

**EXECUTIVE REGULATION CLEAN COPY**



# MONTGOMERY COUNTY EXECUTIVE REGULATION

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

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

Montgomery County Regulation on:

## LANDLORD-TENANT RELATIONS - RENT STABILIZATION

Issued by: County Executive

COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01, 29.62.01

Authority: Code Sections 29-58, 29-59, 29-60, 29-61, 29-62

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.

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

### **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.
- (c) Unused rent increase allowances under (b) may be banked under Section 29-58(a) of the Code.

#### **29.58.01.02 Rent Increases for Troubled or At-Risk Properties**

- (a) If the landlord of regulated rental units located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code meets the following conditions before the property's next scheduled inspection under COMCOR 29.40.01, the Director must remove the Troubled or At-Risk Property designation.
  - (1) For properties designated as Troubled:
    - (A) all violations identified during the initial inspection must be corrected by the landlord and verified by the Department;
    - (B) the landlord must submit to the Department a corrective action plan, as defined in COMCOR 29.40.01.02(a), that meets the Department's approval;
    - (C) the landlord must submit a minimum of two quarters of maintenance logs to the Department under COMCOR 29.40.01.04(k)(3); and
    - (D) a reinspection of the property determines that the SV and TV scores do not result in a designation as a Troubled or At-Risk Property under COMCOR 29.40.01.



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- (2) For properties designated as At-Risk:
  - (A) all violations identified during the initial inspection must be corrected by the landlord and verified by the Department; and
  - (B) a reinspection of the property determines that the SV and TV scores do not result in a designation as a Troubled or At-Risk Property under COMCOR 29.40.01.

(b) 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. If a landlord or 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 is unable to meet the requirements of COMCOR 29.58.01.02(a), the landlord may submit a fair return application under Section 29-59 of the Code.

- (1) If the Director approves the fair return application, the landlord may 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.
- (2) If the Director denies the fair return application, 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 Units**

- (a) If a unit becomes vacant after the effective date of these regulations, 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 regulated rental unit was vacant before these regulations became effective, then upon return to the market, the landlord may set the base rent in the landlord's discretion. 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.

### **29.58.01.04 Limited Surcharge for Capital Improvements**



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- (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 Capital Improvement Petitions.
  - (1) Filing. The Capital Improvements Petition, in the form published by the Director, and one copy of supporting documents, must be filed with the Department.
  - (2) Notice to Tenants of Filing. The landlord must notify each affected tenant of the filing of the Capital Improvement Petition by sending a copy of the Capital Improvement Petition (excluding supporting documentation) by first-class mail and electronic mail, within five business days of the filing.
  - (3) Petition Processing. Within 30 days of receiving a Capital Improvement Petition, the Director must 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 and identify the missing information or documentation. If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Capital Improvement Petition by written notice to the landlord.
  - (4) Preliminary Decisions. Within 60 days after receiving a complete Capital Improvement Petition, the Director must review the petition and issue a preliminary decision, either approving or denying the petition. The decision must include a reasoning and, if applicable, the allowable surcharge for capital improvements in accordance with the phasing schedule set forth in the Capital Improvement Petition (“Preliminary Approval”).
  - (5) Material Change. If there is any material change in the scope, phasing, pricing, or other matter set forth in the Capital Improvement Petition, the landlord must submit to the Director a supplement to the Capital Improvement Petition (“Supplement”) including any revisions to the recommended surcharge for capital improvements, if any, to be allowed in accordance with the phasing schedule set forth in the Capital Improvement Petition. Within 30 days after receiving the Supplement, the Director must notify the landlord of a decision stating the reasons for the approval or denial of the Supplement, including any revisions to the recommended surcharge for capital improvements.



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- (6) 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, the landlord must 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 surcharge for capital improvements (“Reconciliation Package”). Within 30 days after receiving the Reconciliation Package, the Director must issue and notify the landlord of a decision identifying the approved surcharge for capital improvement by unit applicable to the completed project or phase.
- (7) Notice to Tenants of Decision. The landlord must by first class mail and electronic mail, notify all affected tenants of the decision within 5 business days of the receipt of the decision.
- (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 before 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, safety, and security 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 certifying:
- (1) that the subject improvements are capital improvements;
  - (2) whether the 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;
  - (5) whether the capital improvements will result in energy cost savings that will be passed on to the tenant and will either result in a net savings in the use of energy in



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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 surcharge for capital improvements;

- (6) the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;
  - (7) the estimated costs of the capital improvements, including any interest and service charge;
  - (8) the dollar amounts, percentages, and time periods computed by following the instructions listed in (f);
  - (9) all regulated units are properly registered and licensed with the Department; and
  - (10) the planned phasing schedule for the capital improvements, if applicable.
- (f) The Capital Improvement Petition must contain comprehensive calculations for 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 calculated in accordance with the phasing schedule, if applicable;
  - (2) the dollar amount of the surcharge for capital improvements for each regulated rental unit in the rental housing and the percentage increase above the base rents charged as of the date of the Capital Improvement Petition; and
  - (3) the estimated duration of the surcharge for capital improvements 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 capital improvement, in accordance with (i);
  - (2) any interest that must accrue on a loan taken by the landlord to make the capital improvement, in accordance with (j); plus



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- (3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the capital improvement, in accordance with (k).
- (h) The interest and service charge on, “a loan taken by the landlord to make the capital improvement” is the portion of any loan that is specifically attributable to the costs incurred to make the capital improvement, in accordance with (l). The dollar amount of the calculated interest and service charge 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 of the capital improvement. The total cost of a capital improvement must be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is received by a landlord from or guaranteed by a governmental program for the purposes of making the subject capital improvement.
- (j) The interest on a loan taken to make a 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 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. The average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately before the effective date of the surcharge 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 for the purposes of the Capital Improvement Petition must be calculated using the actual rate of the loan over its term, provided that if the Capital





