator may delegate authority to those employees appointed in conformity with paragraph (1) of this subsection. This authority may include, but is not limited to:

(A) Hearing administrative petitions filed or initiated under this chapter;

(B) Issuing decisions on the petitions; and

(C) Rendering final orders on any petition heard by those employees.

(e) The Rent Administrator or a designee may attend all policy meetings of the Rental Housing Commission.

(f) The Rent Administrator shall establish and maintain a formal relationship with the Landlord/Tenant Branch of the Superior Court of the District of Columbia and the Metropolitan Police Department.

(g) The Rent Administrator may issue at the request of any person an advisory opinion on issues of first impression under this chapter.

(h) (1) The Rent Administrator may hold hearings, sit and act at those times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents the Rent Administrator may consider necessary in carrying out his or her functions under this chapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rent Administrator, shall issue to the contumacious person an order requiring that person to appear before the Rent Administrator, to produce evidence if so ordered, or to give testimony touching upon

the matter under inquiry. Any failure of that person to obey any order of the Superior Court of the District of Columbia may be punished by that Court as contempt.

(i) Upon the written request of the Rent Administrator, each department or entity of the District government may furnish directly to the Rent Administrator assistance and information necessary to discharge effectively the functions required under this chapter.

(j) The Rent Administrator shall publish in English and Spanish within 60 days after July 17, 1985, a booklet or other written material describing the rights and obligations of tenants and housing providers and procedures under this chapter. This material shall be distributed through the District libraries and other District offices with which the public has frequent contact and at the office of any community organization which requests to distribute the material.

(k) The Rent Administrator shall publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year in the D.C. Register the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA), during the preceding calendar year.

(l) In preparation for the transfer of jurisdiction of the Rent Administrator's adjudicatory function to the Office of Administrative Hearings pursuant to §2-1831.03(b-1), the Rent Administrator shall submit a plan to the Mayor and Council by December 31, 2004 describing how the Rent Administrator's office will function after its adjudicatory responsibilities are transferred to the Office of Administrative Hearings, the legislative changes needed to prepare the Rent Administrator for its new role, and the resources needed to maintain its non-adjudicatory functions. The plan shall be developed in consultation with the Office of Administrative Hearings.

Sec. 205 (§42-3502.05). Registration and coverage.

(a) Sections 205(f) through 219, except section 217, shall apply to each rental unit in the District except:

(1) Any rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized except units subsidized under subchapter III;

(2) Any rental unit in any newly constructed housing accommodation for which the building permit was issued after December 31, 1975, 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 after January 1, 1980, 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;

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 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 paragraphs (3)(A) and (3)(B) of this subsection; and

(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 42-3404.13(a)(3) [repealed], or by § 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.

(4) Any housing accommodation which has been continuously vacant and not subject to a rental agreement since January 1, 1985, and any housing accommodation previously exempt under section 206(a)(4) of the Rental Housing Act of 1980, provided that upon rerental the housing accommodation is in substantial compliance with the housing regulations when offered for rent;

(5) Any rental unit in any structure owned by a cooperative housing association, if:

(A) The proprietary lease or occupancy agreement for the rental unit is owned by not more than 4 natural persons, who are shareholders or members of the cooperative housing association;

(B) None of the shareholders or members has an interest, directly or indirectly, in more than 4 rental

units in the District of Columbia. A shareholder or member of a cooperative housing association owning a proprietary lease or occupancy agreement for a rental unit in an association shall not be deemed to have an indirect interest in any other rental unit in any structure owned by a cooperative housing association solely by virtue of ownership of a stock or membership certificate, proprietary lease, or other evidence of membership in the association; and

(C) The shareholders or members owning the proprietary lease or occupancy agreement for the rental unit file with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the shareholders or members of a valid claim to the exemption. The claim of exemption statement shall also contain the signature of each person having an interest, direct or indirect, in the proprietary lease or occupancy agreement for the rental unit. Any change in the ownership of the proprietary lease or occupancy agreement or change in the shareholder's or member's interest in any other rental unit which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

(6) [Disapproved.]

(7) Housing accommodations for which a building improvement plan has been executed under the apartment improvement program and housing accommodations which receive rehabilitation assistance under other multifamily assistance programs administered by the Department of Housing and Community Development, if:

(A) The building improvement plan, accompanied by a certification signed by the tenants of 70% of the occupied units, is filed with the Division at the time of execution;

(B) Upon expiration of the building improvement plan, the exemption provided under this paragraph shall terminate and the housing accommodation will again be subject to §§ 42-3502.05(f) through 42-3502.19; and

(C) Upon expiration of the building improvement plan, and notwithstanding the provisions of § 42-3502.09, the schedule of rent ceilings, services, and facilities established by the building improvement plans shall be considered the rent ceilings and service and facility levels established for the purposes of subchapter II of this chapter;

(8) [Disapproved.]

(9) [Disapproved.]

(10) [Disapproved.]

(b) Rent may not be increased under subsections (a)(9) and (a)(10) of this section if:

(1) The unit is vacated as a result of eviction or termination of tenancy where the housing provider seeks in good faith to recover possession for occupancy by the housing provider or a member of the housing provider's family, or the housing provider seeks to recover possession in order to remove permanently the unit from rental housing; or

(2) The vacating of a rental unit by a tenant as a result of a housing provider creating an unreasonable interference with the tenant's comfort, safety, or enjoyment of the rental unit or as a result of retaliatory action under § 42-3505.02 shall not be considered a voluntary vacating of the unit.

(c) Notwithstanding subsections (b)(1) and (b)(2) of this section the housing provider shall be entitled to an exemption whenever the unit is next vacated in accordance with subsections (a)(9) and (a)(10)(A) of this section after an intervening loss of the exemption.

(d) Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

(e) This chapter shall not apply to the following units:

(1) Any rental unit operated by a foreign government as a residence for diplomatic personnel;

(2) Any rental unit in an establishment which has as its primary purpose providing diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes;

(3) Any dormitory; and

(4) Following a determination by the Rent Administrator, any rental unit or housing accommodation intended for use as long-term temporary housing by families with 1 or more members that satisfies each of the following requirements:

(A) The rental unit or housing accommodation is occupied by families that, at the time of their initial occupancy, have had incomes at or below 50% of the District median income for families of the size in question for the immediately preceding 12 months;

(B) The housing provider of the rental unit or housing accommodation is a nonprofit charitable organization that operates the unit or housing accommodation on a strictly not-for-profit basis under which no part of the net earnings of the housing provider inure to the benefit of or are distributable to its directors, officers, or any private individual other than as reasonable compensation for services rendered; and

(C) The housing provider offers a comprehensive social services program to resident families.

(f) Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the

Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units. The registration form shall contain, but not be limited to:

(1) For each accommodation requiring a housing business license, the dates and numbers of that housing business license and the certificates of occupancy, where required by law, issued by the District government;

(2) For each accommodation not required to obtain a housing business license, the information contained therein and the dates and numbers of the certificates of occupancy issued by the District government, and a copy of each certificate;

(3) The base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges;

(4) The number of bedrooms in the housing accommodation;

(5) A list of any outstanding violations of the housing regulations applicable to the accommodation or an affidavit by the housing provider or manager that there are no known outstanding violations; and

(6) The rate of return for the housing accommodation and the computations made by the housing provider to arrive at the rate of return by application of the formula provided in section 212.

(g) (1) A housing provider shall file the following notices with the Rent Administrator:

(A) A copy of the rent increase notice given to the tenant for a rent increase under section 208(h)(2), within 30 days after the effective date of the increase; provided, that if rent increases are given to multiple tenants with the same effective date, the housing provider shall file a sample rent increase notice and a list attached stating the unit number, tenant name, previous rent charged, new rent charged, and effective date for each rent increase;

(B) A copy of the notice given to the tenant for an increase under section 213(d) stating the calculation of the initial rent charged in the lease (based on increases during the preceding 3 years), within 30 days of the commencement of the lease term;

(C) A notice of a change in ownership or management of the housing accommodation, or change in the services and facilities included in the rent charged, within 30 days after the change.

(2) Subject to appropriation, the Mayor shall establish an electronic database for the filing, storage, and retrieval of rent stabilization program documents.

(h) Each registration statement filed under this section shall be available for public inspection at the Division, and each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of the housing accommodation a duplicate of the registration statement.

Sec. 206 (§42-3502.06). Rent charged.

(a) Rent ceilings are abolished, except that the housing provider may implement, in accordance with section 208(g), rent ceiling adjustments pursuant to petitions and Voluntary Agreements approved by the Rent Administrator prior to the effective date of Rent Control Reform Amendment Act of 2006. Petitions and Voluntary Agreements pending as of the effective date of the Rent Control Reform Amendment Act of 2006 shall be decided pursuant to the provisions of this title in effect prior to the effective date and may be implemented in accordance with section 208(g). In considering a hardship petition pursuant to section 212, any unimplemented rent charged increase pursuant to a petition or voluntary agreement approved by the Rent Administrator shall be included in the maximum possible rental income. Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. No tenant may sublet a rental unit at a rent greater than that tenant pays the housing provider.

(b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent charged established by subsection (a) of this section. This adjustment of general applicability shall be 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) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent charged for that unit.

(c) At the housing provider's election, instead of any adjustment authorized by subsection (b) of this section, the rent charged for an accommodation may be adjusted through a hardship petition under section 212. Such a petition

shall be clearly identified as an election instead of the general adjustments authorized by subsection (b) of this section. The Rent Administrator shall accord an expedited review process for these petitions and shall issue and publish a final decision within 90 days after the petition has been filed. In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator at the end of 90 days from the date of filing of the petition and as to which the housing provider is not in default in complying with any information request made under section 216, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider at the end of the 90-day period. The conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, the Rent Administrator shall, by order served upon the parties at least 10 days prior to the expiration of the 90 days, make a provisional finding as to the rent charged adjustment justified by the order, if any. Except to the extent modified by this section, the adjustment procedures of section 216 shall apply to any adjustment.

(d) If on July 17, 1985 the rent being charged exceeds the allowable rent ceiling, that rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due. This subsection shall not apply to any rent administratively approved under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980, or any rent increase authorized by a court of competent jurisdiction. The housing provider shall notify the tenant in writing of any decrease required under this chapter before the effective date of the decrease.

(e) A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under section 216. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in section 103(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

(f) (1) Unless permitted under section 210(j), a capital improvement increase in the rent charged as provided under section 210 shall not be assessed against any elderly or disabled tenant who leases and occupies a rental unit regulated under this chapter.

(2) For the purposes of this section and section 210, the term:

(A) "Disabled tenant" means an individual who has a medically determinable physical impairment, including blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation, and has an income of not more than $40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to section 210.

(B) "Elderly tenant" means an individual who is, and who proves to the satisfaction of the Rent Administrator that he or she is, at least 62 years of age, and has an income of not more than $40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to section 210.

(3) Paragraphs (1) and (2) of this subsection shall not affect any increase in the rent charged for any rental unit regulated under this chapter.

(g) (1) Any housing provider who provides housing to an elderly or disabled tenant and is not permitted under section 210 to implement, and does not implement, all or any portion of any increase in rent charged based on capital improvements provided under section 210 shall receive a tax credit for each unit occupied by an elderly tenant, as determined by the Rent Administrator under section 210, in the amount of $1 for each $1 of the capital improvement rent increase granted by the Rent Administrator that is not implemented. The credit shall be taken against the next installment or installments of real property taxes payable to the District of Columbia coming due with respect to the housing accommodation, inclusive of the land on which it is located.

(2) If an elderly or disabled tenant exempted from capital improvement rent increases pursuant to this chapter should cease to reside in a rental unit, the tax credit allowed to the housing provider for that rental unit shall also cease. If another eligible elderly or disabled tenant becomes a resident of the same rental unit, the housing provider shall provide the exemption to the new tenant, and the tax credit shall continue to be effective.

Sec. 207 (§42-3502.07). [Repealed.]

Sec. 208 (§42-3502.08). Increases above base rent.

(a) (1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

(A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures;

(B) The housing accommodation is registered in accordance with section 205;

(C) The housing provider of the housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing;

(D) The manager of the accommodation, when other than the housing provider, is properly registered under the housing regulations if the regulations require registration; and

(E) Notice of the increase complies with section 904.

(2) Where the Rent Administrator finds there have been excessive and prolonged violations of the housing regulations affecting the health, safety, and security of the tenants or the habitability of the housing accommodation in which the tenants reside and that the housing provider has failed to correct the violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the September 1, 1983, base rent for the rental units until the violations have been abated.

(b) A housing accommodation and each of the rental units in the housing accommodation shall be considered to be in substantial compliance with the housing regulations if:

(1) For purposes of the adjustments made in the rent charged in sections 206 and 207, all substantial violations cited at the time of the last inspection of the housing accommodation by the Department of Consumer and Regulatory Affairs before the effective date of the increase were abated within a 45-day period following the issuance of the citations or that time granted by the Department of Consumer and Regulatory Affairs, and the Department of Consumer and Regulatory Affairs has certified the abatement, or the housing provider or the tenant has certified the abatement and has presented evidence to substantiate the certification. No certification of abatement shall establish compliance with the housing regulations unless the tenants have been given a 10-day notice and an opportunity to contest the certification; and

(2) For purposes of the filing of petitions for adjustments in the rent charged as prescribed in section 216, the housing accommodation and each of the rental units in the housing accommodation shall have been inspected at the request of each housing provider by the Department of Consumer and Regulatory Affairs within the 30 days immediately preceding the filing of a petition for adjustment.

(c) A tenant of a housing accommodation who, after receipt of not less than 5 days written notice that the housing provider desires an inspection of the tenant's rental unit for the purpose of determining whether the housing accommodation is in substantial compliance with the housing regulations, refuses without good cause to admit an employee of the Department of Consumer and Regulatory Affairs for the purpose of inspecting the tenant's rental unit, or who refuses without good cause to admit the housing provider or the housing provider's employee or contractor for the purpose of abating any violation of the housing regulations cited by the Department of Consumer and Regulatory Affairs, will be considered to have waived the right to challenge the validity of the proposed adjustment for reasons that the rental unit occupied by the tenant is not in substantial compliance with the housing regulations.

(d) Nothing in this section shall be construed to limit or abrogate a tenant's right to initiate any lawful action to correct any violation in the tenant's rental unit or in the housing accommodation in which that rental unit is located.

(e) Notwithstanding any other provision of this chapter, no rent shall be adjusted under this chapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for the rental unit for the term of the written lease or rental agreement.

(f) Any notice of an adjustment under section 206 shall contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase. The notice 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.

(g) The amount of rent charged for any rental unit subject to this title shall not be increased until a full 12 months have elapsed since any prior increase; provided, that:

(1) An increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any one section of this title;

(2) If the rental unit becomes vacant within 12 months of an increase in the amount of rent charged, other than a vacancy increase pursuant to section 213, the housing provider may increase the amount of rent charged pursuant to section 213; and

(3) If the amount of rent charged is increased pursuant to paragraph (2) of this subsection, the amount of rent charged shall not be increased until a full 12 months have elapsed after the increase in the amount of rent charged, even if another vacancy occurs.

(h) (1) Unless the increase in the amount of rent charged is implemented pursuant to section 210, 211, 212, 214, or 215, an increase in the amount of rent charged while the unit is vacant shall not exceed the amount permitted under section 213(a).

(2) Unless the increase in the amount of rent charged is implemented pursuant to section 210, 211, 212, 214, or 215, an increase in the amount of rent charged while the unit is occupied shall not exceed, taken as a percentage of the current allowable amount of rent charged for the unit, 2% plus the adjustment of general applicability; provided, that the total increase shall not exceed 10%; provided further than the amount of any such increase in the rent charged for a unit occupied by an elderly or disabled tenant without regard to income but otherwise as defined in section 206(f)

shall not exceed the lesser of 5% or the adjustment of general applicability.

Sec. 209 (§42-3502.09). Rent charged upon termination of exemption and for newly covered rental units.

(a) Except as provided in subsection (c) of this section, the rent charged for any rental unit in a housing accommodation exempted by section 205, except subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption, increased by no more than 5% of the average rent charged during the last 6 consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in sections 208 and 904.

(b) A structure or building, including the land appurtenant, which is located in the District in which 1 or more rental units as defined in section 103(33) are established after July 17, 1985, shall subsequently be defined as a "housing accommodation" for the purposes of this chapter. If any rental unit in such a housing accommodation is not otherwise exempted by 1 of the provisions of section 205, the rent charged for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the housing provider and is considered to be the equivalent of making the computations specified in section 206.

(c) The rent charged for any rental unit exempted under section 205(a)(5) upon the expiration or termination of the exemption shall be the rent charged on the date the unit became exempt plus each subsequent adjustment of general applicability authorized under section 206(b).

Sec. 210 (§42-3502.10). Petitions for capital improvements.

(a) On petition by the housing provider, the Rent Administrator may approve a rent adjustment to cover the cost of capital improvements to a rental unit or housing accommodation if:

(1) The improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation; or

(2) The improvement will effect a net saving in the use of energy by the housing accommodation, or is intended to comply with applicable environmental protection regulations, if any savings in energy costs are passed on to the tenants.

(b) The housing provider shall establish to the satisfaction of the Rent Administrator:

(1) That the improvement would be considered depreciable under the Internal Revenue Code (26 U.S.C.);

(2) The amount and cost of the improvement including interest and service charges; and

(3) That required governmental permits and approvals have been secured.

(c) Any decision of the Rent Administrator under this section shall determine the adjustment of the rent charged:

(1) In the case of building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation. No increase under this paragraph may exceed 20% above the current rent charged;

(2) In the case of limited improvements to 1 or more rental units in a housing accommodation, by dividing the cost over a 64-month period of amortization and by dividing this result by the number of rental units receiving the improvement. No increase under this paragraph may exceed 15% above the current rent charged. The Rent Administrator shall make a determination that the interests of the affected tenants are being protected; and

(3) In the case of a rent increase included as part of the rent charged or base rent for a capital improvement after October 19, 1989, the rent increase is temporary and is abated as to each tenant upon recovery of all costs of the capital improvement, including interest and service charges. The rent increase shall not be calculated as part of either the base rent or rent charged of a tenant when determining the amount of rent charged. When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charged to reflect the abatement of the capital improvement rent increase.

(d) Plans, contracts, specifications, and permits relating to capital improvements shall be retained for 1 year by the housing provider or its designated agent for inspection by affected tenants as the tenants may request at the housing provider's place of business in the District during working hours. If the housing provider does not have a place of business in the District, the plans, contracts, specifications, and permits relating to the capital improvements shall be made available upon request by the affected tenants at the Rental Accommodations Division.

(e) (1) A decision by the Rent Administrator on a rent adjustment under this section shall be rendered within 60 days after receipt of a complete petition for capital improvement.

(2) Failure of the Rent Administrator to render a decision pursuant to this section within the 60-day period shall operate to allow the petitioner to proceed with a capital improvement.

(f) Any tenant displaced from a rental unit by the capital improvement of the unit or the housing accommodation under this section shall have a right to rerent the rental unit immediately upon the completion of the work.

(g) The housing provider may make capital improvements to the property before the approval of the rent adjustment by the Rent Administrator for the capital improvements where the capital improvements are immediately necessary to maintain the health or safety of the tenants.

(h) A housing provider may adjust the rent charged for any rental unit to provide for the cost of any capital im-

provements which are required by provisions of any federal or local statute or regulation becoming effective after October 30, 1980, amortized over the useful life of the improvements, and the cost of the improvements applied on an equal basis to those rental units within the housing accommodation which benefit from the improvement, by filing with the Division a certificate of calculation for mandated capital improvement increase. The certificate shall establish:

(1) That the improvement is required by the provisions of a federal or District statute or regulation becoming effective after October 30, 1980;

(2) The amount of the cost of the improvements; and

(3) That required governmental permits and approvals have been secured.

(i) The housing provider may petition the Rent Administrator for approval of the rent adjustment for any capital improvements made under subsection (g) of this section, if the petition is filed with the Rent Administrator within 10 calendar days from the installation of the capital improvements.

(j) The housing provider may petition the Rent Administrator to assess capital improvement increases in the rent charged against elderly and disabled tenants, and the Rent Administrator shall approve the petition if the housing provider proves to the satisfaction of the Rent Administrator that the amount which would be collectible from elderly and disabled tenants at the housing accommodation, but for the provisions of section 206(f), would exceed the amount of real property taxes that would be payable during the calendar year with respect to the housing accommodation, but for the provisions of section206(g).

Sec. 211 (§42-3502.11). Services and facilities.

If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.

Sec. 212 (§42-3502.12). Hardship petition.

(a) Where an election has been made under section 206(c) to seek a rent adjustment through a hardship petition, the Rent Administrator shall, after review of the figures and computations set forth in the housing provider's petition, allow additional increases in rent which would generate no more than a 12% rate of return computed according to subsection (b) of this section.

(b) In determining the rate of return for each housing accommodation, the following formula, computed over a base period of the 12 consecutive months within 15 months preceding the filing of a petition under this chapter, shall be used to:

(1) Obtain the net income by subtracting from the sum of maximum possible rental income which can be derived from a housing accommodation to which this section applies and the maximum amount of all other income which can be derived from the housing accommodation the following:

(A) The operating expenses, but the following items shall not be allowed 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 connected with counseling or litigation related to actions brought by the District government due to the housing provider's repeated failure to comply with applicable housing regulations as evidenced by violation notices issued by the Department of Consumer and Regulatory Affairs; and

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

(B) The management fee, where applicable, of not more than 6% of the maximum rental income of the housing accommodation unless an additional amount is approved by the Rent Administrator as follows:

(i) The housing provider shall first file with the Rent Administrator a petition which contains information the Rent Administrator may require, including, but not limited to, the name of the payee; and

(ii) If the Rent Administrator determines, based on the petition and other information the Rent Administrator may require, that the excess over 6% of maximum possible income or part of income is reasonable, the Rent Administrator may permit the same excess or so much of the excess as is reasonable;

(C) Property taxes;

(D) Depreciation expenses to the extent reflected in decreased real property tax assessments;

(E) Vacancy losses for the housing accommodation of not more than 6% of the maximum rental housing income of the housing accommodation unless an additional amount is approved by the Rent Administrator;

(F) Uncollected rents; and

(G) Interest payments;

(2) Then, divide the net income by the housing provider's equity in the housing accommodation to determine the rate of return.

(c) The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, and the Rent Administrator, by order served upon the parties at least 10 days prior to the expiration of 90 days, makes a provisional finding as to the rent charged adjustment justified by the petition, the housing provider may implement only the amount of the rent charged adjustment authorized by the order. Except to the extent modified by this subsection, the provisions of section 216 shall apply to any adjustment under this section.

Sec. 213 (§42-3502.13). Vacant accommodation.

(a) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the amount of rent charged may, at the election of the housing provider, be increased:

(1) By 10% of the current allowable amount of rent charged for the vacant unit; or

(2) To the amount of rent charged for a substantially identical rental unit in the same housing accommodation; provided, that the increase shall not exceed 30% of the current lawful amount of rent charged for the vacant unit, except that no increase under this section shall be permitted unless the housing accommodation has been registered under section 205(d).

(b) For the purposes of this section, rental units shall be defined to be substantially identical where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height, if exposure and height have previously been factors in the amount of rent charged, and are in comparable physical condition.

