

4210 PETITIONS BASED ON CAPITAL IMPROVEMENTS

- 4210.1 A housing provider may petition the Rent Administrator for a rent adjustment under § 210 of the Act (D.C. Official Code § 42-3502.10) (“capital improvement petition”), which shall be in the form of a temporary rent surcharge, to recover the cost of a capital improvement made to a housing accommodation.
- 4210.2 The cost of a capital improvement may be recovered through a rent surcharge if the improvement is:
- (a) Made to enhance the quality of the housing accommodation (“quality improvement”) by:
 - (1) Protecting or enhancing the health, safety, and security of the tenants or the habitability of the housing accommodation or affected rental units; or
 - (2) Producing a net saving in the use of energy by the housing accommodation or complying with applicable environmental protection regulations; provided, that any savings in energy costs are passed on to the tenants; or
 - (b) Required by any federal or local statute or regulation becoming effective after October 30, 1980 (“mandatory improvement”).
- 4210.3 The cost of a capital improvement may be recovered through a rent surcharge under this section only if the improvement is depreciable (i.e., required to be “capitalized”) under the Internal Revenue Code (26 U.S.C.). See 26 C.F.R. § 1.263(a)-3(d), distinguishing capital expenditures from other deductible business expenses.
- 4210.4 Except as provided in § , the cost of a capital improvement shall not be recoverable through a rent surcharge under this section if a housing provider makes, or begins construction or other work to make, the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition.
- 4210.5 A housing provider who makes, or begins construction or other work to make, a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under this section, following the approval of the petition, only if:
- (a) The Office of Administrative Hearings has not issued a final order approving or denying the capital improvement petition, in whole or in part, or such an order is stayed pending an appeal to the Commission or

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the District of Columbia Court of Appeals, within sixty (60) days of the filing of the petition; or

- (b) The capital improvement is immediately necessary to maintain the health or safety of the tenants or is a mandatory improvement in accordance with § (b); provided, that the petition shall be filed no later than thirty (30) days after the completion of all work to make the capital improvement.

4210.6 The cost of a capital improvement shall not be recoverable through a rent surcharge under this section if a tenant is displaced by construction or other work to make the improvement and the housing provider does not comply with § 501(f) of the Act (D.C. Official Code § 42-3505.01(f)) or Chapter 43 of this title or if the tenant has not expressly waived those rights and relocation assistance in a written agreement for alternative housing and assistance.

4210.7 A housing provider shall file a capital improvement petition on a form approved by the Rent Administrator (“Capital Improvement Form”), which shall set forth the following:

- (a) Whether, in accordance with § , the improvement is a quality improvement to protect or enhance health, safety, and security or to produce a net savings in energy, or a mandatory improvement;
- (b) If the improvement is a mandatory improvement, the provision of federal or District law, and its effective date, that requires the improvement;
- (c) That the required governmental permits have been requested or obtained, and copies of either the request form or issued permit shall accompany the Capital Improvement Form;
- (d) The basis under the Internal Revenue Code (26 U.S.C.) for considering the improvement to be depreciable; and
- (e) The dollar amounts, percentages, and time periods computed by following the instructions listed in § .

4210.8 The Capital Improvement Form shall contain instructions for computing the following in accordance with this section:

- (a) The total cost of a capital improvement;
- (b) The dollar amount of the rent surcharge for each rental unit in the housing accommodation and the percentage increase above the current rents charged;

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- (c) The tax credits allowed in lieu of rent surcharges on elderly tenants and tenants with a disability and any reduced rent surcharges that may be allowed on those tenants; and
- (d) The duration of the rent surcharge and its pro-rated amount in the month of the expiration of the surcharge.

4210.9 The total cost of a capital improvement shall be the sum of:

- (a) Any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement, in accordance with § ;
- (b) Any interest that shall accrue on a loan taken by the housing provider to make the improvement, in accordance with § ; plus
- (c) Any service charges incurred or to be incurred by the housing provider in connection with a loan taken by the housing provider to make the improvement, in accordance with § .

4210.10 For the purposes of calculating interest and service charges, “a loan taken by the housing provider to make the improvement or renovation” shall mean only the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with § , and the dollar amount of that portion shall not exceed the amount of those costs.

4210.11 The costs incurred to make a capital improvement shall be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of costs as the Administrative Law Judge may find probative of the actual, commercially reasonable costs. The amount of costs incurred shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is received from or guaranteed by a governmental program for the purposes of making the subject improvement.

4210.12 The interest on a loan taken to make a capital improvement shall mean all compensation paid by the housing provider to a lender for the use or detention of money used to make a capital improvement over the amortization period of the loan, in the amount of either:

- (a) The interest payable by the housing provider at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the capital improvement, or on that portion of a multi-purpose loan of money used to make the capital improvement, as documented by the housing provider by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of interest as the Administrative Law Judge may find probative; or

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(b) In the absence of any loan commitment, agreement, or other evidence of interest, the sum of the following over a seven (7) year period:

(1) The rate for seven (7) year United States Treasury constant maturities as published by the Federal Reserve Board in Publication H.15 (519) during the thirty (30) days immediately preceding the filing of the capital improvement petition; plus

(2) Four percentage (4%) points or four hundred (400) basis points.