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Improvement Petition is submitted before the expiration of the loan term, the total interest rate for any unexpired term of the loan must 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 loan, any 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 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 for capital improvements requested or allowed by a 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, in accordance with (g); divided by
  - (2) the sum of the monthly surcharges for capital improvements permitted by Sections 29-58(d)(3) and (4) of the Code on each affected regulated rental unit.
- (n) A surcharge for capital improvements 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 include 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 capital improvement, until the capital improvements are complete.
- (p) A Capital Improvement Petition, as filed with the Director, must include a listing of each rental unit in the housing accommodation, identifying:
  - (1) which regulated rental units will be affected by the capital improvements;
  - (2) the base rent for each affected regulated rental unit, and any other approved surcharges for capital improvements; and



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- (3) the dollar amount of the proposed surcharge for capital improvements for each regulated rental unit and the percentage by which each surcharge for capital improvements exceeds the current rents charged as of the date of the Capital Improvement Petition.
- (q) A decision authorizing a surcharge for capital improvements 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 regulated rental unit; provided that if the capital improvement work renders the unit uninhabitable beyond the expiration of time, the surcharge for capital improvements may be implemented when the unit is reoccupied. The amount of the surcharge for capital improvements must be clearly identified as an approved surcharge for capital improvements in the new lease or in the lease renewal and may not be implemented during the lease term.
- (r) Not less than 90 days before the expiration of an authorized surcharge for capital improvements a landlord may request to extend the duration of the surcharge for capital improvements by filing an application with the Director and serving each affected regulated rental unit with notice by first-class mail and electronic mail, if, within five business days that the total cost of the capital improvement has not been recovered during the originally approved period of the surcharge for capital improvements and requesting to extend the approval (“Certificate of Continuation”). The application for a Certificate of Completion must be deemed complete when delivered to the Director unless within ten business days after receiving the Certificate of Continuation, the Director notifies the landlord in writing of missing or incomplete information or documentation. If the landlord fails to provide the missing or incomplete information or documentation to the Director within ten business days after receipt of the notice, the Director may reject the Certificate of Continuation.
- (s) A Certificate of Continuation must set forth:
- (1) the total cost of the capital improvements 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 surcharge for capital improvements within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;



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- (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 improvements by extension of the duration of the surcharge for capital improvements.
- (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 (s)(1) and (2). If the Director approves the Certificate of Continuation, the landlord must notify each affected tenant by first-class mail and electronic mail, within five business days of the receipt of the Director's notice of approval.
- (u) If the Director does not issue a decision before the expiration of the surcharge for capital improvements, the landlord may continue the implementation of the surcharge for capital improvements 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 is a final order to the landlord to pay a rent refund to each affected tenant in the amount of the surcharge for capital improvements that has been demanded or received beyond its original, approved duration in which it was implemented, and, if the surcharge for capital improvements remains in effect, to discontinue the surcharge.
- (v) A surcharge for capital improvements implemented pursuant to an approved Capital Improvement Petition may be extended by Certificate of Continuation no more than once.
- (w) If a Capital Improvement Petition is denied by the Director, the property may not file a subsequent petition for six months following the issuance of a denial.

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

### **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.



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## 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) “Base Year” means the year immediately prior to the year the unit became a regulated unit per requirements of Chapter 29 of the Code.
- (c) “Current Year” means either the calendar year (January 1<sup>st</sup> to December 31<sup>st</sup>) or the fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) immediately preceding the date that the Fair Return Application required in Section 29.59.01.04 is filed.
- (d) “Current Year CPI-U” means either:
  - (1) if the Current Year is a calendar year, the Current Year CPI-U is the annual CPI-U for that year; or
  - (2) if the Current Year is a fiscal year, the Current Year CPI-U must be the CPI-U for December during the current year.
- (e) “Gross Income” means the annual scheduled 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 Fair Return Application.
- (f) “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 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:



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- (A) actual operating expenses to be offset through a fair return rent increase; or
  - (B) returns on investments equal to real estate investment risk premium of three percent (3%) plus the annual yield on the ten-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 the CPI-U.
- (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 regulated rental unit in the rental housing must be subject to the same percentage increase.
- (1) Except as provided herein, a fair return 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. 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.
  - (2) 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.
  - (3) If a rental unit requiring a 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 landlord may 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 an application for a fair return 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 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:



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- (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; and
  - (3) all Banked Amounts have been applied to regulated rental units.
- (d) Fair Return Application Requirements. A Fair Return Application must include the following information and must be submitted in a form 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 to confirm the 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 no more than three years in the past. The approval must be secured in writing from the Director before 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 tax returns, 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



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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; and
- (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 must be filed with the Department.
- (b) Notice to Tenants of Filing. Within five business days of filing the Fair Return Application, the landlord must notify each affected tenant of the filing by first-class mail and electronic mail, providing each tenant a copy of the Fair Return Application (excluding supporting documentation).
- (c) Fair Return Application Processing. Within 30 days of receipt of a Fair Return Application, the Director must review the Fair Return Application and supporting documentation and notify the landlord in writing that:
  - (1) the Fair Return Application is complete; or
  - (2) the Fair Return Application is incomplete, identifying specifically the missing information or documentation.



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If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Fair Return Application by written notice to the landlord.