(c) No rent increase under subsections (a)(1) and (a)(2) may be sought or granted within the 12-month period following the implementation of a hardship increase under section 212.

(d) Within 15 days after the commencement of the new tenancy, the housing provider shall disclose to the tenant on a form published by the Rent Administrator (or in another suitable format until a form is published):

(1) The applicable rent for the rental unit at the commencement of the tenancy;

(2) The amount of the increases in the amount of rent charged for the rental unit during the preceding 3 years, including the basis for each increase and, if applicable, the identification of any substantially identical rental unit on which a vacancy increase is based, and the current increase in the rent charged; and

(3) The identification of any substantially identical rental unit on which the vacancy increase is based.

Sec. 214 (§42-3502.14). Substantial rehabilitation.

(a) If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent charged for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent charged applicable to the rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications, and projected costs for the rehabilitation, which shall be made available to the Rent Administrator by the housing provider of the rental unit or housing accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors:

(1) The impact of the rehabilitation on the tenants of the unit or housing accommodation; and

(2) The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

(d) This section shall apply to the following:

(1) Any rental unit with respect to which a housing provider has notified the tenant, after July 17, 1985, of an intent to substantially rehabilitate; and

(2) Any rental unit with respect to which, before July 17, 1985:

(A) The housing provider has notified the tenant of the intended substantial rehabilitation; and

(B) All the tenants have left.

Sec. 215 (§42-3502.15). Voluntary agreement.

(a) Seventy percent or more of the tenants of a housing accommodation may enter into a voluntary agreement with the housing provider:

(1) To establish the rent charged;

(2) To alter levels of related services and facilities; and

(3) To provide for capital improvements and the elimination of deferred maintenance (ordinary repair).

(b) The voluntary agreement must be filed with the Rent Administrator and shall include the signature of each tenant, the number of each tenant's rental unit or apartment, the specific amount of increased rent each tenant will pay, if applicable, and a statement that the agreement was entered into voluntarily without any form of coercion on the part of the housing provider. If approved by the Rent Administrator the agreement shall be binding on the housing provider and on all tenants.

(c) Where the agreement filed with the Rent Administrator is to have the rent charged for all rental units in the housing accommodation adjusted by a specified percentage, the Rent Administrator shall immediately certify approval of the increase.

Sec. 216 (§42-3502.16). Adjustment procedure.

(a) The Rent Administrator shall consider adjustments allowed by sections 210, 211, 212, 213 and 214 or a challenge to a section 206 adjustment, upon a petition filed by the housing provider or tenant. The petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator containing the information the Rent Administrator or the Rental Housing Commission may require. The Rent Administrator shall issue a decision and an order approving or denying, in whole or in part, each petition within 120 days after the petition is filed with the Rent Administrator. The time may be extended only by written agreement between the housing provider and tenant of the rental unit.

(b) Immediately upon receipt of the petition, the Rent Administrator shall notify the nonpetitioning party, housing provider or tenant, by certified mail or other form of service which assures delivery of the petition, of the right of either party to make, within 15 days after the receipt of the notice, a written request for a hearing on the petition. The Rent Administrator may deny the petition if the issue is moot or the petition does not comply with subsection (a) of this section.

(c) If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

(d) Each housing provider of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator, within 15 days after a demand is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator or the Rental Housing Commission may require.

(e) The Rent Administrator may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(f) The Rent Administrator may, without holding a hearing, refuse to adjust the rent charged for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under this section, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980 for adjustment to the same rental units within the 6 months immediately preceding the filing of the pending petition.

(g) All petitions filed under this section, all hearings held relating to the petitions, and all appeals taken from decisions of the Rent Administrator shall be considered and held according to the provisions of this section and title I of the District of Columbia Administrative Procedure Act. In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall prevail.

(h) Decisions of the Rent Administrator shall be made on the record relating to any petition filed with the Rent Administrator. An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental Housing Commission within 10 days after the decision of the Rent Administrator, or the Rental Housing Commission may review a decision of the Rent Administrator on its own initiative. The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision. The Rental Housing Commission shall issue a decision with respect to an appeal within 30 days after the appeal is filed.

(i) No increase in rent allowed under this chapter shall be implemented unless the tenant concerned has been given written notice under section 904.

(j) A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties.

(k) The Rent Administrator and, where applicable, the Rental Housing Commission shall accord priority to a housing provider hardship petition covering a housing accommodation for which the federal government is entitled to approve rent increases, where the processing of such a petition has not begun within 45 days immediately following the filing of the petition. Processing of the petitions shall begin no later than 5 days after receipt by the Rent Administrator of written requests from the housing provider and from the federal agency.

(l) No rent increase above that authorized by the Rent Administrator may be implemented by a housing provider during the pendency of an appeal by that housing provider to the Rental Housing Commission or the District of Columbia Court of Appeals where the appeal concerns the validity of that increase.

Sec. 217 (§42-3502.17). Security deposit.

No person shall demand or receive a security deposit from any tenant for a rental unit occupied by the tenant upon July 17, 1985, where no security deposit had been demanded or received of the tenant for the rental unit before July 17, 1985, but this provision shall not prevent the collection of security deposits for newly constructed units or units exempted under section 205(a)(4) and (7). Security deposits shall be collected pursuant to the Security Deposit Act, effective February 20, 1976 (D.C. Law 1-48; 14 DCMR 308 et seq.).

Sec. 218 (§ 42-3502.18). Remedy.

The Rental Housing Commission, Rent Administrator, or any affected housing provider or tenant may commence a civil action in the Superior Court of the District of Columbia to enforce any rule or decision issued under this chapter.

Sec. 219 (§42-3502.19). Judicial review.

Any person or class of persons aggrieved by a decision of the Rental Housing Commission, or by any failure on the part of the Rental Housing Commission or Rent Administrator to act within any time certain mandated by this chapter, may seek judicial review of the decision or an order compelling the decision by filing a petition for review in the District of Columbia Court of Appeals.

Sec. 220 (§42-3502.20). Report of Mayor.

(a) No later than October 1, 1988, the Mayor shall report to the Council on the continued need for the rent stabilization program.

(b) The report shall be prepared by a person not affiliated with the District government and shall contain:

(1) The number of new and renovated units which have been placed on the rental housing market since July 17, 1985;

(2) The number of new and renovated units it is anticipated will be placed on the rental housing market annually until 1996;

(3) An assessment of the effectiveness of the Tenant Assistance Program; the adequacy of monies appropriated for the program; and the projected costs of the Tenant Assistance Program in the absence of rent stabilization legislation;

(4) The impact of the rent stabilization program on the cost and supply of rental housing;

(5) An assessment of the present rent stabilization program in terms of its being understandable, efficient, inexpensive, equitable, and flexible;

(6) The impact of the present rent stabilization program upon small housing providers compared to large housing providers;

(7) The number of District residents living in substandard housing and their locations;

(8) An assessment of the impact of the proposed civil infractions law on housing code violations, if the law is enacted in a timely manner;

(9) An assessment of the probable impact on the private rental housing market and the present rent stabilization program of the following individual or combination of factors:

(A) Vacancy decontrol;

(B) Luxury decontrol;

(C) Increasing from 4 units to 10 units the maximum rental units exemption under section 205(a)(3); and

(D) Tying the rent stabilization program to the amount of family income available for rent; and

(10)Any other information considered appropriate by the drafters of the report.

Sec. 221 (§42-3502.21). Certificate of assurance.

(a) Upon the issuance of any building permit for a housing accommodation to which section 205(a)(2) or (4) applies after July 17, 1985, the Mayor shall at the request of the recipient of the building permit issue to the recipient thereof concurrently with the building permit a certificate of assurance containing the terms set forth in this section. Within 30 days of written request of the owner of any housing accommodation to which section 205(a)(2) or (4) applies, the Mayor shall issue to the owner a certificate of assurance containing the terms set forth in this section.

(b) The certificate of assurance shall provide that in the event that any rental unit in any housing accommodation then existing or thereafter constructed on the property covered by the certificate is ever made subject to section 205(f)

through 219, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the owner of the property shall have the right to recover annually from the District of Columbia for so long as the property is used as a housing accommodation, in accordance with subsection (c) of this section, the difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation. The certificate of assurance shall be executed by the Mayor and the recipient and shall obligate the recipient to use the recipient's best efforts to construct a housing accommodation as expeditiously as possible on the property which is the subject thereof if there does not then exist a housing accommodation on the property. Each certificate of assurance shall provide that it shall become null and void in the event that a housing accommodation is not constructed on the property within 5 years of the issuance thereof and shall contain the definitions set forth in sections 103(1) and (3). The certificate of assurance shall be an irrevocable agreement in recordable form and constitute a covenant running with the land. The Mayor shall review the proposed form of the certificate of assurance with Council's Committee on Consumer and Regulatory Affairs prior to its first use to ensure that the form will be legal, valid and enforceable, contain the terms provided for herein, and otherwise further its intended purpose of stimulating the addition of rental units to the District's housing stock.

(c) The certificate of assurance shall provide that for so long as the property is used as a housing accommodation and is subject to sections 205(f) through 219, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the annual difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation shall be recoverable by the owner of the property by (1) taking a credit against any present or future District of Columbia real estate taxes payable by the owner of the property whether on the housing accommodation or other property located in the District of Columbia, or (2) seeking specific performances of the certificate of assurance against the District of Columbia, or damages for the breach thereof, in the Superior Court of the District of Columbia. If the Mayor considers the credit to be in excess of the amount the owner of the property is entitled to take as a credit hereunder, the Mayor shall notify the owner in writing of the amount of excess credit. If the Mayor and the owner of the property are unable to agree on the amount of the credit, the Mayor shall have the right to sue the owner in the Superior Court of the District of Columbia to recover any excess credit together with interest thereon at the rate of 18% per year from the date that the Mayor filed to recover such excess credit. Notwithstanding any other provision of District of Columbia law, the Mayor shall have no resort to any other remedy for nonpayment of real estate taxes (to the extent such nonpayment arises from a credit claimed hereunder) until a final judgment is rendered in favor of the Mayor in Superior Court of the District of Columbia.

Sec. 222 (§42-3502.22). Disclosure to tenants.

(a) At the written request of a tenant not more than one time each calendar year, a housing provider shall, within 10 business days on a form provided by the Rent Administrator (or in another suitable format until a form is published), provide the amount of each increase in the amount of rent charged for the tenant's rental unit during the preceding 3 years on which the current rent charged is based, including the basis for each increase and, if applicable, the identification of any substantially identical rental unit on which a vacancy increase was based.

(b) (1) At the time a prospective tenant files an application to lease any rental unit, the housing provider shall provide on a disclosure form published by the Rent Administrator (or in another suitable format until a form is published) together with any documents corresponding to each item of information:

(A) The applicable rent for the rental unit;

(B) Any tenant petition or petition filed by the housing provider which is pending that could affect the rental unit, including petitions for further rent increases during the following 12 months;

(C) Any surcharges on rent for the rental unit, including capital improvement surcharges and the expiration date of those surcharges;

(D) The frequency with which rent increases for the rental unit may be implemented;

(E) The rent-controlled or exempt status of the housing accommodation, its business license, and a copy of the registration or claim of exemption together with the most recent notice filed pursuant to section 205(g)(1)(C);

(F) All copies of housing code violation reports issued by the Department of Consumer and Regulatory Affairs for the housing accommodation or rental unit within the last 12 months, or previously issued reports for violations which have but not been abated;

(G) A pamphlet published by the Rent Administrator that explains in detail using lay terminology the laws and regulations governing the implementation of rent increases and petitions permitted to be filed by housing providers and by tenants;

(H) (i) The amount of any nonrefundable application fee; and

(ii) The amount of any initial security deposit, the interest rate on the security deposit, and the means by which the security deposit is returned to the tenant when the tenant vacates the unit;

(I) Whether the housing accommodation is registered as, or in the process of converting to, a condominium or cooperative or a use that is not a housing accommodation;

(J) The disclosure of ownership information in the registration form required by section 205(f) and (g)(1)(C).

(2) The housing provider shall:

(A) Maintain in a publicly accessible area of the housing accommodation (such as a reception desk or management office) a compilation of disclosure forms and documents for each rental unit in the housing accommodation containing the information required by paragraph (1) of this section;

(B) Update the compilation within 30 days of any change in such information;

(C) Give written notice to each tenant of the housing accommodation, on a form published by the Rent Administrator (or in another suitable format until a form is published), that the disclosure forms and documents for the tenant's rental unit are available for inspection, which shall include the location of the disclosure forms in the housing accommodation and a table of contents enumerating the categories of information contained in the compilation required by paragraph (1) of this section;

(D) Make available for the tenant's inspection the disclosure forms and the documents for the tenant's rental unit; and

(E) Within 10 business days after written request by any tenant once per year, provide to the tenant without charge a copy of the disclosure form and such documents for the tenant's rental unit.

(c) The rent for any rental unit shall not be increased if the housing provider:

(1) Willfully violates the provisions of this section; or

(2) Fails to comply within 10 business days of written notice of any failure to comply with the provisions of this section.

Sec. 223(§42-3502.23). Addition to Comprehensive Housing Strategy report.

The Mayor shall include in the reports to the Council pursuant to section 5 of the Comprehensive Housing Strategy Act of 2003, effective March 10, 2004 (D.C. Law 15-73; D.C. Official Code §6-1054), analyses of the need, means, and methods of further assisting income qualified elderly tenants, disabled tenants, teachers of the District of Columbia Public Schools or a District of Columbia Public Charter School, and low-income tenants to pay their rent. The report shall consider:

(1) The income and any other criteria that shall be used to determine which tenants qualify for the program;

(2) The rent that qualified households shall pay;

(3) The number and the allocation of units to be included in any set-aside;

(4) The extent to which the program should incorporate any District affordable housing program and any federal affordable housing program available in the District;

(5) The reporting requirements which should be imposed on housing providers subject to this title and on qualified tenants to ensure that the program is effective.

TITLE III
TENANT ASSISTANCE PROGRAM
(Omitted)

TITLE IV
REVENUE
(Omitted)

TITLE V
EVICTIONS; RETALIATORY ACTION

Sec. 501 (§42-3505.01). Evictions.

(a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

(b) A housing provider may recover possession of a rental unit where the tenant is violating an obligation of ten-

ancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.

(c) A housing provider may recover possession of a rental unit where a court of competent jurisdiction has determined that the tenant, or a person occupying the premises with or in addition to the tenant, has performed an illegal act within the rental unit or the housing accommodation. The housing provider shall serve on the tenant a 30-day notice to vacate. The tenant may be evicted only if the tenant knew or should have known that an illegal act was taking place.

(d) A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person's immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90- day notice to vacate in advance of action to recover possession of the rental unit in instances arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit. A stockholder of a cooperative housing association with a right of possession in a rental unit may exercise the rights of a natural person with a freehold interest under this subsection.

(e) A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person, so long as the housing provider has notified the tenant in writing of the tenant's right and opportunity to purchase as provided in Chapter 34 of this title. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider's action to recover possession of the rental unit. No person shall demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.

(f) (1) (A) A housing provider may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied, so long as:

(i) The plans for the alterations or renovations have been filed with the Rent Administrator and the Chief Tenant Advocate;

(ii) The tenant has had 21 days after receiving notice of the application to submit to the Rent Administrator and to the Chief Tenant Advocate comments on the impact that an approved application would have on the tenant or any household member, and on any statement made in the application;

(iii) An inspector from the Department of Consumer and Regulatory Affairs has inspected the housing accommodation for the accuracy of material statements in the application and has reported his or her findings to the Rent Administrator and the Chief Tenant Advocate;

(iv) On or before the filing of the application, the housing provider has given the tenant:

(I) Notice of the application;

(II) Notice of all tenant rights;

(III) A list of sources of technical assistance as published in the District of Columbia Register by the Mayor;

(IV) A summary of the plan for the alterations and renovations to be made; and

(V) Notice that the plan in its entirety is on file and available for review at the office of the Rent Administrator, at the office of the Chief Tenant Advocate, and at the rental office of the housing provider; and

(v) The Rent Administrator, in consultation with the Chief Tenant Advocate, has determined in writing:

(I) That the proposed alterations and renovations cannot safely or reasonably be made while the rental unit is occupied;

(II) Whether the alterations and renovations are necessary to bring the rental unit into compliance with the housing code and the tenant shall have the right to reoccupy the rental unit at the same rent; and

(III) That the proposal is in the interest of each affected tenant after considering the physical condition of the rental unit or the housing accommodation and the overall impact of relocation on the tenant.

(B) As part of the application under this subsection, a housing provider shall submit to the Rent Administrator for review and approval, and to the Chief Tenant Advocate, the following plans and documents:

(i) A detailed statement setting forth why the alterations and renovations are necessary and why they cannot safely or reasonably be accomplished while the rental unit is occupied;

(ii) A copy of the notice that the housing provider has circulated informing the tenant of the application under this subsection;

(iii) A draft of the notice to vacate to be issued to the tenant if the application is approved by the Rent Administrator;

(iv) A timetable for all aspects of the plan for alterations and renovations, including:

(I) The relocation of the tenant from the rental unit and back into the rental unit;

(II) The commencement of the work, which shall be within a reasonable period of time, not to exceed 120 days, after the tenant has vacated the rental unit;

(III) The completion of the work; and

(IV) The housing provider's submission to the Rent Administrator and the Chief Tenant Advocate of periodic progress reports, which shall be due at least once every 60 days until the work is complete and the tenant is notified that the rent unit is ready to be reoccupied;

(v) A relocation plan for each tenant that provides:

(I) The amount of the relocation assistance payment for each unit;

(II) A specific plan for relocating each tenant to another unit in the housing accommodation or in a complex or set of buildings of which the housing accommodation is a part, or, if the housing provider states that relocation within the same building or complex is not practicable, the reasons for the statement;

(III) If relocation to a rental unit pursuant to sub-sub-subparagraph (II) of this sub-subparagraph is not practicable, a list of units within the housing provider's portfolio of rental accommodations made available to each dispossessed tenant, or, where the housing provider asserts that relocation within the housing provider's portfolio of rental accommodations is not practicable, the justification for such assertion;

(IV) If relocation to a rental unit pursuant to sub-sub-subparagraph (II) or (III) of this sub-subparagraph is not practicable, a list for each tenant affected by the relocation plan of at least 3 other rental units available to rent in a housing accommodation in the District of Columbia, each of which shall be comparable to the rental unit in which the tenant currently lives; and

(V) A list of tenants with their current addresses and telephone numbers.

(C) The Chief Tenant Advocate, in consultation with the Rent Administrator, shall:

(i) Within 5 days of receipt of the application, issue a notice, which shall include the address and telephone number of the Office of the Chief Tenant Advocate, to each affected tenant stating that the tenant:

(I) Has the right to review or obtain a copy of the application, including all supporting documentation, at the rental office of the housing provider, the Office of the Chief Tenant Advocate, or the office of the Rent Administrator;

(II) Shall have 21 days in which to file with the Rent Administrator and serve on the housing provider comments upon any statement made in the application, and on the impact an approved application would have on the tenant or any household member; and

(III) May consult the Office of the Chief Tenant Advocate with respect to ascertaining the tenant's legal rights, responding to the application or to any ancillary offer made by the housing provider, or otherwise safeguarding the tenant's interests;

(ii) At any time prior to or subsequent to the Rent Administrator's approval of the application, make such inquiries as the Chief Tenant Advocate considers appropriate to determine whether the housing provider has complied with the requirements of this subsection and whether the interests of the tenants are being protected, and shall promptly report any findings to the Rent Administrator; and

(iii) Upon the Rent Administrator's approval of the application:

(I) Maintain a registry of the affected tenants, including their subsequent interim addresses; and

(II) Issue a written notice, which shall include the address and telephone number of the Office of the Chief Tenant Advocate, to each affected tenant that notifies the tenant of the right to maintain his or her tenancy and the need to keep the Chief Tenant Advocate informed of interim addresses;

(D) The housing provider shall serve on the tenant a 120-day notice to vacate prior to the filing of an action to recover possession of the rental unit that shall:

(i) Notify the tenant of the tenant's rights under this subsection, including the absolute right to reoccupy the rental unit, the right to reoccupy the rental unit at the same rate if the Rent Administrator has determined that the alterations or renovations are necessary to bring the rental unit into substantial compliance with the housing regulations, and the right to relocation assistance under the provisions of subchapter VII of this chapter;

(ii) Include a list of sources of technical assistance as published in the District of Columbia Register by the Mayor; and

(iii) Include a copy of the notice issued by the Chief Tenant Advocate pursuant to paragraph (1)(C)(iii)(II) of this subsection.

(E) Within 5 days of the completion of alterations and renovations, the housing provider shall provide notice, by registered mail, return receipt requested, to the tenant, the Rent Administrator, and the Chief Tenant Advocate that the rental unit is ready to be occupied by the tenant.

(F) Any notice required by this section to be issued to the tenant by the housing provider, the Rent

Administrator, or the Chief Tenant Advocate shall be published in the languages as would be required by §2-1933(a).

(2) Immediately upon completion of the proposed alterations or renovations, the tenant shall have the absolute right to reoccupy the rental unit. A tenant displaced by actions under this subsection shall continue to be a tenant of the rental unit as defined in section 103(17), for purposes of rights and remedies under Chapter 34 of this title, until the tenant has waived his or her rights in writing. Until the tenant's right to reoccupy the rental unit has terminated, the housing provider shall serve on the tenant any notice or other document regarding the rental unit as required by any provision of Chapter 34 of this title, or any other law or regulation, except that service shall be made by first-class mail at the address identified as the tenant's interim address pursuant to paragraph (1)(C)(iii) of this subsection.

(3) Where the renovations or alterations are necessary to bring the rental unit into substantial compliance with the housing regulations, the tenant may rerent at the same rent and under the same obligations that were in effect at the time the tenant was dispossessed, if the renovations or alterations were not made necessary by the negligent or malicious conduct of the tenant.

(4) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(5) Prior to the date that the tenant vacates the unit, the Rent Administrator shall rescind the approval of any application under this subsection upon determining that the housing provider has not complied with this subsection.

(6) If, after the tenant has vacated the unit, the housing provider fails to comply with the provisions of this subsection, the aggrieved tenant or a tenant organization authorized by the tenant may seek enforcement of any right or provision under this subsection by an action in law or equity. If the aggrieved tenant or tenant organization prevails, the aggrieved tenant or tenant organization shall be entitled to reasonable attorney's fees. In an equitable action, bond requirements shall be waived to the extent permissible under law or court rule.

(g) (1) A housing provider may recover possession of a rental unit for the purpose of immediately demolishing the housing accommodation in which the rental unit is located and replacing it with new construction, if a copy of the demolition permit has been filed with the Rent Administrator, and, if the requirements of subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 180-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(h) (1) A housing provider may recover possession of a rental unit for the purpose of immediate, substantial rehabilitation of the housing accommodation if the requirements of § 42-3502.14 and subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under subchapter VII of this chapter.

(2) Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to rerent the rental unit immediately upon the completion of the substantial rehabilitation.

