



Testimony in support of Bill 16-21 - Environmental Sustainability - Building Energy Use Benchmarking and Performance Standards – Amendments

Submitted by:

Todd Nedwick

Senior Director of Sustainability Policy

National Housing Trust

July 20, 2021

Dear Montgomery County Council:

National Housing Trust (NHT) is a non-profit that creates and preserves affordable homes to provide opportunity, advance racial equity, reduce economic disparities, and strengthen community resilience through practice and policy. NHT has been deeply engaged in the Building Energy Performance Standard (BEPS) policymaking process in Washington, D.C., including as a representative of affordable housing owners on the D.C. Building Energy Performance Standards Task Force.

NHT supports the adoption of BEPS by the Montgomery County Council. Improving the energy and water efficiency of multifamily buildings can preserve affordable housing by lowering operating costs, reduce residents' energy bills, and create healthier housing. However, affordable housing owners face several obstacles to improving the energy efficiency of their properties. Obstacles primarily relate to limited access to the funding and capacity required to undertake building upgrades. Therefore, it is essential that easily accessible funding and technical assistance be available to help affordable housing owners comply with the law. In addition, flexibility should be granted to owners of older buildings that may face unique compliance challenges.

As discussed in detail below, we recommend the following improvements to the legislation:

- 1) Create a funding mechanism to provide financial resources to support under-resourced buildings in complying with the law.
- 2) Amend the definition of affordable housing to reflect the affordability status of a building.
- 3) Add a representative from the Montgomery County Department of Housing and Community Affairs (DHCA) to the Building Performance Improvement Board.
- 4) Amend "18A-42C. Extensions and adjustments" to allow for the consideration of other compliance challenges that may warrant flexibility.

Climate policy must be implemented equitably to alleviate, not contribute to, the economic burdens of under-resourced communities while providing a clean and safe environment. As stated in the Montgomery County Climate Action Plan (CAP), low-income and very low-income households are burdened by the lack of affordable housing in Montgomery County— with demand outgrowing supply.¹ The majority of low-income households

¹ Montgomery County Climate Action Plan, pg. 23



in Montgomery County live in multifamily homes (55%).² The CAP further states that “if landlords are required by law to make costly energy efficiency retrofits and/or electrification conversions, this could adversely impact the availability or price of affordable housing and costs could be passed on to renters.”³

We appreciate the extensive stakeholder feedback process coordinated by the Department of Environmental Protection (DEP) and support the proposed policy model that resulted from that process. Montgomery County’s approach of setting a long-term performance standard with five-year interim performance targets provides certainty so owners can plan for the long term and make comprehensive building improvements at the most favorable times. Long-term planning is crucial for affordable housing. Affordable housing owners can more easily finance energy efficiency upgrades when refinancing their debt and can fold in the cost of energy efficiency improvements into new first mortgages.

Recommended Improvements to the Legislation

While we are supportive of the overall goals and approach of the legislation, we urge the County Council to adopt the following recommendations to improve the legislation.

1) Create a funding mechanism to provide financial resources to support under-resourced buildings in complying with the law.

As stated in the Stakeholder Recommendation Report compiled by DEP, building performance policies adopted in other jurisdictions tend to come with additional resources, programs, and/or funding to assist building owners in meeting the increased requirements.⁴ For example, legislation enacted or proposed to establish a building performance standard in Washington, D.C., Washington State, Colorado, and Boston⁵ created programs to support building owners, as described below.

- **Washington, D.C.** The Clean Energy Omnibus Amendment Act of 2018 that enacted the D.C. BEPS policy required *at least* \$3 million to be appropriated annually to assist affordable housing providers for energy efficiency in buildings subject to BEPS.⁶ The Mayor’s proposed FY’22 budget far exceeds the \$3 million appropriations. The budget invests \$26.5 million from the city’s allocation of federal American Rescue Plan Act funding to support owners of under-resourced buildings comply with BEPS.⁷
- **Washington State.** The Clean Buildings Bill required the Department of Commerce to establish a state energy performance standard early adoption incentive program with a budget of \$75 million to assist eligible building owners in achieving compliance with the state’s building performance standard.⁸

² Ibid

³ Ibid, pg. 26

⁴ Stakeholder Recommendation Report, Building Energy Performance Standards in Montgomery County, MD. Compiled by Montgomery County’s Department of Environmental Protection September 2020

⁵ Enabling legislation in Boston has not yet been enacted.