- (d) Decision on a Fair Return Application. The Director must review the Fair Return Application and within 60 days after receiving the Fair Return Application 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.
- (e) Notice to Tenants of Decision.
  - (1) The landlord must distribute a copy of the decision to each affected tenant by first-class mail and electronic mail, within ten business days of the date of the Director's approval of the Fair Return Application together with posting in common areas of the rental housing.
  - (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 fair return increase authorized by the Department. 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 the following items:





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- (A) utilities paid by the landlord, except to the extent these costs are passed through to the tenants;
  - (B) administrative expenses, such as advertising, legal fees, accounting 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 Annual CPI-U 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 six percent (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 over the useful life as determined by the Internal Revenue Service. 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. The average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately before the completion of the renovation;
  - (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:



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- (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) payments made for mortgage expenses, either principal or interest;
- (C) judicial and administrative fines and penalties;
- (D) damages paid to tenants as ordered by Office of Landlord-Tenant Affairs issued determination letters or consent agreements, Commission on Landlord-Tenant Affairs, 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.



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- (c) Base Year Net Operating Income. A landlord may request to adjust the Base Year Net Operating Income if the Net Operating Income for the Base Year was abnormally low and did not reflect market circumstances. The Director must adjust the Base Year Net Operating Income if the Director makes 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 capital improvements during or before the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a surcharge for capital improvements for these capital improvements;
    - (B) substantial repairs were made to the rental housing due to exceptional circumstances or new laws;
    - (C) other expenses were unreasonably high, notwithstanding prudent business practice; or
    - (D) other exceptional circumstances exist requiring equitable adjustment to the Base Year Net Operating Income.
  - (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 that establish that the rent was not set as the result of an arms-length transaction.

## **29.59.01.07 Fair Return Rent Increase Duration**



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- (a) Duration. Except as provided in 29.59.01.03(b), a rent increase established under an approved Fair Return Application remains in effect for each regulated rental unit for a 12-month period.
  - (1) No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a regulated rental unit for the 12-month period during which the regulated rental unit is subject to a rent increase pursuant to a Fair Return Application (as such rent increase includes any annual rent increase allowance).
  - (2) A landlord may simultaneously charge a surcharge for capital improvements and fair return rent increase if approved or otherwise allowed in accordance with these regulations.
- (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 Fair Return Application must constitute the Base Year income, expenses, and Net Operating Income for those regulated rental units included in the finding of fair return for purposes of reviewing subsequent Fair Return Applications.
- (c) Limitations on Future Fair Return Requests.
  - (1) If a Fair Return Application is approved by the Director, the 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 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 - REGULATIONS

### COMCOR 29.60.01 Title Substantial Renovation Exemption

#### 29.60.01.01 Application for a Substantial Renovation Exemption

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



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- (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, 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), exclusive of land value, as assessed by the State Department of Assessments and Taxation;
  - (4) a schedule showing all regulated rental units in the rental housing to be 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 and electronic mail, a copy of the application (excluding supporting documentation) to the tenants of all units in the rental housing for which the application has been filed with the Director.
- (c) Substantial Renovation Application Processing. Within 30 days of receipt of a Substantial Renovation Application, the Director must review the Substantial Renovation Application and notify the landlord in writing that:
- (1) the Substantial Renovation Application is complete; or
  - (2) the Substantial Renovation Application is incomplete, identifying specifically the missing information or documentation.

If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Substantial Renovation Application by written notice to the landlord.

- (d) Decisions on Substantial Renovation Application. The Director must review the Substantial Renovation Application within 30 days of notifying the landlord that their application is complete and notify the landlord of either a Preliminary Substantial Renovation Application Approval or disapproval with reason(s) in the case of disapproval.
- (e) The landlord must notify all affected tenants of a Preliminary Substantial Renovation Application Approval within ten business days of the receipt of the decision by first-class



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mail and electronic mail.

- (f) Substantial Renovation Application Supplement. If there is a material change in the scope, price, or other matter set forth in the Substantial Renovation Application, the landlord must submit the change(s) to the Director as a Substantial Renovation Application Supplement. Within 30 days after receiving a Substantial Renovation Application Supplement, the Director must issue and notify the landlord of a decision stating the approval or disapproval with reason(s) in the case of disapproval.
- (g) Final Reconciliation. Upon completion of the substantial renovations set forth in the Substantial Renovation Application and approved in a Preliminary Substantial Renovation Application Approval and Substantial Renovation Application Supplement, the landlord must submit a final Substantial Renovation Application Reconciliation Package to the Director identifying the actual costs of the completed substantial renovations with supporting documentation identifying the completion date of the substantial renovations. Within 30 days after receiving the Substantial Renovation Application Reconciliation Package, the Director must issue and notify the landlord of a decision confirming the final approval of the Substantial Renovation Application and the effective date of the exemption. Notwithstanding the foregoing, the Director’s review of the Substantial Renovation Application Reconciliation Package must not contradict any prior approval of a Preliminary Substantial Renovation Application Approval or Substantial Renovation Application Supplement provided that it is consistent with the Preliminary Substantial Renovation Application Approval and Substantial Renovation Application Supplement approval.

### **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 any loan or debt taken by the landlord to make the improvement or renovation, in accordance with Section 29.60.01.06.

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



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For the purposes of calculating interest and service charges, “any loan or debt 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 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 probative of the actual, commercially reasonable costs of the 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 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 renovation, or on that portion of a multi-purpose loan of money used to make the 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. The 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), 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**



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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 setup 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 building(s), exclusive of land value, by considering the following:

- (a) the existing physical condition of the rental housing;
- (b) whether the existing physical condition impairs or tends to impair the health, safety, and security of any tenant;
- (c) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair; and
- (d) whether the proposed renovations are optional or cosmetic changes.

