ENCLOSURE A

COMMENTS ON REGULATION FROM 30-DAY COMMENT PERIOD

Bruton, Scott

From: David Mullins <dmullins@rentersalliance.org>
Sent: Friday, February 23, 2024 3:35 PM
To: Bruton, Scott
Cc: Katrivanos, Nicolle; matt losak; etowey@rentersalliance.org; thoang@rentersalliance.org; Carmen Castro-Conroy; Julia Sarmiento; Mary Hunter
Subject: RA Comments - Rent Stabilization Regulations

[EXTERNAL EMAIL]

Hi Scott, good afternoon.

Please find comments from the Renters Alliance regarding the draft regulations in the attached google doc:
https://docs.google.com/document/d/18fw3qXhm4rsfrAT_PDZIZ1BGTX4CjWfEJoheGNe6gh8/edit?usp=sharing
Our recommendations and questions are in red type.

We are also sharing our comments with our partners at HIP and LEDC as requested.

Have a nice weekend.

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Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) The annual rent increase allowance governing the first year of a multi-year lease applies to the subsequent lease years.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a fair return application under Section 29-59 of the Code.

(a) If the Director approves the fair return application submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the fair return application while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director denies the fair return application submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

Is it worth mentioning here that the requirements to give notice to the tenant under the Fair Return section will apply?

Also, we recommend DHCA include a note somewhere that tenants are encouraged to submit comments, concerns, or other relevant evidence related to landlord petitions to DHCA throughout the application process.

29.58.01.03 Allowable Rent Increase for Previously Vacant Lots

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased up to the banked amount or to no more than the base rent on the date the unit became vacant plus each allowable increase under Section 29-58(a) of the Code.

(b) If a unit was vacant before the Rent Stabilization law was enforceable, then upon return to the market, the landlord may set the base rent. After the unit has been on the market for 12 months,

the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) A landlord may petition the Director for a limited surcharge for capital improvements under Section 29-58(d) of the Code.

(b) Processing of Petitions

(1) Filing of Petition. The Petition form and one copy of supporting documents must be filed with the Department.

(2) Notice of Filing. The landlord must notify each affected tenant by first-class mail of the filing of the Petition within five business days of the filing of the Petition.

This differs slightly from 29.59.01.05(b) and 29.60.01(b) - the respective notice to tenants sections in the fair return and substantial renovation sections.

Those state that the tenant must receive notice of filing *and a copy of the application*.

We would recommend including that same language across the board for consistency.

Additionally, the fair return section requires notice of the *decision* also be provided to tenants - 29.59.01.05(d)

We don't see any requirement to provide notice of decision in this capital improvement section nor in the substantial renovation application section, so we also recommend including that same decision notice language from the fair return section across the board for consistency.

(3) Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed.

(4) If the landlord fails to file all necessary documentation or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.

(5) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance.

(c) Except as provided in (d), the landlord must not recover the cost of a capital improvement through a rent surcharge under Section 29-58(d) of the Code if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition.

(d) A landlord who makes a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under Section 29-58(d) of the Code, following the approval of the petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work.

(e) A landlord must file a capital improvement petition on a form approved by the Director ("Capital Improvement Form"), certifying:

(1) that the capital improvements are permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;

(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;

(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;

(4) that the capital improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing;

(5) whether the capital improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;

(6) that the required governmental permits have been requested or obtained, and copies of either the request form or issued permit must accompany the Capital Improvement Form;

(7) the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;

(8) the costs of the capital improvements, including any interest and service charge;

(9) the dollar amounts, percentages, and time periods computed by following the instructions listed in (f); and

(10) that the petitioner has obtained required governmental permits and approvals.

(f) The Capital Improvement Petition must contain instructions for computing the following in accordance with this section:

(1) the total cost of a capital improvement;

(2) the dollar amount of the rent surcharge for each rental unit in the housing accommodation and the percentage increase above the current rents charged; and

(3) the duration of the rent surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(g) The total cost of a capital improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement, in accordance with (i);

(2) any interest that must accrue on a loan taken by the landlord to make the improvement, in accordance with (j); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement, in accordance with (k).

(h) The interest and service charge on, "a loan taken by the landlord to make the improvement or renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with (l). The dollar amount of the calculated interest and service change must not exceed the amount of the portion of that loan.

(i) The costs incurred to make a capital improvement must 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 Director may find probative of the actual, commercially reasonable costs. The amount of costs incurred must 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.

(j) The interest on a loan taken to make a capital improvement means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make a capital improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord 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 landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of interest that the Director finds probative; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the limited surcharge petition for capital improvements.

(k) For the purposes of (j)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan. If the interest rate changes over the duration of the rent surcharge, any certificate filed under (t) must list all changes and recalculate the total interest on the loan.

(l) The service charges in connection with a loan taken to make a capital improvement must 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 Director may find probative.

(m) Except when a continuation is permitted in accordance with (s), the duration of a rent surcharge requested or allowed by a capital improvement petition must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the capital improvement, in accordance with (g); divided by

(2) the sum of the monthly rent surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected rental unit.

(n) A rent surcharge in the final month of its duration must be no greater than the remainder of the calculation in (m), prior to rounding.

(o) A Capital Improvement Petition must be accompanied by external documents to substantiate the total cost of a capital improvement and must be supplemented with any new documentation reflecting the actual total cost of the improvement, until the Director approves or denies the petition.

(p) A Capital Improvement Petition, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which rental units will be affected by the capital improvements;

(2) the base rent for each affected regulated rental unit, and any other approved capital improvement surcharges; and

(3) the dollar amount of the proposed rent surcharge for each rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) A decision authorizing a capital improvement surcharge must be implemented within 12 months of the date of issuance but no earlier than 12 months following any prior rent increase for an affected rental unit; provided, that if the capital improvement work renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as an approved capital improvement surcharge in the new lease or in the lease renewal and may not be implemented mid lease.

(s) Not less than 90 days before the expiration of an authorized rent surcharge a landlord may request to extend the duration of the rent surcharge by filing an application with the Director 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").

(t) A Certificate of Continuation must set forth:

(1) 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;

(2) the dollar amount actually received 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;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months required, under currently known conditions, for the landlord to recover the total cost of the capital improvement by extension of the duration of the rent surcharge.

(u) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in (t)(1) and (2).

(v) If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.

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

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return application process.

29.59.01.02 Definitions

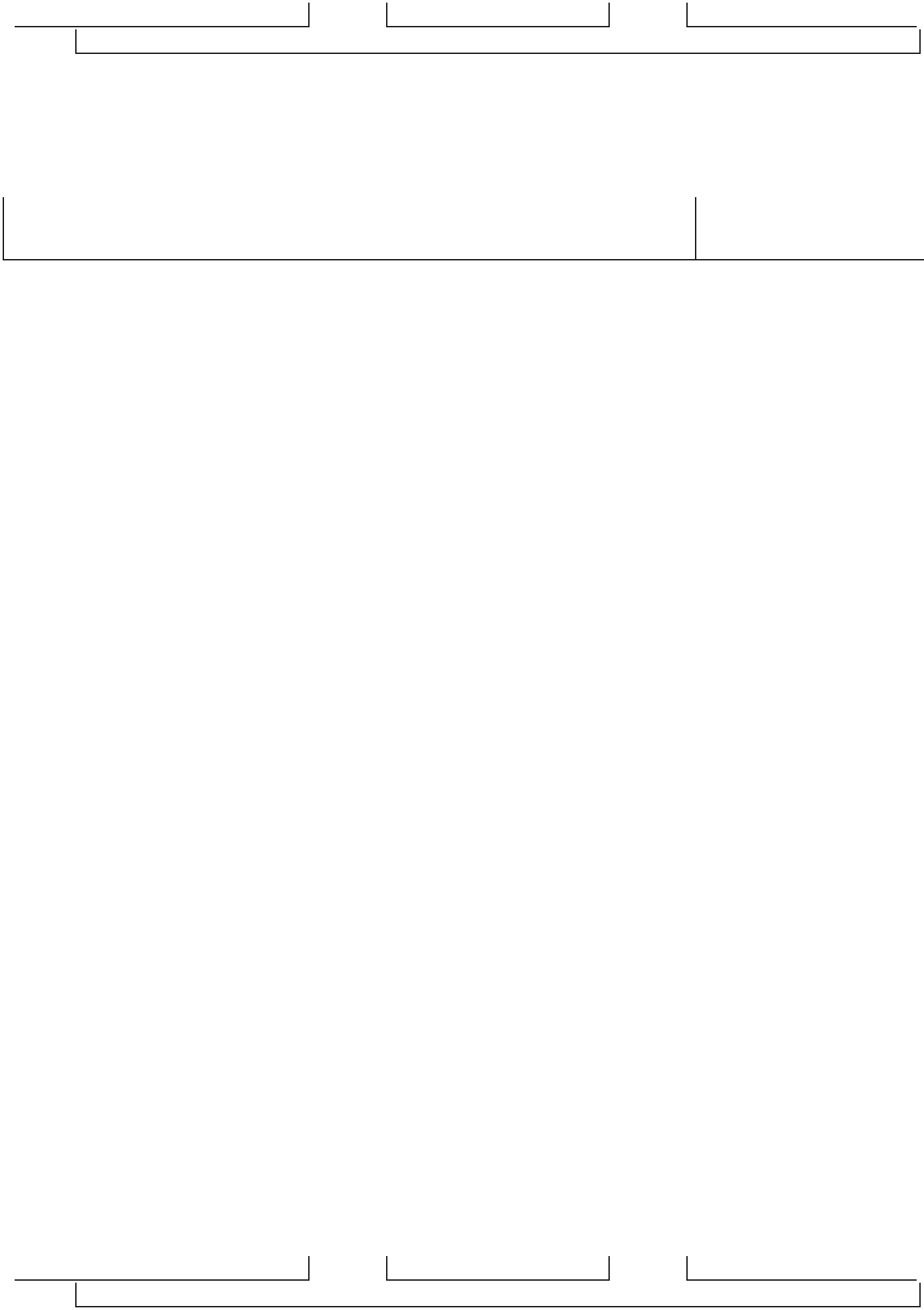
In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year the unit becomes a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the fair return application required in Section 29.59.01.04 is filed.



(e) "Current Year CPI" means either 1) if the current year is a calendar year, the current year CPI is the annual CPI for that year or 2) if the current year is a fiscal year, the current year CPI must be the CPI for December during the current year.

(f) "Gross Income" means the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord was permitted to charge at the time of the application.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses.

29.59.01.03 Formula for Fair Return

(a) Fair Return. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year.

(1) In calculating Gross Income for the Current Year, the Base Year Net Operating Income under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any fair return increase request must be:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; or

(B) demonstrated to be commensurate with returns on investments in other enterprises having comparable risks.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") approved by the Director must be determined as a percentage of the Current Year rents, and each restricted unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein, any rent increase approved by the Director must be implemented within 12 months of the date of the issuance of the decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase awarded by the Director has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is

vacant or if the unit becomes vacant before the required increase has been taken in full, the Director may allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

29.59.01.04 Fair Return Application

(a) Requirement. A landlord may file a fair return application with the Director to increase the rent more than the amount permitted under Section 29-58 of the Code.

(b) Rolling Review. The Director will consider fair return applications on a rolling basis.

(c) Prerequisites for a fair return application. In order for the Director to consider a fair return application, it must meet the following requirements:

(1) All units within the rental housing listed in the fair return application must be properly registered and licensed with the Department.

(2) The fair return application must be completed in full, signed, and include all required supporting documents.

(3) All Banked Amounts have been applied to restricted units.

(d) Fair Return Application Requirements. A fair return application must include the following information and must be submitted in a form administered by the Department:

(1) The applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return.

(2) The application must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director prior to the filing of the application.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been

completed and associated costs are reasonable.

(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.

(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.

(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.

(E) Any justification for exceptional circumstances that the owner is claiming under this regulation.

(F) Any additional information the landlord determines would be useful in making a determination of fair return.

(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director’s discretion.

29.59.01.05 Processing of Fair Return Applications

(a) Filing of Application. The fair return application form and one copy of supporting documents must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the fair return application, the landlord must notify each affected tenant of the filing via first class mail, providing each tenant a copy of the Notice of Filing and the application (excluding supporting documentation).

(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.

(d) Required Notice of Decision to Tenants

(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.

(2) The implementation of any rent increase awarded by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a DHCA authorized fair return increase. Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.

29.59.01.06 Fair Return Criteria in Evaluation

(a) Gross Income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, unless these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.;

We are concerned about eviction filing fees and attorney fees being included as an administrative expense - especially when it comes to landlords that file excessively. In some cases a tenant who loses a case may be responsible for legal fees.

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable;

How can tenants be sure that high-cost trips, meals, drinks for leasing staff or other unreasonable overhead expenditures by the landlord on management and other staff will not be included in this calculation? Are tenants relying on the Director review conducted pursuant to subsection (b)(1)(C)? If so, further clarity regarding how that review will be conducted and on what criteria it will be based would be appreciated. As would providing as much transparency into that process for tenants as possible.

(D) payroll;

(E) amortized cost of capital improvements. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the substantial renovation application.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; and

(I) insurance costs.

(2) Reasonable and expected operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

(B) payments made for mortgage expenses, either principal or interest;

(C) judicial and administrative fines and penalties;

(D) damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(E) depreciation;

(F) late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental housing;

(G) membership fees in organizations established to influence legislation and regulations;

(H) contributions to lobbying efforts;

(I) contributions for legal fees in the prosecution of class-action cases;

(J) political contributions for candidates for office;

(K) any expense for which the tenant has lawfully paid directly or indirectly;**

(L) attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

(M) additional expenses incurred as a result of unreasonably deferred maintenance; and**

Subsections (K) and (M) are good examples of evidence that should be corroborated by the tenant. Is general '*feedback and concerns are welcome from tenants*' language at the top of the regs sufficient? Perhaps tenant corroboration should be specifically included in the application.

(N) any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

(c) Base Year Net Operating Income. To adjust the Base Year Net Operating Income, the Director must make at least one of the following findings:

(1) The Base Year Net Operating Income was abnormally low due to one of the following factors:

(A) the landlord made substantial capital improvements which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these capital improvements;

(B) substantial repairs were made to the rental housing due to exceptional circumstances; or

(C) other expenses were unreasonably high, notwithstanding prudent business practice.

(2) The Base Year Rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased for five years preceding the Base Year;

(C) the Tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

This burden of proof language does not appear in the capital improvement section nor the substantial renovation section. We recommend this admonition be included consistently, or at the very beginning or very end, so it is clear that it applies to all applications for waivers or exemptions.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. A rent established under an approved fair return application remains in effect for a 12month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a restricted unit for that 12-month period.

(b) Establishment of New Base Year Net Operating Income. The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior application for a fair return rent increase must constitute the Base Year income, expenses, and net operating income for those restricted units included in the finding of fair return for purposes of reviewing subsequent applications.

(c) Limitations on Future Fair Return Requests.

(1) If a fair return application is approved by the Director, the property owner may not file a subsequent application for the greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return rent increase is permitted above 15%) has been applied.

(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 Application for a Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation under Section 29-60(12) must file an application with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be renovate showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.

(c) The Director must review the application and supporting documentation and must issue and notify the landlord of a decision approving or denying the exemption.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

If the renovation ends up costing less than estimated, is there a mechanism to somehow credit the tenants who are charged more rent based on the higher estimate?

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of those costs.

29.60.01.04. Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of expenses as the Director may find probative of the actual, commercially reasonable costs.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the improvement or renovation over the amortization period of the loan, in the amount of either:

(a) the interest payable by the landlord at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the improvement or renovation, or on that portion of a multipurpose loan of money used to make the improvement or renovation, as documented by the landlord 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 Director may find probative; or

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior to application for an exemption for a substantial renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 that the Director may find probative of the actual, commercially reasonable costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as

provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The Director must determine whether a proposed substantial renovation is intended to enhance the value of the rental housing by considering the following:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant;

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair; and

(4) whether the proposed renovations are optional or cosmetic changes.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) Within thirty days of the completion of a substantial renovation a landlord must file an affidavit attesting to the completion with the Director. If the Director determines that the renovations have been completed according to the substantial renovation application, the date of filing of the affidavit of completion must be deemed the approved exemption date.

(b) Once a decision approving a substantial renovation exemption has been issued, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease, if any, for that rental unit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

We recommend language that indicates existing fees will remain in effect until the end of the current lease term, but are required to conform to these regulations upon renewal. Also, please clarify how the fees are implemented when a lease goes month-to-month. (Perhaps consistent with how a rent increase may only be imposed on a month-to-month tenant once in a 12 year period.)

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees

Please consider including examples of prohibited fees (much like the list in section 29.59.01.06(2) of expenses), with language clarifying that the list of prohibited fees is not exhaustive (while the list of allowed fees *is* exhaustive).

(a) Application fee

A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than $50 from any household in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of

pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first–class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

(e) Lock out fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25, **and may only be charged if the lockout procedure incurs a cost to the landlord. (As a reminder, some buildings have a 24-hour concierge that provides duplicate keys for tenants who are locked out and are immediately returned by the tenant at no cost to the landlord.)**

(f) Secure storage unit accessible only by tenant

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.

(g) Internet or cable television

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.

We are concerned that tenants who do not utilize or choose not to subscribe to cable television will be paying a fee for a service they are not receiving, while subsidizing their neighbors' access to those services. We support increased competition and internet and cable options.

(h) Motor vehicle parking fee

(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:

(A) 4% of the base rent for the unit for any secured, covered parking space;

(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or

(C) 1% of the base rent for the unit for any other motor vehicle parking space.

(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking.

(i) Bicycle parking fee

Can a cap on bike parking fees also be included?

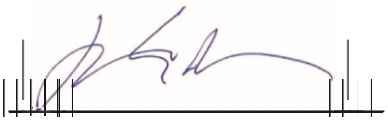
Also, clarity regarding motorcycles and where they fit in would be appreciated.

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Approved:

_____ _____ Marc Elrich, County Executive Date

Approved as to form and legality:



By:_____

Date:_____1/31/24

AIR | COMMUNITIES

February 29, 2024

Mr. Scott Bruton
Director of Housing and Community Affairs
Montgomery County, Maryland- Department of Housing and Community Affairs
1401 Rockville Pike, 4th floor
Rockville, MD 20852
Scott.bruton@montgomerycountymd.gov

Re: Comments on the Montgomery County Regulations on Rent Stabilization

Director Bruton,

On behalf of Apartment Income REIT Corp (AIR Communities), we want to thank you for meeting with us and the Apartment and Office Building Association (AOBA) on February 12, 2024 to listen to our feedback on the draft Rent Stabilization regulations. AIR Communities is one of the nation's largest owners and operators of apartment communities with 77 properties in 10 states and the District of Columbia. As a Real Estate Investment Trust (REIT), AIR engages in the acquisition, ownership, and operation of apartment communities. In Montgomery County, AIR owns and manages four properties including 1,549 apartment homes located in Bethesda and Chevy Chase, 57 of which are Moderately Priced Dwelling Units. We actively upgrade our portfolio through capital enhancements projects to improve the resident experience and increase portfolio value. Our goal is world class customer service, and as a result, our residents stay with us longer, creating conditions for stable, vibrant communities. For the past two years, AIR was ranked by Kingsley as second among operators and first among publicly traded REITS for customer satisfaction, based on third party surveys of our residents.

We believe that as the County works to improve housing affordability, the policies that are most effective in achieving this goal are those targeting assistance to the people who need it most, while still encouraging investment in communities. Housing providers help the County achieve its housing goals by creating safe and healthy living spaces for all ages, income levels and backgrounds. Researchers and economists on both sides of the aisle agree that rent control deters investment in both new and existing housing stock and intensifies housing shortages. As such, our industry vehemently opposed the Rent Stabilization Law (RSL).

With this letter, our intention is not to revisit the flaws of rent control, but rather to offer comments on the proposed regulations to ensure maximum flexibility to mitigate the negative impacts that the new rent control regime will have on housing throughout the county. Our comments have been prepared in the vein of avoiding the many challenges and pitfalls we have encountered in other jurisdictions that have adopted rent control laws. In particular, we ask the County to incorporate flexibility in the regulations in recognition of the acute impact rent stabilization will have on market-rate housing, particularly for high income residents who demand upgrades extensive amenities and conveniences of parking, pets and storage. The County's rent control regulations seem be designed to stabilize rent for lower income residents who need help but will have negative effects on higher income residents by

reducing the ability to invest in their homes and provide amenities they desire and expect. We are also concerned that these rent stabilization regulations are antithetical to the County's climate goals and Building Energy Performance Standards (BEPS) mandates. The combination of rent stabilization with BEPS mandates will create a perverse incentive for older multi-family housing stock to be demolished and redeveloped, or worse, result in disinvestment from the county altogether.

Please see detailed comments below for your consideration:

General:

- ***Grandfather existing projects*** - Many capital improvement projects and substantial renovations were already well underway before RSL and the finalization of these draft regulations. For example, we have spent millions of dollars in design and project planning over the past two years for capital improvements at several properties in the county and are ready to submit permit applications within the month. It is not fair to make owners in our position start over with the uncertainty of the surcharge / exemption process and therefore put our planned investments in limbo. The regulations should allow for properties with any current capital improvement / substantial renovation projects underway (e.g. permits applied for prior to effective date of the regulations) should be grandfathered (exempted from the RSL).
- ***Renovations requested by tenants*** - Please add an exclusion (or automatic surcharge / exemption approval) for renovations requested and agreed upon in writing by tenants (ex: kitchen and bath renovation). This occurs quite frequently in luxury apartment buildings and residents who want these upgrades should not be penalized.

Sec. 29.58.01.01 – Rent Increase for New Lease or Lease Renewal

- *Section 29* – 28 of the County Code requires that housing providers offer two-year lease terms to tenants at each renewal. However, the proposed regulations only allow a single rent increase at the outset of that two-year period. This is in direct conflict with RSL, which explicitly allows annual rent increases in Section 29 – 57. Please correct to allow rent increases annually to be consistent with the law.

29.58.01.04 Limited Surcharge for Capital Improvements:

Process

- **Flexibility**-- It is critical that the process for petitioning the County for a surcharge to cover the costs of capital improvements be flexible, efficient, and adaptable.
- **Tied to Permitting** -- We recommend that the surcharge process be tied seamlessly to the county's permitting process (such as that associated with commercial interior alteration building permits).
- **Allow Phasing**-- Capital improvement projects are often phased over several years – and this is a good thing for residents as it minimizes disruption for them and helps the landlord avoid having to empty the entire property to make the improvements. If the surcharge process doesn't allow for phasing, this will be a huge impact to residents and housing availability within the county.
- **Surcharge in Phases--**The regulations currently state that the Capital Improvement Surcharge must be issued within 12 months of the county's decision authorizing the surcharge. Given the

common practice of phasing capital improvements, implementing the surcharge within 12 months is not realistic. The county should allow the surcharge to be implemented by phase rather than waiting until the entire project is completed. This will also be more resident friendly and reduce the impact of an entire surcharge in a short period of time.

- **Consider a multi-step process on each submittal**: 1.) Housing provider submits petition application form; 2.) Housing provider submits supporting documentation, including phasing plan and applicable surcharge after each phase, 3.) County notifies owner within 10 days that all necessary documentation has been received / or more documentation necessary. 4.) After county notifies that all documentation has been received, County notifies landlord of preliminary approval within 30 days. 5.) Any change in plans or phasing must be resubmitted by the Provider and reviewed for approval by the Department, 6.) After construction is completed, final approval of the final phase / surcharge is completed based on actual costs and allowed to be implemented within 24 months of approval.
- **Time Certain for review and approval** --We recommend the director be given a finite time period for reviewing/approving applications, and if the deadline is missed, the petition should be granted. Time is money and delays will impact the cost and implementation of the project. Contractors won't wait forever and may change their bids with the passage of time. This may have a detrimental effect on residents.
- **Clarify Submittal Requirements**. – The process for providing documents to substantiate the project cost and surcharge is unclear and will result in a frustrating process for the county and the owners. We recommend the county clarify submittal requirements.
- **Information Requests** – When the County requests that the owner provide more information - Circumstances may arise where Owner simply cannot get the information needed in time. Rather than "deny" the application at this stage, the county should "close" the application, allowing the Owner to start over when ready.

Notification

- **Streamline Resident Notification** -The notification requirements in the regulations are mandated extremely early in the process and will cause much unnecessary stress among residents for a project that may never occur. Just because the owner seeks information from the county through a preliminary application, doesn't mean the owner has 100% decided to move forward with the project. According to the Director, the rationale for this requirement is to give tenants the opportunity to weigh in on the proposed capital improvements. However, this suggests that tenants who lease an apartment can override an owner and housing provider's decision to make capital improvements. This is neither fair nor appropriate. Additionally, capital improvements may be required to comply with state or local mandates as outlined below. Housing providers should only be required to notify affected tenants of an approved capital improvement plan and surcharge.

Definition of Capital Improvements

- **Eligibility** --The regulations lack a clear distinction of capital improvements eligible for a surcharge and reference only "structural alterations" without defining what that means. This needs to be defined clearly and broadly to encompass all categories of capital improvement, perhaps using a dollar threshold (e.g. $10,000) to differentiate between capital improvement and wear and tear.

- **Property improvements** -- Regulations make several references to improvements made to regulated rental units rather than the whole property. This could preclude improvements to the corridors, common areas, or complete building systems. The regulations must be amended to say: “capital improvements are permanent alterations to a regulated rental unit or property associated with the regulated rental unit.”

Capital Improvement Petition Form (section e & f)

- In Section (e) consider combining #1 together with #2 and #4 and start the phrase with "whether" - i.e. whether the improvements are intended to enhance the value of the unit, and/or are required by law, and/or would protect the health, safety, etc.
- In Section (e) line 6 it is repetitive with #10. Recommend clarifying and consolidating.
- In Section (f) what is meant by "instructions for computing"? It seems that the county would provide instructions for computing, and the Capital Improvement Petition would show a breakdown of costs, per the instructions.
- In Section (r) "must" is too restrictive - There are circumstances where the owner may decide not to move forward with the project, even if the county authorizes a capital improvement surcharge (e.g. project financing falls through). Please add clarifying phrase - "Should the owner decide to move forward with the capital improvement surcharge, it must be implemented within XX months”.

Cost of Capital Improvements (Section g - l)

- **Costs** --The total costs of a capital improvement should include cost associated with and the loss of income due to tenant displacement.
- **Interest** should be included for “any loans” – not just “a loan,” as projects often have multiple loans
- **Costs incurred** (section i) – please include employee paystubs / payroll to account for costs associated with employees working on the capital improvements

29.59.01.01 Fair Return:

- The entire section on fair return is far too complex and will be too cumbersome for both housing providers and the County to administer.
- Not all units are the same and should not be subject to the same increases.
- Request to remove all documentation required as it is overbearing and will require enormous amount of work from both Director and landlord.
- Recommend the County establish an industry benchmark, whereby any expenses below that benchmark should automatically be accepted without the need for documentation.
- Also, recommend establishing a formula that provides housing providers with a well-defined and predictable method for obtaining fair return. The draft regs do not accomplish this.
- The regulations do not allow housing providers to submit fair return applications for 24 months following the issuance of an approval or until any remainder of the increase has been applied. A property may not obtain a fair return in consecutive years, and therefore the regulations should allow providers to apply annually.

- If a fair return application is denied, why can we not submit again for 12 months? No appeal process?

29.60.01 Application for a Substantial Renovation Exemption

- **Process and Phasing** - The process of applying for a substantial renovation exemption should also follow the county's multi-step permitting process, as outlined in the capital improvements section above and include the ability to phase substantial renovations. Owners need to have flexibility on how phasing works as well (sometimes it's by building, sometimes phasing is done by floor, sometimes its done by "stack" – depending on the nature of the improvements and minimizing disruptions on residents.) Without phasing, housing providers will take units offline for longer periods of time, further contributing to the housing supply shortage.
- **Building Value** --Please add language to clarify that "the value of the rental housing" means the assessed value of the building and does not include value of the land. This would align the regulations with the RSL.
- **Resident Notification** – As previously stated, notification tenants should be upon approval, not upon filing an application, which is way too early in the process and will serve no useful purpose. It will, however, create anxiety that can be avoided. (Imagine hundreds of tenants trying to move out or break their leases to avoid construction that never even obtains final approvals.)
- Please add language to clarify that owner **employee salaries** associated with the substantial renovation - site employees and centralized support - can be included in the total cost.
- **Define "permanent"** – qualified substantial renovations should be defined as broadly as possible to give the housing provider flexibility and discretion for how investments into the building are made.
- **Timing** --The director must respond in a designated timeframe. If applications become stale, contractors will take other jobs and costs could escalate.
- **Total Cost of Renovations Calculation**: - Please clarify the language to include that any loans are covered – many projects have multiple loans.

On Determining Whether a Substantial Renovation is Intended to Enhance Value of Housing

- All renovations are intended to add value to the property, otherwise housing providers would not go through the time and expense to complete them. Whether the Director views that renovations are intended to enhance the value is entirely subjective. We are unsure why the Director is in a position to interpret the landlord's intent.
- Why have the criteria of health, safety, and energy been included? Will optional or cosmetic changes not be approved as substantial renovation? RSL states that that a substantial renovation is a permanent alteration to the building that is intended to enhance the value of the building. These other criteria listed in the draft regs are immaterial.

- If intent must be included, we recommend that the Exemption application include an intent statement from the housing provider certifying that, based on RSL language:
  "The substantial renovation includes permanent alterations that are intended to enhance the value of the property," This removes risk and decreases administrative burden for the county.

29.60.01.10 Implementation of a Substantial Renovation Exemption:

- **Phasing** --This provision says an owner will obtain exemption after completion of the project. Owner needs to be able to get the exemption as units are renovated, or by phase. Renovations are often phased to minimize disruption on residents and can take five or more years to complete on one property. First phase units are renovated and re-rented years before the last phases. Sometimes the last phases may not be completed at all, if customer preference changes or market forces intervene. The owner should be able to file for exemption as renovated units are brought online again, at the completion of each phase. See previous comments.

29.61.01.01 Applicable Fees

- **Internet or Cable Television**: As drafted, the resident cannot be charged anything greater than total cost of service divided by actual units on the property. This is not practical and will cause residents to lose out on opportunities for hundreds of dollars a year in cost savings. This provision inhibits a housing provider's ability to negotiate bulk internet pricing for residents. For example, we buy internet packages in bulk and negotiate prices lower than a resident could buy the same service on their own. It's a win-win for everyone. We recommend changing this provision to: landlord is prohibited from implementing "any fee or charge for internet or cable television greater than the fee a resident would pay for comparable services."
- **Pet fees** Pets and pet fees are optional expenses for renters. Pet fees pay for extra wear and tear associated with pets and amenities that are important specifically to pet owners – like dog parks and dog wash stations, doggie bag kiosk stations and more. If landlords are not able to charge for pets, then fewer places will allow pets, and this is a detriment to all renters. Our pet-owning residents choose to pay pet fees higher than this provision as an amenity that they enjoy. If you refuse to remove the provision entirely, we suggest that owners be expressly allowed to maintain their current fees and services and pet rent be adjusted annually to the maximum allowable rent increase.
- **Motor Vehicle Parking Fees**:
  - **Remove--**Suggest removing this entirely, as it is a benefit to renters to have the option to pay extra to reserve a particular parking spot of interest. Priority parking is an amenity that many residents want, expect and are willing to pay for. Fees also pay for garage maintenance and other services.
  - **Pricing is not logical**--The methodology and pricing applied by the proposed regulations is inappropriate. There is no logical nexus between the cost of a parking space and the base rent of the unit leased. By this methodology, a renter occupying a 3-bedroom apartment would pay substantially more than a resident of a studio apartment for the exact same parking space.
  - **Conflicts with other policies** --Additionally, the parking fee limits are: (a) in conflict with the county's own parking fee structure and the county's climate goals (incentivizes driving); (b)

very costly for housing provider to implement and county to administer (c) will result in parking shortages (cheaper parking incentivizes households to have more vehicles and therefore need more parking) (d) would limit an owner's incentive to invest in covered parking with solar, for example, because we would not be able to charge a premium for those spaces.

  - **Keep current fees** --Our current parking fees are higher than this provision. If this section remains we suggest that increases be allowed annually to the maximum allowable rent increase.

- **Late Fees:** 30 days is far too long and must be reduced (7). It gives little to no incentive for a renter to pay on time. Renters will use this provision to live rent free for 30 days.
- **Storage Fees:** On site personal storage is an optional amenity that many residents desire, expect and are willing to pay for. Storage comes in all shapes and sizes, from a small package locker to bicycle storage to full rooms, and it is measured by volume, not by SF. Imposing a per square foot cap will be very cumbersome for the provider to implement and the county to administer. The housing provider should have the flexibility to charge what the market will support for storage.

Thank you for your time and consideration. Please contact me at Barbara.frommell@aircommunities.com or 303-325-1216 if you have any questions.

Sincerely,

Barbara Frommell
Senior Director of Government and Community Relations
Apartment Income REIT Corp (AIR Communities)

Comments on the Proposed Montgomery County Regulations on Rent Stabilization

The Apartment and Office Building Association (AOBA) of Metropolitan Washington is the leading non-profit trade association representing the owners and managers of approximately 155 million square feet of commercial office space and 430,000 residential units across the Washington Metropolitan region. Of that portfolio, AOBA members operate more than 60,000 (roughly 72%) of the County's estimated 83,769 rental units. On behalf of its member companies, AOBA submits the comments below on the Proposed Regulations on Rent Stabilization.

Background

AOBA has been actively engaged as part of the Montgomery County community for 50 years. As housing providers, our members have helped the County to achieve its housing goals, creating safe and healthy living spaces and opportunities for all ages, income levels and backgrounds. We have grown along with the County, and we hold a vested stake in seeing the community continue to thrive into the future.

It is with this interest in mind that AOBA opposed the adoption of the Rent Stabilization Law (RSL). Our intention is not to relitigate the merits of rent control. Rather, we offer our comments on the proposed regulations in the context of ensuring maximum flexibility to mitigate the negative impacts the RSL will have on the county.

We appreciate the extent to which DHCA has attempted to develop and implement streamlined and simplified administrative processes toward this end. Many of our member companies have operated under rent control regimes in the District of Columbia, Tacoma Park, and elsewhere nationally. Many of our comments are offered in this context and in the vein of avoiding the same challenges and pitfalls they have encountered in those jurisdictions.

Our first general recommendation, which stems from our members' experience with rent control policies, is to include in the regulations a requirement that the Department of Housing and Community Affairs (DHCA) produce a publicly available annual report on the RSL and share it with the Council. This report should be maintained in electronic form on the DHCA website and provide an overview of how the RSL is being administered, including a section detailing the number and type of petitions filed, whether they are approved or denied, the

reasoning for their approval or denial, and how those statistics compare to historical numbers. The reasoning for this stems from the poor tracking of regulatory performance in both Takoma Park and in DC. Both Takoma Park's Commission on Landlord Tenant Affairs (COLTA) and Washington, DC's (DC) Rental Housing Commission (RHC) do not properly disclose information on regulatory performance in a transparent and easily digestible manner. This is a disservice to housing stakeholders, elected officials, and the public, who should be able see how these regulations are being enforced and use that information to inform future decision-making.

In addition, we call on the County to incorporate flexibility in the regulations in recognition of the acute impact that rent stabilization will have for our older market-rate affordable housing stock and to account for the costs of compliance with government mandates such as the Building Energy Performance Standards (BEPS). Roughly 60% of the County's existing rental housing stock is over 30 years of age. These properties, which comprise an outsized share of the units available to lower levels of area median income in the County, already face the pressure of higher operating costs due to their age and the need for scheduled building system replacements and upgrades. Layer on top of that the new requirements associated with BEPS, and the market may not bear the rent increases required to offset these costs. Great care must be taken to ensure that we do not create a perverse incentive for these properties to be shut down and redeveloped, resulting in significant displacement and a net loss of affordable housing.

The remainder of our comments and recommendations relate to specific sections of the proposed regulations, followed by a summary of AOBA's proposed changes.

Sec. 29.58.01.01 – Rent Increase for New Lease or Lease Renewal

Section 29 – 28 of the County Code requires that housing providers offer two-year lease terms to tenants at each renewal. However, the proposed regulations only allow a single rent increase at the outset of that two-year period. According to the Department, the decision to limit rent increases to once per lease term was made based on the County Attorney's interpretation of Section 29 – 58 (a). The Section states that:

> *(a) In general. Except as provided under subsection (b), upon a lease renewal or new lease agreement, a landlord must not increase the rent of a regulated rental unit to an amount greater than:*
>
> *(1) The base rent; plus*
>
> *(2) The rent increase allowance under Section 29-57; plus*
>
> *(3) Any banked amount; and*
>
> *(4) Does not exceed 10 percent of the base rent.*

This is in direct conflict with the RSL, which explicitly allows **annual** rent increases in Section 29 – 57(a). In addition, Section 29 – 57(c) explicitly makes clear that any rent increase allowance under subsection (a) only remains in effect for a 12-month period.

Moreover, this language is antithetical to the stated purpose of the RSL – to promote

housing affordability by keeping rents lower. If adopted, this regulation will result in higher rent increases in the first year of a multi-year lease, likely at or near the maximum level. Absent the ability to spread such increases over the life of the lease term, housing providers will be forced to frontload rent increases to cover projected costs in outyears, building in flexibility for unknown variables such as inflation. The result will inevitably be rent shock, wherein County residents will be subjected to sharper spikes in housing costs rather than a smother growth curve more commensurate with growth in wages. The proposed restriction on annual rent increases for multi-year leases will ultimately harm Montgomery County renters and lead to greater displacement. We ask that DHCA align Sec. 29.58.01.01 of the proposed regulations with RSL Sections 29 – 57(a) and 29 – 57(c).

Sec. 29.58.01.02 – Rent Increases for Troubled or At-Risk Properties

A significant overhaul of the County's troubled and at-risk property designation, as well as the inspection timelines and processes for adding and removing properties from the list, is required prior to the implementation of rent stabilization. We believe that the goal of property inspections should be to ensure safe, decent, habitable, and code-compliant housing. The existing program does little to advance this objective, and as drafted, 29.58.01.02 of the proposed rent stabilization regulations would tie the hands of housing providers, severely limiting their ability to execute necessary repairs and property maintenance.

The County's existing process for designating properties as troubled or at-risk under Section 29-22(b) of the County code is problematic for several reasons. Currently, properties may be designated as troubled immediately after an initial inspection without any opportunity to cure or even sufficient notice given to the property owner. While Section 29.40.01.04(k) of the Executive Regulations state that "Within 30 days of the Department's designation of a rental property as a Troubled Property, the Department shall provide written notice of such designation to the Landlord," it is not clear that DHCA is providing proper and timely notice of such designations. Additionally, housing providers are faced with a moving target based on average TV (total number of violations) and SV (severity of violations) scores of other relatively comparable properties. These target scores should be disclosed to property owners in advance of inspections. Lastly, some property owners have questioned the validity of the scores, given that some property inspections show more units inspected than exist at the property.

The County currently publishes the Troubled Properties List once a year, which means that a property placed on this list cannot be removed for at least a year. Properties designated as at-risk may take even longer to be removed from the list given that the County Code does not require more frequent inspections for those properties. Instead, the Code gives DHCA the "discretion to inspect these properties more frequently than once every three years."

Rather than designating a property as troubled or at risk after the initial inspection, the County should provide housing providers that have been issued notice of violations sufficient time to cure them. A property should only be designated as troubled or at risk if the number or severity of violations exceeds the threshold established by DHCA after the cure period has

ended. Further, the scoring method for total number of violations should be revamped to discount or exclude altogether tenant-caused violations over which the housing provider has no control. At a minimum, tenant caused violations should include hoarding, overcrowding, blocking safe egress from a unit, creating conditions that cause infestations or mold, or preventing a housing provider from accessing a unit to correct violations.

Finally, we urge the County to reconsider the requirement that properties designated as troubled or at-risk file a fair return petition to obtain rent increases. Approximately 40-percent of properties (309) inspected by DHCA in 2023 were designated as troubled or at risk. The County simply does not have the staff or resources to review and process this number of fair return petitions, and prohibiting these properties from obtaining a fair return is not legally defensible. The enabling language in the RSL stipulates that regulated units designated as troubled or at-risk by DHCA under Section 29-22(b) "must not increase rent in excess of an amount the Director determines necessary to cover costs required to improve habitability." Rather than requiring fair return petitions, the County should set an alternate rent cap for troubled or at-risk properties that allow those housing providers to continue to maintain habitability.

Sec. 29.58.01.03 Allowable Rent Increase for Previously Vacant Lots

This section does not account for units that become vacant due to catastrophic events, such as fires, flooding, or other natural disasters. In these instances, a unit could be offline for more than 12 months while the insurance claim is processed, and repairs are made. Units offline for extended periods of time would not have banked rent since no rent increases have been issued. Furthermore, insurance may cover some, but not all, of the costs of repairing these units. In other instances, housing providers may elect to make upgrades to the units beyond the covered insurance amount. In both cases, the housing provider is incurring costs that must be recovered through the rent. Requiring a housing provider to go through a lengthy capital improvement petition to recover these costs will only lengthen the amount of time that the units are offline, further contributing to the housing shortage. All units vacant due to catastrophic events should be allowed to reset rents regardless of any banked rents and without having to go through a lengthy petition for a capital improvement surcharge.

Sec. 29.58.01.04 – Surcharge for Capital Improvements

Grandfathering

Some housing providers invested in large capital improvements before the RSL was enacted. In many cases, these projects took years of planning, lengthy permitting approvals, and implementation to minimize the impact on tenants. These projects are either now being completed or are still underway. It is neither fair nor appropriate for these projects to have to go through a lengthy capital improvement surcharge petition, and doing so will only delay how long it takes for the units to get back on the market. In recognition of the investment that these housing providers have made in the County, any capital improvement projects that received

permitting approval two years prior to the RSL enactment should automatically be grandfathered in with an automatic surcharge petition approval.

Processing of Petitions

It is critical that the process for petitioning the County for a surcharge to cover the costs of capital improvements be flexible, efficient, and adaptable. AOBA members operating under neighboring jurisdictions' rent control regimes have cited petition processes and reviews so onerous that they discourage applications and thus contribute to a decline in the quality of housing. Absent a predictable, fair, and flexible system for approving surcharges, housing providers will be forced to defer projects and maintain only the baseline level of upkeep necessary to pass inspection.

To that end, the petition process should be tied seamlessly to the permitting process for commercial interior alteration building permits. Project timelines may extend over multiple years, whereas the proposed regulations require that to qualify for a capital improvement surcharge, work must be completed within 12 months. Typically, housing providers will conduct large capital improvement projects in phases or as units turn over to avoid the disruption and displacement of tenants that would occur if all units were taken offline simultaneously. The implementation timelines should be extended to align with estimated project timelines proposed by housing providers for regulated units.

There are several other concerning aspects of the capital improvement surcharge process as currently written. First, there is no set timeline for the Director to review the surcharge petition. Absent a streamlined and efficient review process, housing providers will be discouraged from making capital improvements or incentivized to leave units vacant while awaiting a determination of a petition. AOBA recommends including language stating that the Director has 10 days from receipt of a petition to confirm that it has all the information it needs or request additional documentation. This 10-day period mirrors the requirement in the County's Zoning Ordinance standards for Site Plan applications. Following that 10-day period, the Director should be required to review the petition and make a determination within 30 days. Placing time limitations on petition review will ensure that housing providers are not forced to defer maintenance due to monthslong review periods.

The following is an example of how this timeline and process could work based on the process for commercial interior alteration building permits:

1. Housing provider submits petition application form, along with supporting documentation, including phasing plan and applicable surcharge after each phase;
2. Petition is reviewed by the Department within 10 days to verify that the information provided conforms to the submittal requirements, and the application is compliant with County codes and standards;

3. Within 30 days, the Department issues a preliminary approval of the plan and its phasing schedule;
4. Any change in plans or phasing that occurs during construction must be resubmitted and reviewed for approval by the Department;
5. After construction is completed, final approval of the surcharge is completed based on actual costs; and
6. The surcharge can be implemented within 24 months of approval.

Without this process or a substantially similar one, housing providers will not incur the time and expense of planning for and obtaining permits for capital improvements beyond what is necessary to maintain habitability. Furthermore, a 24-month implementation is needed because rent increases cannot be assessed mid-lease, meaning that surcharges cannot be implemented for tenants on two-year leases within the 12-month time limit in the regulations. For example, a housing provider submits and receives preliminary approval to upgrade tenant's bathrooms and kitchen. (It is common for housing providers to receive these requests in Class A apartment buildings.) After the improvements are complete, but before the final surcharge is approved based on the actual costs, the tenant signs a two-year lease. Under the 12-month implementation timeline in the existing regulation, the costs of these improvements could not be recovered.

The regulations also allow the Director to deny the application if a housing provider fails to file all the necessary documentation or respond in a timely manner. The regulations do not, however, define what constitutes a "timely manner." At a minimum, the housing provider should be given 30 days to respond before the application is closed. The regulations should also allow for an application to be closed pending further action on the part of the housing provider rather than an outright denial. This would allow housing providers to address challenges with capital improvements that may take time to resolve, such as those that require engineering studies, without having to start the application all over again.

Lastly, the regulations require that the housing provider notify all affected tenants of the decision to file a petition within five business days of filing the petition. According to the Director, the rationale for this requirement is to give tenants the opportunity to weigh in on the proposed capital improvements. However, this suggests that tenants can override a housing provider's decision to make capital improvements. This is neither fair nor appropriate given that some of the capital improvements are required to comply with state or local mandates as outlined below. Housing providers should only be required to notify affected tenants of an **approved** capital improvement plan and surcharge.

Definition of Capital Improvements

The regulations lack a clear distinction between capital improvements and normal wear and tear. One way to distinguish between the two would be to establish a dollar threshold for when normal wear and tear becomes a capital improvement. For example, any improvements above $5,000 per unit would automatically qualify as a capital improvement. Another approach

would be to **automatically** make anything that would qualify as depreciable under the Internal Revenue Code a capital improvement. According to IRS Publication 946, improvements must be treated as separate depreciable property[1]. To be depreciable, the property must have a determinable useful life of more than one year. Finally, the Department should allow housing providers to develop an ongoing renovation program that can automatically be applied to units at turnover. This could be done as part of a phasing plan as outlined in the processing of petitions section above. This would give the housing provider the flexibility to quickly renovate and turnover the unit without having to go through a lengthy petition each time.

The regulations also require the capital improvements to be "**structural** alterations to a regulated unit." However, neither the RSL nor the regulations define structural alterations. In fact, very few county or municipal codes define structural alterations. Instead, jurisdictions typically define alterations based on tiers or levels of impact to the affected property. One of the few code definitions of structural alterations can be found in the Janesville, Wisconsin municipal code, which uses the following definition:

> *Sec. 42-237. Structural alteration means any change other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, girders or foundations*[2].

This definition is problematic for several reasons. First, very few capital improvements would fall under this definition, including kitchen and bath renovations. Second, many of the energy efficiency measures required to comply with the Maryland Building Energy Performance Standards are not structural.

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[1] https://www.irs.gov/publications/p946#en_US_2023_publink1000107380

[2] https://library.municode.com/wi/janesville/codes/code_of_ordinances?nodeId=COOR_CH42ZO_ARTVIDE_S42-237STAL

Maryland

Table 6 shows the package of selected measures from Table 4 for Mayland BEPS compliance.

Table 6 EEM package for Maryland BEPS compliance

#	Name	Annual Energy and Cost Savings						Payback with Incentives
		Site EUI Savings (%)	Electric Savings (kWh/Yr)	Natural Gas Savings (therms/Yr)	Direct GHG Emissions Savings ($kgCO_2e/SF$)	Measure Cost /SF	Lifespan (Years)	Simple Payback (Yrs)
1	DHW Piping Insulation	4%	-	3,000	0.25	$0.21	15	4
2	Programmable Thermostats	1%	5,800	700	0.05	$0.30	10	EUL
3	Lighting Upgrade	1%	19,600	-	0.00	$0.31	10	7
4	ENERGY STAR Doors and Windows	14%	23,200	9,300	0.78	$5.84	20	EUL
5	Air Barrier Continuity	6%	4,200	3,900	0.33	$2.85	20	EUL
6	ERV Installation	-2%	-9,500	-900	-0.07	$2.42	15	EUL
7	HVAC System Upgrade	28%	-163,700	25,500	2.13	$16.11	15	EUL
8	Plumbing Upgrade	<1%	-	400	0.03	$0.45	3	EUL
9	Exterior Wall Insulation	12%	12,600	7,900	0.66	$12.19	20	EUL
10	DHW System Upgrade	14%	-213,600	17,500	1.46	$16.26	15	EUL
12	Cooking Fuel Conversion	<1%	-7,700	400	0.04	$3.28	30	EUL
	TOTALS (All Measures)	79%	-329,100	67,700	5.66	$60.22	-	-

Figure 1. Steven Winters Associates Multifamily Case Study 2

Even if the County takes a more expansive view of "structural" by including the impact to walls, doors, and windows, this still excludes HVAC system and domestic hot water (DHW) system upgrades among others. As noted above, these improvements are some of the costliest to make and result in some of the highest energy savings. Maryland BEPS are among the most aggressive in the country and will require nearly all buildings, including those that have invested heavily in energy efficiency, to make some level of upgrades. Without the ability to recover these costs, housing providers in Montgomery County cannot fully comply with the County or State BEPS.

The RSL must be amended to remove the word structural from the type of alterations that constitute capital improvements. In the meantime, the regulations must define structural alterations as broadly as possible. For example, the County could include walls, doors, windows, plumbing, and mechanical systems as structures that qualify as capital improvements.

The second issue is that the regulations make several references to improvements made to regulated rental units rather than the whole property. This could preclude improvements to the corridors, common areas, or complete building systems. The regulations must be amended to "capital improvements are ~~permanent~~ alterations to a regulated rental unit **or property associated with the regulated rental unit**."

Costs & Recoverability

The total costs of capital improvements should also include loss of income due to tenant displacement as well as staff costs associated with the capital improvement. Some of the capital improvements required to comply with BEPS, for example, cannot be completed while the unit is occupied. Similarly, these large capital projects require extensive staff costs to implement. Finally, any capital improvements completed in the last three years should be recovered by a

capital improvements surcharge.

In many cases, the market may not be able to absorb large surcharges needed to comply with legislative mandates. Below is an AOBA member case study that examines the cost of BEPS compliance. This case study does not include PEPCO heavy up costs required to handle the additional electrical load of the improvements, nor does it include any secondary code upgrades triggered by the improvements, financing costs or loss of tenant income.

Electrification Case Study

1960s Vintage 24 unit Garden Style Apartment with Split System (Gas Forced Air / Electric AC)

Scope of Work	Total Cost	Cost/Unit
Electrification - Circuit Upgrades (does NOT include Pepco Service Costs)		
Labor / Materials - 1200 Amp Service Installation	$ 42,420.00	$ 1,767.50
Labor / Materials - Service Feeder Installation	$ 10,500.00	$ 437.50
Labor / Materials - 200 Amp In Unit Subpanel Installation	$ 50,108.33	$ 2,087.85
Labor / Materials - 30 Amp Circuit Installation to support Electric Dryer	$ 7,233.33	$ 301.39
Labor / Materials - 225 Amp Circuit Installation to support Electric Water Heating System	$ 84,000.00	$ 3,500.00
Labor / Materials - Electric Stove, Furnace, and Air Conditioning Circuit Installation	$ 40,110.00	$ 1,671.25
Total Cost - Electricifcation - Circuit Upgrades	**$ 234,371.67**	**$ 9,765.49**
Equipment Replacements		
Building Water Heater Upgrade / Installation	$ 52,150.00	$ 2,172.92
Building HVAC (Heat Pump) Upgrade / Installation	$ 204,501.00	$ 8,520.88
In Unit Stove (GE Electric) Replacements / Labor	$ 17,133.60	$ 713.90
Laundry Room Replacements / Labor (Speed Queen)	$ 9,761.40	$ 406.73
Total Cost - Equipment Replacements	**$ 283,546.00**	**$ 11,814.42**
Total Cost - Circuit Upgrades & Equipment Replacements	**$ 517,917.67**	**$ 21,579.90**

Note: This case study is representative of the cost to upgrade in building circuitry and equipment installation and does **not** include: 1.) infrastructure upgrade costs associated with utility required work to accommodate increased electric demand, 2.) financing costs, 3.) permits and engineers fees, 4.) compliance filings, 5.) general contingency, 6.) equipment and labor inflation contingency, and 7.) construction management fees

Figure 2. AOBA Member BEPS Case Study 2023

This property currently has average rents of $1,500 per month. Assuming a below market County Green Bank subsidized loan of 4% amortized over 10 years, these improvements would require a 14% rent increase. Given this property's age and features, the market may not be able to absorb such a high increase. Yet, the regulations do not allow the housing provider to modify the amount of the surcharge over time. The regulations also only allow one “Certificate of Continuation” (COC) to extend the surcharge. Housing providers should be allowed to modify a

surcharge and apply for multiple COCs until all costs can be recovered. For example, if the property above can only absorb a 10% rent increase initially, then the housing provider should be allowed to increase the surcharge or apply for multiple COCs as needed to recover the full cost of BEPS compliance. Such a practice would align with the goals of the RSL, allowing housing providers to smooth out rent increases over time to avoid displacement and rent shock.

Sec. 29.59.01 – Fair Return

The entire section on fair return is far too complex and will be too cumbersome for both housing providers and the County to administer. Rather than requiring extensive documentation of operating expenses for every petition, the County should establish an industry benchmark. One common operating expense benchmark used by commercial loan underwriters and real estate investors is 35% of Gross Potential Income (GPI) excluding capital improvements. Any expenses below that benchmark should automatically be accepted without the need for documentation. The County could still conduct random audits of housing provider's operating expenses to make sure that they are in line with this benchmark and adjust it over time as necessary. The County could also require actual operating expense information from housing providers that claim operating expenses exceeding this benchmark.

The fair return formula also needs to be reworked. Rather than requiring the housing provider to demonstrate returns commensurate with those in other enterprises with comparable risks, the Department should establish its own baseline for fair return. One possible option is to use a real estate investment risk premium over the 10-year Treasury Note (10UST). The 10UST is the most widely tracked government debt instrument and is frequently used as benchmark for mortgage rates and corporate debt. More importantly, the 10UST is the risk-free return for all long-term investments.

Figure 3. Average Annual 10-year US Treasury Note March 2014 – March 2024[3]

The risk premium, on the other hand, is the minimum return that real estate investors need to earn on their investment to compensate for investment risks.

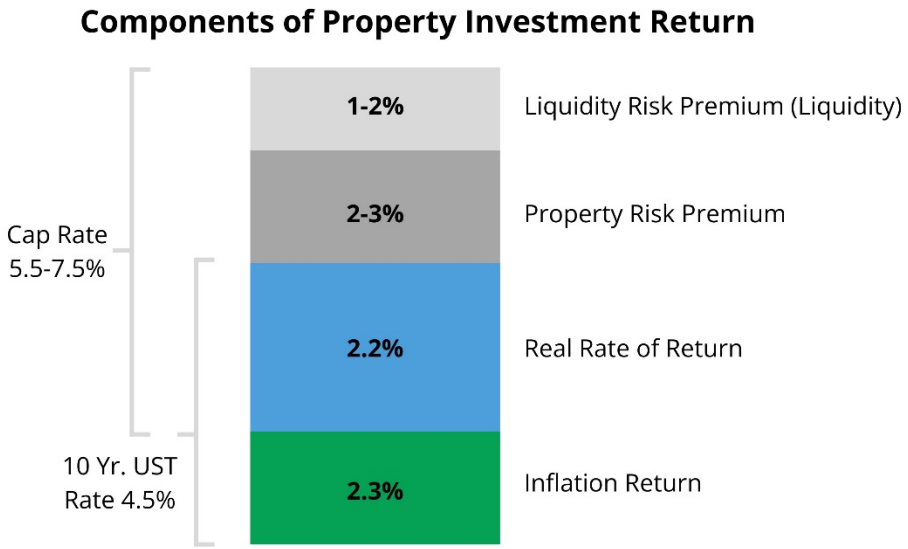

Figure 4. NCREIF NPI Commercial Properties, 1991 – 2016[4]

The liquidity premium is the amount needed to compensate investors for investing in assets, such as real estate, that cannot easily be liquidated. The property risk premium is property specific and may be based on the creditworthiness of tenants, cost of improvements, and market profile. For these regulations, AOBA recommends using a flat risk premium of 4 percent. Combining the 4% risk premium with the 10UST annually would give the County a baseline for fair return.

Below is an example of how this formula would work with a hypothetical property valued at $50 million. This model assumes a 3% annual rent growth and a 3% increase in operating expenses annually. Actual return, also known as capitalization rate, is calculated by dividing Net Operating income (NOI) by property value.

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[3] https://www.macrotrends.net/2016/10-year-treasury-bond-rate-yield-chart

[4] The NCREIF Property Index (NPI) is a quarterly, unleveraged composite total return for private commercial real estate properties held for investment purposes only. All properties in the NPI have been acquired, at least in part, on behalf of tax-exempt institutional investors and held in a fiduciary environment. https://www.naiop.org/research-and-publications/magazine/2017/summer-2017/finance/a-more-relevant-measure-of-risk/

Fair Return Basline Calculation								
Input	2016	2017	2018	2019	2020	2021	2022	2023
Avg 10 Yr T-Bill	1.78%	2.33%	2.62%	2.14%	0.89%	1.45%	2.95%	3.96%
Risk Premium	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Fair Return	5.78%	6.33%	6.62%	6.14%	4.89%	5.45%	6.95%	7.96%
Gross Potential Income (GPI)	$ 4,615,385	$4,753,846	$ 4,896,462	$ 5,043,355	$5,194,656	$5,350,496	$5,511,011	$ 5,676,341
Operating Expenses	$ 1,615,385	$1,663,846	$ 1,713,762	$ 1,765,174	$1,818,130	$1,872,674	$1,928,854	$ 1,986,719
Net Operating Income	$ 3,000,000	$3,090,000	$ 3,182,700	$ 3,278,181	$3,376,526	$3,477,822	$3,582,157	$ 3,689,622
Actual Return (Cap Rate)	6.00%	6.18%	6.37%	6.56%	6.75%	6.96%	7.16%	7.38%
Pass Fair Return?	Yes	No	No	Yes	Yes	Yes	Yes	No

Figure 5. Fair Return Example

Under this formula, the amount of GPI needed to close the gap between the fair return baseline and the actual return would vary by year. This formula could be applied at the unit level by dividing the amount of GPI needed to obtain fair return across all leases expiring in the year that fair return was not obtained. In the example above, fair return is missed in 2017 by 15 basis points. The amount of GPI needed to close this gap is approximately $75,000 resulting in an additional rent increase allowance of 4.63%[5]. This formula provides housing providers with a well-defined and predictable method for obtaining fair return.

Finally, the regulations do not allow housing providers to submit fair return applications for 24 months following the issuance of an approval or until any remainder of the increase has been applied. As noted in the example above, a property may not obtain a fair return in consecutive years. This could be due to a low rent increase allowance, lower-than-expected GPI, higher-than-expected operating expenses, fluctuations in the 10UST, or a combination of these factors. Preventing housing providers from applying for a fair return in consecutive years could constitute a taking that may not be legally defensible.

29.60.01 Substantial Renovation Exemption

The process of applying for a substantial renovation exemption should also follow the commercial interior building alteration permit process as outlined below:

1. Housing provider submits substantial renovation exemption application along with supporting documentation, including phasing plan;
2. Petition is reviewed by the Department within 10 days to verify that the information provided conforms to the submittal requirements, and the application is compliant with County codes and standards;
3. Within 30 days, the Department issues a preliminary approval of the plan and its phasing schedule;
4. Any change in plans or phasing that occurs during construction must be resubmitted and reviewed for approval by the Department;

[5] Formula: $50,000 (property value) x 0.0015 (Fair Return Baseline – Actualy Return) = $75,000

5. After construction is completed, the housing provider submits an affidavit attesting to the completion of the substantial renovation within 30 days; and
6. The Department must determine that the renovations have been completed according to the substantial renovation application within 30 days.

The regulations currently require the substantial renovation exemption to begin when the housing provider files the affidavit of completion and requires DHCA to determine whether the substantial renovation has been completed according to the application. The regulations do not, however, set a timeline for how quickly the DHCA must make this determination. We recommend a 30-day review period and that the exemption period begin **after** the determination has been made, not when the affidavit is filed. Substantial renovations must also include the ability to phase by building or sections of the property. Without phasing, housing providers will take units offline for longer periods of time, further contributing to the housing supply shortage. Furthermore, substantial renovations, like new construction, encourage investment in the County and contribute to the local economy.

The regulation must be amended to clarify that the assessed value used for determining the substantial renovation threshold is specific to the building or improvements to the property and does not include the value of the land. This would align the regulations with the RSL, which states the following:

> *29-56. Rent stabilization definitions. Substantial renovation means permanent alterations to a building that... (2) cost and amount equal to at least 40 percent of the value of the* ***building****, as assessed by the State Department of Assessments and Taxations*

The value of the building, not the land, is what is changing based on the proposed substantial renovation.

Once again, the application notice provision to affected tenants is inappropriate. Allowing tenants to weigh in interferes with the housing provider's property rights and ability to maximize the return on their investment. Housing providers should only be required to notify tenants if a substantial renovation application has been approved (step 4 above).

The regulations give the Director far too much discretion to determine whether a proposed substantial renovation is intended to enhance the value of the rental housing. **All renovations** are intended to add value to the property otherwise housing providers would not go through the time and expense to complete them. The Director claims that this discretion is needed for two reasons. First, the Director would like to prevent housing providers from deferring maintenance over many years to obtain a substantial renovation exemption. The County can already prevent deferred maintenance through robust housing code enforcement. Furthermore, the threshold for obtaining a substantial renovation exemption (40%) is so high that it would take many decades of deferred maintenance to reach.

The second reason that the Director wants this discretion is to prevent substantial renovations from changing the "demographics or affordability" of the property. However, this is

not an appropriate use of the Director's discretion either. The alternative to a substantial renovation i complete redevelopment, which would also impact demographics and affordability or continued disinvestment in housing in the county. Lastly, it is immaterial whether the proposed renovations are optional or cosmetic. Tenants frequently demand higher-end finishes, furnishings and amenities. The only factors that the Director should consider are the total cost of the renovation and supporting documentation.

