



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Marc Elrich
County Executive

Scott Bruton
Director

MEMORANDUM

June 14, 2024

TO: Andrew Friedson, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Executive Regulation 2-24, Rent Stabilization

Executive Regulation 2-24, Rent Stabilization, implements Codes Sections 29-58, 29-59, 29-60, 29-61, and 29-62 of Chapter 29, Landlord-Tenant Relations, of the Montgomery County Code. Key regulation items include:

- Limitations to rent increase amount for new leases, renewals, and previously vacant units,
- Exemptions to the annual rent increase allowance amount through limited-term surcharges through Fair Return, Capital Improvement, and Substantial Rehabilitation petitions, and
- Regulation of permitted fees.

This Regulation was published in the County Register on January 31, 2024. Twenty-seven comments were received during the 30-day comment period.

As a result of the public comments, several changes to the regulations are proposed:

Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

- Addition of a text detailing that a landlord may bank the unused rent increase allowance of a multi-year lease.

Troubled or At-Risk Properties

29.58.01.02 Rent Increases for Troubled or At-Risk Properties

- Addition of text providing guidance regarding the different conditions that a Troubled property and At-Risk property must meet prior to their next inspection in order for the Director to remove their Troubled or At-Risk designation.

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- Clarification of the provision that a landlord may submit a Fair Return Application if their Troubled or At-Risk property is unable to meet the above-mentioned conditions.

Capital Improvement Petitions

29.58.01.04 Limited Surcharge for Capital Improvements

- Modification of text to include electronic mail as an additional required delivery method for Notice to Tenants of Filing and Notice to Tenants of Decision.
- Modification of submittal process from a single-step to a multi-step process to include a Preliminary approval, submission of supporting documentation if there is any material change in the scope, phasing, pricing, or other matter in the Capital Improvement Petition, and final approval of the phase and surcharge.
- Addition of text detailing the Capital Improvement Petition process where the Director has thirty days after receiving the petition to provide written notification to the landlord on the status of the petition, including the need for additional information. If the landlord fails to respond to written notifications within ten business days of receiving the notice from the Director, the Director may deny the petition with the written notice.
- Addition of text detailing the Preliminary Decision where the Director has 60 days from receipt of a complete Capital Improvement Petition to review the petition and supporting documentation and notify the landlord of the petition's preliminary approval or disapproval with reasoning. The notification must also include the recommended surcharge.
- Addition of text to include a phasing schedule for the Capital Improvement.
- Addition of text detailing that a landlord must report any material changes in the scope, phasing, pricing, or other matter in the Capital Improvement Petition by submitting a supplement detailing the changes. The Director must notify the landlord of the supplement's approval or disapproval within thirty days of receiving said supplement.
- Addition of text detailing the required submission of a final Reconciliation Package upon completion of the Capital Improvements. The Director has thirty days after receipt of the package to notify the landlord of the approved surcharge by unit.
- Addition of text detailing that energy cost savings are not required for Capital Improvements to qualify for a surcharge.
- Addition of text requiring the landlord to certify that all regulated rental units are properly registered and licensed with the Department.
- Addition of text clarifying that the total cost of a Capital Improvement and the duration of the surcharge are both estimated for the Preliminary Decision.
- Addition of text clarifying the manner in which loans with variable interest rates must be considered, including using the actual rate of the loan over its term and recalculations of the total interest on the loan for a Certificate of Continuation.

- Addition of text clarifying the process of obtaining a Certificate of Continuation to extend the surcharge for Capital Improvements.
- Addition of text detailing tenant notification requirements for an application and an approved Certificate of Continuation.
- Addition of text detailing that a landlord may not file a subsequent petition for six months following the issuance of a denial.

Fair Return:

29.59.01.02 Definitions

- Removed text defining the Annual Consumer Price Index.
- Addition of text clarifying the definition of “Base Year.”

29.59.01.03 Formula for Fair Return

- Addition of text clarify that any Fair Return Application must identify a requested rent increase based on 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 10-year US Treasury Note, with the gross cost basis being the assessed value of the property as of July 1, 2023 increased annually in accordance with the CPI-U.
- Addition of text to clarify that a Fair Return rent increase must be clearly identified as such in any new lease or lease renewal and may not be implemented mid-lease.