## **29.60.01.10 Implementation of a Substantial Renovation Exemption**

- (a) The substantial renovation exemption must be effective on the date of the Director's approval of the Substantial Renovation Application Reconciliation Package, unless the Department determines that the landlord seeking the exemption is in violation of Chapters





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8, 26, or 29 of the Code. In such case, the exemption must be effective on the date that the Department determines that the landlord is not in violation of Chapters 8, 26, or 29.

- (b) Once a decision approving a substantial renovation exemption has been issued, the exemption must be implemented within 12 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 - REGULATIONS**

### **COMCOR 29.61.01 Fees**

#### **29.61.01.01 Applicable Fees**

- (a) Regulated Fees. Except as provided in subsection (b) and as otherwise permitted by law, including regulations, landlords are limited to charging the following fees on regulated rental units:

- (1) Application fee.

In accordance with Section 8-213 of the Real Property Article, Annotated Code of Maryland, a landlord of a regulated rental unit must not retain a fee or charge a fee of more than the landlord's actual cost for a credit check and other expenses arising out of the application for rental of the regulated rental unit.

- (2) Late fee.

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

- (3) Pet fee.

- (A) A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the landlord may require the tenant of the unit to pay a \$25 monthly pet fee per pet and maintain with the landlord during each rental term a pet deposit not exceeding \$300. The pet deposit must be held in escrow by the owner. The Department must increase the maximum allowed monthly pet fee and the maximum allowed pet deposit annually by the CPI-U.



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- (B) 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 in the regulated rental unit relating to the presence of the pet(s). The tenant may choose to use any balance toward a deposit for an ensuing lease term.
- (C) 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.

- (4) Lost key fee.

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

- (5) Lock out fee.

A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any lockout fee or charge exceeding \$25. The Department must increase the maximum allowed fee annually by the CPI-U. In the event the landlord engages a third-party service provider for the lockout service, the landlord may charge the tenant a fee not exceeding the actual charge incurred for the service. The landlord must provide a tenant with verifiable documented evidence detailing the actual costs associated with the service.

- (6) Secure storage unit accessible only by tenant.

A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any fee or charge for storage located within or attached to or associated with the unit.

- (7) Internet or cable television.

- (A) A landlord must not require a tenant of a regulated rental unit to pay an internet or cable television fee. If a tenant voluntarily opts for either service, the landlord must bill the tenant no more than the amount that the internet or cable television provider charges the landlord, without any



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additional fees. If multiple tenants opt into the service, the landlord must divide the cost to the landlord of the internet or cable television equally by the number of units opting into the service. The fee cannot include any common area services.

- (B) A landlord must provide a tenant of a regulated rental unit documentation of the total cost paid by the landlord for internet or cable television service and the calculation of the fee charged to the tenant.
- (8) Motor vehicle or motorcycle parking fee.
  - (A) A landlord must not impose a parking fee on a tenant of a regulated rental unit unless the tenant has expressly opted to use the parking facilities.
  - (B) A landlord of a regulated rental unit must not increase the fee for parking spaces for motor vehicles or motorcycles, as defined in Section 31-1 of the Code, more than once in a 12-month period.
  - (C) Upon a lease renewal or new lease agreement for a parking space, a landlord must not increase the fee for the parking space to an amount greater than the current fee for the parking space plus CPI-U.
  - (D) A landlord of a regulated rental unit who has not previously charged a fee for motor vehicle or motorcycle parking spaces must not charge a fee for such parking unless the landlord provides documentation to the Director demonstrating that the base rent is insufficient to allow the landlord to recover all costs related to the provision of parking. If the Director determines that the base rent is insufficient for the landlord to recover the foregoing costs, the Director must notify the landlord that tenants using the parking facilities may be charged an amount that will allow the landlord to recover its operating costs related to parking. The amount of the fee must not exceed 10% of the lowest base rent for a regulated rental unit at the property. After the parking fee has been established, any fee increase must be determined under (B) and (C).
  - (E) This Section does not require a landlord to charge rent or fees for motor vehicle or motorcycle parking.
- (9) Bicycle parking fee.



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

(b) Exceptions.

- (1) A landlord may charge fees for unregulated optional services, not listed in subsection (a), and opted into by the tenant.
- (2) For purposes of this Section an optional service does not include a service required to ensure unit access, maintenance, or lease compliance.

(c) Implementation.

- (1) Fees may not be implemented during the lease term unless they relate to an optional service opted into by the tenant.
- (2) Regulated fees in subsection (a) and fees that fall under the exception in subsection (b) may only be increased once in a 12-month period and require a 90-day written notice.
- (3) Landlords must comply with this Section within ninety days after the effective date of these regulations.

## MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-62 RENT STABLIZATION DATA COLLECTION - REGULATIONS

### COMCOR 29.62.01 Enforcement

#### 29.62.01.01 Enforcement

These regulations may be enforced in accordance with Section 29-8 of the Code.

Approved:

\_\_\_\_\_  
Marc Elrich, County Executive

\_\_\_\_\_  
Date




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Approved as to form and legality:

By:   
Walter E. Wilson

Date: 6/13/24

**EXECUTIVE REGULATION BRACKETED COPY**



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Montgomery County Regulation on:

## LANDLORD-TENANT RELATIONS - RENT STABILIZATION

Issued by: County Executive

COMCOR 29.58.01, 29.59.01, 29.60.01, 29.61.01, 29.62.01

Authority: Code Sections 29-58, 29-59, 29-60, 29-61, 29-62

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  
4<sup>th</sup> Floor  
Rockville, Maryland 20852

**STAFF CONTACT:** [jackie.hawksford@montgomerycountymd.gov](mailto:jackie.hawksford@montgomerycountymd.gov)



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

### 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.
- (c) Unused rent increase allowances under (b) may be banked under Section 29-58(a) of the Code.