The section of the regulations on calculating service charges for a loan for a substantial renovation make several references to "a loan." This should be changed to any loans and all forms of debt associated with a substantial renovation should be included. Large capital improvements often require multiple loans or other creative financing, such as intercompany loans.

29.61.01 – Applicable Fees

Application Fees

The regulations state that housing providers "must not assess or collect a fee or charge a fee of more than $50 from any household in connection with the submission of an application for rental of the regulated rental." This conflicts with Maryland Real Property Article Section 8–213(b)(2), which explicitly allows a housing provider to retain the portion of application fees expended for a credit check or other expenses arising out of the application[6]. It is not uncommon for credit and background checks to exceed $100, so a $50 cap is not appropriate. This section of the regulation should be amended to mirror state law allowing actual application costs to be recovered.

Amenity Fees

The regulations prohibit housing providers from assessing or collecting any fee or charge except those on the narrow list of permitted fees. One example of a fee that would be prohibited is an amenity fee, which is common in highly amenitized communities. DHCA claims that amenity fees are high on the list of "junk fees" identified by the Biden Administration. However, neither U.S. Department of Housing and Urban Development's (HUD) letter to the housing industry nor the Federal Trade Commission's (FTC) proposed rule to ban junk fees, specifically call for the banning of amenity fees. Rather, HUD's letter calls for the following[7]:

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[6] https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=grp&section=8-213

[7] https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_048#:~:text=WASHINGTON%20%2D%20U.S.%20Department%20of%20Housing,charges%2C%20or%20add%2Dons.

- *Eliminate duplicative, excessive, and undisclosed fees at all stages of the leasing process such as administrative fees and other processing fees in addition to rental application fees; and*
- *Clearly identify bottom-line amounts that tenants will pay for move-in and monthly rent in advertisements of rental property and in lease documents, including all recurring monthly costs and their purpose.*

The FTC proposed rule makes several references to amenity fees in the hotel or lodging industry, but only one reference specific to the rental housing industry[8]. This lone reference to rental housing amenity fees was specific to the need for greater disclosure of fees and their purpose. AOBA believes that a blanket ban of properly disclosed amenity fees is neither appropriate nor necessary. Should DHCA wish to regulate such fees, it should only do so by placing limits on the amounts that existing fees at the time of the RSL enactment can increase each year. DHCA can also require adequate disclosure to the tenant of the specific purpose or service provided to the tenant by the fee. Should the DHCA wish to enumerate types of amenity fees in the regulations, it should specifically include fees that support fitness centers, business centers, dog parks, aquatic facilities and user fees for club rooms or resident lounges.

Renter Liability Insurance

Another fee that would be prohibited by the regulations is a liability insurance fee. Nearly all housing providers require tenants to purchase renter's insurance that covers both their personal property and personal liability. If a tenant fails to purchase renter's insurance, some housing providers purchase the personal liability insurance portion on the tenant's behalf and charge the tenant a monthly fee for doing so. In fact, there is currently legislation before the Maryland General Assembly that would require a housing provider to purchase these policies on behalf of the tenant[9]

Renter liability policies cover the tenant for any losses or damages that the housing provider incurs because of the tenant's actions. If a tenant causes a fire, for example, the housing provider could recover some of the costs of repairing the damage by filing a claim against the tenant's liability insurance policy. Without a tenant liability policy, the housing provider would be limited to making a claim against their own policy to cover the cost of these damages.

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[8] https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees#citation-94-p77428

[9] HB 564 / SB 725. - Real Property - Residential Leases - Renter's Insurance Requirement

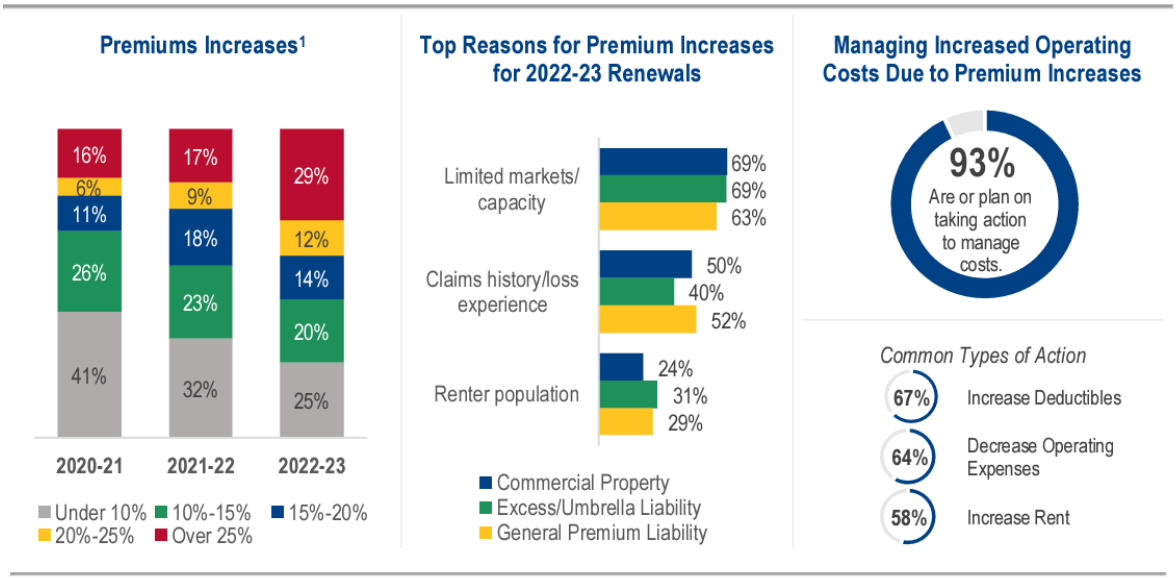

Figure 6. National Leased Housing Association – ndp analytics Survey on Increased Insurance Costs for Affordable Housing Providers 2023

This is problematic because multifamily property insurance rates have been rising by double digits in recent years as shown above[10]. The regulations should be amended to explicitly allow housing providers to charge tenants for purchasing liability insurance on their behalf.

Pet Fees

Security deposits do not adequately cover the costs of housing tenants with pets. At best, the deposit may cover damage to the unit. At worst, the deposits do not cover the costs of maintenance of common areas. For example, landscape areas that are frequently used for dog walking; common area carpets or walls that are stained or damaged; and flea or tick infestations. These costs should not be borne by all tenants and should instead be the responsibility of the tenants with pets. According to the Human Animal Bond Research Institute (HABRI), "72% of residents report that pet-friendly housing is hard to find."[11] Eliminating pet rent will result in more restrictions on pets, which in turn will make pet friendly housing even more scarce.

Parking Fees

Parking fees make housing more affordable by decoupling the cost of parking from the rent. This is particularly true in the County's central business districts where the cost of

[10] https://www.nmhc.org/globalassets/research--insight/research-reports/insurance/ndp-nlha-housing-provider-insurance-costs-report-oct-2023.pdf
[11] https://www.petsandhousing.org/2021-pet-inclusive-housing-report/

structured parking can be 5-10 times the cost of asphalt parking in other areas of the county[12]. According to the County Planning Department, underground parking can cost between $75,000 - $100,000 **per parking space**[13]. Structured parking spaces also require more costly annual maintenance and repairs than surface parking. Yet, the formula for parking does not consider any of these factors. It is also far too restrictive, placing it substantially out of line with market rates and conflicting with the County's climate goals. This is clearly demonstrated by simply comparing the proposed rates with the County's own parking fees, provided below:

PCS Monthly Permit Sticker Rates are as follows:

PARKING DISTRICT	PCS COST
Bethesda	$195
Silver Spring	$132 $195 (ONLY Garage 60 & 61)
Wheaton	$132
Montgomery Hills	$90
North Bethesda TMD	$123

Figure 7. Montgomery County Parking Convenience Sticker Monthly Permit

For reference, the average monthly rents in Silver Spring, Bethesda, Wheaton and North Bethesda are $1,925[14], $2751[15], $1,981[16], and $2,284[17], respectively. A 4% fee for secured covered parking in these areas would cost $77 in Silver Spring, $110 in Bethesda, $79 in Wheaton, and $91 in North Bethesda. This parking fee structure will encourage tenants to have more vehicles per household, which will result in more driving and will make it more difficult to ensure there is sufficient parking for all tenants.

The methodology and pricing applied by the proposed regulations is inappropriate. There is no logical nexus between the cost of a parking space and the base rent of the unit leased. Using this methodology, a renter occupying a 3-bedroom apartment would pay substantially more than

[12] https://cityobservatory.org/the-price-of-parking/

[13] https://montgomeryplanningboard.org/wp-content/uploads/2023/12/SR-ZTA-23-10-Parking-Calculation-of-Required_12-14-23_Revised.pdf
[14] https://www.rentcafe.com/average-rent-market-trends/us/md/silver-spring/
[15] https://www.rentcafe.com/average-rent-market-trends/us/md/bethesda/
[16] https://www.rentcafe.com/average-rent-market-trends/us/md/wheaton/
[17] https://www.rentcafe.com/average-rent-market-trends/us/md/north-bethesda/

a tenant of a studio apartment for the exact same parking space. Rather than limiting the amount of the parking fee, the County should instead limit the amount that existing parking fees can increase each year. To the extent that a housing provider chooses to build additional parking, whether structured or otherwise, it should be treated as a capital improvement that can be recovered via a surcharge.

Properties with surface parking that did not have a parking fee prior to the RSL's enactment should be allowed to establish parking fees based on number of vehicles per household. For example, DC's Residential Parking Permit program charges households $50 for the first vehicle, $75 for the second vehicle, $100 for the third vehicle, and $150 for each additional vehicle[18]. These graduated parking rates help ensure that there is sufficient parking for all tenants and would be consistent with the County's climate goals.

Internet Fees

The restriction on internet or cable television fees is also problematic. Dividing the cost of these services by the total number of units does not work because every property has vacant units. This provision would also discourage housing providers from negotiating bulk pricing for their tenants. The language should be changed to the following:

> *(g) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television* ***greater than the fee a resident would pay for comparable services.***

If a property is only serviced by one internet service provider, the housing provider may be able to negotiate bulk pricing for faster service for the same rate that the tenant would be paying for slower service.

Lost Key & Lockout Fees

The $25 lockout and lost key fees are too low, and over time inflation will erode their value. Housing providers should instead be able to recover the actual costs spent to replace locks and lost keys. To prove actual costs, the County can ask the housing provider to provide receipts from a locksmith or other third-party contractor. If the work is done by in-house property maintenance staff, the County can ask the provider to provide material and hourly personnel costs, including overtime if after hours or on-call.

[18] https://dmv.dc.gov/service/residential-parking-permits

Summarized Proposed Changes and Amendments

General

- **Require DHCA produce an annual report** to be made publicly available for download on its website and submitted to the Council. The Report should provide an overview on how the RSL is being administered, including a section detailing the number and type of petitions filed, whether they are approved or denied, whether a determination was made within 30 days, the reasoning for the determination, and how those statistics compare with submissions and determinations in prior years.
- **Incorporate flexibility as much as possible into the regulations** in recognition of the acute impact the RSL will have on older market-rate affordable housing and to account for the cost of government mandates such as State and County Building Energy Performance Standards (BEPS).

Sec. 29.58.01.01 – Rent increases for New Lease or Lease Renewal

- **Strike Subsection (b).** This is in direct conflict with RSL, which explicitly allows *annual* rent increases in Section 29 – 57(a). In addition, Section 29 – 57(c) explicitly makes clear that any rent increase allowance under Subsection (a) only remains in effect for a 12-month period.

Sec. 29.58.01.02 – Rent Increases for Troubled Properties

- **Amend Sec. 29.58.01.02** to strike the requirement that housing providers submit a fair return petition.
- **Further Amend Sec. 29.58.01.02** to create an alternate rent cap for troubled and at-risk properties.

Troubled and At-Risk Properties Regulations

AOBA recommends separate amended regulations be promulgated in Section 29-22(b) of the County Code prior to the rent stabilization law's implementation. At a minimum, these regulations should:

- **Ensure that property owners are notified immediately upon inspection of a troubled or at-risk designation.**
- **Require the agency to publish targeted TV and SV scores** upon which properties will be evaluated.
- **Provide properties with a reasonable time to appeal such designation or cure violations** prior to their placement on the troubled or at-risk lists.

- **Increase inspection frequency** to allow properties to be reinspected within 30 days of requesting such inspection to be removed from the list upon remedying any violations.
- **Revamp scoring methodology to discount or exclude tenant-caused violations for which the housing provider has no control**, including hoarding, overcrowding, blocking safe egress from a unit, creating conditions that cause infestations or mold, or preventing a housing provider access to a unit for the purposes of addressing such conditions.
- **Update and maintain the troubled and at-risk property lists in real-time.**

Sec. 29.58.01.03 – Allowable Rent Increase for Previously Vacant Lots

- **Amend Subsection (c) to incorporate the following language:** A housing provider may set a base rent upon return to the market where such unit was vacated due to catastrophic events.
- **Define catastrophic events as any event that leads to forced vacancy and requires an insurance claim.**

Sec. 29.58.01.04 – Surcharge for Capital Improvements

- **Amend Subsection (b)** to mirror the permitting process for commercial interior building permits. Project timelines typically extend over multiple years, making the current requirements that work must be completed within 12 months impractical.
- **Strike language in Subsection (b)(2)** requiring notification of affected tenants of the decision to file a petition. Housing providers should only be required to notify affected tenants of an ***approved*** capital improvement plan and surcharge.
- **Amend Subsection (b)(3)** to include language stating that the Director has 10 days from receipt of a petition to confirm that it has all the information it needs or request additional documentation. This 10-day period mirrors the requirement in the County's Zoning Ordinance standards for Site Plan applications.
- **Additionally amend subsection (b)(3)** to require that the Director must make a determination within 30 days of receipt of a complete petition. Placing time limitations on petition review will ensure that housing providers are not forced to defer maintenance due to monthslong review periods.
- **Strike language in Subsection (d)** stipulating that a property owner may recover the cost of an improvement only if that capital improvement was immediately necessary to maintain the health or safety of the tenants.
- **Amend Subsection (e)(1)** to include a definition of structural alterations. This definition should be as broad as possible to include walls, doors, windows, plumbing, and mechanical systems. This could preclude improvements to corridors, common areas, or complete building systems.

    - This is of particular importance as it relates to compliance with the County's newly adopted Building Energy Performance Standards, which may require the employment of technologies and other investments that may not qualify as "permanent structural alterations," or which may include improvements to the building and common areas as opposed to the unit itself.
- **Eliminate language in Subsection (e)(6)** requiring that the capital improvement petition include documentation that the petitioner has obtained required governmental permits and approvals.
- **Strike language in Subsection (r)** requiring that a capital improvement surcharge must be implemented within 12 months of the date of issuance.
- **Amend Subsections (t-v)** to allow for more than one certificate of continuation (COC) and remove the requirement for notice to be provided to the tenant of such a petition's submission.
    - This is particularly applicable to market-rate affordable housing where the market simply may not bear the level of increase required to cover the costs of significant capital improvement projects all at once. Failure to provide the flexibility necessary to spread such costs over a longer duration will result in pressure on such properties to consider redevelopment, resulting in significant displacement and an overall loss of affordable housing stock.
- **Provide automatic approval or reduced scrutiny for certain qualifying improvements at turnover of a unit.** Such improvements that fall under this automatic approval should be any improvement that may be depreciable under the Internal Revenue Code.
- **Add to this section the ability for housing providers to self-certify the completion of capital improvements with a minimum level of documentation and receipts**. Where abuse of such self-certification is suspected, the agency retains the authority to request additional information or conduct audits to determine the validity of a petition.
- **If a petition submission is incomplete, require the Director to provide a 30-day notice to the housing provider of a request for missing documentation disclosing the types of documents that are missing.** If no additional documentation is provided or is provided after that 30-day period, the petition may be denied for failure to provide necessary documentation.
- **Add a subsection applying an automatic surcharge petition approval for capital improvement projects that received permitting approval two years prior to the RSL enactment** in recognition of the investment housing providers have made in the County. Such projects may have been conducted in good faith with the intent of spreading costs over a longer time period (thus keeping rents lower for residents), without knowledge of the impending rent caps and regulations.

Sec. 29.59.01 – Fair Return Petitions

AOBA recommends the following changes to the process:

- **Strike Sec. 20.59.01.03(a) and replace** with a fair return formula that utilizes a Gross Potential Income (GPI) system calculated by adding a 4% risk premium to the 10-year Treasury Note (10UST).
- **Amend Sec. 29.59.01.03(b)** by eliminating the limitation on future fair return requests and explicitly allowing for fair return requests in consecutive years.
- **Amend Section 29.58.01.04** to provide a measure of consistency and accountability in the petition process. AOBA recommends the following language:
    - Require that the Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed <u>within 20 days of the receiving such application.</u>
- **Strike Sec. 29.59.01.05(b).** Such notice is unnecessary and superfluous as the tenant has no role in determining the validity of the requested improvements and must already be notified of any rent increase approved by the Director 90 days before such an increase is to take effect.
    - **If the notification requirement is preserved, electronic delivery of such notification should be explicitly allowed.**
- **Replace Section 29.59.01.06** with an industry expense benchmark and establish 35% of Gross Potential Income (GPI) as that benchmark. The immense amount of documentation required would make this process overly complex and is not practical for County or for housing providers.

Sec. 29.61.01 – Substantial Renovations

- **Amend to allow for phasing of substantial renovations by building or sections of the property.** Without phasing, housing providers will take units offline for longer periods of time, further contributing to the housing supply shortage. Furthermore, substantial renovations, like new construction, encourage investment in the County and contribute to the local economy.
- **Define substantial renovation and align with the RSL, which states the following:**

  29-56. Rent stabilization definitions. Substantial renovation means permanent alterations to a building that... (2) cost and amount equal to at least 40 percent of the value of the ***building****, as assessed by the State Department of Assessments and Taxations*

  The value of the buildings is what is changing, not the value of the property.
- **Amend section 29.60.01.03** to include any loans and all forms of debt associated with a substantial renovation. Large capital improvements often require multiple loans or other creative financing, such as intercompany loans.

- **Amend Sec. 29.60.01.09** by removing the Director's discretion to determine whether a proposed substantial renovation is intended to enhance the value of a building. All renovations are intended to enhance the value of a property.
- **Additionally, strike Sec. 29.60.01.09(1-4)** and replace it with the following language: The Director shall consider the total cost of the renovations and the supporting documentation provided.
    - All renovations are intended to add value to the property otherwise housing providers would not go through the time and expense to complete them. Furthermore, a County inspection process already exists to assess the physical condition of buildings.

Sec. 29.60.01.01 – Applicable Fees

- **Regulate all listed fees based on the annual allowable increase formula of CPI + 3 percent with a cap of 6 percent established in the RSL.** The base fee should be the fee charged at the time of the RSL's enactment.
- **Amend Subsection (a)** to mirror state law under Maryland Real Property Article Section 8–213(b)(2)
- **Amend Subsection (b)** to allow for pet fees.
    - Security deposits do not adequately cover the costs of housing tenants with pets. Eliminating pet rent will result in more restrictions on pets, which in turn will make pet friendly housing even more scarce.
- **In Subsection (h), strike the current formula that assigns parking fees by unit size** and align allowable parking fees with the County's own structured parking fee rates.
- **Amend Subsections (d) and (e)** to allow housing providers to recover the actual costs spent to replace locks and lost keys.
- **Change Subsection (g) to the following:** *(g) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television* ***greater than the fee a resident would pay for comparable services.***
- **Add Subsection (j)** to include properly disclosed amenity fees.
    - A blanket ban of such fees is neither appropriate nor necessary. Should the department wish to regulate these fees, it should do so by placing limits on the amounts that existing fees at the time of the RSL enactment can increase annually. Amenity fees can also require adequate disclosure to the tenant of the specific purpose or service provided to the tenant by the fee.
- **Add Subsection (l)** to explicitly allow housing providers to charge tenants for purchasing insurance on their behalf.
    - Nearly all housing providers require tenants to purchase renter's insurance that covers both their personal property and personal liability. If a tenant fails to purchase renter's insurance, some housing providers purchase the personal

liability insurance portion on the tenant's behalf and charge the tenant a monthly fee for doing so.

SUGGESTED RENT STABILIZATION REGULATIONS

By: Arnold Polinger, President
Polinger Company
February 28, 2024

1. Surcharge for Capital Improvements
    a. Provide regulations to define the difference between routine maintenance and capital improvements on turnover of vacated units. Two possible approaches:
        i. If the cost of turning over a vacant unit is greater than $5,000 (or $5,000 per unit if more than one unit is involved), then it would qualify for the surcharge.
        ii. Items of the improvement that are depreciable under GAAP would qualify for the surcharge, but not items that are considered maintenance under GAAP.
    b. Provide regulations to allow for retroactive application for capital improvement surcharge for improvements that were made in the past three years prior to the enactment of rent control at a time landlords were unaware that rent controls would be imposed.
2. Fair Return
    a. Basing Fair Rate of Return by using the assessed value as the building "cost" is not appropriate. This would create a downward cycle of decreasing value and income – as net income decreases under rent control, the assessment will decrease, thereby validating a lower fair return, etc.
        i. For example, assume the building is assessed at $75 million in the 2024 tax year prior to rent control, but, because of the effects of rent control on both income and investor's perception of the market, the assessment has dropped to $50 million in the 2026 tax year (yes, I believe this is a realistic result). To base fair return on the $50 million figure in 2026 is not fair, given that the value has been reduced so much by the effects of the rent control law itself.
    b. Two possible reasonable alternative approaches:
        i. For the building "cost" part of the equation, use the assessed value just prior to the commencement of rent control, increased annually by the percentage increase in the CPI.
        ii. Set Fair rate of return as the Base Year net income (the net income prior to commencement of rent control or the average of the three preceding years) increased by the percent increase in the CPI from that time until the Current Year.
3. Fees
    a. Amend the application fee limit to be the actual cost of third-party processing (e.g. credit reports) plus a $50 administrative fee.
    b. Parking should not be regulated. Parking is not a fee, but a charge for an additional service that the tenant can choose whether he/she wants it or not.
    c. If it is concluded that parking rates should be regulated, then start with the parking rate in effect prior to rent control going into effect and allow the same percentage increases as is allowed for base rent. Alternatively, use the parking rates in effect for other similar types of parking facilities in the adjacent area.

d. Pet Fees should be allowed to defray the additional costs of having pets in an apartment.
e. If rent is late more than one month, allow multiple late fees. Otherwise, the tenant has no incentive to bring the rent current, and some tenants are 6-12 months delinquent before they can be evicted.

Bruton, Scott

From: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Sent: Wednesday, April 10, 2024 10:54 AM
To: Bruton, Scott
Subject: Proposed clarifications - Montgomery County Draft Regulations on Rent Stabilization

[EXTERNAL EMAIL]

Director Bruton,

Thank you again for inviting the apartment industry to weigh in on the draft Rent Stabilization regulations. As you'll recall, I participated in a conversation with you and AOBA on February 12th, during which we discussed the importance of applying the Substantial Renovation Exemption appropriately to phased renovation projects. This is an extremely important issue to us, because we have been planning and designing a substantial renovation to one of our Montgomery County properties for two years and are ready to submit a permit application. The project entails a $100m+ investment into the building including much needed updates to the life/safety and energy systems within the building, as well as improvements to the amenity areas and the apartments themselves.

Per your request, I submitted comments on the draft regulations on February 29th. Since then, Ballard Spahr submitted "consolidated industry comments," which were not forwarded to us review beforehand.

The consolidated comments go a long way to incorporate phased projects into the Substantial Renovation Exemption, however, there are two points where we recommend the language to be clarified to enable continued investment into multifamily housing in Montgomery County:

1. That the 40% threshold applies to the entire multi-phase total project cost *and does not have to apply individually to each phase of the project* for that phase of the project to be approved for a substantial renovation exemption.
    a. This is a really important detail to clarify - in multi-phase projects where the total project cost reaches the 40% threshold, it's highly unlikely that every single phase will reach the 40% threshold by itself, given that some of the more expensive work may have to be lumped together into one or more phases. For example, in a nine phase project on a high rise, you would not replace 1/9th of the roof in each phase – you would replace the entire roof in one phase, thereby making that one phase more expensive and the other phases less expensive.

2. That the applicant can request approval for a final exemption by phase *and implement the exemption at the completion of each phase*.

I believe based on our February 12 conversation that the county and industry are in alignment on these issues, and so our request is simply to make the language in the final regulations crystal clear to avoid confusion and process delays. The two provisions where Ballard Spahr's proposed edits lack clarity are 29.60.01.01 and 29.60.01.10. We hope to see final proposed regulations that address the two above points. I'd be happy to jump on a call to discuss further or propose legal language, if that would be helpful.

Thank you!

Barb

Barb Frommell

Senior Director Government and Community Relations
Apartment Income REIT Corp (AIR Communities)
303-325-1216
Barbara.Frommell@AIRcommunities.com

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From: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Sent: Thursday, February 29, 2024 2:43 PM
To: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Subject: RE: Comments on the Montgomery County Draft Regulations on Rent Stabilization

Dear Ms. Frommell,

Thank you for submitting rent stabilization regulations comments. AIR Communities' comments will be added to the public record and considered as we revise the regulations.

Best,
Scott Bruton

Scott Bruton, PhD
Director
Department of Housing and Community Affairs

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For questions about services provided by Montgomery County, or to file a complaint, please contact MC311 at 3-1-1 or (240) 777-0311.

From: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Sent: Thursday, February 29, 2024 4:07 PM
To: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Subject: Comments on the Montgomery County Draft Regulations on Rent Stabilization

[EXTERNAL EMAIL]

Director Bruton,

Thank you for meeting with us, AOBA and other industry partners on February 12th to listen to our feedback on the draft Rent Stabilization recommendations. Attached are our formal written comments on the draft regulations. Please feel free to contact me directly if you have any questions or would like additional clarification regarding our comments.

Sincerely,

Barb Frommell

Barb Frommell
Senior Director Government and Community Relations
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For more helpful Cybersecurity Resources, visit:
https://www.montgomerycountymd.gov/cybersecurity

Bruton, Scott

From: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Sent: Friday, April 12, 2024 8:55 PM
To: Bruton, Scott
Subject: RE: Proposed clarifications - Montgomery County Draft Regulations on Rent Stabilization

[EXTERNAL EMAIL]

Hi Scott,

Thanks for your questions. I want to make sure I answer them directly so I've copied them here **in bold**:

Could you explain in more detail how you would propose that exemptions be allowed in phases for a project?

1. For a multiphase project, the Substantial Renovation Application would include a phasing plan showing the scope and cost of each phase and how the total cost of renovation of all phases would, collectively, be equal to or greater than 40% of the total assessed value of the building.
2. If the project meets the County's criteria, the Director would issue "Preliminary Exemption Approval" for the entire project.
3. After Phase 1 is complete, the landlord submits a Final Reconciliation Application for Phase 1 identifying actual costs incurred, actual work completed in Phase 1, and other supporting documentation ("SR Reconciliation Package"). At this point, the Director reviews the SR Reconciliation Package to determine if an exemption is approved for the units in Phase 1 only. *I believe the crux of your question is at this step - what criteria should the Director use to determine whether an exemption for Phase 1 units should be approved? We propose either of the following:*
    a. Option 1: If the completed work and costs materially align with the approved preliminary phasing plan, then the exemption for Phase 1 units would be approved and immediately effective.
        i. This approach would allow for each phase's contribution toward the 40% threshold to be inconsistent, or "lumpy". (e.g. some phases could include more expensive work than other phases, and not every phase has to reach the 40% threshold by itself.)
        ii. The benefit of this option is that it provides the most flexibility from a construction perspective.
        iii. However, if later phases of the project aren't implemented, then the intent of the 40% threshold may not have been met.
    b. Option 2: If the Phase contributes its "fair share" toward the 40% threshold, then the exemption for the phase would be approved. So, in order to be approved for exemption, for each phase, the owner would have to provide evidence that: Phase Cost / (Total Assessed Value / # Phases) => 40%
        i. This option assumes that each phase consistently makes progress toward the 40% threshold.
        ii. This option provides less flexibility from a construction perspective but provides peace of mind that the overall project is on track to meet the 40% threshold.
        iii. Even if later phases of the project are not implemented, the 40% threshold has been met.
4. Repeat step 3 for subsequent phases until the overall project is complete.

Our recommendation would be to use Option 1 as the criteria, because construction is complex, and it's difficult to spread costs evenly across phases. However, we think Option 2 is workable and much better than requiring that a project be fully complete before implementing the exemption, for reasons stated below.

We are not able to approve an exemption for a proposed project total because there is the chance that the total project will not be completed and the total project costs not actually spent.

Mandating that a multi-phased project must be fully completed to be exempted goes against the county's best interest. Phased substantial renovation projects, and implementing the exemption by phase, minimize impacts on residents. Additionally, only allowing exemption at the end of a phased project would not align with how major renovations are financed. Financing costs are felt by owners on day one of a project. Owners would have to carry those financing costs without the benefit of the exemption until the end of the project. This would incentive owners to implement full building renovations (rather than phased) to more quickly qualify for the exemption, which would cause considerable disruption to residents.

It's true that there is a chance that the total phased project will not be completed and the total project costs not actually spent. However, even a partially completed renovation is a *good* thing for the county's housing market. When a portion of a large apartment complex gets renovated (and those units are approved for an exemption), it creates diversity in the housing stock and offers renters a range of housing options and price points. Choice and diverse communities are a good thing. If only 50% of a phased project was completed, the applicability of the exemption by phase would ensure that only renovated units are exempted while the uncompleted units remain unexempt.

In our proposal for a multi-phased project, the county would be providing *Preliminary* Approval for the total multi-phase project after reviewing the Substantial Renovation Application (including the phasing plan), and then *Final* Approval as each phase is completed (only for the units in that phase), when actual costs for each phase are known.

Using our anticipated renovation project as an example, here is some further detail regarding how the ability to implement the exemption after each phase has HUGE implications for renters:

1. <u>Implementing the exemption after each phase incentivizes small phases that minimize resident displacement:</u> Our typical approach to planning renovations of large apartment complexes includes phasing the project to have the least possible impact on our residents. At our Montgomery County property, we plan to implement the renovations in nine phases over four years, renovating 60 units at a time, and these units will be vacant for only four months each. During the four months while renovations are occurring, we can accommodate residents from these apartments elsewhere in the building or in one of our nearby buildings. So - although the temporary relocation will be disruptive – at least our residents aren't being completely displaced from their community. Once the units are renovated, we would seek to implement the substantial renovation exemption after each phase as we re-lease those units, so that we don't have to carry financing costs for years while the remainder of the building is being renovated. The rest of the building would remain rent stabilized until additional phases are completed and the exemption applied by phase.

2. <u>Implementing the exemption at the end of a large renovation project incentivizes full-building renovations that cause significant displacement and exacerbate housing shortages</u> - If the substantial renovation exemption can only apply after the entire project is completed, then an owner's priorities would shift. We would seek to complete the renovation as quickly as possible, because then we minimize the time that we are carrying financing costs. In this case, we would vacate the entire building (500+ apartments) for 2+ years so that we can complete the renovations faster. This could result in the displacement of hundreds of people (as we would not be able to accommodate this many residents in our nearby buildings). And instead of 60 units of housing being offline for 4 months at a time, the county would lose ~500+ units of housing for 2+ years.

I hope this answers your questions. As you can tell, this is a really important issue to get right in the regulations, so thank you for being willing to hear me out.

Our team would be happy to meet with you early next week if you would find that to be helpful.

Thank you and have a nice weekend!

Barb

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From: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Sent: Friday, April 12, 2024 2:29 PM
To: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Subject: RE: Proposed clarifications - Montgomery County Draft Regulations on Rent Stabilization

EXTERNAL EMAIL

Hi Barb,

Could you explain in more detail how you would propose that exemptions be allowed in phases for a project? We are not able to approve an exemption for a proposed project total because there is the chance that the total project will not be completed and the total project costs not actually spent.

Thanks,
Scott

Scott Bruton, PhD
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For questions about services provided by Montgomery County, or to file a complaint, please contact MC311 at 3-1-1 or (240) 777-0311.

From: Bruton, Scott
Sent: Friday, April 12, 2024 4:18 PM
To: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Subject: RE: Proposed clarifications - Montgomery County Draft Regulations on Rent Stabilization

Hi Barb,

Thank you for sharing these comments to augment the consolidated industry comments. We will review and consider them.

Best,
Scott

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1401 Rockville Pike, 4th Floor • Rockville, MD 20852

From: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Sent: Wednesday, April 10, 2024 10:54 AM
To: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Subject: Proposed clarifications - Montgomery County Draft Regulations on Rent Stabilization

[EXTERNAL EMAIL]

Director Bruton,

Thank you again for inviting the apartment industry to weigh in on the draft Rent Stabilization regulations. As you'll recall, I participated in a conversation with you and AOBA on February 12th, during which we discussed the importance of applying the Substantial Renovation Exemption appropriately to phased renovation projects. This is an extremely important issue to us, because we have been planning and designing a substantial renovation to one of our Montgomery County properties for two years and are ready to submit a permit application. The project entails a $100m+ investment into the building including much needed updates to the life/safety and energy systems within the building, as well as improvements to the amenity areas and the apartments themselves.

Per your request, I submitted comments on the draft regulations on February 29th. Since then, Ballard Spahr submitted "consolidated industry comments," which were not forwarded to us review beforehand.

The consolidated comments go a long way to incorporate phased projects into the Substantial Renovation Exemption, however, there are two points where we recommend the language to be clarified to enable continued investment into multifamily housing in Montgomery County:

1. That the 40% threshold applies to the entire multi-phase total project cost *and does not have to apply individually to each phase of the project* for that phase of the project to be approved for a substantial renovation exemption.
    a. This is a really important detail to clarify - in multi-phase projects where the total project cost reaches the 40% threshold, it's highly unlikely that every single phase will reach the 40% threshold by itself, given that some of the more expensive work may have to be lumped together into one or more phases. For example, in a nine phase project on a high rise, you would not replace 1/9th of the roof in each phase – you would replace the entire roof in one phase, thereby making that one phase more expensive and the other phases less expensive.

2. That the applicant can request approval for a final exemption by phase *and implement the exemption at the completion of each phase*.

I believe based on our February 12 conversation that the county and industry are in alignment on these issues, and so our request is simply to make the language in the final regulations crystal clear to avoid confusion and process delays. The two provisions where Ballard Spahr's proposed edits lack clarity are 29.60.01.01 and 29.60.01.10. We hope to see final proposed regulations that address the two above points. I'd be happy to jump on a call to discuss further or propose legal language, if that would be helpful.

Thank you!

Barb

_____

Barb Frommell
Senior Director Government and Community Relations
Apartment Income REIT Corp (AIR Communities)
303-325-1216
Barbara.Frommell@AIRcommunities.com

AIR COMMUNITIES

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From: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Sent: Thursday, February 29, 2024 2:43 PM
To: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Subject: RE: Comments on the Montgomery County Draft Regulations on Rent Stabilization

Dear Ms. Frommell,

Thank you for submitting rent stabilization regulations comments. AIR Communities' comments will be added to the public record and considered as we revise the regulations.

Best,
Scott Bruton

Scott Bruton, PhD
Director
Department of Housing and Community Affairs

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For questions about services provided by Montgomery County, or to file a complaint, please contact MC311 at 3-1-1 or (240) 777-0311.

From: Frommell, Barbara (Denver) <Barbara.Frommell@aircommunities.com>
Sent: Thursday, February 29, 2024 4:07 PM
To: Bruton, Scott <Scott.Bruton@montgomerycountymd.gov>
Subject: Comments on the Montgomery County Draft Regulations on Rent Stabilization

[EXTERNAL EMAIL]

Director Bruton,

Thank you for meeting with us, AOBA and other industry partners on February 12th to listen to our feedback on the draft Rent Stabilization recommendations. Attached are our formal written comments on the draft regulations. Please feel free to contact me directly if you have any questions or would like additional clarification regarding our comments.

Sincerely,

Barb Frommell

Barb Frommell
Senior Director Government and Community Relations
Apartment Income REIT Corp (AIR Communities)
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For more helpful Cybersecurity Resources, visit: https://www.montgomerycountymd.gov/cybersecurity

Bruton, Scott

From: Alex Vazquez <avazquez@wearecasa.org>
Sent: Wednesday, February 28, 2024 1:18 PM
To: Bruton, Scott
Cc: Devorah Stavisky; Eden Aaron; Hawksford, Jacqueline "Jackie"; jriedel; Laura Wallace
Subject: CASA-Coalition Comments on Montgomery County Rent Regulations
Attachments: CASA - Coalition Comments on Montgomery County Rent Stabilization Regulations.pdf

[EXTERNAL EMAIL]

Director Bruton-

Attached to this email are our final comments on behalf of CASA and the signed coalition partners and organizations regarding the Montgomery County Rent Regulations. Please do not hesitate to contact me with any questions or concerns.

All the best,

Alex Vazquez | Director of National Organizing
Cell: 240.722.7177
www.wearecasa.org

February 27, 2024

Scott Bruton
Department of Housing and Community Affairs
Montgomery County, Maryland
101 Monroe Street
Rockville, MD 20850

Dear Mr. Bruton:

We write to submit our comments on the proposed regulations to Montgomery County's rent stabilization law. Thank you for your time and commitment to comprehensively crafting regulations that implement the County Council's intent.

After discussing briefly with you at a stakeholder meeting, the undersigned organizations have a number of comments that DHCA should consider in revising the regulations.

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I. General Comments

Overall, the regulations effectively and accurately convey the intent of the County Council in passing Bill No. 15-23, the Rent Stabilization law. The main thrust of both the passed legislation and regulations is to place meaningful limits on rental increases and improve affordability for renter households, while also guaranteeing a strong and profitable housing market for landlords. As advocates for renters, we support making rents affordable to the maximum extent that the new law allows. We also recognize that exemptions are necessary in any comprehensive rent stabilization scheme. Below are some of our general comments about the regulations.

A. Positive Feedback

We appreciate DHCA's thoughtful approach to these regulations. Below we identify the areas that should remain substantially the same, subject to our specific comments below.

1. Capital Improvements

The regulations on capital improvements are reasonable, flexible exemptions to rent stabilization policies. The regulations carry out the Council's intent of guaranteeing a profitable housing market but with reasonable limitations on rent increases for tenants. Although it remains to be seen whether landlords will find unforeseen loopholes to unnecessarily increase rents, these regulations are a good start to closing those loopholes.

We are particularly pleased with Regulation 29.58.01.04(i), regarding the requirement that the costs for a CIP be objectively supported and commercially reasonable. The reduction based on grants specifically designed for a substantial improvement is also important to keep.

Similarly, Regulation 29.59.01.06(b)(2), regarding exclusions from "reasonable and expected operating expenses" in Fair Return Petitions, are appropriate and designed to safeguard against loopholes that may be engineered by certain landlords.

2. Fee Regulation

We commend DHCA for issuing strong limitations on fees, while also allowing reasonable, market-based fees that are consistent with state law. As renters' advocates, we have seen landlords abuse fees to the tune of tens of thousands of dollars per unit, and in some cases into the hundreds of thousands of dollars per property. The private bar is not capable of handling all the potential litigation arising from these excessive and abusive fees; meaningful legislative and executive action to limit fees will go a long way to protecting renters against such deceptive and abusive practices.

We also believe that strong limitations on fees are the only way to have an effective rent stabilization scheme. As we witnessed from the temporary rent stabilization laws in Montgomery County, Prince George's County, and other jurisdictions during the COVID-19 pandemic, landlords easily evaded the intent of these laws by simply generating, increasing, and assessing fees on tenants. Landlords often claimed that these fees *were not* "rent" for the purposes of these rent increase laws but claimed that they *were* "rent" for the purpose of collecting them in court or when applying tenants' payments to them—without a court having determined their legitimacy—due to their inclusion as definitionally "rent" according to the lease agreements. These regulations attempt to close that enormous loophole, and we appreciate the effort.

In particular we appreciate the elimination of all fees not specifically exempted. Structuring the regulations in this way assures both landlords and tenants that they cannot invent new fees outside of the prohibited ones. This also means a prohibition on the most common and most abusive kinds of fees, such as "month-to-month fees" of several hundred dollars per month. These fees have no basis in market realities and are often just used as cudgels to get tenants to self-evict, usually with an enormous balance trailing them. Our further comments on the fee language can be found *infra*.

B. Mechanisms for enforcement

The regulations only sometimes specify the consequences of a landlord's failure to comply. For instance, 29.58.01.04(b)(4) and 29.59.01.05(c) specify that the DHCA Director may deny an application for failing to submit necessary documentation for a Capital Improvement Petition [CIP] or for a Fair Return Application [FRA] in a timely manner may result in denial of the decision. And some provisions, e.g. 29.58.01.04(v), provide a consequence to the landlord that may benefit the tenant. We also understand that if a landlord did raise the rent more than the applicable limit on the tenant, the tenant could file a complaint that would go through the Office of Landlord-Tenant Affairs' [OLTA] administrative process.

However, we are concerned that there are no penalties specified for a landlord's failure to comply with other aspects of the regulations. For instance, a landlord is required to notify tenants affected by surcharges by first-class mail within five business days, but there appears to be no consequence if they fail to do so. Reliance on OLTA's complaint process will be

insufficient here because the vast majority of tenants would not even be aware that they had a grievance to report to OLTA if the landlord fails their notification obligations.

The legislation delegates enforcement of its provisions to the Director. We recommend adding a general provision that the Director is authorized to issue fines, penalties, suspensions, or denials to noncompliant landlords AND make referrals to the appropriate enforcement agency, such as OLTA.

C. Definitions

Many of the words in the regulations, especially those that are not defined in the Code itself, are susceptible to interpretations that landlords will easily exploit. We understand that there are complications with defining "habitability", and that other terms, such as "capital improvements", are already defined in Section 29–56. But we worry that landlords may use vague language to the disadvantage of tenants. Such examples include:

1. *29.58.01.04(d) - "health or safety"*

We recommend that a definition of "health or safety" be provided, as landlords can make a plausible claim that any improvement to rental housing could be classified as necessary to "maintain the health or safety" of tenants.

We note the language difference here between the phrase "health **or** **safety**" in 29.58.01.04(d), the phrase "health, **safety, and security**" in 29.58.01.04(e)(4) (directly correlated to the same language in the Code at 29-58(d)(6)), and the phrase "health, **safety, or welfare**" in 29.60.01.09(2). We encourage uniform language, or an explanation of the reasons for the difference in language, to aid both landlords and tenants in properly interpreting the intent of the regulation.

2. *29.58.01.04(e) - "enhance the value"*

This phrase can similarly be manipulated to cover almost anything. We recommend providing a definition or a metric by which this element can be determined.

3. *29.60.01.02(c)*

This section refers to something entitled Regulation 29.56.01.06, which appears not to exist.

II. Specific Comments

The following comments are related to specific substantive concerns we have about the content of the regulations.

A. 29.58.01.01(b) – Rent Increase for New Lease or Lease Renewal

The text of the regulation states "The annual rent increase allowance governing the first year of a multi-year lease applies to the subsequent lease years." We express some concern about the timing. When the regulation is implemented, will it cover those who are currently in the first year of a two-year lease?

B. 29.58.01.02(b) - Rent Increases for Troubled or At-Risk Properties

The regulation indicates outcomes if an FRA is approved (paragraph (a)) or denied (paragraph (b)). We believe that landlords may find a loophole if the application is pending or stalled, or if the Director's denial is appealed or litigated. This process could take years, and the ability to raise rents may be interpreted by the landlord in their own favor. We suggest adding a provision about pending applications that states the following: "(c) If the landlord timely appeals the Director's decision, the provisions of subsection (b) apply while the appeal is pending, unless the Director, in their sole discretion, waives the requirement."

C. 29.58.01.04 - Capital Improvements

1. *Subsection (b)*

The regulation requires notice by first-class mail. Our organizations express concern that first-class mail, without a corresponding proof, can be easily manipulated or ignored. We suggest adding a requirement that the notice also be sent by email, if the tenant's email is known to the landlord.

Given the county's linguistic diversity, we also suggest requiring a landlord to issue a notice in other major languages spoken by renters in Montgomery County, including Spanish, French, Amharic, and Chinese. DHCA could create a template to be used generally which may increase the number of languages in which the information could be conveyed.

2. *Subsection (e)*

a) "Certifying"

We recommend that some indication be given as to whether the ten listed items are elements, each of which must be satisfied, or are simply provisions to include. The word "certifying" suggests the former, but the Code does not require each of the elements to be met. The regulations could be subdivided into elements that must be met or "certified" (items 1, 3, 4, 6) and those that must simply be provided (items 2, 5, 7, 8, 9).

Additionally, the Code at 29-58(e) also has ten listed items, but they do not directly correspond to the ten items in the regulation, which may cause confusion that could be dispelled by breaking up the elements as indicated above.

b) Duplicate elements in (e)(6) and (e)(10)

Items (6) and (10), regarding governmental permits, appear to be duplicative.

Note that the Code requires that the permits have been granted, not just requested, before the Director may approve the CIP. Thus we recommend that Item 6 be deleted.

c) Clarity on (e)(5)

To comply with the language of the Code and to avoid confusion, the word "either" should be inserted after the "and" clause but before the "or" clause, like so: ". . . and will **either** result in a net savings . . . ."

d) Expected Time

We recommend adding an eleventh item to the list: the estimated time the landlord expects it will take to make the CIP. This is especially important if the CIP will significantly inconvenience the tenant, such as upgrades to the building entrance, improvements to an apartment's interior kitchen or bathroom, improvements requiring the tenant to vacate the unit or especially loud projects such as new roofing or foundation repair. The Code allows the grant of authority because time is a relevant factor in determining the viability of several of the enumerated elements (e.g. when the CIP surcharge will take effect, whether the CIP will protect health/safety, and the cost of the prorating the CIP). Note that this comment is about the duration of the CIP itself, not about the duration of the surcharge.

3. Subsection (t)

We believe that a Certificate of Continuation should also include notice to affected tenants.

D. 29.59.01.07(c) - Fair Rent Return

The proposed regulation forbids a landlord from immediately filing subsequent applications if the fair return application is approved (24 months maximum) or denied (12 months maximum). We suggest adding a provision that clarifies whether a landlord can have more than one application pending at any given time, and if so, the effect of approval or denial of the first application on any pending subsequent applications. We believe this would close a loophole that a landlord could use to file a subsequent application before the first one has been adjudicated.

E. 29.61.01.01 - Fees

We strongly approve of the limitations on fees in the proposed regulations. We learned from the emergency rent stabilization measures during the COVID-19 pandemic, as well as

what occurred in other jurisdictions that have passed rent stabilization laws, that landlords found ways to increase the rent by as much as they wanted via additional fees, often without a rational basis or actual consideration. The effect was that savvy landlords were not meaningfully affected by the rent stabilization laws and tenants often had to pay even more in rent. In furtherance of limiting fees, we have the following additional comments.

1. Definition and Prevention of Loopholes

We believe that the word "fee or charge" should be thoroughly and carefully defined to include any recurring or periodic charge whatsoever. We have seen landlords describe fees as benefits to tenants in the form of calling a cable fee a "premium service" or a month-to-month fee a "flexibility amenity." We believe that landlords will find ways around this language to still charge "renter's insurance coverage" if it is a requirement in their lease, even though in practice it is simply an additional fee.

In order to correct this discrepancy, the regulation might offer one or more of the following:

a) Clarification that a landlord may not "collect any fee or charge from any tenant in addition to the rent, **WHETHER OR NOT SUCH FEE OR CHARGE ORIGINATES FROM A THIRD PARTY SERVICE**".
   (1) This would have the effect of deterring landlords from claiming that "they" are not charging the fees but rather that it comes from a third party.
b) Clarification that a tenant cannot be charged a fee for an amenity that they are *mandated* to use.
   (1) This would have the effect of deterring landlords from claiming that the tenant has voluntarily elected the fee.
   (2) This would also deter the landlord from attempting to charge the maximum amount of fees allowed by the regulations, such as a parking fee allowable under subsection (h) even if the tenant does not have a car, or a pet deposit under subsection (c) even if the tenant does not have a pet.
   (3) This would also allow the landlord to continue offering renter's insurance for every unit, but that the landlord must include the cost of that insurance in the base rent; if the tenant wishes to purchase their own renter's insurance from the market, the landlord may wish to provide a discount on base rent, and neither of these would run afoul of the regulations.
c) Clarification that a landlord cannot charge a fee for any service which is incident to the landlord's obligations under the lease or applicable federal, state, or local law.
   (1) This would have the effect of deterring landlords from couching unlawful fees as "additional services", e.g. a non-recurring pest control

fee for eradicating bedbugs from a unit or a charge for fixing a water/sewer leak.

(2) Because none of the allowable fees in the proposed regulation are incident to a landlord's obligations, this addition would merely close an anticipated loophole.

2. Allocation Principles

In addition to the loophole that may result from a definitional gap, we believe additional language should be added to prevent unlawful fees from being added to a tenant's ledger. We recommend adding a provision for *allocation* that would require the landlord to allocate a tenant's payments to base rent *first*, followed by late fees, and then other fees allowable under the regulations. This would have the effect of allowing tenants to opt in to services the landlord offers (e.g. room reservation), and to refuse to pay fees that the landlord either has no legitimate claim to (e.g. pest control fees) or has legitimate claims to existing outside of the scope of the rent stabilization regulations (e.g. fees for the lawful towing of a vehicle).

3. Subsection (a) - Application Fees

We believe the $50 limitation on application fees conflicts with state law at Md. Code Ann., Real Prop. § 8-213, which limits an application fee to the greater of $25 or actual costs.

4. Subsection (b) - Late Fees

Subsection (b)(2)(A)'s authorization for a landlord to send an invoice upon imposition of the late fee, or else the fee may be deducted from the security deposit at the end of the tenancy if not paid within 30 days, appears to be either superfluous or conflict with state law. Under current law, landlords may charge late fees in accordance with 29-27(*l*) and, if they remain unpaid, could deduct them from a security deposit in accordance with state law at RP §§ 8-203, 8-203.1. In other words, the only thing this regulation requires is the sending of an invoice when a late fee is applied, with no consequence for failure to do so. As a result we are concerned it may only cause confusion to tenants. There may be other means to achieve the intent of the regulation without having to send an invoice each time a late fee is applied.

5. Subsection (c) - Pet Fees

We would like to see three changes to the section.

First, mandate that a pet deposit cannot be charged for a service animal, as it poses an unnecessary burden on tenants with disabilities.

Second, the language "in escrow" is unclear as a term not generally used in other landlord-tenant situations outside of the Rent Escrow statute, Md. Code Ann., Real Prop. §

8-211. This language could create unusual disparities in where, when, and how pet deposits are kept; whether they bear interest; and whether other state law might govern. We would propose that the regulation state that the deposit be held in an interest-bearing account according to the same provisions that apply to ordinary security deposits. This would also eliminate the need for paragraphs (2) and (3), because the state law on security deposits will apply to the return of the pet deposit.

Finally, we would like to see clarification on what kinds of pets qualify for fees. For instance, the most common kinds of animals like dogs and cats may require deposits due to the damage they could cause if not properly controlled, but such considerations are not always present.

6. Subsection (f) - Storage Units

We would like the regulation to clarify that the storage unit must be *outside* the regulated rental unit in order to qualify as a secure storage unit, lest landlords try to claim in-unit closets as a secured storage unit.

7. Subsection (g) - Internet/Cable TV

We appreciate the requirement that only actual costs can be passed onto tenants for this amenity. We have concerns about how this would be measured. The landlord may deem the term "actual cost" to include costs that the tenant has no responsibility for, such as installation, maintenance and repair, upgrades, late fees incurred to the landlord for paying their own cable bill late, and so on.[1] We think the better solution is to prohibit this fee and include the benefit of this amenity in the base rent as the case may be.

8. Interaction with Utilities

We believe the regulations should clarify the relationship between these fee provisions and utility costs and associated utility service charges. This is because other provisions of the Montgomery County Code (e.g. 29-27(w), 29-30, 29-34), Montgomery County Regulations (e.g. COMCOR 29.00.01) as well as state law (e.g. RP §§ 8-205.1, 8-212.4, 8A-503) tightly regulate utilities and the costs to tenants. For instance, Montgomery County regulations on RUBS allow an administrative fee of $1 (29.00.01.09), but this proposed regulation prohibits all fees not specifically exempted.

[1] Recently, in Montgomery County, a landlord who was required by law to pass only actual costs on to tenants for water usage ended up charging them many times the pro rata share of tenants' responsibility, at an average of $20 more per month. This occurred due to large leaks in the water system, resulting in very large charges that were not tenants' responsibility. The landlord successfully (if ultimately erroneously) argued that this was an actual cost to the landlord that they were entitled to pass on to tenants. Similar arguments may be made in the context of internet and cable, where the landlord defers maintenance that increases their "actual costs".

We recommend that the regulation cross-reference other sections of the Montgomery County Code regarding the charging of utilities and associated charges. We also recommend that the regulation prohibit utility charges for tenants in cases where RUBS is not used and where the tenant, by the terms of the lease, is responsible for utilities and pays directly to the utility services provider. We believe that in all other cases (e.g. where the landlord pays the utility provider and seeks an arbitrary amount to be reimbursed from the tenant), that the cost of utilities should be included in base rent and not collectible as any fee or charge.

9. Timing

Section 29-61(a) currently states: "The Director must issue Method (2) regulations regarding limitations **on fee increases or new fees charged** by the landlord to the tenant for a regulated rental unit." We could find no direct answer to how exactly the provisions of this regulation on fees would apply to existing tenants, or what a "fee increase" or "new fee" means within the context of the regulations. We are concerned that the regulations may be applied inconsistently between different landlords, which may result in a flood of complaints to OLTA.

Regarding the term "new fee", some landlords may interpret "new fee" in the Code, coupled with the prohibition on fees in the regulations, to allow them to continue charging the fees they currently charge (at the same amount or raised), whether or not it is an existing or new tenant. For example, they may continue to charge a $50 pet fee even to new tenants because the pet fee is not "new" to their organization.

Another point refers to the timing of a fee increase or "new fee". For example, suppose a tenant is currently paying $1500 in base rent, $150 for ùnreserved parking, $300 in a month-to-month fee, and a $50 pet fee. The total that they pay is $2000. Suppose further that the allowable rent increase for the next year is 5%. When the regulations go into effect, prohibiting or limiting these fees, will the new permissible rent be a 5% increase on only the base rent plus the allowable fee ($1575 for base rent and $15.75 for parking), equaling $1590.75? Or will the new rent be a 5% increase on $2000 (the total amount of the previous amount paid), equaling $2100? The former would result in a substantial (~20%) *reduction* in the total amount paid, while the latter would essentially grandfather in all existing fees as the new base rent, even if they are prohibited by the regulations, which may cause vast confusion and enormous differences between similar units.

We recommend that the regulation include a clause clarifying the timing and effect of the regulation on existing tenants who are already charged such fees and on those tenants who plan to renew their leases. Our proposal would be to confirm that all fees are prohibited upon any renewal or new lease, based on the language in the Code at 29-58(a) and 29-61(b), even if the fees were in place during the existing lease.

In the above example, the result would be a total rent of $1590.75. We believe this result would better align with the Council's policy goals of placing meaningful limits on landlords'

behavior while also accommodating fair market principles. It would reward landlords who did not try to stack hidden or arbitrary fees to raise the rent on tenants prior to the passage of the law. Thus a landlord who was previously charging $2000 in base rent with no hidden or arbitrary fees would be permitted to raise the rent to $2100, but a landlord who received the same amount through hidden or arbitrary fees would be limited to the lesser “base rent” amount. Further, if the effect of this “reduction” in rent would cause undue hardship to the landlord, a Fair Return petition would still be available to offset the loss while also benefiting the current tenants.

III. Conclusion

We again thank DHCA for issuing strong regulations implementing the Rent Stabilization law, Bill No. 15-23. In general we support the regulations with amendments, some technical and some substantive. We appreciate your attention to our comments and remain available for additional stakeholder conversations.

Respectfully submitted,

CASA
Everyday Canvassing
Housing Initiative Partnership
Green New Deal for Social Housing
Jews United for Justice
Montgomery County DSA
Montgomery County Racial Equity (MORE) Network
Progressive Maryland
MD Poor People’s Campaign
Shepherd’s Table
SEIU Local 500

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February 28, 2024

Via E-mail [scott.bruton@montgomerycountymd.gov]

Scott Bruton
Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

Re: Comments to Rent Stabilization Regulations

Dear Director Bruton:

Having reviewed the proposed Montgomery County Regulations ("Proposed Regulations") implementing the Rent Stabilization Act, we have prepared the attached mark-up on behalf of the following multifamily property owners, developers, investors, and managers with Montgomery County assets: AION Partners, AvalonBay, Carlyle, Carter Funds, Cove Management, Donaldson Group, Hampshire Properties, Kay Management, Kettler, Kossow Management, Morgan Properties, Polinger Companies, Rakusin & Becker Management, Tower Companies (collectively, the "Stakeholder Coalition").

The Rent Stabilization Act seeks to address the affordable housing crisis in Montgomery County, and members of the Stakeholder Coalition and the vast majority of landlord across the County support efforts to increase and maintain quality affordable housing. While the public policy goal is a good one, we are gravely concerned that if the Proposed Regulations are adopted as drafted, the effect will be counter to the intent: there will be more rent increases, more displacement, deferred capital investment, more units held vacant, loss of older housing, curtailment of amenities and fewer pet friendly properties. The Stakeholder Coalition members have brought decades of professional expertise to their review of the Proposed Regulations and have offered suggested changes that are consistent with the public policy goal without introducing unnecessary administrative burden. Landlords are not the enemy, but seek to work with the County to revise the Proposed Regulations to work for all.

If the Rent Stabilization Act takes effect in accordance with the Proposed Regulations, landlords will immediately lose the ability to operate and maintain their properties in the ordinary course of business. The Proposed Regulations establish the Director of the

Department of Housing and Community Affairs as the gatekeeper for all capital improvements and substantial renovations to multifamily properties in the County. This disregards the professional expertise that is essential for the successful operation of quality housing. The Proposed Regulations will take effect as soon as approved by the County Council, which leaves virtually no time for DHCA to hire and train qualified staff that would be capable of timely reviewing and analyzing the detailed financial, construction, and business data that is required. The Proposed Regulations establish detailed procedures that are unnecessary and impractical.

The Proposed Regulations are complicated and directly impact every resident of this County. The stakes are high. It is essential that the Department of Housing and Community Affairs and the County Council take the time to get this right. We call your attention to the proposed changes in our attached mark-up, key issues in which are noted below:

1. Affidavits Subject to County Review. We propose allowing landlords to submit affidavits with supporting documentation as the prerequisite for landlords charging a Rent Surcharge (for Capital Improvements), rent increase (for Fair Return), and qualifying for exemption (for Substantial Renovation). The Director continues to have the authority under Section 29-6 of the Code to investigate alleged violations and pursue enforcement, so if the Director is concerned that any of these landlord submittals is inaccurate or otherwise in violation of law, the Director has remedies. This approach provides the County oversight sought by the Rent Stabilization Act without requiring a burdensome administrative process that would be operationally impractical. Our suggested affidavit approach solves several critical issues in the Proposed Regulations:
    (a) The Proposed Regulations have no timeline applicable to the Department's review of submitted applications. This would leave landlords at a standstill unable to move forward with necessary improvements without Department approval, since moving forward without the approval would adversely impact the landlord's ability to recover a surcharge.
    (b) DHCA is not presently equipped to receive, process, review, and respond to the onslaught of applications that would be immediately submitted if the Proposed Regulations are enacted. Rather than create this administrative bottleneck, the affidavit process allows Rent Stabilization to promptly take effect with the compliance it seeks. If the County later finds that the more detailed regulations are necessary to properly implement the Rent Stabilization Act and that DHCA is equipped to handle the anticipated submission volume, supplemental regulations can always be enacted.

2. Capital Improvements. The capital improvements language in the Proposed Regulations creates many questions:
    a) What is a capital improvement and how does that definition relate to the landlord's most common improvement work (unit turnover, BEPS, legal requirements)? We proposed language in Section 29.58.01.04(a).
    b) How are improvements handled that are pursuant to a long term capital improvement plan? We proposed the Capital Improvement Affidavit to address this, but the required resubmittal with unknown approval will be a nonstarter for landlord lenders.

3. Fair Return. Even with the language of the Proposed Regulations, it is not clear what constitutes a fair return. For this concept to be implemented, we need a threshold that is deemed fair return so that landlord can rely on applicability on a go-forward basis. We proposed a deemed threshold for fair return as the 3 year average of Net Operating Income adjusted for CPI.

4. Substantial Renovation. The Proposed Regulations fail to address the exemption for properties that were substantially renovated in the 23 years prior to the regulations taking effect. We proposed language to address this in Section 29.60.01.10.

5. Fees. The fee provisions in the Proposed Regulations exceed the authority of the Rent Stabilization law, and fail to recognize the actual costs incurred by landlord for the services provided. Parking, storage, pets, and applications all have real costs to the landlord, which are not at all accounted for the in arbitrary caps in the Proposed Regulations. It is not possible to have an exhaustive list of permitted fees because tenant needs, available services, technology, and business arrangements are always changing. For example, there are companies that provide pet verification services and security deposit indemnitees, which result in cost savings for landlord and tenants, but the Proposed Regulations would not allow landlords or tenants to benefit from these arrangements. Some landlords charge a fee to extend renters insurance coverage if the tenant fails to obtain it. The existence of this insurance coverage protects the tenant from adverse and costly consequences, but the Proposed Regulations would prohibit landlords from backstopping the renter's insurance, putting the tenant at risk. The County's interest in the fee provision is to protect tenants from unreasonable and excessive fees akin to "junk fees", and we support that policy goal. However, that can be accomplished without imposing arbitrary restriction. We propose requiring landlords to submit their fee schedule to the Department with annual reports—which provides the fee transparency the County seeks. If the Department finds the fees to be

unreasonable or excessive, it can challenge them pursuant to its enforcement authority under Chapter 29.

6. Tenant Notices. Tenant notice provisions should be consistent with the landlord's standard tenant notice and communication methods. In most cases, this is no longer first class mail. Requiring first class mail introduces unnecessary cost, staffing, and environmental burdens, for no additional tenant benefit. We proposed alternative language in Sections 29.58.01.04(c)(2), 29.59.01.05(b), and 29.60.01(b).