(3) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(i) (1) A housing provider may recover possession of a rental unit for the immediate purpose of discontinuing the housing use and occupancy of the rental unit so long as:

(A) The housing provider serves on the tenant a 180-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter;

(B) The housing provider shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(C) The housing provider shall not resume any housing or commercial use of the unit for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(D) The housing provider shall not resume any housing use of the unit other than rental housing;

(E) Upon resumption of the housing use, the housing provider shall not rerent the unit at a greater rent than would have been permitted under this chapter had the housing use not been discontinued;

(F) The housing provider shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation, such as address and number of units, the reason for the discontinuance of use, and future plans for the property;

(G) If the housing provider desires to resume a rental housing use of the unit, the housing provider shall notify the Rent Administrator who shall determine whether the provisions of this paragraph have been satisfied;

and

(H) The housing provider shall not demand or receive rent for any rental unit which the housing provider has repossessed under this subsection for a 12-month period beginning on the date the housing provider recovered possession of the rental unit.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(j) In any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to section 206(c) of the Rental Housing Conversion and Sale Act of 1980 (§42-3402.06(c)).

(k) Notwithstanding any other provision of this section, no housing provider shall evict a tenant on any day when the National Weather Service predicts at 8:00 a.m. that the temperature at the National Airport weather station will fall below 32 degrees fahrenheit or 0 degrees centigrade within the next 24 hours.

(k-1) Subsection (k) shall not apply:

(1) Where, in accordance with and as provided in subsection (c) of this section, a court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation;

(2) Where a court of competent jurisdiction has made a specific finding that the tenant's actions or presence causes undue hardship on the health, welfare, and safety of other tenants or immediate neighbors; or

(3) Where a court of competent jurisdiction has made a specific finding that the tenant has abandoned the premises.

(l) [Expired.]

(m) This section shall not apply to privately-owned rental housing or housing owned by the federal or District government with regard to drug-related evictions under subchapter I of Chapter 36 of this title.

(n) (1) If the occupancy of a tenant has been or will be terminated by a placard placed by the District government in accordance with section 103 of Title 14 of the District of Columbia Municipal Regulations for violations of Title 14 of the District of Columbia Municipal Regulations that threaten the life, health, or safety of the tenant, the tenancy shall not be deemed terminated until the unit has been offered for reoccupation to the tenant after the date that physical occupancy ceased.

(2) The Mayor shall maintain a registry of the persons, including their subsequent interim addresses, who were tenants at the time the building was placarded.

(3) At the time of the placarding, the Mayor shall provide a written notice to the tenants of the right to maintain their tenancy and the need to keep the Mayor informed of interim addresses. The notice shall contain the address and telephone number of the office maintaining the registry.

(4) Any notice required under this subchapter shall be effective when sent to the tenant at the address maintained in the registry.

Sec. 502 (§42-3505.02). Retaliatory action.

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the

housing provider; or

(6) Brought legal action against the housing provider.

Sec. 503 (§42-3505.03). Conciliation and arbitration service.

(a) There is established a conciliation and arbitration service ("service") within the Division.

(b) The service shall provide a voluntary, nonadversarial forum for the resolution of disputes arising between housing providers and tenants in the District.

(c) The staff of the service shall be designated by the Rent Administrator and shall be persons familiar with the problems of the law relating to housing-provider and tenant relations and with knowledge of conciliation and arbitration practices.

(d) Either a housing provider or a tenant may initiate a proceeding before the service.

(e) No person shall be compelled to attend a session of the service or participate in any proceeding before its staff. The results of any proceeding shall not be binding upon any party, except (1) to the extent provided in section 504, or (2) with respect to a conciliation agreement, to the extent that a party to the proceeding agrees to be bound by the conciliation agreement. No evidence pertaining to a conciliation or arbitration proceeding shall be admissible in any judicial proceeding under other provisions of law relating to housing-provider and tenant disputes.

Sec. 504 (§42-3505.04). Arbitration.

(a) By mutual consent, the housing provider and tenant may submit for arbitration any dispute not satisfactorily resolved under section 503.

(b) A request for arbitration shall be in writing.

(c) The Rent Administrator shall designate 3 members of the Division's staff, other than those who heard the dispute under section 503, to serve as a panel of arbitrators.

(d) The arbitration panel shall issue a written recommendation to resolve the dispute within 10 days of the request.

(e) Agreements entered into between the housing provider and tenant under the panel's recommendation shall be approved by the Rent Administrator and shall be binding upon the parties.

Sec. 505 (§42-3505.05). Prohibition of discrimination against elderly tenants or families with children.

(a) It is unlawful for a housing provider to discriminate against families receiving or eligible to receive Tenant Assistance Program assistance, elderly tenants, or families with children when renting housing accommodations.

(b) Any protections provided by subsection (a) of this section and any penalties provided in section 901 shall be in addition to any other provision of law.

(c) Allegations of violations of this section that are made by families receiving or eligible to receive Tenant Assistance Program assistance, by elderly tenants, or by families with children shall be promptly investigated and handled by the Department of Consumer and Regulatory Affairs, which shall provide the complaining party with a written report upon the conclusion of the investigation.

Sec. 506. Right of tenants to organize.

(a) For purposes of the section, the term:

(1) "CPI" means the average of the consumer Price Index for the Washington-Baltimore Metropolitan statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on November 30 of such year.

(2) "Tenant Organizer means a person who:

(A) Assists tenants in establishing and operating a tenant organization; and

(B) Is not an employee or representative of the current or prospective owner, the current or prospective manager, or an agent of such persons.

(b) Tenants shall have the right to:

(1) Self-organization;

(2) Form, join, meet, or assist one another within and without tenant organizations;

(3) Meet and confer through representatives of their own choosing with an owner;

(4) Engage in other concerted activities for the purpose of mutual aid and protection; and

(5) Refrain from such activity.

(c) (1) If a multifamily housing accommodation has a written policy favoring canvassing, any tenant organizer who is not a tenant shall be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations.

(2) If the multifamily housing accommodation does not have a consistently enforced, written policy against canvassing, the multifamily housing accommodation shall be treated as if it has a policy favoring canvassing.

(3) If a multifamily housing accommodation has a consistently enforced, written policy against canvassing, a tenant shall accompany a tenant organizer who is not a renant while the tenant organizer is on the property of the multifamily housing accommodation. The tenant organizer who is not a tenant shall be afforded the same privileges and

rights of access as other invited outside parties in the normal course of operations.

(d) No owner or agent of an owner of a multifamily housing accommodation shall interfere with the right of a tenant or tenant organizer to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing literature in common areas, including lobby areas;

(2) Placing literature at or under tenants' doors;

(3) Posting information on all building bulletin boards;

(4) Assisting tenants to participate in tenant organization activities;

(5) Convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of their lease, including any tenant's unit, a community room, a common area including lobbies, or other available space; provided, that an owner or agent of owner shall not attend or make audio recordings of such meetings unless permitted to do so by the tenant organization, if one exists, or by a majority of tenants in attendance, if a tenant organization does not exist;

(6) Formulating responses to owner actions, including:

(A) Rent or rent ceiling increases or requests for rent or rent ceiling increases;

(B) Proposed increases, decreases, or other changes in the housing accommodation's facilities and services;

(C) Conversion of residential units to nonresidential use, cooperative housing, or condominiums;

(7) Proposing that the owner or management modify the housing accommodation's facilities and services; and

(8) Any other activity reasonably related to the establishment or operation of a tenant organization.

(e) An owner, and person with an ownership interest in an owner, or an agent or an owner of a multifamily housing accommodation who knowingly violates any provision of this section, or any rule or regulation issued or promulgated in furtherance of this section, shall be subject to:

(1) A civil penalty for each violation not to exceed $10,000, which shall be increases annually, beginning January 1, 2008, by an amount equal to $10,000 multiplied by the percentage by which the CPI for the preceding year ending November 30 exceeds the CPI for the year ending November 30, 2006;

(2) An injunctive order respecting future behavior;

(3) Liability for damages to tenants, or a tenant organization or its members;

(4) Suspension or revocation of the owner or agent's business license or registration, during which period the rent for any rental unit in the housing accommodation shall not be increased; or

(5) Reasonable attorney's fees under section 902.

TITLE VI
CONVERSION OR DEMOLITION OF RENTAL HOUSING
(Omitted)

TITLE VII
RELOCATION ASSISTANCE FOR TENANTS DISPLACED BY SUBSTANTIAL REHABILITATION, DEMOLITION, OR HOUSING DISCONTINUANCE
(Omitted)

TITLE VIII
NEW AND VACANT RENTAL HOUSING AND DISTRESSED PROPERTY
(Omitted)

TITLE IX
MISCELLANEOUS PROVISIONS

Sec. 901 (§42-3509.01). Penalties.

(a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of title II of this act, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

(b) Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until

and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $5,000 for each violation.

(c) Any housing provider who has provided relocation assistance under this chapter may bring a civil action to recover the amount of relocation assistance paid to any person who was not eligible to receive the assistance.

(d) Any person who knowingly or wilfully makes a false or fraudulent application, report, or statement in order to obtain, or for the purpose of obtaining, any grant or payment under the Tenant Assistance Program, or any person ceasing to become eligible for the grant or payment and who does not immediately notify the Department of his or her ineligibility, shall be fined not less than $50 and not more than $5,000 for each offense. A person who knowingly and wilfully makes false or fraudulent reports or statements, or of failing to notify promptly the Department of the person's ineligibility, shall repay to the District government all amounts paid by the District government in reliance on the false or fraudulent application, report, or statement, or all amounts paid after eligibility ceases, and shall be liable for interest on the amounts at the rate of 1/2 of 1% per month until repaid.

(e) A housing provider who discriminates against a family receiving or eligible to receive Tenant Assistance Program assistance, an elderly tenant, or a family with children when renting housing accommodations shall be fined not more than $5,000 for each violation. Repeat violators shall be fined not more than $15,000 for each violation. Nothing in this subsection shall be construed as requiring the rental of a rental unit to a tenant with a child in the case of a single-room-occupancy rental unit designed for occupancy by a single adult living alone.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of subsections (b), (d), and (e) of this section, or any rules or regulations issued under the authority of these subsections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of these subsections shall be pursuant to Chapter 18 of Title 2.

(g) Any person who knowingly, wilfully, and in bad faith makes a false or fraudulent statement to receive a tax credit for not assessing capital improvement increases to an elderly or disabled tenant shall be subject to a fine of not more than $5,000 for each violation.

Sec. 902 (§42-3509.02). Attorney's fees.

The Rent Administrator, Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney's fees to the prevailing party in any action under this chapter, except actions for eviction authorized under section 501.

Sec. 903 (§42-3509.03). Supersedure.

This act shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980.

Sec. 904 (§42-3509.04). Service.

(a) Unless otherwise provided by Rental Housing Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of the documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

(1) By handing the document to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(2) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;

(3) By mail or deposit with the United States Postal Service properly stamped and addressed; or

(4) By any other means that is in conformity with an order of the Rental Housing Commission or the Rent Administrator in any proceeding.

(b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant.

Sec. 905 (§42-3509.05). [Reserved]

Sec. 906 (§42-3509.06). [Reserved]

Sec. 907 (§42-3509.07). Termination.

All titles of this act, except titles III and V, shall terminate on December 31, 2010.

February 6, 2006
Letter from Mayor Williams and Executive Summary

ANTHONY A. WILLIAMS
MAYOR

February 6, 2006

The Honorable Jim Graham
Chairman, Committee on Consumer and Regulatory Affairs
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 105
Washington, DC 20004

RE: Rental Control Reform Amendment Act of 2006

Dear Councilmember Graham:

I am pleased that the Committee on Consumer and Regulatory Affairs remains willing to consider my rent control proposal for its committee print, per your January 18, 2006 memorandum (attached). As promised, please find the legislative component of my proposal attached for your review along with an executive summary. The proposal includes suggestions offered by members of the Committee's rent control working group. You will be pleased to know that the tenant advocates were enthusiastically supportive of the revised proposal, particularly with respect to the gradual abolition of the District's rent ceiling system.

Both the Executive and the Committee have benefited from meeting with concerned groups. As your memorandum indicates, the Committee agrees to continued dialogue on the abolition of the District's rent ceiling system. Therefore, I am also writing to request that the Committee postpone its February 8, 2006 markup of Bill 16-457, the "Rental Control Reform Amendment Act of 2006" by one week. This additional week will 1) allow us to discuss my proposal in detail; 2) afford the Committee the opportunity to speak with tenants and landlords about the legislation; and 3) allow the Committee to advance a comprehensive solution to the District's rent control program for full Council review.

Thank you for affording me the opportunity to assist the Committee with its efforts to remedy current concerns with the District's rent control system. My staff is available to meet with you for further discussion.

Sincerely,

Anthony A. Williams

Enclosures

RENTAL CONTROL REFORM AMENDMENT ACT OF 2006
Executive Summary

The Executive's rent control proposal incorporates the desires of tenants, landlords and the District's rental housing administration by converting the current rent ceiling system into a rent charged system. The following summary details the ways in which the Executive's approach benefits all parties.

Tenant Benefits

Clear and Affordable Rents

- Rents can only increase once a year.
- Landlords are limited to charging annual rent increases of 8% plus the annual CPI or 4% plus the annual CPI (for elderly and disabled residents).
- Elderly and disabled tenants earning less than $55,600 a year now will receive greater protection under rent control.

Elimination of Rent Ceilings Over Time

- Rent ceilings are frozen and will never increase.
- Increases in the rent charged based on existing rent ceilings can only be taken on vacant units.
- Increases in the rent charged based on existing rent ceilings cannot exceed 50% of the current rent charged for a rental unit when a comparable unit is used to calculate the rent increase.

Standard Vacancy Rent Increases

- Rents on vacant units cannot increase by more than 10% or are capped at 50% of the current rent charged when a comparable unit is used to calculate the rent increase.
- Perfected and unimplemented rent increases cannot exceed the 50% cap on vacancies.

Extended Contest Period

- Tenants have 1 year to challenge base rents.
- Tenants can go back 3 years to challenge base rent calculations.
- Tenants have 1 year to challenge all rent charge increases.
- Landlords are required to provide the Rent Administrator upon request documents showing rent increases.

Increased Disclosure and Participation

- Landlords are required to provide the full calculation of new rent charge to tenants, in writing.
- Landlords are required to inform current and future tenants of all rent increases, in writing.
- Tenants are allowed to comment when landlords file for special petitions and voluntary agreements.

Accessible Government Liaison

- The District's new Tenant Advocate will assist tenants in learning and understanding the new rent control system.

Landlord Benefits

Consistent Petition Programs

- The District's petition processes and voluntary agreement programs remain intact.
- Formerly approved petitions and voluntary agreements will be honored.

Ability to Upgrade Units

- Landlords are given adequate means to improve units upon vacancy from long-term tenants.

Carryover Perfected Increases

- Landlords may carry over rent ceilings that were perfected and unimplemented before the effective date of this new system.

Rental Housing Administration Benefits

Ease and Consistency

- Establishment of a clean and manageable rent control system.

Comparable Unit Listing

- Landlords are required to file a listing of all comparable units.

Shift in Burden of Production

- Landlords are required to provide the Rent Administrator upon request documents showing rent adjustments.
- Landlords are required to file annual rent increase notices with the District government.

Protection Against Litigation

- Landlords may carry over rent ceilings that were perfected and unimplemented before the effective date of this new system.

April 13, 2006 Committee Print

Vincent M. Policy

From: Waters, Paul (DCRA) [Paul.Waters@dc.gov]
Sent: Friday, April 14, 2006 10:08 AM
To: Vincent M. Policy
Subject: Rent Control

Mark,

Good luck today on your procedure! ☺

Below is a note I received from Alicia, along with the copy of the Committee Print.

> Attached is the cmte print CM Graham's staff circulated to cmte members (it wasn't filed with the Secretary's office because the report wasn't completed). He intends to file the report Monday, April 24th after the Council's spring recess.
>
> Also, he's scheduled a special meeting to reconsider the votes for the bill. Apparently CM Brown wants to switch his vote. CM Graham hopes others will do so as well following the outcome of our meeting next week. He believes he has a bill that will please all.

As I understand it, next week's meeting is scheduled for Thursday. I'll chat with you on Tuesday, (Monday is a D.C. Holiday).

Thanks,

Paul E. Waters, Esq.
Legislative Liaison
Office of the General Counsel
Department of Consumer and Regulatory Affairs
(202) 442-8410 (office)
(202) 442-8373 (fax)

COMMITTEE PRINT
COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS
APRIL 13, 2006

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Rental Housing Act of 1985 to amend the definition of base rent, to provide for the elimination of rent ceilings, to preserve previously perfected rent ceiling adjustments and limit their implementation, to limit the amount of any rent charge adjustment, other than a petition-based adjustment, that may be implemented on an occupied unit to 6% of the current rent charged plus the adjustment of general applicability but not to exceed 10%, or to the adjustment of general applicability if occupied by a qualified elderly tenant or qualified disabled tenant or a qualified teacher in the District public or charter schools or a qualified tenant whose income does not exceed 40% of the Area Median Income, or to the adjustment of general applicability if the rent ceiling for the current tenant's rental did not exceed by more than 20% the rent charged to that tenant for that rental unit as in effect prior to amendment, to provide for time limits on challenges, to amend the vacancy adjustment provisions to allow the housing provider to raise the rent charged of a non-income qualified vacant rental unit by 10% or to the highest comparable within that building, subject to a limit of 50% of the current lawful amount of rent charged and subject to specified exceptions, to terminate the unitary rent ceiling adjustment restriction, to provide for income qualified units, and to limit to one per year the number of increases in rent charged.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may cited as the "Rental Control Reform Amendment Act of 2006".

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501-01, *et seq.*), is amended as follows:

(a) Section 103(4) (D.C. Official Code § 42-3501.03(4)) is amended to read as follows:

"(4) "Base rent" means the rent legally charged on April 30, 2006."

(b) Section 202(a)(3) (D.C. Official Code § 42-3502.02(a)(3)) is amended by striking the phrase "rent ceiling" and inserting the phrase "rent charged" in its place.

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

(1) Subsection (f) is amended as follows:

(a) The lead-in text is amended by striking the phrase "July 17, 1985" wherever it appears and inserting the phrase "the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457)" in its place.

(b) Paragraph (5) is amended by striking the phrase "and".

(c) Paragraph (6) is amended by striking the period and inserting a semi-colon in its place;

(d) New paragraphs (7) and (8) are added to read as follows:

"(7) Any granted or perfected rent ceiling adjustments in effect; and

"(8) A listing of which rental units in the housing accommodation are substantially identical to other rental units in the housing accommodation for purposes of Section 213.",

(2) Subsection (g) is repealed.

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

(1) The section designation is amended by striking the word "ceiling" and inserting the word "charged" in its place.

(2) Subsection (a) is amended by striking the phrase "April 30, 1985" and inserting "April 30, 2006" in its place.

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

(a) Strike the phrase "rent ceiling" wherever it appears and insert the phrase "rent charged" in its place.

(b) A new sentence is added to read as follows:

"An increase in rent charged pursuant to subsection (h) shall be in addition to an increase in rent charged pursuant to this subsection.".

(4) Subsection (c) is amended by striking the phrase "rent ceiling" and inserting the phrase "rent charged" in its place.

(5) Subsection (d) is amended as follows:

(a) Strike the first sentence and insert the sentence "If, on the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), the rent being charged exceeds the allowable rent charged, the rent shall be reduced to the allowable rent charged as of the next date that the rent is due.".

(b) A new sentence is added to read as follows:

"Rent ceiling increases granted or perfected prior to the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), shall remain in effect, but may be implemented as increases in the rent charged as provided in, and subject to the limitations of, section 206(h)(3) and section 213 (d).".

(6) Subsection (e) is amended to read as follows:

"(e) A tenant may challenge a rent adjustment implemented under any section of this subtitle by filing a petition with the Rent Administrator under section 16. No petition shall be filed with respect to any adjustment in the rent charged, under any section of this subtitle:

"(1) Within the applicable time limit stated in subsection (h) of this section; and

"(2) More than 3 years after the effective date of the adjustment in the rent ceiling; provided that a petition challenging the new base rent as provided in section 03(4) shall be filed within one year after the date that the housing provider files his base rent as required by this subtitle.".

(7) Subsection 206 (f)(2) is amended as follows:

(a) Paragraph (A) is amended by striking the phrase "$40,000" and inserting the phrase "60% of area median income for the Washington-Arlington-Alexandria Metropolitan Area" in its place.

(b) Paragraph (B) is amended by striking the phrase "$40,000" and inserting the phrase "60% of area median income for the Washington-Arlington-Alexandria Metropolitan Area" in its place.

(8) A new subsection 206 (h) is added to read as follows:

"(h)(1) The rent charged and the increases therein shall be controlled as provided in this subsection. Any adjustment in rent charged under this subsection (h), section 208(h), section 213, or any other provision of this subtitle, need not be based upon and shall not require any corresponding rent ceiling adjustment. Except for rent ceiling adjustments in effect prior to the effective date of, and preserved as provided in, the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), rent ceilings are abolished.

"(2)(A) An adjustment in rent charged for a rental unit while the rental unit is occupied by a tenant shall not exceed:

"(i) The adjustment of general applicability under section 206(b) for:

"(I) An elderly resident tenant or a disabled resident tenant, as defined in subsection (f)(2) and determined by the Rent Administrator pursuant to the procedures applicable under subsection (f); or

"(II) A full-time teacher teaching in a District of Columbia Public School or a Charter school (as defined in section 101(8) and (14) of the Public Charter Schools Act of 1996, effective May 29, 1996 (D.C. Law 11-935; D.C. Official Code § 38-1701.01(8) and (14)) with an income of not more than 60% of area median income, as certified by the Rent Administrator;

"(III) A person who has an income of less than 40% of the Area Median Income and who is a resident tenant (as defined in and determined by the Rent Administrator pursuant to the procedures applicable under section 206(f)) residing in the unit; or

"(IV) A tenant residing in a rental unit as of the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), who is named in the lease with the housing provider and as to whom the Rent Administrator determines that, immediately prior to the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), the rent ceiling for that tenant's rental unit did not exceed by more than 20% of, or was equal to, the rent charged to the tenant.

"(ii) For all other tenants, 6% of the prior rent charged for the rental unit, plus the adjustment of general applicability under subsection 206(b), but not to exceed 10% in any year.

"(B) Any unimplemented portion of such percentages during the applicable year shall not be carried over to a subsequent year. An adjustment in rent charged under this paragraph shall not be implemented until a full 12 months have elapsed since a prior adjustment in rent charged under this paragraph.

"(3) The limitations in paragraph (2) of this subsection, section 208(h), and section 213 shall not apply to an adjustment in the rent charged that implements a decision of the Rent Administrator pursuant to a petition under section 210, section 211, section 212 or section 214, or a voluntary agreement under section 215, including any decision or voluntary agreement granted on or after the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), or any decision or voluntary agreement as to which the rent ceiling adjustment was granted prior to the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), to the extent the rent ceiling adjustment was not implemented prior to the adjustment in rent charged pursuant to this subsection. Such rent ceiling adjustments shall remain in effect. In proceedings under section 210, section 211, section 212, section 214 or a voluntary agreement under § section 215, the Rent Administrator shall determine the adjustment to the rent charged, not the rent ceiling, according to the provisions of those sections. The percentages in section 210(c)(1) and (2) and section 214(a) shall be applied as percentages of the rent charged. Unimplemented portions of increases in the rent charged under all petitions approved by the Rent Administrator as set forth in this subsection may be carried over to subsequent years.