#### 29.58.01.02 Rent Increases for Troubled or At-Risk Properties

- (a) If the landlord of regulated rental units located in a property designated by the Department as Troubled or At-Risk under Section 29-22(b) of the Code meets the following conditions before the property's next scheduled inspection under COMCOR 29.40.01, the Director must remove the Troubled or At-Risk Property designation.
  - (1) For properties designated as Troubled:
    - (A) all violations identified during the initial inspection must be corrected by the landlord and verified by the Department;
    - (B) the landlord must submit to the Department a corrective action plan, as defined in COMCOR 29.40.01.02(a), that meets the Department's approval;
    - (C) the landlord must submit a minimum of two quarters of maintenance logs to the Department under COMCOR 29.40.01.04(k)(3); and
    - (D) a reinspection of the property determines that the SV and TV scores do not result in a designation as a Troubled or At-Risk Property under COMCOR 29.40.01.





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(2) For properties designated as At-Risk:

(A) all violations identified during the initial inspection must be corrected by the landlord and verified by the Department; and

(B) a reinspection of the property determines that the SV and TV scores do not result in a designation as a Troubled or At-Risk Property under COMCOR 29.40.01.

(b) 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. If a landlord or 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 is unable to meet the requirements of COMCOR 29.58.01.02(a), the landlord may submit a fair return application under Section 29-59 of the Code.

(1) If the Director approves the fair return application, the landlord may 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.

(2) If the Director denies the fair return application, 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 Units**

(a) If a unit becomes vacant after the effective date of these regulations, 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 regulated rental unit was vacant before these regulations became effective, then upon return to the market, the landlord may set the base rent in the landlord's discretion. 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.

### **29.58.01.04 Limited Surcharge for Capital Improvements**



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- (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 Capital Improvement Petitions.
- (1) Filing. The Capital Improvements Petition, in the form published by the Director, and one copy of supporting documents, must be filed with the Department.
  - (2) Notice to Tenants of Filing. The landlord must notify each affected tenant of the filing of the Capital Improvement Petition by sending a copy of the Capital Improvement Petition (excluding supporting documentation) by first-class mail and electronic mail, within five business days of the filing.
  - (3) Petition Processing. Within 30 days of receiving a Capital Improvement Petition, the Director must 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 and identify the missing information or documentation. If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Capital Improvement Petition by written notice to the landlord.
  - (4) Preliminary Decisions. Within 60 days after receiving a complete Capital Improvement Petition, the Director must review the petition and issue a preliminary decision, either approving or denying the petition. The decision must include a reasoning and, if applicable, the allowable surcharge for capital improvements in accordance with the phasing schedule set forth in the Capital Improvement Petition (“Preliminary Approval”).
  - (5) Material Change. If there is any material change in the scope, phasing, pricing, or other matter set forth in the Capital Improvement Petition, the landlord must submit to the Director a supplement to the Capital Improvement Petition (“Supplement”) including any revisions to the recommended surcharge for capital improvements, if any, to be allowed in accordance with the phasing schedule set forth in the Capital Improvement Petition. Within 30 days after receiving the Supplement, the Director must notify the landlord of a decision stating the reasons for the approval or denial of the Supplement, including any revisions to the recommended surcharge for capital improvements.



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- (6) 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, the landlord must 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 surcharge for capital improvements (“Reconciliation Package”). Within 30 days after receiving the Reconciliation Package, the Director must issue and notify the landlord of a decision identifying the approved surcharge for capital improvement by unit applicable to the completed project or phase.
- (7) Notice to Tenants of Decision. The landlord must by first class mail and electronic mail, notify all affected tenants of the decision within 5 business days of the receipt of the decision.
- (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 before 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, safety, and security 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 certifying:
- (1) that the subject improvements are capital improvements;
  - (2) whether the 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;
  - (5) whether the capital improvements will result in energy cost savings that will be passed on to the tenant and will either result in a net savings in the use of energy in



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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 surcharge for capital improvements;

- (6) the basis under the federal Internal Revenue Code for considering the improvement to be depreciable;
- (7) the estimated costs of the capital improvements, including any interest and service charge;
- (8) the dollar amounts, percentages, and time periods computed by following the instructions listed in (f);
- (9) all regulated units are properly registered and licensed with the Department; and
- (10) the planned phasing schedule for the capital improvements, if applicable.

(f) The Capital Improvement Petition must contain comprehensive calculations for 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 calculated in accordance with the phasing schedule, if applicable;
- (2) the dollar amount of the surcharge for capital improvements for each regulated rental unit in the rental housing and the percentage increase above the base rents charged as of the date of the Capital Improvement Petition; and
- (3) the estimated duration of the surcharge for capital improvements 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 capital improvement, in accordance with (i);
- (2) any interest that must accrue on a loan taken by the landlord to make the capital improvement, in accordance with (j); plus



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- (3) any service charges incurred or to be incurred by the landlord in connection with a loan taken by the landlord to make the capital improvement, in accordance with (k).
- (h) The interest and service charge on, “a loan taken by the landlord to make the capital improvement” is the portion of any loan that is specifically attributable to the costs incurred to make the capital improvement, in accordance with (l). The dollar amount of the calculated interest and service charge 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 of the capital improvement. The total cost of a capital improvement must be reduced by the amount of any grant, subsidy, credit, or other funding not required to be repaid that is received by a landlord from or guaranteed by a governmental program for the purposes of making the subject capital improvement.
- (j) The interest on a loan taken to make a 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 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. The average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately before the effective date of the surcharge 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 for the purposes of the Capital Improvement Petition must be calculated using the actual rate of the loan over its term, provided that if the Capital