4210.13 For the purposes of § (a), if a housing provider has obtained a loan with a variable rate of interest, the total interest payable shall be calculated using the initial rate of the loan. If the interest rate changes over the duration of the rent surcharge, any certificate filed pursuant to § shall list all changes and recalculate the total interest on the loan.

4210.14 The service charges in connection with a loan taken to make a capital improvement shall include points, loan origination and loan processing fees, trustee's fees, escrow set-up fees, loan closing fees, charges, costs, title insurance fees, survey fees, lender's counsel fees, borrower's counsel fees, appraisal fees, environmental inspection fees, lender's inspection fees (in any form the foregoing may be designated or described), and other charges (other than interest) required by a lender, as supported by the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of service charges as the Administrative Law Judge may find probative.

4210.15 The dollar amount of a rent surcharge on a rental unit that a housing provider may implement pursuant to a final order approving a capital improvement petition shall be no more per month than the following:

(a) If a quality improvement affects all rental units in the housing accommodation, the lesser of the amount computed in accordance with § or twenty percent (20%) of the rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, for each affected rental unit on the date the petition is filed;

(b) If a quality improvement affects fewer than all rental units in the housing accommodation, the lesser of the amount computed in § or fifteen percent (15%) of the rent charged, as lawfully calculated and properly filed with the Rental Accommodations Division, for each affected rental unit on the date the petition is filed; or

(c) If an improvement is a mandatory improvement, the amount computed in accordance with § .

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- 4210.16 Except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § (a), the monthly amount of a rent surcharge for each affected rental unit for a quality improvement that affects all rental units in a housing accommodation shall be the quotient of:
- (a) The total cost of the capital improvement, in accordance with § , divided by ninety-six (96) months; divided by
 - (b) The number of rental units in the housing accommodation.
- 4210.17 Except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § (b), the monthly amount of a rent surcharge for each affected rental unit for a quality improvement that affects fewer than all rental units in a housing accommodation shall be the quotient of:
- (a) The total cost of the capital improvement, in accordance with § , divided by sixty-four (64) months; divided by
 - (b) The number of rental units affected by the improvement.
- 4210.18 The monthly amount of a rent surcharge for each affected rental unit for a mandatory improvement shall be the quotient of:
- (a) The total cost of the capital improvement, in accordance with § , divided by the number of months in the useful life of the improvement; divided by
 - (b) The number of rental units affected by the improvement.
- 4210.19 The monthly amount of a rent surcharge requested or allowed by a capital improvement petition shall be an equal amount for each affected rental unit, except where the amount of a rent surcharge on a rental unit is limited to the percentage specified by § (a) or (b) or where the implementation of a rent surcharge is prohibited by § 224(b) of the Act (D.C. Official Code § 42-3502.24(b)) and § 4215 of this chapter.
- 4210.20 Except when a continuation is permitted in accordance with § , the duration of a rent surcharge requested or allowed by a capital improvement petition shall be the quotient, rounded to the next whole number of months, of:
- (a) The total cost of the capital improvement, in accordance with § ; divided by
 - (b) The sum of the monthly rent surcharges permitted by § on each affected rental unit, without regard to whether implementation of the surcharge is prohibited by § 4215.

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- 4210.21 A rent surcharge in the final month of its duration shall be no greater than the remainder of the calculation in § , prior to rounding.
- 4210.22 A Capital Improvement Form, as filed with the Rent Administrator, shall be accompanied by external documents to substantiate the total cost of a capital improvement. A housing provider who has filed a capital improvement petition shall have a continuing obligation to supplement the record of the administrative proceedings on the petition with any new documentation reflecting the actual total cost of the improvement, until a final order approves or denies the petition or the evidentiary record of a hearing closes.
- 4210.23 A Capital Improvement Form, as filed with the Rent Administrator, shall be accompanied by a listing of each rental unit in the housing accommodation, which shall identify:
- (a) Which rental units are to be affected by the capital improvement;
 - (b) The rent charged for each affected rental unit, as lawfully calculated and properly filed with the Rental Accommodations Division, and any other approved rent surcharges; and
 - (c) The dollar amount of the proposed rent surcharge for each rental unit and the percentage by which each surcharge exceeds the current rents charged.
- 4210.24 After determining, in accordance with § 4208.5, that a capital improvement petition has been properly filed, the Rent Administrator shall transmit the petition to the Office of Administrative Hearings within ten (10) business days.
- 4210.25 A tenant or tenant association that appears pursuant to § 4208.11 may contest whether the capital improvement petition should be approved or denied, in whole or in part, based on the following issues:
- (a) Whether the improvement qualifies as a quality or mandatory improvement or is depreciable under the Internal Revenue Code (26 U.S.C.);
 - (b) Whether the improvement affects all or fewer than all rental units in the housing accommodation;
 - (c) If the improvement affects fewer than all rental units in the housing accommodation, whether the interests of the affected tenants are being protected;
 - (d) Whether the housing provider has obtained all required District government permits by the time of an evidentiary hearing; provided, that