"(4) The limitations in paragraph (2) of this subsection shall not apply if a rental unit in such housing accommodation is vacated by the tenant, in which event any increase in the rent charged for the rental unit during the initial lease period following the vacancy shall be determined as provided in section 213.

"(5) A housing provider shall be required to file, with the Rent Administrator, a copy of the notice of each rent charge increase served on a tenant and the implementation of any preserved rent ceiling increase under section 213(d). Failure to file shall not invalidate such increases and no other certificate, amended registration form, or other document shall be required to be filed with the Rent Administrator, Rental Housing Commission, or any other agency in connection with any increase in rent charged. The Rent Administrator shall publish the registration

form and rent increase notice form on or before the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457). The housing provider shall maintain copies of all notices of adjustments in the rent charged during the period of the applicable limitations period under subsections (e) of this section or this subsection and shall produce such records to the Rent Administrator upon request.

"(6)(A) A tenant in occupancy may challenge any increase in the rent charged for his or her rental unit; provided, that a petition shall not be filed with respect to any such adjustment in the rent charged under any section of this subtitle: (i) More than 3 years after the effective date of the adjustment, as to any adjustment prior to the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), (ii) more than one year after the effective date of the adjustment, as to any adjustment on or after the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457); provided, that if the adjustment was based on fraud by the housing provider, the period shall be 3 years.

"(B) When the rental unit becomes vacant after the initial lease period under paragraph (4) of this subsection, a petition shall not be filed as to the initial rent charged to a tenant leasing the vacant unit on any ground other than that a rental unit used as a substantially identical rental unit was not substantially identical to the vacant unit, which petition shall not be filed more than one year after the date the lease is executed. Subparagraph (A) of this paragraph shall apply to any subsequent rent increases.

"(7) Subject to appropriation, the Mayor shall establish an electronic database for the filing, storage and retrieval of rent stabilization program documents.".

(e) Section 207 (D.C. Official Code § 42-3502.07) is repealed.

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

(1) Subsection (a)(2) is amended by striking the phrase "September 1, 1983" and inserting "April 30, 2006" in its place.

(2) Subsection (g) is amended by striking the phrase "180 days have elapsed since any prior adjustment" and inserting the phrase "12 months have elapsed since any prior increase in the rent charged to the tenant of the rental unit; provided, that if the rental unit becomes vacant within 12 months of an increase in rent charged under section 208(h)(2) or (3), section 213 shall apply and the housing provider may increase the rent charged as provided in section 213" in its place.

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

"(h) (1) An adjustment in rent charged for a rental unit while the rental unit is occupied by a tenant shall not exceed:

"(i) The adjustment of general applicability under section 206(b) for:

"(I) An elderly resident tenant or a disabled resident tenant, as defined in subsection (f)(2) and determined by the Rent Administrator pursuant to the procedures applicable under subsection (f); or

"(II) A full-time teacher teaching in a District of Columbia Public School or a Charter school (as defined in section 101(8) and (14) of the Public Charter Schools Act of 1996, effective May 29, 1996 (D.C. Law 11-935; D.C. Official Code § 38-1701.01(8) and (14)) with an income of not more than 60% of area median income, as certified by the Rent Administrator;

"(III) A person who has an income of less than 40% of the Area Median Income and who is a resident tenant (as defined in and determined by the Rent Administrator pursuant to the procedures applicable under section 206(f)) residing in the unit; or

"(IV) A tenant residing in a rental unit as of the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on

_____, 2006 (Enrolled version of Bill 16-457), who is named in the lease with the housing provider and as to whom the Rent Administrator determines that, immediately prior to the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), the rent ceiling for that tenant's rental unit did not exceed by more than 20% of, or was equal to, the rent charged to the tenant.

"(ii) For all other tenants, 6% of the prior rent charged for the rental unit, plus the adjustment of general applicability under subsection 206(b), but not to exceed 10% in any year.

"(2) The limitations in paragraph (1) of this subsection, section 206(h), and section 213 shall not apply to an adjustment in the rent charged that implements a decision of the Rent Administrator pursuant to a petition under section 210, section 211, section 212 or section 214, or a voluntary agreement under section 215."

(g) Section 209 (D.C. Official Code § 42-3502.09) is amended as follows:

(1) The section title is amended to read as follows: "Rent charged upon termination of exemption and for newly covered rental units.".

(2) Strike the phrase "rent ceiling" wherever it appears and insert "rent charged" in its place.

(h) Section 210 (D.C. Official Code § 42-3502.10) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place, except in subsection (c)(3) of this section.

(i) Section 211 (D.C. Official Code § 42-3502.11) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place.

(j) Section 212 (D.C. Official Code § 42-3502.12) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place.

(k) Section 213 (D.C. Official Code § 42-3502.13) is amended as follows:

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

"(a)(1) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the rent charged may, at the election of the housing provider, be adjusted once per 12-month period under this section:

"(A) To an amount not to exceed the current lawful amount of rent charged a substantially identical rental unit in the same housing accommodation (except as provided in subsection (d) of this section), provided, that the increase in the rent charged for the vacant unit shall not exceed 50% of the current lawful amount of rent charged for the vacant unit, or

"(B) By an increase of 10% of the current lawful amount of rent charged for the vacant unit, except that an increase under this section shall not be permitted unless the housing accommodation has been registered under section 205(f).

"(2) Any unimplemented portion of the adjustment to the rent charged shall not be preserved or carried over to a subsequent year.".

(2) New subsections (d) and (e) are added to read as follows:

"(d) When a rental unit becomes vacant, without petitioning the Rent Administrator, the housing provider may increase the rent charged on the vacant unit, in addition to the increase permitted by section 213(a)(1), as provided in this subsection. If the increase calculated under subsection (a)(1)(A) of this section is less than 50% of the current lawful rent charged for the vacant unit, the housing provider may further increase the rent charged for the vacant unit, not to exceed 50% of the current lawful rent charged for the vacant unit, by implementing all or any portion of the aggregate amount of rent ceiling increases preserved and unimplemented by the

Comment: We do not know what this means???

housing provider. For purposes of the preceding sentence, a rent ceiling increase means any rent ceiling increase perfected and unimplemented by the housing provider prior to the effective date of the Rental Control Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457).".

"(e) The housing provider and the tenant to whom the vacant unit is relet shall execute and attach to the lease an addendum, in which the housing provider shall disclose the rent charged adjustments on which the initial rent charged in the lease is based. Upon written request by the tenant at the time that the addendum is executed, the housing provider shall provide to the tenant copies of all notices of rent charged adjustments on which such initial rent charged is based. Notwithstanding the foregoing, the housing provider shall not be required to disclose in the addendum, or provide copies of notices of, any rent charged adjustments which became effective prior to the applicable limitations period in section 206(e) or (h).".

(l) Section 214 (D.C. Official Code § 42-3502.14) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place.

(m) Section 215 (D.C. Official Code § 42-3502.15) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place.

(n) Section 216 (D.C. Official Code § 42-3502.16) is amended by striking the phrase "rent ceiling" wherever it appears and inserting "rent ceiling or rent charged" after "rent ceiling" in its place

(o) Section 220 (D.C. Official Code § 42-3502.20) is amended to read as follows:

"(a) For purposes of this section, the term "qualified income" means a gross income from all sources of the tenant household which does not exceed 60% of the area median income for the Washington-Arlington-Alexandria Metropolitan Area, as published by the United States Department of Housing and Urban Development.

"(b) As to all housing accommodations subject to the rent stabilization program in this subtitle and which contain 20 or more rental units, up to 10% of the total number of rental units in that housing accommodation as they become available, shall be selected, and designated by the housing provider as income qualified units for occupancy by applicants with qualified incomes who apply to rent such income qualified units. The housing provider and the Rent Administrator shall be provided, upon request, income verification at the inception of the tenancy and annually thereafter. The rent charged for an income qualified unit occupied by a tenant with a qualified income shall not exceed 80% of the fair market rent for that unit type published annually during the tenancy by the United States Department of Housing and Urban Development for the Washington-Arlington-Alexandria Metropolitan Area (DC-VA-MD HMFA).

"(c) No later than 3 months after the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), the Mayor shall propose rules to carry out the purposes of this section. The proposed rules shall be subject to Council approval.

"(d) The rights and obligations under other provisions of this Act applicable to a tenant residing in a rental unit as of the effective date of the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), but who does not meet the qualified income requirements of this section, shall not be abrogated or modified by the provisions of this section.".

(p) Section 901 (D.C. Official Code § 42-3509.01) is amended by striking the phrase "rent ceiling" wherever it appears and inserting the phrase "rent charged" in its place.

(q) A new Section 222 is added to read as follows:

"Sec. 222. Transitional provision – Rental Control Reform Amendment Act of 2006. Petitions filed prior to the effective date of the Rental Control Reform

Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457), shall be decided pursuant to the provisions of this subtitle prior to the Rental Control Reform Amendment Act of 2006, passed on 2nd reading on _____, 2006 (Enrolled version of Bill 16-457).

Sec. 3. Fiscal Impact Statement. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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.

January 18, 2012
Letter from Mr. Policy to DHCD

GDL
GREENSTEIN DELORME & LUCHS, P.C.

1620 L STREET, N.W., SUITE 900
WASHINGTON, D.C. 20036-5605
tel (202) 452-1400 fax (202) 452-1410

www.gdllaw.com

Vincent Mark J. Policy
VMP@gdllaw.com

January 18, 2012

BY ELECTRONIC MAIL AND BY MESSENGER

Director John E. Hall
District of Columbia Department of
Housing and Community Development
Rental Accommodations Division
1800 Martin Luther King Avenue, S.E.
2nd Floor
Washington, D.C. 20020

BY ELECTRONIC MAIL AND BY MESSENGER

Theresa L. Lewis, Esq.
Acting Rent Administrator
Department of Housing and Community
Development
Rental Accommodations Division
1800 Martin Luther King Avenue, S.E.
2nd Floor
Washington, D.C. 20020

Re: Rent Control Reform Amendment Act 2006

Dear Director Hall and Acting Rent Administrator Lewis:

As you may recall, at our last meeting on January 12, 2012 there was much discussion about the claim that a housing provider is required to implement a voluntary agreement-based increase or petition-based increase all at one time and cannot preserve it for future implementation.

Enclosed is the official form of the Department of Housing and Community Development entitled "Notice of Increase in Rent Charged". I apologize for the prior copy (it is what we received from DHCD), but please refer to the paragraph in the middle of the page which reads as follows:

> "Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now,

the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

_____	_____	$_____
[section of Act]	[type of increase]	[increase authorized]

_____	_____	_____
[effective date of authorization]	[case number, if applicable]	[date of decision, if applicable].

(Emphasis added.)"

This same language appeared in the original Notice of Increase in Rent Charged adopted by DCRA in August 2006 (copy enclosed).

This language clearly states the understanding of the 2006 Amendments by both the Department of Consumer Regulatory Affairs and the Department of Housing and Community Development since the Reform Act was adopted in August 2006. It was also the law prior to the 2006 Amendments. Thus, the 2006 Amendments made no change in the ability of a housing provider to implement part (or none) of a voluntary agreement increase and preserve the remainder for future implementation.

I hope that this resolves this issue. Please note that I provided to Mr. Keith Anderson a more extensive analysis of this issue in 2009, demonstrating that there is no substance to the claim that a petition-based increase or a voluntary agreement-based increase has to be implemented all at one time or it is lost. In light of the enclosures to this letter, however, we do not feel that it is necessary to belabor the point at this time.

Respectfully submitted,

Vincent Mark J. Policy

VMP:dlh
Enclosure

cc: Nicola Whiteman, Esq. (by email; w/encl.)
Shaun Pharr, Esq. (by email; w/encl.)
Mr. Charles Hathaway (by email; w/encl.)
Mr. G. Thomas Borger (by email; w/encl.)
Johanna Shreve, Esq. (by email; w/encl.)
Richard W. Luchs, Esq. (by email; w/encl.)

Owner (name & address)

_____

_____

_____

Department of Housing and Community Development
Rental Accommodations Division (RAD)

Housing Accommodation:

_____

_____

_____ (tenants)

_____ (address)

_____

Registration No. & Date _____

Date of Notice: _____

Notice of Increase in Rent Charged

In accordance with the provisions of the Rental Housing Act of 1985 as amended (the "Act"), the rent charged for your rental unit will be increased as set forth below.

Your current rent charged is: $_____ The increase in your rent charged is: $_____

Your new rent charged is: $_____ The effective date is: _____

The basis of the increase in rent charged is as follows [check one]:

☐ Under section 208(h)(2) of the Act (annual CPI-based increase) the increase in rent charged is based on the increase in the Consumer Price Index (CPI). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the CPI percentage, but not more than 5.0%. For other tenants, the maximum percentage increase in rent charged is the CPI percentage plus 2.0%, but not more than 10.0%. The CPI percentage published by the Rental Housing Commission for the rent-control year May _____ through April _____ is _____%.

☐ Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now, the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

_____ [section of Act] _____ [type of increase] $_____ [increase authorized]

_____ [effective date of authorization] _____ [case number, if applicable] _____ [date of decision, if applicable]

The housing provider certifies that (1) the rent increase is in compliance with the Act; (2) at least one year has passed since the last rent increase; and (3) the rental unit and the common elements of the housing accommodation are in substantial compliance with the District of Columbia Municipal Housing Regulations (Title 14) or that any noncompliance is the result of tenant neglect or misconduct.

You have the right to request that the Rental Accommodations and Conversion Division (RACD) review this notice if you believe it is improper. You may contact RACD on (202) 442-9505. RACD is located in 1800 Martin Luther King Jr. Avenue S.E. Washington, DC 20020.

_____ _____

Signature of (check one) owner/agent Name of (check one) owner, agent (print or type)

Owner (name & address)

_____
_____
_____

Department of Consumer & Regulatory Affairs
Housing Regulation Administration
Rental Accommodations and Conversion Division

Housing Accommodation:

_____

_____ [tenant(s)] _____

_____ [address] Registration No. & Date _____

_____ Date of Notice: _____

Notice of Increase in Rent Charged

In accordance with the provisions of the Rental Housing Act of 1985 as amended (the "Act"), the rent charged for your rental unit will be increased as set forth below.

Your current rent charged is: $_____ The increase in your rent charged is: $_____

Your new rent charged is: $_____ The effective date is: _____

The basis of the increase in rent charged is as follows [check one]:

☐ Under section 208(h)(2) of the Act (annual CPI-based increase) the increase in rent charged is based on the increase in the Consumer Price Index (CPI). For tenants qualified under the Act as elderly or disabled, the maximum increase in rent charged is the CPI percentage, but not more than 5.0%. For other tenants, the maximum percentage increase in rent charged is the CPI percentage plus 2.0%, but not more than 10.0%. The CPI percentage published by the Rental Housing Commission for the rent-control year May _____ through April _____ is _____%.

☐ Alternatively, a housing provider may seek an allowable increase under other provisions of the Act, including petitions based on capital improvements, changes in services and facilities, hardship, substantial rehabilitation or agreement with seventy percent of the tenants. If any such authorized increase is partially implemented now, the balance may be implemented later. The increase in rent charged is based on the following provision of the Act:

_____ [section of Act] _____ [type of increase] $_____ [increase authorized]

_____ [effective date of authorization] _____ [case number, if applicable] _____ [date of decision, if applicable]

The housing provider certifies that (1) the rent increase is in compliance with the Act; (2) at least one year has passed since the last rent increase; and (3) the rental unit and the common elements of the housing accommodation are in substantial compliance with the District of Columbia Municipal Housiing Regulations (Title 14) or that any noncompliance is the result of tenant neglect or misconduct.

You have the right to request that the Rental Accommodations and Conversion Division (RACD) review this notice if you believe it is improper. You may contact RACD on 202-442-4477. RACD is located in Suite 7100 at 941 North Capitol Street, N.E., Washington, DC 20002. A more detailed summary of tenant rights and sources of technical assistance are available in the RACD pamphlet available from the Housing Provider, in the RACD office and on line at *www.dcra.dc.gov*.

_____ _____

Signature of [circle one] owner/agent Name of circle one] owner/agent [print or type]

May 7, 2009
Order Granting Voluntary Agreement

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
HOUSING REGULATION ADMINISTRATION
1800 MARTIN LUTHER KING, JR. AVENUE, S.E.
WASHINGTON, D.C. 20020
P (202) 442-9505 / F (202) 645-5870

Fax

TO: V. Policy- FROM: K. Anderson-RAD

COMPANY: GDL DATE: 5-7-09

2|452-1410 TOTAL NO. OF PAGES INCLUDING COVER: 17

FAX NUMBER: SENDER'S REFERENCE NUMBER: 2|442-9505

RE: VA-08-011 YOUR REFERENCE NUMBER:

NOTES/COMMENTS:

cc: Eric Rome

☑ URGENT
☑ FOR REVIEW
☐ PLEASE COMMENT
☐ PLEASE REPLY
☐ FOR YOUR RECORDS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING REGULATION ADMINISTRATION
RENTAL ACCOMMODATIONS DIVISION
1800 Martin Luther King Avenue, SE 2nd Floor
Washington, D.C. 20020

IN RE: 70% VOLUNTARY AGREEMENT PETITION FOR RENT ADJUSTMENT **WRF 1921 KALORAMA ROAD, LP SUCCESSOR BY DEED TO SOUTHWEST PROPERTIES,INC & NEW KALORAMA KALORAMA TENANTS ASSOCIATION, INC.** Joint Housing Provider & Tenant/Petitioners	**Voluntary Agreement No. 08-011** 1921 Kalorama Road, NW Multi-Unit Dwelling; Ward 1 MAY 07 2009

ORDER GRANTING JOINT MOTION TO APPROVE VOLUTARY AGREEMENT

Jurisdiction

KEITH ANDERSON, ESQUIRE, ACTING RENT ADMINISTRATOR: The above-captioned matter comes before the District of Columbia Department of Housing and Community Development, Housing Regulation Administration, Rental Accommodations Division (RAD), (formerly the DC Department of Consumer and Regulatory Affairs, Rental Accommodations Division (RACD)),[1] pursuant to Title II of the Rental Housing Act of 1985, D.C. Law 6-10, as amended, effective July 17, 1985, (the Act), D.C. Code Section 42-3501 (2007) et seq., the D.C. Administrative Procedure Act, D.C. Code Section 2-501 et seq. (2007), and the Rules of the Rental Housing Commission, 33 DCR 2656 (May 2, 1986),14 DCMR Section 3800 et seq. (2004) (the Rules).

[1] Pursuant to the FY 2008 Budget Support Act of 2007, the Rental Housing Operations Transfer Amendment Act of 2007, effective September 18, 2007 (D.C. Law 17 – 0020), the Rental Accommodations and Conversion Division was transferred from the Department of Consumer and Regulatory Affairs to the Department of Housing and Community Development and renamed the Rental Accommodations Division. The transfer had no bearing on the outcome of this Decision and Order.

Procedural History

Housing Provider, WRF 1921 Kalorama Road, LP, and the subject Tenants, known as The New Kalorama Tenants Association, Inc. (the Tenants), jointly filed Voluntary Agreement (VA) 08-011 on July 25, 2008, pursuant to D.C. Official Code 42-3502.15 (2007), 14 D.C.M.R. 4213 (2004) to adjust the rent charged for the rental units in consideration for making major renovations at the housing accommodation located at 1921 Kalorama Road, NW. Pursuant to 14 DCMR Sect. 4213.6, which requires that a copy of the proposed agreement be filed with RAD, the July 25, 2008 filing was deemed to be the proposed agreement for VA 08-011. On or about August 5, 2008, RAD staff contacted the Housing Provider by email about the filing of VA 08-011. In that communication, RAD referred to the July 25, 2008 filing as the final proposed agreement for VA 08-011.

Notwithstanding this representation, pursuant to 14 DCMR 4213.6, RAD determined that the Housing Provider was required to file a proposed voluntary agreement before submitting a final version. RAD therefore deemed the July 25, 2008 to be the proposed voluntary agreement and that the Housing Provider did not file a copy of the final proposed voluntary agreement in VA 08-011, after the July 25, 2008 agreement was submitted. Based on this determination, by Order dated October 15, 2008, RAD requested Petitioner to submit a final proposed voluntary agreement.

On October 21, 2008, the Housing Provider and the Tenants filed a Joint Motion of Housing Provider and Tenants to Vacate Order Requesting Final Proposed Voluntary Agreement. In the Motion, the Housing Provider and the Tenants argued that (1) the July 25, 2008 filing clearly stated that it was, in fact, the final proposed voluntary agreement; (2) the law does not require that a proposed agreement must be filed before a final proposed voluntary agreement is filed; (3) the final proposed voluntary agreement filed on July 25, 2008 complied with the requirements for approval of voluntary agreements; and (4) RAD lacked jurisdiction to take any action on the voluntary agreement in its final form because 45-days had expired when RAD issued its Order on October 15, 2008 requesting a final version of VA 08-011.

By letter dated December 19, 2008, the Housing Provider and Tenants requested a meeting with RAD to discuss how VA 08-011 could be resolved to the satisfaction of the Housing Provider, Tenants and RAD in compliance with applicable law and in the interest of avoiding any additional costly and time consuming adjudication of the matter.

After evaluating the issues involved in VA 08-011, RAD determined that a meeting for the purpose of trying to achieve resolution of VA 08-011 was warranted. A meeting to discuss resolution of VA 08-011 was convened on January 29, 2009. Present at the meeting were Eric Rome, Esq., counsel for the Tenants Association; Vincent Mark Policy, Esq., counsel for the Housing Provider; and Keith Anderson, Acting Rent Administrator.

The discussion included whether VA 08-011 was filed in its final proposed form on July 25, 2008; whether statute and regulations governing voluntary agreements require a proposed voluntary agreement be filed with RAD before a final proposed voluntary is filed; whether the terms of VA 08-011 complied with Sect. 102 of the Act; the condition and proposed renovation

of the housing accommodation; and the amount of the proposed increase in the rent charged for each rental unit.

At the close of the meeting, both counsel were invited to file a pleading providing any supplemental grounds for approval of VA 08-011. On March 23, 2009, the Housing Provider and Tenants, through counsel, filed a Joint Motion of Housing Provider and Tenants To Approve Voluntary Agreement.

Based on the information provided in VA 08-011, including the the March 23, 2009 Joint Motion of Housing Provider and Tenants to Approve Voluntary Agreement, RAD determines that the October 15, 2008 Order requesting a final proposed version of VA 08-011 shall be vacated and VA 08-011 shall be approved as set forth more fully below.

Issues Presented

The issues presented in VA 08-011 are:

1. Whether the Housing Provider and Tenants filed a joint final proposed voluntary agreement?

2. Whether the Act requires that a landlord or tenant file a proposed voluntary agreement with RAD prior to filing a final proposed voluntary agreement?