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Improvement Petition is submitted before the expiration of the loan term, the total interest rate for any unexpired term of the loan must 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 loan, any 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 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 for capital improvements requested or allowed by a 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, in accordance with (g); divided by
  - (2) the sum of the monthly surcharges for capital improvements permitted by Sections 29-58(d)(3) and (4) of the Code on each affected regulated rental unit.
- (n) A surcharge for capital improvements 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 include 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 capital improvement, until the capital improvements are complete.
- (p) A Capital Improvement Petition, as filed with the Director, must include a listing of each rental unit in the housing accommodation, identifying:
  - (1) which regulated rental units will be affected by the capital improvements;
  - (2) the base rent for each affected regulated rental unit, and any other approved surcharges for capital improvements; and



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- (3) the dollar amount of the proposed surcharge for capital improvements for each regulated rental unit and the percentage by which each surcharge for capital improvements exceeds the current rents charged as of the date of the Capital Improvement Petition.
- (q) A decision authorizing a surcharge for capital improvements 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 regulated rental unit; provided that if the capital improvement work renders the unit uninhabitable beyond the expiration of time, the surcharge for capital improvements may be implemented when the unit is reoccupied. The amount of the surcharge for capital improvements must be clearly identified as an approved surcharge for capital improvements in the new lease or in the lease renewal and may not be implemented during the lease term.
- (r) Not less than 90 days before the expiration of an authorized surcharge for capital improvements a landlord may request to extend the duration of the surcharge for capital improvements by filing an application with the Director and serving each affected regulated rental unit with notice by first-class mail and electronic mail, if, within five business days that the total cost of the capital improvement has not been recovered during the originally approved period of the surcharge for capital improvements and requesting to extend the approval (“Certificate of Continuation”). The application for a Certificate of Completion must be deemed complete when delivered to the Director unless within ten business days after receiving the Certificate of Continuation, the Director notifies the landlord in writing of missing or incomplete information or documentation. If the landlord fails to provide the missing or incomplete information or documentation to the Director within ten business days after receipt of the notice, the Director may reject the Certificate of Continuation.
- (s) A Certificate of Continuation must set forth:
- (1) the total cost of the capital improvements 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 surcharge for capital improvements within its approved duration, including any amount estimated to be collected before the expiration of its approved duration;



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(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 improvements by extension of the duration of the surcharge for capital improvements.

(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 (s)(1) and (2). If the Director approves the Certificate of Continuation, the landlord must notify each affected tenant by first-class mail and electronic mail, within five business days of the receipt of the Director’s notice of approval.

(u) If the Director does not issue a decision before the expiration of the surcharge for capital improvements, the landlord may continue the implementation of the surcharge for capital improvements 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 is a final order to the landlord to pay a rent refund to each affected tenant in the amount of the surcharge for capital improvements that has been demanded or received beyond its original, approved duration in which it was implemented, and, if the surcharge for capital improvements remains in effect, to discontinue the surcharge.

(v) A surcharge for capital improvements implemented pursuant to an approved Capital Improvement Petition may be extended by Certificate of Continuation no more than once.

(w) If a Capital Improvement Petition is denied by the Director, the property may not file a subsequent petition for six months following the issuance of a denial.

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

### 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.





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## **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) “Base Year” means the year immediately prior to the year the unit became a regulated unit per requirements of Chapter 29 of the Code.
- (c) “Current Year” means either the calendar year (January 1<sup>st</sup> to December 31<sup>st</sup>) or the fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) immediately preceding the date that the Fair Return Application required in Section 29.59.01.04 is filed.
- (d) “Current Year CPI-U” means either:
  - (1) if the Current Year is a calendar year, the Current Year CPI-U is the annual CPI-U for that year; or
  - (2) if the Current Year is a fiscal year, the Current Year CPI-U must be the CPI-U for December during the current year.
- (e) “Gross Income” means the annual scheduled 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 Fair Return Application.
- (f) “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 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:



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- (A) actual operating expenses to be offset through a fair return rent increase; or
  - (B) returns on investments equal to real estate investment risk premium of three percent (3%) plus the annual yield on the ten-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 the CPI-U.
- (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 regulated rental unit in the rental housing must be subject to the same percentage increase.
- (1) Except as provided herein, a fair return 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. 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.
  - (2) 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.
  - (3) If a rental unit requiring a 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 landlord may 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 an application for a fair return 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 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:



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- (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; and
- (3) all Banked Amounts have been applied to regulated rental units.
- (d) Fair Return Application Requirements. A Fair Return Application must include the following information and must be submitted in a form 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 to confirm the 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 no more than three years in the past. The approval must be secured in writing from the Director before 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 tax returns, 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



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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; and
- (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 must be filed with the Department.
- (b) Notice to Tenants of Filing. Within five business days of filing the Fair Return Application, the landlord must notify each affected tenant of the filing by first-class mail and electronic mail, providing each tenant a copy of the Fair Return Application (excluding supporting documentation).
- (c) Fair Return Application Processing. Within 30 days of receipt of a Fair Return Application, the Director must review the Fair Return Application and supporting documentation and notify the landlord in writing that:
  - (1) the Fair Return Application is complete; or
  - (2) the Fair Return Application is incomplete, identifying specifically the missing information or documentation.



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If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Fair Return Application by written notice to the landlord.