7. Duplication. A number of concepts in the Proposed Regulations are already addressed in County law. For example, the County already has inspection rights (See 29-22 and licensing provisions), there is already a provision for the Director or Commission to investigate and enforce violations of Chapter 29 (which includes rent stabilization), and there are already protections around the notice provisions for rent increases (See 29-54). Restating these provisions in the Proposed Regulations is slightly different ways only creates more confusion.

On behalf of the Stakeholder Coalition, we urge DHCA to revise the Proposed Regulations to incorporate the changes in the attached mark-up. We remain available to discuss this with DHCA, Councilmembers, and staff.

Very truly yours,

Katherine M. Noonan

Enclosure: Mark-up of Rent Stabilization Regulations

CC: *via email*

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

[Stakeholder Coalition Mark-up 2/28/24]

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) ~~The~~For a lease with a stated term in excess of one year, the annual rent increase allowance ~~governing~~after the first year of ~~a multi-year lease applies to the subsequent lease years~~the stated term shall be as set forth in Section 29-57(a) of the Code, and if the base rent for the subsequent year(s) shall be subject reduction if it exceeds the rent increase allowance for such year.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code that is noncompliant with its corrective action plan (as defined in 29.40.01.02)) must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a ~~fair return application~~Fair Return Affidavit under Section 29-59 of the Code.

(a) Within thirty (30) days following receipt of the Fair Return Affidavit for a Troubled of At-Risk Property, the Director must review the Fair Return Affidavit and issue and notify the landlord of a the Director's approval or disapproval with reason, and if the Director fails to timely respond, it shall be deemed to have approved the Fair Return Affidavit. If the Director approves ~~the fair return application~~or is deemed to have approved the Fair Return Affidavit submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the ~~fair return application~~Fair Return Affidavit while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director timely denies the ~~fair return application~~Fair Return Affidavit submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section

Noonan, Katherine M. [NKM1]
Why would an initial multi-year lease term be treated any differently from a renewal? This approach puts tenants at risk by potentially exposing them to rent increases in excess of the allowance (i.e., if the allowance in year 1 was higher than in year 2), and it permanently restricts the rent for a unit (i.e., if the allowance in year 2 was higher than year 1 and the rent increase was limited to the year 1 number). The rent increase allowance formula set forth in 29-57(a) accounts for market changes, providing the tenant protection sought. There is no need to further complicate this. A 2-year lease can identify the current rent and state that year two rent is that plus 6% or such lower amount permitted by law.

The proposed language is problematic because it suggests that a lease for which the term is extended by amendment would be treated the same as a lease with an initial term of 2+ years.

Noonan, Katherine M. [NKM2]
The County regulations already have a process for the landlord of a Troubled or At-Risk property to develop and implement a corrective action plan. If the landlord is compliant with such plan, rent increases up to the annual rent increase allowance should be permitted. Increases for noncompliant landlords would be prohibited.

29-22(b) of the Code and is noncompliance with its corrective action plan, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code unless and until the Director approves a Fair Return Affidavit with regard to the property.

(c) When a property that was subject to Section 29-58(b) of the Code is no longer designated as Troubled or At-Risk under Section 29-22(b) of the Code, all annual rent increase allowances that the landlord was prohibited from imposing during the time of such designation pursuant to Section 28-58(h) shall be deemed banked amounts.

29.58.01.03 Allowable Rent Increase for Previously Vacant ~~Lots~~Units

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased ~~up to the banked amount or~~ to no more than the base rent on the date the unit became vacant plus each ~~allowable~~annual rent increase ~~under~~allowance since the date of vacancy, plus any banked amount, unless the unit is vacant, with no active lease agreement, for a continuous period of 12 months or more, then upon return to the market the landlord may set the base rent at the median rent for a comparable regulated unit in the landlord's propoerty. After the unit has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

(b) If a unit was vacant ~~before~~when the Rent Stabilization law was first enforceable, then upon return to the market, the landlord may set the base rent in landlord's discretion. After the unit is occupied or has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) As use in this Regulation, the following works and terms have the following meanings:

(i) "Capital Improvement" as defined in Section 29-56 of the Code includes an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under generally accepted accounting principles or the Internal Revenue Code, and specifically includes alterations to a multifamily project that are intended to enhance the value of the units, any depreciable improvements to a multifamily project to comply with local, state or federal law, and replacement of appliances, fixtures, flooring, windows, HVAC, and unit components.

Noonan, Katherine M. [NKM3]
When the designation is removed, the landlord should be able to recover foregone rent increases as banked amounts. Without this concept, the landlord will forever have below-market rent rates creating a perpetual cycle of inability to properly maintain the property.

Noonan, Katherine M. [NKM4]
This language fails to address:
1. How does this apply when an exempt unit becomes a regulated unit? If the landlord has recently performed capital improvement work (without the necessity of Department approval) and accounted for that in then-current rents, can the landlord continue to recover the surcharge once its units are regulated? Or should the landlord increase rents to cover the full capital improvement cost before it becomes subject to rent control (which would likely result in significant tenant displacement?]

2. How does this process apply to long term phased-in capital plans? These are common for multifamily property owners, and they do not work if a landlord is approved for a surcharge for Phase 1 but has not comfort that the next phase will be approved. A landlord should be able to present the entire plan to the County and get approval at one time, with reconciliations via the Certificates of Continuation. This requires modification to the timelines herein.

3. What happens if a landlord has multiple Capital Improvement Affidavits submitted or approved at any given time? As a practical matter, a landlord may have an emergency roof replacement and required BEPS compliance needs that are not reflected in a single application. If both meet the requirements of 29-58(d), then both must be approved by the Director. However, the language of the regulations would prevent the landlord from imposing both surcharges. How is this intended to work?

Noonan, Katherine M. [NKM5]
This tracks the "capital improvement" definition in DC. See DC Code 42-3501.03(6).

(ii) "Rent Surcharge" a charge added to the base rent charged for a rental unit pursuant to a Capital Improvement Affidavit, and not as part of rent charged. The amount of the Rent Surcharge is the amount necessary to cover the costs of Capital Improvements to the regulated unit, excluding costs of ordinary repair and maintenance.

(b) ~~(a)~~ A landlord may ~~petition~~submit an affidavit confirming to the Director that the landlord's property meets the requirements for a ~~limited surcharge for capital improvements~~Rent Surcharge for Capital Improvements under Section 29-58(d) of the Code.

(c) ~~(b)~~ Processing of ~~Petitions~~Capital Improvement Affidavit

(1) Filing of ~~Petition. The Petition form~~Capital Improvement Affidavit. The Capital Improvement affidavit and one copy of supporting documents required pursuant to (p) and (q) below (collectively the "Capital Improvement Affidavit") must be filed with the Department.

(2) Notice of Filing. The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant ~~by first-class mail~~ of the filing of the ~~Petition~~Capital Improvement Affidavit within five business days of the filing of the ~~Petition~~Capital Improvement Affidavit.

Noonan, Katherine M. [NKM6]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

(3) ~~Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed.~~Implementation of Rent Surcharge. Beginning on the date the landlord submits the Capital Improvement Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the Rent Surcharge as set forth in the Capital Improvement Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code.

(4) If the landlord fails to file all ~~necessary~~required supporting documentation ~~or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.~~

~~(5) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance~~with the Capital Improvement Affidavit, the Director may exercise its enforcement rights pursuant to Section 29-6 of the Code.

(d) ~~(c)~~ Except as provided in (d), the landlord must not recover the cost of a capital improvement through a ~~rent surcharge~~Rent Surcharge under Section 29-58(d) of the Code ~~if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition~~prior to the 31st day following submission of the Capital Improvement Affidavit to the Department and notice to tenants.

(e) ~~(d)~~ A landlord who makes a ~~capital improvement without~~Capital Improvement prior ~~approval of a capital improvement petition~~to submitting a Capital Improvement Affidavit to the Department and providing notice to tenants may recover the cost of the ~~improvement~~Capital Improvement under Section 29-58(d) of the Code, ~~following the approval~~upon submission of the ~~petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work~~Capital Improvement Affidavit to the Department and providing notices to tenant.

(f) ~~(e)~~ A landlord must file ~~a capital improvement petition on a form approved by~~ the ~~Director ("~~Capital Improvement ~~Form")~~Affidavit, certifying:

(1) that the ~~capital~~subject improvements are ~~permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;~~Capital Improvements

~~(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;~~

~~(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;~~

;

(2) ~~(4)~~ that the ~~capital improvements~~Capital Improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing or are required to comply with law;

(3) ~~(5)~~ whether the ~~capital improvements~~Capital Improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;~~(6)~~ provided, however, that ~~the~~energy cost savings are not required for Capital Improvements to qualify for a Rent Surcharge;

(4) all regulated units are properly registered and licensed with the Department, and if the

Noonan, Katherine M. [NKM7]
The Code does not require County approval of a request prior to landlord's performance of the capital improvement work. The proposed language here would preclude landlords from recovering any surcharge for capital improvements that are now in process or were completed prior to adoption of the Regulations. The Department has approval rights over the Capital Improvement Affidavit, but there is no reason to further restrict the timing of landlord's work on its own property.

Noonan, Katherine M. [NKM8]
The Code states that "Capital improvements include structural alterations required under federal, state, or County law." This statement is not limited to improvements to a regulated unit. As a practical matter, many landlords will seek a capital improvement surcharge in connection with the building infrastructure modifications required per BEPS and other local laws. Many of these modifications are to building structures and systems---not specifically to regulated units. This needs to be clarified.

Noonan, Katherine M. [NKM9]
Also note that the DC regulations that the Department used as a form for its proposed MoCo regulations specifically provides that the capital improvement surcharge can be used for improvements required by law (See 14 DCMR 4210.2)

Noonan, Katherine M. [NKM10]
No need to additionally certify that subject improvements do not include ordinary repair and maintenance costs because that is part of the definition of Capital Improvements and covered by (1) above.

Capital Improvements have commenced or been completed, that all governmental permits ~~have been requested or obtained, and copies~~required by law to be in place with regard to the status of ~~either~~ the ~~request form or issued permit must accompany~~Capital Improvements as of the date of the Capital Improvement ~~Form~~Affidavit have been granted;

(5) ~~(7)~~ whether the ~~basis under~~Capital Improvements may be depreciable under generally accepted accounting principles or the federal Internal Revenue Code ~~for considering the improvement to be depreciable~~;

(6) ~~(8)~~ the estimated costs of the ~~capital improvements~~Capital Improvements, including any interest and service charge; and

(7) ~~(9)~~ the dollar amounts, percentages, and time periods computed by following the instructions listed in (~~f~~g); ~~and (10) that the petitioner has obtained required governmental permits and approvals~~.

(g) ~~(f)~~ The Capital Improvement ~~Petition~~Affidavit must ~~contain instructions for computing~~identify and compute the following in accordance with this section:

(1) the total cost of a ~~capital improvement~~Capital Improvement;

(2) the dollar amount of the ~~rent surcharge~~Rent Surcharge for each ~~rental~~regulated unit in the housing accommodation and the percentage increase above the current ~~rents~~base rent charged; and

(3) the duration of the ~~rent surcharge~~Rent Surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(h) ~~(g)~~ The total cost of a ~~capital improvement~~Capital Improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the ~~improvement~~Capital Improvement, in accordance with (~~i~~j);

(2) any interest that accrues or must accrue on a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~j~~k); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~k~~l).

Noonan, Katherine M. [NKM11]
Our revisions are consistent with the language of the Code. The language does not require the landlord to have obtained or applied for permits with regard to the proposed capital improvements, as such a requirement would be impractical.

(i) ~~(h)~~ The interest and service charge on, "a loan taken by the landlord to make the ~~improvement or renovation~~Capital Improvement" is the portion of any loan that is specifically attributable to the costs incurred to make the ~~improvement or renovation~~Capital Improvement, in accordance with (~~l~~m). The dollar amount of the calculated interest and service ~~change~~charge must not exceed the amount of the portion of that loan that is specifically attributable to the costs incurred to make the Capital Improvement, in accordance with (m).

(j) ~~(i)~~ The ~~costs incurred to make a capital improvement~~" total cost of a Capital Improvement" must 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 Director may find~~ probative of the actual~~, commercially reasonable~~ costs of the Capital Improvements. The ~~amount~~total cost of ~~costs incurred must~~a Capital Improvement shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is actually received by landlord from ~~or guaranteed by~~ a governmental program for the purposes of making the subject ~~improvement~~Capital Improvement.

(k) ~~(j)~~ The interest on a loan taken to make a ~~capital improvement~~Capital Improvement means all compensation paid or required to be paid by or on behalf of the landlord to a lender for the use, forbearance, or detention of money used to make a ~~capital improvement~~Capital Improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~capital improvement~~Capital Improvement, or on that portion of a multi-purpose loan of money used to make the ~~capital improvement~~Capital Improvement, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other ~~evidence of interest that the Director finds~~ probative evidence; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus four percentage (4%) points or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the ~~limited surcharge petition for capital improvements~~effective date of the Rent Surcharge for Capital Improvements.

Noonan, Katherine M. [NKM12]
14 DCMR 4210.12 provides for this alternative calculation of the rate of 7 year US Treasury maturities during prior 30 days plus 4% or 400bp. It is not clear why the Regulations propose this structure.

(l) ~~(k)~~ For the purposes of (~~j~~k)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Capital Improvement Affidavit must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Capital Improvement Affidavit is

submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the Capital Improvement Affidavit was filed. If the interest rate changes over the duration of the ~~rent surcharge~~loan, any ~~certificate filed under (t)~~Certificate of Continuation must list all changes and recalculate the total interest on the loan.

(m) ~~(l)~~ The service charges in connection with a loan taken to make a ~~capital improvement~~Capital Improvement must 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 probative evidence of service charges ~~as the Director may find probative~~.

(n) ~~(m)~~ Except when a continuation is permitted in accordance with (~~s~~t), the duration of a ~~rent surcharge requested or~~Rent Surcharge allowed ~~by~~pursuant to a ~~capital improvement petition~~Capital Improvement Affidavit must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the ~~capital improvement~~Capital Improvement, in accordance with (~~g~~h); divided by

(2) the sum of the monthly ~~rent surcharges~~Rent Surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected ~~rental~~regulated unit.

(o) ~~(n)~~ A ~~rent surcharge~~Rent Surcharge in the final month of its duration must be no greater than the remainder of the calculation in (~~m~~n), prior to rounding.

(p) ~~(o)~~ A Capital Improvement ~~Petition~~Affidavit must be accompanied by external documents to substantiate the total cost of a ~~capital improvement~~Capital Improvement and must be supplemented with any new documentation reflecting a material change in the actual total cost of the ~~improvement~~Capital Improvement, until the ~~Director approves or denies the petition~~Capital Improvements have been substantially completed.

(q) ~~(p)~~ A Capital Improvement ~~Petition~~Affidavit, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which regulated rental units will be affected by the ~~capital improvements~~Capital Improvements;

(2) the base rent for each affected regulated rental unit, and any other ~~approved capital improvement surcharges~~permitted Rent Surcharges; and

(3) the dollar amount of the proposed ~~rent surcharge~~Rent Surcharge for each regulated rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) ~~(q)~~ A ~~decision authorizing a capital improvement surcharge must be implemented~~landlord shall begin implementing a Rent Surcharge within 12 months of the date of ~~issuance~~the Capital Improvement Affidavit was submitted but no earlier than 12 months following any prior rent increase for an affected ~~rental~~regulated unit; provided, that if the ~~capital improvement~~Capital Improvement work renders the unit uninhabitable beyond the expiration of time, the ~~rent surcharge~~Rent Surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as ~~an approved capital improvement surcharge~~a permitted Rent Surcharge in the new lease or in the lease renewal ~~and may not be implemented mid lease~~.

(s) ~~(r) Not less than 90 days before the~~Prior to expiration of an authorized ~~rent surcharge~~Rent Surcharge a landlord may request to extend the duration or otherwise modify the amount of the ~~rent surcharge~~Rent Surcharge by filing ~~an application~~a notice with the Director and serving each affected rental unit with notice that the total cost of the ~~capital improvement~~Capital Improvement has not been recovered during the originally approved period of the ~~rent surcharge~~Rent Surcharge and requesting to extend ~~the approval~~or otherwise modify the amount of the Rent Surcharge ("Certificate of Continuation").

(t) ~~(s)~~ A Certificate of Continuation must set forth:

(1) the total cost of the ~~capital improvement as approved by the capital improvement petition,~~Capital Improvement as set forth in the Capital Improvement Affidavit, and the total cost of the Capital Improvement based on actual costs including, if applicable, any changes in the total interest due to a variable-rate loan;

(2) the dollar amount actually received by the implementation of the ~~rent surcharge~~Rent Surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months or modified amount required, under currently known conditions, for the landlord to recover the total cost of the ~~capital~~

~~improvement~~Capital Improvement by extension of the duration or modification of the ~~rent surcharge~~amount of the Rent Surcharge.

~~(t) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in mil.) and (2).~~

(u) ~~If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.~~Upon delivery of the Certificate of Continuation to the Department and notice to Tenants, Landlord shall be permitted to extend the duration or modify the amount of the Rent Surcharge as set forth in the Certificate of Continuation.

(v) ~~A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once~~In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Capital Improvement Affidavit and Certificate of Continuation.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return ~~application~~ process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

Noonan, Katherine M. [NKM13]
This language does not address how Fair Return Affidavits and Capital Improvement Affidavits relate to each other. Since they are for different purposes, presumably a landlord could submit both at the same time and have both approved. That would require modifications to the rent increase timing.

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year immediately prior to the year the unit ~~becomes~~became a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the ~~fair return application~~Fair Return Affidavit required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the ~~current year~~Current Year is a calendar year, the ~~current year~~Current Year CPI is the ~~annual~~Annual CPI for that year or 2) if the ~~current year~~Current Year is a fiscal year, the ~~current year~~Current Year CPI must be the CPI for December during the ~~current year~~Current Year.

(f) "Gross Income" means the actual annual ~~scheduled~~ rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord ~~was permitted to charge at the time of the application~~legally collected during the applicable period.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses for the applicable period.

29.59.01.03 Formula for Fair Return

(a) Fair Return~~. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year~~.

(1) In calculating Gross Income for the Current Year, the ~~Base Year~~ Net Operating Income for the Base Year under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any Fair Return Affidavit must identify a rent increase based on fair return ~~increase request must be~~as:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; and/or

(B) demonstrated to be commensurate with returns on investments ~~in~~of other

Noonan, Katherine M. [NKM14]
Whether regarding the Current Year or Base Year, the Gross Income is an actual known number. It should not include projections of what the landlord could have collected if all units were occupied, all tenants paid, and amenity fees were across the board.

Noonan, Katherine M. [NKM15]
This is wrong. The fair return rent increase formula is not Gross Income minus operating expenses. That is only part of the formula.

Noonan, Katherine M. [NKM16]
A Fair Return Affidavit may seek a fair return increase based on both operating expense offset and return on investment. It's not one or the other.

enterprises having comparable risks, provided that return on investment shall be deemed fair return up to the Net Operating Income for the property averaged over the prior three year period adjusted for CPI.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") ~~approved by the Director~~pursuant to a Fair Return Affidavit must be determined as a percentage of the Current Year rents and shall include any annual rent increase allowance under 27-57(a) of the Code, and each ~~restricted~~regulated unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein and subject to Section 29-54 of the Code, any fair return rent increase ~~approved by the Director~~ must begin to be implemented within 12 months of the date of the ~~issuance of the decision~~Fair Return Affidavit is submitted to the Department and notices provided to tenants or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase ~~awarded by~~pursuant to the ~~Director~~Fair Return Affidavit has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required increase has been taken in full, the ~~Director~~landlord may ~~allow~~elect to implement the ~~required~~full rent increase for that unit ~~to be taken~~ in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

Noonan, Katherine M. [NKM17]
After the 12 month or longer period expires for each unit, how does the landlord set the rent? This needs to be clarified since the fair return rent increase presumably includes the annual rent increase allowance.

Noonan, Katherine M. [NKM18]
Why would this be subject to Director approval? The requirement just creates more administrative hurdles and additional burdens on DHCA's limited resources.

29.59.01.04 Fair Return ~~Application~~Affidavit

(a) Requirement. A landlord may file a ~~fair return application~~Fair Return Affidavit (as defined in 29.59.01.04(d)(2) below) with the Director to increase the rent more than the amount permitted under ~~Section~~Sections 29-57 or 29-58 of the Code.

~~(b) Rolling Review. The Director will consider fair return applications on a rolling basis.~~

(b) ~~(c)~~ Prerequisites for a ~~fair return application~~Fair Return Affidavit. In order for ~~the Director~~a landlord to ~~consider~~submit a ~~fair return application, it must meet~~Fair Return Affidavit, the following requirements must be satisfied:

(1) All units within the rental housing listed in the ~~fair return application~~Fair Return Affidavit must be properly registered and licensed with the Department.

(2) The ~~fair return application~~Fair Return Affidavit must be completed in full, signed, and include all required ~~supporting documents~~for the Fair Return Affidavit.

(3) All Banked Amounts have been applied to ~~restricted~~regulated units.

(c) ~~(d)~~ Fair Return ~~Application~~Affidavit Requirements. A ~~fair return application~~Fair Return Affidavit must include the following information ~~and must be submitted in a form administered by the Department~~:

(1) The ~~applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return~~Fair Return Affidavit and one copy of supporting documents required pursuant to [_____] below (collectively the "Fair Return Affidavit") must be filed with the Department.

(2) The ~~application~~Fair Return Affidavit must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director ~~prior to the filing of the application~~.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) ~~Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been completed and associated costs are reasonable.~~Income and operating expense report for the property for the Base Year and the Current Year. Within ten (10) days following written request from the Director, landlord shall deliver supporting documentation confirming specific items on the income and operating expense report as may be specifically requested by the County. Such supporting documentation may include copies of bills, invoices, receipts, time sheets, or other documents. Any such supporting documentation provided by the landlord in response to the Director's request shall be delivered in an organized manner and shall be held by the Director as confidential.

Noonan, Katherine M. [NKM19]
The County already has inspection rights with regard to multifamily properties. No additional rights are needed here.

Noonan, Katherine M. [NKM20]
Does the Department really want to see and review every operating expense invoice for a property for the Base Year and Current Year? This seems overly burdensome for all.

~~(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.~~

~~(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.~~

~~(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.~~

(B) ~~(E)~~ Any justification for exceptional circumstances that the ~~owner~~landlord is claiming under this ~~regulation~~Regulation.

(C) ~~(F)~~ Any additional information the landlord determines would be useful in making a determination of fair return.

~~(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion~~

(d) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Fair Return Affidavit.

29.59.01.05 Processing of Fair Return ~~Applications~~Affidavit

(a) Filing of ~~Application. The fair return application form and one copy of supporting documents~~Fair Return Affidavit. The Fair Return Affidavit must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the ~~fair return application~~Fair Return Affidavit, the landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing ~~via first class mail, providing each tenant a copy of the Notice of Filing and~~of the ~~application (excluding supporting documentation)~~Fair Return Affidavit.

~~(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.~~

~~(d) Required Notice of Decision to Tenants~~

~~(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.~~

(c) ~~(2)~~ Implementation of Rent Increase. Beginning when landlord submits the Fair Return Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the rent increase as set forth in the Fair Return Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code. The implementation of any rent increase ~~awarded~~approved by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a ~~DHCA~~Department authorized fair return increase. ~~Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.~~

29.59.01.06 Fair Return Criteria ~~in Evaluation~~

(a) Gross income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord ~~could have~~actually received ~~if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid~~during such period.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

Noonan, Katherine M. [NKM21]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

Noonan, Katherine M. [NKM22]
The term "Notice of Filing" is not used elsewhere in these Regulations. The tenant notice makes the tenants aware that a Fair Return Affidavit has been filed, but there is no need for the landlord to provide the entire Fair Return Affidavit to the tenants. An interested tenant can reach out to the County, but there is no need to overwhelm all tenants with detailed information. Tenants are not entitled to the landlord's financial records.

Noonan, Katherine M. [NKM23]
As a practical matter, no property has 100% occupancy and 100% rent payment year over year. If this change is not made to Gross Income, then the definition of operating expenses should be revised to include all rental losses incurred by a landlord in connection with nonpayment and vacancy.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, ~~unless~~except to the extent these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.; below;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the Annual CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates ~~by a preponderance of the evidence~~ that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital ~~improvements~~expenses over the useful life of the expensed asset. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey plus 4% or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~the~~ substantial completion of the renovation ~~application~~.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; ~~and~~

(I) insurance costs; and

(J) costs incurred by landlord to comply with the Rent Stabilization Act, including costs of reporting, data collection, tenant noticing, Capital Improvement Affidavits, Fair Return Affidavits, Substantial Renovation Affidavits, and other administrative costs incurred by landlord as a result of the Rent Stabilization Act and these Regulations.

(2) ~~Reasonable and expected operating~~Operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been ~~or will be~~ reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

~~(B) payments made for mortgage expenses, either principal or interest;~~

(B) ~~(C)~~ judicial and administrative fines and penalties~~;(D)~~ , including damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(C) ~~(E)~~ depreciation;

(D) ~~(F)~~ late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord ~~or the rental housing~~;

(E) ~~(G)~~ membership fees in organizations established to influence legislation and regulations;

(F) ~~(H)~~ contributions to lobbying efforts;

(G) ~~(I)~~ contributions for legal fees in the prosecution of class-action cases;

(H) ~~(J)~~ political contributions for candidates for office;

(I) ~~(K)~~ any expense for which the tenant has lawfully paid directly or indirectly;

(J) ~~(L)~~ attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

~~(M) additional expenses incurred as a result of unreasonably deferred maintenance;~~ and

(K) ~~(N)~~ any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

Noonan, Katherine M. [NKM24]
This is duplicative of the former (2)(B) (payments made for mortgage expenses).

(c) ~~Base Year~~ Net Operating Income for Base Year. To adjust the ~~Base Year~~ Net Operating Income for the Base Year, the Director must make at least one of the following findings:

(1) The ~~Base Year~~ Net Operating Income for the Base Year was abnormally low due to one of the following factors:

(A) the landlord made substantial ~~capital improvements~~Capital Improvements in or prior to the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these ~~capital improvements~~Capital Improvements pursuant to a Capital Improvement Affidavit;

(B) substantial repairs were made to the rental housing due to exceptional ~~circumstances; or~~circumstance or new laws;

(C) other expenses were unreasonably high, notwithstanding prudent business practice; or

(D) other exceptional circumstances exist requiring equitable adjustment to Net Operating Income for the Base Year.

(2) The Base Year ~~Rents~~rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased ~~for five~~in the years preceding the Base Year;

(C) the ~~Tenant~~tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. ~~A~~Except as provided in 29.59.01.03(b), a rent increase established under an approved ~~fair return application~~Fair Return Affidavit remains in effect for each regulated unit for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a ~~restricted~~regulated unit for ~~that~~the 12-month period during which the regulated unit is subject to a rent increase pursuant to a Fair Return Affidavit (as such rent increase includes any annual rent increase allowance).

(b) Establishment of New ~~Base Year~~ Net Operating Income for the Base Year. The ~~net operating income~~Net Operating Income, income, and expenses, determined to be fair and reasonable pursuant to ~~a prior application for a fair return rent increase~~an approved Fair Return Affidavit must constitute the Net Operating Income of the Base Year income, and expenses~~, and net operating income~~ for those ~~restricted~~regulated units included in the finding of fair return for purposes of reviewing subsequent ~~applications~~affidavits.

(c) Limitations on Future Fair Return Requests.

(1) If ~~a fair return application is approved by the Director~~landlord submits a Fair Return Affidavit, the ~~property owner~~landlord may not file a subsequent ~~application~~Fair Return Affidavit covering the same period for which the ~~greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return~~ rent increase is ~~permitted above 15%) has been applied~~in effect under the prior Fair Return Affidavit.

~~(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.~~

Noonan, Katherine M. [NKM25]
Landlord cannot have multiple fair return increases in place at the same time, but there is no need to preclude subsequent fair return affidavits. Such a requirement only reduces the Department's burden at the landlord's cost.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.00 – Transition of Exempt Units

When an exempt unit becomes a regulated unit, the base rent for the first year of such regulated period shall be the median rent for comparable regulated units at the landlord's property. Thereafter, base rent for such regulated units shall be determined by Section 29-58(a) of the Code.

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 ~~Application for a~~ Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation ("renovation") under Section 29-60(12) for renovation commencing on or after the effective date of these Regulations must file an ~~application~~affidavit ("Substantial Renovation Affidavit") with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed, if any, for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be ~~renovate~~renovated showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) ~~Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.~~The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing of the Substantial Renovation Affidavit within five business days of the filing of the Substantial Renovation Affidavit.

(c) ~~The Director must review the application and supporting documentation and must issue and notify~~

Noonan, Katherine M. [NKM26]
This language fails to address:

1. What happens if a property is exempt under the substantial renovation exemption, but is subsequently in violation of Chapters 8, 26, or 29 of the Code? These Regulations already address Troubled and At-Risk designations, but not these other provisions. We proposed language in 29.60.01.10(d) to address this.

2. As drafted, this process applies logically to substantial renovations to be implemented after the Regulations take effect. That does not address the landlords who performed substantial renovations to their properties in the 23 years prior to the effective date of the Regulations. We proposed language in Section 29.60.01.10(c) to address this.

Noonan, Katherine M. [NKM27]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

~~the landlord of a decision approving or denying the exemption.~~A property shall be exempt under Section 29-60(12) upon filing the Substantial Renovation Affidavit with the Director, or, if such Substantial Renovation Affidavit is submitted to the Department within sixty (60) days of the effective date of these Regulations, then the exemption shall be deemed effective as of the effective date of the Regulations.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of ~~those costs~~the portion of that loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04.

29.60.01.04 Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents, estimates, or a commitment to make a loan, or other evidence of expenses as ~~the Director may find~~are probative of the actual~~, commercially reasonable~~ costs of such renovations.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the ~~improvement or~~ renovation over the amortization period of the loan, in the amount of either:

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

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus 4% or 400 basis points. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior ~~to application for an exemption for a~~ substantial completion of the renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the ~~initial~~actual rate of the loan (if known), or otherwise recalculated when actual interest is known.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 ~~that the Director may find~~ probative of the actual~~, commercially reasonable~~ costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The ~~Director must determine~~following factors shall be relevant to a determination of whether a ~~proposed~~

substantial renovation is deemed to be intended to enhance the value of the rental housing ~~by considering the following~~:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant; and

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair~~; and~~.

~~(4) whether the proposed renovations are optional or cosmetic changes~~

Any renovation required for compliance with federal, state or local law is deemed to be intended to enhance the value of the rental housing.

Noonan, Katherine M. [NKM28]
Optional vs cosmetic is not a relevant standard to determine if there is an enhancement of the value of rental housing.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) ~~Within thirty days of the~~Following completion of a ~~substantial~~ renovation for which landlord has submitted a Fair Return Affidavit, a landlord must file an affidavit attesting to the substantial completion with the Director~~. If the Director determines that the renovations have been completed according to the substantial renovation application,~~ and identifying the date of ~~filing of the affidavit of~~such substantial completion ~~must be deemed the approved~~. The exemption ~~date~~shall be effective on the substantial completion date as set forth in the affidavit, and shall remain in effect until the 23rd anniversary thereof, subject to the property's continued compliance with Section 29-60(a)(12)(B) of the Code.

(b) Once a ~~decision approving a~~Fair Return Affidavit and affidavit if substantial ~~renovation exemption has been issued~~completion have been filed with the Department and subject to Section 29-54 of the Code, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease (without regard to any renewal term), if any, for that rental unit.

(c) Notwithstanding anything to the contrary herein and subject to Section 29-60(a)(12)(B) of the Code, the landlord of any multifamily property claiming exemption pursuant to Section 29-60(a)(12) of the Code on basis of renovations performed prior to the effective date of these Regulations shall be deemed exempt until the 23rd anniversary of the substantial completion date of such renovations if the landlord provides a written affidavit to the Department confirming (i) the date of substantial completion of the renovation, (ii) that the renovations constitute permanent

alterations to a building that are intended to enhance the value of the building and when substantially completed cost an amount equal to at least 40% of the value of the building as assessed by the State Department of Assessments and Taxation.

(d) If at any time during the 23 year substantial renovation exemption period, a court or other administrative agency determines that a multifamily property is in violation of Chapter 8, 26 or 29 of the Code, the exemption shall not apply until such violation has been cured.

(e) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Substantial Renovation Affidavit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit ~~must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:~~may charge reasonable fees for amenities and services not included in base rent and shall include a schedule of such then-current fees in in the annual report the landlord submits to the Department in accordance with Section 29-62 of the Code, provided that fees for laundry, charging stations, vending machines, and other services available to tenants in connection with third party agreements shall not be governed by this Section 29.61.01.01.

(a) Application fee A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than the greater of (i) $50 from any ~~household~~tenant applicant, and (ii) the actual amount charged by a third party application review service in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

~~(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;~~

Noonan, Katherine M. [NKM29]
This provision is necessary to address all substantial renovations completed in the 23 years prior to the effective date of the Regulations. In practice, this should be treated as the exemption for new construction. The County can always challenge an affidavit, but removing an unnecessary approval process here will allow the Regulations to take effect in a more streamlined manner. Without this concept a landlord who completed a substantial renovation in 2021 will be subject to rent control upon adoption of the Regulations, and then submit the affidavit based on retroactive construction, to presumably be granted exemption as of a County approval date. That makes no sense and would cause all kinds of confusion amount tenants.

Noonan, Katherine M. [NKM30]
This section exceeds the authority of the Department under Rent Stabilization. The law allows the Director to limit fee increases or new fees or include a fee schedule----all in accordance with the affordable housing goals of the law.

1. Any specified fee amounts must be indexed.
2. Is there tenant outcry at the amount of lockout, key, and storage fees that necessitates this degree of government control. Landlords incur actual costs for these items, and passing them through to the applicable tenants prevents general expense to all tenants.
3. These proposed fee caps apply to regulated units only.

Noonan, Katherine M. [NKM31]
Landlords incur actual costs to perform background checks as part of application review. The proposed limitation does not account for the fact that some households have multiple applicants and that these actual costs exist and may vary from time-to-time. Recovering actual costs is not a tenant gauging effort.

Noonan, Katherine M. [NKM32]
The County Code already addresses late fees and the Rent Stabilization Act does not suggest that regulated units be treated different from other units with regard to late fees.

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

~~(e) Lock out fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.~~

~~(f) Secure storage unit accessible only by tenant A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.~~

~~(g) Internet or cable television A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.~~

~~(h) Motor vehicle parking fee~~

~~(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:~~

~~(A) 4% of the base rent for the unit for any secured, covered parking space;~~

~~(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or~~

~~(C) 1% of the base rent for the unit for any other motor vehicle parking space.~~

~~(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking~~

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) Intentional Omitted.

(f) Intentionally Omitted.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Noonan, Katherine M. [NKM33]
Pets actually create additional wear and tear on building and landlords need to have the ability to recover those costs. The restriction on pet fees goes beyond the scope of protecting affordable housing in the County.

Noonan, Katherine M. [NKM34]
Storage space actually costs money. A cap of $3 per square foot per month seems arbitrary and fails to account for cost differentials across properties. It is not indexed.

Noonan, Katherine M. [NKM35]
These rates are not market and they fail to account for variations across the County. The price of parking is not the same across the board.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

Document comparison by Workshare Compare on Wednesday, February 28, 2024 5:06:39 PM

Input:	
Document 1 ID	iManage://DMSFIRM/DMFIRM/411297563/1
Description	#411297563v1<DMFIRM> - Montgomery County Rent Stabilization Regulations
Document 2 ID	iManage://DMSFIRM/DMFIRM/411297563/6
Description	#411297563v6<DMFIRM> - Montgomery County Rent Stabilization Regulations
Rendering set	Standard

Legend:	
Insertion	
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Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	422
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Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	784

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March 1, 2024

Via E-Mail [scott.bruton@montgomerycountymd.gov]

Scott Bruton
Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

Re: Montgomery County Regulation on Rent Stabilization

Dear Director Bruton,

I am writing you today to submit comments and express concerns about the proposed legislation regarding Rent Stabilization (or the "Bill") in Montgomery County, MD.

AION Partners ("AION") is a vertically-integrated owner/operator of garden-style and mid-rise apartment buildings throughout the Northeast, Mid-Atlantic, and Midwest regions of the United States. AION's current portfolio consists of $3B worth of real estate ($1B of investor equity) containing 19,423 units and 58 properties with a blended year of construction of 1973 (including 25 assets built prior to 1970). Locally, AION owns and manages three properties containing a total of 1,480 units in Montgomery County, MD with a blended vintage of 1979. We formerly owned a fourth property containing a total of 133 units, which was sold in 2021 (built in 1965). Since 2018, AION has acquired $304MM worth of real estate in Montgomery County and deployed over $89MM of investor equity across the four assets.

AION's investment approach is predicated on acquiring and improving older housing stock that's often been neglected by legacy or non-institutional owners, and with a capital intensive value-add strategy. As a result, we have an in depth understanding and knowledge of the ongoing capital needs that this product requires. We invest millions of dollars annually to: (i) remediate deferred maintenance left unaddressed by previous owners and managers; (ii) complete energy and utility savings projects to reduce consumption; (iii) improve drive-by curb appeal, common areas, and amenity offerings; and (iv) programtically complete interior unit renovations that modernize outdated layouts and finishes that will become more functional and cosmetically appealing to today's renter. In Montgomery County, AION has invested over $23.8MM across the three assets since 2020 (or $6.1MM per year) to complete discretionary capex projects and maintain the rapidly deteriorating interior/exterior building systems and utility infrastructure. These concerted improvements were ultimately intended to maintain essential services for residents, improve the day-to-day experience for existing and new residents (through newer unit finishes, amenities, and common areas), and reduce ongoing repair and maintenance costs.

While we understand the Council is concerned about preserving naturally occurring affordable housing in Montgomery County, there will undoubtedly be longer term ramifications to the proposed Bill that will not only adversely impact the physical components of our communities but ultimately the residents' living experiences. Operating costs have risen significantly since the start of the global pandemic, fueled by multiple rounds of economic stimulus and unemployment benefits for Americans. Over the last four years, inflation drove wages, utilities, insurance premiums, and construction costs to levels that have made it economically challenging for businesses to generate a profit without passing costs onto consumers. Furthermore, interest rates are at their highest levels in 40 years, further exacerbating cash flows for businesses and real estate owners alike.

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Without the ability to increase the top line to offset higher operating expenses and debt service, landlords will have no choice but to allow their communities to deteriorate. Landlords and managers who predominantly own older housing stock like ourselves will suffer the most from the proposed Rent Stabilization law because rising operational and repair costs associated with maintaing these outdated buildings will quickly outpace the limited rent increases that the Bill proposes. As a result, the physical deterioration will occur at a much faster pace.

My intent by submitting this letter and the enclosed comments is that the Council will consider these changes in good faith and further contemplate the long term impacts that the Bill will have on residents and landlords in Montgomery County as currently drafted. I will make myself available to discuss the proposed regulations in greater detail at your convenience and address any questions that you may have.

Sincerely,

Michael Betancourt
Managing Partner
AION Partners

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

[Stakeholder Coalition Mark-up 2/28/24]

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) ~~The~~For a lease with a stated term in excess of one year, the annual rent increase allowance ~~governing~~after the first year of ~~a multi-year lease applies to the subsequent lease years~~the stated term shall be as set forth in Section 29-57(a) of the Code, and if the base rent for the subsequent year(s) shall be subject reduction if it exceeds the rent increase allowance for such year.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code that is noncompliant with its corrective action plan (as defined in 29.40.01.02)) must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a ~~fair return application~~Fair Return Affidavit under Section 29-59 of the Code.

(a) Within thirty (30) days following receipt of the Fair Return Affidavit for a Troubled of At-Risk Property, the Director must review the Fair Return Affidavit and issue and notify the landlord of a the Director's approval or disapproval with reason, and if the Director fails to timely respond, it shall be deemed to have approved the Fair Return Affidavit. If the Director approves ~~the fair return application~~or is deemed to have approved the Fair Return Affidavit submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the ~~fair return application~~Fair Return Affidavit while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director timely denies the ~~fair return application~~Fair Return Affidavit submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section

Noonan, Katherine M. [NKM1]
Why would an initial multi-year lease term be treated any differently from a renewal? This approach puts tenants at risk by potentially exposing them to rent increases in excess of the allowance (i.e., if the allowance in year 1 was higher than in year 2), and it permanently restricts the rent for a unit (i.e., if the allowance in year 2 was higher than year 1 and the rent increase was limited to the year 1 number). The rent increase allowance formula set forth in 29-57(a) accounts for market changes, providing the tenant protection sought. There is no need to further complicate this. A 2-year lease can identify the current rent and state that year two rent is that plus 6% or such lower amount permitted by law.

The proposed language is problematic because it suggests that a lease for which the term is extended by amendment would be treated the same as a lease with an initial term of 2+ years.

Noonan, Katherine M. [NKM2]
The County regulations already have a process for the landlord of a Troubled or At-Risk property to develop and implement a corrective action plan. If the landlord is compliant with such plan, rent increases up to the annual rent increase allowance should be permitted. Increases for noncompliant landlords would be prohibited.

29-22(b) of the Code and is noncompliance with its corrective action plan, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code unless and until the Director approves a Fair Return Affidavit with regard to the property.

(c) When a property that was subject to Section 29-58(b) of the Code is no longer designated as Troubled or At-Risk under Section 29-22(b) of the Code, all annual rent increase allowances that the landlord was prohibited from imposing during the time of such designation pursuant to Section 28-58(h) shall be deemed banked amounts.

29.58.01.03 Allowable Rent Increase for Previously Vacant ~~Lots~~Units

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased ~~up to the banked amount or~~ to no more than the base rent on the date the unit became vacant plus each ~~allowable~~annual rent increase ~~under~~allowance since the date of vacancy, plus any banked amount, unless the unit is vacant, with no active lease agreement, for a continuous period of 12 months or more, then upon return to the market the landlord may set the base rent at the median rent for a comparable regulated unit in the landlord's propoerty. After the unit has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

(b) If a unit was vacant ~~before~~when the Rent Stabilization law was first enforceable, then upon return to the market, the landlord may set the base rent in landlord's discretion. After the unit is occupied or has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) As use in this Regulation, the following works and terms have the following meanings:

(i) "Capital Improvement" as defined in Section 29-56 of the Code includes an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under generally accepted accounting principles or the Internal Revenue Code, and specifically includes alterations to a multifamily project that are intended to enhance the value of the units, any depreciable improvements to a multifamily project to comply with local, state or federal law, and replacement of appliances, fixtures, flooring, windows, HVAC, and unit components.

Noonan, Katherine M. [NKM3]
When the designation is removed, the landlord should be able to recover foregone rent increases as banked amounts. Without this concept, the landlord will forever have below-market rent rates creating a perpetual cycle of inability to properly maintain the property.

Noonan, Katherine M. [NKM4]
This language fails to address:
1. How does this apply when an exempt unit becomes a regulated unit? If the landlord has recently performed capital improvement work (without the necessity of Department approval) and accounted for that in then-current rents, can the landlord continue to recover the surcharge once its units are regulated? Or should the landlord increase rents to cover the full capital improvement cost before it becomes subject to rent control (which would likely result in significant tenant displacement?]

2. How does this process apply to long term phased-in capital plans? These are common for multifamily property owners, and they do not work if a landlord is approved for a surcharge for Phase 1 but has not comfort that the next phase will be approved. A landlord should be able to present the entire plan to the County and get approval at one time, with reconciliations via the Certificates of Continuation. This requires modification to the timelines herein.

3. What happens if a landlord has multiple Capital Improvement Affidavits submitted or approved at any given time? As a practical matter, a landlord may have an emergency roof replacement and required BEPS compliance needs that are not reflected in a single application. If both meet the requirements of 29-58(d), then both must be approved by the Director. However, the language of the regulations would prevent the landlord from imposing both surcharges. How is this intended to work?

Noonan, Katherine M. [NKM5]
This tracks the "capital improvement" definition in DC. See DC Code 42-3501.03(6).

(ii) "Rent Surcharge" a charge added to the base rent charged for a rental unit pursuant to a Capital Improvement Affidavit, and not as part of rent charged. The amount of the Rent Surcharge is the amount necessary to cover the costs of Capital Improvements to the regulated unit, excluding costs of ordinary repair and maintenance.

(b) ~~(a)~~ A landlord may ~~petition~~submit an affidavit confirming to the Director that the landlord's property meets the requirements for a ~~limited surcharge for capital improvements~~Rent Surcharge for Capital Improvements under Section 29-58(d) of the Code.

(c) ~~(b)~~ Processing of ~~Petitions~~Capital Improvement Affidavit

(1) Filing of ~~Petition. The Petition form~~Capital Improvement Affidavit. The Capital Improvement affidavit and one copy of supporting documents required pursuant to (p) and (q) below (collectively the "Capital Improvement Affidavit") must be filed with the Department.

(2) Notice of Filing. The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant ~~by first-class mail~~ of the filing of the ~~Petition~~Capital Improvement Affidavit within five business days of the filing of the ~~Petition~~Capital Improvement Affidavit.

Noonan, Katherine M. [NKM6]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

(3) ~~Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed.~~Implementation of Rent Surcharge. Beginning on the date the landlord submits the Capital Improvement Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the Rent Surcharge as set forth in the Capital Improvement Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code.

(4) If the landlord fails to file all ~~necessary~~required supporting documentation ~~or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.~~

~~(5) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance~~with the Capital Improvement Affidavit, the Director may exercise its enforcement rights pursuant to Section 29-6 of the Code.

(d) ~~(c)~~ Except as provided in (d), the landlord must not recover the cost of a capital improvement through a ~~rent surcharge~~Rent Surcharge under Section 29-58(d) of the Code ~~if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition~~prior to the 31st day following submission of the Capital Improvement Affidavit to the Department and notice to tenants.

(e) ~~(d)~~ A landlord who makes a ~~capital improvement without~~Capital Improvement prior ~~approval of a capital improvement petition~~to submitting a Capital Improvement Affidavit to the Department and providing notice to tenants may recover the cost of the ~~improvement~~Capital Improvement under Section 29-58(d) of the Code, ~~following the approval~~upon submission of the ~~petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work~~Capital Improvement Affidavit to the Department and providing notices to tenant.

(f) ~~(e)~~ A landlord must file ~~a capital improvement petition on a form approved by~~ the ~~Director ("~~Capital Improvement ~~Form")~~Affidavit, certifying:

(1) that the ~~capital~~subject improvements are ~~permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;~~Capital Improvements

~~(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;~~

~~(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;~~

;

(2) ~~(4)~~ that the ~~capital improvements~~Capital Improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing or are required to comply with law;

(3) ~~(5)~~ whether the ~~capital improvements~~Capital Improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;~~(6)~~ provided, however, that ~~the~~energy cost savings are not required for Capital Improvements to qualify for a Rent Surcharge;

(4) all regulated units are properly registered and licensed with the Department, and if the

Noonan, Katherine M. [NKM7]
The Code does not require County approval of a request prior to landlord's performance of the capital improvement work. The proposed language here would preclude landlords from recovering any surcharge for capital improvements that are now in process or were completed prior to adoption of the Regulations. The Department has approval rights over the Capital Improvement Affidavit, but there is no reason to further restrict the timing of landlord's work on its own property.

Noonan, Katherine M. [NKM8]
The Code states that "Capital improvements include structural alterations required under federal, state, or County law." This statement is not limited to improvements to a regulated unit. As a practical matter, many landlords will seek a capital improvement surcharge in connection with the building infrastructure modifications required per BEPS and other local laws. Many of these modifications are to building structures and systems---not specifically to regulated units. This needs to be clarified.

Noonan, Katherine M. [NKM9]
Also note that the DC regulations that the Department used as a form for its proposed MoCo regulations specifically provides that the capital improvement surcharge can be used for improvements required by law (See 14 DCMR 4210.2)

Noonan, Katherine M. [NKM10]
No need to additionally certify that subject improvements do not include ordinary repair and maintenance costs because that is part of the definition of Capital Improvements and covered by (1) above.

Capital Improvements have commenced or been completed, that all governmental permits ~~have been requested or obtained, and copies~~required by law to be in place with regard to the status of ~~either~~ the ~~request form or issued permit must accompany~~Capital Improvements as of the date of the Capital Improvement ~~Form~~Affidavit have been granted;

(5) ~~(7)~~ whether the ~~basis under~~Capital Improvements may be depreciable under generally accepted accounting principles or the federal Internal Revenue Code ~~for considering the improvement to be depreciable~~;

(6) ~~(8)~~ the estimated costs of the ~~capital improvements~~Capital Improvements, including any interest and service charge; and

(7) ~~(9)~~ the dollar amounts, percentages, and time periods computed by following the instructions listed in (~~f~~g); ~~and (10) that the petitioner has obtained required governmental permits and approvals~~.

(g) ~~(f)~~ The Capital Improvement ~~Petition~~Affidavit must ~~contain instructions for computing~~identify and compute the following in accordance with this section:

(1) the total cost of a ~~capital improvement~~Capital Improvement;

(2) the dollar amount of the ~~rent surcharge~~Rent Surcharge for each ~~rental~~regulated unit in the housing accommodation and the percentage increase above the current ~~rents~~base rent charged; and

(3) the duration of the ~~rent surcharge~~Rent Surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(h) ~~(g)~~ The total cost of a ~~capital improvement~~Capital Improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the ~~improvement~~Capital Improvement, in accordance with (~~i~~j);

(2) any interest that accrues or must accrue on a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~j~~k); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~k~~l).

Noonan, Katherine M. [NKM11]
Our revisions are consistent with the language of the Code. The language does not require the landlord to have obtained or applied for permits with regard to the proposed capital improvements, as such a requirement would be impractical.

(i) ~~(h)~~ The interest and service charge on, "a loan taken by the landlord to make the ~~improvement or renovation~~Capital Improvement" is the portion of any loan that is specifically attributable to the costs incurred to make the ~~improvement or renovation~~Capital Improvement, in accordance with (~~l~~m). The dollar amount of the calculated interest and service ~~change~~charge must not exceed the amount of the portion of that loan that is specifically attributable to the costs incurred to make the Capital Improvement, in accordance with (m).

(j) ~~(i)~~ The ~~costs incurred to make a capital improvement~~" total cost of a Capital Improvement" must 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 Director may find~~ probative of the actual~~, commercially reasonable~~ costs of the Capital Improvements. The ~~amount~~total cost of ~~costs incurred must~~a Capital Improvement shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is actually received by landlord from ~~or guaranteed by~~ a governmental program for the purposes of making the subject ~~improvement~~Capital Improvement.

(k) ~~(j)~~ The interest on a loan taken to make a ~~capital improvement~~Capital Improvement means all compensation paid or required to be paid by or on behalf of the landlord to a lender for the use, forbearance, or detention of money used to make a ~~capital improvement~~Capital Improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~capital improvement~~Capital Improvement, or on that portion of a multi-purpose loan of money used to make the ~~capital improvement~~Capital Improvement, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other ~~evidence of interest that the Director finds~~ probative evidence; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus four percentage (4%) points or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the ~~limited surcharge petition for capital improvements~~effective date of the Rent Surcharge for Capital Improvements.

Noonan, Katherine M. [NKM12]
14 DCMR 4210.12 provides for this alternative calculation of the rate of 7 year US Treasury maturities during prior 30 days plus 4% or 400bp. It is not clear why the Regulations propose this structure.

(l) ~~(k)~~ For the purposes of (~~j~~k)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Capital Improvement Affidavit must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Capital Improvement Affidavit is

submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the Capital Improvement Affidavit was filed. If the interest rate changes over the duration of the ~~rent surcharge~~loan, any ~~certificate filed under (t)~~Certificate of Continuation must list all changes and recalculate the total interest on the loan.

(m) ~~(l)~~ The service charges in connection with a loan taken to make a ~~capital improvement~~Capital Improvement must 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 probative evidence of service charges ~~as the Director may find probative~~.

(n) ~~(m)~~ Except when a continuation is permitted in accordance with (~~s~~t), the duration of a ~~rent surcharge requested or~~Rent Surcharge allowed ~~by~~pursuant to a ~~capital improvement petition~~Capital Improvement Affidavit must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the ~~capital improvement~~Capital Improvement, in accordance with (~~g~~h); divided by

(2) the sum of the monthly ~~rent surcharges~~Rent Surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected ~~rental~~regulated unit.

(o) ~~(n)~~ A ~~rent surcharge~~Rent Surcharge in the final month of its duration must be no greater than the remainder of the calculation in (~~m~~n), prior to rounding.

(p) ~~(o)~~ A Capital Improvement ~~Petition~~Affidavit must be accompanied by external documents to substantiate the total cost of a ~~capital improvement~~Capital Improvement and must be supplemented with any new documentation reflecting a material change in the actual total cost of the ~~improvement~~Capital Improvement, until the ~~Director approves or denies the petition~~Capital Improvements have been substantially completed.

(q) ~~(p)~~ A Capital Improvement ~~Petition~~Affidavit, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which regulated rental units will be affected by the ~~capital improvements~~Capital Improvements;

(2) the base rent for each affected regulated rental unit, and any other ~~approved capital improvement surcharges~~permitted Rent Surcharges; and

(3) the dollar amount of the proposed ~~rent surcharge~~Rent Surcharge for each regulated rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) ~~(q)~~ A ~~decision authorizing a capital improvement surcharge must be implemented~~landlord shall begin implementing a Rent Surcharge within 12 months of the date of ~~issuance~~the Capital Improvement Affidavit was submitted but no earlier than 12 months following any prior rent increase for an affected ~~rental~~regulated unit; provided, that if the ~~capital improvement~~Capital Improvement work renders the unit uninhabitable beyond the expiration of time, the ~~rent surcharge~~Rent Surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as ~~an approved capital improvement surcharge~~a permitted Rent Surcharge in the new lease or in the lease renewal ~~and may not be implemented mid lease~~.

(s) ~~(r) Not less than 90 days before the~~Prior to expiration of an authorized ~~rent surcharge~~Rent Surcharge a landlord may request to extend the duration or otherwise modify the amount of the ~~rent surcharge~~Rent Surcharge by filing ~~an application~~a notice with the Director and serving each affected rental unit with notice that the total cost of the ~~capital improvement~~Capital Improvement has not been recovered during the originally approved period of the ~~rent surcharge~~Rent Surcharge and requesting to extend ~~the approval~~or otherwise modify the amount of the Rent Surcharge ("Certificate of Continuation").

(t) ~~(s)~~ A Certificate of Continuation must set forth:

(1) the total cost of the ~~capital improvement as approved by the capital improvement petition,~~Capital Improvement as set forth in the Capital Improvement Affidavit, and the total cost of the Capital Improvement based on actual costs including, if applicable, any changes in the total interest due to a variable-rate loan;

(2) the dollar amount actually received by the implementation of the ~~rent surcharge~~Rent Surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months or modified amount required, under currently known conditions, for the landlord to recover the total cost of the ~~capital~~

~~improvement~~Capital Improvement by extension of the duration or modification of the ~~rent surcharge~~amount of the Rent Surcharge.

~~(t) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in mil.) and (2).~~

(u) ~~If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.~~Upon delivery of the Certificate of Continuation to the Department and notice to Tenants, Landlord shall be permitted to extend the duration or modify the amount of the Rent Surcharge as set forth in the Certificate of Continuation.

(v) ~~A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once~~In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Capital Improvement Affidavit and Certificate of Continuation.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return ~~application~~ process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

Noonan, Katherine M. [NKM13]
This language does not address how Fair Return Affidavits and Capital Improvement Affidavits relate to each other. Since they are for different purposes, presumably a landlord could submit both at the same time and have both approved. That would require modifications to the rent increase timing.

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year immediately prior to the year the unit ~~becomes~~became a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the ~~fair return application~~Fair Return Affidavit required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the ~~current year~~Current Year is a calendar year, the ~~current year~~Current Year CPI is the ~~annual~~Annual CPI for that year or 2) if the ~~current year~~Current Year is a fiscal year, the ~~current year~~Current Year CPI must be the CPI for December during the ~~current year~~Current Year.

(f) "Gross Income" means the actual annual ~~scheduled~~ rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord ~~was permitted to charge at the time of the application~~legally collected during the applicable period.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses for the applicable period.

29.59.01.03 Formula for Fair Return

(a) Fair Return~~. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year~~.

(1) In calculating Gross Income for the Current Year, the ~~Base Year~~ Net Operating Income for the Base Year under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any Fair Return Affidavit must identify a rent increase based on fair return ~~increase request must be~~as:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; and/or

(B) demonstrated to be commensurate with returns on investments ~~in~~of other

Noonan, Katherine M. [NKM14]
Whether regarding the Current Year or Base Year, the Gross Income is an actual known number. It should not include projections of what the landlord could have collected if all units were occupied, all tenants paid, and amenity fees were across the board.

Noonan, Katherine M. [NKM15]
This is wrong. The fair return rent increase formula is not Gross Income minus operating expenses. That is only part of the formula.

Noonan, Katherine M. [NKM16]
A Fair Return Affidavit may seek a fair return increase based on both operating expense offset and return on investment. It's not one or the other.

enterprises having comparable risks, provided that return on investment shall be deemed fair return up to the Net Operating Income for the property averaged over the prior three year period adjusted for CPI.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") ~~approved by the Director~~pursuant to a Fair Return Affidavit must be determined as a percentage of the Current Year rents and shall include any annual rent increase allowance under 27-57(a) of the Code, and each ~~restricted~~regulated unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein and subject to Section 29-54 of the Code, any fair return rent increase ~~approved by the Director~~ must begin to be implemented within 12 months of the date of the ~~issuance of the decision~~Fair Return Affidavit is submitted to the Department and notices provided to tenants or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase ~~awarded by~~pursuant to the ~~Director~~Fair Return Affidavit has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required increase has been taken in full, the ~~Director~~landlord may ~~allow~~elect to implement the ~~required~~full rent increase for that unit ~~to be taken~~ in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

Noonan, Katherine M. [NKM17]
After the 12 month or longer period expires for each unit, how does the landlord set the rent? This needs to be clarified since the fair return rent increase presumably includes the annual rent increase allowance.

Noonan, Katherine M. [NKM18]
Why would this be subject to Director approval? The requirement just creates more administrative hurdles and additional burdens on DHCA's limited resources.

29.59.01.04 Fair Return ~~Application~~Affidavit

(a) Requirement. A landlord may file a ~~fair return application~~Fair Return Affidavit (as defined in 29.59.01.04(d)(2) below) with the Director to increase the rent more than the amount permitted under ~~Section~~Sections 29-57 or 29-58 of the Code.

~~(b) Rolling Review. The Director will consider fair return applications on a rolling basis.~~

(b) ~~(c)~~ Prerequisites for a ~~fair return application~~Fair Return Affidavit. In order for ~~the Director~~a landlord to ~~consider~~submit a ~~fair return application, it must meet~~Fair Return Affidavit, the following requirements must be satisfied:

(1) All units within the rental housing listed in the ~~fair return application~~Fair Return Affidavit must be properly registered and licensed with the Department.

(2) The ~~fair return application~~Fair Return Affidavit must be completed in full, signed, and include all required ~~supporting documents~~for the Fair Return Affidavit.

(3) All Banked Amounts have been applied to ~~restricted~~regulated units.

(c) ~~(d)~~ Fair Return ~~Application~~Affidavit Requirements. A ~~fair return application~~Fair Return Affidavit must include the following information ~~and must be submitted in a form administered by the Department~~:

(1) The ~~applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return~~Fair Return Affidavit and one copy of supporting documents required pursuant to [_____] below (collectively the "Fair Return Affidavit") must be filed with the Department.

(2) The ~~application~~Fair Return Affidavit must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director ~~prior to the filing of the application~~.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) ~~Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been completed and associated costs are reasonable.~~Income and operating expense report for the property for the Base Year and the Current Year. Within ten (10) days following written request from the Director, landlord shall deliver supporting documentation confirming specific items on the income and operating expense report as may be specifically requested by the County. Such supporting documentation may include copies of bills, invoices, receipts, time sheets, or other documents. Any such supporting documentation provided by the landlord in response to the Director's request shall be delivered in an organized manner and shall be held by the Director as confidential.

Noonan, Katherine M. [NKM19]
The County already has inspection rights with regard to multifamily properties. No additional rights are needed here.

Noonan, Katherine M. [NKM20]
Does the Department really want to see and review every operating expense invoice for a property for the Base Year and Current Year? This seems overly burdensome for all.

~~(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.~~

~~(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.~~

~~(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.~~

(B) ~~(E)~~ Any justification for exceptional circumstances that the ~~owner~~landlord is claiming under this ~~regulation~~Regulation.

(C) ~~(F)~~ Any additional information the landlord determines would be useful in making a determination of fair return.

~~(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion~~

(d) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Fair Return Affidavit.

29.59.01.05 Processing of Fair Return ~~Applications~~Affidavit

(a) Filing of ~~Application. The fair return application form and one copy of supporting documents~~Fair Return Affidavit. The Fair Return Affidavit must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the ~~fair return application~~Fair Return Affidavit, the landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing ~~via first class mail, providing each tenant a copy of the Notice of Filing and~~of the ~~application (excluding supporting documentation)~~Fair Return Affidavit.

~~(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.~~

~~(d) Required Notice of Decision to Tenants~~

~~(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.~~

(c) ~~(2)~~ Implementation of Rent Increase. Beginning when landlord submits the Fair Return Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the rent increase as set forth in the Fair Return Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code. The implementation of any rent increase ~~awarded~~approved by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a ~~DHCA~~Department authorized fair return increase. ~~Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.~~

29.59.01.06 Fair Return Criteria ~~in Evaluation~~

(a) Gross income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord ~~could have~~actually received ~~if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid~~during such period.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

Noonan, Katherine M. [NKM21]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

Noonan, Katherine M. [NKM22]
The term "Notice of Filing" is not used elsewhere in these Regulations. The tenant notice makes the tenants aware that a Fair Return Affidavit has been filed, but there is no need for the landlord to provide the entire Fair Return Affidavit to the tenants. An interested tenant can reach out to the County, but there is no need to overwhelm all tenants with detailed information. Tenants are not entitled to the landlord's financial records.