3. Whether the "45-day" rule took effect and applies to VA 08-011?

4. Whether VA 08-011 contains any of the grounds for disapproval set forth in Sect. 4213.19 of the Regulations?

1. Whether the Housing Provider and Tenants Filed a final Proposed Voluntary Agreement?

Further review of the July 25, 2008 petition jointly submitted by the Housing Provider and Tenants indicates that the filing was followed by an email from the Rent Administrator, which clearly stated that the Rent Administrator considered the document to be the final version of VA 08-011. However, the email was not in the case file on October 15, 2008 when RAD issued the Order requesting that a final proposed agreement be submitted. The email was located during a search for the email conducted after RAD received the Joint Motion to Vacate the October 15, 2008 Order. Based on the statements in the email and the fact that the July 25, 2008 submission was signed by 85% of the occupants at the subject property, RAD determines that the Housing Provider and the Tenants did in fact file a final version of VA 08-011 on July 25, 2008. Accordingly, the initial determination that the Housing Provider and the Tenants failed to file VA 08-011 in its final form was in error and is reversed.

The issue whether the Housing Provider and Tenants were required but failed to file a proposed voluntary agreement with RAD, as prescribed by 14 DCMR Sect. 4213.6, is not addressed in this Order. RAD determines that the issue is moot based on amendments to the July 25, 2008 final

proposed voluntary agreement made by the Parties and RAD's decision to accept and approve the July 25, 2008 final proposed voluntary agreement, as amended.

2. Whether the "45-day' rule took affect and applied to VA 08-011?

The Regulation, 14 DCMR Sect. 4213.14 (2004) provides as follows:

> If the Rent Administrator does not approve or disapprove the voluntary agreement within the time limit of section 4213.13, the voluntary agreement shall be deemed approved.

RAD has determined that the Housing Provider and Tenants jointly executed a final proposed voluntary agreement on July 25, 2008 in which 85% of the tenants residing at the subject property approved the terms of VA 08-011.

In response to RAD's October 15, 2008 Order that the Housing Provider and Tenants had not filed a final proposed voluntary agreement, in addition to stating that a final agreement was, in fact filed, the Housing Provider and Tenants argued that RAD lacked jurisdiction over the matter because the October 15, 2008 motion was filed more than 45 days after VA 08-011 was filed on July 25, 2008.

Again, in view of RAD's approval of VA 08-011 for reasons more fully set forth herein, the issue concerning the applicability of Sect. 4213.14 is also moot and warrants no further review or consideration in this Order.

3. Whether VA 08-011 contains any of the grounds for disapproval set forth in Sect. 4213.19 of the Regulations?

The Regulation, 14 DCMR Sect. 4213.19 (2004), provides as follows:

> The Rent Administrator may disapprove a voluntary agreement which has been approved by seventy percent (70%) of the tenants only in the following circumstances:
>
> (a) If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;
>
> (b) If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or
>
> (c) If the voluntary agreement contradicts provisions of Sect. 102 of the Act or results in inequitable treatment of the tenants.

RAD determines that the terms of VA 08-011 do not fall within the scope of Sect. 4213.19.

First, there is no record evidence that approval of the agreement or any part of the agreement was induced by either duress, harassment, intimidation or coercion; or fraud, deceit or misrepresentation of material facts. More than 70% of the Tenants signed the agreement, each of whom was either represented by experienced counsel or had the opportunity to receive legal

advice from counsel. None of the Tenants who signed or refused to sign the agreement have lodged objections to the terms of the voluntary agreement or raised questions or disputes regarding the negotiations involved in reaching the voluntary agreement to date. Therefore, none of the grounds for disapproval set forth in Sects 4213.19(a) or (b) are present in VA 08-011.

Second, RAD determines that VA 08-011 does not contradict the provisions of Section 102 of the Act or result in inequitable treatment of the Tenants, pursuant to Sect. 4213.19(c).

Section 102 of the Act, DC Official Code Sect. 42-3501.02 (2007), states that:

> In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:
>
> (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
>
> (2) To provide for incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
>
> (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
>
> (4) To protect the existing supply of rental housing from conversion to other uses; and
>
> (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

(a) VA 08-011 protects low and moderate income tenants from the erosion of their income from increased housing costs

The rent increases proposed in VA 08-011 do not erode the income of low to moderate income of the residents of the property who signed the voluntary agreement.

In exchange for the Housing Provider completing a $5,990,000.00 substantial renovation of the property and increasing rents on each rental unit as proposed in VA 08-011, each of the current Tenants will pay rent at their current rent levels and avoid their rent being increased pursuant to a substantial rehabilitation agreement petition. Their current rent levels will only be subject to the annual CPI increase of general applicability, which cannot exceed 10% in any one year. The incomes of the current Tenants will not be eroded because they will not be subject to the new higher rents for the remainder of their tenancies.

As for future tenants who will have to pay the new rent levels, VA 08-011 proposes to increase the rents on each of the 57 units by an average of 96% of the current rent levels in consideration for the Housing Provider spending $5,990,000.000 in renovations for the housing accommodation. Thirty-one (31) of the 57 units will have rents at or below $2,200 per month and will be affordable to households that earn between 58% and 80% of Area Median Income, which is currently $94,000.00. In Ward 1, the monthly rent affordable for household income in the 80th

percentile is $2,355.00 per month. Eighteen (18) of the remaining 26 units are two-bedroom, one-bathroom apartments that will have new rents set at $2,950.00, which is $595.00 above the $2,355.00 level. The last 8 units are two-bedroom, 2 bathroom apartments. Four (4) of these units are exceedingly spacious two-bedroom, two-bathroom apartments that also have dens. The new rents for these 8 units will be set at $3,200.00, which is $845.00 above the $2,355.00 level. As such, future tenants will not experience erosion of their incomes from the increased rents for the 57 units because (1) the new rents for the 31 efficiencies, one-bedroom and 18 two-bedroom units are within the prescribed affordability levels; (2) the $3,200.00 new rent charged for the 8 units with two-bedrooms and two baths is consistent with market rent levels for units of similar size and amenities in Ward 1; (3) the new rents for all 57 of the units are supported by the extensive and necessary renovation being done to rehabilitate and modernize the building at a cost of $5,990,000.00; and (4) some of the units are likely to be occupied by households with multiple incomes in the 80th percentile.

Furthermore, the Housing Provider is entitled to file a Petition for Rent Adjustment for Substantial Rehabilitation to defray the cost of the proposed renovations. A rent increase under the substantial rehabilitation provision is determined by the amount of money needed each month to repay a loan equal to the cost of the renovation plan approved by RAD, provided that the increase can not exceed 125% of the rent charged at the time the petition is filed. Based on a 60 month loan commitment equal to the $5,990,000.00 cost of the subject renovation, it is reasonable to assume that a substantial rehabilitation filed by the Housing Provider would result in a rent increase of approximately $850.00 to $1,700.00, depending on the renovation cost approved by RAD. Adding these amounts to the current rent charged for the 56 units in question would result in new rent levels slightly below, equal to, or greater than the rent increases proposed for each result unit. Thus, VA 08-011 or a substantial rehabilitation petition will have virtually the same effect on the rental income of the Tenants.

(b) VA 08-011 will provide for the rehabilitation of vacant rental units in the District.

The subject rental property is in a serious state of disrepair. VA 08-011 proposes to substantially rehabilitate the property via a renovation plan of $5,990,000.00, a cost which is well over 60% of the current assessed value of the property of approximately $7,000,000.00. In doing so, it provides for the rehabilitation and re-rental of 28 vacant units in the housing accommodation that have not been used for rental purposes due to the poor condition of the units and the common areas of the building. Though, VA 08-011 does not involve construction of new rental units, it will result in the rehabilitation of vacant and existing units and thereby is consistent with the goal of providing incentives for (or in this case the actual) rehabilitation of vacant units the District.

(c) VA 08-011continues to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants.

VA 08-011 avoids the costs, time, and inconvenience; and resolves any potential disputes that may have been raised had the Housing Provider filed a substantial rehabilitation petition and the 120-Day Notices to Vacate required to be served on the tenants in order to complete the planned renovation of the property. Consequently, VA 08-011 enhances the administrative machinery for the resolution of disputes and controversies between housing providers and tenants by

eliminating the continued and potential need to use governmental resources and allowing resolution of their disputes voluntarily as contemplated by Sect. 102 of the Act..

(d) VA 08-011 protects the existing supply of rental housing from conversion to other uses.

The terms of VA 08-011 contain a stipulation between the Housing Provider and Tenants that the Housing Provider will take no action to convert the property to a condominium or cooperative regime, demolition or other use for at least five years. By this provision, VA 08-011 makes clear that any action by the Housing Provider to convert the property to condominium will be taken subject to prior approval by the Condominium Conversion and Sales Division of the DC Department of Housing and Community Development in accordance with the Rental Housing Conversion and Sale Act. VA 08-011 will also allow the Housing Provider to receive a rate of return sufficient enough to operate the housing accommodation at a reasonable profit, which may reduce the incentive to discontinue use of the property as a housing accommodation for economic reasons in the future. As such, VA 08-011 protects the existing supply of rental housing from conversion to other uses.

(e) VA 08-011 prevents the erosion of moderately priced housing while providing housing provider and developers with a reasonable return on their investment.

The proposed new rent levels for the 31 efficiency and one-bedroom units are within the prescribed affordability ranges, and will be available to tenants who earn 80% or less than the area median income for Ward 1. The proposed new rent levels of these 31 units, while significantly higher than the current rent levels in some instances, remain consistent with both possible rent adjustments via substantial rehabilitation petition, as well as, market rates for renovated efficiency and one bedroom units in the Adams-Morgan/Columbia Heights neighborhoods in the District. The proposed new rents for the remaining 26 two-bedroom units that exceed income levels for those tenants within 80% of the area median income for Ward 1, and the 125% limit for substantial rehabilitation petitions, are nonetheless necessary to support the cost of the $5,990.000.00 major renovation. Moreover, no rental units will be priced off the market and the number of available rental units will be increased when the vacant units are rented. The Housing Provider's rate of return based on the proposed rent increase is less than 10% and well within the 12% statutory level applicable to increases based on claim of hardship, under DC Official Code Sect. 42-3502.12. In this manner, VA 08-011 prevents the continued erosion of affordable rental units at the subject property caused by deferred maintenance while providing the housing provider with a reasonable return on its investment. The Agreement represents an acceptable balance of rent increases against the costs of a major renovation in consideration of market rent levels for rehabilitated rental units in the Adams-Morgan/Columbia Heights area.

Finally, there is no evidence in the terms of VA 08-011 itself or its execution that suggest that VA 08-011 results in inequitable treatment of current or future tenants.

Conclusion

Therefore, based on signatures of more than 70% of the Tenants, the proposed increased rent levels, the extensive planned renovation of the property, and the lack of prejudice to the Tenants

– current and future - RAD determines that VA 08-011 contains none of the grounds for disapproval set forth in 14 DCMR Sect. 4213.19 and more specifically is consistent with the goals and purposes of the Act. VA 08-011 will ensure that 57 occupied and vacant rent controlled units, though at the top or slightly above the range of affordable rent levels for the property, will remain in or return to the District's affordable rental housing stock. It is undisputed that the housing accommodation is in a critical state of disrepair and is subject to being continuously underutilized or possible discontinued as affordable rental housing without intervention such as that proposed by the Housing Provider and Tenants through VA 08-011.

ORDER

Thereof, it is hereby **ORDERED** this MAY 7 2009 that:

Voluntary Agreement 08-011 is hereby **GRANTED.**

It is **FURTHER ORDERED** that:

The Housing Provider, WRF 1921 Kalorama Road, LP, shall expend on renovations of each unit and the common areas of the subject property, 1921 Kalorama Road, NW, not less than the sum of $5,990,000.00, inclusive of hard and soft costs, construction contingencies and fees and debt service. The Detailed Summary of Work as agreed by the Housing Provider and Tenants is included with this Decision and Order as Attachment 1.

It is **FURTHER ORDERED** that:

Upon completion of the renovations set forth in the Detailed Summary of Work, the rent charged for each of the 57 rental units located at 1921 Kalorama Road, NW, Washington, DC, may be lawfully increased in accordance with the modified Proposed Rent Schedule submitted by the Parties, a copy of which is included with this Decision and Order as Attachment 2.

It is **FURTHER ORDERED** that:

Any renovations, repairs, improvements, amenities or changes in services and/or facilities as provided in VA 08-011 shall be afforded to each rental unit, whether the Tenant who occupies the rental unit approved or disapproved the 70% voluntary agreement.

It is **FURTHER ORDERED** that:

The Housing Provider shall not increase the rent charged for any of the 57 rental units at the subject housing accommodation above the amount specified in any valid written lease with an unexpired fixed term and unless one (1) year has passed since the last increase was taken for the rental unit, a proper 30-day notice of increase is served on the tenant and filed with RAD, the housing accommodation is properly registered with RAD, the rental unit and the common areas of the housing accommodation are in compliance with the DC Housing Code Regulations, and all other applicable prerequisites for filing adjustments to the rent charged established by Act and Rules have been met.

It is **FURTHER ORDERED** that:

The Housing Provider shall file a Notice of Change in Rent Charged listing the increase in the rent levels for each of the 57 occupied units at the housing accommodation approved in the final proposed version of Voluntary Agreement 08-011, accompanied by a copy of the current Certificate of Occupancy and Housing Business License for the housing accommodation prior to taking any rent increase pursuant to this Order.

It is **FURTHER ORDERED** that:

This Order is effective immediately.

Right to File Objections to Voluntary Agreement

The Housing Provider and/or Tenants may submit written objections to the Order approving the final proposed version of Voluntary Agreement 08-011 to the Rent Administrator and to the opposing Party within thirty (30) days of the date of this Order, including Saturdays, Sundays and legal holidays and allowing three days for mailing, on or before JUN 10 2009 Monday through Fridays, 9:00 am – 3:00 pm.

The Housing Provider and/or Tenants must file their objections at:

DC Dept. of Housing and Community Development
Rental Accommodations Division
1800 Martin Luther King Avenue, SE 2nd Floor
Washington, D.C. 20020.

Failure of the Housing Provider or a Tenant to file a timely objection with RAD may result in the waiver of the right to have a hearing convened before the District of Columbia Office of Administrative Hearings.

KEITH ANDERSON, ESQUIRE
Acting Rent Administrator
DC Dept. of Housing and Community Development
Rental Accommodations Division

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Tenants of
1921 Kalorama Road, NW
Washington, DC 20009
(See attached list of Tenants'Names and Unit Nos.)

Certificate of Service

I ~~hereby certify that~~ a copy of the Order Granting Joint Motion to Approve Voluntary Agreement 08-011 was sent by US Priority Mail, with delivery confirmation, to the above-listed parties on MAY 7 2009.

Certifying Party

Attachment I

DETAILED SUMMARY OF WORK

Scope of Work – 1921 Kalorama Road NW

Demolition:

- Protect wood floors in all units
- Remove all kitchen appliances and cabinets
- Remove all kitchen flooring down to sub-flooring
- Remove all plaster and lath at kitchen including ceiling and both sides of walls in common with LR. and/or groove and patch plaster to accommodate electrical upgrade as needed.
- Remove bath fixtures including sink, toilet, and bath
- Remove tile at floor and walls
- Remove plaster, green board, tile, lath at walls
- Laundry Company: remove all equipment from laundry room

Common Area:

Developer will consult with Tenant Association when selecting finishes for the common areas.

Landscaping:

- Overhaul landscaping

Lobby:

- Install new front entry door and lobby – all glass
- Paint
- Replace carpet
- Repair and refinish steps
- Redecorate
- Upgrade lighting and furnishings

Laundry Room:

- Install new flooring/level floor
- Install work lighting (2 x 4 fixtures)
- Install new entry door with access control
- Electric outlets and gas connections for at least 4 sets of machines plus vending machines
- Install new updated laundry equipment – card (not coin) operated
- Install ventilation to maintain cool dry conditions
- The Developer may opt to install under the counter or stackable washer/dryers in each unit in lieu of upgrading the laundry room

- In the event that the Developer adds laundry machines to the units, the basement laundry room will contain 3 washers and 3 dryers. If the Developer does not add laundry to the units the basement laundry room will contain at least 4 washers and 4 dryers.

Halls:

- Install new unit entry doors
- Repair/refinish hall floors and/or install carpet
- Repaint
- Install upgraded lighting

Exterior:

Windows:

- Replace all windows subject to Historic Preservation Review Board approval

Fire Protection:

- Upgrade fire alarm system
  - Add alarm pulls and individual unit annunciators
- Install emergency lights in halls and stairwells

Hallways and Makeup Air:

- Add Make-up air system to halls and lobby utilizing existing hall ventilation ducts add system to roof, and possibly in basement to reach lobby and first floor

New Entry System:

- Install new telephone based entry system

Elevator:

- Renovate and upgrade both elevators with new cab finishes and controls

Framing:

- Frame half walls at kitchen where appropriate
- Framing at new HVAC units

Electric Upgrade (service):

- Upgrade and heavy-up service to property
- New service to individual units
- New circuit panel box in individual units
- New switches, outlets, GFI outlets, light fixtures in kitchen and bath
- Closet lights, new switches, dimmers, and accessories

- New service feeds for HVAC in individual units

Plumbing work:

- Inspect, repair, and replace plumbing stacks as needed
- Install new stubs in kitchens and baths
- Install new bathroom sink, toilet, shower diverter, tub
- Install new kitchen sink, disposal

Plaster, Drywall Repair:

- Drywall at kitchen
- Drywall (green board) at bathrooms
- Drywall at HVAC installation locations

Finishes & Floors:

- Add crown molding to accommodate new cables as needed
- Refinish unit wood floors
- Install new kitchen floors and subfloor
- Prep & Paint units

Tile:

- Install new tile at bathroom floors and shower/tub surrounds

Appliances:

- Install all new appliances (refrigerator, gas range, microwave, dishwasher)

Cabinets & Counters:

- Install new kitchen cabinets and bathroom vanities
- Install new counters at kitchens
- Install new vanity and tops at bathrooms

HVAC:

- Install new heatpumps at each unit

Bike Storage Room

- Bike room will accessible to all, in the basement, and close to an egress door.

Attachment 2

RENT SCHEDULE

Property: 1521 Kalorama Rd NW
Current AMI: $ 99,000.00

Unit Number	Unit Type	Renovation Per Unit [Incl Interest] [Total: $5,990,000]	VA Requested Rent	Lowest Possible Rent to Support Renovations	Affordable to Renters Making % of AMI
101	1BR	$ 87,404.76	$ 2,200.00	$ 2,200.00	80%
102	2BR	$ 109,964.81	$ 2,950.00	$ 2,950.00	107%
103	2BR	$ 122,169.42	$ 2,950.00	$ 2,950.00	107%
104	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
105	2BR	$ 146,455.37	$ 2,950.00	$ 2,950.00	107%
106	EFF	$ 35,381.05	$ 1,250.00	$ 1,250.00	45%
107	1BR	$ 82,350.33	$ 2,200.00	$ 2,200.00	80%
108	1BR	$ 84,446.07	$ 2,200.00	$ 2,200.00	80%
109	1BR	$ 74,583.75	$ 2,200.00	$ 1,600.00	58%
110	1BR	$ 82,966.72	$ 2,200.00	$ 2,200.00	80%
201	2BR	$ 116,745.15	$ 2,950.00	$ 2,950.00	107%
202	2BR	$ 151,509.81	$ 3,200.00	$ 3,200.00	116%
203	2BR	$ 122,169.42	$ 2,950.00	$ 2,950.00	107%
204	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
205	2BR	$ 146,455.37	$ 3,200.00	$ 3,200.00	116%
206	EFF	$ 35,381.05	$ 1,250.00	$ 1,250.00	45%
207	1BR	$ 82,350.33	$ 2,200.00	$ 2,200.00	80%
208	1BR	$ 84,446.07	$ 2,200.00	$ 2,200.00	80%
209	1BR	$ 74,583.75	$ 2,200.00	$ 2,200.00	80%
210	1BR	$ 82,966.72	$ 2,200.00	$ 2,200.00	80%
301	2BR	$ 116,745.15	$ 2,950.00	$ 2,950.00	107%
302	2BR	$ 151,509.81	$ 3,200.00	$ 3,200.00	116%
303	2BR	$ 122,169.42	$ 2,950.00	$ 2,950.00	107%
304	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
305	2BR	$ 146,455.37	$ 3,200.00	$ 3,200.00	116%
306	EFF	$ 35,381.05	$ 1,250.00	$ 1,250.00	45%
307	2BR	$ 82,350.33	$ 2,950.00	$ 2,950.00	107%
308	1BR	$ 84,446.07	$ 2,200.00	$ 2,200.00	80%
309	2BR	$ 74,583.75	$ 3,200.00	$ 2,800.00	102%

310	1BR	$ 82,966.72	$ 2,200.00	$ 2,200.00	80%
401	2BR	$ 116,745.15	$ 2,950.00	$ 2,800.00	102%
402	2BR	$ 151,509.81	$ 3,200.00	$ 3,200.00	116%
403	2BR	$ 122,169.42	$ 2,950.00	$ 2,950.00	107%
404	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
405	2BR	$ 146,455.37	$ 3,200.00	$ 3,200.00	116%
406	EFF	$ 34,271.54	$ 1,250.00	$ 1,250.00	45%
407	1BR	$ 82,350.33	$ 2,200.00	$ 2,200.00	80%
408	1BR	$ 84,446.07	$ 2,200.00	$ 2,200.00	80%
409	1BR	$ 74,583.75	$ 2,200.00	$ 2,200.00	80%
410	1BR	$ 82,966.72	$ 2,200.00	$ 2,200.00	80%
501	2BR	$ 116,745.15	$ 2,950.00	$ 2,950.00	107%
502	2BR	$ 151,509.81	$ 3,200.00	$ 3,200.00	116%
503	2BR	$ 122,169.42	$ 2,950.00	$ 2,950.00	107%
504	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
505	2BR	$ 146,455.37	$ 2,950.00	$ 2,950.00	107%
506	EFF	$ 35,381.05	$ 1,250.00	$ 1,250.00	45%
507	1BR	$ 82,350.33	$ 2,200.00	$ 2,200.00	80%
508	1BR	$ 84,446.07	$ 2,200.00	$ 2,200.00	80%
509	1BR	$ 74,583.75	$ 2,200.00	$ 2,200.00	80%
510	1BR	$ 82,966.72	$ 2,200.00	$ 2,200.00	80%
B-1	EFF	$ 56,585.03	$ 1,250.00	$ 1,250.00	45%
B-2	EFF	$ 44,503.69	$ 1,250.00	$ 1,250.00	45%
B-3* (New)	1BR	$ 99,239.54	$ 2,200.00	$ 2,200.00	80%
T-1* (New)	1BR	$ 83,213.28	$ 2,200.00	$ 2,200.00	80%
T-10* (New)	1BR	$ 82,720.16	$ 2,200.00	$ 2,200.00	80%
T-3	1BR	$ 66,817.18	$ 2,200.00	$ 2,200.00	80%
T-4	2BR	$ 120,443.52	$ 2,950.00	$ 2,950.00	107%
T-5	2BR	$ 146,455.37	$ 3,200.00	$ 3,200.00	116%
T-6	EFF	$ 35,381.05	$ 1,250.00	$ 1,250.00	45%
T-7	1BR	$ 82,350.33	$ 2,200.00	$ 2,200.00	80%
T-8	1BR	$ 84,446.07	$ 2,200.00	$ 2,000.00	73%
T-9	1BR	$ 74,583.75	$ 2,200.00	$ 2,200.00	80%

Tenants of:
1921 Kalorama Road, NW
Washington, DC 20009

Unit #	Name
T-3	Claudia Carpio
T-5	Virginia Gaskins
T-8	Juana Santacruz & Fabian Jarrian
101	Susan E. Law
102	David Phillips & Ariel Teichman
103	Fred Sellers
105	Eilleen McArdle
109	Edna D. Durand
204	Pamela Dewitt
205	Maria Ariano & Susan Tamir
208	Gwendolyn Long
209	Monique Johnson
210	Francisco Mundaca
301	Erin & Heather Benit
302	Sebia A.Hawkins
303	Lauren Flemming
304	Celia Petty
305	Jon Zibel
307	Joe Cameron & Craig Cameron
308	Kelly Harrington &Frank J. Andrejasich
309	Marion Ford
310	David Battery & Kathy Ozer
402	Natalie Marra
404	Bonita Sen
405	Laura Obolensky
501	Alex Curtis & Susan Powers
503	Daniele Anastasion
505	John Bantivoglio
507	Jennifer Roberts
508	Jennifer Elkus
509	Joseph Kondel
510	Nacy Cumberland

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS
ADDENDUM TO COMMITTEE REPORT

1350 Pennsylvania Avenue, NW, 20004

T O : All Councilmembers

FROM: Councilmember Jim Graham, Chairperson
Committee on Consumer and Regulatory Affairs

DATE: June 8, 2006

SUBJECT: Bill 16-109, the "Rent Control Reform Amendment Act of 2006"

On May 2, 2006, the Council unanimously approved on first reading an Amendment in the Nature of a Substitute to Bill 16-109, the "Tenants' Rights to Information Amendment Act of 2006." The Amendment renames Bill 16-109 the "Rent Control Reform Amendment Act of 2006"; incorporates comprehensive rent control reform legislation that moots related legislation, Bill 16-457, previously approved by the Committee; and incorporates the provisions of Bill 16-109 and Bill 16-48, the "Rent Ceiling Calculation Disclosure Amendment Act of 2006," as amended to conform to the comprehensive reform legislation's elimination of rent ceilings from the District's rent control law. On June 6,2006, the Council unanimously passed on final reading Bill 16-109 as amended by the Amendment in the Nature of a Substitute. Pursuant to Council Rule 444, the Committee adopts this addendum to the Committee Report on Bill 16-109, filed March 17, 2006, to explain the reasoning for Bill 16-109 as amended by the Amendment in the Nature of a Substitute and as passed by the full Council.