- (d) Decision on a Fair Return Application. The Director must review the Fair Return Application and within 60 days after receiving the Fair Return Application 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.
- (e) Notice to Tenants of Decision.
- (1) The landlord must distribute a copy of the decision to each affected tenant by first-class mail and electronic mail, within ten business days of the date of the Director's approval of the Fair Return Application together with posting in common areas of the rental housing.
  - (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 fair return increase authorized by the Department. 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 the following items:



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- (A) utilities paid by the landlord, except to the extent these costs are passed through to the tenants;
  - (B) administrative expenses, such as advertising, legal fees, accounting 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 Annual CPI-U 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 six percent (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 over the useful life as determined by the Internal Revenue Service. 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. The average is calculated as the mid-point between the high and low Prime Rates reported for the 52 weeks immediately before the completion of the renovation;
  - (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:



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- (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) payments made for mortgage expenses, either principal or interest;
- (C) judicial and administrative fines and penalties;
- (D) damages paid to tenants as ordered by Office of Landlord-Tenant Affairs issued determination letters or consent agreements, Commission on Landlord-Tenant Affairs, 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.



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- (c) Base Year Net Operating Income. A landlord may request to adjust the Base Year Net Operating Income if the Net Operating Income for the Base Year was abnormally low and did not reflect market circumstances. The Director must adjust the Base Year Net Operating Income if the Director makes 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 capital improvements during or before the Base Year which were not reflected in the Base Year rents and the landlord did not obtain a surcharge for capital improvements for these capital improvements;
    - (B) substantial repairs were made to the rental housing due to exceptional circumstances or new laws;
    - (C) other expenses were unreasonably high, notwithstanding prudent business practice; or
    - (D) other exceptional circumstances exist requiring equitable adjustment to the Base Year Net Operating Income.
  - (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 that establish that the rent was not set as the result of an arms-length transaction.

## **29.59.01.07 Fair Return Rent Increase Duration**





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- (a) Duration. Except as provided in 29.59.01.03(b), a rent increase established under an approved Fair Return Application remains in effect for each regulated rental unit for a 12-month period.
  - (1) No annual rent increase allowance under Section 29-57(a) of the Code may be applied to a regulated rental unit for the 12-month period during which the regulated rental unit is subject to a rent increase pursuant to a Fair Return Application (as such rent increase includes any annual rent increase allowance).
  - (2) A landlord may simultaneously charge a surcharge for capital improvements and fair return rent increase if approved or otherwise allowed in accordance with these regulations.
- (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 Fair Return Application must constitute the Base Year income, expenses, and Net Operating Income for those regulated rental units included in the finding of fair return for purposes of reviewing subsequent Fair Return Applications.
- (c) Limitations on Future Fair Return Requests.
  - (1) If a Fair Return Application is approved by the Director, the 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 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 - REGULATIONS

### COMCOR 29.60.01 Title Substantial Renovation Exemption

#### 29.60.01.01 Application for a Substantial Renovation Exemption

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



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- (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, 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), exclusive of land value, as assessed by the State Department of Assessments and Taxation;
  - (4) a schedule showing all regulated rental units in the rental housing to be 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 and electronic mail, a copy of the application (excluding supporting documentation) to the tenants of all units in the rental housing for which the application has been filed with the Director.
- (c) Substantial Renovation Application Processing. Within 30 days of receipt of a Substantial Renovation Application, the Director must review the Substantial Renovation Application and notify the landlord in writing that:
- (1) the Substantial Renovation Application is complete; or
  - (2) the Substantial Renovation Application is incomplete, identifying specifically the missing information or documentation.
- If the landlord fails to deliver the missing information or documentation to the Director within ten business days of receipt of the notice in (b) above, then the Director may deny the Substantial Renovation Application by written notice to the landlord.
- (d) Decisions on Substantial Renovation Application. The Director must review the Substantial Renovation Application within 30 days of notifying the landlord that their application is complete and notify the landlord of either a Preliminary Substantial Renovation Application Approval or disapproval with reason(s) in the case of disapproval.
- (e) The landlord must notify all affected tenants of a Preliminary Substantial Renovation Application Approval within ten business days of the receipt of the decision by first-class



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mail and electronic mail.

- (f) Substantial Renovation Application Supplement. If there is a material change in the scope, price, or other matter set forth in the Substantial Renovation Application, the landlord must submit the change(s) to the Director as a Substantial Renovation Application Supplement. Within 30 days after receiving a Substantial Renovation Application Supplement, the Director must issue and notify the landlord of a decision stating the approval or disapproval with reason(s) in the case of disapproval.
  
- (g) Final Reconciliation. Upon completion of the substantial renovations set forth in the Substantial Renovation Application and approved in a Preliminary Substantial Renovation Application Approval and Substantial Renovation Application Supplement, the landlord must submit a final Substantial Renovation Application Reconciliation Package to the Director identifying the actual costs of the completed substantial renovations with supporting documentation identifying the completion date of the substantial renovations. Within 30 days after receiving the Substantial Renovation Application Reconciliation Package, the Director must issue and notify the landlord of a decision confirming the final approval of the Substantial Renovation Application and the effective date of the exemption. Notwithstanding the foregoing, the Director’s review of the Substantial Renovation Application Reconciliation Package must not contradict any prior approval of a Preliminary Substantial Renovation Application Approval or Substantial Renovation Application Supplement provided that it is consistent with the Preliminary Substantial Renovation Application Approval and Substantial Renovation Application Supplement approval.

### **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 any loan or debt taken by the landlord to make the improvement or renovation, in accordance with Section 29.60.01.06.