Noonan, Katherine M. [NKM23]
As a practical matter, no property has 100% occupancy and 100% rent payment year over year. If this change is not made to Gross Income, then the definition of operating expenses should be revised to include all rental losses incurred by a landlord in connection with nonpayment and vacancy.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, ~~unless~~except to the extent these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.; below;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the Annual CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates ~~by a preponderance of the evidence~~ that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital ~~improvements~~expenses over the useful life of the expensed asset. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey plus 4% or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~the~~ substantial completion of the renovation ~~application~~.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; ~~and~~

(I) insurance costs; and

(J) costs incurred by landlord to comply with the Rent Stabilization Act, including costs of reporting, data collection, tenant noticing, Capital Improvement Affidavits, Fair Return Affidavits, Substantial Renovation Affidavits, and other administrative costs incurred by landlord as a result of the Rent Stabilization Act and these Regulations.

(2) ~~Reasonable and expected operating~~Operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been ~~or will be~~ reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

~~(B) payments made for mortgage expenses, either principal or interest;~~

(B) ~~(C)~~ judicial and administrative fines and penalties~~;(D)~~ , including damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(C) ~~(E)~~ depreciation;

(D) ~~(F)~~ late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord ~~or the rental housing~~;

(E) ~~(G)~~ membership fees in organizations established to influence legislation and regulations;

(F) ~~(H)~~ contributions to lobbying efforts;

(G) ~~(I)~~ contributions for legal fees in the prosecution of class-action cases;

(H) ~~(J)~~ political contributions for candidates for office;

(I) ~~(K)~~ any expense for which the tenant has lawfully paid directly or indirectly;

(J) ~~(L)~~ attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

~~(M) additional expenses incurred as a result of unreasonably deferred maintenance;~~ and

(K) ~~(N)~~ any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

Noonan, Katherine M. [NKM24]
This is duplicative of the former (2)(B) (payments made for mortgage expenses).

(c) ~~Base Year~~ Net Operating Income for Base Year. To adjust the ~~Base Year~~ Net Operating Income for the Base Year, the Director must make at least one of the following findings:

(1) The ~~Base Year~~ Net Operating Income for the Base Year was abnormally low due to one of the following factors:

(A) the landlord made substantial ~~capital improvements~~Capital Improvements in or prior to the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these ~~capital improvements~~Capital Improvements pursuant to a Capital Improvement Affidavit;

(B) substantial repairs were made to the rental housing due to exceptional ~~circumstances; or~~circumstance or new laws;

(C) other expenses were unreasonably high, notwithstanding prudent business practice; or

(D) other exceptional circumstances exist requiring equitable adjustment to Net Operating Income for the Base Year.

(2) The Base Year ~~Rents~~rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased ~~for five~~in the years preceding the Base Year;

(C) the ~~Tenant~~tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. ~~A~~Except as provided in 29.59.01.03(b), a rent increase established under an approved ~~fair return application~~Fair Return Affidavit remains in effect for each regulated unit for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a ~~restricted~~regulated unit for ~~that~~the 12-month period during which the regulated unit is subject to a rent increase pursuant to a Fair Return Affidavit (as such rent increase includes any annual rent increase allowance).

(b) Establishment of New ~~Base Year~~ Net Operating Income for the Base Year. The ~~net operating income~~Net Operating Income, income, and expenses, determined to be fair and reasonable pursuant to ~~a prior application for a fair return rent increase~~an approved Fair Return Affidavit must constitute the Net Operating Income of the Base Year income, and expenses~~, and net operating income~~ for those ~~restricted~~regulated units included in the finding of fair return for purposes of reviewing subsequent ~~applications~~affidavits.

(c) Limitations on Future Fair Return Requests.

(1) If ~~a fair return application is approved by the Director~~landlord submits a Fair Return Affidavit, the ~~property owner~~landlord may not file a subsequent ~~application~~Fair Return Affidavit covering the same period for which the ~~greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return~~ rent increase is ~~permitted above 15%) has been applied~~in effect under the prior Fair Return Affidavit.

~~(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.~~

Noonan, Katherine M. [NKM25]
Landlord cannot have multiple fair return increases in place at the same time, but there is no need to preclude subsequent fair return affidavits. Such a requirement only reduces the Department's burden at the landlord's cost.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.00 – Transition of Exempt Units

When an exempt unit becomes a regulated unit, the base rent for the first year of such regulated period shall be the median rent for comparable regulated units at the landlord's property. Thereafter, base rent for such regulated units shall be determined by Section 29-58(a) of the Code.

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 ~~Application for a~~ Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation ("renovation") under Section 29-60(12) for renovation commencing on or after the effective date of these Regulations must file an ~~application~~affidavit ("Substantial Renovation Affidavit") with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed, if any, for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be ~~renovate~~renovated showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) ~~Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.~~The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing of the Substantial Renovation Affidavit within five business days of the filing of the Substantial Renovation Affidavit.

(c) ~~The Director must review the application and supporting documentation and must issue and notify~~

Noonan, Katherine M. [NKM26]
This language fails to address:

1. What happens if a property is exempt under the substantial renovation exemption, but is subsequently in violation of Chapters 8, 26, or 29 of the Code? These Regulations already address Troubled and At-Risk designations, but not these other provisions. We proposed language in 29.60.01.10(d) to address this.

2. As drafted, this process applies logically to substantial renovations to be implemented after the Regulations take effect. That does not address the landlords who performed substantial renovations to their properties in the 23 years prior to the effective date of the Regulations. We proposed language in Section 29.60.01.10(c) to address this.

Noonan, Katherine M. [NKM27]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

~~the landlord of a decision approving or denying the exemption.~~A property shall be exempt under Section 29-60(12) upon filing the Substantial Renovation Affidavit with the Director, or, if such Substantial Renovation Affidavit is submitted to the Department within sixty (60) days of the effective date of these Regulations, then the exemption shall be deemed effective as of the effective date of the Regulations.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of ~~those costs~~the portion of that loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04.

29.60.01.04 Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents, estimates, or a commitment to make a loan, or other evidence of expenses as ~~the Director may find~~are probative of the actual~~, commercially reasonable~~ costs of such renovations.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the ~~improvement or~~ renovation over the amortization period of the loan, in the amount of either:

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

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus 4% or 400 basis points. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior ~~to application for an exemption for a~~ substantial completion of the renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the ~~initial~~actual rate of the loan (if known), or otherwise recalculated when actual interest is known.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 ~~that the Director may find~~ probative of the actual~~, commercially reasonable~~ costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The ~~Director must determine~~following factors shall be relevant to a determination of whether a ~~proposed~~

substantial renovation is deemed to be intended to enhance the value of the rental housing ~~by considering the following~~:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant; and

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair~~; and~~.

~~(4) whether the proposed renovations are optional or cosmetic changes~~

Any renovation required for compliance with federal, state or local law is deemed to be intended to enhance the value of the rental housing.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) ~~Within thirty days of the~~Following completion of a ~~substantial~~ renovation for which landlord has submitted a Fair Return Affidavit, a landlord must file an affidavit attesting to the substantial completion with the Director~~. If the Director determines that the renovations have been completed according to the substantial renovation application,~~ and identifying the date of ~~filing of the affidavit of~~such substantial completion ~~must be deemed the approved~~. The exemption ~~date~~shall be effective on the substantial completion date as set forth in the affidavit, and shall remain in effect until the 23rd anniversary thereof, subject to the property's continued compliance with Section 29-60(a)(12)(B) of the Code.

(b) Once a ~~decision approving a~~Fair Return Affidavit and affidavit if substantial ~~renovation exemption has been issued~~completion have been filed with the Department and subject to Section 29-54 of the Code, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease (without regard to any renewal term), if any, for that rental unit.

(c) Notwithstanding anything to the contrary herein and subject to Section 29-60(a)(12)(B) of the Code, the landlord of any multifamily property claiming exemption pursuant to Section 29-60(a)(12) of the Code on basis of renovations performed prior to the effective date of these Regulations shall be deemed exempt until the 23rd anniversary of the substantial completion date of such renovations if the landlord provides a written affidavit to the Department confirming (i) the date of substantial completion of the renovation, (ii) that the renovations constitute permanent

Noonan, Katherine M. [NKM28]
Optional vs cosmetic is not a relevant standard to determine if there is an enhancement of the value of rental housing.

alterations to a building that are intended to enhance the value of the building and when substantially completed cost an amount equal to at least 40% of the value of the building as assessed by the State Department of Assessments and Taxation.

(d) If at any time during the 23 year substantial renovation exemption period, a court or other administrative agency determines that a multifamily property is in violation of Chapter 8, 26 or 29 of the Code, the exemption shall not apply until such violation has been cured.

(e) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Substantial Renovation Affidavit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit ~~must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:~~may charge reasonable fees for amenities and services not included in base rent and shall include a schedule of such then-current fees in in the annual report the landlord submits to the Department in accordance with Section 29-62 of the Code, provided that fees for laundry, charging stations, vending machines, and other services available to tenants in connection with third party agreements shall not be governed by this Section 29.61.01.01.

(a) Application fee A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than the greater of (i) $50 from any ~~household~~tenant applicant, and (ii) the actual amount charged by a third party application review service in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

~~(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;~~

Noonan, Katherine M. [NKM29]
This provision is necessary to address all substantial renovations completed in the 23 years prior to the effective date of the Regulations. In practice, this should be treated as the exemption for new construction. The County can always challenge an affidavit, but removing an unnecessary approval process here will allow the Regulations to take effect in a more streamlined manner. Without this concept a landlord who completed a substantial renovation in 2021 will be subject to rent control upon adoption of the Regulations, and then submit the affidavit based on retroactive construction, to presumably be granted exemption as of a County approval date. That makes no sense and would cause all kinds of confusion amount tenants.

Noonan, Katherine M. [NKM30]
This section exceeds the authority of the Department under Rent Stabilization. The law allows the Director to limit fee increases or new fees or include a fee schedule----all in accordance with the affordable housing goals of the law.

1. Any specified fee amounts must be indexed.
2. Is there tenant outcry at the amount of lockout, key, and storage fees that necessitates this degree of government control. Landlords incur actual costs for these items, and passing them through to the applicable tenants prevents general expense to all tenants.
3. These proposed fee caps apply to regulated units only.

Noonan, Katherine M. [NKM31]
Landlords incur actual costs to perform background checks as part of application review. The proposed limitation does not account for the fact that some households have multiple applicants and that these actual costs exist and may vary from time-to-time. Recovering actual costs is not a tenant gauging effort.

Noonan, Katherine M. [NKM32]
The County Code already addresses late fees and the Rent Stabilization Act does not suggest that regulated units be treated different from other units with regard to late fees.

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

~~(e) Lock out fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.~~

~~(f) Secure storage unit accessible only by tenant A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.~~

~~(g) Internet or cable television A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.~~

~~(h) Motor vehicle parking fee~~

~~(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:~~

~~(A) 4% of the base rent for the unit for any secured, covered parking space;~~

~~(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or~~

~~(C) 1% of the base rent for the unit for any other motor vehicle parking space.~~

~~(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking~~

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) Intentional Omitted.

(f) Intentionally Omitted.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Noonan, Katherine M. [NKM33]
Pets actually create additional wear and tear on building and landlords need to have the ability to recover those costs. The restriction on pet fees goes beyond the scope of protecting affordable housing in the County.

Noonan, Katherine M. [NKM34]
Storage space actually costs money. A cap of $3 per square foot per month seems arbitrary and fails to account for cost differentials across properties. It is not indexed.

Noonan, Katherine M. [NKM35]
These rates are not market and they fail to account for variations across the County. The price of parking is not the same across the board.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

Document comparison by Workshare Compare on Wednesday, February 28, 2024 5:06:39 PM

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Document 1 ID	iManage://DMSFIRM/DMFIRM/411297563/1
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Document 2 ID	iManage://DMSFIRM/DMFIRM/411297563/6
Description	#411297563v6<DMFIRM> - Montgomery County Rent Stabilization Regulations
Rendering set	Standard

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Moved cell	
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Moved to	2
Style changes	0
Format changes	0
Total changes	784

EST. 1947
TOWER

Sandy Paik, *General Counsel*

March 1, 2024

Mr. Scott Bruton
Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, Md 20852

Re: Rent Stabilization Regulations

Dear Director Bruton:

I have spent a significant portion of my legal career working to support the development, financing, ownership and operation of multi-family apartment buildings across the US, in large part working to increase the affordable housing supply involving low-income housing tax credits (LIHTC) projects, many of which are located in Maryland. I began my legal practice decades ago in Howard County working on bond deals with HUD and Maryland's Community Development Administration. Throughout my career, I have invested years supporting efforts to increase the affordable housing supply, including a period serving as Associate General Counsel at Freddie Mac's Legal Division working on nearly $2B of transactions involving LIHTC properties with the Freddie Mac Multifamily Targeted Affordable Housing team. My current practice includes serving as General Counsel of The Tower Companies, which manages nearly 1400 units in Silver Spring's Blairs District.

It is my personal belief that the impact on the housing market in Montgomery County will ripple into the broader real estate market adjacent as it declines in quality due to delayed repairs as a direct result of the onerous regulatory process contemplated by the proposed regulations. It was with great consternation that I reviewed the legislation and proposed regulations implementing the Rent Stabilization Act, as it is likely that the approach will not only exacerbate the housing crisis we face in our community but there is

a likelihood it will deepen this crisis rather than advance Montgomery County towards the policy goal of a more stable housing market for renters.

The challenge of affordable housing production, the high cost of creating new multifamily affordable housing units, and the complex work to preserve the existing affordable housing supply will not be corrected by a rent control regime that involves significant resources devoted to administrative processing. The current housing crisis calls involves an urgent need for there to be more quality affordable housing faced by communities throughout the US, and the solution for the shortage in affordable housing is making investments in increasing both the quantity and quality of the affordable housing supply. Historical data indicates this approach will lead to a decline in Montgomery County in the quantity of the housing supply and the deterioration of the existing housing stock – there is a multitude of bipartisan policy research (including the Brookings Institute) that indicate the mid-term outcomes will trend towards significant loss in the valuation, investment and transaction activity first in the multifamily housing markets.

We support affordable housing goals, and we strongly urge the Department to restructure the regulations and to make recommendations of legislative fixes to concentrate the Department's resources on working with landlords who are not in compliance with the legal requirements. We write in support of and to supplement the attached comments to the proposed regulations submitted to Department by both Ballard Spahr and AOBA. Additionally, we echo the statements set forth in the July 7, 2023, letter in opposition to the rent control legislation submitted by the Mayor of Gaithersburg (https://montgomeryperspective.com/2023/07/10/gaithersburg-to-council-no-on-rent-control/)

It is of utmost importance that the regulations not result in artificially imposed delays in the ability of landlords to improve their rental units and/or properties and lease them. Specifically, these regulations should contain self-executing certification processes rather than an approval process for each surcharge and increase above the rent cap is needed in the regulations in order to provide landlords both the flexibility and ability to continue their renovation and leasing processes with minimal business disruption, which will in turn minimize vacancy. The elimination of wait time for the Department to

process what will likely be voluminous applications and petitions is in alignment with the Rent Stabilization Act, which states that landlords have the right to certain surcharges and increases. As proposed, the regulations will have a chilling effect on customary landlord operations associated with unit vacancies, unit renovations, and building renovations that will have a direct result in artificially accelerating deterioration due to delayed repairs than what would otherwise occur in a rent control regime with self-executing requirements that prioritize minimizing downtime in unit turnover.

Reliance on the transparency required by the Act is a critically needed restructure in the Department's framework. To continue with the regulations as proposed will result in a quicker and more dire housing crisis for the rental residents of Montgomery County. We firmly believe that the Department's resources will be better spent focusing on the small percentage of landlords that are intentionally out of compliance with the Act, in lieu of spending the Department's limited resources on processing submissions from 100% of the landlords, as most landlords will endeavor to be in compliance with the Act.

We would also prefer to see the Department provide: (i) more effective support and interventions for renters experiencing a personal crisis, (ii) investments in connecting to the wraparound services for low and moderate income households as contemplated by the Blueprint for Maryland, and (iii) rental assistance and support targeted for housing providers of low and moderate income households.

Sincerely,

Sandy Paik, Esq.

Gaithersburg
A CHARACTER COUNTS! CITY

July 7, 2023

Honorable Evan Glass, Esq.
President
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Glass:

The Mayor and City Council of Gaithersburg, like the Montgomery County Council, are committed to finding and implementing policies and programs that foster the well-being and financial stability of people in lower income brackets who are in rental housing - as all of us face the rising cost of housing and higher levels of inflation. I am writing, however, to express our serious concerns about the potential unintended consequences of the rent stabilization bill that is currently being considered to address this.

Amended Bill 15-23, Landlord-Tenant Relations – Anti-Rent Gouging Protections, would limit allowable annual rent increases to 3% plus the Consumer Price Index (CPI), and capped at 6%. Rent control legislation, while well intended, invariably does more harm than good. Since 2020, the rate of annual rent increases has unquestionably intensified, due in part to operating costs that rose dramatically for property owners coupled with COVID-era moratoriums on rent increases implemented by municipal and county governments. Indeed, the City of Gaithersburg joined other jurisdictions in implementing a temporary moratorium on rent increases during the state of emergency.

However, as you have heard before, **the average rent increase over the last 10 years in Montgomery County has been 2.1%.** And **in the 20-year period leading up to the pandemic, that average increase was 1.48%.** That is lower than the overall region, including our neighboring, rent-stabilized Washington D.C. (OLO 2020). This is to say that, **over time and without any legislatively imposed constraints, market forces have kept rental rates relatively stable in Montgomery County.**

Our concerns with Bill 15-23 include the following:

- Under rent control, whenever the market rate for rentals goes up beyond that 6% allowable rent increase, the property owner has an incentive not to renew leases and, thus, we will see an increase in tenant turnover.
- The bill promises to have a chilling effect on development, limiting property owners' ability to maintain buildings and discouraging potential investors. Our region is already suffering from an acute housing shortage. This bill will reduce the overall inventory of rental units and, in turn, drive market prices higher.
- It creates economic disincentives for maintenance and renovation projects on current properties—disincentives that will negatively impact the quality of living conditions for renters as well as erode property values. We have seen this situation play out virtually everywhere that rent control has been implemented.

- With less maintenance and fewer renovations of rental properties and, as the buildings deteriorate, not only will this negatively impact the quality of life for County renters, it will lead to lower appraised values of these properties, which will then lead to lower tax revenue to support critical services provided at the municipal, county, and state levels.
- Small property owners, who are generally less capitalized than REIT and multistate investors, provide an estimated 40% of rental housing in Montgomery County. This bill will prevent many of them from being able to meet the rising costs of maintenance, higher mortgage rates, and/or rising property taxes.
- Rent control provides a powerful incentive for property owners either to convert rental units into condominiums or to demolish existing rental properties and construct new ones with fewer affordable units.

Numerous studies identify rent control policies' adverse economic effects. Rebecca Diamond, an Associate Professor of Economics at the Stanford Graduate School of Business, states "In the long run it decreases affordability, fuels gentrification, and creates negative spillovers on the surrounding neighborhood." Albert Saiz, Associate Professor of Urban Economics & Real Estate at the MIT Center for Real Estate, said, "The evidence is very clear that rent control doesn't work the way it's intended to work." According to the *Economic and Fiscal Impacts of Rent Control Legislation in Montgomery County, Maryland,* prepared by the Regional Economic Studies Institute at Towson University in 2015, "Rent Control would result in reductions in the property values of existing multifamily buildings and would, in turn, significantly decrease County property tax revenues and income tax revenues paid by building owners residing in the County. Additionally, many planned multifamily and mixed-use projects would not be developed, resulting in further losses of tax revenues and jobs."

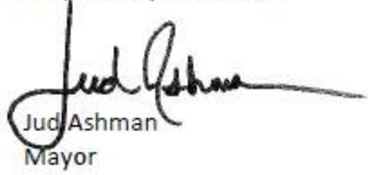
Closer to home, the County's own Office of Legislative Oversight (OLO) stated the following in a 2020 report:

Research indicates that rent stabilization could lead to reduced supply of rental housing and upward pressure on the prices of unregulated units (including owner-occupied units). This reduced supply could occur as a result of condominium conversion or reduced construction activity. Research also indicates that rent stabilization programs often result in disinvestment by owners, including deferred or foregone maintenance. There is evidence that rent stabilization has led to neighborhood deterioration or increased crime in some locations.

In the end, our goal is to expand people's opportunities to secure quality housing in Montgomery County. The City Council and I are proud to support programs that will achieve that outcome. However, we are concerned that this bill will have the opposite effect, potentially doing profound damage to the housing market and the local economy – and, more importantly, diminishing the quality of life for our renter community.

We ask that you consider our concerns before proceeding any further. As always, we thank you for your consideration, your partnership, and for all you do for our County. Please do not hesitate to reach out to me directly to discuss this.

Respectfully submitted,



Jud Ashman
Mayor

Comments on the Proposed Montgomery County Regulations on Rent Stabilization

The Apartment and Office Building Association (AOBA) of Metropolitan Washington is the leading non-profit trade association representing the owners and managers of approximately 155 million square feet of commercial office space and 430,000 residential units across the Washington Metropolitan region. Of that portfolio, AOBA members operate more than 60,000 (roughly 72%) of the County's estimated 83,769 rental units. On behalf of its member companies, AOBA submits the comments below on the Proposed Regulations on Rent Stabilization.

Background

AOBA has been actively engaged as part of the Montgomery County community for 50 years. As housing providers, our members have helped the County to achieve its housing goals, creating safe and healthy living spaces and opportunities for all ages, income levels and backgrounds. We have grown along with the County, and we hold a vested stake in seeing the community continue to thrive into the future.

It is with this interest in mind that AOBA opposed the adoption of the Rent Stabilization Law (RSL). Our intention is not to relitigate the merits of rent control. Rather, we offer our comments on the proposed regulations in the context of ensuring maximum flexibility to mitigate the negative impacts the RSL will have on the county.

We appreciate the extent to which DHCA has attempted to develop and implement streamlined and simplified administrative processes toward this end. Many of our member companies have operated under rent control regimes in the District of Columbia, Tacoma Park, and elsewhere nationally. Many of our comments are offered in this context and in the vein of avoiding the same challenges and pitfalls they have encountered in those jurisdictions.

Our first general recommendation, which stems from our members' experience with rent control policies, is to include in the regulations a requirement that the Department of Housing and Community Affairs (DHCA) produce a publicly available annual report on the RSL and share it with the Council. This report should be maintained in electronic form on the DHCA website and provide an overview of how the RSL is being administered, including a section detailing the number and type of petitions filed, whether they are approved or denied, the

reasoning for their approval or denial, and how those statistics compare to historical numbers. The reasoning for this stems from the poor tracking of regulatory performance in both Takoma Park and in DC. Both Takoma Park's Commission on Landlord Tenant Affairs (COLTA) and Washington, DC's (DC) Rental Housing Commission (RHC) do not properly disclose information on regulatory performance in a transparent and easily digestible manner. This is a disservice to housing stakeholders, elected officials, and the public, who should be able see how these regulations are being enforced and use that information to inform future decision-making.

In addition, we call on the County to incorporate flexibility in the regulations in recognition of the acute impact that rent stabilization will have for our older market-rate affordable housing stock and to account for the costs of compliance with government mandates such as the Building Energy Performance Standards (BEPS). Roughly 60% of the County's existing rental housing stock is over 30 years of age. These properties, which comprise an outsized share of the units available to lower levels of area median income in the County, already face the pressure of higher operating costs due to their age and the need for scheduled building system replacements and upgrades. Layer on top of that the new requirements associated with BEPS, and the market may not bear the rent increases required to offset these costs. Great care must be taken to ensure that we do not create a perverse incentive for these properties to be shut down and redeveloped, resulting in significant displacement and a net loss of affordable housing.

The remainder of our comments and recommendations relate to specific sections of the proposed regulations, followed by a summary of AOBA's proposed changes.

Sec. 29.58.01.01 – Rent Increase for New Lease or Lease Renewal

Section 29 – 28 of the County Code requires that housing providers offer two-year lease terms to tenants at each renewal. However, the proposed regulations only allow a single rent increase at the outset of that two-year period. According to the Department, the decision to limit rent increases to once per lease term was made based on the County Attorney's interpretation of Section 29 – 58 (a). The Section states that:

> *(a) In general. Except as provided under subsection (b), upon a lease renewal or new lease agreement, a landlord must not increase the rent of a regulated rental unit to an amount greater than:*
>
> *(1) The base rent; plus*
>
> *(2) The rent increase allowance under Section 29-57; plus*
>
> *(3) Any banked amount; and*
>
> *(4) Does not exceed 10 percent of the base rent.*

This is in direct conflict with the RSL, which explicitly allows **annual** rent increases in Section 29 – 57(a). In addition, Section 29 – 57(c) explicitly makes clear that any rent increase allowance under subsection (a) only remains in effect for a 12-month period.

Moreover, this language is antithetical to the stated purpose of the RSL – to promote

housing affordability by keeping rents lower. If adopted, this regulation will result in higher rent increases in the first year of a multi-year lease, likely at or near the maximum level. Absent the ability to spread such increases over the life of the lease term, housing providers will be forced to frontload rent increases to cover projected costs in outyears, building in flexibility for unknown variables such as inflation. The result will inevitably be rent shock, wherein County residents will be subjected to sharper spikes in housing costs rather than a smother growth curve more commensurate with growth in wages. The proposed restriction on annual rent increases for multi-year leases will ultimately harm Montgomery County renters and lead to greater displacement. We ask that DHCA align Sec. 29.58.01.01 of the proposed regulations with RSL Sections 29 – 57(a) and 29 – 57(c).

Sec. 29.58.01.02 – Rent Increases for Troubled or At-Risk Properties

A significant overhaul of the County's troubled and at-risk property designation, as well as the inspection timelines and processes for adding and removing properties from the list, is required prior to the implementation of rent stabilization. We believe that the goal of property inspections should be to ensure safe, decent, habitable, and code-compliant housing. The existing program does little to advance this objective, and as drafted, 29.58.01.02 of the proposed rent stabilization regulations would tie the hands of housing providers, severely limiting their ability to execute necessary repairs and property maintenance.

The County's existing process for designating properties as troubled or at-risk under Section 29-22(b) of the County code is problematic for several reasons. Currently, properties may be designated as troubled immediately after an initial inspection without any opportunity to cure or even sufficient notice given to the property owner. While Section 29.40.01.04(k) of the Executive Regulations state that "Within 30 days of the Department's designation of a rental property as a Troubled Property, the Department shall provide written notice of such designation to the Landlord," it is not clear that DHCA is providing proper and timely notice of such designations. Additionally, housing providers are faced with a moving target based on average TV (total number of violations) and SV (severity of violations) scores of other relatively comparable properties. These target scores should be disclosed to property owners in advance of inspections. Lastly, some property owners have questioned the validity of the scores, given that some property inspections show more units inspected than exist at the property.

The County currently publishes the Troubled Properties List once a year, which means that a property placed on this list cannot be removed for at least a year. Properties designated as at-risk may take even longer to be removed from the list given that the County Code does not require more frequent inspections for those properties. Instead, the Code gives DHCA the "discretion to inspect these properties more frequently than once every three years."

Rather than designating a property as troubled or at risk after the initial inspection, the County should provide housing providers that have been issued notice of violations sufficient time to cure them. A property should only be designated as troubled or at risk if the number or severity of violations exceeds the threshold established by DHCA after the cure period has

ended. Further, the scoring method for total number of violations should be revamped to discount or exclude altogether tenant-caused violations over which the housing provider has no control. At a minimum, tenant caused violations should include hoarding, overcrowding, blocking safe egress from a unit, creating conditions that cause infestations or mold, or preventing a housing provider from accessing a unit to correct violations.

Finally, we urge the County to reconsider the requirement that properties designated as troubled or at-risk file a fair return petition to obtain rent increases. Approximately 40-percent of properties (309) inspected by DHCA in 2023 were designated as troubled or at risk. The County simply does not have the staff or resources to review and process this number of fair return petitions, and prohibiting these properties from obtaining a fair return is not legally defensible. The enabling language in the RSL stipulates that regulated units designated as troubled or at-risk by DHCA under Section 29-22(b) "must not increase rent in excess of an amount the Director determines necessary to cover costs required to improve habitability." Rather than requiring fair return petitions, the County should set an alternate rent cap for troubled or at-risk properties that allow those housing providers to continue to maintain habitability.

Sec. 29.58.01.03 Allowable Rent Increase for Previously Vacant Lots

This section does not account for units that become vacant due to catastrophic events, such as fires, flooding, or other natural disasters. In these instances, a unit could be offline for more than 12 months while the insurance claim is processed, and repairs are made. Units offline for extended periods of time would not have banked rent since no rent increases have been issued. Furthermore, insurance may cover some, but not all, of the costs of repairing these units. In other instances, housing providers may elect to make upgrades to the units beyond the covered insurance amount. In both cases, the housing provider is incurring costs that must be recovered through the rent. Requiring a housing provider to go through a lengthy capital improvement petition to recover these costs will only lengthen the amount of time that the units are offline, further contributing to the housing shortage. All units vacant due to catastrophic events should be allowed to reset rents regardless of any banked rents and without having to go through a lengthy petition for a capital improvement surcharge.

Sec. 29.58.01.04 – Surcharge for Capital Improvements

Grandfathering

Some housing providers invested in large capital improvements before the RSL was enacted. In many cases, these projects took years of planning, lengthy permitting approvals, and implementation to minimize the impact on tenants. These projects are either now being completed or are still underway. It is neither fair nor appropriate for these projects to have to go through a lengthy capital improvement surcharge petition, and doing so will only delay how long it takes for the units to get back on the market. In recognition of the investment that these housing providers have made in the County, any capital improvement projects that received

permitting approval two years prior to the RSL enactment should automatically be grandfathered in with an automatic surcharge petition approval.

Processing of Petitions

It is critical that the process for petitioning the County for a surcharge to cover the costs of capital improvements be flexible, efficient, and adaptable. AOBA members operating under neighboring jurisdictions' rent control regimes have cited petition processes and reviews so onerous that they discourage applications and thus contribute to a decline in the quality of housing. Absent a predictable, fair, and flexible system for approving surcharges, housing providers will be forced to defer projects and maintain only the baseline level of upkeep necessary to pass inspection.

To that end, the petition process should be tied seamlessly to the permitting process for commercial interior alteration building permits. Project timelines may extend over multiple years, whereas the proposed regulations require that to qualify for a capital improvement surcharge, work must be completed within 12 months. Typically, housing providers will conduct large capital improvement projects in phases or as units turn over to avoid the disruption and displacement of tenants that would occur if all units were taken offline simultaneously. The implementation timelines should be extended to align with estimated project timelines proposed by housing providers for regulated units.

There are several other concerning aspects of the capital improvement surcharge process as currently written. First, there is no set timeline for the Director to review the surcharge petition. Absent a streamlined and efficient review process, housing providers will be discouraged from making capital improvements or incentivized to leave units vacant while awaiting a determination of a petition. AOBA recommends including language stating that the Director has 10 days from receipt of a petition to confirm that it has all the information it needs or request additional documentation. This 10-day period mirrors the requirement in the County's Zoning Ordinance standards for Site Plan applications. Following that 10-day period, the Director should be required to review the petition and make a determination within 30 days. Placing time limitations on petition review will ensure that housing providers are not forced to defer maintenance due to monthslong review periods.

The following is an example of how this timeline and process could work based on the process for commercial interior alteration building permits:

1. Housing provider submits petition application form, along with supporting documentation, including phasing plan and applicable surcharge after each phase;
2. Petition is reviewed by the Department within 10 days to verify that the information provided conforms to the submittal requirements, and the application is compliant with County codes and standards;

3. Within 30 days, the Department issues a preliminary approval of the plan and its phasing schedule;
4. Any change in plans or phasing that occurs during construction must be resubmitted and reviewed for approval by the Department;
5. After construction is completed, final approval of the surcharge is completed based on actual costs; and
6. The surcharge can be implemented within 24 months of approval.

Without this process or a substantially similar one, housing providers will not incur the time and expense of planning for and obtaining permits for capital improvements beyond what is necessary to maintain habitability. Furthermore, a 24-month implementation is needed because rent increases cannot be assessed mid-lease, meaning that surcharges cannot be implemented for tenants on two-year leases within the 12-month time limit in the regulations. For example, a housing provider submits and receives preliminary approval to upgrade tenant's bathrooms and kitchen. (It is common for housing providers to receive these requests in Class A apartment buildings.) After the improvements are complete, but before the final surcharge is approved based on the actual costs, the tenant signs a two-year lease. Under the 12-month implementation timeline in the existing regulation, the costs of these improvements could not be recovered.

The regulations also allow the Director to deny the application if a housing provider fails to file all the necessary documentation or respond in a timely manner. The regulations do not, however, define what constitutes a "timely manner." At a minimum, the housing provider should be given 30 days to respond before the application is closed. The regulations should also allow for an application to be closed pending further action on the part of the housing provider rather than an outright denial. This would allow housing providers to address challenges with capital improvements that may take time to resolve, such as those that require engineering studies, without having to start the application all over again.

Lastly, the regulations require that the housing provider notify all affected tenants of the decision to file a petition within five business days of filing the petition. According to the Director, the rationale for this requirement is to give tenants the opportunity to weigh in on the proposed capital improvements. However, this suggests that tenants can override a housing provider's decision to make capital improvements. This is neither fair nor appropriate given that some of the capital improvements are required to comply with state or local mandates as outlined below. Housing providers should only be required to notify affected tenants of an **approved** capital improvement plan and surcharge.

Definition of Capital Improvements

The regulations lack a clear distinction between capital improvements and normal wear and tear. One way to distinguish between the two would be to establish a dollar threshold for when normal wear and tear becomes a capital improvement. For example, any improvements above $5,000 per unit would automatically qualify as a capital improvement. Another approach

would be to **automatically** make anything that would qualify as depreciable under the Internal Revenue Code a capital improvement. According to IRS Publication 946, improvements must be treated as separate depreciable property[1]. To be depreciable, the property must have a determinable useful life of more than one year. Finally, the Department should allow housing providers to develop an ongoing renovation program that can automatically be applied to units at turnover. This could be done as part of a phasing plan as outlined in the processing of petitions section above. This would give the housing provider the flexibility to quickly renovate and turnover the unit without having to go through a lengthy petition each time.

The regulations also require the capital improvements to be "**structural** alterations to a regulated unit." However, neither the RSL nor the regulations define structural alterations. In fact, very few county or municipal codes define structural alterations. Instead, jurisdictions typically define alterations based on tiers or levels of impact to the affected property. One of the few code definitions of structural alterations can be found in the Janesville, Wisconsin municipal code, which uses the following definition:

> *Sec. 42-237. Structural alteration means any change other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, girders or foundations*[2].

This definition is problematic for several reasons. First, very few capital improvements would fall under this definition, including kitchen and bath renovations. Second, many of the energy efficiency measures required to comply with the Maryland Building Energy Performance Standards are not structural.

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[1] https://www.irs.gov/publications/p946#en_US_2023_publink1000107380

[2] https://library.municode.com/wi/janesville/codes/code_of_ordinances?nodeId=COOR_CH42ZO_ARTVIDE_S42-237STAL

Maryland

Table 6 shows the package of selected measures from Table 4 for Mayland BEPS compliance.

Table 6 EEM package for Maryland BEPS compliance

#	Name	Annual Energy and Cost Savings						Payback with Incentives
		Site EUI Savings (%)	Electric Savings (kWh/Yr)	Natural Gas Savings (therms/Yr)	Direct GHG Emissions Savings ($kgCO_2e/SF$)	Measure Cost /SF	Lifespan (Years)	Simple Payback (Yrs)
1	DHW Piping Insulation	4%	-	3,000	0.25	$0.21	15	4
2	Programmable Thermostats	1%	5,800	700	0.05	$0.30	10	EUL
3	Lighting Upgrade	1%	19,600	-	0.00	$0.31	10	7
4	ENERGY STAR Doors and Windows	14%	23,200	9,300	0.78	$5.84	20	EUL
5	Air Barrier Continuity	6%	4,200	3,900	0.33	$2.85	20	EUL
6	ERV Installation	-2%	-9,500	-900	-0.07	$2.42	15	EUL
7	HVAC System Upgrade	28%	-163,700	25,500	2.13	$16.11	15	EUL
8	Plumbing Upgrade	<1%	-	400	0.03	$0.45	3	EUL
9	Exterior Wall Insulation	12%	12,600	7,900	0.66	$12.19	20	EUL
10	DHW System Upgrade	14%	-213,600	17,500	1.46	$16.26	15	EUL
12	Cooking Fuel Conversion	<1%	-7,700	400	0.04	$3.28	30	EUL
	TOTALS (All Measures)	79%	-329,100	67,700	5.66	$60.22	-	-

Figure 1. Steven Winters Associates Multifamily Case Study 2

Even if the County takes a more expansive view of "structural" by including the impact to walls, doors, and windows, this still excludes HVAC system and domestic hot water (DHW) system upgrades among others. As noted above, these improvements are some of the costliest to make and result in some of the highest energy savings. Maryland BEPS are among the most aggressive in the country and will require nearly all buildings, including those that have invested heavily in energy efficiency, to make some level of upgrades. Without the ability to recover these costs, housing providers in Montgomery County cannot fully comply with the County or State BEPS.

The RSL must be amended to remove the word structural from the type of alterations that constitute capital improvements. In the meantime, the regulations must define structural alterations as broadly as possible. For example, the County could include walls, doors, windows, plumbing, and mechanical systems as structures that qualify as capital improvements.

The second issue is that the regulations make several references to improvements made to regulated rental units rather than the whole property. This could preclude improvements to the corridors, common areas, or complete building systems. The regulations must be amended to "capital improvements are ~~permanent~~ alterations to a regulated rental unit **or property associated with the regulated rental unit**."

Costs & Recoverability

The total costs of capital improvements should also include loss of income due to tenant displacement as well as staff costs associated with the capital improvement. Some of the capital improvements required to comply with BEPS, for example, cannot be completed while the unit is occupied. Similarly, these large capital projects require extensive staff costs to implement. Finally, any capital improvements completed in the last three years should be recovered by a

capital improvements surcharge.

In many cases, the market may not be able to absorb large surcharges needed to comply with legislative mandates. Below is an AOBA member case study that examines the cost of BEPS compliance. This case study does not include PEPCO heavy up costs required to handle the additional electrical load of the improvements, nor does it include any secondary code upgrades triggered by the improvements, financing costs or loss of tenant income.

Electrification Case Study

1960s Vintage 24 unit Garden Style Apartment with Split System (Gas Forced Air / Electric AC)

Scope of Work	Total Cost	Cost/Unit
Electrification - Circuit Upgrades (does NOT include Pepco Service Costs)		
Labor / Materials - 1200 Amp Service Installation	$ 42,420.00	$ 1,767.50
Labor / Materials - Service Feeder Installation	$ 10,500.00	$ 437.50
Labor / Materials - 200 Amp In Unit Subpanel Installation	$ 50,108.33	$ 2,087.85
Labor / Materials - 30 Amp Circuit Installation to support Electric Dryer	$ 7,233.33	$ 301.39
Labor / Materials - 225 Amp Circuit Installation to support Electric Water Heating System	$ 84,000.00	$ 3,500.00
Labor / Materials - Electric Stove, Furnace, and Air Conditioning Circuit Installation	$ 40,110.00	$ 1,671.25
Total Cost - Electricifcation - Circuit Upgrades	**$ 234,371.67**	**$ 9,765.49**
Equipment Replacements		
Building Water Heater Upgrade / Installation	$ 52,150.00	$ 2,172.92
Building HVAC (Heat Pump) Upgrade / Installation	$ 204,501.00	$ 8,520.88
In Unit Stove (GE Electric) Replacements / Labor	$ 17,133.60	$ 713.90
Laundry Room Replacements / Labor (Speed Queen)	$ 9,761.40	$ 406.73
Total Cost - Equipment Replacements	**$ 283,546.00**	**$ 11,814.42**
Total Cost - Circuit Upgrades & Equipment Replacements	**$ 517,917.67**	**$ 21,579.90**

Note: This case study is representative of the cost to upgrade in building circuitry and equipment installation and does **not** include: 1.) infrastructure upgrade costs associated with utility required work to accommodate increased electric demand, 2.) financing costs, 3.) permits and engineers fees, 4.) compliance filings, 5.) general contingency, 6.) equipment and labor inflation contingency, and 7.) construction management fees

Figure 2. AOBA Member BEPS Case Study 2023

This property currently has average rents of $1,500 per month. Assuming a below market County Green Bank subsidized loan of 4% amortized over 10 years, these improvements would require a 14% rent increase. Given this property's age and features, the market may not be able to absorb such a high increase. Yet, the regulations do not allow the housing provider to modify the amount of the surcharge over time. The regulations also only allow one “Certificate of Continuation” (COC) to extend the surcharge. Housing providers should be allowed to modify a

surcharge and apply for multiple COCs until all costs can be recovered. For example, if the property above can only absorb a 10% rent increase initially, then the housing provider should be allowed to increase the surcharge or apply for multiple COCs as needed to recover the full cost of BEPS compliance. Such a practice would align with the goals of the RSL, allowing housing providers to smooth out rent increases over time to avoid displacement and rent shock.

Sec. 29.59.01 – Fair Return

The entire section on fair return is far too complex and will be too cumbersome for both housing providers and the County to administer. Rather than requiring extensive documentation of operating expenses for every petition, the County should establish an industry benchmark. One common operating expense benchmark used by commercial loan underwriters and real estate investors is 35% of Gross Potential Income (GPI) excluding capital improvements. Any expenses below that benchmark should automatically be accepted without the need for documentation. The County could still conduct random audits of housing provider's operating expenses to make sure that they are in line with this benchmark and adjust it over time as necessary. The County could also require actual operating expense information from housing providers that claim operating expenses exceeding this benchmark.

The fair return formula also needs to be reworked. Rather than requiring the housing provider to demonstrate returns commensurate with those in other enterprises with comparable risks, the Department should establish its own baseline for fair return. One possible option is to use a real estate investment risk premium over the 10-year Treasury Note (10UST). The 10UST is the most widely tracked government debt instrument and is frequently used as benchmark for mortgage rates and corporate debt. More importantly, the 10UST is the risk-free return for all long-term investments.

Figure 3. Average Annual 10-year US Treasury Note March 2014 – March 2024[3]

The risk premium, on the other hand, is the minimum return that real estate investors need to earn on their investment to compensate for investment risks.

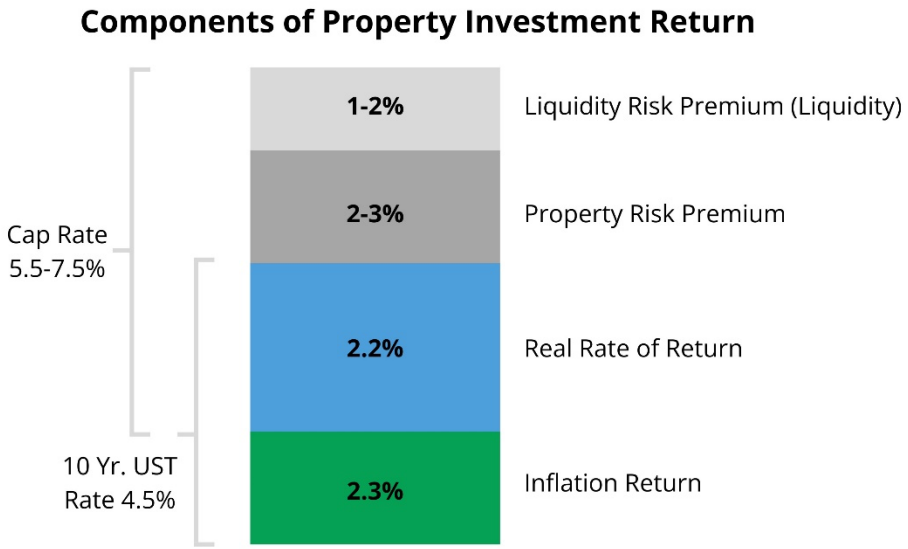

Figure 4. NCREIF NPI Commercial Properties, 1991 – 2016[4]

The liquidity premium is the amount needed to compensate investors for investing in assets, such as real estate, that cannot easily be liquidated. The property risk premium is property specific and may be based on the creditworthiness of tenants, cost of improvements, and market profile. For these regulations, AOBA recommends using a flat risk premium of 4 percent. Combining the 4% risk premium with the 10UST annually would give the County a baseline for fair return.

Below is an example of how this formula would work with a hypothetical property valued at $50 million. This model assumes a 3% annual rent growth and a 3% increase in operating expenses annually. Actual return, also known as capitalization rate, is calculated by dividing Net Operating income (NOI) by property value.

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[3] https://www.macrotrends.net/2016/10-year-treasury-bond-rate-yield-chart

[4] The NCREIF Property Index (NPI) is a quarterly, unleveraged composite total return for private commercial real estate properties held for investment purposes only. All properties in the NPI have been acquired, at least in part, on behalf of tax-exempt institutional investors and held in a fiduciary environment. https://www.naiop.org/research-and-publications/magazine/2017/summer-2017/finance/a-more-relevant-measure-of-risk/

Fair Return Basline Calculation								
Input	2016	2017	2018	2019	2020	2021	2022	2023
Avg 10 Yr T-Bill	1.78%	2.33%	2.62%	2.14%	0.89%	1.45%	2.95%	3.96%
Risk Premium	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Fair Return	5.78%	6.33%	6.62%	6.14%	4.89%	5.45%	6.95%	7.96%
Gross Potential Income (GPI)	$ 4,615,385	$4,753,846	$ 4,896,462	$ 5,043,355	$5,194,656	$5,350,496	$5,511,011	$ 5,676,341
Operating Expenses	$ 1,615,385	$1,663,846	$ 1,713,762	$ 1,765,174	$1,818,130	$1,872,674	$1,928,854	$ 1,986,719
Net Operating Income	$ 3,000,000	$3,090,000	$ 3,182,700	$ 3,278,181	$3,376,526	$3,477,822	$3,582,157	$ 3,689,622
Actual Return (Cap Rate)	6.00%	6.18%	6.37%	6.56%	6.75%	6.96%	7.16%	7.38%
Pass Fair Return?	Yes	No	No	Yes	Yes	Yes	Yes	No

Figure 5. Fair Return Example

Under this formula, the amount of GPI needed to close the gap between the fair return baseline and the actual return would vary by year. This formula could be applied at the unit level by dividing the amount of GPI needed to obtain fair return across all leases expiring in the year that fair return was not obtained. In the example above, fair return is missed in 2017 by 15 basis points. The amount of GPI needed to close this gap is approximately $75,000 resulting in an additional rent increase allowance of 4.63%[5]. This formula provides housing providers with a well-defined and predictable method for obtaining fair return.

Finally, the regulations do not allow housing providers to submit fair return applications for 24 months following the issuance of an approval or until any remainder of the increase has been applied. As noted in the example above, a property may not obtain a fair return in consecutive years. This could be due to a low rent increase allowance, lower-than-expected GPI, higher-than-expected operating expenses, fluctuations in the 10UST, or a combination of these factors. Preventing housing providers from applying for a fair return in consecutive years could constitute a taking that may not be legally defensible.

29.60.01 Substantial Renovation Exemption

The process of applying for a substantial renovation exemption should also follow the commercial interior building alteration permit process as outlined below:

1. Housing provider submits substantial renovation exemption application along with supporting documentation, including phasing plan;
2. Petition is reviewed by the Department within 10 days to verify that the information provided conforms to the submittal requirements, and the application is compliant with County codes and standards;
3. Within 30 days, the Department issues a preliminary approval of the plan and its phasing schedule;
4. Any change in plans or phasing that occurs during construction must be resubmitted and reviewed for approval by the Department;

[5] Formula: $50,000 (property value) x 0.0015 (Fair Return Baseline – Actualy Return) = $75,000

5. After construction is completed, the housing provider submits an affidavit attesting to the completion of the substantial renovation within 30 days; and
6. The Department must determine that the renovations have been completed according to the substantial renovation application within 30 days.

The regulations currently require the substantial renovation exemption to begin when the housing provider files the affidavit of completion and requires DHCA to determine whether the substantial renovation has been completed according to the application. The regulations do not, however, set a timeline for how quickly the DHCA must make this determination. We recommend a 30-day review period and that the exemption period begin **after** the determination has been made, not when the affidavit is filed. Substantial renovations must also include the ability to phase by building or sections of the property. Without phasing, housing providers will take units offline for longer periods of time, further contributing to the housing supply shortage. Furthermore, substantial renovations, like new construction, encourage investment in the County and contribute to the local economy.

The regulation must be amended to clarify that the assessed value used for determining the substantial renovation threshold is specific to the building or improvements to the property and does not include the value of the land. This would align the regulations with the RSL, which states the following:

> *29-56. Rent stabilization definitions. Substantial renovation means permanent alterations to a building that... (2) cost and amount equal to at least 40 percent of the value of the* ***building****, as assessed by the State Department of Assessments and Taxations*

The value of the building, not the land, is what is changing based on the proposed substantial renovation.

Once again, the application notice provision to affected tenants is inappropriate. Allowing tenants to weigh in interferes with the housing provider's property rights and ability to maximize the return on their investment. Housing providers should only be required to notify tenants if a substantial renovation application has been approved (step 4 above).

The regulations give the Director far too much discretion to determine whether a proposed substantial renovation is intended to enhance the value of the rental housing. **All renovations** are intended to add value to the property otherwise housing providers would not go through the time and expense to complete them. The Director claims that this discretion is needed for two reasons. First, the Director would like to prevent housing providers from deferring maintenance over many years to obtain a substantial renovation exemption. The County can already prevent deferred maintenance through robust housing code enforcement. Furthermore, the threshold for obtaining a substantial renovation exemption (40%) is so high that it would take many decades of deferred maintenance to reach.

The second reason that the Director wants this discretion is to prevent substantial renovations from changing the "demographics or affordability" of the property. However, this is

not an appropriate use of the Director's discretion either. The alternative to a substantial renovation i complete redevelopment, which would also impact demographics and affordability or continued disinvestment in housing in the county. Lastly, it is immaterial whether the proposed renovations are optional or cosmetic. Tenants frequently demand higher-end finishes, furnishings and amenities. The only factors that the Director should consider are the total cost of the renovation and supporting documentation.

The section of the regulations on calculating service charges for a loan for a substantial renovation make several references to "a loan." This should be changed to any loans and all forms of debt associated with a substantial renovation should be included. Large capital improvements often require multiple loans or other creative financing, such as intercompany loans.

29.61.01 – Applicable Fees

Application Fees

The regulations state that housing providers "must not assess or collect a fee or charge a fee of more than $50 from any household in connection with the submission of an application for rental of the regulated rental." This conflicts with Maryland Real Property Article Section 8–213(b)(2), which explicitly allows a housing provider to retain the portion of application fees expended for a credit check or other expenses arising out of the application[6]. It is not uncommon for credit and background checks to exceed $100, so a $50 cap is not appropriate. This section of the regulation should be amended to mirror state law allowing actual application costs to be recovered.

Amenity Fees

The regulations prohibit housing providers from assessing or collecting any fee or charge except those on the narrow list of permitted fees. One example of a fee that would be prohibited is an amenity fee, which is common in highly amenitized communities. DHCA claims that amenity fees are high on the list of "junk fees" identified by the Biden Administration. However, neither U.S. Department of Housing and Urban Development's (HUD) letter to the housing industry nor the Federal Trade Commission's (FTC) proposed rule to ban junk fees, specifically call for the banning of amenity fees. Rather, HUD's letter calls for the following[7]:

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[6] https://mgaleg.maryland.gov/mgawebsite/Laws/StatuteText?article=grp&section=8-213

[7] https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_048#:~:text=WASHINGTON%20%2D%20U.S.%20Department%20of%20Housing,charges%2C%20or%20add%2Dons.

- *Eliminate duplicative, excessive, and undisclosed fees at all stages of the leasing process such as administrative fees and other processing fees in addition to rental application fees; and*
- *Clearly identify bottom-line amounts that tenants will pay for move-in and monthly rent in advertisements of rental property and in lease documents, including all recurring monthly costs and their purpose.*

The FTC proposed rule makes several references to amenity fees in the hotel or lodging industry, but only one reference specific to the rental housing industry[8]. This lone reference to rental housing amenity fees was specific to the need for greater disclosure of fees and their purpose. AOBA believes that a blanket ban of properly disclosed amenity fees is neither appropriate nor necessary. Should DHCA wish to regulate such fees, it should only do so by placing limits on the amounts that existing fees at the time of the RSL enactment can increase each year. DHCA can also require adequate disclosure to the tenant of the specific purpose or service provided to the tenant by the fee. Should the DHCA wish to enumerate types of amenity fees in the regulations, it should specifically include fees that support fitness centers, business centers, dog parks, aquatic facilities and user fees for club rooms or resident lounges.

Renter Liability Insurance

Another fee that would be prohibited by the regulations is a liability insurance fee. Nearly all housing providers require tenants to purchase renter's insurance that covers both their personal property and personal liability. If a tenant fails to purchase renter's insurance, some housing providers purchase the personal liability insurance portion on the tenant's behalf and charge the tenant a monthly fee for doing so. In fact, there is currently legislation before the Maryland General Assembly that would require a housing provider to purchase these policies on behalf of the tenant[9]

Renter liability policies cover the tenant for any losses or damages that the housing provider incurs because of the tenant's actions. If a tenant causes a fire, for example, the housing provider could recover some of the costs of repairing the damage by filing a claim against the tenant's liability insurance policy. Without a tenant liability policy, the housing provider would be limited to making a claim against their own policy to cover the cost of these damages.

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[8] https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees#citation-94-p77428

[9] HB 564 / SB 725. - Real Property - Residential Leases - Renter's Insurance Requirement

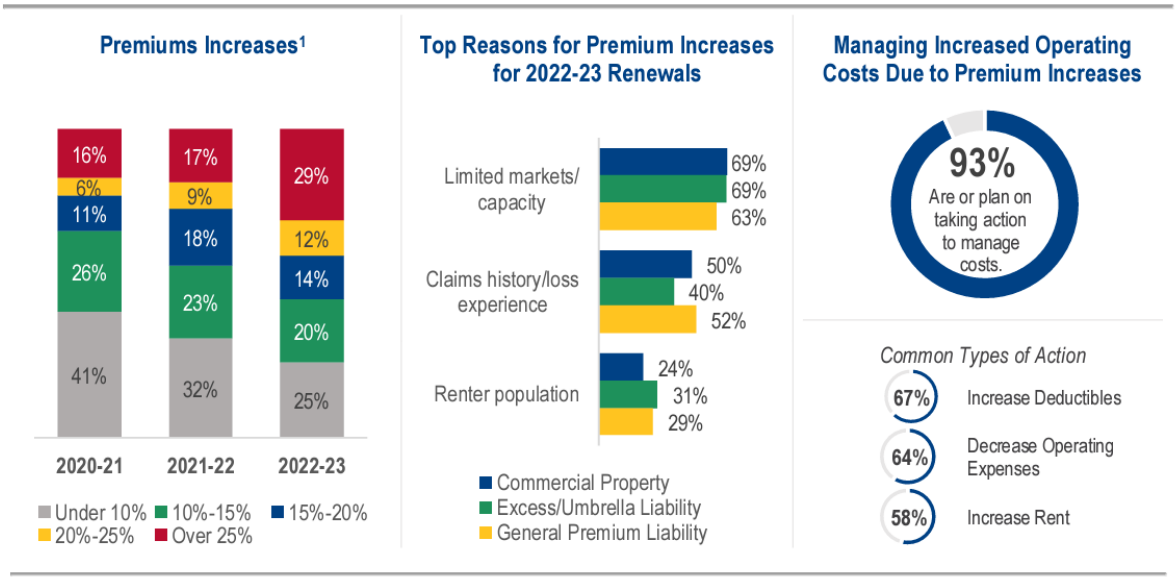

Figure 6. National Leased Housing Association – ndp analytics Survey on Increased Insurance Costs for Affordable Housing Providers 2023

This is problematic because multifamily property insurance rates have been rising by double digits in recent years as shown above[10]. The regulations should be amended to explicitly allow housing providers to charge tenants for purchasing liability insurance on their behalf.

Pet Fees

Security deposits do not adequately cover the costs of housing tenants with pets. At best, the deposit may cover damage to the unit. At worst, the deposits do not cover the costs of maintenance of common areas. For example, landscape areas that are frequently used for dog walking; common area carpets or walls that are stained or damaged; and flea or tick infestations. These costs should not be borne by all tenants and should instead be the responsibility of the tenants with pets. According to the Human Animal Bond Research Institute (HABRI), "72% of residents report that pet-friendly housing is hard to find."[11] Eliminating pet rent will result in more restrictions on pets, which in turn will make pet friendly housing even more scarce.

Parking Fees

Parking fees make housing more affordable by decoupling the cost of parking from the rent. This is particularly true in the County's central business districts where the cost of

[10] https://www.nmhc.org/globalassets/research--insight/research-reports/insurance/ndp-nlha-housing-provider-insurance-costs-report-oct-2023.pdf
[11] https://www.petsandhousing.org/2021-pet-inclusive-housing-report/

structured parking can be 5-10 times the cost of asphalt parking in other areas of the county[12]. According to the County Planning Department, underground parking can cost between $75,000 - $100,000 **per parking space**[13]. Structured parking spaces also require more costly annual maintenance and repairs than surface parking. Yet, the formula for parking does not consider any of these factors. It is also far too restrictive, placing it substantially out of line with market rates and conflicting with the County's climate goals. This is clearly demonstrated by simply comparing the proposed rates with the County's own parking fees, provided below:

PCS Monthly Permit Sticker Rates are as follows:

PARKING DISTRICT	PCS COST
Bethesda	$195
Silver Spring	$132 $195 (ONLY Garage 60 & 61)
Wheaton	$132
Montgomery Hills	$90
North Bethesda TMD	$123

Figure 7. Montgomery County Parking Convenience Sticker Monthly Permit

For reference, the average monthly rents in Silver Spring, Bethesda, Wheaton and North Bethesda are $1,925[14], $2751[15], $1,981[16], and $2,284[17], respectively. A 4% fee for secured covered parking in these areas would cost $77 in Silver Spring, $110 in Bethesda, $79 in Wheaton, and $91 in North Bethesda. This parking fee structure will encourage tenants to have more vehicles per household, which will result in more driving and will make it more difficult to ensure there is sufficient parking for all tenants.

The methodology and pricing applied by the proposed regulations is inappropriate. There is no logical nexus between the cost of a parking space and the base rent of the unit leased. Using this methodology, a renter occupying a 3-bedroom apartment would pay substantially more than

[12] https://cityobservatory.org/the-price-of-parking/

[13] https://montgomeryplanningboard.org/wp-content/uploads/2023/12/SR-ZTA-23-10-Parking-Calculation-of-Required_12-14-23_Revised.pdf
[14] https://www.rentcafe.com/average-rent-market-trends/us/md/silver-spring/
[15] https://www.rentcafe.com/average-rent-market-trends/us/md/bethesda/
[16] https://www.rentcafe.com/average-rent-market-trends/us/md/wheaton/
[17] https://www.rentcafe.com/average-rent-market-trends/us/md/north-bethesda/

a tenant of a studio apartment for the exact same parking space. Rather than limiting the amount of the parking fee, the County should instead limit the amount that existing parking fees can increase each year. To the extent that a housing provider chooses to build additional parking, whether structured or otherwise, it should be treated as a capital improvement that can be recovered via a surcharge.

Properties with surface parking that did not have a parking fee prior to the RSL's enactment should be allowed to establish parking fees based on number of vehicles per household. For example, DC's Residential Parking Permit program charges households $50 for the first vehicle, $75 for the second vehicle, $100 for the third vehicle, and $150 for each additional vehicle[18]. These graduated parking rates help ensure that there is sufficient parking for all tenants and would be consistent with the County's climate goals.

Internet Fees

The restriction on internet or cable television fees is also problematic. Dividing the cost of these services by the total number of units does not work because every property has vacant units. This provision would also discourage housing providers from negotiating bulk pricing for their tenants. The language should be changed to the following:

> *(g) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television* ***greater than the fee a resident would pay for comparable services.***

If a property is only serviced by one internet service provider, the housing provider may be able to negotiate bulk pricing for faster service for the same rate that the tenant would be paying for slower service.

Lost Key & Lockout Fees

The $25 lockout and lost key fees are too low, and over time inflation will erode their value. Housing providers should instead be able to recover the actual costs spent to replace locks and lost keys. To prove actual costs, the County can ask the housing provider to provide receipts from a locksmith or other third-party contractor. If the work is done by in-house property maintenance staff, the County can ask the provider to provide material and hourly personnel costs, including overtime if after hours or on-call.

[18] https://dmv.dc.gov/service/residential-parking-permits

Summarized Proposed Changes and Amendments

General

- **Require DHCA produce an annual report** to be made publicly available for download on its website and submitted to the Council. The Report should provide an overview on how the RSL is being administered, including a section detailing the number and type of petitions filed, whether they are approved or denied, whether a determination was made within 30 days, the reasoning for the determination, and how those statistics compare with submissions and determinations in prior years.
- **Incorporate flexibility as much as possible into the regulations** in recognition of the acute impact the RSL will have on older market-rate affordable housing and to account for the cost of government mandates such as State and County Building Energy Performance Standards (BEPS).

Sec. 29.58.01.01 – Rent increases for New Lease or Lease Renewal

- **Strike Subsection (b).** This is in direct conflict with RSL, which explicitly allows *annual* rent increases in Section 29 – 57(a). In addition, Section 29 – 57(c) explicitly makes clear that any rent increase allowance under Subsection (a) only remains in effect for a 12-month period.

Sec. 29.58.01.02 – Rent Increases for Troubled Properties

- **Amend Sec. 29.58.01.02** to strike the requirement that housing providers submit a fair return petition.
- **Further Amend Sec. 29.58.01.02** to create an alternate rent cap for troubled and at-risk properties.

Troubled and At-Risk Properties Regulations

AOBA recommends separate amended regulations be promulgated in Section 29-22(b) of the County Code prior to the rent stabilization law's implementation. At a minimum, these regulations should:

- **Ensure that property owners are notified immediately upon inspection of a troubled or at-risk designation.**
- **Require the agency to publish targeted TV and SV scores** upon which properties will be evaluated.
- **Provide properties with a reasonable time to appeal such designation or cure violations** prior to their placement on the troubled or at-risk lists.