⁶ Clean Energy Omnibus Amendment Act of 2018 at <https://doee.dc.gov/service/clean-energy-dc-act>

⁷ Mayor Muriel Bowser’s FY 2021 - FY 2025 Federal Recovery Budget

⁸ Engrossed Third Substitute House Bill 1257 at <http://www.commerce.wa.gov/wp-content/uploads/2019/06/HB1257.pdf>

- **Colorado.** Legislation establishing the state’s building performance standard created the Climate Change Mitigation and Adaptation Fund to assist building owners in complying with the building performance standards by providing outreach, training, technical assistance, and grants to building owners.⁹
- **Boston.** Draft legislation to enact the city’s building performance standard includes creating the Equitable Emissions Investment Fund to improve low-income affordable housing and housing where tenants are at risk of displacement and in need of rent stabilization, among other purposes.¹⁰

Funding support for affordable housing owners is important for several reasons. Building owners have limited access to upfront capital. Subsidized affordable housing operates on tight margins. Properties underwritten to serve very low-income households may not generate sufficient net income to cover unexpected costs. While both Section 8 and Low-Income Housing Tax Credit properties are required to fund replacement reserves to cover the cost of expected repairs and upgrades, the amount of reserves is often insufficient to fund needed improvements fully. Also, building owners often need to request permission from HUD or investors to access their reserves. Access to debt to finance efficiency upgrades is often unavailable to affordable housing owners mid-financing cycle.

For these reasons, affordable housing owners will likely require financial support in the form of grants to pay for building upgrades to meet interim performance targets. Therefore, Montgomery County should take a similar approach to the jurisdictions mentioned above and create a funding mechanism to provide financial support to affordable housing owners. Doing so would send an important signal to the housing community that BEPS will be implemented equitably in keeping with the county’s Climate Action Plan principles.

2) **Amend the definition of affordable housing to reflect the affordability status of a building.**

The legislation gives the Director of DEP and the Building Performance Improvement Board authority to modify the performance targets and grant extensions to affordable housing owners. Such decisions should be made for the entire building, not individual dwelling units. However, the legislation defines “affordable housing” as “a ***dwelling unit*** whose sale or rental price does not exceed that of a moderately-priced dwelling unit under Chapter 25A or group senior assisted housing [emphasis added].” A strict interpretation of this definition would suggest that only buildings where 100 percent of dwelling units meet the affordability level would be eligible for performance target modifications or exemptions. In reality, there are likely many buildings that are less than 100 percent affordable that may need flexibility due to financial or other constraints.

The legislation should be amended as follows:

⁹ Colorado General Assembly House Bill 21-1286 at https://leg.colorado.gov/sites/default/files/documents/2021A/bills/2021a_1286_enr.pdf

¹⁰ Ordinance Amending the City of Boston Code, Ordinances, Chapter VII Sections 7-2.1 and 7-2.2, Building Energy Reporting and Disclosure

“Affordable housing” means a multifamily building that includes more than fifty percent of dwelling units whose sale or rental price do not exceed that of a moderately-priced dwelling unit under Chapter 25A or group senior assisted housing.”

This is similar to the definition of affordable housing incorporated in the BEPS legislation adopted in St. Louis and Washington, D.C..¹¹

3) Add a representative from the Montgomery County Department of Housing and Community Affairs (DHCA) to the Building Performance Improvement Board.

The legislation establishes a Building Performance Improvement Board to advise DEP on the implementation of building energy performance standards. The legislation specifies that designees of the DEP, Department of General Services, and Department of Permitting Services are ex officio nonvoting members of the Board. In addition, a designee from DHCA should also be included as a nonvoting member. Including DHCA will help ensure that the county’s housing programs are aligned with the goals of BEPS. The BEPS Task Force in D.C. includes a representative from the Department of Housing and Community Development. Their presence has helped the Task Force understand the financial and technical challenges of compliance in affordable housing and how they city’s housing programs can be used to support compliance.

4) Amend “18A-42C. Extensions and adjustments” to allow for the consideration of other compliance challenges that may warrant flexibility.

The legislation specifies four conditions under which an extension or modification to an interim or final performance target shall be considered: planned demolition, financial distress, exemption from real property taxes, and economic infeasibility. However, there are other conditions that could warrant an extension or modification. These may include historic building designations, affordable housing refinancing timelines, and technological challenges due to the age and condition of the property. Section 18A-42C should be amended by adding “or other acceptable conditions as determined by the Director by regulation.”

Thank you for considering these recommendations to improve Bill 16-21. If you have any questions about this testimony, please contact Todd Nedwick, Senior Director of Sustainability Policy, at tnedwick@nhtinc.org or 202-333-8931 ext. 128.

¹¹ The City of St. Louis BEPS ordinances defines affordable housing as “a building in which a ***majority of the households*** in the building make less than eighty percent of the Area Median Income for the City of St. Louis.”

The Washington, D.C. legislation defines affordable housing as “buildings that are primarily residential, contain 5 or more dwelling units, and: (1) In which use restrictions or other covenants require that ***at least 50% of all of the building’s dwelling units*** are occupied by households that have household incomes of less than or equal to 80% of the area median income; or (2) The building owner can demonstrate that ***at least 50% of the dwelling units*** rent at levels that are affordable to households with incomes less than or equal to 80% of the area median income.” [Emphasis added]