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



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For the purposes of calculating interest and service charges, “any loan or debt 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 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 probative of the actual, commercially reasonable costs of the 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 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 renovation, or on that portion of a multi-purpose loan of money used to make the 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. The 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), 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**



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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 setup 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 building(s), exclusive of land value, by considering the following:

- (a) the existing physical condition of the rental housing;
- (b) whether the existing physical condition impairs or tends to impair the health, safety, and security of any tenant;
- (c) whether deficiencies in the existing physical conditions could instead be corrected by improved maintenance or repair; and
- (d) whether the proposed renovations are optional or cosmetic changes.

## **29.60.01.10 Implementation of a Substantial Renovation Exemption**

- (a) The substantial renovation exemption must be effective on the date of the Director's approval of the Substantial Renovation Application Reconciliation Package, unless the Department determines that the landlord seeking the exemption is in violation of Chapters



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8, 26, or 29 of the Code. In such case, the exemption must be effective on the date that the Department determines that the landlord is not in violation of Chapters 8, 26, or 29.

(b) Once a decision approving a substantial renovation exemption has been issued, the exemption must be implemented within 12 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 - REGULATIONS

### COMCOR 29.61.01 Fees

#### 29.61.01.01 Applicable Fees

(a) Regulated Fees. Except as provided in subsection (b) and as otherwise permitted by law, including regulations, landlords are limited to charging the following fees on regulated rental units:

(1) Application fee.

In accordance with Section 8-213 of the Real Property Article, Annotated Code of Maryland, a landlord of a regulated rental unit must not retain a fee or charge a fee of more than the landlord's actual cost for a credit check and other expenses arising out of the application for rental of the regulated rental unit.

(2) Late fee.

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

(3) Pet fee.

(A) A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any fee, charge, or deposit in connection with the tenant having a pet present in the unit, except that the landlord may require the tenant of the unit to pay a \$25 monthly pet fee per pet and maintain with the landlord during each rental term a pet deposit not exceeding \$300. The pet deposit must be held in escrow by the owner. The Department must increase the maximum allowed monthly pet fee and the maximum allowed pet deposit annually by the CPI-U.



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(B) 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 in the regulated rental unit relating to the presence of the pet(s). The tenant may choose to use any balance toward a deposit for an ensuing lease term.

(C) 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.

(4) Lost key fee.

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

(5) Lock out fee.

A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any lockout fee or charge exceeding \$25. The Department must increase the maximum allowed fee annually by the CPI-U. In the event the landlord engages a third-party service provider for the lockout service, the landlord may charge the tenant a fee not exceeding the actual charge incurred for the service. The landlord must provide a tenant with verifiable documented evidence detailing the actual costs associated with the service.

(6) Secure storage unit accessible only by tenant.

A landlord of a regulated rental unit must not assess or collect from the tenant of the unit any fee or charge for storage located within or attached to or associated with the unit.

(7) Internet or cable television.

(A) A landlord must not require a tenant of a regulated rental unit to pay an internet or cable television fee. If a tenant voluntarily opts for either service, the landlord must bill the tenant no more than the amount that the internet or cable television provider charges the landlord, without any



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additional fees. If multiple tenants opt into the service, the landlord must divide the cost to the landlord of the internet or cable television equally by the number of units opting into the service. The fee cannot include any common area services.

(B) A landlord must provide a tenant of a regulated rental unit documentation of the total cost paid by the landlord for internet or cable television service and the calculation of the fee charged to the tenant.

(8) Motor vehicle or motorcycle parking fee.

(A) A landlord must not impose a parking fee on a tenant of a regulated rental unit unless the tenant has expressly opted to use the parking facilities.

(B) A landlord of a regulated rental unit must not increase the fee for parking spaces for motor vehicles or motorcycles, as defined in Section 31-1 of the Code, more than once in a 12-month period.

(C) Upon a lease renewal or new lease agreement for a parking space, a landlord must not increase the fee for the parking space to an amount greater than the current fee for the parking space plus CPI-U.

(D) A landlord of a regulated rental unit who has not previously charged a fee for motor vehicle or motorcycle parking spaces must not charge a fee for such parking unless the landlord provides documentation to the Director demonstrating that the base rent is insufficient to allow the landlord to recover all costs related to the provision of parking. If the Director determines that the base rent is insufficient for the landlord to recover the foregoing costs, the Director must notify the landlord that tenants using the parking facilities may be charged an amount that will allow the landlord to recover its operating costs related to parking. The amount of the fee must not exceed 10% of the lowest base rent for a regulated rental unit at the property. After the parking fee has been established, any fee increase must be determined under (B) and (C).

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

(9) Bicycle parking fee.





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

(b) Exceptions.

- (1) A landlord may charge fees for unregulated optional services, not listed in subsection (a), and opted into by the tenant.
- (2) For purposes of this Section an optional service does not include a service required to ensure unit access, maintenance, or lease compliance.

(c) Implementation.

- (1) Fees may not be implemented during the lease term unless they relate to an optional service opted into by the tenant.
- (2) Regulated fees in subsection (a) and fees that fall under the exception in subsection (b) may only be increased once in a 12-month period and require a 90-day written notice.
- (3) Landlords must comply with this Section within ninety days after the effective date of these regulations.

**MONTGOMERY COUNTY CODE CHAPTER 29, SEC. 29-62 RENT STABLIZATION DATA COLLECTION - REGULATIONS**

**COMCOR 29.62.01 Enforcement**

**29.62.01.01 Enforcement**

These regulations may be enforced in accordance with Section 29-8 of the Code.

Approved:

\_\_\_\_\_  
Marc Elrich, County Executive

\_\_\_\_\_  
Date




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Approved as to form and legality:

By: 

Walter E. Wilson

Date: 6/13/24