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I. INTRODUCTION

On October 11, 2005, **Councilmember Jim Graham,** the Chairperson of this Committee, introduced the "Rent Control Reform Amendment Act of 2005," which was designated Bill 16-457 and referred to the Committee. It was co-introduced by Chairman **Cropp,** Committee members **Brown** and **Fenty,** and Councilmembers **Barry, Evans, Gray, Mendelson, Orange,** and **Patterson,** and co-sponsored by Committee member **Catania** and Councilmember **Schwartz.** As introduced, the bill would amend sections 208(g), 208(h), and 213 of the Rental Housing Act of 1985 (D.C. Code §§ 42-3502.08(g), 42-3502.08(h), and 42-3502.13) which govern rent charged increases and vacancy rent ceiling adjustments on rent-controlled apartments in the District of Columbia.

Chairperson Graham's primary objectives in introducing this legislation were (1) to address the lack of effective and meaningful controls on rent levels and on rent increases in many of the District's rent-controlled apartments, and (2) to restore to the District's rent control law its chief statutory purpose "[t]o protect low- and moderate-income tenants from the erosion of their income from increased housing costs." D.C. Code § 42-3501.02(1).

On introducing the "Rent Control Reform Amendment Act of 2006," **Chairperson Graham** identified 3 discrete areas of the rent control law that prompted the legislation: (1) the ability of the landlord to increase the rent twice annually; (2) the "vacancy high comparable" rent ceiling adjustment, which allows the landlord to increase the rent ceiling upon vacancy to the highest rent ceiling of any "substantially identical" unit in the building; and (3) the ability of the landlord to increase the rent on an occupied unit by the amount of any single rent ceiling adjustment, including a "vacancy high comparable" adjustment, which can and often does exceed $500 or even $1,000.

Over the course of the next 7 months, **Chairperson Graham** consulted all stakeholders — including tenant advocates, landlord representatives, DCRA, and the Mayor's office — in an effort to achieve greater tenant protection in the context of as broad a consensus as possible consistent with the legislation's primary objectives. The process (described below) culminated in consensus legislation, which Chairperson Graham introduced as an Amendment in the Nature of a Substitute to Bill 16-109, the "Tenants' Rights to Information Amendment Act of 2006," on first reading at the May 2,2006 legislative session. On June 6,2006 on final reading the Council passed Bill 16-109 as amended on May 2, 2006. It amends the Rental Housing Act of 1985 to:

1. Limit the frequency of rent increases on occupied units to once per year.

2. Cap annual rent increases generally at *2%* plus the CPI, but not to exceed 10%.

3. Cap annual rent increases for elderly and disabled tenant at the CPI, but not to exceed 5%, and not to be means-tested.

4. Cap vacancy rent increases at 10% of the current rent charged, or at the current rent charged for a substantially identical unit in the building, but not to exceed 30% of the current rent charged for the vacant unit.

5. Abolish rent ceilings and rent ceiling adjustments, except for adjustments by petition previously approved by the Rent Administrator.

6. Require that housing providers make certain information available to tenants regarding rent control and the condition of the building, and file certain information with the Rent Administrator including notices of rent increases.

7. Require that the Mayor include in his Comprehensive Housing Strategy report consideration of the need for and ways to implement a low-income rental unit set-aside program within the Rent Stabilization program.

II. COMMITTEE ACTION

On Friday, February 17,2006, at 3:00 p.m., the Committee on Consumer and Regulatory Affairs held an additional meeting of the Committee to markup and vote on the Graham version of the Committee print of and accompanying report on Bill 16-457, in Room 123 of the historic Wilson Building, located at 1350 Pennsylvania Avenue, NW. With Chairperson Jim Graham (Ward 1) and Councilmembers Ambrose, Brown, Catania, and Fenty present, Chairperson Graham convened a quorum. Having just received 2 additional reform proposals, Chairperson Graham enumerated the major provisions of each and called for the meeting to be recessed so they could be fully considered. Prior to recessing, each of Committee members offered comments on the Committee print, on the 2 alternative proposals, and on the 2 concepts newly introduced in these proposals of abolishing rent ceilings and of establishing a set-aside of a certain percentage of rent-controlled units to be made available to low-income tenants.

On Thursday, March 16,2006, at 3:30 p.m., the Committee on Consumer and Regulatory Affairs reconvened the additional meeting in the same room to markup and vote on the Committee print of and accompanying report on Bill 16-457. Chairperson Graham had incorporated a provision directing the Mayor to propose rules, subject to full Council review, establishing a low-income set-aside of 5% of units in rent-controlled buildings with 20 or more rental units. (On the premise that rent ceilings should not be abolished until possible ramifications are at least considered, Chairperson Graham scheduled a hearing on this matter for April 6, 2006, later moved to and held on March 31, 2006.) With Chairperson Jim Graham (Ward 1) and Councilmembers Ambrose, Brown, Catania, and Fenty present, Chairperson Graham again convened a quorum. After the Committee approved without amendment 4 other bills relating to tenants' rights, Chairperson Graham moved the Draft Committee Print.

Councilmember Ambrose moved an Amendment in the Nature of a Substitute. As initially offered for the Committee's consideration, the Substitute's provisions that correlated to those in the Draft Committee Print included a limit on annual rent increases of 8% plus the CPI% capped at 10% (all percentages to be based on the current rent charged); a CPI% limit on annual rent increases for units occupied by lower-income elderly and disabled tenants, schoolteachers, and tenants now occupying units for which the rent charged is within *5%* of the rent ceiling; a limit on vacancy increases up to the rent charged for a "substantially identical" unit in the building, not to exceed 50% of the current rent charged for the vacant unit, provided that the landlord could use the aggregated amount of previously unimplemented rent ceiling adjustments

to achieve a 50% vacancy increase. Additionally, rent ceilings would be frozen (except that previously unimplemented rent ceiling adjustments could be implemented towards the 50% vacancy increase), would no longer to be correlated to rent increases on occupied units, and would never increase. A set-aside would be established of 5% of units in rent-controlled buildings with 20 or more units to be made available to tenants whose income does not exceed 60% of the area median income.

Various amendments to the Amendment in the Nature of a Substitute were discussed and voted upon as follows:

1. Chairperson Graham moved a further Amendment in the Nature of a Substitute to allow the landlord to increase the rent ceiling of a vacant rental unit to the rent charged for a substantially identical unit in the building, not to exceed 40% of the current lawful amount of rent charged for the vacated unit, to limit the amount of any increase in the rent charged on an occupied unit to 8% of the current lawful amount of rent charged plus CPI, or, if the unit is occupied by an elderly or disabled person, to the lesser of 4% or the CPI taken as a percentage of rent charged, to limit to one per year the number of increases in rent charged, and to provide that any rollback of rent may reduce the amount of rent charged and not merely the rent ceiling. It failed by a vote of 2-3 (Graham and Brown voting yes).

2. Councilmember Fenty moved an amendment to include among the categories of tenants subject to the CPI% cap on annual rent increases those "resident tenants" who earn under 40% of the Area Median Income. It was accepted as friendly amendment.

3. Chairperson Graham moved an amendment to subj ect the agency rule-making for the income qualified unit set-aside program to active Council approval. It was approved by voice vote.

4. Chairperson Graham moved an amendment to strike the phrase "which become vacant" from the provision on units to be included in the income qualified unit set-aside, and insert the phrase "as they become available." It was approved by voice vote.

5. Chairperson Graham moved an amendment to strike the phrase "5% of units" and insert the phrase "up to 10% of units" from the provision on the percentage of total units in each housing accommodation subject to rent stabilization with 20 or more units to be set aside as income qualified units. It was approved by voice vote.

6. Chairperson Graham moved an amendment to strike the phrase "8% + CPI" and insert the phrase "7%" in the annual rent cap provision. It failed by a vote of 2-3 (Graham and Brown voting yes).

7. Chairperson Graham moved an amendment to strike the phrase "8% + CPI" and insert the phrase "8%" in the annual rent cap provision. It failed by a vote of 2-3 (Graham and Brown voting yes).

8. Councilmember Catania moved an amendment to strike the phrase "8% + CPI" and insert the phrase "6% + CPI" in the annual rent cap provision. It passed by a vote of 3-2 (Graham and Ambrose voting no).

9. Chairperson Graham moved an amendment to strike the phrase "50%" and insert the phrase "2% per year since prior vacancy but no less than 10%" in the provision on capping the vacancy increase in rent charged. It failed by a vote of 2-3 (Graham and Brown voting yes).

10. Councilmember Brown moved an amendment to strike the phrase "50%" and insert the phrase "30%" in the provision on capping the vacancy increase in rent charged. It failed by a vote of 2-3 (Graham and Brown voting yes).

11. Chairperson Graham moved an amendment to strike the phrase "within 5% of the rent ceiling" and insert the phrase "within 20% of the rent ceiling" in the provision capping the annual rent charged increase at CPI for current resident tenants (who have signed a lease) whose rent charged is within a certain percentage of the rent ceiling. It was approved by voice vote.

By 4 to 1 (Graham voting no), the Committee voted in favor of the Amendment in the Nature of a Substitute as amended. By 4 to 1 (Graham voting no), the Committee voted in favor of Committee print of Bill 16-457 as amended by the Amendment in the Nature of a Substitute and amendments thereto, with leave for staff and the General Counsel to make technical and conforming amendments.

At the March 31, 2006 Committee roundtable on the "possible ramifications of the elimination of rent ceilings," Bill 16-457, as amended by the Amendment in the Nature of a Substitute at the March 16,2006 Committee mark-up meeting, received much criticism by tenant representatives and advocates. Representatives of housing providers, with whom Chairperson Graham continued to consult, also expressed dissatisfaction with the bill. In a series of 3 meetings jointly chaired by Chairperson Graham and Deputy Mayor Stanley Jackson, the stakeholders were reconvened in a successful effort to reach consensus on comprehensive rent control reform legislation. The key elements of that consensus legislation are enumerated in Section I above.

On Thursday, June 8,2006, at 3:00 p.m., the Committee convened an additional meeting in room 123. With Chairperson Jim Graham (Ward 1) and Councilmembers Catania and Fenty present, Chairperson Graham convened a quorum. Pursuant to Council Rule 444, Chairperson Graham moved for adoption of this addendum to the Committee report on Bill 16-109 approved on March 16, 2006. The motion passed unanimously. Pursuant to Council Rule 357, Councilmember Catania moved to reconsider 3 bills approved by the Committee on March 16, 2006, which were subsequently mooted by the consensus legislation: Bill 16-457, the "Rent Control Reform Amendment Act of 2006,"Bill 16-48, the "Disclosure of Rent Ceiling Calculation Amendment Act of 2006," and Bill 16-51, the "Rent Control Statute of Limitations Amendment Act of 2006." The latter bill was mooted because it was agreed at the working group sessions that the consensus legislation should not and does not have any impact on the existing statute of limitations in the Rental Housing Act. The motion passed unanimously.

III. BILL 16-109 SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the bill.

Section 2(a) amends as appropriate each section that refers to "rent ceilings" to conform with the abolition of rent ceilings.

Section 2(b) amends section 205(g) to enumerate the notices the housing provider is required to file with the Rent Administrator.

Section 2(c) amends section 206(a) to abolish rent ceilings except for those rent ceiling adjustments pursuant to petitions and Voluntary Agreements that the Rent Administrator has already approved.

Sections 2(d) repeals section 207 "Adjustments in rent ceiling" which enumerates rent ceiling adjustment petitions available to housing providers.

Section 2(e)(l) amends section 208(g) to limit the frequency of rent increases to once per year, except in the case of the first vacancy that occurs within any 12-month period.

Section 2(e)(2) amends section 208(h) to limit the amount of rent increases on occupied units generally to 2% plus the CPI, but not to exceed 10%, the total to be taken as a percentage of rent charged; to limit the amount of rent increases for elderly and disabled tenants to the CPI, but not to exceed 5%, the total to be taken as a percentage of rent charged.

Section 2(f)(l) amends section 213 to limit the amount of rent increases on vacant units to 10% of the current rent charged, or at the rent charged for a substantially identical unit in the same building, but not to exceed 30% of the current rent charged for the vacant unit.

Section 2(f)(2) adds a new subsection 213(d) to require the housing provider to disclose to a new tenant the rent charged increases for the preceding 3 years and, if relevant, any substantially identical unit used as the basis for any such increase.

Section 2(g) adds a new section 222 to require the housing provider to provide any current tenant upon request with rent increase information; to provide a prospective tenant with certain information, including information regarding rent control, petitions pending with the Rent Administrator, and unabated housing code violations; and to maintain all such information in an area accessible to tenants.

Sections 2(h) adds a new section 223 to require the Mayor to provide the Council, as part of Comprehensive Housing Strategy reports, with an analysis of the merits of

and methods for further assisting low income and other qualified tenants to pay their rent.

Section 3 states the fiscal impact statement as that adopted in the committee report.

Section 4 states the effective date of the bill should it become law.

IV. PURPOSE AND BACKGROUND

NEED FOR REFORM: THE RESEARCH

Chairperson Graham determined that reform of the rent control law is necessary for the following reasons:

1. At the request of **Chairperson Graham,** the Office of the Inspector General prepared a report, "Review of Housing Provider Filings at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs" (Attachment #1), publishing its results on Dec. 12, 2005. The committee convened a roundtable on the Inspector General's report on Dec. 21, 2005. The Inspector General selected seven "rent controlled" buildings, comprising 1,492 rental units in total and located in six wards of the city, and compared the rent and rent ceilings for units in these buildings in 1999 with the rent and rent ceilings in 2005. The buildings selected were: the Park Plaza in Ward One, the Barclay Apartments and Columbia Plaza in Ward Two, the Cleveland House in Ward Three, the Rittenhouse in Ward Four, the Parkview Apartments in Ward Five and the Marbury Plaza in Ward Seven. By selecting buildings in various District neighborhoods, there was an intention to demonstrate how the rules applicable to rent control of a vacant apartment operated under different real estate situations.

Chairperson Graham in consultation with stakeholders reached the following conclusions based on a range of evidence including data provided in the Inspector General's report:

A. *A landlord's ability to increase the rent ceiling in a vacant unit to equal the highest rent ceiling of a substantially identical unit in the same building, and to then apply the same increase to the rent charged, is the principal legal means by which landlords have transformed buildings with affordable rents into luxury apartments way beyond the means of people who, previously, could afford to live there.*

The data provided in the Inspector General's report show that units that had comparable rent ceilings in 1999 now have rent ceilings that differ dramatically. 1 The rent control implications of this fact are also dramatic. Byway of example, in 1999, two units in the Park Plaza had rent ceilings of $765 and $720, respectively. By 2005, the rent ceilings for these two units were $814 and $2,671, respectively. If these units are substantially identical, and if the $814 unit was vacated in 2005, the landlord could raise that the rent ceiling for that unit to

[1] The OIG has reported to the Committee a data error rate for each building of 0-1 percent, which is well below acceptable levels.

$2,671, or by $1,857. The rent charged for that unit could also go up by $1,857, because that is the amount of a single, previously unimplemented rent ceiling adjustment, hi fact, according to the data, the rent charged for the unit with the $2,671 rent ceiling actually rose from $605 to $1,003 per month from 1999 to 2005, a 54 percent increase, while the monthly rent for the unit with the $814 rent ceiling rose only 7 percent, from $641 to $685. Even in the Marbury Plaza, the most "affordable" property in the study, similar numbers can be seen. In 1999, two units had rent ceilings of $643 and $638, these ceilings rose to $736 and $4,973 by 2005, during which time the rent on one increased by 14 percent ($632 to $720) while the rent on the other increased 75 percent ($521 to $914). The examples provided above are hardly unusual; the same pattern repeats throughout every property in the study, as indicated by Table 4 from the Inspector General's report, reproduced below:

Table 4. Rent Charged by Affordability Criteria

	Affordable		Moderate		Unaffordable		Total Units Per Building	*Percent Unaffordable*	
	Under $500		*$500-$1000*		*Over $1000*				
Building	**1999**	**2005**	**1999**	**2005**	**1999**	**2005**		**1999**	**2005**
Park Plaza	7	4	227	166	45	109	280	16%	39%
Barclay Apartments	4	3	40	23	13	31	57	23%	54%
Columbia Plaza	1	0	163	81	102	185	268	38%	69%
Cleveland House	0	0	67	8	147	206	216	68%	95%
The Rittenhouse	4	0	193	54	9	152	204	4%	75%
Parkview Apartments	0	0	51	39	0	12	51	0%	24%
Marbury Plaza	35	7	280	272	1	37	316	0%	12%

B. This development toward luxury rentals in so-called "rent controlled" buildings has so far been particularly pronounced in those neighborhoods that have been the subject of escalating real estate values. The future trend in this regard, however, is predictable as more neighborhoods experience increased real estate values.

While every property in the study demonstrated a significant decline in affordable housing availability, many of the most dramatic losses came in areas with the District's highest real estate values. Reflecting these escalating real estate values, the buildings in these neighborhoods have lost the great number of affordable units. For example, the Cleveland House in Ward 3 had 95% of the units unaffordable by 2005. The Rittenhouse, in Ward 4, went from 4% unaffordable to 75% in just 6 years. But in the east side of the city, the same trend, though still somewhat restrained, was evident. Parkview (Ward 5), 24% unaffordable, up from 0%; and the Marbury (Ward 7), 12% unaffordable, up from 0%. While "vacancy high comparable" rent

ceiling increases account for 62 percent of all rent ceiling increases filed by the buildings in the study, the Park Plaza (Ward 1), located in a still diverse area often considered prime territory for new development, filed 413 "vacancy high comparable" rent ceiling increases during the course of the study as opposed to just 33 vacancy 12 percent rent ceiling increases. As shown in section A above, such "vacancy high comparable" rent ceiling increases can open the door for large increases in rent charged down the road.

C. In consequence of the "vacancy high comparable" rule, rent control has become, for an ever-increasing number of apartments, not very meaningful.

The decrease in affordable housing availability in the Cleveland House stands out as dramatic, hi 1999, about one-third (32 percent) of all units in the Cleveland House were rated affordable; today, affordable housing is all but extinct in the building, with only eight affordable units out of two hundred and sixteen. If the Council does not act, the future of the District's rent controlled housing can be seen in the Cleveland House. Across Rock Creek in Ward Four, The Rittenhouse went from 96 percent affordable housing to a mere 25 percent over just six years, and the other properties in the study are all poised to follow.

The number of large increases in rental ceilings has resulted in rental ceilings as high as $6,371 at Columbia Plaza, $8,225 at Marbury Plaza and $8,330 for no fewer than twenty-three different units in the Cleveland House. These ceilings are simply not plausible rental rates for the apartments; they serve as reservoirs to allow future rent increases in comparable apartments to virtually any level desired by the landlord.

D. In summary, the data provided by the Inspector General demonstrate the need for Council action to repeal the "vacancy high comparable" rule, and replace it with restraints on the current ability of landlords to increase the rent by as much as double or more of the prior rent.

The data provide many cases of rental rates on formerly affordable housing increasing by over 100 or even 200 percent over the period of the study, removing units from the affordable housing rolls throughout the city. By way of example, during the course of the study, the rent on a unit at the Cleveland House increased 134 percent ($705 to $1650), the rent on a unit at the Rittenhouse increased 196 percent ($429 to $1270), and the rent on a unit at Columbia Plaza increased 215 percent ($542 to $1660). All three units also saw huge increases in rent ceilings during the period of the study- 1,065 percent at Cleveland House unit, 571 percent at the Rittenhouse unit, and 686 percent at the Columbia Plaza unit - that could only have plausibly resulted from application of the "vacancy high comparable" rule, and which paved the way for the conversion of rent-controlled affordable housing to luxury housing.

While the 3 examples provided above are among the steeper increases documented by the report, they are by no means unique, and the report demonstrates that even "routine" rent increases under the current rent control rules endanger the District's supply of affordable housing. The table below, generated by the Committee based upon the detailed unit-by-unit breakdowns provided in the Inspector General's report, shows the median and 75th percentile increases in rent charged at the buildings during the study and demonstrates the extent to which rents on a substantial portion of the District's "rent-controlled" housing are increasing at a rate

that soon puts them out of the reach of tenants who could have afforded to live in these units only a few years previously.

BUILDING	**Median percentage increase**	**75th percentile percentage increase**
Park Plaza	20%	50%
Barclay Apartments	19%	43%
Columbia Plaza	28%	44%
Cleveland House	56%	72%
The Rittenhouse	55%	81%
Parkview Apartments	27%	31%
Marbury Plaza	15%	34%

As shown above, the report provides no shortage of examples of the current rent control law failing to control the city's rent levels, and, without Council action, the examples will become the rule.

2. The Department of Consumer and Regulatory Affairs (DCRA) has reported to **Chairperson Graham** that the Rental Housing Act's rent control provisions apply to about 65 % of the District's approximately 135,000 rental units. Thus, it is evident that the District's major and primary means of preserving units with affordable rents is the rent stabilization act and related laws.