- **Increase inspection frequency** to allow properties to be reinspected within 30 days of requesting such inspection to be removed from the list upon remedying any violations.
- **Revamp scoring methodology to discount or exclude tenant-caused violations for which the housing provider has no control**, including hoarding, overcrowding, blocking safe egress from a unit, creating conditions that cause infestations or mold, or preventing a housing provider access to a unit for the purposes of addressing such conditions.
- **Update and maintain the troubled and at-risk property lists in real-time.**

Sec. 29.58.01.03 – Allowable Rent Increase for Previously Vacant Lots

- **Amend Subsection (c) to incorporate the following language:** A housing provider may set a base rent upon return to the market where such unit was vacated due to catastrophic events.
- **Define catastrophic events as any event that leads to forced vacancy and requires an insurance claim.**

Sec. 29.58.01.04 – Surcharge for Capital Improvements

- **Amend Subsection (b)** to mirror the permitting process for commercial interior building permits. Project timelines typically extend over multiple years, making the current requirements that work must be completed within 12 months impractical.
- **Strike language in Subsection (b)(2)** requiring notification of affected tenants of the decision to file a petition. Housing providers should only be required to notify affected tenants of an ***approved*** capital improvement plan and surcharge.
- **Amend Subsection (b)(3)** to include language stating that the Director has 10 days from receipt of a petition to confirm that it has all the information it needs or request additional documentation. This 10-day period mirrors the requirement in the County's Zoning Ordinance standards for Site Plan applications.
- **Additionally amend subsection (b)(3)** to require that the Director must make a determination within 30 days of receipt of a complete petition. Placing time limitations on petition review will ensure that housing providers are not forced to defer maintenance due to monthslong review periods.
- **Strike language in Subsection (d)** stipulating that a property owner may recover the cost of an improvement only if that capital improvement was immediately necessary to maintain the health or safety of the tenants.
- **Amend Subsection (e)(1)** to include a definition of structural alterations. This definition should be as broad as possible to include walls, doors, windows, plumbing, and mechanical systems. This could preclude improvements to corridors, common areas, or complete building systems.

    - This is of particular importance as it relates to compliance with the County's newly adopted Building Energy Performance Standards, which may require the employment of technologies and other investments that may not qualify as "permanent structural alterations," or which may include improvements to the building and common areas as opposed to the unit itself.
- **Eliminate language in Subsection (e)(6)** requiring that the capital improvement petition include documentation that the petitioner has obtained required governmental permits and approvals.
- **Strike language in Subsection (r)** requiring that a capital improvement surcharge must be implemented within 12 months of the date of issuance.
- **Amend Subsections (t-v)** to allow for more than one certificate of continuation (COC) and remove the requirement for notice to be provided to the tenant of such a petition's submission.
    - This is particularly applicable to market-rate affordable housing where the market simply may not bear the level of increase required to cover the costs of significant capital improvement projects all at once. Failure to provide the flexibility necessary to spread such costs over a longer duration will result in pressure on such properties to consider redevelopment, resulting in significant displacement and an overall loss of affordable housing stock.
- **Provide automatic approval or reduced scrutiny for certain qualifying improvements at turnover of a unit.** Such improvements that fall under this automatic approval should be any improvement that may be depreciable under the Internal Revenue Code.
- **Add to this section the ability for housing providers to self-certify the completion of capital improvements with a minimum level of documentation and receipts**. Where abuse of such self-certification is suspected, the agency retains the authority to request additional information or conduct audits to determine the validity of a petition.
- **If a petition submission is incomplete, require the Director to provide a 30-day notice to the housing provider of a request for missing documentation disclosing the types of documents that are missing.** If no additional documentation is provided or is provided after that 30-day period, the petition may be denied for failure to provide necessary documentation.
- **Add a subsection applying an automatic surcharge petition approval for capital improvement projects that received permitting approval two years prior to the RSL enactment** in recognition of the investment housing providers have made in the County. Such projects may have been conducted in good faith with the intent of spreading costs over a longer time period (thus keeping rents lower for residents), without knowledge of the impending rent caps and regulations.

Sec. 29.59.01 – Fair Return Petitions

AOBA recommends the following changes to the process:

- **Strike Sec. 20.59.01.03(a) and replace** with a fair return formula that utilizes a Gross Potential Income (GPI) system calculated by adding a 4% risk premium to the 10-year Treasury Note (10UST).
- **Amend Sec. 29.59.01.03(b)** by eliminating the limitation on future fair return requests and explicitly allowing for fair return requests in consecutive years.
- **Amend Section 29.58.01.04** to provide a measure of consistency and accountability in the petition process. AOBA recommends the following language:
    - Require that the Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed <u>within 20 days of the receiving such application.</u>
- **Strike Sec. 29.59.01.05(b).** Such notice is unnecessary and superfluous as the tenant has no role in determining the validity of the requested improvements and must already be notified of any rent increase approved by the Director 90 days before such an increase is to take effect.
    - **If the notification requirement is preserved, electronic delivery of such notification should be explicitly allowed.**
- **Replace Section 29.59.01.06** with an industry expense benchmark and establish 35% of Gross Potential Income (GPI) as that benchmark. The immense amount of documentation required would make this process overly complex and is not practical for County or for housing providers.

Sec. 29.61.01 – Substantial Renovations

- **Amend to allow for phasing of substantial renovations by building or sections of the property.** Without phasing, housing providers will take units offline for longer periods of time, further contributing to the housing supply shortage. Furthermore, substantial renovations, like new construction, encourage investment in the County and contribute to the local economy.
- **Define substantial renovation and align with the RSL, which states the following:**

  29-56. Rent stabilization definitions. Substantial renovation means permanent alterations to a building that... (2) cost and amount equal to at least 40 percent of the value of the ***building****, as assessed by the State Department of Assessments and Taxations*

  The value of the buildings is what is changing, not the value of the property.
- **Amend section 29.60.01.03** to include any loans and all forms of debt associated with a substantial renovation. Large capital improvements often require multiple loans or other creative financing, such as intercompany loans.

- **Amend Sec. 29.60.01.09** by removing the Director's discretion to determine whether a proposed substantial renovation is intended to enhance the value of a building. All renovations are intended to enhance the value of a property.
- **Additionally, strike Sec. 29.60.01.09(1-4)** and replace it with the following language: The Director shall consider the total cost of the renovations and the supporting documentation provided.
    - All renovations are intended to add value to the property otherwise housing providers would not go through the time and expense to complete them. Furthermore, a County inspection process already exists to assess the physical condition of buildings.

Sec. 29.60.01.01 – Applicable Fees

- **Regulate all listed fees based on the annual allowable increase formula of CPI + 3 percent with a cap of 6 percent established in the RSL.** The base fee should be the fee charged at the time of the RSL's enactment.
- **Amend Subsection (a)** to mirror state law under Maryland Real Property Article Section 8–213(b)(2)
- **Amend Subsection (b)** to allow for pet fees.
    - Security deposits do not adequately cover the costs of housing tenants with pets. Eliminating pet rent will result in more restrictions on pets, which in turn will make pet friendly housing even more scarce.
- **In Subsection (h), strike the current formula that assigns parking fees by unit size** and align allowable parking fees with the County's own structured parking fee rates.
- **Amend Subsections (d) and (e)** to allow housing providers to recover the actual costs spent to replace locks and lost keys.
- **Change Subsection (g) to the following:** *(g) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television* ***greater than the fee a resident would pay for comparable services.***
- **Add Subsection (j)** to include properly disclosed amenity fees.
    - A blanket ban of such fees is neither appropriate nor necessary. Should the department wish to regulate these fees, it should do so by placing limits on the amounts that existing fees at the time of the RSL enactment can increase annually. Amenity fees can also require adequate disclosure to the tenant of the specific purpose or service provided to the tenant by the fee.
- **Add Subsection (l)** to explicitly allow housing providers to charge tenants for purchasing insurance on their behalf.
    - Nearly all housing providers require tenants to purchase renter's insurance that covers both their personal property and personal liability. If a tenant fails to purchase renter's insurance, some housing providers purchase the personal

liability insurance portion on the tenant's behalf and charge the tenant a monthly fee for doing so.

Bruton, Scott

From: Zac Trupp <ztrupp@gcaar.com>
Sent: Friday, March 1, 2024 4:40 PM
To: Bruton, Scott
Cc: Hawksford, Jacqueline "Jackie"; Irene Kang; Tyler Hagen
Subject: GCAAR Redline Comments on Rent Regulations
Attachments: GCAAR_RedlineComments_RentRegulations_3-1-24.pdf; RentRegs_Documentation1.pdf

[EXTERNAL EMAIL]

Director Bruton,

Thank you for the time earlier this week regarding the rent regulations draft. Please find attached two documents as part of GCAAR's comments on the regulations.

The first is a redline of the regulations with edits and comments and the second is a few pieces of documentation regarding the lockout fee issues discussed as well as pet damage at one of our member's properties.

If you have any questions or would like to discuss further, please reach out at any time.

-Zac

Zachary Trupp
Government Affairs Director
Greater Capital Area Association of REALTORS® (GCAAR)
15201 Diamondback Drive
Rockville, MD 20850
301-590-8762
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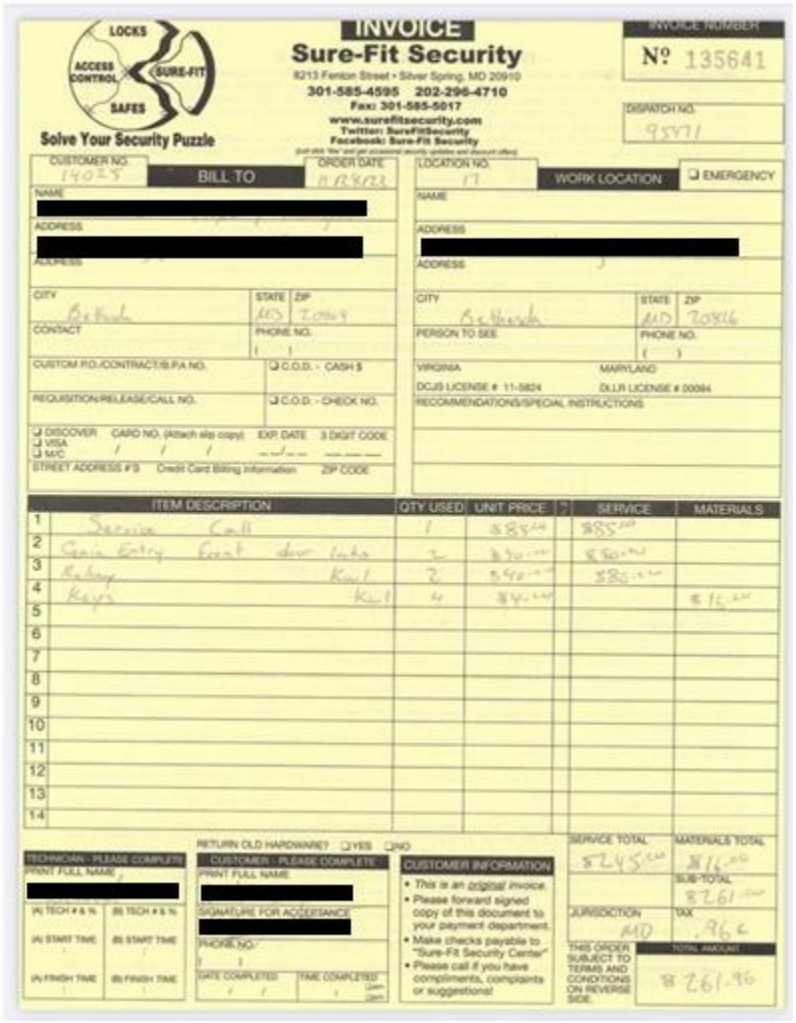
Receipt for Locksmith services – November 2023 – Single family home



INVOICE

Sure-Fit Security

8213 Fenton Street • Silver Spring, MD 20910
301-585-4595 202-296-4710
Fax: 301-585-5017
www.surefitsecurity.com
Twitter: SureFitSecurity
Facebook: Sure-Fit Security

Solve Your Security Puzzle

INVOICE NUMBER: Nº 135641

DISPATCH NO.: 95471

ITEM DESCRIPTION	QTY USED	UNIT PRICE	SERVICE	MATERIALS
1 Service Call	1	$85.00	$85.00	
2 Gain Entry Front door Locks	2	$30.00	$60.00	
3 Rekey Kwl	2	$40.00	$80.00	
4 Keys Kwl	4	$4.00		$16.00
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

SERVICE TOTAL: $245.00
MATERIALS TOTAL: $16.00
SUB-TOTAL: $261.00
JURISDICTION: MD
TAX: .96
TOTAL AMOUNT: $261.96

Pet Damage examples:

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

~~(b) The annual rent increase allowance governing the first year of a multi-year lease applies to the subsequent lease years.~~

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a fair return application under Section 29-59 of the Code.

(a) If the Director approves the fair return application submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the fair return application while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director denies the fair return application submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

29.58.01.03 Allowable Rent Increase for Previously Vacant Lots

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased up to the banked amount or to no more than the base rent on the date the unit became vacant plus each allowable increase under Section 29-58(a) of the Code.

(b) If a unit was vacant before the Rent Stabilization law was enforceable, then upon return to the market, the landlord may set the base rent. After the unit has been on the market for 12 months,

Commented [ZT1]: We disagree with the notion that this is settled based on Section 29 – 57 of the code. We request copy of the County and Council attorney's opinion on the matter that DHCA refers to in its decision to draft the section in this manner. It is not the legislative intent of nor the law written in 16-23.

If the Council concurs that previous landlord tenant law backs this up, we would request they issue an emergency change to the code to clean up this mistake.

the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

c) A landlord may petition for a unit made vacant by natural disaster or force majeure events to receive an increase in rent in excess of the allowable increase under (a) or (b) of this section, or Section 29-58(a) of the Code, if the petition includes documented Capital Improvements that exceed the unit's previous status. This approval process will supersede that of the process laid out in Section 29.58.01.04 as to return these units to habitation in a timely manner.

Commented [ZT2]: While some of the costs of repairing these units may be covered by insurance, housing providers may elect to make upgrades to the units beyond the covered insurance amount.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) A landlord may petition the Director for a limited surcharge for capital improvements under Section 29-58(d) of the Code.

(b) Processing of Petitions

(1) Filing of Petition. The Petition form and one copy of supporting documents must be filed with the Department. Petition form will include option for phasing in rent increases based on completion of separate projects within Petition.

(2) Notice of Filing. The landlord must notify each affected tenant by first-class mail of the filing of the Petition within five business days of the filing of the Petition.

(3) ~~Decisions on a~~ Petition Processing. The Director must review the petition and supporting documentation and, within 10 days of receipt, confirm whether that petition meets application requirements or requires further documentation. If a landlord refuses or fails to cure the outstanding issues within 10 days, the Director may deny the application. Petition will include proposed phasing of capital improvements and applicable rent increases for each phase.

(4) Decision on a Petition. The Director must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed of each phase within 30 days of the petition receiving confirmation that it meets the requirements for a petition application. Failure by the Director to respond within the 30 day period will result in approval of the application.

~~(3)~~(5) Material Change in Petition. Any material change in plans or phasing that occurs during construction must be resubmitted and reviewed for approval by the Department within 30 days of receipt. Failure to file material changes may result in the retroactive denial of an approved petition. Failure by the Director

to respond within the 30 day period will result in approval of the amended application.

~~(4) If the landlord fails to file all necessary documentation or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.~~

(6) Notice of Issuance. The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance.

~~(5)~~(7) Resubmission of Denied Petition. A landlord may submit an application denied by the Director once per calendar year

(c) Except as provided in (d), the landlord must not recover the cost of a capital improvement through a rent surcharge under Section 29-58(d) of the Code if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition.

(d) A landlord who makes a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under Section 29-58(d) of the Code, following the approval of the petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

(e) A landlord must file a capital improvement petition on a form approved by the Director ("Capital Improvement Form"), certifying:

(1) that the capital improvements are permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;

(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;

(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures, which in this instance is defined as deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition but does not include any deterioration that is a result of negligence, carelessness, accident, or abuse of the unit, fixtures, equipment, or other tangible personal property by the tenant, immediate family member, or a guest;

Commented [ZT3]: Based on DC definition of "wear and tear"

(4) whether ~~that~~ the capital improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing;

(5) whether the capital improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;

(6) that the required governmental permits have been requested or obtained, and that copies of either the request form or issued permit ~~must~~ accompany the Capital Improvement Form;

(7) the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;

(8) the costs of the capital improvements, including any interest and service charge;

(9) the dollar amounts, percentages, and time periods computed by following the instructions listed in (f); and

~~(10) that the petitioner has obtained required governmental permits and approvals;~~

Commented [ZT4]: 6 and 10 are duplicative, and 10 specifically limits the option for having requested the permitting.

(f) The Capital Improvement Petition must contain instructions for computing the following in ~~accordance with this section:~~

(1) the total cost of a capital improvement;

(2) the dollar amount of the rent surcharge for each rental unit in the housing accommodation and the percentage increase above the current rents charged; and

(3) the duration of the rent surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(g) The total cost of a capital improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement, in accordance with (i);

(2) any interest that must accrue on a loan taken by the landlord to make the improvement, in accordance with (j); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement, in accordance with (k).

(h) The interest and service charge on, "a loan taken by the landlord to make the improvement or renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with (l). The dollar amount of the calculated interest and service change must not exceed the amount of the portion of that loan.

(i) The costs incurred to make a capital improvement must 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 Director may find probative of the actual, commercially reasonable costs. The amount of costs incurred must 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.

(j) The interest on a loan taken to make a capital improvement means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make a capital improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord 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 landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of interest that the Director finds probative; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates

reported for the 52 weeks immediately prior to the limited surcharge petition for capital improvements.

(k) For the purposes of (j)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan. If the interest rate changes over the duration of the rent surcharge, any certificate filed under (t) must list all changes and recalculate the total interest on the loan.

(l) The service charges in connection with a loan taken to make a capital improvement must 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 Director may find probative.

(m) Except when a continuation is permitted in accordance with (s), the duration of a rent surcharge requested or allowed by a capital improvement petition must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the capital improvement, in accordance with (g); divided by

(2) the sum of the monthly rent surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected rental unit.

(n) A rent surcharge in the final month of its duration must be no greater than the remainder of the calculation in (m), prior to rounding.

(o) A Capital Improvement Petition must be accompanied by external documents to substantiate the total cost of a capital improvement and must be supplemented with any new documentation reflecting the actual total cost of the improvement, until the Director approves or denies the petition.

(p) A Capital Improvement Petition, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which rental units will be affected by the capital improvements;

(2) the base rent for each affected regulated rental unit, and any other approved capital improvement surcharges; and

(3) the dollar amount of the proposed rent surcharge for each rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) A decision authorizing a capital improvement surcharge must be implemented within 12 months of the date of issuance but no earlier than 12 months following any prior rent increase for an affected rental unit; provided, that if the capital improvement work renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as an approved capital improvement surcharge in the new lease or in the lease renewal and may not be implemented mid lease.

(s) Not less than 90 days before the expiration of an authorized rent surcharge a landlord may request to extend the duration of the rent surcharge by filing an application with the Director 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").

(t) A Certificate of Continuation must set forth:

(1) 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;

(2) the dollar amount actually received 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;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months required, under currently known conditions, for the landlord to recover the total cost of the capital improvement by extension of the duration of the rent surcharge.

(u) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in (t)(1) and (2).

(v) If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.

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

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return application process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year the unit becomes a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the fair return application required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the current year is a calendar year, the current year CPI is the annual CPI for that year or 2) if the current year is a fiscal year, the current year CPI must be the CPI for December during the current year.

(f) "Gross Income" means the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord was permitted to charge at the time of the application.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses.

29.59.01.03 Formula for Fair Return

(a) Fair Return. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year.

(1) In calculating Gross Income for the Current Year, the Base Year Net Operating Income under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any fair return increase request must be:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; or

(B) demonstrated to be commensurate with returns on investments in other enterprises having comparable risks.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") approved by the Director must be determined as a percentage of the Current Year rents, and each restricted unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein, any rent increase approved by the Director must be implemented within 12 months of the date of the issuance of the decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase awarded by the Director has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is

vacant or if the unit becomes vacant before the required increase has been taken in full, the Director may allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

29.59.01.04 Fair Return Application

(a) Requirement. A landlord may file a fair return application with the Director to increase the rent more than the amount permitted under Section 29-58 of the Code.

(b) Rolling Review. The Director will consider fair return applications on a rolling basis.

(c) Prerequisites for a fair return application. In order for the Director to consider a fair return application, it must meet the following requirements:

(1) All units within the rental housing listed in the fair return application must be properly registered and licensed with the Department.

(2) The fair return application must be completed in full, signed, and include all required supporting documents.

(3) All Banked Amounts have been applied to restricted units.

(d) Fair Return Application Requirements. A fair return application must include the following information and must be submitted in a form administered by the Department:

(1) The applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return.

(2) The application must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director prior to the filing of the application.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been

completed and associated costs are reasonable.

(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.

(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.

(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.

(E) Any justification for exceptional circumstances that the owner is claiming under this regulation.

(F) Any additional information the landlord determines would be useful in making a determination of fair return.

(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion.

29.59.01.05 Processing of Fair Return Applications

(a) Filing of Application. The fair return application form and one copy of supporting documents must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the fair return application, the landlord must notify each affected tenant of the filing via first class mail, providing each tenant a copy of the Notice of Filing and the application (excluding supporting documentation).

(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.

(d) Required Notice of Decision to Tenants

(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.

(2) The implementation of any rent increase awarded by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a DHCA authorized fair return increase. Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.

29.59.01.06 Fair Return Criteria in Evaluation

(a) Gross Income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, unless these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital improvements. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the substantial renovation application.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; and

(I) insurance costs.

(2) Reasonable and expected operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

(B) payments made for mortgage expenses, either principal or interest;

(C) judicial and administrative fines and penalties;

(D) damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(E) depreciation;

(F) late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental housing;

(G) membership fees in organizations established to influence legislation and regulations;

(H) contributions to lobbying efforts;

(I) contributions for legal fees in the prosecution of class-action cases;

(J) political contributions for candidates for office;

(K) any expense for which the tenant has lawfully paid directly or indirectly;

(L) attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

(M) additional expenses incurred as a result of unreasonably deferred maintenance; and

(N) any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

(c) Base Year Net Operating Income. To adjust the Base Year Net Operating Income, the Director must make at least one of the following findings:

(1) The Base Year Net Operating Income was abnormally low due to one of the following factors:

(A) the landlord made substantial capital improvements which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these capital improvements;

(B) substantial repairs were made to the rental housing due to exceptional circumstances; or

(C) other expenses were unreasonably high, notwithstanding prudent business practice.

(2) The Base Year Rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased for five years preceding the Base Year;

(C) the Tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. A rent established under an approved fair return application remains in effect for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a restricted unit for that 12-month period.

(b) Establishment of New Base Year Net Operating Income. The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior application for a fair return rent increase must constitute the Base Year income, expenses, and net operating income for those restricted units included in the finding of fair return for purposes of reviewing subsequent applications.

(c) Limitations on Future Fair Return Requests.

(1) If a fair return application is approved by the Director, the property owner may not file a subsequent application for the greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return rent increase is permitted above 15%) has been applied.

(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 Application for a Substantial Renovatioi dn Exemption

(a) A landlord seeking an exemption for a substantial renovation under Section 29-60(12) must file an application with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be renovate showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.

(c) The Director must review the application and supporting documentation and must issue and notify the landlord of a decision approving or denying the exemption.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of those costs.

29.60.01.04. Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of expenses as the Director may find probative of the actual, commercially reasonable costs.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the improvement or renovation over the amortization period of the loan, in the amount of either:

(a) the interest payable by the landlord at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the improvement or renovation, or on that portion of a multi-purpose loan of money used to make the improvement or renovation, as documented by the landlord 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 Director may find probative; or

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to application for an exemption for a substantial renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 that the Director may find probative of the actual, commercially reasonable costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The Director must determine whether a proposed substantial renovation is intended to enhance the value of the rental housing by considering the following:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant;

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair; and

(4) whether the proposed renovations are optional or cosmetic changes.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) Within thirty days of the completion of a substantial renovation a landlord must file an affidavit attesting to the completion with the Director. If the Director determines that the renovations have been completed according to the substantial renovation application, the date of filing of the affidavit of completion must be deemed the approved exemption date.

(b) Once a decision approving a substantial renovation exemption has been issued, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease, if any, for that rental unit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:

(a) Application fee

A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of no more than ~~$50~~ $100 per applicant over 18 ~~from any household~~ in connection with the submission of an application for rental of the regulated rental. A landlord must set this application rate yearly in the required rental survey.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $~~100~~500, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of

Commented [ZT5]: We believe this section conflicts with Maryland Real Property Article Section 8–213(b)(2) that allows housing providers to retain portions of application fees used for credit checks or other expenses during the application process.

While the most basic of application charges start at $49, these usually do not include necessary verification checks of employers, previous landlords, credit checks, criminal background checks (especially when separated out per the County's ban the box regulations), etc.

Commented [ZT6]: Including this information in the rental survey will allow DHCA to see and save a baseline to reference any issues moving forward.

Commented [ZT7]: A security deposit of $100 is not sufficient to cover the expenses of a landlord that must make repairs or alterations to the property during or after the tenancy of a resident with a pet.

Even the most basic of damage can get multiple over the tenancy and throughout the unit.

The Director has explained the $100 as an amount tagged to the cost of getting a pet declared a therapy or comfort animal. This does not reflect the reality of costs for having pet-friendly units and, if kept the same, will lead to fewer pet-friendly units made available.

We fully expect that if this comes to pass, legislation (that has already been previously introduced in the Maryland General Assembly) banning or curtailing those restrictions will be pushed by tenant advocates. A tit-for-tat game of legislating should be avoided when a reasonable regulation can be created at the onset.

pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first–class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

(e) Lock out fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25 if landlord or on-site property management staff are utilized to complete this function. A charge above $25 may be assessed if external services are required to assist. In this instance, tenant must be provided invoice or receipt of services by landlord to justify charge.

(f) Secure storage unit accessible only by tenant

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.

(g) Internet or cable television

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord for service to the building divided by the number of rental occupied units in the property. This fee or charge may not exceed the market rate for comparable services.

(h) Motor vehicle parking fee

(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:

(A) 4% of the base rent for the unit for any secured, covered parking space;

Commented [ZT8]: The costs below are an underestimation of about 50% of the cost of parking when looking at the percentage of a County monthly parking permit sticker rate from a corresponding market rent rate for that parking district.

It is also antithetical to base parking fees on the cost of a rental as the spaces may be the same but different size units may be offered.

Therefore an alternate structure should be created that aligns more with what the County itself charges, and the amount it can increase should be tagged to costs to the landlord based on inflation.

(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or

(C) 1% of the base rent for the unit for any other motor vehicle parking space.

(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

KENNETH H. BECKER

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301-656-7817; kbecker@rbmgt.com

February 29, 2024

SENT VIA EMAIL: scott.bruton@montgomerycountymd.gov

Mr. Scott Bruton, Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

Re: Comments to Rent Stabilization Regulations

Dear Director Bruton;

As a principal in various multifamily housing properties in Montgomery County, please find attached my comments and recommendations to the proposed Regulations for the implementation of the Rent Stabilization Bill approved by Council this past July.

I serve as one of many owners who retained the services of Ballard Spahr to assist us with the review of these documents and while we vehemently disagree with many of the elements of this new code, our focus here was to make these regulations workable without severely impacting the long term stability of the County's legacy housing stock which serves many market segments, including work force housing, retired residents, remote workers, federal workers, NIH, and Joint Base Walter Reed Medical Facilities personnel. We even serve NIH patients with our short term units during extended treatments.

We would argue that this is a stable housing stock, absent any history of egregious rent increases but more importantly, properties that continue investing in maintaining this housing stock to be competitive and highly affordable when compared to the many new buildings completed in the last ten years. This is possible only with responsible management and the appropriate upgrade of aging and noncompetitive apartment units as they become vacant and market based pricing of these renovated units. These may be only a couple of units at a time but, without question, requires invested capital, and over time keeps a building reasonably competitive and current without which it will begin an irrevocable decline. Our proposed changes to these regulations address this perspective without, in our view, conflicting with the Code, nor establishing a gauntlet of infeasible multilevel multi-phase extended time uncertain process that will fail to maintain a business model to maintain these units, structures, and common areas to the detriment of all while maintaining the Department's mission and authority.

We ask that you and your staff give these proposed modifications genuine consideration

Sincerely,

Kenneth H. Becker

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

[Stakeholder Coalition Mark-up 2/28/24]

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) ~~The~~For a lease with a stated term in excess of one year, the annual rent increase allowance ~~governing~~after the first year of ~~a multi-year lease applies to the subsequent lease years~~the stated term shall be as set forth in Section 29-57(a) of the Code, and if the base rent for the subsequent year(s) shall be subject reduction if it exceeds the rent increase allowance for such year.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code that is noncompliant with its corrective action plan (as defined in 29.40.01.02)) must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a ~~fair return application~~Fair Return Affidavit under Section 29-59 of the Code.

(a) Within thirty (30) days following receipt of the Fair Return Affidavit for a Troubled of At-Risk Property, the Director must review the Fair Return Affidavit and issue and notify the landlord of a the Director's approval or disapproval with reason, and if the Director fails to timely respond, it shall be deemed to have approved the Fair Return Affidavit. If the Director approves ~~the fair return application~~or is deemed to have approved the Fair Return Affidavit submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the ~~fair return application~~Fair Return Affidavit while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director timely denies the ~~fair return application~~Fair Return Affidavit submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section

Noonan, Katherine M. [NKM1]
Why would an initial multi-year lease term be treated any differently from a renewal? This approach puts tenants at risk by potentially exposing them to rent increases in excess of the allowance (i.e., if the allowance in year 1 was higher than in year 2), and it permanently restricts the rent for a unit (i.e., if the allowance in year 2 was higher than year 1 and the rent increase was limited to the year 1 number). The rent increase allowance formula set forth in 29-57(a) accounts for market changes, providing the tenant protection sought. There is no need to further complicate this. A 2-year lease can identify the current rent and state that year two rent is that plus 6% or such lower amount permitted by law.

The proposed language is problematic because it suggests that a lease for which the term is extended by amendment would be treated the same as a lease with an initial term of 2+ years.

Noonan, Katherine M. [NKM2]
The County regulations already have a process for the landlord of a Troubled or At-Risk property to develop and implement a corrective action plan. If the landlord is compliant with such plan, rent increases up to the annual rent increase allowance should be permitted. Increases for noncompliant landlords would be prohibited.

29-22(b) of the Code and is noncompliance with its corrective action plan, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code unless and until the Director approves a Fair Return Affidavit with regard to the property.

(c) When a property that was subject to Section 29-58(b) of the Code is no longer designated as Troubled or At-Risk under Section 29-22(b) of the Code, all annual rent increase allowances that the landlord was prohibited from imposing during the time of such designation pursuant to Section 28-58(h) shall be deemed banked amounts.

29.58.01.03 Allowable Rent Increase for Previously Vacant ~~Lots~~Units

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased ~~up to the banked amount or~~ to no more than the base rent on the date the unit became vacant plus each ~~allowable~~annual rent increase ~~under~~allowance since the date of vacancy, plus any banked amount, unless the unit is vacant, with no active lease agreement, for a continuous period of 12 months or more, then upon return to the market the landlord may set the base rent at the median rent for a comparable regulated unit in the landlord's propoerty. After the unit has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

(b) If a unit was vacant ~~before~~when the Rent Stabilization law was first enforceable, then upon return to the market, the landlord may set the base rent in landlord's discretion. After the unit is occupied or has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) As use in this Regulation, the following works and terms have the following meanings:

(i) "Capital Improvement" as defined in Section 29-56 of the Code includes an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under generally accepted accounting principles or the Internal Revenue Code, and specifically includes alterations to a multifamily project that are intended to enhance the value of the units, any depreciable improvements to a multifamily project to comply with local, state or federal law, and replacement of appliances, fixtures, flooring, windows, HVAC, and unit components.

Noonan, Katherine M. [NKM3]
When the designation is removed, the landlord should be able to recover foregone rent increases as banked amounts. Without this concept, the landlord will forever have below-market rent rates creating a perpetual cycle of inability to properly maintain the property.

Noonan, Katherine M. [NKM4]
This language fails to address:
1. How does this apply when an exempt unit becomes a regulated unit? If the landlord has recently performed capital improvement work (without the necessity of Department approval) and accounted for that in then-current rents, can the landlord continue to recover the surcharge once its units are regulated? Or should the landlord increase rents to cover the full capital improvement cost before it becomes subject to rent control (which would likely result in significant tenant displacement?]

2. How does this process apply to long term phased-in capital plans? These are common for multifamily property owners, and they do not work if a landlord is approved for a surcharge for Phase 1 but has not comfort that the next phase will be approved. A landlord should be able to present the entire plan to the County and get approval at one time, with reconciliations via the Certificates of Continuation. This requires modification to the timelines herein.

3. What happens if a landlord has multiple Capital Improvement Affidavits submitted or approved at any given time? As a practical matter, a landlord may have an emergency roof replacement and required BEPS compliance needs that are not reflected in a single application. If both meet the requirements of 29-58(d), then both must be approved by the Director. However, the language of the regulations would prevent the landlord from imposing both surcharges. How is this intended to work?

Noonan, Katherine M. [NKM5]
This tracks the "capital improvement" definition in DC. See DC Code 42-3501.03(6).

(ii) "Rent Surcharge" a charge added to the base rent charged for a rental unit pursuant to a Capital Improvement Affidavit, and not as part of rent charged. The amount of the Rent Surcharge is the amount necessary to cover the costs of Capital Improvements to the regulated unit, excluding costs of ordinary repair and maintenance.

(b) ~~(a)~~ A landlord may ~~petition~~submit an affidavit confirming to the Director that the landlord's property meets the requirements for a ~~limited surcharge for capital improvements~~Rent Surcharge for Capital Improvements under Section 29-58(d) of the Code.

(c) ~~(b)~~ Processing of ~~Petitions~~Capital Improvement Affidavit

(1) Filing of ~~Petition. The Petition form~~Capital Improvement Affidavit. The Capital Improvement affidavit and one copy of supporting documents required pursuant to (p) and (q) below (collectively the "Capital Improvement Affidavit") must be filed with the Department.

(2) Notice of Filing. The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant ~~by first-class mail~~ of the filing of the ~~Petition~~Capital Improvement Affidavit within five business days of the filing of the ~~Petition~~Capital Improvement Affidavit.

Noonan, Katherine M. [NKM6]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

(3) ~~Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed.~~Implementation of Rent Surcharge. Beginning on the date the landlord submits the Capital Improvement Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the Rent Surcharge as set forth in the Capital Improvement Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code.

(4) If the landlord fails to file all ~~necessary~~required supporting documentation ~~or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.~~

~~(5) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance~~with the Capital Improvement Affidavit, the Director may exercise its enforcement rights pursuant to Section 29-6 of the Code.

(d) ~~(c)~~ Except as provided in (d), the landlord must not recover the cost of a capital improvement through a ~~rent surcharge~~Rent Surcharge under Section 29-58(d) of the Code ~~if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition~~prior to the 31st day following submission of the Capital Improvement Affidavit to the Department and notice to tenants.

(e) ~~(d)~~ A landlord who makes a ~~capital improvement without~~Capital Improvement prior ~~approval of a capital improvement petition~~to submitting a Capital Improvement Affidavit to the Department and providing notice to tenants may recover the cost of the ~~improvement~~Capital Improvement under Section 29-58(d) of the Code, ~~following the approval~~upon submission of the ~~petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work~~Capital Improvement Affidavit to the Department and providing notices to tenant.

(f) ~~(e)~~ A landlord must file ~~a capital improvement petition on a form approved by~~ the ~~Director ("~~Capital Improvement ~~Form")~~Affidavit, certifying:

(1) that the ~~capital~~subject improvements are ~~permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;~~Capital Improvements

~~(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;~~

~~(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;~~

;

(2) ~~(4)~~ that the ~~capital improvements~~Capital Improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing or are required to comply with law;

(3) ~~(5)~~ whether the ~~capital improvements~~Capital Improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;~~(6)~~ provided, however, that ~~the~~energy cost savings are not required for Capital Improvements to qualify for a Rent Surcharge;

(4) all regulated units are properly registered and licensed with the Department, and if the

Noonan, Katherine M. [NKM7]
The Code does not require County approval of a request prior to landlord's performance of the capital improvement work. The proposed language here would preclude landlords from recovering any surcharge for capital improvements that are now in process or were completed prior to adoption of the Regulations. The Department has approval rights over the Capital Improvement Affidavit, but there is no reason to further restrict the timing of landlord's work on its own property.

Noonan, Katherine M. [NKM8]
The Code states that "Capital improvements include structural alterations required under federal, state, or County law." This statement is not limited to improvements to a regulated unit. As a practical matter, many landlords will seek a capital improvement surcharge in connection with the building infrastructure modifications required per BEPS and other local laws. Many of these modifications are to building structures and systems---not specifically to regulated units. This needs to be clarified.

Noonan, Katherine M. [NKM9]
Also note that the DC regulations that the Department used as a form for its proposed MoCo regulations specifically provides that the capital improvement surcharge can be used for improvements required by law (See 14 DCMR 4210.2)

Noonan, Katherine M. [NKM10]
No need to additionally certify that subject improvements do not include ordinary repair and maintenance costs because that is part of the definition of Capital Improvements and covered by (1) above.

Capital Improvements have commenced or been completed, that all governmental permits ~~have been requested or obtained, and copies~~required by law to be in place with regard to the status of ~~either~~ the ~~request form or issued permit must accompany~~Capital Improvements as of the date of the Capital Improvement ~~Form~~Affidavit have been granted;

(5) ~~(7)~~ whether the ~~basis under~~Capital Improvements may be depreciable under generally accepted accounting principles or the federal Internal Revenue Code ~~for considering the improvement to be depreciable~~;

(6) ~~(8)~~ the estimated costs of the ~~capital improvements~~Capital Improvements, including any interest and service charge; and

(7) ~~(9)~~ the dollar amounts, percentages, and time periods computed by following the instructions listed in (~~f~~g); ~~and (10) that the petitioner has obtained required governmental permits and approvals~~.

(g) ~~(f)~~ The Capital Improvement ~~Petition~~Affidavit must ~~contain instructions for computing~~identify and compute the following in accordance with this section:

(1) the total cost of a ~~capital improvement~~Capital Improvement;

(2) the dollar amount of the ~~rent surcharge~~Rent Surcharge for each ~~rental~~regulated unit in the housing accommodation and the percentage increase above the current ~~rents~~base rent charged; and

(3) the duration of the ~~rent surcharge~~Rent Surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(h) ~~(g)~~ The total cost of a ~~capital improvement~~Capital Improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the ~~improvement~~Capital Improvement, in accordance with (~~i~~j);

(2) any interest that accrues or must accrue on a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~j~~k); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~k~~l).

Noonan, Katherine M. [NKM11]
Our revisions are consistent with the language of the Code. The language does not require the landlord to have obtained or applied for permits with regard to the proposed capital improvements, as such a requirement would be impractical.

(i) ~~(h)~~ The interest and service charge on, "a loan taken by the landlord to make the ~~improvement or renovation~~Capital Improvement" is the portion of any loan that is specifically attributable to the costs incurred to make the ~~improvement or renovation~~Capital Improvement, in accordance with (~~l~~m). The dollar amount of the calculated interest and service ~~change~~charge must not exceed the amount of the portion of that loan that is specifically attributable to the costs incurred to make the Capital Improvement, in accordance with (m).

(j) ~~(i)~~ The ~~costs incurred to make a capital improvement~~" total cost of a Capital Improvement" must 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 Director may find~~ probative of the actual~~, commercially reasonable~~ costs of the Capital Improvements. The ~~amount~~total cost of ~~costs incurred must~~a Capital Improvement shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is actually received by landlord from ~~or guaranteed by~~ a governmental program for the purposes of making the subject ~~improvement~~Capital Improvement.

(k) ~~(j)~~ The interest on a loan taken to make a ~~capital improvement~~Capital Improvement means all compensation paid or required to be paid by or on behalf of the landlord to a lender for the use, forbearance, or detention of money used to make a ~~capital improvement~~Capital Improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~capital improvement~~Capital Improvement, or on that portion of a multi-purpose loan of money used to make the ~~capital improvement~~Capital Improvement, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other ~~evidence of interest that the Director finds~~ probative evidence; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus four percentage (4%) points or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the ~~limited surcharge petition for capital improvements~~effective date of the Rent Surcharge for Capital Improvements.

Noonan, Katherine M. [NKM12]
14 DCMR 4210.12 provides for this alternative calculation of the rate of 7 year US Treasury maturities during prior 30 days plus 4% or 400bp. It is not clear why the Regulations propose this structure.

(l) ~~(k)~~ For the purposes of (~~j~~k)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Capital Improvement Affidavit must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Capital Improvement Affidavit is

submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the Capital Improvement Affidavit was filed. If the interest rate changes over the duration of the ~~rent surcharge~~loan, any ~~certificate filed under (t)~~Certificate of Continuation must list all changes and recalculate the total interest on the loan.

(m) ~~(l)~~ The service charges in connection with a loan taken to make a ~~capital improvement~~Capital Improvement must 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 probative evidence of service charges ~~as the Director may find probative~~.

(n) ~~(m)~~ Except when a continuation is permitted in accordance with (~~s~~t), the duration of a ~~rent surcharge requested or~~Rent Surcharge allowed ~~by~~pursuant to a ~~capital improvement petition~~Capital Improvement Affidavit must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the ~~capital improvement~~Capital Improvement, in accordance with (~~g~~h); divided by

(2) the sum of the monthly ~~rent surcharges~~Rent Surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected ~~rental~~regulated unit.

(o) ~~(n)~~ A ~~rent surcharge~~Rent Surcharge in the final month of its duration must be no greater than the remainder of the calculation in (~~m~~n), prior to rounding.

(p) ~~(o)~~ A Capital Improvement ~~Petition~~Affidavit must be accompanied by external documents to substantiate the total cost of a ~~capital improvement~~Capital Improvement and must be supplemented with any new documentation reflecting a material change in the actual total cost of the ~~improvement~~Capital Improvement, until the ~~Director approves or denies the petition~~Capital Improvements have been substantially completed.

(q) ~~(p)~~ A Capital Improvement ~~Petition~~Affidavit, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which regulated rental units will be affected by the ~~capital improvements~~Capital Improvements;

(2) the base rent for each affected regulated rental unit, and any other ~~approved capital improvement surcharges~~permitted Rent Surcharges; and

(3) the dollar amount of the proposed ~~rent surcharge~~Rent Surcharge for each regulated rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) ~~(q)~~ A ~~decision authorizing a capital improvement surcharge must be implemented~~landlord shall begin implementing a Rent Surcharge within 12 months of the date of ~~issuance~~the Capital Improvement Affidavit was submitted but no earlier than 12 months following any prior rent increase for an affected ~~rental~~regulated unit; provided, that if the ~~capital improvement~~Capital Improvement work renders the unit uninhabitable beyond the expiration of time, the ~~rent surcharge~~Rent Surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as ~~an approved capital improvement surcharge~~a permitted Rent Surcharge in the new lease or in the lease renewal ~~and may not be implemented mid lease~~.

(s) ~~(r) Not less than 90 days before the~~Prior to expiration of an authorized ~~rent surcharge~~Rent Surcharge a landlord may request to extend the duration or otherwise modify the amount of the ~~rent surcharge~~Rent Surcharge by filing ~~an application~~a notice with the Director and serving each affected rental unit with notice that the total cost of the ~~capital improvement~~Capital Improvement has not been recovered during the originally approved period of the ~~rent surcharge~~Rent Surcharge and requesting to extend ~~the approval~~or otherwise modify the amount of the Rent Surcharge ("Certificate of Continuation").

(t) ~~(s)~~ A Certificate of Continuation must set forth:

(1) the total cost of the ~~capital improvement as approved by the capital improvement petition,~~Capital Improvement as set forth in the Capital Improvement Affidavit, and the total cost of the Capital Improvement based on actual costs including, if applicable, any changes in the total interest due to a variable-rate loan;

(2) the dollar amount actually received by the implementation of the ~~rent surcharge~~Rent Surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months or modified amount required, under currently known conditions, for the landlord to recover the total cost of the ~~capital~~

~~improvement~~Capital Improvement by extension of the duration or modification of the ~~rent surcharge~~amount of the Rent Surcharge.

~~(t) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in mil.) and (2).~~

(u) ~~If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.~~Upon delivery of the Certificate of Continuation to the Department and notice to Tenants, Landlord shall be permitted to extend the duration or modify the amount of the Rent Surcharge as set forth in the Certificate of Continuation.

(v) ~~A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once~~In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Capital Improvement Affidavit and Certificate of Continuation.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return ~~application~~ process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

Noonan, Katherine M. [NKM13]
This language does not address how Fair Return Affidavits and Capital Improvement Affidavits relate to each other. Since they are for different purposes, presumably a landlord could submit both at the same time and have both approved. That would require modifications to the rent increase timing.

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year immediately prior to the year the unit ~~becomes~~became a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the ~~fair return application~~Fair Return Affidavit required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the ~~current year~~Current Year is a calendar year, the ~~current year~~Current Year CPI is the ~~annual~~Annual CPI for that year or 2) if the ~~current year~~Current Year is a fiscal year, the ~~current year~~Current Year CPI must be the CPI for December during the ~~current year~~Current Year.

(f) "Gross Income" means the actual annual ~~scheduled~~ rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord ~~was permitted to charge at the time of the application~~legally collected during the applicable period.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses for the applicable period.

29.59.01.03 Formula for Fair Return

(a) Fair Return~~. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year~~.

(1) In calculating Gross Income for the Current Year, the ~~Base Year~~ Net Operating Income for the Base Year under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any Fair Return Affidavit must identify a rent increase based on fair return ~~increase request must be~~as:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; and/or

(B) demonstrated to be commensurate with returns on investments ~~in~~of other

Noonan, Katherine M. [NKM14]
Whether regarding the Current Year or Base Year, the Gross Income is an actual known number. It should not include projections of what the landlord could have collected if all units were occupied, all tenants paid, and amenity fees were across the board.

Noonan, Katherine M. [NKM15]
This is wrong. The fair return rent increase formula is not Gross Income minus operating expenses. That is only part of the formula.

Noonan, Katherine M. [NKM16]
A Fair Return Affidavit may seek a fair return increase based on both operating expense offset and return on investment. It's not one or the other.

enterprises having comparable risks, provided that return on investment shall be deemed fair return up to the Net Operating Income for the property averaged over the prior three year period adjusted for CPI.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") ~~approved by the Director~~pursuant to a Fair Return Affidavit must be determined as a percentage of the Current Year rents and shall include any annual rent increase allowance under 27-57(a) of the Code, and each ~~restricted~~regulated unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein and subject to Section 29-54 of the Code, any fair return rent increase ~~approved by the Director~~ must begin to be implemented within 12 months of the date of the ~~issuance of the decision~~Fair Return Affidavit is submitted to the Department and notices provided to tenants or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase ~~awarded by~~pursuant to the ~~Director~~Fair Return Affidavit has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required increase has been taken in full, the ~~Director~~landlord may ~~allow~~elect to implement the ~~required~~full rent increase for that unit ~~to be taken~~ in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

Noonan, Katherine M. [NKM17]
After the 12 month or longer period expires for each unit, how does the landlord set the rent? This needs to be clarified since the fair return rent increase presumably includes the annual rent increase allowance.

Noonan, Katherine M. [NKM18]
Why would this be subject to Director approval? The requirement just creates more administrative hurdles and additional burdens on DHCA's limited resources.

29.59.01.04 Fair Return ~~Application~~Affidavit

(a) Requirement. A landlord may file a ~~fair return application~~Fair Return Affidavit (as defined in 29.59.01.04(d)(2) below) with the Director to increase the rent more than the amount permitted under ~~Section~~Sections 29-57 or 29-58 of the Code.

~~(b) Rolling Review. The Director will consider fair return applications on a rolling basis.~~

(b) ~~(c)~~ Prerequisites for a ~~fair return application~~Fair Return Affidavit. In order for ~~the Director~~a landlord to ~~consider~~submit a ~~fair return application, it must meet~~Fair Return Affidavit, the following requirements must be satisfied:

(1) All units within the rental housing listed in the ~~fair return application~~Fair Return Affidavit must be properly registered and licensed with the Department.

(2) The ~~fair return application~~Fair Return Affidavit must be completed in full, signed, and include all required ~~supporting documents~~for the Fair Return Affidavit.

(3) All Banked Amounts have been applied to ~~restricted~~regulated units.

(c) ~~(d)~~ Fair Return ~~Application~~Affidavit Requirements. A ~~fair return application~~Fair Return Affidavit must include the following information ~~and must be submitted in a form administered by the Department~~:

(1) The ~~applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return~~Fair Return Affidavit and one copy of supporting documents required pursuant to [_____] below (collectively the "Fair Return Affidavit") must be filed with the Department.

(2) The ~~application~~Fair Return Affidavit must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director ~~prior to the filing of the application~~.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) ~~Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been completed and associated costs are reasonable.~~Income and operating expense report for the property for the Base Year and the Current Year. Within ten (10) days following written request from the Director, landlord shall deliver supporting documentation confirming specific items on the income and operating expense report as may be specifically requested by the County. Such supporting documentation may include copies of bills, invoices, receipts, time sheets, or other documents. Any such supporting documentation provided by the landlord in response to the Director's request shall be delivered in an organized manner and shall be held by the Director as confidential.

Noonan, Katherine M. [NKM19]
The County already has inspection rights with regard to multifamily properties. No additional rights are needed here.

Noonan, Katherine M. [NKM20]
Does the Department really want to see and review every operating expense invoice for a property for the Base Year and Current Year? This seems overly burdensome for all.

~~(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.~~

~~(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.~~

~~(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.~~

(B) ~~(E)~~ Any justification for exceptional circumstances that the ~~owner~~landlord is claiming under this ~~regulation~~Regulation.

(C) ~~(F)~~ Any additional information the landlord determines would be useful in making a determination of fair return.

~~(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion~~

(d) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Fair Return Affidavit.

29.59.01.05 Processing of Fair Return ~~Applications~~Affidavit

(a) Filing of ~~Application. The fair return application form and one copy of supporting documents~~Fair Return Affidavit. The Fair Return Affidavit must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the ~~fair return application~~Fair Return Affidavit, the landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing ~~via first class mail, providing each tenant a copy of the Notice of Filing and~~of the ~~application (excluding supporting documentation)~~Fair Return Affidavit.

~~(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.~~

~~(d) Required Notice of Decision to Tenants~~

~~(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.~~

(c) ~~(2)~~ Implementation of Rent Increase. Beginning when landlord submits the Fair Return Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the rent increase as set forth in the Fair Return Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code. The implementation of any rent increase ~~awarded~~approved by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a ~~DHCA~~Department authorized fair return increase. ~~Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.~~

29.59.01.06 Fair Return Criteria ~~in Evaluation~~

(a) Gross income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord ~~could have~~actually received ~~if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid~~during such period.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

Noonan, Katherine M. [NKM21]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

Noonan, Katherine M. [NKM22]
The term "Notice of Filing" is not used elsewhere in these Regulations. The tenant notice makes the tenants aware that a Fair Return Affidavit has been filed, but there is no need for the landlord to provide the entire Fair Return Affidavit to the tenants. An interested tenant can reach out to the County, but there is no need to overwhelm all tenants with detailed information. Tenants are not entitled to the landlord's financial records.

Noonan, Katherine M. [NKM23]
As a practical matter, no property has 100% occupancy and 100% rent payment year over year. If this change is not made to Gross Income, then the definition of operating expenses should be revised to include all rental losses incurred by a landlord in connection with nonpayment and vacancy.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, ~~unless~~except to the extent these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.; below;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the Annual CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates ~~by a preponderance of the evidence~~ that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital ~~improvements~~expenses over the useful life of the expensed asset. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey plus 4% or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~the~~ substantial completion of the renovation ~~application~~.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; ~~and~~

(I) insurance costs; and

(J) costs incurred by landlord to comply with the Rent Stabilization Act, including costs of reporting, data collection, tenant noticing, Capital Improvement Affidavits, Fair Return Affidavits, Substantial Renovation Affidavits, and other administrative costs incurred by landlord as a result of the Rent Stabilization Act and these Regulations.

(2) ~~Reasonable and expected operating~~Operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been ~~or will be~~ reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

~~(B) payments made for mortgage expenses, either principal or interest;~~

(B) ~~(C)~~ judicial and administrative fines and penalties~~;(D)~~ , including damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(C) ~~(E)~~ depreciation;

(D) ~~(F)~~ late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord ~~or the rental housing~~;

(E) ~~(G)~~ membership fees in organizations established to influence legislation and regulations;

(F) ~~(H)~~ contributions to lobbying efforts;

(G) ~~(I)~~ contributions for legal fees in the prosecution of class-action cases;

(H) ~~(J)~~ political contributions for candidates for office;

(I) ~~(K)~~ any expense for which the tenant has lawfully paid directly or indirectly;

(J) ~~(L)~~ attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

~~(M) additional expenses incurred as a result of unreasonably deferred maintenance;~~ and

(K) ~~(N)~~ any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

Noonan, Katherine M. [NKM24]
This is duplicative of the former (2)(B) (payments made for mortgage expenses).

(c) ~~Base Year~~ Net Operating Income for Base Year. To adjust the ~~Base Year~~ Net Operating Income for the Base Year, the Director must make at least one of the following findings:

(1) The ~~Base Year~~ Net Operating Income for the Base Year was abnormally low due to one of the following factors:

(A) the landlord made substantial ~~capital improvements~~Capital Improvements in or prior to the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these ~~capital improvements~~Capital Improvements pursuant to a Capital Improvement Affidavit;

(B) substantial repairs were made to the rental housing due to exceptional ~~circumstances; or~~circumstance or new laws;

(C) other expenses were unreasonably high, notwithstanding prudent business practice; or

(D) other exceptional circumstances exist requiring equitable adjustment to Net Operating Income for the Base Year.

(2) The Base Year ~~Rents~~rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased ~~for five~~in the years preceding the Base Year;

(C) the ~~Tenant~~tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. ~~A~~Except as provided in 29.59.01.03(b), a rent increase established under an approved ~~fair return application~~Fair Return Affidavit remains in effect for each regulated unit for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a ~~restricted~~regulated unit for ~~that~~the 12-month period during which the regulated unit is subject to a rent increase pursuant to a Fair Return Affidavit (as such rent increase includes any annual rent increase allowance).

(b) Establishment of New ~~Base Year~~ Net Operating Income for the Base Year. The ~~net operating income~~Net Operating Income, income, and expenses, determined to be fair and reasonable pursuant to ~~a prior application for a fair return rent increase~~an approved Fair Return Affidavit must constitute the Net Operating Income of the Base Year income, and expenses~~, and net operating income~~ for those ~~restricted~~regulated units included in the finding of fair return for purposes of reviewing subsequent ~~applications~~affidavits.

(c) Limitations on Future Fair Return Requests.

(1) If ~~a fair return application is approved by the Director~~landlord submits a Fair Return Affidavit, the ~~property owner~~landlord may not file a subsequent ~~application~~Fair Return Affidavit covering the same period for which the ~~greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return~~ rent increase is ~~permitted above 15%) has been applied~~in effect under the prior Fair Return Affidavit.

~~(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.~~

Noonan, Katherine M. [NKM25]
Landlord cannot have multiple fair return increases in place at the same time, but there is no need to preclude subsequent fair return affidavits. Such a requirement only reduces the Department's burden at the landlord's cost.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.00 – Transition of Exempt Units

When an exempt unit becomes a regulated unit, the base rent for the first year of such regulated period shall be the median rent for comparable regulated units at the landlord's property. Thereafter, base rent for such regulated units shall be determined by Section 29-58(a) of the Code.

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 ~~Application for a~~ Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation ("renovation") under Section 29-60(12) for renovation commencing on or after the effective date of these Regulations must file an ~~application~~affidavit ("Substantial Renovation Affidavit") with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed, if any, for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be ~~renovate~~renovated showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) ~~Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.~~The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing of the Substantial Renovation Affidavit within five business days of the filing of the Substantial Renovation Affidavit.

(c) ~~The Director must review the application and supporting documentation and must issue and notify~~

Noonan, Katherine M. [NKM26]
This language fails to address:

1. What happens if a property is exempt under the substantial renovation exemption, but is subsequently in violation of Chapters 8, 26, or 29 of the Code? These Regulations already address Troubled and At-Risk designations, but not these other provisions. We proposed language in 29.60.01.10(d) to address this.

2. As drafted, this process applies logically to substantial renovations to be implemented after the Regulations take effect. That does not address the landlords who performed substantial renovations to their properties in the 23 years prior to the effective date of the Regulations. We proposed language in Section 29.60.01.10(c) to address this.

Noonan, Katherine M. [NKM27]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

~~the landlord of a decision approving or denying the exemption.~~A property shall be exempt under Section 29-60(12) upon filing the Substantial Renovation Affidavit with the Director, or, if such Substantial Renovation Affidavit is submitted to the Department within sixty (60) days of the effective date of these Regulations, then the exemption shall be deemed effective as of the effective date of the Regulations.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of ~~those costs~~the portion of that loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04.

29.60.01.04 Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents, estimates, or a commitment to make a loan, or other evidence of expenses as ~~the Director may find~~are probative of the actual~~, commercially reasonable~~ costs of such renovations.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the ~~improvement or~~ renovation over the amortization period of the loan, in the amount of either:

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

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus 4% or 400 basis points. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior ~~to application for an exemption for a~~ substantial completion of the renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the ~~initial~~actual rate of the loan (if known), or otherwise recalculated when actual interest is known.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 ~~that the Director may find~~ probative of the actual~~, commercially reasonable~~ costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The ~~Director must determine~~following factors shall be relevant to a determination of whether a ~~proposed~~

substantial renovation is deemed to be intended to enhance the value of the rental housing ~~by considering the following~~:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant; and

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair~~; and~~.

~~(4) whether the proposed renovations are optional or cosmetic changes~~

Any renovation required for compliance with federal, state or local law is deemed to be intended to enhance the value of the rental housing.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) ~~Within thirty days of the~~Following completion of a ~~substantial~~ renovation for which landlord has submitted a Fair Return Affidavit, a landlord must file an affidavit attesting to the substantial completion with the Director~~. If the Director determines that the renovations have been completed according to the substantial renovation application,~~ and identifying the date of ~~filing of the affidavit of~~such substantial completion ~~must be deemed the approved~~. The exemption ~~date~~shall be effective on the substantial completion date as set forth in the affidavit, and shall remain in effect until the 23rd anniversary thereof, subject to the property's continued compliance with Section 29-60(a)(12)(B) of the Code.

(b) Once a ~~decision approving a~~Fair Return Affidavit and affidavit if substantial ~~renovation exemption has been issued~~completion have been filed with the Department and subject to Section 29-54 of the Code, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease (without regard to any renewal term), if any, for that rental unit.

(c) Notwithstanding anything to the contrary herein and subject to Section 29-60(a)(12)(B) of the Code, the landlord of any multifamily property claiming exemption pursuant to Section 29-60(a)(12) of the Code on basis of renovations performed prior to the effective date of these Regulations shall be deemed exempt until the 23rd anniversary of the substantial completion date of such renovations if the landlord provides a written affidavit to the Department confirming (i) the date of substantial completion of the renovation, (ii) that the renovations constitute permanent

Noonan, Katherine M. [NKM28]
Optional vs cosmetic is not a relevant standard to determine if there is an enhancement of the value of rental housing.

alterations to a building that are intended to enhance the value of the building and when substantially completed cost an amount equal to at least 40% of the value of the building as assessed by the State Department of Assessments and Taxation.

(d) If at any time during the 23 year substantial renovation exemption period, a court or other administrative agency determines that a multifamily property is in violation of Chapter 8, 26 or 29 of the Code, the exemption shall not apply until such violation has been cured.

(e) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Substantial Renovation Affidavit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit ~~must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:~~may charge reasonable fees for amenities and services not included in base rent and shall include a schedule of such then-current fees in in the annual report the landlord submits to the Department in accordance with Section 29-62 of the Code, provided that fees for laundry, charging stations, vending machines, and other services available to tenants in connection with third party agreements shall not be governed by this Section 29.61.01.01.

(a) Application fee A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than the greater of (i) $50 from any ~~household~~tenant applicant, and (ii) the actual amount charged by a third party application review service in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

~~(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;~~

Noonan, Katherine M. [NKM29]
This provision is necessary to address all substantial renovations completed in the 23 years prior to the effective date of the Regulations. In practice, this should be treated as the exemption for new construction. The County can always challenge an affidavit, but removing an unnecessary approval process here will allow the Regulations to take effect in a more streamlined manner. Without this concept a landlord who completed a substantial renovation in 2021 will be subject to rent control upon adoption of the Regulations, and then submit the affidavit based on retroactive construction, to presumably be granted exemption as of a County approval date. That makes no sense and would cause all kinds of confusion amount tenants.

Noonan, Katherine M. [NKM30]
This section exceeds the authority of the Department under Rent Stabilization. The law allows the Director to limit fee increases or new fees or include a fee schedule----all in accordance with the affordable housing goals of the law.

1. Any specified fee amounts must be indexed.
2. Is there tenant outcry at the amount of lockout, key, and storage fees that necessitates this degree of government control. Landlords incur actual costs for these items, and passing them through to the applicable tenants prevents general expense to all tenants.
3. These proposed fee caps apply to regulated units only.

Noonan, Katherine M. [NKM31]
Landlords incur actual costs to perform background checks as part of application review. The proposed limitation does not account for the fact that some households have multiple applicants and that these actual costs exist and may vary from time-to-time. Recovering actual costs is not a tenant gauging effort.

Noonan, Katherine M. [NKM32]
The County Code already addresses late fees and the Rent Stabilization Act does not suggest that regulated units be treated different from other units with regard to late fees.