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the grounds for any agency's issuance or denial of a required permit shall not be contested;

- (e) Whether the improvement is substantially related to an improvement that is the subject of a separate capital improvement petition, such that the simultaneous implementation of both rent surcharges would circumvent the twenty percent (20%) or fifteen percent (15%) surcharge limit provided by § 210(c)(1) or (2) of the Act (D.C. Official Code § 42-3502.10(c)(1) or (2)) and § (a) or (b);
- (f) The accuracy of the financial documentation or if the documentation substantiates the total cost of the capital improvement;
- (g) The calculations made by the housing provider or the Rent Administrator in determining the amount and duration of the surcharge;
- (h) Whether the housing accommodation is properly registered and the housing provider has all required business licenses;
- (i) Whether, as provided by § 4216.4, substantial violations of the Housing Regulations existed on the date the capital improvement petition was filed and have not been abated on the date of a hearing on the capital improvement petition;
- (j) Whether the capital improvement petition was filed as a retaliatory action prohibited by § 502 of the Act (D.C. Official Code § 42-3505.02) and § 4303 of this title; or
- (k) Any other violation of § 210 of the Act (D.C. Official Code § 42-3502.10) or this section.

4210.26 Failure of the Rent Administrator to take action or the Office of Administrative Hearings to issue a final order within sixty (60) days of the filing of a capital improvement petition shall not authorize the implementation of any rent surcharge under this section, notwithstanding the authorization to begin work to make the improvement in accordance with § 4210.5(a).

4210.27 Any rent surcharge that is authorized by a final order approving a capital improvement petition shall be implemented in accordance with § 4205 within twelve (12) months of the date on which the order becomes final, including the exhaustion of any rights of appeal, but no earlier than twelve (12) months following any prior rent increase for an affected rental unit; provided, that if the work to make the capital improvement renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. Failure to implement the rent surcharge within twelve (12) months will result in forfeiture of the authorization in accordance with § 4204.9(e).

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- 4210.28 Not less than ninety (90) days before the expiration of a rent surcharge implemented pursuant to an approved capital improvement petition, a housing provider may request to extend the duration of the rent surcharge by filing an application with the Rent Administrator and serving each affected rental unit with notice that the total cost of the capital improvement has not been recovered during the originally approved period of the rent surcharge and requesting to extend the approval (“Certificate of Continuation”).
- 4210.29 A Certificate of Continuation shall be executed under oath and shall set forth:
- (a) The total cost of the capital improvement as approved by the capital improvement petition, including, if applicable, any changes in the total interest due to a variable-rate loan;
 - (b) The dollar amount actually received, including any tax credits taken pursuant to § 224(g) of the Act (D.C. Official Code § 42-3502.24(g)), by the implementation of the rent surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;
 - (c) An accounting of and reason(s) for the difference between the amounts stated in paragraphs (a) and (b); and
 - (d) A calculation of the additional number of months required, under currently known conditions, for the housing provider to recover the total cost of the capital improvement by extension of the duration of the rent surcharge.
- 4210.30 A Certificate of Continuation that is properly filed shall be transmitted within ten (10) business days by the Rent Administrator to the Office of Administrative Hearings under the same case number of the underlying capital improvement petition.
- 4210.31 A tenant of a rental unit affected by a Certificate of Continuation may file exceptions and objections with the Office of Administrative Hearings within thirty (30) days of the service of the Certificate of Continuation, setting forth reasons why the requested extension is erroneous under § or should not be granted pursuant to § .
- 4210.32 A Certificate of Continuation shall be approved only if the housing provider demonstrates good cause for the difference between the amounts stated in § (a) and (b). Good cause shall not include inequitable implementation of the rent surcharge on specific tenants or rental units or classes of tenants or rental units.
- 4210.33 If an order approving or denying a Certificate of Continuation is not issued prior to the expiration of the surcharge, the housing provider may continue the

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implementation of the rent surcharge for no more than the number of months requested in the Certificate of Continuation. If a Certificate of Continuation is subsequently denied, the order of denial shall constitute a final order to the housing provider to pay a rent refund to each affected tenant in the amount of the surcharge that has been demanded or received beyond its original, approved duration in which it was implemented, and, if the rent surcharge remains in effect, to discontinue the surcharge.

4210.34 A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1399-1400 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2667-68 (May 2, 1986); Notice of Final Rulemaking published at 37 DCR 2503 (April 20, 1990); and Notice of Final Rulemaking published at 45 DCR 684, 688-94 (February 6, 1998); as amended by Final Rulemaking published at 68 DCR 012634 (December 3, 2021).