3. hi addition, from other reports, we know that the District is losing affordable housing, and especially affordable rental housing, at an alarming rate. In September 2005, the D.C. Fiscal Policy Institute issued findings that between 2003 and 2004, the District lost 2,400 units of affordable rental units, while gaining 4,600 units of high-cost rental units. Furthermore, between 2000 and 2004, the share of the city's renters paying more than 30 percent of their income for housing rose from 39 to 46 percent, and the share paying more than 50 percent rose from 18 to 23 percent. An estimated 4 in 10 of the District's low-income renters now have severe cost burdens.

4. As the District's affordable housing crisis looms ever larger, what is at stake is the District's future character. Will the District continue to be a place where economic and cultural diversity thrives, and where low and moderate-income residents can afford to live? Because rent control affects far more apartments than does, for example, inclusionary zoning or inclusionary development, it is the most essential among the District's affordable housing tools. But that can only be true if rent control is made to truly control rental housing costs.

RENT CONTROL REFORM WORKING GROUP

In order to discuss stakeholder issues in Bill B16-457, **Councilmember Graham** convened a working group comprised of tenant advocates, housing provider advocates, DCRA personnel, and representatives of the Mayor.

The working group met 7 times prior to February 17, 2006, when the Committee first met to mark-up Bill 16-457 (but recessed to consider 2 alternative proposals presented that day), on December 6 and 14, 2005, and on January 11, 18 and 25 and February 1, 2006. The group

reconvened on February 9, 2006 at the request of the Mayor to consider the Mayor's reform proposals. After the Committee mark-up meeting on March 16, 2006, the group reconvened in a series of 3 meetings jointly chaired by Chairperson Graham and Deputy Mayor Stanley Jackson.

Representing tenants were David Conn, Esq. and Betty Sellers of the Tenant Action Network (TAN); Kevin Fitzgerald of the New Capitol Park Plaza Tenant Association; Julie Becker, Esq. of the Legal Aid Society; Jonathan Strong, Esq. of the Brandywine Tenant Association; Farah Fosse of the Latino Economic Development Corporation; Professor Ed Allen of the University of the District of Columbia Law School; Elizabeth Figueroa, Esq. of Blumenthal & Shanley; and Kim Farhenholtz of the Park Plaza Tenant Association. Kenneth Rothschild of the D.C. Coalition for Rent Control, Janet Brown of the Affordable Housing Alliance, Peter Schwartz of the Kennedy-Warren Tenants Association, Antonia Fasanelli of the Washington Legal Clinic for the Homeless, Natalie LeBeau of Housing Counseling Services, Karen Perry of the Van Ness South Tenants Association, and Jim McGrath of D.C. Tenants Advocacy Coalition joined the stakeholder meetings in April 2006.

Representing housing providers were John Ritz of the W.C. Smith Company; Nicola Whiteman, Esq. and Shaun Pharr, Esq. of the Apartment and Office Building Association; Michael Sims of the D.C. Small Apartment Owners Association; Charles Hathway of the Bernstein Management Company; and Vincent Mark Policy, Esq. of the law firm of Greenstein, Delorme & Luchs. Peggy Jeffers of AOB A joined the stakeholder meetings in April 2006. Representing the Mayor were Acting Rent Administrator Keith Anderson, Esq.; DCRA Legislative Liaison Paul Waters, Esq.; DCRA representatives Gloria Johnson and D. Greer; and Lisa Hodges and Alicia Lewis of the Office of the Deputy Mayor for Planning and Economic Development.

The group focused its attention on the vacancy rent ceiling adjustment mechanism and on ideas on how to replace it. Considerable attention was paid to turnovers of units that have been occupied for long periods of time, and thus might likely have rents that were still affordable for moderate and low-income tenants. Various suggestions were explored that attempted to keep the system as uncomplicated as possible, and at the same time tie rent increases upon vacancies to the realities of increased costs faced by housing providers. The ideas included correlating vacancy increases to the number of years a unit had been occupied, and the exploration of tax credits for the remaining affordable units. Upon reconvening the stakeholder meetings in April 2006, following the March 31, 2006 Committee roundtable on "possible ramifications of the elimination of rent ceilings," the group focused on what direct caps on rent charged increases could satisfy the competing demands of affordability for tenants and profitability for housing providers as well as easing the administrative burdens created by the rent ceiling mechanism.

REASONING FOR THE CONSENSUS LEGISLATION

The consensus legislation that emerged from the April 2006 stakeholder meetings placed a cap on annual rent increases of 2% plus the CPI, not to exceed 10% no matter how high the CPI is in any given year. An additional protection exists for the elderly or disabled tenant without regard to income. For that tenant, the housing provider may only assess an annual rental increase equal to the lesser of the relevant CPI percentage or 5%.

This version improves the lot of most tenants in rent-controlled units. First, it amends section 208(g) of the Act, 42 D.C. Code § 3502.08(g), to provide that the housing provider may take only one rent increase per year instead of two. Second, it replaces rent ceilings with a tight cap on rent charged increases, one that is significantly lower than any such rent charged cap previously considered. Third, at age 62 any tenant will be subject to annual rent increases no greater than the CPI, never to exceed 5%.

An example should suffice. If the rent charged comes to $1,000 per month and the rent ceiling comes to $4,000 per month, under the current law, a CPI of even 4% would raise the rent ceiling to $4,160 per month and the rent charged, which can be increased by that same dollar amount, to $1,160 per month. With the 2% + CPI rent charged cap in the reform legislation, the maximum rent charged could not exceed $1,060 per month, a monthly savings of $100. For an elderly or disabled tenant, the maximum rent charged could not exceed $1,040 per month (current rent charged plus CPI% of current rent charged), a monthly savings of $120.

The reform also assists incoming tenants greatly through its treatment of vacancy increases. First, it repeals the much criticized "highest comparable" provision of the law. Instead, the housing provider may raise the rent charged for the vacant apartment by 10% of the current lawful amount of rent charged or to the rent charged for a substantially identical unit in the building, but not to exceed 30% of the current rent charged for the vacant unit. Under this formula, there is an effective break on rent charged increases for any vacant unit in any building, whereas the current law allows that unit to leap from affordability to unaffordability because the rent ceiling for a "comp unit" in the building has escalated far beyond the market rate.

Currently, as the OIG report demonstrates, many apartment units have rent ceilings exceeding $3,000 per month even for one-bedroom apartments. For units already at the 'highest comparable' rent ceiling figures, even a 12% rent ceiling increase under the existing law's alternative vacancy adjustment allowance, is substantial, hi the example above, a $3,000 rent ceiling would increase to $3,360 for the incoming tenant and a rent increase potentially could be $360 based on that ceiling adjustment. So a $750 rent charged amount could increase to $1,110. But under the reform, an increase of 30% would be based on the rent charged, not the rent ceiling, hi that case, a $750 would increase only by $225 to $975, for annual savings of $1,620. This provides more certainty and affordability than uncapped rent ceiling increases.

The reform legislation assures the housing provider that he/she will continue to make a reasonable rate of return. For most tenants, the housing provider may recover up to 2% plus the CPI of the rent charged to that tenant, and for only a subset of elderly and disabled tenants the housing provider is limited to the CPI%.[2] Based on numbers provided to the Committee's

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[2] The Supreme Court has rejected both Constitutional and anticompetitive challenges to the imposition of a rent stabilization or rent control scheme since the RHA of 1985. Pennell v. City of San Jose, 485 U.S. 1 (1988); Fishery. City of Berkeley, 475 U.S. 260 (1986); see Silverman v. Barry, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956 (1988); Hornstein v. Barry, 560 A.2d 530 (D.C. 1989) (en bane)

working group by representatives of housing providers, it also allows the housing provider to recover the costs of renovating a vacated unit within a reasonable timeframe.

Mr. Ritz, a housing provider with William C. Smith Company and a part of the group discussing this version with **Chairperson Graham,** stated that from his experience housing providers would invest the amount necessary to renovate a vacated unit to the extent it could be recovered within 3 years. Mr. Ritz also posited that the most such a renovation would likely cost is $8,200. When asked why this figure is higher than others quoted, Mr. Ritz acknowledged that this estimate of renovation cost at the high end presumes that the housing provider would replace the refrigerator and floors in the unit. Thus the estimate for the high estimate actually includes capital expenditures as well as the normal maintenance and repair costs for wear and tear, hi any event, this high estimate assumes a prior tenancy of relatively long duration, or that the vacancy occurrence is the best opportunity the housing provider has had in a long time to do major renovations.

To recover the $8,200 cost of renovating a vacated unit in three years, the increase in rent charged would have to come to $228 per month. If the rent charged for the newly vacated unit came to $760 per month, a 30% rent increase to the unit would come to $228 per month for a new rent charged of $988 per month to the incoming tenant, and Mr. Ritz would recover $8,200 in 3 years.

Other estimates of the renovation cost at the higher end came to $5,000. An increase in rent charged of $140 per month would enable the housing provider to recover $5,000 in 3 years, hi such a case, a 30% rent increase on a rent charged of $470 per month would cover the renovation cost in three years. The new rent charged would come to $610 per month.

Mr. Simms, a housing provider whose constituents include those owning 20 or fewer rental units citywide, estimated that it costs between $2,000 and $3,000 to renovate a unit for the next occupant. It would take a monthly rent increase of $70 to enable Mr. Simms to recover the cost of a $2,500 renovation of the unit for the new tenant in 3 years. If the previous tenant paid $700 a month in rent, the 10% vacancy increase would enable Mr. Simms to recover a $2,500 cost in 3 years.

ALTERNATIVES CONSIDERED

Over the course of working group sessions, various alternative concepts were considered and rejected. These concepts include "means-testing" — that is, a general means-test for apartments that fall under a certain rent level threshold — and a "tax credit" for housing providers who maintain affordable rent levels.

Specifically, with regard to means-testing, the Committee examined whether it makes sense to cap rent ceilings and rents charged for units that might not exceed a rent charged, for example, of $800 or $1,000 per month. Capping such units would mean that tenants who could afford higher priced moderate-income rents or even wealthier people would have an equal opportunity to rent a unit with a well-below market rate as the lower income tenant, hi the case of a much lower than market rent, a preference system to assist lower income tenants receive the lowest rent units appeared warranted.

On the other hand, it also appeared necessary to offer a tax credit for a housing provider who would have had to accept a freeze on rents to keep it affordable. Questions arose because housing providers raised objections to having to keep a unit vacant while waiting for a qualifying low-income tenant, many housing providers prefer tenants with higher incomes to guarantee rent payments, and what level of "tax credits" could the city guarantee.

A host of questions arose as to whether certain areas of the city would lose diversity and the advantages of having mixed income housing, whether "inclusionary zoning" or other programs would accomplish goals of finding lower income housing, and whether other subsidy programs better meet the needs of low income tenants to have affordable housing. Moreover, no figures showed what type of fiscal impact the District would face with a "means test" included in the Rental Housing Act and a "tax credit" system to fill encourage housing providers to allow means-tested individuals to fill vacancies in lower-priced apartment units. Ultimately, the dual concepts of means-testing and tax-credit were deemed too impracticable administratively and otherwise to pursue. Instead, the working group agreed that the same goals are better served by slowing down increases in rents for rent stabilized units by limiting rent increases to current tenants and moderating rent increases for vacant units. Instead of preserving or freezing low rents for rental housing units, a more practicable solution is to do better what rent stabilization is intended to do — moderate rent increases and protect tenants from sudden and rapid marketplace increases.

On January 13, 2006, Deputy Mayor Stanley Jackson on behalf of the Mayor submitted to **Chairperson Graham** a number of specific proposals to reform rent control, including the elimination of rent ceilings, hi consultation with the working group, the Chairperson determined that the elimination of rent ceilings may make rent control more understandable and easier to administer, but some tenants could be made worse off unless the direct cap on rent charged increases were significantly reduced from those considered up until then. Specifically, the tenants most affected would be those who have occupied their units the longest, who pay in rent an amount equal to the rent ceiling, and who are now subject only to rent increases equal to the CPI. The Chairperson was also not willing to abolish rent ceilings without a careful review.

However, **Chairperson Graham** in consultation with the working group found 2 parts of that Mayoral proposal to be very positive, and incorporated them into the version of Bill 16-457 he offered both at the mark-up meeting scheduled for February 17, 2006 and at the March 16, 2006 mark-up meeting:

1. Place a lower cap on rent charged increases for elderly and disabled tenants who meet an annual income eligibility requirement.

2. Allow for rent refunds and rollbacks, for instance when housing code violations are found, based on the rent charged rather than just the rent ceiling.

On the day prior to the mark-up meeting scheduled for February 17, 2006,[3] the

[3] **Chairperson Graham** recessed the February 17, 2006 mark-up to allow the Committee to consider these 2 proposals and their ramifications.

Chairperson Graham received 2 additional reform proposals, one from the Mayor's office and one from the office of Councilmember Catania, hi addition to the concept of eliminating or freezing rent ceilings, these proposals introduced 2 new ideas to the discussion of rent control reform. One would establish a "Low Income Housing" set aside of 5% of units in each rent-controlled building with at least 20 units for lower income tenants who would pay no more than 30% of income toward rent. The other would tie "the applicability of the rent stabilization program to the amount of family income for low and moderate income families."

Prior to recessing the February 17, 2006 meeting to allow the Committee to further consider these alternative proposals, **Chairperson Graham** expressed his belief that the concept of targeting lower-income residents for a set-aside of more affordable units has merit. To establish one by legislative fiat, however, would raise a host of concerns, including with regard to fiscal impact, logistical matters, burdens on stakeholders including the agency, predictable anomalies, and others. Rather, **Chairperson Graham** said it more appropriate that the Mayor should first consider the devil in the details and propose regulations for Council review and approval.

Chairperson Graham also expressed his belief that the concept of rent ceiling abolition has not been given nearly enough consideration with regard to the ramifications on other aspects of the Rental Housing Act, and in particular with regard to the impact that would have on the restraints the rent ceiling now provides under some circumstances both for the current tenant and for the subsequent tenant. Accordingly, Chairperson **Graham** held a public roundtable on March 31, 2006, on the "possible ramifications of the elimination of rent ceilings in the District of Columbia." This public roundtable is discussed below. The evidence presented at that roundtable indicates that rent ceilings have failed to protect most tenants from onerously large rent increases. The rent ceilings, however, have benefited certain tenants — generally those who have occupied their units for a very long period of time and therefore have rent charged amounts at or near the rent ceiling. Only a very tight across-the-board cap directly on rent charged increases would justify elimination of the rent ceilings. No proposal prior to the consensus legislation introduced at the May 2, 2006 Council session reform included a cap of less than 6% plus the CPI.

BRIEF HISTORY OF RENT CONTROL

The hallmark of the District of Columbia's rent stabilization program has balanced the need to preserve reasonable quality moderate income housing so as to prevent the erosion of income of low and moderate income tenants while allowing the housing provider to make a reasonable rate of return on investment. 42 D.C. Code § 3502.01 (1), (5). The rent stabilization program accomplishes this goal by having in place a ceiling which the rent charged cannot exceed, and generally limiting rent ceiling increases to the Washington, D.C. Standard Metropolitan Statistical Area to the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W"). 42 D.C. Code § 3502.06 (b). Such an increase cannot exceed 10 percent per year. Id.

In order to assure that owners make a reasonable rate of return, the housing provider can

petition the Rent Administrator to grant hardship petitions, 42 D.C. Code § 3502.12. Moreover, in order to increase the rent ceilings and charge higher rents, housing providers may petition the Rent Administrator to grant capital improvement petitions, 42 D.C. Code § 3502.10, Voluntary Agreements, 42 D.C. Code § 3502.15, increases in services and facilities petitions, 42 D.C. Code § 3502.11, and substantial rehabilitations, 42 D.C. Code § 3502.14.

The tenants, on the other hand, may seek to reduce rent ceilings due to rent overcharges, housing code violations, or reductions in services and facilities by filing with the Rent Administrator, a tenant petition to obtain relief. 42 D.C. Code § 3502.16. The Rental Housing Act of 1985 ("RHA"), D.C. Law 6-10, codified at 42 D.C. Code § 3500 *et* seq,, made major changes to the original Act of 1975. First, the RHA included a provision for the first time mandating "vacancy decontrol." This meant that when the current occupant vacated the rent-stabilized unit, the new tenant would encounter unregulated rental increases. Second, the RHA included a provision that exempted buildings with vacancies of 80% or higher from the rent stabilization program. See Section 205, 42 D.C. Code § 3502.5. The citizens of the District of Columbia overturned the vacancy decontrol provisions in a citizen initiative in 1986.

The Council had an alternative provision for vacancy decontrol. Namely, it amended section 213(b), 42 D.C. Code 3502.13 (b) to provide that when a tenant vacated an apartment unit, and the new tenant rerented it, the rent ceiling of the unit could now increase to the most expensive or greatest rent ceiling of a "substantially identical" unit in the same housing accommodation. This clause has become known as the "highest comparable" unit rent ceiling clause. Previously, the Act provided only for a vacancy increase that would increase the rent ceiling by a straight 12%. Section 213 (a), 42 D.C. Code § 3502.13 (a).

The "highest comparable" or "substantially identical" clause of the vacancy increase provision has led to large increases in rent ceilings for tenants in a 20 year period. For instance, if a current tenant vacates a unit with a current rent ceiling of $800, the straight 12% vacancy increase leads to a rent ceiling of $896 for the incoming tenant. However, if a "substantially identical" unit in the building has a rent ceiling of $4,000 per month, the incoming tenant may see her rent ceiling increased to the same $4,000 per month. This has major ramifications. So long as the housing provider had room in the rent ceiling, and had properly perfected the rent increases that he/she had not implemented against the tenant, the housing provider had the ability to raise the rent charged from $800 to the full $4000.[4] The D.C. Court of Appeals had affirmed this interpretation of the law in Winchester Van Buren Tenants Ass'n v. D.C. Rental Housing Comm'n, 550 A.2d 551 (D.C. 1988).[5] Namely, the Winchester Van Buren holding affirmed Borger Management's ability to "stack" both a capital improvement and a CPI rent increase at one time to the tenants to raise the rent charged to the same level as the rent ceiling after waiting

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[4] Of course, market forces might not allow the housing provider to take the full increase without driving the tenant out of the unit. Nothing in the law prohibited it, however.

[5] The court affirmed that the housing provider could take more than one perfected and unimplemented rent charged adjustment at one time to bring the rent charged in line with the rent ceiling so long as it had waited six months before implementing a rent charged increase against the tenant. See Section 208(g) of the Act, 42 D.C. Code § 3502.08(g).

six months from the previous rent increase.

Alarmed at the holding in the Winchester Van Buren litigation, and the fact that rent ceilings quickly outpaced the rent charged after the enactment of the "highest comparable" or "substantially identical" vacancy increase, tenant activists sought to limit the "stacking" of rent charged increases when implemented against tenants. In recognition of this concern, the Council enacted the "Unitary Rent Ceiling Adjustment Act" in 1993, Section 208 (h), codified as 42 D.C. Code § 3502.08 (h). 42 D.C. Code § 3502.08 (h) (1) slowed the rate of rent increases by changing the law to allow the housing provider to implement only one previously unimplemented rent adjustment at one time. The Unitary Rent Ceiling Adjustment Act did not change the provision allowing a housing provider to take most types of rent increases 180 days apart or require the housing provider to forfeit unimplemented rent increases if not taken.[6]

The effects of the "substantially identical" language did not become apparent immediately. For instance, if a unit vacated every year for six years, the housing provider could add 12% to the rent ceiling every year. Without factoring in the annual CPI-W, which the housing provider also adds to the rent ceiling every year, the rent ceiling for that unit would double. Hence, if a substantially identical unit in the building vacated after six years, the housing provider could raise the rent ceiling to the level of that unit which had vacated every year for the past six years. This would mean that the incoming tenant would find that the rent ceiling for her unit had doubled under the "highest comparable" rather than simply gone up 12% under the alternative scenario.[7]

Therefore, if the incoming tenant's unit formerly had a rent ceiling and rent charged of $800, the vacancy increase would take the rent ceiling to $1600. The Unitary Rent Ceiling Adjustment Act enables the housing provider to implement all or part of the $800 unimplemented rent increase. Should market conditions currently limit the increase to $1400, the housing provider would still have a perfected, but unimplemented rent adjustment of $200 that it could levy by waiting six months.

The higher rent ceiling also affects the percentage rent charged increase even with an annual CPI adjustment. For instance, taking the previous example, if the rent ceiling comes to $1,600 per month and the rent charged comes to $800 per month, a 3% annual CPI will have the following effect. Namely, the rent ceiling will increase by the 3% CPI adjustment from $1,600 to $1,648. A 3% increase in the rent charged would raise the rent charged from $800 per month to $824 per month. However, because the amount of rent adjustment in the rent ceiling came to

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[6] 14 D.C.M.R. § 4204.11. A housing provider may take and perfect an upward rent ceiling adjustment pursuant to §§ 4204.9 and 4204.10 without simultaneously implementing a rent increase to the new rent ceiling, and the election not to implement a rent increase to the new ceiling shall not constitute a waiver or forfeiture of the housing provider's right to implement the full rent increase at a later time.

[7] The recently released Inspector General report sample of rent ceiling increases city-wide indicates that the housing provider opts to take the "highest comparable" increase 87% of the time, compared to taking the alternative 12% rent ceiling increase.

$48 per month, the housing provider may legally assess the tenant an increase of 6% or to $848. Therefore, the CPI increase on the rent charged can far exceed the annual CPI because of the differentials between the rent charged and rent ceiling.

The Inspector General's report shows that after many years, it is likely that a rent ceiling can exceed the rent by fourfold. Therefore, if the rent ceiling comes to $4,000 and includes an unimplemented vacancy increase of $1,500, an unimplemented vacancy increase of $1,000, and several smaller unimplemented increases adding up to $500, the tenant faces a risk that at any one time, she may face a rent increase of up to $1,500. Even if the housing provider opts to take a 3% CPI adjustment, the rent ceiling increases to $4,120 and the rent charged rather than only increasing from $1,000 per month to $1,030 per month will instead likely increase to $1,120, an effective increase of 12%.

As people vacate their units over time, rent ceilings generally exceed the rents charged. A report released in early 2000 by Nathan Associates concluded that 83% of the approximately 100,000 rental units under the rent stabilization program had rent ceilings that exceeded the rent charged although the study did not indicate the magnitude of difference. Therefore, the large majority of tenants under the rent stabilization program face a situation where rent increases are uncertain and worrisome.

FINAL ACTION ON REFORM

On May 2, 2006, after months of consultations and deliberations, **Chairperson Graham** moved reform legislation that had received ample comment from and had been fully considered by stakeholders. It was premised on the belief that the rent-stabilization program remains a viable method for keeping about 100,000 rental units built prior to 1975 affordable for low and moderate-income tenants in our city; on the fact that about 60% of the District's population resides in rental housing[8]; and on the sobering reality that the District is losing affordable housing rapidly as rising housing prices and rents put housing out of reach of low and moderate-income households. It was based on research produced by the DC Fiscal Policy Institute, which recently estimated that rising rents alone caused a loss of 7,500 units with rent levels under $500 a month between 2000 and 2004.[9] Regardless of the failure of the Comprehensive Housing Strategy Task Force ("CHSTF") to include the city's RHA or rent stabilization program as an integral strategic method to preserve and promote affordable rental housing, it was consistent with CHSTF's conclusion that keeping the existing housing stock of high quality and of reasonable price provides the most cost-effective method to promote affordable housing.[10]

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[8] Homes for an Inclusive City: A Comprehensive Housing Strategy for Washington, D. C; STATEMENT OF PRINCIPLES AND RECOMMENDATIONS Comprehensive Housing Strategy Task Force, Washington, DC (January 31, 2006) at 12.