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

~~(e) Lock out fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.~~

~~(f) Secure storage unit accessible only by tenant A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.~~

~~(g) Internet or cable television A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.~~

~~(h) Motor vehicle parking fee~~

~~(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:~~

~~(A) 4% of the base rent for the unit for any secured, covered parking space;~~

~~(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or~~

~~(C) 1% of the base rent for the unit for any other motor vehicle parking space.~~

~~(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking~~

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) Intentional Omitted.

(f) Intentionally Omitted.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Noonan, Katherine M. [NKM33]
Pets actually create additional wear and tear on building and landlords need to have the ability to recover those costs. The restriction on pet fees goes beyond the scope of protecting affordable housing in the County.

Noonan, Katherine M. [NKM34]
Storage space actually costs money. A cap of $3 per square foot per month seems arbitrary and fails to account for cost differentials across properties. It is not indexed.

Noonan, Katherine M. [NKM35]
These rates are not market and they fail to account for variations across the County. The price of parking is not the same across the board.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	422
Deletions	358
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	784

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

February 29, 2024

Scott Bruton
Director, Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

RE: MCER NO. 2-24 - PROPOSED MONTGOMERY COUNTY DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS REGULATION

Dear Director Bruton:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to submit comments in regards to MCER 2-24. MBIA has been actively engaged as part of the Montgomery County business community for more than 25 years. As housing providers, our members have helped the County to achieve its housing goals, creating safe and healthy living spaces and opportunities for all ages, income levels and backgrounds. It is important to acknowledge that we did and do oppose rent stabilization. There's no denying that many people are struggling to pay for housing, and inflation throughout the economy has eroded income gains. But the implication that this is solely due to price gouging of rents is just not accurate. Rent control and eviction moratoria to protect tenants during the height of the pandemic is one thing, but as long term policy it's much different.

We appreciate the extent to which DHCA has endeavored to draft the regulations in such a manner as to streamline and simplify administrative processes toward this.

Please see below our comments on certain aspects of the regulations, a redlined version along with a separate version focusing on parking and amenity fees will be included in MBIA's comments for the record.

- The "Annual Consumer Price Index" referenced in the Regulations appears outdated and is no longer utilized commonly. Moreover, it is inherently inappropriate to subject a Washington Metropolitan area County to the CPI applicable to Baltimore. Baltimore CPI is notoriously lower than Washington DC Metro CPI indices. We request DHCA to include a different Washington DC Metro Area CPI, rather than a more restrictive Baltimore CPI.

- We have been informed by DHCA that tenants are not intended to have standing to challenge petition processes under these regulations. However, the regulations in several respect allow for advanced written notice to tenants of the petition being pursued. We believe this will cause confusion among tenants and likely will cause tenants to pursue adversarial proceedings regarding petitions, notwithstanding their lack of standing. DHCA has indicated to us that they are not willing to include a flat statement in the regulations to clarify that tenants do not have standing. Therefore, to avoid any doubt, we propose that tenant notice is adequately protected by the obligation to deliver notice following a decision, and we propose removing advanced notices requirements to tenants.

- Director decisions under these regulations should include a mandatory response period, to avoid uncertainty in the market. In order to serve their tenants and communities, Landlords will need certainty as to whether certain exemptions and other petition approvals are granted.

- Fair Return Rent Increases: the last paragraphs of Section (b)(1) (and therefore all of Section (b)(2)) is the Director's attempt to impose an ADDITIONAL rent cap, beyond the intent of the law. This is outside of the purview of the Director in adopting regulations. If the Council wanted this additional cap, they would have included it in the law.

- The limitations on fair rent return applications are overly restrictive and will lead to further economic strife by the already-affected landlord

- Section 29.60.01.09. - No such finding is required.

- Section 29.60.01.10. - This is beyond the Director's knowledge or purview. If the work is complete, it will be demonstrated by a final inspection by DPS.

Capital improvements:

- Sections C and D are overly restrictive and will prevent landlords from undertaking appropriate capital improvements that will benefit the quality of life of tenants. These regulations restrict landlords to only undertake capital improvements that are necessary to maintain the health and safety of tenants, which is a low bar, or else the landlord runs the risk of incurring substantial cost without any change of recoupment.

- Not all capital improvements are "permanent structural alterations". Nor does the law specifically require that they be "intended to enhance the value of the unit", although most capital improvements by their nature do increase the value of the overall property this is too restrictive on a unit by unit basis.

- The requirement that the Landlord must demonstrate that capital improvements "result in energy cost savings that will be passed on to the tenant …" Is overreach.
  - The law only requires that capital improvements may have that benefit. Energy efficiency in capital improvements will be governed by BEPS, not by rent control.

- Section 6 requires that the applicant must have requested OR obtained all permits necessary. Section 10 requires that all permits are obtained. This is in direct conflict to Section 6. The intent of the law is to request and pursue permits, not to have all permits obtained. Pulling permits as a pre-condition for this application is premature and overly burdensome.

- Section R is incomprehensible as drafted. If each affected unit incurs an annual rent increase within the limits of this new law, then it would be impossible to both implement within 12 months of the date of issuance, and also not implement within 12 months of the most recent rent increase. The last sentence of R has the same effect of creating an impossible timeline for implementation, except where the unit is vacant.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:

(a) Application fee

A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than $50 from any household in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

[This entire pet fee section is extremely problematic. The DC Metro "Market" pet deposit and pet fees are generally a $300 to $500 deposit PLUS a $50 to $100 per month in "pet rent." The pet rent is charged per animal (for example $100 per month for one dog or $200 per month for two dogs and so on). Every other jurisdiction in the DC metro allows for both a deposit and a fee except Montgomery County. In addition, after COVID, we've seen pets, particularly dogs, rise from 25% of the occupants to as much as 50% of the occupants. This has put an incredible amount of stress on the properties, interior and exterior. If they exist, dog amenities (parks, cleaning facilities, etc.) are facing much more upkeep and maintenance. Faced with these added costs and limitations on what can be charged, land lords will have no choice but to stop allowing pets or take the amenities offline. How can a blanket ordinance like the items below possibly cover all of the potential scenarios the landlord might face?

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100 [monthly or annually], which must be held in escrow by the owner. How will this fee change over time to reflect cost inflation? Does this apply to one, two, three pets, etc.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first–class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25. How will this fee be adjusted for future inflation, the time it takes to program the electronic keys, time involved to acquire more, etc.

(e) Lock out fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.

(f) Secure storage unit accessible only by tenant

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month. This is poorly written. Is it talking about storage units that can be leased and accessed only by the tenant (could be in a parking garage, building corridors, exterior spaces, etc. or is it talking about a potential scenario where there might be a storage unit on a balcony that is only accessible to that specific unit? Does Montgomery County Government get involved in setting rental rates at self-storage facilities? If not, why is there a belief that that can be done in multifamily communities? There is no right or requirement for a multifamily owner to provide storage spaces. Storage rent is an incredibly important part of other income and therefore the property's NOI and financing and refinancing. In-unit storage (i.e. closets) are provided in individual units to meet building codes. Secured storage units are a luxury and are not required. Private, secured storage is 100% OPTIONAL to the tenant. For that reason it should be completely struck from this ordinance. However, if it were to remain, $3 / sf is *significantly below* the market price. Storage comes in all shapes and sizes and locations across the county. For example, a storage unit in Bethesda may rent for $5 - $10 PSF. A tenant may happily pay more for storage in Bethesda than Clarksburg. With something like 80,000 multifamily units in the county how can $3 / SF possible be implemented across the entire county? If a tenant has OPTIONALLY signed a lease for storage then the market should establish the rents for that space. If a tenant has signed a lease for $100 for example then perhaps there is a certain amount the landlord can't increase the price of the storage. If allowed to remain, how would this amount be adjusted for future inflation?

(g) Internet or cable television

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property. Landlords should be allowed to do whatever state and federal laws allow. Because this is associated with telecommunications there is a significant amount of case law in both the federal and state realms as it relates to what your can or cannot provide tenants. How will this ordinance not run afoul of these rules? For example, as a company we've made significant investments in our properties to provide the fastest possible internet speeds. The result of this section may venture into the territory of where you offer one basic internet speed for free and then charge other tenants for a premium package. What happens in that scenario? Artificial Intelligence (and other things we don't even know about) are going to affect this section greatly, and soon. Television service is

heading toward an internet streaming model. How will that affect how landlords choose to upgrade in the future?

[How can Montgomery County possibly pursue a one-size-fits-all strategy for parking price controls in a county as large as Montgomery with close to 100,000 multifamily units. **Parking should be completely struck from this ordinance.** So many forces are moving toward reductions in parking (including the Montgomery County Council approving its own parking reduction ordinance). One way to reduce the reliance on cars is to increase the price for parking cars. Society, environmental and sustainability rating systems, are all pushing toward reducing parking. It's in society's interest to have less parking. As a landlord, we should have an incentive to encourage renters near transit who don't have cars to park. These caps below would decimate the value of parking spaces and make it impossible in many cases to finance structured parking for infill development. In addition, these caps don't come anywhere close to the market price for secured parking. It seems as if the department is trying to tie these to the county's parking garages rates. Those aren't secure, convenient, or attached to an occupant's residence. Is Montgomery County's transportation department going to limit the amount they can reduce monthly parking, parking meter fees, or fines? What about the example of the tenant who rents a $1,750 one-bedroom unit in Clarksburg and is willing to pay $300 per month for their own free-standing garage that only they can access? That is 17% of the base rent. By the example below you could only charge $70 for the garage.

(h) Motor vehicle parking fee

(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:

(A) 4% of the base rent for the unit for any secured, covered parking space;

(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or

(C) What about a reserved AND secured covered space? How would that be handled?

(D) What about a second parking space, third parking space, etc. We already try to charge a ton for those?

(E) What about MPDU renter parking?

(F) What about EV Charging Station parking spaces?

(G) What about handicap spaces?

(H) What about bicycle parking spaces or the spaces within secure bike rooms?

(I) What about motorcycle parking spaces?

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department	**Effective Date**
Department of Housing and Community Affairs	

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY CODE CHAPTER 29. SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) The annual rent increase allowance governing the first year of a multi-year lease applies to the subsequent lease years.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a fair return application under Section 29-59 of the Code.

(a) If the Director approves the fair return application submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the fair return application while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director denies the fair return application submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

29.58.01.03 Allowable Rent Increase for Previously Vacant Lots

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased up to the banked amount or to no more than the base rent on the date the unit became vacant plus each allowable increase under Section 29-58(a) of the Code.

(b) If a unit was vacant before the Rent Stabilization law was enforceable, then upon return to the market, the landlord may set the base rent. After the unit has been on the market for 12 months,

the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) A landlord may petition the Director for a limited surcharge for capital improvements under Section 29-58(d) of the Code.

(b) Processing of Petitions

(1) Filing of Petition. The Petition form and one copy of supporting documents must be filed with the Department.

(2) Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord, within thirty (30) days of the date of filing of the Petition, of a decision stating the recommended rent increase, if any, to be allowed. If the Director fails to issue its decision within the thirty (30) day response period, the Petition shall be deemed automatically approved as filed with the Department.

(3) If the landlord fails to file all necessary documentation or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.

(4) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance.

(c) Omitted.

(d) A landlord who makes a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under Section 29-58(d) of the Code, following the approval of the petition.

(e) A landlord must file a capital improvement petition on a form approved by the Director ("Capital Improvement Form"), certifying:

(1) that the capital improvements are to a regulated rental unit;

(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;

(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;

(4) that the capital improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing;

(5) Omitted;

(6) that the required governmental permits have been requested or obtained, and copies of either the request form or issued permit must accompany the Capital Improvement Form;

(7) the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;

(8) the costs of the capital improvements, including any interest and service charge;

(9) the dollar amounts, percentages, and time periods computed by following the instructions listed in (f) .

(f) The Capital Improvement Petition must contain instructions for computing the following in accordance with this section:

(1) the total cost of a capital improvement;

(2) the dollar amount of the rent surcharge for each rental unit in the housing accommodation and the percentage increase above the current rents charged; and

(3) the duration of the rent surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(g) The total cost of a capital improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the improvement, in accordance with (i);

(2) any interest that must accrue on a loan taken by the landlord to make the improvement, in accordance with (j); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement, in accordance with (k).

(h) The interest and service charge on, "a loan taken by the landlord to make the improvement or renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the improvement or renovation, in accordance with (l). The dollar amount of the calculated interest and service change must not exceed the amount of the portion of that loan.

(i) The costs incurred to make a capital improvement must 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 Director may find probative of the actual, commercially reasonable costs. The amount of costs incurred must 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.

(j) The interest on a loan taken to make a capital improvement means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make a capital improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord 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 landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other evidence of interest that the Director finds probative; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates

reported for the 52 weeks immediately prior to the limited surcharge petition for capital improvements.

(k) For the purposes of (j)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan. If the interest rate changes over the duration of the rent surcharge, any certificate filed under (t) must list all changes and recalculate the total interest on the loan.

(l) The service charges in connection with a loan taken to make a capital improvement must 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 Director may find probative.

(m) Except when a continuation is permitted in accordance with (s), the duration of a rent surcharge requested or allowed by a capital improvement petition must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the capital improvement, in accordance with (g); divided by

(2) the sum of the monthly rent surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected rental unit.

(n) A rent surcharge in the final month of its duration must be no greater than the remainder of the calculation in (m), prior to rounding.

(o) A Capital Improvement Petition must be accompanied by external documents to substantiate the total cost of a capital improvement and must be supplemented with any new documentation reflecting the actual total cost of the improvement, until the Director approves or denies the petition.

(p) A Capital Improvement Petition, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which rental units will be affected by the capital improvements;

(2) the base rent for each affected regulated rental unit, and any other approved capital improvement surcharges; and

(3) the dollar amount of the proposed rent surcharge for each rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) A decision authorizing a capital improvement surcharge must be implemented within 12 months of the date of issuance; provided, that if the capital improvement work renders the unit uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied.

(s) Not less than 90 days before the expiration of an authorized rent surcharge a landlord may request to extend the duration of the rent surcharge by filing an application with the Director 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").

(t) A Certificate of Continuation must set forth:

(1) 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;

(2) the dollar amount actually received 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;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months required, under currently known conditions, for the landlord to recover the total cost of the capital improvement by extension of the duration of the rent surcharge.

(u) The Director must review the Certificate of Continuation and must issue and notify the landlord, within thirty (30) days of the date of filing of the landlord's request, of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in (t)(1) and (2). If the Director fails to issue its decision within the thirty (30) day period, the request shall be deemed automatically approved as filed with the Department.

(v) If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.

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

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return application process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

(b) "Annual Consumer Price Index" (CPI) means the [TBD], except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year the unit becomes a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the fair return application required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the current year is a calendar year, the current year CPI is the annual CPI for that year or 2) if the current year is a fiscal year, the current year CPI must be the CPI for December during the current year.

(f) "Gross Income" means the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord was permitted to charge at the time of the application.

(g) "Net Operating Income" means the rental housing's Gross Income minus Operating Expenses.

29.59.01.03 Formula for Fair Return

(a) Fair Return. The fair return rent increase formula is computed as follows: Gross Income minus Operating Expenses permitted under Section 29.59.01.06 for the Current Year.

(1) In calculating Gross Income for the Current Year, the Base Year Net Operating Income under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any fair return increase request must be:

(A) demonstrated as actual Operating Expenses to be offset through a fair return rent increase; or

(B) demonstrated to be commensurate with returns on investments in other enterprises having comparable risks.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") approved by the Director must be determined as a percentage of the Current Year rents, and each restricted unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein, any rent increase approved by the Director must be implemented within 12 months of the date of the issuance of the decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

29.59.01.04 Fair Return Application

(a) Requirement. A landlord may file a fair return application with the Director to increase the rent more than the amount permitted under Section 29-58 of the Code.

(b) Rolling Review. The Director will consider fair return applications on a rolling basis.

(c) Prerequisites for a fair return application. In order for the Director to consider a fair return application, it must meet the following requirements:

(1) All units within the rental housing listed in the fair return application must be properly registered and licensed with the Department.

(2) The fair return application must be completed in full, signed, and include all required supporting documents.

(3) All Banked Amounts have been applied to restricted units.

(d) Fair Return Application Requirements. A fair return application must include the following information and must be submitted in a form administered by the Department:

(1) The applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return.

(2) The application must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director prior to the filing of the application.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been

completed and associated costs are reasonable.

(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.

(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.

(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.

(E) Any justification for exceptional circumstances that the owner is claiming under this regulation.

(F) Any additional information the landlord determines would be useful in making a determination of fair return.

(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion following notice to the landlord and a fifteen (15) day period for the landlord to provide any additional financial information or documentation as may be necessary to clarify the initial financial information provided.

29.59.01.05 Processing of Fair Return Applications

(a) Filing of Application. The fair return application form and one copy of supporting documents must be filed with the Department.

(b) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and, within thirty (30) days of the date of filing of the application, must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision. The Director's failure to issue a decision within thirty (30) days of filing shall render the application automatically approved as filed with the Department.

(c) Required Notice of Decision to Tenants

(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.

(2) The implementation of any rent increase awarded by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a DHCA authorized fair return increase. Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.

29.59.01.06 Fair Return Criteria in Evaluation

(a) Gross Income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance and repair:

(A) utilities paid by the landlord, unless these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital improvements, and adjustment made for depreciation in accordance with generally accepted accounting procedures. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the substantial renovation application.

(F) maintenance and repair related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; and

(I) insurance costs;

(J) payments made for mortgage expenses, either principal or interest; and

any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or

brokers, appraisals, legal fees, accounting fees, etc.

(2) Reasonable and expected Operating Expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

(B) Omitted;

(C) judicial and administrative fines and penalties;

(D) damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(E) Omitted;

(F) late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental housing to the extent caused by landlord's failures;

(G) membership fees in organizations established to influence legislation and regulations;

(H) contributions to lobbying efforts;

(I) contributions for legal fees in the prosecution of class-action cases;

(J) political contributions for candidates for office;

(K) any expense for which the tenant has lawfully paid directly or indirectly;

(L) attorney's fees charged for services connected with counseling or litigation related to actions brought by or against the County under County regulations or this title, as amended, unless the landlord has prevailed in such an action brought by or against the County;

(M) additional expenses incurred as a result of unreasonably deferred maintenance; and

(c) Base Year Net Operating Income. To adjust the Base Year Net Operating Income, the Director must make at least one of the following findings:

(1) The Base Year Net Operating Income was abnormally low due to one of the following factors:

(A) the landlord made substantial capital improvements which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these capital improvements;

(B) substantial repairs were made to the rental housing due to exceptional circumstances; or

(C) other expenses were unreasonably high, notwithstanding prudent business practice.

(2) The Base Year Rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased for five years preceding the Base Year;

(C) the Tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that Operating Expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. A rent established under an approved fair return application remains in effect for a 12-month period.

(b) Establishment of New Base Year Net Operating Income. The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior application for a fair return rent increase must constitute the Base Year income, expenses, and net operating income for those restricted units included in the finding of fair return for purposes of reviewing subsequent applications.

MONTGOMERY COUNTY CODE CHAPTER 29. SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 Application for a Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation under Section 29-60(12) must file an application with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed for required building permits for the proposed renovations;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be renovate showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.

(c) The Director must review the application and supporting documentation and must issue and notify the landlord, within thirty (30) days of the date of filing of the application, of a decision approving or denying the exemption. If the Director fails to issue its decision within the thirty (30) day period, the application shall be deemed automatically approved as filed with the Department

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of those costs.

29.60.01.04. Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents or a commitment to make a loan, or other evidence of expenses as the Director may find probative of the actual, commercially reasonable costs.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the improvement or renovation over the amortization period of the loan, in the amount of either:

(a) the interest payable by the landlord at a commercially reasonable fixed or variable rate of interest on a loan of money used to make the improvement or renovation, or on that portion of a multi-purpose loan of money used to make the improvement or renovation, as documented by the landlord 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 Director may find probative; or

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to application for an exemption for a substantial renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the initial rate of the loan.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 that the Director may find probative of the actual, commercially reasonable costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

(1) Deleted.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) Following the completion of a substantial renovation a landlord must file an affidavit attesting that the renovations have been completed. The landlord's affidavit shall be accompanied by a final inspection report from the Department of Permitting Services.

MONTGOMERY COUNTY CODE CHAPTER 29. SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:

(a) Application fee

A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than $50 from any household in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of

pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first–class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

(e) Lock out fee

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.

(f) Secure storage unit accessible only by tenant

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.

(g) Internet or cable television

A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.

(h) Motor vehicle parking fee

(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:

(A) 4% of the base rent for the unit for any secured, covered parking space;

(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or

(C) 1% of the base rent for the unit for any other motor vehicle parking space.

(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

TO: Scott Bruton, Director of DHCA

FROM: AOBA – Brian Anleu, banleu@aoba-metro.org
Coalition of Stakeholders – Katie Noonan, noonank@ballardspahr.com
GCAAR – Zac Trupp, ztrupp@gcaar.com
NAIOP DC/MD – Stacy Lee, slee@naiopdcmd.org

DATE: March 22, 2024

RE: Comments on Draft Rent Stabilization Regulations

At your request, we have prepared a consolidated mark-up of the draft Rent Stabilization Regulations. The mark-up is endorsed by AOBA, Coalition of Stakeholders, GCAAR, and NAIOP DC/MD. As you know, we individually submitted detailed comments to the draft regulations during the February 2024 comment period, and those comments provide additional background and analysis of the specific concerns of each industry group. In preparing the attached mark-up, we were mindful of the requirements of the Rent Stabilization Law, the overall affordable housing goals that we all share, as well as ways to minimize vacancy, delay and disruption in the leasing process.

The attached mark-up is detailed and thorough. In reviewing, we call your attention to the following points that we all agree are priority issues that require revision to the draft regulations.

- Approval Process. There currently is no time frame within which the Director must respond to a landlord request under the draft regulations. This creates significant uncertainty in the market, and could result in properties becoming at risk as the Director conducts a review without any timeframe for making a decision. We suggest an initial review for the Director to confirm completeness of a submission and a period of 30 calendar days to issue a decision on all submissions. If DHCA fails to issue a decision within this time-period, such request will be deemed approved. In addition, landlords should be allowed to proceed upon providing the Director with an affidavit of compliance, as the Director continues to have enforcement authority under Chapter 29.

- Capital Improvement Petition. It is essential to have a clear definition of "capital improvements", as the existing language of the Code and draft regulations creates ambiguity. Large-scale capital improvement projects are routinely completed in phases, and the draft regulations must be revised to permit approval of phased improvement plans in a single application. In addition, there is significant cost in preparing building permit drawings associated with large scale capital improvements. As such, it is essential that an owner receive approval of its Capital Improvement Petition, prior to a landlord investing in the cost of preparing building permit plans. As currently written, one must invest in preparing detailed building permit drawings.

- Substantial Renovation Exemption. The draft regulations currently provide the Director with the discretion to step into the shoes of the landlord and determine whether a "Substantial Renovation" is justified. The landlord must be given the discretion to determine, based on market conditions or otherwise, whether a Substantial Renovation is needed to support the continued profitability and marketability of a building. For the Director to step into this subjective role of substituting its judgment for a landlord is problematic and creates significant uncertainty and ambiguity in the market. In addition, the regulations must allow properties to qualify for a substantial renovation exemption if the renovation work was performed prior to the regulations taking effect.

- Fair Return. The draft regulations make it impossible for an owner to have any certainty as to whether it will qualify for a fair return. We suggest replacing the standard of "return on investment commensurate with that of enterprises of comparable risks" with an objective standard of the yield on the 10 year US Treasury Note plus 4%. The administrative burden on calculating operating expenses can be dramatically reduced by acknowledging that operating expenses not in excess of 35% of gross income do not require additional verification.

- Fees. We understand that fees may not be used as a back-door to increasing rents. The proposed limitation on fees, however, as currently suggested - prevents landlords from being made whole and suggests practices that are not customary and reasonable and does not account for the cost of inflation. All fees should be indexed to inflation. We suggest language clarifying that if a tenant can opt out of a service/amenity and avoid the fee, then the fee is not subject to restriction under the regulations. Under this approach, pet fees, renters' insurance fees and optional gym, pool, club, parking, and storage fees would not be subject to restriction. As to any fees applied to all tenants (with no opt-out option), landlords should continue to have the right to charge fees consistent with the landlord's fee schedule in effect prior to the date the regulations take effect, with annual CPI increases. This approach meets the County's goal of preventing fees from becoming back-door rent increases, which also permits landlords to charge standard and customary fees that on a site-specific basis.

- Rent Increases for Troubled and At-Risk Properties. The fair return application cannot be the only way for a landlord of a troubled or at-risk property to increase rent. We propose the automatic right of a landlord to increase rent by the greater of CPI or 3%, and if the landlord needs a greater increase, it can file a fair return application. In addition, any rent increases otherwise permitted by law that a landlord cannot charge as a result of its property designation should be treated as banked amounts. This approach is consistent with the County's goal of addressing the physical conditions of the property while preventing the property from forever being rented at below market rates.

- Vacant Units. If a unit is vacant for a year or is otherwise below market as the result of a special landlord-tenant relationship, when there is a new lease for the

unit, rent should be set at the median rent for regulated units at the landlord's property.

- Multi-Year Leases. The language in the draft regulations at 29.58.01.01(b) is contrary to Section 29-57(a) of the Code which provides for annual rent increases.

As we have discussed, it is essential that the County takes the time to get these regulations right. As an industry, we are gravely concerned that if the draft regulations take effect in their current form, there will be adverse impacts on tenants, landlords, rental housing stock, investments, and overall economic conditions.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Collective Comments 3/22/24

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) ~~The~~For a lease with a stated term in excess of one year, the annual rent increase allowance ~~governing~~after the first year of ~~a multi-year lease applies to the subsequent lease years~~the stated term shall be as set forth in Section 29-57(a) of the Code, and the base rent for the subsequent year(s) shall be subject to reduction if it exceeds the rent increase allowance for such year.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code that is noncompliant with its corrective action plan (as defined in 29.40.010.2) must not increase rent in excess of ~~an~~the amount ~~the Director determines~~ necessary to cover the costs required to improve habitability. The ~~Director must determine if the landlord of such a regulated rental unit is unable to cover the costs~~amount required to improve habitability ~~by requiring~~is the greater of CPI-U or 3%. Alternatively, a landlord ~~to~~may submit a ~~fair return application under Section 29-59~~Fair Return Application for Director approval of a rent increase in excess of ~~the Code~~this amount.

(a) If the Director approves the ~~fair return application~~Fair Return Application submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the ~~fair return application~~Fair Return Application while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director denies the ~~fair return application~~Fair Return Application submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code and is non-compliant with its corrective action plan, the landlord must not increase the rent on the regulated rental unit above CPI while the property is designated by the Department as

Troubled or At-Risk under Section 29-22(b) of the Code unless and until the Director approves a Fair Return Application.

(c) When a property that was subject to Section 29-58(b) of the Code is no longer designated as Troubled or At-Risk under Section 29-22(b) of the Code, all annual rent increase allowances that the landlord was prohibited from imposing during the time of such designation pursuant to Section 28-58(h) shall be deemed banked amounts.

29.58.01.03 Allowable Rent Increase for Previously Vacant ~~Lots~~Units

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased ~~up to the banked amount or~~ to no more than the base rent on the date the unit became vacant plus each ~~allowable~~annual rent increase ~~under~~allowance since the date of vacancy, plus any banked amount, unless the unit is vacant as a result of casualty, eviction, or voluntary non-renewal, with no active lease agreement, for a continuous period of 12 months or more or if the base rent on the date the unit became vacant was below market as a result of a special relationship between landlord and tenant (including but not limited to employee, service provider, etc.), then upon return to the market the landlord may set the base rent at the median rent for a comparable regulated unit in the landlord's property. After the unit is leased, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

(b) If a regulated unit was vacant ~~before~~when the Rent Stabilization law was first enforceable, then upon return to the market, the landlord may set the base rent in landlord's discretion. After the unit ~~has been on the market for 12 months~~is leased, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) As used in this Regulation, the following words and terms have the following meanings:

(i) "Capital Improvement" as defined in Section 29-56 of the Code includes an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation may be depreciable under generally accepted accounting principles or the Internal Revenue Code, and specifically includes alterations to a multifamily project that are intended to enhance the value of the units, any depreciable improvements to a multifamily project to comply with local, state or federal law, and replacement of appliances, fixtures, flooring, windows, doors, walls, HVAC, plumbing and mechanical systems, and building components.

(ii) "CI Surcharge" a charge added to the base rent charged for a rental unit pursuant to a Capital Improvement Application, and not as part of rent charged. The amount of the CI Surcharge is the amount necessary to cover the costs of Capital Improvements to the regulated unit, excluding costs of ordinary repair and maintenance.

(b) ~~(a)~~ A landlord may petition the Director for a ~~limited surcharge for capital improvements~~CI Surcharge for Capital Improvements under Section 29-58(d) of the Code.

(c) ~~(b)~~ Processing of Capital Improvement Petitions

(1) Filing of Capital Improvement Petition. The ~~Petition form~~Capital Improvement petition in the form published by the Director and one copy of supporting documents required pursuant to subsections (p) and (q) below (collectively, the "Capital Improvement Petition") must be filed with the Department.

(2) ~~Notice of Filing. The landlord must notify each affected tenant by first-class mail of the filing of the Petition within five business days of the filing of the Petition~~Capital Improvement Petition Processing. Within ten (10) days of receipt of a Capital Improvement Petition, the Director shall review the Capital Improvement Petition and notify the landlord in writing that (a) the Capital Improvement Petition is complete, or (b) the Capital Improvement Petition is incomplete identifying specifically the missing information or documentation. If the Director fails to timely provide notice in accordance with this subsection, the Capital Improvement Petition shall be deemed complete. If the landlord fails to deliver the missing information or documentation to the Director within ten days of receipt of the notice in (b) above, then the Director may deny the Capital Improvement Petition by written notice to landlord.

(3) Decisions on a Capital Improvement Petition. The Director must review the ~~petition and supporting documentation and~~Capital Improvement Petition and within thirty (30) days following receipt of the Capital Improvement Petition, must issue and notify the landlord of a decision stating the approval or disapproval with reason of the Capital Improvement Petition, including recommended ~~rent increase~~CI Surcharge, if any, to be allowed in accordance with the phasing schedule set forth in the Capital Improvement Petition ("Preliminary Approval"). If the Director fails to timely provide notice in accordance with this subsection, Preliminary Approval of the Capital Improvement Petition shall be deemed granted.

(4) ~~If the landlord fails to file all necessary documentation or respond in a timely manner to~~

~~requests for additional information or documentation, the Director may deny the application.~~Material Change. If there is any material change in the scope, phasing, pricing, or other matter set forth in the Capital Improvement Petition, landlord shall submit the same to the Director as a supplement to the Capital Improvement Petition ("Supplement"). Within thirty (30) days following receipt of the Supplement, the Director shall issue and notify the landlord of a decision stating the approval or disapproval with reason of the Supplement, including any revisions to the recommended CI Surcharge, if any, to be allowed in accordance with the phasing schedule set forth in the Capital Improvement Petition and Supplement. If the Director fails to timely provide notice in accordance with this subsection, the Supplement shall be deemed approved and incorporated as part of the Capital Improvement Petition and Preliminary Approval.

(5) Final Reconciliation. Upon completion of the Capital Improvements set forth in the capital Improvement Petition or upon completion of the Capital Improvements applicable to any phase set forth in the Capital Improvement Petition, landlord shall submit a final reconciliation package to the Director identifying the actual costs of the completed Capital Improvements with supporting documentation, and a recalculation of the CI Surcharge ("Reconciliation Package"). Within thirty (30) days following receipt of the Reconciliation Package, the Director shall issue and notify the landlord of a decision identifying the approved CI Surcharge by unit applicable to the completed project or phase. If the Director fails to timely provide notice in accordance with this subsection, the CI Surcharge set forth in the Reconciliation Package shall be deemed approved. Notwithstanding the foregoing, the Director's review of the Reconciliation Package shall not contradict any prior approval or deemed approval of the Preliminary Application or Supplement

(6) ~~(5)~~ Notice of Approved CI Surcharge. The landlord must~~,~~ (a) by first -class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify ~~all~~each affected ~~tenants~~tenant of the ~~decision~~approved CI Surcharge within ~~five~~ten business days of ~~issuance~~the receipt of the Director's approval or deemed approval of the CI Surcharge.

(d) ~~(c)~~ Except ~~as provided~~ in ~~(d)~~accordance with a CI Affidavit, the landlord must not recover the cost of a ~~capital improvement~~Capital Improvement through a ~~rent surcharge~~CI Surcharge under Section 29-58(d) of the Code ~~if a landlord makes the improvement to a rental unit or a housing accommodation~~ prior to ~~the~~ approval ~~of a capital improvement petition.~~

~~(d) A landlord who makes a capital improvement without prior approval of a capital improvement petition may recover the cost of the improvement under Section 29-58(d) of the Code, following~~

~~the approval of the petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work~~or deemed approval of the Director pursuant to subsection (c)(6) above.

(e) A landlord must file ~~a capital improvement petition on a form approved by~~ the ~~Director (“~~Capital Improvement ~~Form”)~~Petition, certifying:

(1) that the ~~capital~~subject improvements are ~~permanent structural alterations to a regulated rental unit intended to enhance the value of the unit~~Capital Improvements;

(2) whether the ~~capital improvements include structural alterations to a regulated rental unit~~Capital Improvements are required under federal, state, or County law;

(3) ~~that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;~~

~~(4)~~ that the capital improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing;

(4) ~~(5)~~ whether the ~~capital improvements~~Capital Improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law; provided, however, that energy cost savings are not required for Capital Improvements to qualify for a CI Surcharge;

~~(6) that the required governmental permits have been requested or obtained, and copies of either the request form or issued permit must accompany the Capital Improvement Form;~~

(5) all regulated units are properly registered and licensed with the Department;

(6) ~~(7)~~ the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;

(7) ~~(8)~~ the estimated costs of the ~~capital improvements~~Capital Improvements, including any interest and service charge;

(8) ~~(9)~~ the dollar amounts, percentages, and time periods computed by following the instructions listed in (f); and ~~(10) that the petitioner has obtained required governmental permits and approvals~~

(9) the planned phasing schedule for the Capital Improvements, if applicable.

(f) The Capital Improvement Petition must contain instructions for computing the following in accordance with this section and in accordance with the phasing schedule, if applicable:

(1) the estimated total cost of a ~~capital improvement~~Capital Improvement calculated in accordance with the phasing schedule;

(2) the dollar amount of the ~~rent surcharge~~CI Surcharge for each ~~rental~~regulated unit in the housing accommodation and the percentage increase above the ~~current rents~~base rent charged as of the date of the Capital Improvement Petition; and

(3) the estimated duration of the ~~rent surcharge~~CI Surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(g) The total cost of a ~~capital improvement~~Capital Improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the ~~improvement~~Capital Improvement, in accordance with (i);

(2) any interest that must accrue on a loan taken by the landlord to make the ~~improvement~~Capital Improvement, or in the absence of a loan, the interest on the equity, in accordance with (j); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (k).

(h) The interest and service charge on, "a loan taken by the landlord to make the ~~improvement or renovation~~Capital Improvement" is the portion of any loan that is specifically attributable to the costs incurred to make the ~~improvement or renovation~~Capital Improvement, in accordance with (~~l~~m). The dollar amount of the calculated interest and service ~~change~~charge must not exceed the amount of the portion of that loan~~.~~

~~(i) The~~ that is specifically attributable to the costs incurred to make ~~a capital improvement~~the Capital Improvement, in accordance with (l).

(i) The "total cost of a Capital Improvement" must 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 Director may find~~ probative of the actual~~, commercially reasonable~~ costs of the Capital

Improvements. The ~~amount~~total cost of ~~costs incurred must~~a Capital Improvement shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is actually received by landlord from ~~or guaranteed by~~ a governmental program for the purposes of making the subject ~~improvement~~Capital Improvement.

(j) The interest on a loan taken to make a ~~capital improvement~~Capital Improvement means all compensation paid ~~by~~or required to be paid by or on behalf of the landlord to a lender or interest foregone by landlord in connection with equity funding for the use, forbearance, or detention of money used to make a ~~capital improvement~~Capital Improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~capital improvement~~Capital Improvement, or on that portion of a multi-purpose loan of money used to make the ~~capital improvement~~Capital Improvement, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other ~~evidence of interest that the Director finds~~ probative evidence; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate plus four percentage (4%) points or 400 basis points , as reported by The Wall Street Journal's bank survey, applied over a seven-year period. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the ~~limited surcharge petition for capital improvements~~effective date of the CI Surcharge.

(k) For the purposes of (j)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Capital Improvement Petition must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Capital Improvement Petition is submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the Capital Improvement Petition was filed. If the interest rate changes over the duration of the ~~rent surcharge~~loan, any ~~certificate filed under (t)~~Certificate of Continuation must list all changes and recalculate the total interest on the loan.

(l) The service charges in connection with a loan taken to make a ~~capital improvement~~Capital Improvement must 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 Director may find~~ probative evidence.

(m) Except when a continuation is permitted in accordance with (s), the duration of a ~~rent surcharge~~CI Surcharge requested or allowed by a ~~capital improvement petition~~Capital Improvement Petition or phase therein must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the ~~capital improvement~~Capital Improvement, in accordance with (g); divided by

(2) the sum of the monthly ~~rent surcharges~~CI Surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected ~~rental~~regulated unit.

(n) A ~~rent surcharge~~CI Surcharge in the final month of its duration must be no greater than the remainder of the calculation in (m), prior to rounding.

(o) A Capital Improvement Petition must ~~be accompanied by~~include external documents to substantiate the total cost of a ~~capital improvement~~Capital Improvement and must be supplemented with any new documentation reflecting the actual total cost of the ~~improvement~~Capital Improvement, until the ~~Director approves or denies the petition~~Capital Improvements are complete.

(p) A Capital Improvement Petition, as filed with the Director, must ~~be accompanied by~~include a listing of each rental unit in the housing accommodation, identifying:

(1) which ~~rental~~regulated units will be affected by the ~~capital improvements~~Capital Improvements;

(2) the base rent for each affected regulated rental unit, and any other approved ~~capital improvement surcharges~~CI Surcharges; and

(3) the dollar amount of the proposed ~~rent surcharge~~CI Surcharge for each ~~rental~~regulated unit and the percentage by which each ~~surcharge~~CI Surcharge exceeds the current ~~rents~~base rent charged as of the date of the Capital Improvement Petition.

(q) A decision authorizing a ~~capital improvement~~CI surcharge must be implemented within ~~12~~24 months of the date of issuance but no earlier than 12 months following any prior rent increase for an affected rental unit; provided, that if the capital improvement work renders the unit

uninhabitable beyond the expiration of time, the rent surcharge may be implemented when the unit is reoccupied. The amount of the ~~surcharge~~CI Surcharge must be clearly identified as an approved ~~capital improvement surcharge~~CI Surcharge in the new lease or in the lease renewal and may not be implemented mid lease.

(r) ~~Not less than 90 days before the~~Prior to expiration of an authorized ~~rent surcharge~~CI Surcharge a landlord may request to extend the duration of the ~~rent surcharge~~CI Surcharge by filing an application with the Director ~~and serving each affected rental unit~~ with notice that the total cost of the ~~capital improvement~~Capital Improvement has not been recovered during the originally approved period of the ~~rent surcharge~~CI Surcharge and requesting to extend the approval ("Certificate of Continuation"). The Certificate of Completion shall be deemed complete when delivered to the Director unless within ten (10) days following receipt of the Certificate of Continuation, the Director notifies the landlord in writing of missing or incomplete information or documentation. If landlord fails to provide the missing or incomplete information or documentation to the Director within ten (10) days after receipt of notice, the Director may reject the Certificate of Continuation.

(s) A Certificate of Continuation must set forth:

(1) the total cost of the ~~capital improvement~~Capital Improvement as approved by the ~~capital improvement petition~~Capital Improvement Petition, including, if applicable, any changes in the total interest due to a variable-rate loan;

(2) the dollar amount actually received by the implementation of the ~~rent surcharge~~CI Surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months required, under currently known conditions, for the landlord to recover the total cost of the ~~capital improvement~~Capital Improvement by extension of the duration of the ~~rent surcharge~~CI Surcharge.

(t) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in ~~mil.~~(l) and (2).

(u) If the Director does not issue a decision ~~prior to the expiration of the surcharge, the~~within thirty (30) days following receipt of the Certificate of Continuation, the Certificate of Continuation shall be deemed approved and landlord may continue the implementation of the ~~rent surcharge~~CI 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 must constitute a final order to the landlord 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.~~

(v) ~~A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once.~~A landlord who submitted permit applications for Capital Improvements in the three (3) years immediately prior to the date these Regulations take effect shall have the right submit an affidavit to the Director certifying all matters set forth in subsection (e) above and calculation of the CI Surcharge as set forth herein ("CI Affidavit"). The CI Affidavit shall be deemed complete when delivered to the Director unless within ten (10) days following receipt of the CI Affidavit, the Director notifies the landlord in writing of missing or incomplete information or documentation. If landlord fails to provide the missing or incomplete information or documentation to the Director within ten (10) days after receipt of notice, the Director may reject the CI Affidavit. Unless rejected by the Director as provided herein, Landlord shall be permitted to charge the CI Surcharge in accordance with subsection (q) below.

(w) As an alternative to the Capital Improvement Petition process, a landlord may elect in lieu of submitting a CI Affidavit to the Director including all information required for a Capital Improvement Petition as well as landlord's affidavit certifying that the Capital Improvements and CI Surcharge satisfy the requirements of the Code. Thirty (30) days after delivering the CI Affidavit to the Director, landlord may begin to implement the CI Surcharge as set forth in (q) above. If landlord elects this alternative compliance approach, the Director shall continue to have all rights under Chapter 29 to investigate and enforce any suspected violations.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return application process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

(b) "~~Annual Consumer Price Index" (~~CPI~~)~~" means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year immediately prior to the year the unit ~~becomes~~became a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the ~~fair return application~~Fair Return Application required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the ~~current year~~Current Year is a calendar year, the ~~current year~~Current Year CPI is the annual CPI for that year or 2) if the ~~current year~~Current Year is a fiscal year, the ~~current year~~Current Year CPI must be the CPI for December during the current year.

(f) "Gross Income" means the annual scheduled ~~rental~~ income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord was permitted to charge at the time of the ~~application~~Fair Return Application.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses for the applicable period.

29.59.01.03 Formula for Fair Return

(a) Fair Return. ~~The~~ A property qualifies for a fair return rent increase ~~formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06~~if the Net Operating Income for the Current Year divided by gross cost basis (as set forth in 29.59.01.03(a)(2)(B) below) is less than the yield on the 10-year US Treasury Note plus 4%.

(1) In calculating ~~Gross~~Net Operating Income for the Current Year, the Gross Income for the Base Year ~~Net Operating Income~~ under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any Fair Return Application must identify a requested rent increase based on fair return ~~increase request must be~~as:

(A) ~~demonstrated as~~ actual operating expenses to be offset through a fair return rent increase; and/or

(B) ~~demonstrated to be commensurate with returns on investments in other enterprises having comparable risks~~returns on investments equal to real estate investment risk premium of four percent (4%) plus the annual yield on the 10-year US Treasury Note, with the gross cost basis being the assessed value of the property as of July 1, 2023 increased annually in accordance with CPI.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") approved by the Director must be determined as a percentage of the Current Year rents, and each ~~restricted~~regulated unit in the rental housing must be subject to the same percentage increase.

(1) ~~Except as provided herein, any~~A decision authorizing a Fair Return rent increase ~~approved by the Director~~ must be implemented within ~~12~~24 months of the date of ~~the~~ issuance ~~of the decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07~~but no earlier than 12 months following any prior rent increase for an affected rental unit. The amount of the Fair Return rent increase must be clearly identified as an approved Fair Return rent increase in the new lease or in the lease renewal and may not be implemented mid lease.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase awarded by the Director has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If ~~the Director determines that~~ a rental unit requiring an Fair Return rent increase of more than 15% is vacant or if the unit becomes vacant before the required increase has been taken in full, the ~~Director~~landlord may ~~allow~~elect to implement the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

29.59.01.04 Fair Return Application

(a) Requirement. A landlord may file and application for a fair return ~~application~~and required

supporting documentation ("Fair Return Application") with the Director to increase the rent more than the amount permitted under Section 29-57 or 29-58 of the Code.

(b) Rolling Review. The Director will consider ~~fair return applications~~Fair Return Applications on a rolling basis. Landlord may file Fair Return Applications in consecutive years.

(c) Prerequisites for a ~~fair return application~~Fair Return Application. In order for the Director to consider a ~~fair return application, it must meet~~Fair Return Application, the following requirements must be satisfied:

(1) All regulated units within the rental housing listed in the ~~fair return application~~Fair Return Application must be properly registered and licensed with the Department.

(2) The ~~fair return application~~Fair Return Application must be completed in full, signed, and include all required supporting documents.

(3) All Banked Amounts have been applied to ~~restricted~~regulate units.

(d) Fair Return Application Requirements. A ~~fair return application~~Fair Return Application must include the following information and must be submitted in a form ~~administered~~published by the Department:

(1) The applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return.

(2) The application must include all the information required by these Regulations and contain adequate information ~~for both the Base Year and~~to confirm calculation of the Gross Income for the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director ~~prior to the filing of the application~~.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) ~~Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been completed and associated costs are reasonable.~~Income and operating expense report for the property for the Base Year and the Current Year. If these reports indicate

operating expenses in excess of 35% of Gross Income (excluding Capital Improvements) for the Base Year or the Current Year, the Director may require landlord to deliver supporting documentation confirming specific items on the income and operating expense report as may be specifically requested by the County. Such supporting documentation may include copies of bills, invoices, receipts, time sheets, or other documents. Any such supporting documentation provided by the landlord in response to the Director's request shall be delivered in an organized manner and shall be held by the Director as confidential.

~~(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.~~

~~(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.~~

~~(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.~~

(B) ~~(E)~~ Any justification for exceptional circumstances that the owner is claiming under this regulation.

(C) ~~(F)~~ Any additional information the landlord determines would be useful in making a determination of fair return.

~~(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion.~~

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

29.59.01.05 Processing of Fair Return Applications

(a) Filing of Application. The ~~fair return application form and one copy of supporting documents~~Fair Return Application must be filed with the Department.

~~(b) Notice of Filing. Within five business days of filing the fair return application, the landlord must notify each affected tenant of the filing via first class mail, providing each tenant a copy of the Notice of Filing and the application (excluding supporting documentation).~~

(b) ~~(c) Decisions on~~Fair Return Application Processing. Within ten (10) days of receipt of a Fair Return Application~~. The~~, the Director ~~must~~shall review the ~~fair return application and supporting documentation and must issue~~Fair Return Application and notify the landlord ~~of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary~~in writing that (a) the Fair Return Application is complete, or (b) the Fair Return Application is incomplete identifying specifically the missing information or documentation ~~or~~. If the Director fails to ~~respond in a~~ timely ~~manner to requests for additional~~provide notice in accordance with this subsection, the Fair Return Application shall be deemed complete. If the landlord fails to deliver the missing information or ~~supporting~~ documentation to the Director within ten days of receipt of the notice in (b) above, then the Director may ~~delay~~deny the ~~issuance of a decision or may result in the denial of a decision~~Fair Return Application by written notice to landlord.

(c) Decisions on a Fair Return Application. The Director must review the Fair Return Application and within thirty (30) days following receipt of the Fair Return Application, must issue and notify the landlord of a decision stating the approval or disapproval with reason of the Fair Return Application, including the rent increase identified therein, to be allowed in accordance the Fair Return Application. If the Director fails to timely provide notice in accordance with this subsection, the Fair Return Application shall be deemed approved.

(d) ~~Required Notice of Decision to Tenants~~Notice of Approved Fair Return Application and Rent Increase. The landlord must (i) by first-class mail or (ii) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the approved Fair Return Application and rent increase within ten business days of the receipt of the Director's approval or deemed approval of the Fair Return Application and rent increase.

~~(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.~~

~~(2) The implementation of any rent increase awarded by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a DHCA authorized fair return increase. Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.~~

29.59.01.06 Fair Return Criteria in Evaluation

(a) Gross Income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, ~~unless~~except to the extent these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the Annual CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates ~~by a preponderance of the evidence~~ that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital ~~improvements~~expenses over the useful life of the expensed asset. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey plus 4% or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~the~~ substantial completion of the renovation ~~application~~.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; ~~and~~

(I) insurance costs; and

(J) costs incurred by landlord to comply with the Rent Stabilization Act, including costs of reporting, data collection, tenant noticing, Capital Improvement Petitions, Fair Return Applications, Substantial Renovation Applications, and other administrative costs incurred by landlord as a result of the Rent Stabilization Act and these Regulations.

(2) ~~Reasonable and expected operating~~Operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been ~~or will be~~ reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

~~(B) payments made for mortgage expenses, either principal or interest;~~

(B) ~~(C)~~ judicial and administrative fines and penalties;~~(D)~~ including damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(C) ~~(E)~~ depreciation;

(D) ~~(F)~~ late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental housing;

(E) ~~(G)~~ membership fees in organizations established to influence legislation and regulations;

(F) ~~(H)~~ contributions to lobbying efforts;

(G) ~~(I)~~ contributions for legal fees in the prosecution of class-action cases;

(H) ~~(J)~~ political contributions for candidates for office;

(I) ~~(K)~~ any expense for which the tenant has lawfully paid directly or indirectly;

(J) ~~(L)~~ attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

~~(M) additional expenses incurred as a result of unreasonably deferred maintenance; and~~

(K) ~~(N)~~ any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

(c) ~~Base Year~~ Net Operating Income~~. To adjust~~ for the Base Year. Landlord may request adjustment to the ~~Base Year~~ Net Operating Income~~,~~ for the Base Year if the Net Operating Income and/or rents for the Base Year were abnormally low or did not reflect market circumstances. The Director shall adjust the Net Operating Income for the Base Year if the Director ~~must make at least~~makes one of the following findings:

(1) The ~~Base Year~~ Net Operating Income for the Base Year was abnormally low due to one of the following factors:

(A) the landlord made ~~substantial capital improvements~~Capital Improvements in or prior to the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a ~~rent adjustment~~CI Surcharge for these ~~capital improvements~~Capital Improvements;

(B) substantial repairs were made to the rental housing due to exceptional circumstances or new laws; ~~or~~

(C) other expenses were unreasonably high, notwithstanding prudent business practice; or

(D) other exceptional circumstances exist requiring equitable adjustment to Net Operating Income for the Base Year.

(2) ~~The~~If the Base Year ~~Rents~~rents did not reflect market transaction(s) due to one or more of the ~~following~~ circumstances~~:~~ listed in (A) through (E) below, landlord shall have the right to adjust Base Year rents for such below-market units as the median rent for a comparable regulated unit at the landlord's property.

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased ~~for five~~the years preceding the Base Year;

(C) the ~~Tenant~~tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

~~(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.~~

(d) ~~(e)~~ Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

(a) Duration. ~~A~~Except as provided in 29.59.01.03(b), a rent increase established under an approved ~~fair return application~~Fair Return Application remains in effect for each regulated unit for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a ~~restricted~~regulated unit for ~~that~~the 12-month period during which the regulated unit is subject to a rent increase pursuant to a Fair Return Application (as such rent increase includes any annual rent increase allowance). A landlord may simultaneously charge a CI Surcharge and fair return rent increase, if approved or otherwise allowed in accordance with these Regulations.

(b) Establishment of New ~~Base Year~~ Net Operating Income for the Base Year. The ~~net operating income~~Net Operating Income, income, and expenses, determined to be fair and reasonable pursuant to ~~a prior application for a fair return rent increase~~an approved Fair Return A must constitute the Net Operating Income of the Base Year income, and expenses~~, and net operating income~~ for those ~~restricted~~regulated units included in the finding of fair return for purposes of reviewing subsequent ~~applications~~affidavits.

(c) Limitations on Future Fair Return Requests.

(1) If a ~~fair return application~~Fair Return Application is approved by the Director, the ~~property owner~~landlord may not file a subsequent ~~application for the greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return~~Fair Return Application covering the same period for which the rent increase is ~~permitted above 15%) has been applied~~in effect under the prior Fair Return Application.

~~(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial~~

(d) As an alternative to the Fair Return Application process, a landlord may elect in lieu of submitting a Fair Return Affidavit to the Director including all information required for a Fair Return Application as well as landlord's affidavit certifying that the fair return rent increase satisfies the requirements of the Code. Thirty (30) days after delivering the Fair Return Affidavit to the Director, landlord may begin to implement the fair return rent increase. If landlord elects this alternative compliance approach, the Director shall continue to have all rights under Chapter 29 to investigate and enforce any suspected violations.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.00 – Transition of Exempt Units

When an exempt unit under 29-60(a)(11)becomes a regulated unit, the base rent for the first year of such regulated period shall be the median rent for comparable regulated units at the landlord's property, and if there are no comparable regulated units at the landlord's property, then base year for the first year of such regulated period shall be the median rent for comparable regulated units in the vicinity of the property. Thereafter, base rent for such regulated units shall be determined by Section 29-58(a) of the Code.

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 Application for a Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation under Section 29-60(12) must file an application ("Substantial Renovation Application") with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02 and the planned phasing schedule for the substantial renovations, if any;

(2) copies of all applications, if any, filed for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing building(s) as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be ~~renovate~~renovated showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

~~(b) Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.~~

~~(c) The Director must review the application and supporting documentation and must issue and notify the landlord of a decision approving or denying the exemption~~

(6) Substantial Renovation Application Processing. Within ten (10) days of receipt of a Substantial Renovation Application, the Director shall review the Substantial Renovation Application and notify the landlord in writing that (a) the Substantial Renovation Application is complete, or (b) the Substantial Renovation Application is incomplete identifying specifically the missing information or documentation. If the Director fails to

timely provide notice in accordance with this subsection, the Substantial Renovation Application shall be deemed complete. If the landlord fails to deliver the missing information or documentation to the Director within ten days of receipt of the notice in (b) above, then the Director may deny the Substantial Renovation Application by written notice to landlord.

(7) Decisions on a Substantial Renovation Application. The Director must review the Substantial Renovation Application and within thirty (30) days following receipt of the Substantial Renovation Application, must issue and notify the landlord of a decision stating the approval or disapproval with reason of the Substantial Renovation Application ("Preliminary Exemption Approval"). If the Director fails to timely provide notice in accordance with this subsection, Preliminary Exemption Approval of the Substantial Renovation Application shall be deemed granted.

(8) Material Change. If there is any material change in the scope, phasing, pricing, or other matter set forth in the Substantial Renovation Application, landlord shall submit the same to the Director as a supplement to the Substantial Renovation Application ("SR Supplement"). Within thirty (30) days following receipt of the SR Supplement, the Director shall issue and notify the landlord of a decision stating the approval or disapproval with reason of the SR Supplement. If the Director fails to timely provide notice in accordance with this subsection, the SR Supplement shall be deemed approved and incorporated as part of the Substantial Renovation Application and Preliminary Exemption Approval.

(9) Final Reconciliation. Upon completion of the substantial renovations set forth in the Substantial Renovation Application or upon completion of the substantial renovations applicable to any phase set forth in the Substantial Renovation Application, landlord shall submit a final reconciliation package to the Director identifying the actual costs of the completed substantial renovations with supporting documentation ("SR Reconciliation Package") identifying the completion date of the substantial renovations by phase. Within thirty (30) days following receipt of the SR Reconciliation Package, the Director shall issue and notify the landlord of a decision confirming final approval of the Substantial Renovation Application in full or as to the specific phase, if applicable, and confirming the effective date of the exemption as to the project or specific phase, as applicable. If the Director fails to timely provide notice in accordance with this subsection, final approval of the Substantial Renovation Application as requested in the Reconciliation Package shall be deemed granted. Notwithstanding the foregoing, the Director's review of the SR Reconciliation Package shall not contradict any prior approval or deemed approval of the Preliminary Exemption Application or SR Supplement, and in the case of a phased project,

the Director shall approve the SR Reconciliation Package as to the phase provided that it is consistent with the Preliminary Exemption Approval and Supplement previously approved or deemed approved by the Director.

(10) Notice of Approved Substantial Renovation Exemption. The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the approved Substantial Renovation Application within ten business days of the receipt of the Director's approval or deemed approval of the Substantial Renovation Application.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with ~~a~~any loan or debt taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan or debt that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of ~~those costs~~the portion of that loan or debt that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04.

29.60.01.04 Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents, estimates, or a commitment to make a loan, or other evidence of expenses as ~~the Director may find~~are probative of the actual~~, commercially reasonable~~ costs of such renovations.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the ~~improvement or~~ renovation over the amortization period of the loan, in the amount of either:

(a) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~improvement or~~ renovation, or on that portion of a multipurpose loan of money used to make the ~~improvement or~~ renovation, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other probative evidence of interest ~~as the Director may find probative~~; or

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus 4% or 400 basis points. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~application for an exemption for~~completion of a substantial renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Substantial Renovation Application must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Substantial Renovation Application is submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the SR Reconciliation Package was filed. If the interest rate changes over the duration of the loan, any SR Reconciliation Package must list all changes and recalculate the total interest on the loan.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 ~~that the Director may find~~ probative of the actual~~, commercially reasonable~~ costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a

proposed improvement or renovation that is not intended to enhance the value of the rental housing building, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 ~~Determining Whether a~~ Substantial Renovation is Intended to Enhance the Value of the ~~Rental Housing~~Building

~~The Director must determine whether a proposed substantial renovation is~~Renovations are deemed to be intended to enhance the value of the ~~rental housing by considering the following:~~building if they constitute alterations to the building(s) and landlord confirms the same in the Substantial Renovation Application.

~~(1) the existing physical condition of the rental housing;~~

~~(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant;~~

~~(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair; and~~

~~(4) whether the proposed renovations are optional or cosmetic changes.~~

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) ~~Within thirty days of the completion of a~~The substantial renovation ~~a landlord must file an affidavit attesting to the completion with the Director. If the Director determines that the renovations have been completed according to the substantial renovation application,~~exemption shall be effective on the date of ~~filing of~~ the ~~affidavit of completion must be~~Director's approval or deemed approval of the ~~approved~~SR Reconciliation Package. The exemption ~~date~~period may vary by phase.

(b) ~~Once a decision approving a substantial renovation exemption has been issued, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease, if any, for that rental unit.~~Notwithstanding anything to the contrary herein and subject to Section 29-60(a)(12)(B) of the Code, the landlord of any multifamily property claiming exemption pursuant to Section 29-60(a)(12) of the Code on basis of renovations performed prior to the effective date of these Regulations shall be deemed exempt until the 23rd anniversary of the substantial completion date of such renovations if the landlord provides a written affidavit to the Department confirming (i) the date of substantial completion of the renovation, (ii) that the

renovations constitute permanent alterations to a building that are intended to enhance the value of the building and when substantially completed cost an amount equal to at least 40% of the value of the building as assessed by the State Department of Assessments and Taxation. In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the affidavit set forth herein.

(c) If at any time during the 23 year substantial renovation exemption period, a court or other administrative agency determines that a multifamily property is in violation of Chapter 8, 26 or 29 of the Code, the exemption shall not apply until such violation has been cured.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

"Mandatory Fee" means any fee or charge unilaterally assessed or collected by the landlord from any tenant of a regulated unit with no option of the tenant to avoid the fee or charge by declining the service or amenity to which the fee or charge is related. By way of example and not by way of limitation, any gym fee, pool fee, club user fee, or similar fee is not a Mandatory Fee if the tenant can avoid the fee by declining access to and use of the stated amenity. In addition, any fee for renters' liability insurance is not a Mandatory fee if the tenant can avoid the fee by obtaining renters' liability insurance in its own right.

"Existing Fee" means any fee or charge assessed or collected by landlord from any tenant of a rental unit in the year prior to these Regulations taking effect. The amount of any Existing Fee may be increased annually by landlord in accordance with CPI.

A landlord of a regulated ~~rental~~ unit must not ~~assess or collect any fee or~~ charge ~~from~~ any ~~tenant~~Mandatory Fee in addition to the base rent except for the following permitted fees:

(a) Application fee ~~A~~. In accordance with Section 8-213 of the Real Property Article of the Maryland Code, a landlord of a regulated rental unit must not ~~assess or collect~~retain a fee or charge a fee of more than ~~$50 from any household in connection with~~landlord's actual cost for credit check and other expenses arising out of the ~~submission of an~~ application ~~for rental of the regulated rental~~.

(b) Late fee

~~(1)~~ Late fees must comply with Section 29-27 of the Code.

~~(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;~~

~~(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.~~

~~(B) A landlord of a regulated rental unit must not:~~

~~(i) charge interest on a late fee;~~

~~(ii) impose a late fee more than one time on each late payment;~~

~~(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.~~

(c) Pet ~~fee~~fees are not Mandatory Fees.

~~(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.~~

~~(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.~~

~~(3) If any portion of the pet deposit is withheld, the landlord must present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.~~

(d) Lost key fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication or replacement cost plus $25.

(e) Lock out fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding landlord's actual cost to service the lockout request plus $25.

(f) Secure storage unit accessible only by tenant A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding ~~$3 per square foot per month~~the amount the greater of (i) the amount tenant would pay for comparable storage in the vicinity of the property, and (ii) the Existing Fee amount permitted by (j) below.

(g) Internet or cable television A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the ~~actual cost to the landlord divided by the number of rental units in the property~~fee a tenant would pay for comparable services obtained directly by the tenant.

(h) Motor vehicle parking fee

(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the ~~following:~~greater of (i) the highest monthly parking rate charged by the County at parking garages, and (ii) the Existing Fee amount permitted by (j) below.

~~(A) 4% of the base rent for the unit for any secured, covered parking space;~~

~~(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or~~

~~(C) 1% of the base rent for the unit for any other motor vehicle parking space.~~

(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

(j) Existing Fees.

(1) A landlord of a regulated unit may charge a tenant of such unit any Existing Fees, as the same may be increased as provided herein. Upon request from the Director, a landlord shall provide a copy of its Existing Fees to the Director.