[9] Id at 8.

[10] Id. at 10. The CHSTF notes, "[M]ore than 50 percent of existing housing units in the District of Columbia are rental units. Renters are more likely than homeowners to experience severe housing-cost burden, meaning that they spend over 50% of the household

Finally, it kept to the legislative objectives of the bill as introduced and of the Rental Housing Act itself; it would make the greatest changes in favor of tenants and affordable housing since 1985, when amendments to the Rental Housing Act weakened it greatly; and it would enhance the Rental Housing Act's fundamental goal of helping to preserve the income of low and moderate-income tenants while guaranteeing the housing provider a reasonable rate of return.

V. LEGISLATIVE HISTORY

DATE	ACTION
October 11,2005	Chairperson Jim Graham introduces B16-45 7, the "Rental Control Reform Amendment Act of 2005" to repeal and replace the vacancy high comparable and 12% rent ceiling adjustment provisions, and to cap rent increases at 10% of the amount of current rent charged annually. B16-457 is subsequently referred to the Committee.
October 21, 2005	Notice of the Council's intent to act on Bill 16-457 is published in the District of Columbia Register.
October 21, 2005	Notice of a hearing on Bill 16-457 is published in the District of Columbia Register.
October 26,2005	Public hearing on Bill 16-457.
December 6, 2005 **December 14, 2005** **January 11,2006** **January 18,2006** **January 25, 2006** **February 1, 2006** **February 9, 2006**	Chairperson Graham convenes meetings of a rent control reform working group that includes all stakeholders.
February 17, 2006	The Committee on Consumer and Regulatory Affairs meets to mark-up and vote on the report and committee print of Bill 16-457. Chairperson Graham recesses the meeting to consider new reform proposals offered by the Mayor and by Committee Member Catania just prior to the meeting.
March 16, 2006	The Committee on Consumer and Regulatory Affairs meets to mark-up and vote on the report and committee print of Bill 16-457. Councilmember Ambrose moves an Amendment in the Nature of a Substitute, which the Committee passes on a vote of 4 to 1 (Graham voting "no").

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income on housing. Therefore the city must have a strategy specifically targeted at maintaining that housing stock and keeping a portion of it affordable to low income renters. Preserving existing affordable housing is usually much less costly than producing new affordable housing,.."

March 17, 2006	Notice of a public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings" is published in the District of Columbia Register.
March 31, 2006	Public roundtable on "Possible Ramifications of the Elimination of Rent Ceilings."
April 21, 2006 **April 24, 2006** **April 26, 2006**	Chairperson Graham with Deputy Mayor Stanley Jackson reconvenes stakeholder meetings concluding in an agreement on consensus legislation.
May 2, 2006	Chairperson Graham introduces the consensus legislation as an Amendment in the Nature of a Substitute for Bill 16-109, the "Tenants Rights to Information Amendment Act of 2006" at first reading. The Council unanimously approves the Amendment.
June 6, 2006	At final reading, the Council unanimously passes Bill 16-109, the "Rent Control Reform Amendment Act of 2006."

VI. PUBLIC HEARING AND PUBLIC ROUNDTABLE SUMMARY

On Wednesday, October 26, 2006, the Committee held a public hearing on Bill 16-457 as introduced by **Chairperson Jim Graham** and on four other bills that would protect and enhance tenants' rights: Bill 16-48, the "Disclosure of Rent Ceiling Calculation Amendment Act of 2005," Bill 16-51, the "Statute of Limitations Amendment Act of 2005," Bill 16-109, the "Tenants Right to Information Amendment Act of 2005," and Bill 16-458, the "Right of Tenants to Organize Amendment Act of 2005." **Chairperson Graham** opened the hearing by acknowledging the bill's nine co-introducers and two cosponsors. **Chairperson Graham** said the five bills together represent more comprehensive reform than the Council has considered in decades. **Chairperson Graham** noted that funding for the newly established Office of the Tenant Advocate began on October 1, 2005 at the start of fiscal year 2006. He noted the link between the soon-to-be-named Chief Tenant Advocate and each of the five bills being considered. An important role of the Chief Tenant Advocate will be to help tenants cut through the complexities of the rent control law and understand tenants rights.

Councilmembers **David Catania** and **Adrian Fenty** made statements. Councilmember Catania said the current allowable two rent increases per year poses hardships on tenants and he is eager to support the limitation to one annual increase. Given that buildings under rent control were built before 1975, key questions concern the infrastructure of affordable housing in the District and the revenue stream of housing providers to make necessary improvements. Many buildings are badly in need of repairs and maintenance, and some are literally falling down around tenants. Property values, operating costs, and the need of housing providers to borrow for capital improvements are dramatically on the rise. Reform shouldn't risk creating onerous mechanisms that make it difficult to finance improvements. The bills are timely and thoughtful. The hearing should reflect a spirit of seeking solutions, not winners and losers. He expressed the hope that **Chairperson Graham** would provide the required balance and bring all sides to the table. He also expressed support for an income eligibility requirement for moving into apartments under rent control.

Councilmember Fenty expressed support for a number of the reforms. He noted that the District has the highest percentage of rental property in nation - 60 percent - and also one of the biggest affordable housing crises. He commended **Chairperson Graham** for moving reforms that the Council should have been moved rather than merely extending the rent control status quo every five years. Rent control should be meaningful. **Chairperson Graham** is right to close loopholes in the Rental Housing Act similar to those that he closed in the Tenant Opportunity to Purchase Act. They include the twice-annual rent increase allowance and the so-called "vacancy high comp" rent ceiling adjustment, which turns affordable units into unaffordable units.

Witnesses included affordable housing experts Angie Rodgers, Policy Analyst for the D.C. Fiscal Policy Institute, and Cheryl Cort, Executive Director of the Washington Regional Network for Livable Communities and a panel of government witnesses including Stanley Jackson, Deputy Mayor for Planning and Economic Development, Theresa Lewis, Chief of Staff, Department of Consumer and Regulatory Affairs, and Raenelle Zapata, Esq., Rent Administrator. Alternate panels of tenant advocates and housing provider representatives were then called upon to testify, including: Betty Sellers and David Conn of the Tenant Action Network and Jonathan Strong of the Brandywine Tenants Association; W. Shaun Pharr, Esq., Senior Vice President of Government Affairs, and Nicola Y. Whiteman, Esq., Vice President of Government Affairs, of the Apartment and Office Building Association (AOBA), Michael T. Sims, President, DC Small Apartment Owners Association, K. David Meit, Executive Vice President Affairs, Daro Realty, Inc., and Vincent M. Policy, Esq., attorney for Daro Realty, Inc.; Dr. Barbara Kraft, Board of Directors, Quebec House Tenants Association and Jim McGrath, Chairman, and Dr. Chris Crowder of the D.C. Tenants' Advocacy Coalition (TENAC); Thomas Borger of the Borger Management Corporation, Denise Johnson, Community Manager of the Normandy Apartments; and Joyce Roberts, Community Manager of the Park Manor Apartments; Kevin Fitzgerald, economist and treasurer of the New Capital Park Plaza Tenants Association, and Marilyn Rubin and Dorothy Miller, President of the Columbia Plaza Tenants Association of the Columbia Plaza Tenants Associations; and Benoit Brookens, Esq. of the Dorchester Rent Rollback Organization and Luzette King of the Dorchester Apartments.

Other witnesses included Michael Sussman, Natalie LeBeau of Housing Counseling Services, Joe Martin, Vice Chair ANC 4CO9 M. Michael Hull of the Cafritz Company, Donna Lewis, Deborah Lindeman, ANC 3C02 Commissioner, Kenneth Rothchild of the DC Coalition for Rent Control, Donna Stinson, Fred Silver of the Bojan Management Corporation, Malcolm E. Peabody of the Peabody Corporation, Mary R. Hueg, Regional Manager, Sawyer Realty Holdings, LLC, Lin Dalton, Campbell Johnson of the Urban Housing Alliance, Alex Martin, President of the Cleveland House Tenant Association, Ed Krauze of the Realtors Association, Lauren Bladen-White, Lorena Cabaniss of the Rittenhouse Tenants Association, Femi Akinbi of the Mt. Vernon Tenants Association, John B. Murgolo, Vice President of the Aldon Management Corporation, Chad Hill, Senior Vice President of Horning Brothers, Karen Williamson, President of the Barclay Tenants Association Jeffery Gelman, Chair to CDBIA Housing District of Columbia Building Industry Association, Olivia Klaben of the 4000 Mass. Ave. Tenants Association, William Stokes of Community Education, Stephanie Clipper, John Utley of Windsor Associates, Amy LeFaivre Dolan, Senior Residential Manager of QDC Property Management, Inc., John Hoskinson of MPM Management, Rebecca Lindhurst and Jennifer Berger of Bread for the City, and Elizabeth Figueroa, Legal Counsel to 420 16th Street, S.E.,

Tenants Association.

Angie Rodgers of the D.C. Fiscal Policy Institute reported that, since 2000, the District has lost 7,500 units of low-cost housing (costing less than $500 per month) while gaining 13,000 units of high-cost housing (costing more than $1000 per month). She pointed out that Wider Opportunities for Women's self-sufficiency standards, which measure the income required to live in a jurisdiction without receiving public assistance, show that the District is less expensive than the close-in suburbs, and so that without public action low- and moderate-income housing could vanish not only from the District, but from the region.

Deputy Mayor **Stanley Jackson** testified that the bill would on the whole strengthen protection of tenants, but suggested several amendments and clarifications and called upon the city to ensure that rent controlled apartments are matched with those residents most in need. He expressed concern that the impact of amending the vacancy high comparable method of calculating a rent ceiling increase has not yet been adequately studied, and suggested that studies be made to ensure that limiting these increases would not encourage landlords to undertake condominium conversions instead.

Betty Sellers and **David Conn** appeared on behalf of the Tenant Action Network, which supports the proposed legislation, believing it will keep housing affordable for District residents. TAN believes that the proposed once per year increase of up to 10 percent will keep rent increases under control better than the current system, under which an increase of 5 percent of an inflated rent ceiling can be far greater than 10 percent, and is consistent with the normal limit on consumer price index increases in the existing rent control regulations of 10 percent per year.

Jonathan Strong of the Brandywine Tenants Association characterized the bill as less stringent than similar provisions in New York City's rent stabilization program, but an improvement over the status quo. He recommended that rent ceiling vacancy increases be calculated by reference to one percent of last rent charged, rather than one percent of the rent ceiling, and suggested that annual rent increases be limited to 7 percent or 1.5 times the consumer price index, whichever is lower, rather than the 10 percent in the bill.

K. David Meit testified on behalf of the Apartment and Office Building Association, with **W. Shaun Pharr, Nicola Y. Whiteman** and **Vincent M. Policy** present to assist with questions if needed. Mr. Meit argued that the legislation is too onerous to be practical and will encourage rental property owners to convert rental properties to condominiums rather than comply with the regulations. AOBA believes that the maximum increase in rent allowed by the turnover of vacant property should be 75 percent rather than the proposed 30 percent, and that the higher number will encourage more housing investment. AOBA also believes that the bill should also repeal the Unitary Rent Ceiling Adjustment Act, as they argue that the limits on combining rent ceiling adjustments would become unnecessary if this bill becomes law.

Dr. Barbara S. Kraft of the Quebec House Tenants Organization called for the Council to protect the city's rent control regime in order to allow the District to protect senior citizens, students and residents on fixed income. These residents contribute to the city with volunteer efforts and help maintain the District's history and culture, but are at risk of being priced out of

the District without rent control.

Denise Johnson of Borger Management presented the rental profile of the Normandie Apartments, where all 99 one- and two-bedroom units rent for between $500 and $1000, all utilities included.

Joyce Roberts of Borger Management presented the rental profiles of the Park Manor, Parkview and Crestview Apartments, where 43 percent of the tenants have lived in their units for more than ten years and 26 percent for more than 15 years. In these apartments, at least some units of every size, up to three-bedroom apartments, are available at less than $1000 per month, although only Park Manor has all of its one-bedroom units available in that price range.

Kevin Fitzgerald of the New Capitol Park Plaza Tenants Association testified that the degree to which rent ceilings have expanded faster than rents charged has given landlords motivation to ensure high rates of tenant turnover, and that replacing the 12 percent and vacancy highest comparable rules with the proposed 1 percent per year rent ceiling increase would still allow landlords to recover maintenance and repair costs. However, Mr. Fitzgerald argued that the current rent ceiling system is unnecessary complicated, and suggested either resetting all rent ceilings or doing away with the concept altogether and calculating rent increases based upon the previous rent charged.

Dorothy Miller of ANC Single Member District 2A05 discussed the fate of the Columbia Plaza apartment complex following George Washington University's purchase of an interest in the complex, and asked the Council to take action on behalf of the complex's long-term tenants.

Michael Sussman testified that, as a small landlord, he believes that the additional income a landlord can generate by using the current methods for calculating rent and rent ceiling increases upon vacancy is barely adequate to cover physical plant maintenance and upgrades and operating costs, especially given recent increases in heating costs. While a larger building can afford to carry some units at a loss and spread the extra cost over the remaining units, a smaller building cannot be competitive if too few units have to subsidize the rest, as the more expensive units will not attract tenants, ultimately encouraging condominium conversions and reducing the District's housing stock. Finally, he called upon the Council to impose a primary residency requirement for rent-controlled properties, arguing that the benefits of rent control should accrue to District residents.

Natalie LeBeau of the Tenant Anti-Displacement Program of Housing Counseling Services endorsed the bill as a progressive measures to protect and expand the rights of tenants in the District and maintain the District's cultural diversity.

Deborah Lindeman of ANC 3C presented a resolution from the ANC commissioners, who had voted 8-0 to endorse the bill, subject to suggestions that the concept of rent ceilings should be done away with and replaced with limits on rents charged and that the maximum annual increases should be tied to the Washington DC cost of living index.

Frederick Silvers of Bojan Management and Realty reported that utility costs have increased faster than the consumer price index: WAS A increased rates by 10 percent over the past two years, with a 6 percent increase pending, PEPCO raised rates 18 percent earlier in the year and Washington Gas by a total of 30 percent over the past year. When combined with additional maintenance costs on heating and cooling systems caused by heavy use during increasingly hot summers and cold winters, it is appropriate to raise rental rates faster than inflation. If landlords cannot raise rents on vacant apartments to market rate, they will have to pass the costs on to existing tenants by means of a hardship exception, which will fall most heavily on long-time residents, especially senior citizens.

Lin Dalton of the Somerset Tenants' Association testified that the STA is concerned that high rental costs are driving long-term Washington residents out of the city and encouraging rapid turnover of residential properties at the expense of community identity.

Campbell C. Johnson III of the Urban Housing Alliance felt that the rent control reform bill does not go far enough toward protecting tenants from excessive rent increases. He recommended that rent ceiling increases upon vacancy be limited to one percent of rent charged per year for up to ten years, rather than one percent of rent ceiling per year, and that rent increases should be capped at $50. He also recommended that DCRA actively monitor capital improvement increases to ensure these charges are rolled back when the underlying capital improvement is paid off.

Chad Hill of Hornung Brothers testified that the proposed legislation would either encourage housing developers to increase rents more heavily on existing tenants to fund capital improvements and compensate for increased heating costs, or else drive housing developers into Virginia or Maryland. Rather than expand rent control, Mr. Hill suggested that DCRA revamp and expand its voucher programs, to be paid for by taxes on profits after investment in property, and give tax credits to property developers creating new affordable housing in currently vacant properties.

Karen Williamson of the Barclay Tenants Association testified that rental increases in her building, a moderate-income property when she moved there in 1975, have made it impossible for new moderate-income tenants to live in the property without either living together or receiving family assistance. By making it too challenging for moderate-income residents to live in the District, the District is driving away potential long-term residents and future homeowners while undermining the city's inclusiveness.

Jeffrey Gelman of Greenstein, DeLorme & Luchs and the District of Columbia Building Industry Association argued that the city's rent control law is inefficient, as it does not include a means test for participation, and that the proposed legislation does nothing to address this.

Stephanie Clipper reported that, based upon her experiences, some landlords have been encouraging high turnover by allowing necessary health, safety and maintenance work to go undone, and using the high turnover to dramatically increase rents without reinvesting the extra proceeds into the building.

Amy LeFaivre-Dolan of QDC Property Management's The WestPark Apartments charged that the bill would destroy the economic rationale to keeping a rent controlled building in good order. She reported that operating expenses at WestPark have increased 20 percent faster than rental income over the past ten years, while real estate taxes have increased 10 percent over the past four years, and that any additional restrictions on rent increases will make it impossible to run a well-maintained rental property economically. She also reported that the current high comparable vacancy provisions make it possible to make large-scale capital improvements without seeking a capital improvement rent increase, ensuring that long-time residents see more of the benefits from rent control.

Jennifer Burger of the Legal Aid Society of the District of Columbia argued that the bill would eliminate the current temptation for landlords to leave a unit vacant for a year in order to take the vacancy high comparable rent adjustment, increasing the proportion of units occupied at any given time and thus expanding access to affordable housing.

Eric Von Salzen submitted a written statement on behalf of DARO Realty in which he credited the vacancy high comparable rule for rent increases as having been a key in the successes of the District's rent control regime, by encouraging landlords to properly maintain below-market units and buildings in the hope of charging market-rate rents later. Mr. Von Salzen expressed his belief that rent control should be chiefly for the benefit of existing tenants rather than incoming tenants, as the latter will only select housing they can currently afford while the former can be displaced from communities in which they have established roots by subsequent rent increases.

To protect existing tenants from condominium conversions or neglect of property by landlords, Mr. Von Salzen argued that the vacancy high comparable regime should be maintained, the 10 percent rate increase cap should not apply to new tenants and language in the bill needs to be amended to make it clear that higher rate increases can be permitted by the Rent Administrator or by voluntary agreement with tenants. Mr. Von Salzen also indicated that he believes the 10 percent annual rate increase cap would allow for the abolition of the Unitary Rent Ceiling Adjustment provision, which he feels is well-intended but too burdensome, and that an annual rate increase cap would remove the need to limit rent increases to once per year.

Rosemarie Flynn of the Gray Panthers appeared before the Committee to endorse the bill, which she characterized as a way of addressing rent ceilings that have risen out of control. She suggested that the legislation should require that a tenant be made aware of the grounds for a rent increase - whether the annual consumer price index adjustment or a previously-unimplemented increase - and how much of an increase within the rent ceiling can still be applied to the rent charged. She also suggested extending the proposed $50 per month limit on monthly rent increases from capital improvements for senior citizens and the disabled to cover all rent increases for these types of tenants.

The full testimonies of these public witnesses are appended to this report and incorporated into the record.

Public Roundtable on the Possible Ramifications of the Elimination of Rent Ceilings in the District of Columbia

On Friday, March 31,2006, in the Council Chamber of the historic Wilson Building, the Committee on Consumer and Regulatory Affairs received five and a half hours of testimony on the possible ramifications of eliminating rent ceilings from the District's rent control system.

DCRA Director Patrick Canavan and Michael Hodge of the Office of the Deputy Mayor for Planning and Economic Development testified that rent ceilings have been difficult to administer and understand and have failed to protect tenants. Eliminating rent ceilings and calculating caps on rent increases based upon rent charged would make for a better system. The government witnesses supported capping rent increases at CPI for tenants who currently have rents within 20 percent of the rent ceiling and remain in the same unit and also supported a set-aside program for lower-income tenants. While they endorsed substitute Bill 16-457 as a good beginning for reforming rent control, they acknowledged that the bill still needs work and looked forward to continued dialogue with Chairperson Graham.

Public witnesses included a number of tenant advocacy organizations, including the Tenant Action Network (TAN), the D.C. Tenant Advocacy Coalition (TENAC), and representatives of tenants associations from throughout the city. They generally testified that rent ceilings, though flawed, could be made to work for tenants rather than against them. They called for ending the abusive vacancy high comparable rent ceiling adjustment, and enhancing the enforcement powers of tenants and the Rent Administrator. They testified that the Substitute Bill 16-457 does neither and in fact weakens both the substantive and the procedural aspects of the rent control law. They pointed out that although the Substitute purports to eliminate rent ceilings, instead it keeps them when they benefit landlords, namely to maximize vacancy rent increases, and eliminates them when they benefit tenants.

Through the course of the tenant testimony, it became clear that the rent ceiling as it currently operates benefits some tenants but not others. Any rent charged increase on a unit for which the rent charged is at or near the rent ceiling is generally no greater than the CPI. This is because no other rent ceiling adjustment is available for the landlord to implement to increase the rent charged. But on a unit for which the rent ceiling significantly exceeds the rent charged, the landlord may impose a rent charged increase of virtually any amount. This is because the landlord has as many rent increase options as he has rent ceiling adjustments. Some tenants complained of landlord threats to increase the rent by as much as $800 unless the tenant selected the renewal lease option preferred by the landlord. Even this "favorable" option would mean a rent increase of $200 or more. The current law permits this where the landlord has preserved and previously not implemented rent ceiling adjustments, usually "vacancy high comps," in these amounts. It is also more likely that a tenant subject to these types of increases will also be subject to two rent increases in the same year, which the current law allows.

Despite having indicated their intention to appear and testify, the Apartment and Office Building Association (AOBA), representing housing providers, did not do so and thus were unavailable to answer questions. In a written statement, AOBA stated that rent ceilings have rarely operated so as to limit rent increases. While anticipating revenue losses due to the elimination of the vacancy high comparable rent ceiling mechanism, most of AOBA's

membership believes that the Substitute will provide for enough savings due to the reduction in paperwork to compensate for that loss. They believe that tenants also benefit by way of the elimination of the carry-over of unused annual and vacancy rent charged increases that the current system allows.

VII. COMMITTEE REASONING

The reasoning for Bill 16-109 as passed by the full Council is discussed above.

VIII. FISCAL IMPACT

The fiscal impact statement, as required by section 602 (c) (3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)), is included as Attachment 8 to this report.

IX. IMPACT ON EXISTING LAW

The "Rent Control Reform Amendment Act amends various sections of Title II of the Rental Housing Act of 1985 (D.C. Code §§ 42-3502.01 *et seq.)*, and adds 2 new sections, as described in the section-by-section analysis.

X. ATTACHMENTS

1. Office of the Inspector General, "Review of Housing Provider Filings at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs," December 12, 2005.
2. DC Fiscal Policy Institute, "New Census Data Show DCs Affordable Housing Crisis is Worsening," September 13, 2005.
3. Fannie Mae Foundation and the Urban Institute, Introduction and Chapter 4, "Narrowing Rental Options," *Housing in the Nation's Capital 2005,* November 2005.
4. Bill 16-457 as introduced with referral.
5. Notice of a public hearing on Bill 16-457.
6. Public Hearing Testimony.
7. Amendment in the Nature of a Substitute to Bill 16-109.
8. Fiscal Impact Statement for Bill 16-109.
9. Rent Control FAQs

EXHIBIT 2

To be supplemented. *See* Motion at 2, Footnote 2.