(2) Landlord may amend its Existing Fees with approval of the Director. Within thirty (30) days following receipt of a written request to amend its Existing Fees, the Director shall notify the landlord of approval or disapproval of the amendment request. The Director shall approve the amendment request if the request demonstrates that (i) landlord is providing a new amenity or service not previously provided to all tenants, and (ii) the amount of the new service or amenity is not in excess of the amount the tenant would pay for the same amenity or service if obtained directly by tenant. If the Director fails to timely respond to the amendment request as set forth herein, the amendment request shall be deemed approved. No amendment request is required for landlord to implement the CPI increase for Existing Fees.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-62 REGULATION OF FEES

COMCOR 29.62.01 Annual Reporting Requirements

29.61.01.01 Reports to Council.

By February 1 of each year, the Department must report to the Council on activities under this Chapter for the prior calendar year, including: any Capital Improvement Petitions, Fair Return Applications, and Substantial Renovation Applications received by the Director, and the processing time and resolution of each submittal.

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

_____

By:

Date: 1/31/24

Document comparison by Workshare Compare on Friday, March 22, 2024 4:54:56 PM

Input:	
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Description	#411297563v1<DMFIRM> - Montgomery County Rent Stabilization Regulations
Document 2 ID	iManage://DMSFIRM/DMFIRM/411297563/9
Description	#411297563v9<DMFIRM> - Montgomery County Rent Stabilization Regulations
Rendering set	Standard

Legend:	
Insertion	
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Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	340
Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	702

Bruton, Scott

From: Nicole Zimmerman <nicolelaurenzimmerman@gmail.com>
Sent: Friday, March 1, 2024 4:23 PM
To: Bruton, Scott
Cc: Hawksford, Jacqueline "Jackie"
Subject: Rent Stabilization Regulations Commetns
Attachments: Rent Stabilization Comments.docx

[EXTERNAL EMAIL]

Dear Director Bruton,

Please see the attached comments submitted to the County Council in response to the rent stabilization regulations.

Since the release of the rent stabilization regulations, we've held a canvass at the Fields of Bethesda in downtown Bethesda and a tenant meeting at the Blairs in downtown Silver Spring, both focused on talking to renters about the rent stabilization regulations. At both of these events, we heard from renters that their rents have increased by more than 6% since the law went into effect in October 2023, making it harder for them to afford to live in Montgomery County. Tenants were excited about the provisions of the regulations limiting parking fees and pet fees and limiting rent increases in buildings listed as 'troubled' or 'at-risk' by the county and anxious to see the law enforced as soon as possible.

Link and attached: https://docs.google.com/document/d/1BX1cOtsmNgtUKVN6JK5Wt64w2q6Kg1w47tqSM-v8YS8/edit?usp=sharing

Thank you,

Nicole Zimmerman
Montgomery County branch, Metro DC DSA

Dear Director Bruton,

Please see the attached comments submitted to the County Council in response to the rent stabilization regulations.

Since the release of the rent stabilization regulations, we've held a canvass at the Fields of Bethesda in downtown Bethesda and a tenant meeting at the Blairs in downtown Silver Spring, both focused on talking to renters about the rent stabilzation regulations. At both of these events, we heard from renters that their rents have increased by more than 6% since the law went into effect in October 2023, making it harder for them to afford to live in Montgomery County. Tenants were excited about the provisions of the regulations limiting parking fees and pet fees and limiting rent increases in buildings listed as 'troubled' or 'at-risk' by the county and anxious to see the law enforced as soon as possible.

Thank you,

Nicole Zimmerman
Montgomery County branch, Metro DC DSA

Dear Council Members,

I am a tenant at 8401 Flower Avenue Takoma Park, Maryland in district 4 and I am writing to share my thoughts and experiences as a renter in Montgomery County and to encourage the council to pass the rent stabilization regulations as soon as possible. The building I live in is classified as a "troubled" property. My rent has been increased by 3.6% ($1370/month to $1420/month) despite a persistent roach infestation. I have to request treatment every 90 days to keep the roaches away. I have communicated with the technician who has confirmed the infestation is not my fault and has nothing to do with the cleanliness of the apartment. He also has said there is no way for me to keep them out of my unit. My landlord initially claimed he would treat all of the units in the building, but the technician confirmed with me that only one other was treated. The technician has also said I cannot clean where the spray has been applied, which is all of my kitchen cabinets and drawers so most of my utensils, plates, bowls, and cups are wrapped up in plastic bags. This is a very stressful living situation and has been happening since I moved in. I have had a total of three treatments so far to live in a unit without cockroaches.

Additionally, there has been ongoing remodeling construction in my building since December 18, 2023. Beginning immediately at 8 am (and sometimes earlier) every weekday (including federal holidays) there is drilling, hammering and construction noises which continue till 5 pm. Please see the video attached. My landlord has not given any real explanation for this remodeling or what the timeline is for its completion. This has severely impacted my quality of life. I work alternating weekends, which means I cannot rest during my off days. Additionally the walls in the building are incredibly thin; I can clearly hear my neighbors above and below me

most days without the construction, with construction it sounds like the drilling and hammering is taking place inside my apartment.

Lastly, beginning this year my landlord is raising the lockout fee to $100 and copy key charge to $40 if I choose to renew this year. This combined with the rent increase is too expensive for my budget and I am forced to look elsewhere to rent.

Please consider the concerns of renters in Montgomery County and pass the regulations to put this historic law into action. Required approval for rent increases for troubled properties would greatly protect me and my living situation.

Sincerely,
Gordiya Khademian

Dear County Council Members and Staff,

My name is Kenneth Danty and I am a renter, a senior citizen, and a constituent in downtown Silver Spring (district 4). I want to celebrate the passing of the historic rent stabilization bill this past summer! I am grateful for the stability and greater predictability I will likely receive from a rent cap.

Landlords are often not transparent about why a rate is being raised. This imbalance can really fray the level of trust we have in our management companies. An elderly friend recently received on his renewal, a clause permitting the landlord to alter the rent during the second year of a two year lease. (See attached below.)

A young Montgomery County high school teacher, a friend and neighbor of mine, worried last year with the rental increases that he would no longer be able to live in the county in which he taught. Remember that the cost of living has also increased with many items.

I heartily urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not to strengthen them further!

Thanks much,

Kenneth Danty
Silver Spring, MD

Dear Council Members,

My name is Michelle Ripari and I am a renter and a constituent in downtown Silver Spring (D4). I want to celebrate the passing of the historic rent stabilization bill this past summer. I am grateful for the stability and predictability I will receive from a rent cap.

I urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not strengthen them further.

I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations. I pay an exorbitant amount for parking each month for just an uncovered parking space ($120) which was a one time increase from $90 during my lease resign. The regulations would limit this price gouging and bring it down to 2% of my base rent which is much more affordable for me. Additionally, my roommate and I pay $100 total in pet rent per month along with our pet deposits. I am glad the regulations limit this pet charge to only the pet deposit because it's ridiculous to charge an excess monthly fee.
Passing these regulations as soon as possible is essential to following the spirit of the rent stabilization law and keeping tenants such as myself in our beloved communities.

Thank you,
Michelle Ripari

Dear Council Members Jawando, Sayles, and Stewart,

My name is Olivia Delaplaine and I am a renter and a constituent in Takoma Park, District 4. I want to celebrate the passing of the historic rent stabilization bill this past summer. I am grateful for the stability and predictability I will receive from a rent cap, and grateful for your leadership and strong support of the bill!

I urge you to speak with your colleagues, particularly Council President Friedson, and urge them to vote to pass the regulations as soon as they are presented to you by DHCA and before the council's work on the budget begins.

I live in a 4-unit apartment building and I pay $1450 for my 2-bedroom unit. With rent stabilization, a 6% increase would be manageable for me, but anything much beyond that wouldn't. I live in Long Branch, a neighborhood where many of my friends and neighbor's buildings have been recently been bought by large investment and private equity firms, and they

have seen rent increases from $500 to almost $1000, 25-45% increases, and I have seen a lot of my neighbors choose to leave the county all together as a result. I have been really sad to see them as well as other friends move away, and I know that every week we wait to fully implement rent stabilization is a week people are getting unmanageable increases. For that reason, I urge you all to speak with your colleagues to ensure strong regulations are approved as soon as possible.

I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations. Specifically, I have two cats and I support the provision of the regulations that limit pet rent to a $100 refundable deposit, and I am glad that the draft regulations would require my landlord to get approval and notify me via first-class mail before increasing my rent for big capital improvement projects.

If you have any further questions, I would be happy to meet with you and share my story further. I currently serve as the chair of Montgomery County DSA, a member organization of the MORE Network, and through our outreach work, I have spoken with many other tenants with similar stories that I would be happy to share.
Passing these regulations as soon as possible is essential to following the spirit of the rent stabilization law and keeping tenants such as myself in Montgomery County and in the homes and neighborhoods that we love.

Thank you,
Olivia

Dear Council Members,

My name is Lexie Grove, and I am a constituent in Takoma Park (Council District 4). I want to express my enthusiastic support for the rent stabilization bill passed last summer. As a renter, I am grateful for the rent cap, which will make it easier for me to afford to continue living in Montgomery County.

I urge you to vote to approve the rent stabilization regulations in their current form as soon as possible.

I was encouraged to see that in addition to the rent cap, the regulations released by the Department of Housing and Community Affairs include a number of protections for renters related to fees. When I moved to the county last year, it was difficult to find housing within my budget, and the additional fees charged by landlords often pushed potential apartments out of reach for me. Particularly as a dog owner, I found it challenging to find a pet-friendly rental

without an exorbitant non-refundable deposit and monthly pet rent. I am relieved to know that I will not have to deal with that situation in the future if these regulations are enacted.

I believe that passing these regulations will meaningfully improve the lives of renters in the county.

Thank you,
Lexie

Dear Council Members,

My name is Nathan Mason, and I am a renter and MCPS teacher in Montgomery County. I live in Aspen Hill and work in Rockville. I am writing today to celebrate the passing of the rent stabilization bill last summer and to urge you to approve the current rent stabilization regulations passed by the Department of Housing and Community Affairs if not strengthen them further. Increasing tenants' rights and preventing landlord exploitation is key to ensure myself, my neighbors, and my students can live with peace of mind in the county we call home.

Currently, paying rent takes up around 40% of my take home pay. Each year I have lived in the county, landlords have pushed double-digit rent percentage increases, forcing me to find new housing. These increases were never due to any property improvements or changes; they were purely profit seeking behavior. Capping these increases to 6% or lower would ensure I can continue to live in the county I teach in. It would also give my students and their families more stability. Every year when the rent increase rolls around, many families at my school are forced to make tough choices, made even tougher when they have children. I personally know families who've had to have their school-age children work dozens of hours every week just to make rent. Limiting rent gouging would allow more children the chance to grow and learn at school and develop the county further.

In addition to the limit on rent increases, the regulations have many other inclusions that will benefit residents. Ensuring that landlords communicate in a timely manner using official mail will limit disputes. I've personally had landlords attempt to raise rent without giving me sufficient notice. I also live in a building considered "at-risk" by the county. Requiring the county to approve rental increases in these communities will help to increase quality of life and disincentivize landlords from delaying maintenance to just collect profit. Pet and parking fees are other ways landlords squeeze money from renters. I have a cat that was rescued from an abusive home. I've now paid hundreds of dollars to landlords for him to live with me, despite

him causing no damage to any units and placing no burden on the property owners. I applaud the regulations for limiting pet fees to a single refundable deposit and capping parking fees.

Swiftly passing these regulations as soon as possible will help the hundreds of thousands of renters in Montgomery County live peacefully and remain in our community. If you have further questions, I would be happy to meet and share my story further.

Thank you,

Nathan Mason, MCPS Teacher

Dear Council Member,

My name is Allison and I am a renter and a constituent in downtown Silver Spring. I want to celebrate the passing of the historic rent stabilization bill this past summer. I am grateful for the stability and predictability I will receive from a rent cap.

I urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not strengthen them further.

Last year, my rent increased by almost 12%. This rent increase makes it more difficult for me to afford to live in Montgomery County. My wife and I signed a two year lease and have been able to make it work to stay in our home despite only receiving 3% salary increase. Unfortunately should our rent continue to go up at this pace when our lease is up in 2025, we will be forced to choose between staying in our community in Silver Spring, where we love and have lived for four years, or leaving Montgomery County in order to afford fertility treatments for our growing family. We'd love to stay and have our children in Silver Spring but we need your support as our council member to ensure our rent is affordable.

I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations. I have a dog and pay $40 monthly for pet rent. I support the provision of the regulations to limit pet rent to a $100 refundable deposit.

If you have any further questions, I would be happy to meet with you and share my story further. Passing these regulations as soon as possible is essential to following the spirit of the rent stabilization law and keeping tenants such as myself in our beloved communities.

Thank you,
Allison Punch
734-649-4826
8710 Cameron Street #704 Silver Spring, MD 20910

Dear Council Member,

My name is David Peller and I am a renter and a constituent in Silver Spring, council district 4. I am overjoyed about the passing of the historic rent stabilization bill this past summer. I am grateful for the stability and predictability I will receive from a rent cap.

I urge you not only to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, but also to strengthen them further. As such, I heartily recommend consideration be given to having the regulation made to become retroactive to at least January 1, 2024. The reason for this is due to my opinion, wherein I believe as soon as the landlords heard of the bill being “introduced”, immediately must have made plans to increase rental charges AND take advantage of the additional 6% increase for the future lease renewal – which I believe is not legal to have a provision post factum unilaterally included in a such a lease/contract. It appears to me that this was an arbitrary and capricious act on the part of the landlords (“greed”). Accordingly, I would suggest that the council give consideration to maximize rental increases based on the Cost of Living in Montgomery County and included in the regulation. In addition I would strongly recommend a maximum increase at time of lease renewal, of e.g. 2-1/2% - ?:) - AND allowing a “further”. (arbitrary and capricious?:) of not more than 1%, per annum.

Over the last year and a half, my rent has increased by a substantial amount, The annual or bi-annual rent increase makes it more difficult for me to afford continuing living in Montgomery County; in that, although I enjoy living in my rented apartment (presently living in the same apartment for the past 35(+)years) and though the percentile increase has been reasonable, the actual dollar amount was substantive. It is because of the greed of the landlords that I also

believe that Montgomery County will find a reduction in renters who will find cheaper rental properties in other nearby counties.

In addition to my suggestion that the present Council regulation provide a maximum of an annual rental increase of no more than the Cost of Living [in Montgomery County]. In addition, and for the benefit of the owners, the present [and future] tenants should be encouraged to agree to a two year lease; thereby stabilizing residency - for all concerned, i.e. owners and tenants.

I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations. My apartment is located in a building which had been built more than 50 years ago. Though I consider the continuing maintenance to be adequate, the "constant" intrusion of having to make repairs, etc. in my living space is annoying and deprives me of my privacy as well as losing the use of whatever it is that is being or projected for repair, etc..

If you have any further questions, I would be happy to meet with you and share my story further (I can also be reached by – landline – phone at: 301/565-2850. Passing these [suggested retroactive] regulations as soon as possible is essential to following the spirit of the rent stabilization law and will continue keeping tenants such as myself in our Montgomery County communities.

Thank you,

DAVID PELLER

Dear Council President Friedson,

Last Sunday, we canvassed the Fields of Bethesda near downtown Bethesda in your district. We chose this apartment complex because, during our efforts last year to spread the word about the new rent stabilization law, we heard from a tenant who had received a $300 monthly rent increase. We went door-to-door in the complex and asked tenants to share their experiences living in this complex, including rent increases and maintenance issues.

This apartment complex is an income-restricted complex listed as 'at-risk' by the county. Tenants repeatedly shared that they love living in a walkable area, but fear that rent increases will – or already have forced them to move. They reported that they received significant rent increases this year – which are on top of significant increases the year before. Long-term tenants reported that, historically, thier rent increases had been minimal from year to year but

they have received unprecedented increases in the years since the end of the COVID-19 state emergency. We also saw many white slips in doors – which tenants told us were eviction notices, delivered on a Sunday when the leasing office is closed.

Here are a few of the folks we talked to:

- A disabled person on a fixed income who spends most of his monthly income on rent, leaving only a small amount for food and other essentials. He recently received an 8% rent increase. We talked to him as he had just received an eviction notice and was calling a nonprofit social services agency about emergency rental assurance.
- A family that had just immigrated from Afghanistan to the United States within the last month. They told us that for now, a refugee agency pays their rent. But, we wondered how long the agency will pay their rent and if the family will be able to afford to live in the area if they receive rent increases after their assistance runs out.
- Another disabled person on a fixed income who spends over 50% of her income on rent and had received a $150 monthly increase on top of a significant increase last year. Her disability means that she cannot drive and she appreciates living an area where she is able to live near transit and run many errands without a car.
- A tenant reported that a $100 dollar monthly increase forced him to plan to move, possibly out of Montgomery County. This increase, on top of issues with rodents and maintenance, made living in this complex no longer viable.
- Another tenant shared that the complex had six handicapped parking spots and then the management repainted it so that the handicap spots no longer have enough space to meet the ADA regulations. Additionally, the fire alarm constantly goes off for no apparent reason.
- A tenant told us that they received a $200 monthly increase.
- One tenant said that her rent had increased by $100 dollar last year. She has not yet received a lease renewal letter this year but was concerned because one of her neighbors had just received another $100 increase on top of a $100 increase the year before.
- An Afghan refugee explained problems with rent increases of ~180-90 in two consecutive years. Complained that despite having a 2/3 bedroom he was only entitled to one parking spot which people would take up early in the morning. Also complained that the mailbox was open exposing everyone's mail, he had a package stolen and management refused to take accountability blaming USPS. He also complained of pests, mice and cockroaches, as well as rats getting in the warm car tailpipes and messing up the cars.

For many of these tenants, rent increases of 5% or 6% are too much. The minimum that the council can do to keep these tenants housed and in Montgomery County is to pass the rent stabilization regulations as soon as possible with minimal changes to the draft regulations issued by the Department of Housing and Community Affairs.

We would be happy to return to the Fields of Bethesda with you so that you can directly speak to tenants there.

Thank you,

Nicole Zimmerman
Montgomery County branch, Metro DC Democratic Socialists of America
Silver Spring, MD

Dear Council Member Friedson,

My name is Will and I live in Chevy Chase, District 1. I was excited when Montgomery County's historic rent stabilization bill passed last summer! I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations. I am writing to urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not strengthen them further. Passing these regulations as soon as possible is essential to following the spirit of the rent stabilization law and ensure that a diversity of tenants can afford to sustainably live in Montgomery County.

Thank you,
Will Yetvin

Chevy Chase, MD 20815

As a longtime MoCo resident and homeowner, I urge you to please vote as quickly as possible for the strongest possible regulations protecting renters in the county. Please make sure important aspects of the regulations remain, such as:

1) Prohibition of fees outside of those listed in the regulations
2) Ensuring landlords whose properties are troubled or at-risk get county approval before raising rent
3) Landlords properly communicating with renters before raising rents

Every day these regulations are delayed, we know that landlords are increasing rents *far* beyond the amount allowed in Bill 15-23, so please do your best to encourage the council to move swiftly.

Mara Greengrass
301-802-1950
mara.greengrass@verizon.net

My name is Susan Rogers and I am a home owner and a constituent in Takoma Park. I want to celebrate the passing of the historic rent stabilization bill this past summer. The reason I moved to Takoma Park over ten years ago was because it was highly diverse, including economically diverse, with a sizable amount of rent control housing for working class people.

I am concerned that it has taken the Council so long to put together the rent stabilization regulations to vote on. During this period, renters have been left in the dark about this new law benefiting them and landlords have taken advantage since last summer to increase their rents above the 6% that is stipulated in the law. I **strongly urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not strengthen them further.** Many renters in Montgomery County have long awaited this legislation and we owe it to them to get it implemented.

The pieces of the **regulations that I am especially pleased to see** are the following:

- For buildings that qualify under the law, and have gone through many capital improvements, I am happy the draft regulations would require landlords to get approval before increasing rent for these projects. I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations

- I am also pleased that the regulations limit parking fees to 4% for covered spaces and less for uncovered spaces as I am aware of several friends who pay more than this and it has become a hardship to have a safe place for their vehicles

- In addition, I am aware of other friends who are renting who pay a monthly fee to have a pet. I support the provision of the regulations to limit pet rent to a $100 refundable deposit.

Along with timely passage of these regulations, I am also concerned about **what is in place to report/monitor rent increases in our county** so the law can be enforced. I only hope that the county has already started working on a computerized program for this purpose. If the county is shorted staffed to do this, I hope they have put it out for bid for an external contractor. Most importantly, **what provisions are being made to educate renters about the new law and assist them in determining if their rental unit qualifies under the new law?** I am certainly sure that landlords will not go out of their way to inform their tenants; this should be the responsibility of the county.

Thank you considering these requests and concerns,

Susan Rogers, 416 Lincoln Ave, Takoma Park

My name is Mike Heywood and I'm a constituent in Silver Spring, voting in District 4. I want to celebrate the passing of the historic rent stabilization bill this past summer. I am grateful for the stability and predictability I will receive from a rent cap. I'm not currently a renter, but I expect I will be in the future, and I want to be able to stay in Montgomery County over the long term.

I urge you to vote to approve the rent stabilization regulations as soon as possible and to keep these regulations as strong as they currently are, if not strengthen them further.

Over the last couple of years, I've been doing tenant organizing around the rent stabilization bill in particular, and in general to build renter power. I've heard stories of exorbitantly high rent increases from the period before the bill passed, upwards of 10% sometimes. I'm glad that the rent stabilization bill will prevent such increases in the future.

However, I've also heard stories of landlords using additional fees, for parking, pets, maintenance, cable & internet, storage, etc., as ways to raise the rent without raising the rent. In particular, at the Blairs in downtown Silver Spring, I've heard about management hiking parking fees since the rent stabilization bill passed last July.

I was glad to see that the Department of Housing and Community Affairs has released a strong set of regulations that would help prevent landlords from using these workarounds to extract more money from their tenants. In particular:

- All of the fees mentioned above are specifically limited by the draft regulations:
    - Landlords whose properties have been designated as troubled or at risk by Montgomery County may not increase rent by more than the Department of Housing and Community Affairs has determined as necessary to improve habitability.
    - Parking fees are limited to 4% of the tenant's rent for covered, reserved parking, 2% for reserved parking space and 1% for unreserved parking.
    - The draft regulations limit the amount of "pet rent" to a $100 refundable deposit. This means that landlords are not permitted to charge a monthly fee for pets.

    - Under the draft regulations, landlords are not allowed to charge more than the cost for cable and internet divided by the number of units if they provide internet to tenants.
    - Landlords are not permitted to charge more than $3/square foot for a private, secured storage area.
- The draft regulations specify that if a landlord wants to increase rent for capital improvement projects or fair return, they must **first** get approval from the government **before** doing so. This provision is crucial. If it is absent from the final regulations, then landlords will make the calculated decision to increase rents in excess of the 6% cap, figuring that it's easier to ask forgiveness than permission.
- The draft regulations require landlords to notify tenants by first-class mail of any potential changes to their rent, especially if the landlord wants to file for an exemption to the bill for construction or fair return. This gives renters more predictability in their rent, and time to plan for any potential changes to it, which was part of the rationale for passing the rent stabilization bill in the first place.

I urge you to, at the very least, vote to approve the regulations with these provisions intact. I would also ask you to extend them further. In particular, while these regulations will prevent future abuses by the landlords, they do not necessarily rectify the harm already done. So I would ask that you clarify that these regulations apply retroactively, back to the point at which Bill 15-23 was passed.

If you have any further questions, I would be happy to meet with you and share my story further. Passing these regulations as soon as possible is essential to following the spirit of the rent stabilization law and keeping tenants such as myself in our beloved communities.
Thank you,

Mike Heywood

Bruton, Scott

From: Mike English <mje213@gmail.com>
Sent: Wednesday, February 28, 2024 12:55 PM
To: Bruton, Scott
Subject: Rent Stabilization Comments

[EXTERNAL EMAIL]

Director Bruton, and whomever else this concerns,

Thank you in advance for taking my comments on these rent stabilization regulations into consideration. And if at any point you wish to discuss them in more detail please let me know

My name is Mike English and I have been, and remain a supporter of the rent stabilization law that passed last year and lead to these regulations, and on the whole I think they are in pretty good shape. And I am supportive of the bulk of the regulations just like I am supportive of the rent stabilization law that they are implementing. The fact that fees and pet rent and other items that, if not included, could serve as avenues for significant rent increases above and beyond the cap in all but name, are regulated is a feature not a bug, and they must continue to be regulated in some form, whatever the final version the regulations take. The fact that the fair return section does not allow landlords to claim expenses they will be reimbursed for, don't allow them to factor in fines that have been leveled against them, and other similar exemptions, is also a strong feature that must be preserved, so that only costs related to competent management of properties are considered. Obviously, if fines could be counted against it, they would lose all enforcement power, etc.

I do have some suggested changes, but before I get into them I want to caution against going too far in changing things up. Yes, I very much want these regulations to be tweaked to make rental regulations more predictable and manageable so that we build and maintain enough housing to keep homes affordable for renters, but emphasis on the word "tweak". With the exception of the parking regulation, which I think is fundamentally flawed in its current form, I think most of these regulations are pretty solid.I would like to see things loosened up a little, but these are regulations meant to enact a law to make rent more predictable for tenants. Don't change it so much that we cease to do that in a meaningful way, otherwise we aren't carrying out the law as intended. The law is good, the regulations can be tweaked to be just as good, let's not get too clever by half and undo a lot of hard work at the goal line here.

In addition to my opinions informed by my own advocacy in recent years in Montgomery County housing matters, I've talked with both landlord/developer and tenant advocates on this issue to try to learn their take. Whatever takeaway you have from my comments, and those of others, I ask that you keep in mind the important balance we need to strike to make sure that renters are protected in line with the intent of the law while also making sure that housing remains a healthy enough investment for new housing to constructed and existing housing to be maintained. As long as we accomplish that, I think we'll be okay here.

That said, there are a few changes I would like to see happen. The most important to me, by far, is the way that parking fees are capped. To be clear we can and should regulate parking and other fees to meaningfully protect renters.

That said, the cap on parking is very low. At 4% of base rent for covered parking and 2% for uncovered parking, this places some spaces well below current prices, and while I get the intent, parking is not cheap to provide, and making it *too* constrained on price will both result in non-car owning tenants subsidizing that cost in some way, and encouraging car usage at a time the county is moving in the opposite direction.

I support having as little surplus parking as possible, as well as the county's proposal to get rid of parking minimums near transit, but some parking will still be needed and things still need to pencil out for parking that many tenants will still need to be built and maintained.

Moreover, limiting parking fees as a percentage of base rent provides an incentive for landlords to raise the rent as much as possible each year, so that 4% or 2% comes from a bigger number. I don't think that's what we want to encourage here.

I think a better system would be to regulate parking the same way we are regulating rent. Take the price it is now, and put a percentage cap on how much it can be raised. I don't know enough about costs of provision and regulations to have a specific recommended number for you here, but I think this is a better system to make sure landlords don't circumvent the intent of the law and that parking costs are kept reasonable, without incentivising rent increases and making it hard to provide parking in a fiscally sustainable way.

That brings me to my other main comment, which is more of a broad guideline than a specific recommendation. As I said in my testimony in support of the final legislation, and several times in the process up to that point and since the law's passage, predictability will be key for landlords, tenants, and developers alike. Anything the county can do to make fair return calculations and other related fees and processes more predictable, and more based on a set of rules or templates or some other option that doesn't require many ad hoc, point in time judgements at great expense of time, money, and detail, will be helpful here

This might mean more clearly laying out a series of thresholds at which point fair return exemptions would apply rather than waiting for a case by case basis, I don't really know the best approach here, to be honest. That said, as someone who supports rent stabilization as a tool to protect against dramatic increases so long as it is moderate enough to still encourage investment in new and existing housing, I think these rules could benefit from changes that create a little less uncertainty. I leave the details of that up to those more well versed in the technicalities here than me to figure out.

Again, in closing, these regs are mostly good. There are legitimate concerns people will have about needing more flexibility and predictability, and that's fine and true in that housing provision and maintenance needs to be financially feasible, but I urge you against fundamental changes to their structure and scope. Broadly speaking, those are on the mark, even if I think they need a little TLC.

Thank you,

Mike English
8005 13th Street
Unit 304
Silver Spring, MD
20910

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NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
DC|MD CHAPTER

NAIOP DC/MD Comments on Draft Rent Stabilization Regulations

On behalf of NAIOP DC/MD, we provide comments on Montgomery County's draft Rent Stabilization Regulations ("Draft Regulations"). NAIOP DC/MD represents hundreds of companies, including many Montgomery County based companies that have been involved in creating some of the most innovative mixed-use developments in the County.

We submit that the Draft Regulations, as currently written, create ambiguity, uncertainty and subjective reviews. In addition, certain requirements and limitations on fees are not based on what is customary and reasonable in the industry to cover costs and expenses. As such, we suggest the following amendments and ask that these changes be made prior to the Department of Housing and Community Affairs (DHCA) submitting the Draft Regulations to the County Council for review and action. Please note that these comments are higher level in nature and we understand that other Industry leaders will be submitting more detailed recommended changes.

1. **Capital Improvement Petition:** There is significant cost in preparing building permit drawings associated with large scale capital improvements. As such, it is essential that DHCA determine whether it will approve such Capital Improvement Petition, prior to a building owner investing in the cost of preparing building permit plans. As currently written, one must invest in preparing detailed building permit drawings before one knows if such will qualify as a Capital Improvement. Additionally, the Draft Regulations should expressly require DHCA and the Department of Environmental Protection (DEP) to coordinate when an owner has applied for both a Building Performance Improvement Plan under the Building Energy Performance Standards (BEPS) law and a Capital Improvement Petition under Rent Stabilization to help cover the cost of improvements. Since the applications would be interrelated, it is imperative that the County have in place a process to coordinate such reviews.

2. **Legacy Rights:** There will be leases that are in place that may span the time between when a unit is unregulated and when it becomes a Regulated Rental Unit. The Draft Regulations should have legacy provisions in place that exempts leases that have been signed prior to the unit becoming a Regulated Rental Unit.

3. **Substantial Renovations.** The Regulations currently provide the Director with the discretion to step into the shoes of the Landlord and determine whether a "Substantial Renovation" is justified. Specifically, the regulations currently indicate the Director may assess whether the proposed renovations are "optional" or "whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair." The Landlord must be given the discretion to determine, based on market conditions or otherwise, whether a Substantial Renovation is needed to support the continued profitability and marketability of a building. For DHCA to step into this subjective role of substituting its judgment for a landlord is problematic and creates significant uncertainty and ambiguity in the market.

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DC|MD CHAPTER

4. **Fees.** We understand that fees may not be used as a back-door to increasing rents. The proposed limitation on fees, however, as currently suggested - prevents landlords from being made whole and suggests practices that are not customary and reasonable and does not account for the cost of inflation. All fees should be indexed to inflation. Suggested additional modifications include:

- **Pet Fee.** "Pet rent" offsets the costs of increased cleaning and maintenance required throughout the building (not just in units), as well as ongoing staff time spent enforcing rules and adjudicating conflicts. Without a reasonable monthly pet rent, a rent-controlled building may choose to disallow pets entirely. Additionally, a $100 deposit is not adequate and will not cover costs of potential damage and wear and tear. If this low deposit is dictated (which would not cover costs for potential damages) and fees are not allowed, the unintended consequence is that many landlords will prohibit all tenants from having pets. A customary and reasonable fee should be allowed to cover the costs for pet fees.

- **Parking Fee.** The amount suggested in the regulations will not allow a developer to recoup the cost of providing parking. This restriction on fees should not be applied to buildings that have structured parking, and in-place fees should be allowed to continue and increase at rates commensurate with unit rental rates.

- **Secure Storage Fee.** Similar to the parking fee, the amount listed will not cover the cost of reserving space for storage, and imply rates at a fraction of market rate. If this Storage fee is adopted as proposed, it will result in an unintended consequence that developers will reduce the amount of storage space reserved in a building, because they cannot recoup their costs for such space.

5. **Timeframe for DHCA Review of Landlord Requests:** There currently is no time frame within which DHCA must respond to a landlord request under the Draft Regulations. This creates significant uncertainty in the market, and could result in properties becoming at risk as DHCA conducts a review without any timeframe for making a decision. We suggest that DHCA have 30 calendar days to issue a decision on all accepted submissions. If DHCA fails to issue a decision within this time-period, such request will be deemed approved.

6. **Appeal of DHCA Final Decision:** The Draft Regulations do not establish the procedure for an appeal of a DHCA final decision. We suggest that the Regulations clearly state the process for such appeals.

We appreciate your review and consideration of NAIOP DC/MD's comments.

Bruton, Scott

From: p brown <pbrown_dos@yahoo.com>
Sent: Wednesday, February 21, 2024 1:25 PM
To: Bruton, Scott
Cc: Hawksford, Jacqueline "Jackie"
Subject: Comments on Rent Stabilization regulations (2-24)

[EXTERNAL EMAIL]

Please find below comments. Thank you and kind regards.

Paul A. Brown
4615 N Park Ave
Chevy Chase, MD 20815-4505

Comments on Draft Rent Stabilization regulations (2-24) Register Vol 41. No. 2

I am a resident in Montgomery County and have been a rental tenant since 2013 in a large apartment building.

I strongly support the draft Rent Stabilization regulations. The regulations should enter into force immediately upon approval. There should be no grace period.

Montgomery County has lagged significantly behind the District of Columbia in protecting renters. The new law and this draft narrow that gap. I offer some suggestions on how Regulation 2-24 it might be enhanced further to uphold fairness and due process, and protect the interests of renters in Montgomery County.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES
COMCOR 29.61.01 Fees
29.61.01.01 Applicable Fees

I urge that the approach stated in the regulations that "A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees" be retained in full.

Many landlords are actively and extensively adding new or higher fees on top of already high rent. Some are for services which tenants are given no real opportunity to accept or decline; some are for services which the landlord has simply chosen to pass on to tenants. It is critical that fees not be used as hidden charges that could offset the limitations established for annual rent increases. Montgomery County needs to follow and expand on the protections offered renters in DC (see, for example: Attorney General Schwalb Issues Consumer Alert on Rental Fees & Protections for DC Renters.

Examples of fees with which I have familiarity:

-- The landlord charges all tenants a monthly fee for "pest control", whether or not a resident actually requires pest control services. I would note that DC prohibits "fees for services that the landlord is legally required to provide as part of renting a livable space (such as pest fees, fees to maintain the furnace to provide heat, etc.). This "pest fee" may be illegal already in Montgomery County as well, and would certainly be illegal under the draft regulation, since "pest fees" are not included in the list of excepted fees.

-- The landlord assesses a monthly "service charge" of $4.75 for the "service" provided by the company Conservice, for the landlord, in dividing up utility charges (electricity, water, sewer, gas). Utilities are not included in rent, and the landlord, not the tenants, made a contract with Conservice to calculate the monthly utilities charges billed to residents. I understand that utility regulations allow a monthly administrative fee of $1 for water and sewer.

-- The landlord recently informed tenants of its intent to impose on all tenants a mandatory monthly $60 fee for Internet access pursuant to an agreement with Comcast Xfinity, regardless of whether or not a tenant actually chooses to use Xfinity. It appears that tenants that pay for and use a different Internet service provider (i.e., not Xfinity) will still be assessed this $60 / month fee (in addition to the tenant paying the charges due the provider they are using). This fee would may be illegal and certainly would be under the proposed regulation.

-- The landlord recently added an monthly "Energy Conservation Fee." It is unclear what this fee is for.

While a plain reading of Section 29.61.01.01 should prohibit any fee that is not expressly listed, it is not clear to me that all of the fees I note about -- and particularly the "service charge" -- would be covered by Section 29.61.01.01. **For the sake of clarity, I would urge that under the list of applicable fees you add a separate entry for "utility service fees," and limit that to no more than $1, consistent with existing regulations.**

I very much support section (c), the limit on pet fees, at the levels specified, including a prohibition on monthly pet fees. Landlords should not be allowed to assess a monthly pet fee. Pets can be important for the well-being of residents, and it would be hard to distinguish -- and unfair - to limit any prohibition only to pets that are "comfort animals". Pet fees also reduce the incentive to adopt rescue animals, by adding to the expense of maintaining the animals. **Please retain the prohibition on monthly pet fees and the limit on the value of deposits, at no higher a level than specified in the draft.**

I very much support section (x) the limit on parking fees. Our landlord currently assesses a high monthly charge, in addition to rent, for parking for one vehicle in an unreserved spot. In contrast, overnight street parking is available in our neighborhood at no charge. **The limit on monthly parking fees should be kept in the draft at the level as drafted, or, if possible, a lower level, with no distinction made between reserved or unreserved parking.**

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

29.58.01.04 Capital Improvements

Need to enhance transparency and due process for tenants in Capital Improvement Petitions

In cases where a landlord petitions for a limited surcharge for capital improvement, the landlord should not only provide notice to tenants of the petition, but a landlord should also be required to provide a copy of the petition (in hard copy or electronically) to tenants. This would enhance transparency to tenants, who would otherwise be unlikely to be able to obtain a copy of said petition. I note that, in the case of applications for Fair Return, Section 29.59.01.05 (b) "Processing of Fair Return Applications - Notice of Filing" and Section 29.60.01.01 (b) "Application for a Substantial Renovation Exemption" both require landlords to provide a copy of the application, unlike Section 29.58.01.04 (b) (2). **Section 29.58.01.04 (b) (2) should be amended to require landlords to provide tenants with a copy of petition**.

Existing section 29.58.01.04 appears solely focused on a process involving the Director and the landlord, to the exclusion of any input from tenants. The process therefore lacks transparency for tenants, who may have insight into the reasonableness or not of the proposed capital improvements for which the landlord seeks authorization to assess a surcharge. For example, is the proposal for "improvements" purely ascetic. In the case of buildings I am familiar with, landlords have sought to "improve" the "curb appeal" of the lobby or other public areas, while neglecting addressing other more critical infrastructure (leaks, windows, etc.). Since the intent of Section 29.58.01.04 (c) is on certifying that the capital improvement enhances "the value of the (rental) unit," tenant views are material on whether the improvements proposed in the petition will in fact enhance "unit value" as opposed to building value.

The regulation should thus provide tenants with a full opportunity to comment on any petition. Dockets with the petition and other material should be publicly accessible on the Internet. **New sub-sections should be added to Section 29.58.01.04 (b) that specify that the Director will post a publicly-accessible docket with the landlord's petition and other supporting documents, provide tenants with a point of contact for any comment on the petition, provide a reasonable deadline for such comments of not less than 30 days, and require the Director to consider such comments.**

In cases where landlords are making capital improvements, the costs of electricity used to make those improvements should not be included in the utility costs paid by tenants. Where the total cost of a building's utilities are divided by the landlord among tenants, it is unfair to also include in that amount the cost of utilities used by contractors working renovations. Section 29.58.01.04 (c) does not, at present, require landlords to specify whether the cost of electricity, gas, water, etc. used as part of the capital improvement process will be passed on to tenants, and if so, how.

Since the regulation anticipates that landlords will be able to assess renters a surcharge, landlords should only cover the cost of electricity, water, gas used to make the capital improvement through that surcharge, not by including it in the monthly utility costs assessed tenants. **Section 29.58.01.04 should be amended to prohibit landlords from passing on to tenants the utility costs associated with a capital improvement.**

29.58.01.04 (v) allows the landlord to continue implementation of a rent surcharge in cases where the Director has not made a decision on continuation. That section is unfair to tenants and biased to landlords. The landlord should be required to cease any implementation until such time as the Director makes a decision. **Section 29.58.01.04 (v) should be deleted.**

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN
COMCOR 29.59.01 Fair Return

I support the requirement in Section 29.59.01.05 (b) that a landlord should provide a copy of the application to tenants. However, for effective due process, tenants, tenant associations, and tenant advocates should have an opportunity to provide comments on any application by a landlord as part of the fair return application process. Any of these individuals or groups may have information that could be material to the Director's assessment of a landlord application.

Section 29.59.01.04 does not, at present, explicitly provide for a landlord application to be publicly available (as opposed to providing it to tenants). nor does it explicitly provide an opportunity for any public comment opportunity. While some supporting material in an application might be business confidential, in general applications and supporting material should be accessible to the public. **Section 29.59.01.04 should be amended to insert a new sub-section after "(b)" that states that the Director will post a publicly accessible docket providing the Notice of Filing, the application, and supporting material, provide a point-of-contact for public comment, provide a reasonable deadline for comment of not less than 30 days, and require the Director to consider any such comments.**

OTHER ISSUES - Cost of Utilities

More and more landlords are no longer including utilities with the monthly rent, but charging tenants utilities. Yet for buildings where there are not individual meters in each apartment, there is no transparency in how landlords divide a building's total utility costs For example, in the building where I live, we have never been informed how units' utility costs are determined. Landlords should be required to seek approval of any method of dividing utilities among tenants, and should be required provide tenants with information annually on how utility costs are assessed, e.g., on the basis of size of unit, etc. **The regulations should be amended to include a section addressing this issue; it should:**

- Prohibit landlords from including in monthly utility costs billed to tenants the cost of utilities for unoccupied units and for common areas.

- Require landlords to provide tenants upon signing a lease, and annually thereafter, a formula on how utility costs are divided among occupied units, unoccupied units, and common space.

- Require landlords to provide tenants with an annual report on utility costs for the building as a whole for the preceding year, including utility costs divided by occupied units, unoccupied units, and common areas, and on measures taken to conserve utility costs.

Thank you for the opportunity to file these comments.

Paul A. Brown
4615 N Park Ave
Chevy Chase, MD 20815-4505

Bruton, Scott

From: Robert Goldman <rgoldman@mhpartners.org>
Sent: Thursday, March 7, 2024 10:43 AM
To: Bruton, Scott
Cc: Chris Gillis
Subject: Comments on Rent Stabilization Regulations

[EXTERNAL EMAIL]

Dear Scott,

I understand that DHCA is in the process of incorporating comments on the proposed regs for rent stabilization, and I wanted to share some thoughts with you.

One thing I mentioned a while back that I thought I would pass along again relates to the timing of the annual rate. I didn't see it in the regs although I saw something on your website that suggested the annual rate will be announced on July 1 and be effective immediately. While I know there are bigger issues that folks are raising with the regs, I think it would be a big help if the rate for the coming year can be announced in Sept. to go in effect on January 1. First, many landlords are on a calendar year and prepare their budgets in the fall so knowing the rates in the fall will help them budget better. I know with the VRG, we often had to guess the rate during budget season and were often way off. Also, as you know, landlords need to give tenants 90-day notice of a rent increase so notices will need to go out on Oct. 1 for a Jan. 1 effective date (or April 1 for a July 1 effective date). Announcing the rate and saying it goes in effect immediately creates an awkward situation where they gave out notices 3 months before and then have to change that notice which creates a bunch of confusion for the residents and makes it hard on the landlord if they have to reissue the notices for another 90-day notice. I will also add that the definitions in the regulations of CPI for Fair Return creates a bit of confusion as it relates to the publishing of the rate – the definition suggests it is either the rate published in March or if you are on a fiscal year, it is the rate published in December. That seems different than what your website is saying for when the rate goes into effect.

My second comment relates to the Troubled Properties. I know you are working on this, so I just say this to confirm the direction I think you are trying to achieve - first, it doesn't make sense that the Council included At-Risk properties together with the Troubled Properties – but you can't change that in the regs. But under the current way Troubled and At-Risk properties are inspected, a landlord would have to wait 1 year or 3 years – to get off the Troubled or At-Risk list and therefore get a rent increase – that is a real problem for landlords especially if you are trying to encourage them to keep the property up to a certain standard. Plus, the landlord with a better property (At-Risk) is punished longer (3 years) than the landlord with a worse property (Troubled – 1 year). Having some mechanism to get off the lists once the repairs have been done, needs to be figured out in some manner. Before this bill, being on the Troubled or At-Risk list for 1-3 years after finishing the repairs just created some potential stigma or bad press – with this bill, there are real consequences which makes resolving the timing all the more important.

A couple of other observations - saying you can't get a capital improvement increase for any work done before the petition seems odd. I would think the county would want to encourage landlords to do capital improvements as soon as possible as opposed to waiting for a petition to be processed. If the landlord takes the risk and does the work and the petition isn't approved later that should be on them. It is not clear why you have this provision.

Not allowing a pet fee seems harsh and against standard market practices. Are you allowing landlords to charge a higher rent (not a separate fee) for having a pet which then would be subject to the rent stabilization limits? If so, that to me would be okay. It seems like the legislation asks DHCA to put some limits on fees, so

landlords won't create new fees to get around rent stabilization – this fee has been a standard practice in the industry before this bill passed and the market has a pretty standard fee.

My last comment, it is very awkward that for affordable housing developments – the market rate units in a mixed income property are subject to rent control. It creates two different standards that we need to manage. Maybe the 2 standards won't really conflict with each other, but I can imagine scenarios where they will. I'm not sure if anything can be done in the regulations to exempt properties that have more than say 50% affordability or whether the law limits your ability to do that.

I know you have put a lot of hard work in getting the bill passed and the regulations issued – you've done a lot of research and reached out to lots of folks for comment - I'm very impressed. Keep up the good work.

Please feel free to reach out if you have any questions.

Thanks,

Rob

Robert A. Goldman
(he, him, his)
President
MHP

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MANAGEMENT, INC.

February 29, 2024

Transmitted via email to: scott.bruton@montgomerycountymd.gov

Scott Bruton
Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

Re: **Comments to Rent Stabilization Regulations**

Dear Director Bruton;

On behalf of Rakusin & Becker Management, Inc., property management agent for Topaz House, a 360-unit, multi-family property located in Bethesda, Maryland, please find attached our comments and recommendations to the proposed Montgomery County Regulations for implementation of the Rent Stabilization Bill. These comments were thoughtfully assembled with the assistance of the Stakeholder Coalition, a group comprised of multi-family property owners, developers, investors and managers serving Montgomery County. This group of stakeholders has voluminous experience successfully operating multi-family housing in Montgomery County and truly understands the complexity and nuance required to implement and regulate the Rent Stabilization Bill.

The Rent Stabilization Bill seeks to address the affordable housing crisis in Montgomery County, and members of the Stakeholder Coalition and the vast majority of landlord across the County support efforts to increase and maintain quality affordable housing. While the public policy goal is a good one, we are gravely concerned that if the proposed regulations are adopted as drafted, the effect will be counter to the intent: there will be higher rent increases to existing tenants, more displacement, deferred capital investment, more units held vacant, loss of older housing, curtailment of amenities and fewer pet friendly properties. The attached modifications to the proposed regulations are consistent with the public policy goal without introducing unnecessary administrative burden.

We are you allies in this process, but we must have a set of regulations that is reasonable, does not destroy our business model, and is feasible to implement. We ask that you and your department provide genuine consideration to the attached modifications and make the necessary changes to the proposed regulations.

Sincerely,

P.J

Paul M. Schiller
Chief Financial Officer
Rakusin & Becker Management, Inc.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

[Stakeholder Coalition Mark-up 2/28/24]

Montgomery County Regulation on:

RENT STABILIZATION

Issued by: County Executive
COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01
Authority: Code Sections 29-58, 29-59, 29-60, 29-61
Council Review Method (2) Under Code Section 2A-15
Register Vol. 41, No. 2
Comment Deadline: March 1, 2024
Effective Date: _____
Sunset Date: None

SUMMARY: The regulation establishes the procedures for Rent Stabilization.

ADDRESS: Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852

STAFF CONTACT: jackie.hawksford@montgomerycountymd.gov

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-58 RENT INCREASES – IN GENERAL; VACANT UNITS; AND LIMITED SURCHARGES FOR CAPITAL IMPROVEMENTS

COMCOR 29.58.01 Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

(a) A landlord of a regulated rental unit must not increase the base rent of the unit more than once in a 12-month period.

(b) ~~The~~For a lease with a stated term in excess of one year, the annual rent increase allowance ~~governing~~after the first year of ~~a multi-year lease applies to the subsequent lease years~~the stated term shall be as set forth in Section 29-57(a) of the Code, and if the base rent for the subsequent year(s) shall be subject reduction if it exceeds the rent increase allowance for such year.

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

A landlord of a regulated rental unit located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code that is noncompliant with its corrective action plan (as defined in 29.40.01.02)) must not increase rent in excess of an amount the Director determines necessary to cover the costs required to improve habitability. The Director must determine if the landlord of such a regulated rental unit is unable to cover the costs required to improve habitability by requiring the landlord to submit a ~~fair return application~~Fair Return Affidavit under Section 29-59 of the Code.

(a) Within thirty (30) days following receipt of the Fair Return Affidavit for a Troubled of At-Risk Property, the Director must review the Fair Return Affidavit and issue and notify the landlord of a the Director's approval or disapproval with reason, and if the Director fails to timely respond, it shall be deemed to have approved the Fair Return Affidavit. If the Director approves ~~the fair return application~~or is deemed to have approved the Fair Return Affidavit submitted by the landlord for a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code, the Director must allow the landlord to increase the rent on a regulated rental unit in the amount approved by the ~~fair return application~~Fair Return Affidavit while the property is still designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code.

(b) If the Director timely denies the ~~fair return application~~Fair Return Affidavit submitted by the landlord for a property that is designated by the Department as Troubled or At-Risk under Section

Noonan, Katherine M. [NKM1]
Why would an initial multi-year lease term be treated any differently from a renewal? This approach puts tenants at risk by potentially exposing them to rent increases in excess of the allowance (i.e., if the allowance in year 1 was higher than in year 2), and it permanently restricts the rent for a unit (i.e., if the allowance in year 2 was higher than year 1 and the rent increase was limited to the year 1 number). The rent increase allowance formula set forth in 29-57(a) accounts for market changes, providing the tenant protection sought. There is no need to further complicate this. A 2-year lease can identify the current rent and state that year two rent is that plus 6% or such lower amount permitted by law.

The proposed language is problematic because it suggests that a lease for which the term is extended by amendment would be treated the same as a lease with an initial term of 2+ years.

Noonan, Katherine M. [NKM2]
The County regulations already have a process for the landlord of a Troubled or At-Risk property to develop and implement a corrective action plan. If the landlord is compliant with such plan, rent increases up to the annual rent increase allowance should be permitted. Increases for noncompliant landlords would be prohibited.

29-22(b) of the Code and is noncompliance with its corrective action plan, the landlord must not increase the rent on the regulated rental unit while the property is designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code unless and until the Director approves a Fair Return Affidavit with regard to the property.

(c) When a property that was subject to Section 29-58(b) of the Code is no longer designated as Troubled or At-Risk under Section 29-22(b) of the Code, all annual rent increase allowances that the landlord was prohibited from imposing during the time of such designation pursuant to Section 28-58(h) shall be deemed banked amounts.

29.58.01.03 Allowable Rent Increase for Previously Vacant ~~Lots~~Units

(a) If a unit becomes vacant after the Rent Stabilization law was enforceable, the base rent for the unit may be increased ~~up to the banked amount or~~ to no more than the base rent on the date the unit became vacant plus each ~~allowable~~annual rent increase ~~under~~allowance since the date of vacancy, plus any banked amount, unless the unit is vacant, with no active lease agreement, for a continuous period of 12 months or more, then upon return to the market the landlord may set the base rent at the median rent for a comparable regulated unit in the landlord's propoerty. After the unit has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

(b) If a unit was vacant ~~before~~when the Rent Stabilization law was first enforceable, then upon return to the market, the landlord may set the base rent in landlord's discretion. After the unit is occupied or has been on the market for 12 months, the rent for the subsequent lease or lease renewal must be determined by Section 29-58(a) of the Code.

29.58.01.04 Limited Surcharge for Capital Improvements

(a) As use in this Regulation, the following works and terms have the following meanings:

(i) "Capital Improvement" as defined in Section 29-56 of the Code includes an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under generally accepted accounting principles or the Internal Revenue Code, and specifically includes alterations to a multifamily project that are intended to enhance the value of the units, any depreciable improvements to a multifamily project to comply with local, state or federal law, and replacement of appliances, fixtures, flooring, windows, HVAC, and unit components.

Noonan, Katherine M. [NKM3]
When the designation is removed, the landlord should be able to recover foregone rent increases as banked amounts. Without this concept, the landlord will forever have below-market rent rates creating a perpetual cycle of inability to properly maintain the property.

Noonan, Katherine M. [NKM4]
This language fails to address:
1. How does this apply when an exempt unit becomes a regulated unit? If the landlord has recently performed capital improvement work (without the necessity of Department approval) and accounted for that in then-current rents, can the landlord continue to recover the surcharge once its units are regulated? Or should the landlord increase rents to cover the full capital improvement cost before it becomes subject to rent control (which would likely result in significant tenant displacement?]

2. How does this process apply to long term phased-in capital plans? These are common for multifamily property owners, and they do not work if a landlord is approved for a surcharge for Phase 1 but has not comfort that the next phase will be approved. A landlord should be able to present the entire plan to the County and get approval at one time, with reconciliations via the Certificates of Continuation. This requires modification to the timelines herein.

3. What happens if a landlord has multiple Capital Improvement Affidavits submitted or approved at any given time? As a practical matter, a landlord may have an emergency roof replacement and required BEPS compliance needs that are not reflected in a single application. If both meet the requirements of 29-58(d), then both must be approved by the Director. However, the language of the regulations would prevent the landlord from imposing both surcharges. How is this intended to work?

Noonan, Katherine M. [NKM5]
This tracks the "capital improvement" definition in DC. See DC Code 42-3501.03(6).

(ii) "Rent Surcharge" a charge added to the base rent charged for a rental unit pursuant to a Capital Improvement Affidavit, and not as part of rent charged. The amount of the Rent Surcharge is the amount necessary to cover the costs of Capital Improvements to the regulated unit, excluding costs of ordinary repair and maintenance.

(b) ~~(a)~~ A landlord may ~~petition~~submit an affidavit confirming to the Director that the landlord's property meets the requirements for a ~~limited surcharge for capital improvements~~Rent Surcharge for Capital Improvements under Section 29-58(d) of the Code.

(c) ~~(b)~~ Processing of ~~Petitions~~Capital Improvement Affidavit

(1) Filing of ~~Petition. The Petition form~~Capital Improvement Affidavit. The Capital Improvement affidavit and one copy of supporting documents required pursuant to (p) and (q) below (collectively the "Capital Improvement Affidavit") must be filed with the Department.

(2) Notice of Filing. The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant ~~by first-class mail~~ of the filing of the ~~Petition~~Capital Improvement Affidavit within five business days of the filing of the ~~Petition~~Capital Improvement Affidavit.

Noonan, Katherine M. [NKM6]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

(3) ~~Decisions on a Petition. The Director must review the petition and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be allowed.~~Implementation of Rent Surcharge. Beginning on the date the landlord submits the Capital Improvement Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the Rent Surcharge as set forth in the Capital Improvement Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code.

(4) If the landlord fails to file all ~~necessary~~required supporting documentation ~~or respond in a timely manner to requests for additional information or documentation, the Director may deny the application.~~

~~(5) The landlord must, by first class mail notify all affected tenants of the decision within five business days of issuance~~with the Capital Improvement Affidavit, the Director may exercise its enforcement rights pursuant to Section 29-6 of the Code.

(d) ~~(c)~~ Except as provided in (d), the landlord must not recover the cost of a capital improvement through a ~~rent surcharge~~Rent Surcharge under Section 29-58(d) of the Code ~~if a landlord makes the improvement to a rental unit or a housing accommodation prior to the approval of a capital improvement petition~~prior to the 31st day following submission of the Capital Improvement Affidavit to the Department and notice to tenants.

(e) ~~(d)~~ A landlord who makes a ~~capital improvement without~~Capital Improvement prior ~~approval of a capital improvement petition~~to submitting a Capital Improvement Affidavit to the Department and providing notice to tenants may recover the cost of the ~~improvement~~Capital Improvement under Section 29-58(d) of the Code, ~~following the approval~~upon submission of the ~~petition, only if the capital improvement was immediately necessary to maintain the health or safety of the tenants and the petition was filed no later than 30 days after the completion of all capital improvement work~~Capital Improvement Affidavit to the Department and providing notices to tenant.

(f) ~~(e)~~ A landlord must file ~~a capital improvement petition on a form approved by~~ the ~~Director ("~~Capital Improvement ~~Form")~~Affidavit, certifying:

(1) that the ~~capital~~subject improvements are ~~permanent structural alterations to a regulated rental unit intended to enhance the value of the unit;~~Capital Improvements

~~(2) whether the capital improvements include structural alterations to a regulated rental unit required under federal, state, or County law;~~

~~(3) that the capital improvements do not include the costs of ordinary repair or maintenance of existing structures;~~

;

(2) ~~(4)~~ that the ~~capital improvements~~Capital Improvements would protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing or are required to comply with law;

(3) ~~(5)~~ whether the ~~capital improvements~~Capital Improvements will result in energy cost savings that will be passed on to the tenant and will result in a net savings in the use of energy in the rental housing or are intended to comply with applicable law;~~(6)~~ provided, however, that ~~the~~energy cost savings are not required for Capital Improvements to qualify for a Rent Surcharge;

(4) all regulated units are properly registered and licensed with the Department, and if the

Noonan, Katherine M. [NKM7]
The Code does not require County approval of a request prior to landlord's performance of the capital improvement work. The proposed language here would preclude landlords from recovering any surcharge for capital improvements that are now in process or were completed prior to adoption of the Regulations. The Department has approval rights over the Capital Improvement Affidavit, but there is no reason to further restrict the timing of landlord's work on its own property.

Noonan, Katherine M. [NKM8]
The Code states that "Capital improvements include structural alterations required under federal, state, or County law." This statement is not limited to improvements to a regulated unit. As a practical matter, many landlords will seek a capital improvement surcharge in connection with the building infrastructure modifications required per BEPS and other local laws. Many of these modifications are to building structures and systems---not specifically to regulated units. This needs to be clarified.

Noonan, Katherine M. [NKM9]
Also note that the DC regulations that the Department used as a form for its proposed MoCo regulations specifically provides that the capital improvement surcharge can be used for improvements required by law (See 14 DCMR 4210.2)

Noonan, Katherine M. [NKM10]
No need to additionally certify that subject improvements do not include ordinary repair and maintenance costs because that is part of the definition of Capital Improvements and covered by (1) above.

Capital Improvements have commenced or been completed, that all governmental permits ~~have been requested or obtained, and copies~~required by law to be in place with regard to the status of ~~either~~ the ~~request form or issued permit must accompany~~Capital Improvements as of the date of the Capital Improvement ~~Form~~Affidavit have been granted;

(5) ~~(7)~~ whether the ~~basis under~~Capital Improvements may be depreciable under generally accepted accounting principles or the federal Internal Revenue Code ~~for considering the improvement to be depreciable~~;

(6) ~~(8)~~ the estimated costs of the ~~capital improvements~~Capital Improvements, including any interest and service charge; and

(7) ~~(9)~~ the dollar amounts, percentages, and time periods computed by following the instructions listed in (~~f~~g); ~~and (10) that the petitioner has obtained required governmental permits and approvals~~.

(g) ~~(f)~~ The Capital Improvement ~~Petition~~Affidavit must ~~contain instructions for computing~~identify and compute the following in accordance with this section:

(1) the total cost of a ~~capital improvement~~Capital Improvement;

(2) the dollar amount of the ~~rent surcharge~~Rent Surcharge for each ~~rental~~regulated unit in the housing accommodation and the percentage increase above the current ~~rents~~base rent charged; and

(3) the duration of the ~~rent surcharge~~Rent Surcharge and its pro-rated amount in the month of the expiration of the surcharge.

(h) ~~(g)~~ The total cost of a ~~capital improvement~~Capital Improvement must be the sum of:

(1) any costs actually incurred, to be incurred, or estimated to be incurred to make the ~~improvement~~Capital Improvement, in accordance with (~~i~~j);

(2) any interest that accrues or must accrue on a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~j~~k); plus

(3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the ~~improvement~~Capital Improvement, in accordance with (~~k~~l).

Noonan, Katherine M. [NKM11]
Our revisions are consistent with the language of the Code. The language does not require the landlord to have obtained or applied for permits with regard to the proposed capital improvements, as such a requirement would be impractical.

(i) ~~(h)~~ The interest and service charge on, "a loan taken by the landlord to make the ~~improvement or renovation~~Capital Improvement" is the portion of any loan that is specifically attributable to the costs incurred to make the ~~improvement or renovation~~Capital Improvement, in accordance with (~~l~~m). The dollar amount of the calculated interest and service ~~change~~charge must not exceed the amount of the portion of that loan that is specifically attributable to the costs incurred to make the Capital Improvement, in accordance with (m).

(j) ~~(i)~~ The ~~costs incurred to make a capital improvement~~" total cost of a Capital Improvement" must 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 Director may find~~ probative of the actual~~, commercially reasonable~~ costs of the Capital Improvements. The ~~amount~~total cost of ~~costs incurred must~~a Capital Improvement shall be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is actually received by landlord from ~~or guaranteed by~~ a governmental program for the purposes of making the subject ~~improvement~~Capital Improvement.

(k) ~~(j)~~ The interest on a loan taken to make a ~~capital improvement~~Capital Improvement means all compensation paid or required to be paid by or on behalf of the landlord to a lender for the use, forbearance, or detention of money used to make a ~~capital improvement~~Capital Improvement over the amortization period of the loan, in the amount of either:

(1) the interest payable by the landlord at a ~~commercially reasonable~~ fixed or variable rate of interest on a loan of money used to make the ~~capital improvement~~Capital Improvement, or on that portion of a multi-purpose loan of money used to make the ~~capital improvement~~Capital Improvement, as documented by the landlord by means of the relevant portion of a bona fide loan commitment or agreement with a lender, or by other ~~evidence of interest that the Director finds~~ probative evidence; or

(2) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus four percentage (4%) points or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to the ~~limited surcharge petition for capital improvements~~effective date of the Rent Surcharge for Capital Improvements.

Noonan, Katherine M. [NKM12]
14 DCMR 4210.12 provides for this alternative calculation of the rate of 7 year US Treasury maturities during prior 30 days plus 4% or 400bp. It is not clear why the Regulations propose this structure.

(l) ~~(k)~~ For the purposes of (~~j~~k)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable for purposes of the Capital Improvement Affidavit must be calculated using the ~~initial~~actual rate of the loan over its term, provided that if the Capital Improvement Affidavit is

submitted prior to expiration of the loan term, the total interest rate for any unexpired term of the loan shall be calculated using the actual interest rate applicable at the time the Capital Improvement Affidavit was filed. If the interest rate changes over the duration of the ~~rent surcharge~~loan, any ~~certificate filed under (t)~~Certificate of Continuation must list all changes and recalculate the total interest on the loan.

(m) ~~(l)~~ The service charges in connection with a loan taken to make a ~~capital improvement~~Capital Improvement must 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 probative evidence of service charges ~~as the Director may find probative~~.

(n) ~~(m)~~ Except when a continuation is permitted in accordance with (~~s~~t), the duration of a ~~rent surcharge requested or~~Rent Surcharge allowed ~~by~~pursuant to a ~~capital improvement petition~~Capital Improvement Affidavit must be the quotient, rounded to the next whole number of months, of:

(1) the total cost of the ~~capital improvement~~Capital Improvement, in accordance with (~~g~~h); divided by

(2) the sum of the monthly ~~rent surcharges~~Rent Surcharges permitted by Sections 29-58(d)(3) and (4) of the Code on each affected ~~rental~~regulated unit.

(o) ~~(n)~~ A ~~rent surcharge~~Rent Surcharge in the final month of its duration must be no greater than the remainder of the calculation in (~~m~~n), prior to rounding.

(p) ~~(o)~~ A Capital Improvement ~~Petition~~Affidavit must be accompanied by external documents to substantiate the total cost of a ~~capital improvement~~Capital Improvement and must be supplemented with any new documentation reflecting a material change in the actual total cost of the ~~improvement~~Capital Improvement, until the ~~Director approves or denies the petition~~Capital Improvements have been substantially completed.

(q) ~~(p)~~ A Capital Improvement ~~Petition~~Affidavit, as filed with the Director, must be accompanied by a listing of each rental unit in the housing accommodation, identifying:

(1) which regulated rental units will be affected by the ~~capital improvements~~Capital Improvements;

(2) the base rent for each affected regulated rental unit, and any other ~~approved capital improvement surcharges~~permitted Rent Surcharges; and

(3) the dollar amount of the proposed ~~rent surcharge~~Rent Surcharge for each regulated rental unit and the percentage by which each surcharge exceeds the current rents charged.

(r) ~~(q)~~ A ~~decision authorizing a capital improvement surcharge must be implemented~~landlord shall begin implementing a Rent Surcharge within 12 months of the date of ~~issuance~~the Capital Improvement Affidavit was submitted but no earlier than 12 months following any prior rent increase for an affected ~~rental~~regulated unit; provided, that if the ~~capital improvement~~Capital Improvement work renders the unit uninhabitable beyond the expiration of time, the ~~rent surcharge~~Rent Surcharge may be implemented when the unit is reoccupied. The amount of the surcharge must be clearly identified as ~~an approved capital improvement surcharge~~a permitted Rent Surcharge in the new lease or in the lease renewal ~~and may not be implemented mid lease~~.

(s) ~~(r) Not less than 90 days before the~~Prior to expiration of an authorized ~~rent surcharge~~Rent Surcharge a landlord may request to extend the duration or otherwise modify the amount of the ~~rent surcharge~~Rent Surcharge by filing ~~an application~~a notice with the Director and serving each affected rental unit with notice that the total cost of the ~~capital improvement~~Capital Improvement has not been recovered during the originally approved period of the ~~rent surcharge~~Rent Surcharge and requesting to extend ~~the approval~~or otherwise modify the amount of the Rent Surcharge ("Certificate of Continuation").

(t) ~~(s)~~ A Certificate of Continuation must set forth:

(1) the total cost of the ~~capital improvement as approved by the capital improvement petition,~~Capital Improvement as set forth in the Capital Improvement Affidavit, and the total cost of the Capital Improvement based on actual costs including, if applicable, any changes in the total interest due to a variable-rate loan;

(2) the dollar amount actually received by the implementation of the ~~rent surcharge~~Rent Surcharge within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;

(3) an accounting of and reason(s) for the difference between the amounts stated in (1) and (2); and

(4) a calculation of the additional number of months or modified amount required, under currently known conditions, for the landlord to recover the total cost of the ~~capital~~

~~improvement~~Capital Improvement by extension of the duration or modification of the ~~rent surcharge~~amount of the Rent Surcharge.

~~(t) The Director must review the Certificate of Continuation and must issue and notify the landlord of a decision either approving or denying the continuation. The Director must only approve the request if the landlord demonstrates good cause for the difference between the amounts stated in mil.) and (2).~~

(u) ~~If the Director does not issue a decision prior to the expiration of the surcharge, the landlord may continue the 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 must constitute a final order to the landlord 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.~~Upon delivery of the Certificate of Continuation to the Department and notice to Tenants, Landlord shall be permitted to extend the duration or modify the amount of the Rent Surcharge as set forth in the Certificate of Continuation.

(v) ~~A rent surcharge implemented pursuant to an approved capital improvement petition may be extended by Certificate of Continuation no more than once~~In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Capital Improvement Affidavit and Certificate of Continuation.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-59 FAIR RETURN

COMCOR 29.59.01 Fair Return

29.59.01.01 Purpose

A landlord has a right to a fair return as defined by Chapter 29 of the Montgomery County Code. This Regulation establishes the fair return ~~application~~ process.

29.59.01.02 Definitions

In this Regulation, the following words and terms have the following meanings:

(a) Terms not otherwise defined herein have the meaning provided in Article VI of Chapter 29 of the Montgomery County Code, 2014, as amended ("Chapter 29" or "Code").

Noonan, Katherine M. [NKM13]
This language does not address how Fair Return Affidavits and Capital Improvement Affidavits relate to each other. Since they are for different purposes, presumably a landlord could submit both at the same time and have both approved. That would require modifications to the rent increase timing.

(b) "Annual Consumer Price Index" (CPI) means the Consumer Price Index. All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year must be the CPI published in December of the Current Year.

(c) "Base Year" means the year immediately prior to the year the unit ~~becomes~~became a regulated unit per requirements of Chapter 29 of the Code.

(d) "Current Year" means either the calendar year (January 1st to December 31st) or the fiscal year (July 1st to June 30th) immediately preceding the date that the ~~fair return application~~Fair Return Affidavit required in Section 29.59.01.04 is filed.

(e) "Current Year CPI" means either 1) if the ~~current year~~Current Year is a calendar year, the ~~current year~~Current Year CPI is the ~~annual~~Annual CPI for that year or 2) if the ~~current year~~Current Year is a fiscal year, the ~~current year~~Current Year CPI must be the CPI for December during the ~~current year~~Current Year.

(f) "Gross Income" means the actual annual ~~scheduled~~ rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord ~~was permitted to charge at the time of the application~~legally collected during the applicable period.

(g) "Net Operating Income" means the rental housing's Gross Income minus operating expenses for the applicable period.

29.59.01.03 Formula for Fair Return

(a) Fair Return~~. The fair return rent increase formula is computed as follows: Gross Income minus operating expenses permitted under Section 29.59.01.06 for the Current Year~~.

(1) In calculating Gross Income for the Current Year, the ~~Base Year~~ Net Operating Income for the Base Year under Section 29.59.01.06 must be adjusted by the annual rent increase allowance under Section 29-57 since the Base Year.

(2) Any Fair Return Affidavit must identify a rent increase based on fair return ~~increase request must be~~as:

(A) demonstrated as actual operating expenses to be offset through a fair return rent increase; and/or

(B) demonstrated to be commensurate with returns on investments ~~in~~of other

Noonan, Katherine M. [NKM14]
Whether regarding the Current Year or Base Year, the Gross Income is an actual known number. It should not include projections of what the landlord could have collected if all units were occupied, all tenants paid, and amenity fees were across the board.

Noonan, Katherine M. [NKM15]
This is wrong. The fair return rent increase formula is not Gross Income minus operating expenses. That is only part of the formula.

Noonan, Katherine M. [NKM16]
A Fair Return Affidavit may seek a fair return increase based on both operating expense offset and return on investment. It's not one or the other.

enterprises having comparable risks, provided that return on investment shall be deemed fair return up to the Net Operating Income for the property averaged over the prior three year period adjusted for CPI.

(b) Fair Return Rent Increases. Fair return rent increases ("rent increases") ~~approved by the Director~~pursuant to a Fair Return Affidavit must be determined as a percentage of the Current Year rents and shall include any annual rent increase allowance under 27-57(a) of the Code, and each ~~restricted~~regulated unit in the rental housing must be subject to the same percentage increase.

(1) Except as provided herein and subject to Section 29-54 of the Code, any fair return rent increase ~~approved by the Director~~ must begin to be implemented within 12 months of the date of the ~~issuance of the decision~~Fair Return Affidavit is submitted to the Department and notices provided to tenants or at the end of the current tenant's lease term, whichever is later, in accordance with Section 29.59.01.07.

If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant must be phased-in over a period of more than one year until such time as the full rent increase ~~awarded by~~pursuant to the ~~Director~~Fair Return Affidavit has been taken. Rent increases of more than 15% must be implemented in consecutive years.

(2) If the Director determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required increase has been taken in full, the ~~Director~~landlord may ~~allow~~elect to implement the ~~required~~full rent increase for that unit ~~to be taken~~ in one year or upon the vacancy of that unit, provided the unit became vacant as a result of voluntary termination by the tenant or a termination of the tenancy by the landlord for just cause.

Noonan, Katherine M. [NKM17]
After the 12 month or longer period expires for each unit, how does the landlord set the rent? This needs to be clarified since the fair return rent increase presumably includes the annual rent increase allowance.

Noonan, Katherine M. [NKM18]
Why would this be subject to Director approval? The requirement just creates more administrative hurdles and additional burdens on DHCA's limited resources.

29.59.01.04 Fair Return ~~Application~~Affidavit

(a) Requirement. A landlord may file a ~~fair return application~~Fair Return Affidavit (as defined in 29.59.01.04(d)(2) below) with the Director to increase the rent more than the amount permitted under ~~Section~~Sections 29-57 or 29-58 of the Code.

~~(b) Rolling Review. The Director will consider fair return applications on a rolling basis.~~

(b) ~~(c)~~ Prerequisites for a ~~fair return application~~Fair Return Affidavit. In order for ~~the Director~~a landlord to ~~consider~~submit a ~~fair return application, it must meet~~Fair Return Affidavit, the following requirements must be satisfied:

(1) All units within the rental housing listed in the ~~fair return application~~Fair Return Affidavit must be properly registered and licensed with the Department.

(2) The ~~fair return application~~Fair Return Affidavit must be completed in full, signed, and include all required ~~supporting documents~~for the Fair Return Affidavit.

(3) All Banked Amounts have been applied to ~~restricted~~regulated units.

(c) ~~(d)~~ Fair Return ~~Application~~Affidavit Requirements. A ~~fair return application~~Fair Return Affidavit must include the following information ~~and must be submitted in a form administered by the Department~~:

(1) The ~~applicant must submit information necessary to demonstrate the rent necessary to obtain a fair return~~Fair Return Affidavit and one copy of supporting documents required pursuant to [_____] below (collectively the "Fair Return Affidavit") must be filed with the Department.

(2) The ~~application~~Fair Return Affidavit must include all the information required by these Regulations and contain adequate information for both the Base Year and the Current Year. If the required information is not available for the Base Year, a landlord may, at the discretion of the Director, use an alternative year. Such approval must be secured in writing from the Director ~~prior to the filing of the application~~.

(3) The landlord must supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year:

(A) ~~Copies of bills, invoices, receipts, or other documents that support all reported expense deductions must be submitted. The Department reserves the right to inspect the rental housing to verify that the identified maintenance has been completed and associated costs are reasonable.~~Income and operating expense report for the property for the Base Year and the Current Year. Within ten (10) days following written request from the Director, landlord shall deliver supporting documentation confirming specific items on the income and operating expense report as may be specifically requested by the County. Such supporting documentation may include copies of bills, invoices, receipts, time sheets, or other documents. Any such supporting documentation provided by the landlord in response to the Director's request shall be delivered in an organized manner and shall be held by the Director as confidential.

Noonan, Katherine M. [NKM19]
The County already has inspection rights with regard to multifamily properties. No additional rights are needed here.

Noonan, Katherine M. [NKM20]
Does the Department really want to see and review every operating expense invoice for a property for the Base Year and Current Year? This seems overly burdensome for all.

~~(B) Copies of time sheets maintained by the landlord in support all self-labor charges must be submitted if such charges are claimed. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for skilled labor, a statement substantiating the landlord's skill, or a copy of the applicable license is required.~~

~~(C) For amortized capital improvement expenses, copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Director reserves the right to inspect the rental housing to verify that identified capital improvements have been completed and associated costs are reasonable.~~

~~(D) All expense documentation must be organized in sections by line item on the application. A copy of a paid invoice or receipt documenting each expense must be attached to the front of the documentation for each line item. The documents must be submitted to the Director in the same order as the corresponding amounts on the invoice or receipt. The total of the documented expenses for each line item on the invoice or receipt must be equal to the amount on the corresponding line on the application.~~

(B) ~~(E)~~ Any justification for exceptional circumstances that the ~~owner~~landlord is claiming under this ~~regulation~~Regulation.

(C) ~~(F)~~ Any additional information the landlord determines would be useful in making a determination of fair return.

~~(4) Upon a finding by the Director that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the application, the Base Year net operating income must be re-computed using the financial information on the tax return. This decision must be made at the Director's discretion~~

(d) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Fair Return Affidavit.

29.59.01.05 Processing of Fair Return ~~Applications~~Affidavit

(a) Filing of ~~Application. The fair return application form and one copy of supporting documents~~Fair Return Affidavit. The Fair Return Affidavit must be filed with the Department.

(b) Notice of Filing. Within five business days of filing the ~~fair return application~~Fair Return Affidavit, the landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing ~~via first class mail, providing each tenant a copy of the Notice of Filing and~~of the ~~application (excluding supporting documentation)~~Fair Return Affidavit.

~~(c) Decisions on a Fair Return Application. The Director must review the fair return application and supporting documentation and must issue and notify the landlord of a decision stating the recommended rent increase, if any, to be awarded to the landlord. The landlord's failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a decision or may result in the denial of a decision.~~

~~(d) Required Notice of Decision to Tenants~~

~~(1) The landlord must distribute a copy of the decision to each affected tenants by first-class mail within five business days of the date of issuance.~~

(c) ~~(2)~~ Implementation of Rent Increase. Beginning when landlord submits the Fair Return Affidavit to the Department and provides notice to tenants, Landlord shall be permitted to charge the rent increase as set forth in the Fair Return Affidavit with implementation of such rent surcharge in accordance with Section 29-54 of the Code. The implementation of any rent increase ~~awarded~~approved by the Director must comply with Section 29-54 of the Code, and must be clearly identified in the lease, rent increase notice and/or renewal as a ~~DHCA~~Department authorized fair return increase. ~~Said increases are contingent on the decision of the Director becoming final in accordance with Section 29.59.01.05(c) of these Regulations.~~

29.59.01.06 Fair Return Criteria ~~in Evaluation~~

(a) Gross income. Gross income for both the Base Year and the Current Year includes the total amount of rental income the landlord ~~could have~~actually received ~~if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid~~during such period.

(1) Gross income includes any fees paid by the tenants for services provided by the landlord.

(2) Gross income does not include income from laundry and vending machines, interest received on security deposits more than the amounts required to be refunded to tenants, and other miscellaneous income.

Noonan, Katherine M. [NKM21]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

Noonan, Katherine M. [NKM22]
The term "Notice of Filing" is not used elsewhere in these Regulations. The tenant notice makes the tenants aware that a Fair Return Affidavit has been filed, but there is no need for the landlord to provide the entire Fair Return Affidavit to the tenants. An interested tenant can reach out to the County, but there is no need to overwhelm all tenants with detailed information. Tenants are not entitled to the landlord's financial records.

Noonan, Katherine M. [NKM23]
As a practical matter, no property has 100% occupancy and 100% rent payment year over year. If this change is not made to Gross Income, then the definition of operating expenses should be revised to include all rental losses incurred by a landlord in connection with nonpayment and vacancy.

(b) Operating Expenses.

(1) For purposes of fair return, operating expenses include, but are not limited to the following items, which are reasonable expenditures in the normal course of operations and maintenance:

(A) utilities paid by the landlord, ~~unless~~except to the extent these costs are passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, accounting fees, etc.; below;

(C) management fees, whether performed by the landlord or a property management firm; if sufficient information is not available for current management fees, management fees may be assumed to have increased by the percentage increase in the Annual CPI between the Base Year and the Current Year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of Gross Income unless the landlord demonstrates ~~by a preponderance of the evidence~~ that a higher percentage is reasonable;

(D) payroll;

(E) amortized cost of capital ~~improvements~~expenses over the useful life of the expensed asset. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey plus 4% or 400 basis points. Such average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately prior to ~~the~~ substantial completion of the renovation ~~application~~.

(F) maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;

(G) property taxes;

(H) licenses, government fees and other assessments; ~~and~~

(I) insurance costs; and

(J) costs incurred by landlord to comply with the Rent Stabilization Act, including costs of reporting, data collection, tenant noticing, Capital Improvement Affidavits, Fair Return Affidavits, Substantial Renovation Affidavits, and other administrative costs incurred by landlord as a result of the Rent Stabilization Act and these Regulations.

(2) ~~Reasonable and expected operating~~Operating expenses which may be claimed for purposes of fair return do not include the following:

(A) expenses for which the landlord has been ~~or will be~~ reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

~~(B) payments made for mortgage expenses, either principal or interest;~~

(B) ~~(C)~~ judicial and administrative fines and penalties~~;(D)~~ , including damages paid to tenants as ordered by OLTA issued determination letters or consent agreements, COLTA, or the courts;

(C) ~~(E)~~ depreciation;

(D) ~~(F)~~ late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord ~~or the rental housing~~;

(E) ~~(G)~~ membership fees in organizations established to influence legislation and regulations;

(F) ~~(H)~~ contributions to lobbying efforts;

(G) ~~(I)~~ contributions for legal fees in the prosecution of class-action cases;

(H) ~~(J)~~ political contributions for candidates for office;

(I) ~~(K)~~ any expense for which the tenant has lawfully paid directly or indirectly;

(J) ~~(L)~~ attorney's fees charged for services connected with counseling or litigation related to actions brought by the County under County regulations or this title, as amended. This provision must apply unless the landlord has prevailed in such an action brought by the County;

~~(M) additional expenses incurred as a result of unreasonably deferred maintenance;~~ and

(K) ~~(N)~~ any expense incurred in conjunction with the purchase, sale, or financing of the rental housing, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

Noonan, Katherine M. [NKM24]
This is duplicative of the former (2)(B) (payments made for mortgage expenses).

(c) ~~Base Year~~ Net Operating Income for Base Year. To adjust the ~~Base Year~~ Net Operating Income for the Base Year, the Director must make at least one of the following findings:

(1) The ~~Base Year~~ Net Operating Income for the Base Year was abnormally low due to one of the following factors:

(A) the landlord made substantial ~~capital improvements~~Capital Improvements in or prior to the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these ~~capital improvements~~Capital Improvements pursuant to a Capital Improvement Affidavit;

(B) substantial repairs were made to the rental housing due to exceptional ~~circumstances; or~~circumstance or new laws;

(C) other expenses were unreasonably high, notwithstanding prudent business practice; or

(D) other exceptional circumstances exist requiring equitable adjustment to Net Operating Income for the Base Year.

(2) The Base Year ~~Rents~~rents did not reflect market transaction(s) due to one or more of the following circumstances:

(A) there was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;

(B) the rents have not been increased ~~for five~~in the years preceding the Base Year;

(C) the ~~Tenant~~tenant lawfully assumed maintenance responsibility in exchange for low rent increases or no rent increases;

(D) the rents were based on MPDU or other affordability covenants at the time of the rental housing's Base Year; or

(E) other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

(d) Returns on investments in other enterprises having comparable risks. If data, rate information, or other sources of cost information indicate that operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense must be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases may be introduced by the landlord or the Director.

(e) Burden of Proof. The landlord has the burden of proof in demonstrating that a rent increase should be authorized pursuant to these regulations.

29.59.01.07 Fair Return Rent Increase Duration

(a) Duration. ~~A~~Except as provided in 29.59.01.03(b), a rent increase established under an approved ~~fair return application~~Fair Return Affidavit remains in effect for each regulated unit for a 12-month period. No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a ~~restricted~~regulated unit for ~~that~~the 12-month period during which the regulated unit is subject to a rent increase pursuant to a Fair Return Affidavit (as such rent increase includes any annual rent increase allowance).

(b) Establishment of New ~~Base Year~~ Net Operating Income for the Base Year. The ~~net operating income~~Net Operating Income, income, and expenses, determined to be fair and reasonable pursuant to ~~a prior application for a fair return rent increase~~an approved Fair Return Affidavit must constitute the Net Operating Income of the Base Year income, and expenses~~, and net operating income~~ for those ~~restricted~~regulated units included in the finding of fair return for purposes of reviewing subsequent ~~applications~~affidavits.

(c) Limitations on Future Fair Return Requests.

(1) If ~~a fair return application is approved by the Director~~landlord submits a Fair Return Affidavit, the ~~property owner~~landlord may not file a subsequent ~~application~~Fair Return Affidavit covering the same period for which the ~~greater of 24 months following the issuance of an approval, or until any remainder of the increase permitted under Section 29.59.01.03(b) (when a fair return~~ rent increase is ~~permitted above 15%) has been applied~~in effect under the prior Fair Return Affidavit.

~~(2) If a fair return application is denied by the Director, the property may not file a subsequent application for 12 months following the issuance of a denial.~~

Noonan, Katherine M. [NKM25]
Landlord cannot have multiple fair return increases in place at the same time, but there is no need to preclude subsequent fair return affidavits. Such a requirement only reduces the Department's burden at the landlord's cost.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
Rent Stabilization	2-24
Originating Department Department of Housing and Community Affairs	Effective Date

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-60 EXEMPT RENTAL UNITS

COMCOR 29.60.00 – Transition of Exempt Units

When an exempt unit becomes a regulated unit, the base rent for the first year of such regulated period shall be the median rent for comparable regulated units at the landlord's property. Thereafter, base rent for such regulated units shall be determined by Section 29-58(a) of the Code.

COMCOR 29.60.01 Substantial Renovation Exemption

29.60.01.01 ~~Application for a~~ Substantial Renovation Exemption

(a) A landlord seeking an exemption for a substantial renovation ("renovation") under Section 29-60(12) for renovation commencing on or after the effective date of these Regulations must file an ~~application~~affidavit ("Substantial Renovation Affidavit") with the Director that includes the following:

(1) detailed plans, specifications, and documentation showing the total cost of the renovations, in accordance with Section 29.60.01.02;

(2) copies of all applications filed, if any, for required building permits for the proposed renovations or copies of all required permits if they have been issued;

(3) documentation of the value of the rental housing as assessed by the State Department of Assessments and Taxation;

(4) a schedule showing all regulated rental units in the rental housing to be ~~renovate~~renovated showing whether the rental unit is vacant or occupied; and

(5) a schedule showing the current lawful base rent.

(b) ~~Within five days of filing the application with the Director, a landlord must send by first-class mail a copy of the application to the tenants of all units in the rental housing for which the application has been filed with the Director.~~The landlord must (a) by first-class mail or (b) by email or other electronic communication customarily used by landlord for tenant communications together with posting in common areas of the property, notify each affected tenant of the filing of the Substantial Renovation Affidavit within five business days of the filing of the Substantial Renovation Affidavit.

(c) ~~The Director must review the application and supporting documentation and must issue and notify~~

Noonan, Katherine M. [NKM26]
This language fails to address:

1. What happens if a property is exempt under the substantial renovation exemption, but is subsequently in violation of Chapters 8, 26, or 29 of the Code? These Regulations already address Troubled and At-Risk designations, but not these other provisions. We proposed language in 29.60.01.10(d) to address this.

2. As drafted, this process applies logically to substantial renovations to be implemented after the Regulations take effect. That does not address the landlords who performed substantial renovations to their properties in the 23 years prior to the effective date of the Regulations. We proposed language in Section 29.60.01.10(c) to address this.

Noonan, Katherine M. [NKM27]
Email, listserve, and similar electronic distributions are increasing common methods of tenant communications. Onsite postings will also be provided as additional notice. Multiple first class mailings is an unnecessary environmental burden.

~~the landlord of a decision approving or denying the exemption.~~A property shall be exempt under Section 29-60(12) upon filing the Substantial Renovation Affidavit with the Director, or, if such Substantial Renovation Affidavit is submitted to the Department within sixty (60) days of the effective date of these Regulations, then the exemption shall be deemed effective as of the effective date of the Regulations.

29.60.01.02 Total Cost of Renovations Calculation

The total cost of renovations must be the sum of:

(a) any costs actually incurred, to be incurred, or estimated to be incurred to make the renovation, in accordance with Section 29.60.01.04;

(b) any interest that must accrue on a loan taken by the landlord to make the renovation, in accordance with Section 29.60.01.05; plus

(c) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the improvement ore renovation, in accordance with Section 29.56.01.06.

29.60.01.03 Limits on Interest and Service Charges for a Substantial Renovation Loan

For the purposes of calculating interest and service charges, "a loan taken by the landlord to make the renovation" is the portion of any loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04. The dollar amount of that portion must not exceed the amount of ~~those costs~~the portion of that loan that is specifically attributable to the costs incurred to make the renovation, in accordance with Section 29.60.01.04.

29.60.01.04 Determining Costs Incurred for a Substantial Renovation

The costs incurred to renovate the rental housing must be determined based on invoices, receipts, bids, quotes, work orders, loan documents, estimates, or a commitment to make a loan, or other evidence of expenses as ~~the Director may find~~are probative of the actual~~, commercially reasonable~~ costs of such renovations.

29.60.01.05 Calculating Interest on a Loan for a Substantial Renovation

The interest on a loan taken to renovate the rental housing means all compensation paid by the landlord to a lender for the use, forbearance, or detention of money used to make the ~~improvement or~~ renovation over the amortization period of the loan, in the amount of either:

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

(b) in the absence of any loan commitment, agreement, or other evidence of interest, the Director may apply the average 52-week Wall Street Journal's U.S. Prime Rate, as reported by The Wall Street Journal's bank survey, applied over a seven-year period plus 4% or 400 basis points. Such average is calculated as the midpoint between the high and low Prime Rates reported for the 52 weeks immediately prior ~~to application for an exemption for a~~ substantial completion of the renovation.

29.60.01.06 Calculating Interest on a Variable Rate Loan for a Substantial Renovation

For the purpose of Section 29.60.01.05(a)(1), if a landlord has obtained a loan with a variable rate of interest, the total interest payable must be calculated using the ~~initial~~actual rate of the loan (if known), or otherwise recalculated when actual interest is known.

29.60.01.07 Calculating Service Charges for a Loan for a Substantial Renovation

The service charges in connection with a loan taken to renovate the rental housing must 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 such 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 ~~that the Director may find~~ probative of the actual~~, commercially reasonable~~ costs.

29.60.01.08 Exclusions for Costs, Interest, or Fees for a Substantial Renovation

Any costs, and any interest or fees attributable to those costs, for any specific aspect or component of a proposed improvement or renovation that is not intended to enhance the value of the rental housing, as provided by Section 29.60.01.09, must be excluded from the calculation of the total cost of the renovation.

29.60.01.09 Determining Whether a Substantial Renovation is Intended to Enhance the Value of the Rental Housing

The ~~Director must determine~~following factors shall be relevant to a determination of whether a ~~proposed~~

substantial renovation is deemed to be intended to enhance the value of the rental housing ~~by considering the following~~:

(1) the existing physical condition of the rental housing;

(2) whether the existing physical condition impairs or tends to impair the health, safety, or welfare of any tenant; and

(3) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair~~; and~~.

~~(4) whether the proposed renovations are optional or cosmetic changes~~

Any renovation required for compliance with federal, state or local law is deemed to be intended to enhance the value of the rental housing.

29.60.01.10 Implementation of a Substantial Renovation Exemption

(a) ~~Within thirty days of the~~Following completion of a ~~substantial~~ renovation for which landlord has submitted a Fair Return Affidavit, a landlord must file an affidavit attesting to the substantial completion with the Director~~. If the Director determines that the renovations have been completed according to the substantial renovation application,~~ and identifying the date of ~~filing of the affidavit of~~such substantial completion ~~must be deemed the approved~~. The exemption ~~date~~shall be effective on the substantial completion date as set forth in the affidavit, and shall remain in effect until the 23rd anniversary thereof, subject to the property's continued compliance with Section 29-60(a)(12)(B) of the Code.

(b) Once a ~~decision approving a~~Fair Return Affidavit and affidavit if substantial ~~renovation exemption has been issued~~completion have been filed with the Department and subject to Section 29-54 of the Code, the exemption must be implemented within twelve months of the approval, but no earlier than the expiration of the current lease (without regard to any renewal term), if any, for that rental unit.

(c) Notwithstanding anything to the contrary herein and subject to Section 29-60(a)(12)(B) of the Code, the landlord of any multifamily property claiming exemption pursuant to Section 29-60(a)(12) of the Code on basis of renovations performed prior to the effective date of these Regulations shall be deemed exempt until the 23rd anniversary of the substantial completion date of such renovations if the landlord provides a written affidavit to the Department confirming (i) the date of substantial completion of the renovation, (ii) that the renovations constitute permanent

Noonan, Katherine M. [NKM28]
Optional vs cosmetic is not a relevant standard to determine if there is an enhancement of the value of rental housing.

alterations to a building that are intended to enhance the value of the building and when substantially completed cost an amount equal to at least 40% of the value of the building as assessed by the State Department of Assessments and Taxation.

(d) If at any time during the 23 year substantial renovation exemption period, a court or other administrative agency determines that a multifamily property is in violation of Chapter 8, 26 or 29 of the Code, the exemption shall not apply until such violation has been cured.

(e) In accordance with Section 29-6 of the Code, the Director may initiate investigations and conciliations of any alleged or apparent violation of Chapter 29 of the Code, and pursue enforcement related thereto, including with regard to the Substantial Renovation Affidavit.

MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-61 REGULATION OF FEES

COMCOR 29.61.01 Fees

29.61.01.01 Applicable Fees

A landlord of a regulated rental unit ~~must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:~~may charge reasonable fees for amenities and services not included in base rent and shall include a schedule of such then-current fees in in the annual report the landlord submits to the Department in accordance with Section 29-62 of the Code, provided that fees for laundry, charging stations, vending machines, and other services available to tenants in connection with third party agreements shall not be governed by this Section 29.61.01.01.

(a) Application fee A landlord of a regulated rental unit must not assess or collect a fee or charge a fee of more than the greater of (i) $50 from any ~~household~~tenant applicant, and (ii) the actual amount charged by a third party application review service in connection with the submission of an application for rental of the regulated rental.

(b) Late fee

(1) Late fees must comply with Section 29-27 of the Code.

~~(2) Under Section 29-27(l) of the Code, a landlord of a regulated rental unit must not assess or collect from the tenant of such unit any late fee or charge for a late payment for a minimum of ten days after the payment was due;~~

Noonan, Katherine M. [NKM29]
This provision is necessary to address all substantial renovations completed in the 23 years prior to the effective date of the Regulations. In practice, this should be treated as the exemption for new construction. The County can always challenge an affidavit, but removing an unnecessary approval process here will allow the Regulations to take effect in a more streamlined manner. Without this concept a landlord who completed a substantial renovation in 2021 will be subject to rent control upon adoption of the Regulations, and then submit the affidavit based on retroactive construction, to presumably be granted exemption as of a County approval date. That makes no sense and would cause all kinds of confusion amount tenants.

Noonan, Katherine M. [NKM30]
This section exceeds the authority of the Department under Rent Stabilization. The law allows the Director to limit fee increases or new fees or include a fee schedule----all in accordance with the affordable housing goals of the law.

1. Any specified fee amounts must be indexed.
2. Is there tenant outcry at the amount of lockout, key, and storage fees that necessitates this degree of government control. Landlords incur actual costs for these items, and passing them through to the applicable tenants prevents general expense to all tenants.
3. These proposed fee caps apply to regulated units only.

Noonan, Katherine M. [NKM31]
Landlords incur actual costs to perform background checks as part of application review. The proposed limitation does not account for the fact that some households have multiple applicants and that these actual costs exist and may vary from time-to-time. Recovering actual costs is not a tenant gauging effort.

Noonan, Katherine M. [NKM32]
The County Code already addresses late fees and the Rent Stabilization Act does not suggest that regulated units be treated different from other units with regard to late fees.

(A) After the ten-day period established under Section 29-27(l) of the Code, a landlord of a regulated rental unit may issue the tenant of such unit an invoice to be paid within 30 days after the date of issuance for any lawfully imposed late fees. If the tenant does not pay the late fee within the 30-day period, the housing provider may deduct from the tenant's security deposit, at the end of the tenancy, any unpaid, lawfully imposed late fees.

(B) A landlord of a regulated rental unit must not:

(i) charge interest on a late fee;

(ii) impose a late fee more than one time on each late payment;

(iii) impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, is responsible for payment.

(c) Pet fee

(1) A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the owner may require the tenant of the unit to maintain with the owner during each rental term a pet deposit not exceeding $100, which must be held in escrow by the owner.

(2) The pet deposit must be returned in full within 45 days after the termination of the tenancy unless costs are incurred by the landlord as a result of damages relating to the presence of pets in the unit. The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(3) If any portion of the pet deposit is withheld, the landlord must present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under this section with an itemized statement and proof of the cost incurred.

(d) Lost key fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for the replacement of a mechanical or electronic key exceeding the actual duplication cost plus $25.

~~(e) Lock out fee A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any lockout fee or charge exceeding $25.~~

~~(f) Secure storage unit accessible only by tenant A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for a secured storage unit accessible only by the tenant in an amount exceeding $3 per square foot per month.~~

~~(g) Internet or cable television A landlord of a regulated rental unit must not assess or collect from the tenant of such unit any fee or charge for internet or cable television service greater than the actual cost to the landlord divided by the number of rental units in the property.~~

~~(h) Motor vehicle parking fee~~

~~(1) A landlord of a regulated rental unit that rents parking spaces for motor vehicles must not charge more than one rent or fee per parking space, that exceeds the following:~~

~~(A) 4% of the base rent for the unit for any secured, covered parking space;~~

~~(B) 2% of the base rent for the unit for a reserved motor vehicle parking space; or~~

~~(C) 1% of the base rent for the unit for any other motor vehicle parking space.~~

~~(2) This Section does not require a landlord to charge rent or fees for motor vehicle parking~~

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) Intentional Omitted.

(f) Intentionally Omitted.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Bicycle parking fee

(1) A landlord of a regulated rental unit may charge a tenant of such unit a bicycle parking fee under Section 29-35A of the Code.

Noonan, Katherine M. [NKM33]
Pets actually create additional wear and tear on building and landlords need to have the ability to recover those costs. The restriction on pet fees goes beyond the scope of protecting affordable housing in the County.

Noonan, Katherine M. [NKM34]
Storage space actually costs money. A cap of $3 per square foot per month seems arbitrary and fails to account for cost differentials across properties. It is not indexed.

Noonan, Katherine M. [NKM35]
These rates are not market and they fail to account for variations across the County. The price of parking is not the same across the board.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Rent Stabilization	Number 2-24
Originating Department Department of Housing and Community Affairs	Effective Date

Approved:

_____ _____

Marc Elrich, County Executive Date

Approved as to form and legality:

_____

By:

Date: 1/31/24

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Total changes	784

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March 1, 2024

Via Email (Scott.Bruton@montgomerycountymd.gov***)***

Mr. Scott Bruton
Director
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, MD 20852

Re: Written Comments to Montgomery County Proposed Executive Regulation No. 2-24 (the "Proposed Regulation") Implementing Bill 15-23 (the "Rent Stabilization Law")

Dear Mr. Bruton:

On behalf of The Seasons, a Maryland Limited Partnership (the "**Seasons LP**"), please accept the following comments regarding three sections of the above-referenced Proposed Regulation. They are COMCOR 29.58.01.02 (Rent Increases for Troubled or At-Risk Properties), 29.61.01.01(h) (Motor Vehicle Parking Fee), and 29.58.01.04 (Limited Surcharge for Capital Improvements).

Background

By way of background, Seasons LP owns and operates a 15-story, mixed-use, multi-family residential building known as The Seasons Apartments, located at 4710 Bethesda Avenue, Bethesda, Maryland (the "**Building**"). The Building was originally constructed in 1970 and contains 247 multi-family dwelling units and approximately 33,790 square feet of commercial space (including office space on the second floor and storefront type retail space on the first floor).

The Seasons LP is owned by four members of the Landow family, each of whom are life-long Montgomery County, Maryland residents and involved members of their communities. The Landow family champions affordable housing, as evidenced by their decision to continue to provide 12 Moderately Priced Dwelling Units ("MPDU's") at the Building through a voluntary rental agreement with the Department of Housing and Community Affairs ("**DHCA**") following the expiration of the MPDU agreement for the Building.

While applauding the County Council's stated goal of promoting the affordability of rental housing, certain aspects of the Proposed Regulation are either not consistent with the Rent Stabilization Law or would penalize owners of multifamily housing units, discouraging reinvestment in the existing housing stock and production of new housing in Montgomery County.

Accordingly, we urge that the following revisions be made to the Proposed Regulation prior to its adoption.

COMCOR 29.58.01.02 Rent Increases for Troubled or At-Risk Properties

The Proposed Regulation at COMCOR 29.58.01.02 provides that properties considered to be "Troubled" or "At-Risk" under Section 29-22(b) of the Montgomery County Code may not increase rent in excess of an amount that the Director of the DHCA approves as necessary to cover the costs required to improve habitability. The flaw in the Proposed Regulation is that there is no differentiation between properties considered to be "Troubled" or "At-Risk," when in reality, the difference between those definitions is profound. Most important, there is no notice provided to an owner when a property is found to be "At-Risk," meaning that under the Proposed Regulation, owners of "At-Risk" properties would be subject to stringent rent control provisions without any meaningful opportunity to challenge that finding or to even know that their property has been characterized as such.

Notably, Section 29-22(b) of the Montgomery County Code does not even mention "At-Risk" properties; rather Section 29-22(b)(2) provides for the Director to designate certain properties as "troubled" properties. The Method (2) regulations promulgated pursuant to Section 29-22(b) of the Montgomery County Code at COMCOR 29.40.01.04 created the additional designation of "At-Risk" properties, seemingly as a follow-on to defining "Troubled" properties, but without any legislation authorizing or defining that designation.

The current language of COMCOR 29.40.01.02(b) defines "Troubled Property" as "rental housing which, because of the severity and quantity of [housing code violations], is subject to annual inspections by [DHCA] and requires the development and implementation of a corrective action plan." The regulatory framework in COMCOR 29.40.01 extensively details the procedures by which a property is considered to be "Troubled," requires that written notification of the designation be given to the property owners, identifies the actions required to be taken to remedy the violations, and describes how properties can be removed from the "Troubled" category.

In contrast, there is no comparable regulatory framework for properties designated as "At-Risk" properties. Instead, COMCOR 29.40.01.04(j), the only section that provides guidance related to properties designated as "At-Risk," merely provides: (1) "At-Risk" properties are those that have fewer total violations or whose violations are determined to be less severe than those properties being designated as "Troubled" and (2) that DHCA shall use its "discretion to inspect these properties more frequently than once every three years to monitor the properties and *encourage* the [owners] to avoid Troubled Properties designation" (emphasis added).

Thus, for "At-Risk" properties, there is no legislative guidance provided at all on how properties are defined as such, no regulatory framework requiring notification, and no effective opportunity to even be removed from this list since no notice is required to be given. Indeed, it is believed that in many instances no notice is given at all, with the result that property owners are placed on the list, and remain on it, without their knowledge.

Despite this lack of notification for "At-Risk" properties, and the clear difference between the

number of occurrences and severity of code violations between "Troubled" and "At-Risk" properties, both types of properties would be subject to the same rent control provisions under the Proposed Regulation. Even if an "At-Risk" property has relatively few violations, the most its owner could raise rent would be by the amount needed to improve habitability. While the stated purpose of COMCOR 29.40.01.04(j) is to "encourage" owners to avoid Troubled Properties designation, the effect of the Proposed Regulation is punitive in nature.

Imposing such restrictions on unaware property owners violates their due process rights. Due process requires a landlord to have notice before a governmental body takes actions that limit the landlord's rights. *See DiCicco v. Balt. Cnty.,* 232 Md. App. 218, 225 ("[S]tate action affecting property must generally be accompanied by notification of that action[.]" (quoting *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 484 (1988))). The notice must be "reasonably calculated under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id*. (quoting *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)).

Requested Revision

As currently drafted, the Proposed Regulation permits the imposition of strict limitations on certain properties that are labeled "At-Risk" without statutory authority or guidance for labeling properties as such. Any decision to treat "At-Risk" properties equally to "Troubled" properties should be made through amendment to the County Code. If the Council elects to make this legislative change, then any implementing regulation must provide notice to owners of "At-Risk" properties. The consequence of treating "At-Risk" property exactly the same as "Troubled" property is substantial, given that the "At-Risk" owner will be precluded from increasing rents, as otherwise allowed by Section 29-57(a) of the Rent Stabilization Law. Because the Proposed Regulation will result in an unlawful taking by depriving an apartment owner of a property right without due process (*i.e.*, advance notice and an opportunity to be heard), we urge the Council to revise the Proposed Regulation to remove all references to "At-Risk" properties at COMCOR 29.58.01.02.

COMCOR 29.61.01.01(h) Motor Vehicle Parking Fee

The Proposed Regulation at COMCOR 29.61.01.01(h) caps the amount of parking fees that owners can charge to tenants to "4% of the base rent for the unit." This cap is not authorized by the Rent Stabilization Law and it has no basis in economic reality, resulting in a cap that is far lower than parking rates that Montgomery County charges at its own parking garages. Additionally, as a policy it is inconsistent with both the Rent Stabilization Law and The Maryland-National Capital Park and Planning Commission's Thrive 2050 General Plan ("Thrive 2050").

Section 29-61(a) of the Rent Stabilization Law requires DHCA to issue regulations regarding "*fee increases or new fees* charged by the landlord to the tenant for a ***regulated rental unit***" (*emphasis added*). In most cases, capping parking fees is neither a "fee increase" nor does it constitute a "new fee." Indeed, Seasons LP has been charging a fee to tenants for the structured parking spaces situated in the Building ever since the original completion of the Building in 1970.

It also is not clear that parking charges are tied to any "regulated rental unit" since apartment

owners often separate out parking agreements from the rental of any particular apartment. To the extent that the Rent Stabilization Law authorizes DHCA to regulate parking fees, a point which is not at all clear, the delegation of authority *should be limited to regulation of future increases to existing parking fees* (e.g., limiting future increases to structured parking fees to align with the methodology for annual rent increases in Section 29-57 of the Rent Stabilization Law).

Moreover, the limitation of parking fees to four percent of an apartment's base rental amount would mean that if, for example, a tenant pays base rent for an apartment in the amount of $1,900 per month (a realistic rent for a studio apartment in Montgomery County, Maryland), the most that can be charged for an associated parking spot for that unit would be $76 per month—far below local market rates. In fact, under this example, the cap that would be applied to private landlords is *less than half of the parking fee that Montgomery County charges its own citizens at its own parking lots,* which is currently $195 per month for a monthly parking pass in the Bethesda and Silver Spring Parking Lot Districts. In the instance of The Seasons Apartments, which is located immediately adjacent to MCDOT PLD Lot 31, it is not fair, appropriate, or reasonable for DHCA to suggest that Seasons LP can only charge approximately **40%** of that which MCDOT charges for a parking space in the garage operated by the County located next door.

Further, limiting the amount that can be charged for a parking space to a percentage of the rent charged for an apartment actually *encourages* landlords to increase the rent charged for housing rental units, which is in direct contradiction to the purpose of the Rent Stabilization Law. It also creates a disparate fee for identical parking spaces based on unrelated factors; it unfairly penalizes renters who may rent a larger apartment due to family size and discourages landlords from offering smaller rental units for single individuals.

This wholesale reduction to parking fees also is inconsistent with Montgomery County's land use and environmental policies that discourage the use of private parking in favor of public transportation. For example, Thrive 2050 recommends that the County "[m]anage parking efficiently and equitably by charging market rates and reducing the supply of public and private parking where appropriate." *See* THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, THRIVE 2050 GENERAL PLAN 113 (Oct. 2022). Additionally, the plan recommends that "[r]educing the supply of parking – and the amount of land allocated to parking spaces – over time will increase the amount of space available for economically productive activity, reduce the cost of development, and relieve pressure on undeveloped land, all of which will enhance the county's economic and environmental performance." *Id*. at 118.

The Proposed Regulation, by imposing drastic reductions to the parking fees permitted to be charged by property owners, would in fact *encourage* the use of private motor vehicles. This is wholly inconsistent with, and will compromise, land use and environmental goals established by Thrive 2050.

Requested Revision

"[R]ules and regulations must be reasonable and consistent with the letter and spirit of the statute under which the agency acts." *McClanahan v. Wash. Cnty. Dep't of Soc. Servs*., 445 Md. 691, 708-09 (2015) (quoting *Paek v. Prince George's Cnty. Bd. Of License Comm'rs*, 381 Md. 583, 591

(2004)). Because the limitations on parking fees imposed by the Proposed Regulation at COMCOR 29.61.01.01(h) go beyond that contemplated by the Rent Stabilization Law, and on their face are unreasonable and at odds with the law's purpose and the County's own goals to encourage public transportation and limit the supply of parking, COMCOR 29.61.01.01(h) should be eliminated in its entirety.

COMCOR 29.58.01.04 Limited Surcharge for Capital Improvements

Section 29-58(d) of the Rent Stabilization Law permits apartment building owners to charge increased rent in the form of a "surcharge" to enable the owner to make capital improvements. It further directs that DHCA "*must grant* a landlord's petition to add a surcharge" so long as the owner complies with ten specific requirements, for example, that the owner has certified that required governmental permits and approvals have been granted. *See* Section 29-58(d)(10). While this framework is generally followed in the Proposed Regulation at COMCOR 29.58.01.04, there are certain gaps and inconsistencies within the approval process, and the standards by which the petitions will be evaluated, that will impose burdens on apartment building owners. We believe this will lead to uncertainty and possible decreases in capital improvement investments in rental properties.

(a) Efficient and Timely Review of Surcharge Petitions

While the Proposed Regulation at COMCOR 29.58.01.04(b)(4) states that "if a landlord fails to file all necessary documentation or respond in a timely manner to requests for additional information or documentation, the [DHCA] Director may deny the application," the language fails to provide any requirement that DHCA timely review and respond to such petitions. When financing capital improvements, an apartment owner must be able to timely respond to the requirements of its lenders and investors in order to make capital improvements financially viable. We recommend that COMCOR 29.58.01.04(b) be revised to provide a standard timeframe by which DHCA is required to review a capital improvement petition and respond to the apartment owner with either a request for additional information or with a determination.

Additionally, the Proposed Regulation at COMCOR 29.58.01.04(e)(6) and (10) imposes two different requirements. Paragraph (6) requires that a capital improvement petition include a certification "that the required governmental permits have been *requested or obtained*," whereas paragraph (10) requires "that the petitioner *has obtained* required governmental permits and approvals" (emphasis added). Not only is there an inconsistency here, but the language is too broad. It is not clear whether it requires there to be a building permit issued, or whether there must be final inspections approved and occupancy under the permit. An owner should only need the permit or approval for commencement of the work to submit the petition.

Moreover, the Proposed Regulation at COMCOR 29.58.01.04(c) prevents the recovery of the cost of a capital improvement through a rent surcharge if "the landlord makes the improvement … prior to approval of a capital improvement petition." The only exception to this rule is for capital improvements "immediately necessary to maintain the health or safety of the tenants." *See* Proposed Regulation, COMCOR 29.58.01.04(d).

We believe this language would have the effect of discouraging property owners from making capital improvements, for they would be disqualified from seeking a rent surcharge if they make improvements prior to submission of a petition. Owners should be able to make improvements to their properties and then obtain approval for the limited surcharge. Indeed, this process makes sense given the requirement that owners have a permit in hand before filing a petition, since as noted above, some permits and approvals can only be obtained *after* a capital improvement is completed.

Requested Revision

In order to address the gaps and inconsistencies in the Proposed Regulation relating to the review of rent surcharge petitions and the documentation that must be provided in advance of review, we suggest that (1) the Proposed Regulation at COMCOR 29.58.01.04(b)(4) provide DHCA with 10 calendar days from receipt of a petition to confirm that the petition is complete or request additional information, and another 10 calendar days to render a determination; (2) the Proposed Regulation at COMCOR 29.58.01.04(e) should make clear that only a permit or approval for commencement of work is required to submit the petition, and should also expressly permit owners to file petitions for work that has already been completed.

(b) Energy Efficiency Improvements

Section 29-58(d)(7) of the Rent Stabilization Law directs that capital improvements resulting in energy cost savings qualify for approval of a capital improvement surcharge petition so long as "the savings would be passed on to the tenant; and … either: (1) the improvements would result in net savings in the use of energy in the building; or (ii) the improvements are intended to comply with applicable law." We note that in the Proposed Regulation at COMCOR 29.58.01.04, there is no explanation or guidance as to what would be considered to be "applicable law," and in particular there is no mention as to Montgomery County's policies relating to Building Energy Performance Standards ("**BEPS**") that implement Montgomery County's so-called Benchmarking Law.

Requested Revision

In order to provide clarity, the Proposed Regulation at COMCOR 29.58.01.04 should state that capital improvements undertaken to comply with Montgomery County policies, including but not limited to the BEPS, will qualify as "applicable law" in support of a surcharge petition.

Conclusion

The Proposed Regulation is an important step toward enhancing affordable housing in Montgomery County. However, we believe that in many respects the language can be improved.

As an initial matter, any decision on the treatment of "At-Risk" properties and their eligibility to institute rent increases should be made through legislation, as was done for "Troubled" properties. We urge the Council to recognize the clear differences between these two different types of properties, particularly since owners of "At-Risk" properties are not even provided with notice as to their status and there is no guidance provided for seeking removal of that designation.

For the provisions relating to parking fees, we believe that they should be removed in their entirety, for there is no clear mandate for addressing parking charges in the Rent Stabilization Law. Moreover, the limitation on charges are far below market rate (even considering the parking fees the County charges in its own facilities). Setting parking fees at below-market rates is at odds with policies to discourage the use of automobiles in favor of public transportation.

The Proposed Regulation also needs to be drafted in such a way to promote the ability of apartment owners to engage in capital improvements and to have those financial investments play a role in setting rent amounts.

We believe that with the amendments proposed above, the Proposed Regulation would help to achieve the important goal of providing affordable housing for Montgomery County residents while encouraging reinvestment in existing housing and the production of new housing in the County.

We appreciate your consideration of our remarks, and look forward to the opportunity to work with DHCA, the County Council, and other stakeholders on improvements to the Proposed Regulation.

Sincerely,

David M. Landow
On behalf of The Seasons, a Maryland Limited Partnership

Copy: PHP Committee (Councilmember Friedson, Fani-Gonzalez and Jawando)
Jackie Hawksford, jackie.hawksford@montgomerycountymd.gov

Bruton, Scott

From: Anthony Rakusin <ARakusin@rbmgt.com>
Sent: Friday, March 1, 2024 3:49 PM
To: McCartney-Green, Ludeen; Councilmember.Abornoz@montgomerycomd.gov; Fani-Gonzalez's Office, Councilmember; Balcombe's Office, Councilmember; CouncilmemberFriedson@montgomerycountymd.gov; CouncilmemberGlass@montgomerycounty.gov; Jawando's Office, Councilmember; Katz's Office, Councilmember; Coucilmember.Luedtke@montgomerycountymd.gov; Mink's Office, Councilmember; Sayles's Office, Councilmember; Stewart's Office, Councilmember; Bruton, Scott
Subject: Opposition to Rent Control

[EXTERNAL EMAIL]

I am a member of the Stakeholder's Coalition. The Coalition has prepared a document which offers technical changes to the Rent Stabilization Bill to attempt making it somewhat more practical and feasible to accomplish. While I admire the attempt to streamline and make equitable changes, even if accepted the Bill, however, still remains a cumbersome, convoluted, administrative nightmare which will require major increases to the staff to process all the applications and there will still be a bottleneck for approval or denial of the applications and inspections.
As an owner and manager of The Topaz House for the past 30 years I am appalled and frustrated by Montgomery County's wrong headed attack on properties which are 23 years old and older. This is an arbitrary number which may have nothing to do with the condition of the building. What is important is how well the building and apartment units have been cared for, updated and maintained. A well cared for older building already offers an affordable alternative to the new and newer buildings in Bethesda which are extremely expensive by comparison. Such older buildings as ours may not have all the glitz and glamour of the newer buildings but if maintained and updated, which requires enough revenue to make a profit and still reinvest in the property, it can be a close but affordable alternative to the new properties and usually with substantially larger units and closet/storage space. We work very hard to keep our building clean and attractive, taking care of any functional issues so things are always working properly, making enhancements whenever possible, renovating our units with upgrades etc.. As an older property in a competitive market we are compelled to keep our building as functional and attractive as possible while still offering a relatively affordable rent when compared to newer buildings. All the regulations being imposed on older properties will distort the competition that exists naturally in a Capitalist system.
This is an example of Government overreach and instead of an even playing field the Council is attempting to put a finger on the scale against 23 year old properties and inadvertently creating the opposite of the desired effect of creating more affordable housing. This will actually reduce the amount of affordable housing for the following reasons;

1. Older properties will have less money and incentive to maintain and/or enhance their properties if they can't get a reasonable rate of return on the invested funds. They will deteriorate.
2. Montgomery county will have a reputation for overbearing control of the housing market with rules making it impossible to get a decent return on investment discouraging developers and lenders to put more money at risk in Montgomery County.
3. Multifamily properties will turn to condominiums further reducing the size of the rental housing market.
4. Property values will decrease reducing property taxes and therefore reducing County Tax Revenue which will have a much larger overhead due to the staff required for processing applications and inspections.
5. The process as outlined will be backlogged making it difficult for properties to plan renovations or repairs and keep their tenants apprised.

Anthony Rakusin
President, Topaz House Inc.
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March 1, 2024

Via Email (Scott.Bruton@montgomerycountymd.gov)
Mr. Scott Bruton
Department of Housing and Community Affairs
1401 Rockville Pike, 4th Floor
Rockville, Maryland 20852

Re: Comments on Draft County Executive Regulation No. 2-24: Proposed Montgomery County Department of Housing and Community Affairs Regulation – Rent Stabilization (Implementing Montgomery County Council Bill No. 15-23: Landlord-Tenant Relations – Rent Stabilization – the "Bill")

Dear Mr. Bruton:

On behalf of White Flint Plaza LLC ("WFP"), we are submitting this letter with our comments on Draft County Executive Regulation No. 2-24 (the "Draft Regulation"). WFP owns property in the North Bethesda/White Flint area of Montgomery County, and their parent entity owns property throughout the County. They have been following the Bill and proposed Draft Regulation carefully. Their most significant concerns relate to the substantial renovation provisions and the highly prescriptive permitted fees. They are also seeking clarification regarding how the annual rent increase allowance applies to multi-year leases.

Regarding the substantial renovation provisions, while we recognize that the definition of this term comes from the Bill rather than the Draft Regulation ("[s]ubstantial renovation means permanent alterations to a building that: (1) are intended to enhance the value of the building; and (2) *cost an amount equal to at least 40 percent of the value of the building, as assessed by the State Department of Assessments and Taxation*") (emphasis added), we feel that it is important to raise our concern that this is a very high qualifying threshold. For a building that has $100 million in assessed value, this means that the renovation must cost at least $40 million. Renovations of such scale are extremely rare, and so it is unlikely that most typical renovations on buildings would even qualify for this.

That fact notwithstanding, per Section 29.60.01.10(a) of the Draft Regulation, the Director only determines after the renovations are complete, based on an affidavit submitted by the landlord, whether the renovations have been completed according to the substantial renovation application, and it is then the date of filing of the affidavit that is the approved exemption date. While Section 29.60.01.01(c) states that "[t]he Director must review the application and supporting documentation and must issue and notify the landlord of a decision approving or denying the exemption," there is no specified timeframe for that action in that Section, and thus it appears that approval in fact only occurs after the renovation is already complete.

WIRE GILL LLP

Heather Dlhopolsky
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This begs the question of why anyone would choose to renovate a building, especially when such renovation must cost at least 40% of the building's assessed value to qualify, without having a decision up front that the application has been approved. While WFP certainly understands the need for filing an affidavit upon completion attesting that the renovations have occurred in accordance with the application, there can be no uncertainty at that time as to whether the application will be approved. Approval must be issued before anyone would consider undertaking the contemplated renovation and we recommend that the Draft Regulation be revised accordingly.

WFP also has significant concerns regarding the fees proscribed in Section 29.61.01.01. Broadly speaking, the proposed fees are far under market and well under what these services actually cost landlords to provide. And given that new buildings would not be subject to these fee provisions for 23 years until they become a "regulated unit," these fees will be outrageously low at that time. These fees should be updated annually by the County, just as the rent increase allowance will be updated annually by the County, based on actual expenses and market conditions.

With regard to the pet fee specifically, this proposed fee is far too low. Remedying a unit after a pet moves out is a major expense, as pets often do significant damage to a unit and many things have to be replaced and corrected. In the end, if a landlord hopes to lease the unit again the unit must be brought to the point where the next tenant has no idea that a pet ever lived there.

The parking fees also need further consideration and revision. There are very different markets for parking, and in some markets parking may simply be offered for free, while in other places what the market dictates is far higher than what the Draft Regulation proposes.

Lastly, Section 29.58.01.01(b) addresses how the rent increase allowance applies to multi-year leases. This provision is not quite clear, and we suggest that an example would be helpful to include for clarity and consistent application moving forward.

Thank you for your consideration of our comments. Please do not hesitate to contact us should you have any questions or require any additional information.

Sincerely,

Wire Gill LLP

Heather Dlhopolsky

Heather Dlhopolsky

cc: Jackie Hawksford, Montgomery County
Aisha Hill, White Flint Plaza LLC
Alan Henderson, White Flint Plaza LLC

Subject: Willard Tenants Association Comments on Rent Stabilization Regulations (Register Vol. 41, No.2)

Director, Department of Housing and Community
1401 Rockville Pike
4th Floor
Rockville, Maryland 20852
Attn: Jackie Hawksford (Jackie.hawksford@montgomerycountymd.gov)

We thank you for the opportunity to comment on the critical proposed regulations to establish the procedures for Rent Stabilization. Our comments focus on the surcharge for capital improvements, the listing of applicable fees, and the need for an explicit and responsive tenant complaint process.

Section 29.58.01.04 Limited Surcharge for Capital Improvements,

W*e strongly urge retention and careful enforcement of provision (e) (3) of the regulations to ensure the capital improvements submitted to justify a rent surcharge do not include the costs of ordinary repair or maintenance of existing structures*. Our apartments at 4701 Willard were built in the mid-1960's and we have the original elevators that are now scheduled to be replaced. The cost of replacing these elevators should be counted as ordinary maintenance and repair of existing structures and not included as a capital improvement. Similarly, the landlord recently replaced our boiler which was necessary because of frequent malfunctions and hot water shutoffs. This replaced boiler should not be listed as a capital improvement. More generally, your office needs to pay careful attention to the submitted list of capital improvements in older apartment buildings to ensure that the capital improvements do not include the costs of long overdue ordinary repairs.

One of the best protections you have in ensuring that the proposed capital improvements are in fact meaningful improvements is a transparent process whereby residents in the building are provided with a copy of the capital improvement application and have an opportunity to comment on the building's application. We urge adding a provision to give residents a review and comment opportunity on all capital improvement aplications.

Section 29.61.01.01 Applicable Fees

It is critical to the integrity of the rent stabilization legislation that the landlord's imposition of new fees not be used as hidden charges that could offset the formula limitations established for annual rent increases. To this end, we strongly urge retention of the approach stated in the regulations that *"A landlord of a regulated rental unit must not assess or collect any fee or charge from any tenant in addition to the rent except for the following permitted fees:*"

To illustrate fee creep, among a number of new fees our landlord has imposed or is proposing in its buildings is a monthly fee for the cost of exterminators. The landlord should be providing

this as an essential service for the building to be livable and pest and rodent free. Also being proposed is an "Energy conservation Fee" without an explanation as to what services justify this fee and what are their costs.

We do suggest that under the list of applicable fees you add the Conservice utility fees. The Rubs regulation already allows a monthly administrative fee of $1 for water and sewer. We urge your regulations to also add a similar fee limit of $1 on the gas utility administration fee. Residents in our building are now being charged a $4.75 gas utility fee. There is no justification for a fee higher than the $1 allowed under RUBS for water and sewer administration costs, as the monthly cost to administer the gas utility bill is not higher than for water and sewer.

Note that the proposed rent stabilization regulations prohibit landlords from collecting a fee in connection with the tenant having a pet but allow the levying of a pet deposit not exceeding $100. This pet deposit can be used by the landlord to pay for costs incurred by the landlord as a result of damages from a pet. The Office of Landlord-Tenants' Affairs (OLTA) language currently prohibits the landlord from charging a pet fee or a pet deposit. We recommend using the fee language in the rent stabilization bill which permits a landlord to charge a pet owner up to a $100 deposit. Having this deposit, the landlord has a ready mechanism for levying a fine on a pet owner by drawing down the deposit if a pet owner fails to clean-up after his/her pet.

We further propose that leases should display in one place along with their monthly rent a list of all potential fees with charges expressed on a per month basis like rents. Fees are attractive to landlords because they are hidden and spread throughout a lease. While individually some fee items may be small dollar amounts, they collectively can add up to an important cost to tenants on top of their rent. Having all the potential fees listed in one place along with the monthly rent would achieve the desired fee visibility.

An Explicit Complaint Process

To elaborate on our comment above on transparency of the capital improvement regulation, we urge that you establish an explicit compliance process in your office along with an entity to receive and rule on tenants' complaints. The ruling on tenants' complaints should be binding on landlords. A strong and prompt complaint process is essential to the integrity of implementation of the rent stabilization bill.

We appreciate the effort of Montgomery County to create stable and equitable rents for all and the adoption of clear and strong regulations will help achieve these goals.

Alan Ginsburg
Chair, Willard Tenants Association (4701 Willard, Chevy Chase, Md. 20815)
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