29.59.01.04 Fair Return Application

- Modification of text for the application to include information for the calculation of the Gross Income for the Current Year.
- Addition of text clarifying that if the required information is not available for the Base Year, an alternative year cannot be more than three years in the past.
- An addition of text to include the requirement of supplying tax returns for the documentations of operating and maintenance expenses.

29.59.01.05 Processing of Fair Return Applications

- Modification of text to include electronic mail as an additional required delivery method for Notice to Tenants of Filing and Notice to Tenants of Decision.
- Modification of process from single-step to multi-step process to include Fair Return Application processing and decision of a Fair Return Application.
- Addition of text for Fair Return Application processing to clarify that once submitted, the Director has thirty days to review the Fair Return Application and supporting documentation to notify the landlord in writing that the application is complete or incomplete and identify the missing information. If the landlord fails to submit the missing information within ten business days, the Director may deny the application by written notice.
- Addition of text for decision on a Fair Return Application detailing that the Director has sixty days after receipt of the Fair Return Application to review and inform the landlord of the application approval or denial with reasoning.

- Addition of text for the requirement to post the Notice to Tenants of Decision in common areas of the rental housing.

29.59.01.06 Fair Return Criteria in Evaluation

- Addition of text to clarify that the Net Operating Income for the base year must be abnormally low and not reflective of market standards to justify a change in the Base Year Net Operating Income
- Addition of text to clarify the amortized cost of capital improvements over the useful life as determined by Internal Revenue Service guidelines.

29.59.01.07 Fair Return Rent Increase Duration

- Addition of text clarifying a landlord may not assess an annual rent increase on regulated units for the 12-month period that the units are subjected to a Fair Return Increase. However, a landlord may charge a Capital Improvement Surcharge and Fair Return rent increase at the same time.

Substantial Renovations:

29.60.01.01 Application for a Substantial Renovation Exemption

- Modification of the submission process from a single-step to a multi-step process to include a preliminary approval, submission of supporting documentation if there is any material change in the scope, phasing, pricing, or other matter in the Substantial Renovation Application, and final reconciliation package.
- Modification of text to include electronic mail as an additional required delivery method for notice to tenants of application filing and Notice to Tenants of Decision.
- Addition of text detailing the Substantial Renovation Application processing where the Director has thirty days after receiving the application to provide written notification to the landlord on the status of the application, including the need for additional information. If the landlord fails to respond to the written notifications within ten business days of receiving the notice from the Director, the Director may deny the application with written notice.
- Addition of text detailing the Preliminary Decision where the Director within thirty days of receipt of a complete application must notify the landlord of the Substantial Renovation Application's preliminary approval or disapproval with reasoning.
- Addition of text detailing the required notice to tenants of Preliminary Substantial Renovation Application Approval within ten business days.
- Addition of text detailing the requirement to submit a Substantial Renovation Application Supplement for any material changes to the original application.
- Addition of text detailing the required submission of a Final Substantial Renovation Reconciliation package after the completion of the substantial renovations.

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

- Addition of text clarifying the value of the rental housing building(s) is exclusive of land value.

29.60.01.10 Implementation of a Substantial Renovation Exemption

- Modification and addition of text to clarify that, barring any violations of Chapters 8, 26, or 29 of the Code, a substantial renovation exemption is effective on the date that the Director approves the Substantial Renovation Application Reconciliation Package.

Applicable Fees:

29.61.01.01 Applicable Fees

- Addition of text to include regulated fees and unregulated optional fees.
- Modification of text to clarify the following regulated fees:
 - Application fee: Limit the application fee to the actual cost of the credit check and other expenses arising out of the application of the regulated unit in accordance with the Annotated Code of Maryland.
 - Late Fee: Must comply with Section 29-27 of the Code.
 - Pet Fee: Revised to include both a \$25 per month pet rent and a pet deposit not to exceed \$300. The maximum limits for the per-month fee and the deposit will increase annually by CPI-U.
 - Lockout Fee: Addition of text to include an annual CPI-U. Addition of text to include that if a third-party service provider is used, the landlord may charge the tenant a fee not exceeding the actual charge incurred for such service. The landlord must provide a tenant with evidence detailing the actual costs associated with the service.
 - Secure Storage Fee: A landlord must not assess any fee or charge for storage located within (e.g., a closet), attached to (e.g., a storage locker on a balcony), or associated with (e.g., a detached shed for a single-family house) the unit.
 - Internet or Cable Television Fee: A landlord must not require a tenant to pay a fee and must offer it as a voluntary opt-in service only. A landlord must provide the tenant documentation showing the cost paid by the landlord for internet or cable television service and may not include the costs of any common areas serviced.
 - Motor Vehicle Parking Fee:
 - Addition of text clarifying that a tenant must opt-in into using the parking facilities.
 - Addition of motorcycle parking spaces to the fees.
 - Addition of a timeline in which a landlord can increase the parking space fee for motor vehicles or motorcycles.
 - Addition of text to clarify a landlord cannot increase a parking fee by greater than the current charged fee plus CPI-U.
 - Modification of parking fees to provide a process for landlords who have not charged for parking previously to apply to begin charging for parking.

Please see the attached memo providing an overview of this regulation.

By the terms of the Montgomery County Code, this Regulation must proceed under the Method 2 process for approval. As such, I am transmitting this Regulation to you for approval.



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS


Marc Elrich
County Executive

Scott Bruton
Director Executive

MEMORANDUM

June 14, 2024

TO: Marc Elrich County Executive
Montgomery County, MD

FROM: Scott Bruton, Director 
Department of Housing and Community Affairs.

SUBJECT: Executive Regulation 2-24, Rent Stabilization

The Department of Housing and Community Affairs (DHCA) is transmitting the attached Executive Regulation that implements Code Sections 29-58, 29-59, 29-60, 29-61, and 29-62, Rent Stabilization, of Chapter 29, Landlord-Tenant Relations, of the Montgomery County Code, as modified by Bill 15-23.

The rent stabilization law was enacted to prevent excessive rent charges for regulated rental units by defining the base rent amount, limiting rent increases, and regulating appropriate fees. It seeks to balance the interests of landlords and tenants, by ensuring landlords receive a fair return on their investments and protecting the long-term housing affordability for Montgomery County tenants. The law grants exemptions from rental increase restrictions for specific units and allows for increases to support a fair return on investment and capital improvements.

Per Bill 15-23, this Executive Regulation must be adopted under the Method 2 procedure, which requires approval by the County Council. The proposed Executive Regulation was published in the County Register on January 31, 2024, and the public comment period ended on March 1, 2024.

OVERVIEW OF KEY REGULATION ITEMS

This regulation details several key aspects related to the implementation of Rent Stabilization.

- **Rent Increases:** The rent stabilization law will allow an Annual Rent Increase Allowance using the lower of the U.S. Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U) plus three percent or six percent. This annual allowance will apply to all new leases and lease renewals. Properties designated as Troubled or At-Risk

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are prohibited from increasing rents, but they will have a process by which they will be able to either have that designation changed or seek the ability to increase rents while still under that designation by meeting the established conditions for a Fair Return Application under Section 29-59 of the Code.

- **Capital Improvement Petition:** Landlords may apply for a limited-term surcharge to help support the cost of certain capital improvements. The regulation outlines the timeframes and the criteria required for a Capital Improvement Petition, as well as the procedures for obtaining a Certificate of Continuation, in cases where the landlord did not recover the cost of the improvements within the designated timeframe of the surcharge. The landlord must provide written notification to affected tenants throughout the Capital Improvement Petition submission process and upon receipt of the petition's determination.
- **Fair Return:** Landlords subject to the rent stabilization law may apply to exceed the annual rent increase allowance to gain a fair return on their investments to offset operating expenses. This Regulation establishes a Fair Return rent increase formula based on gross income minus the permitted operating expenses. This Fair Return Application process aims to balance landlord profitability and tenant affordability. Landlords must prove the need for increases beyond the Annual Increase Allowance and properties that have approved Fair Return Applications are subject to a 24-month restriction on subsequent Fair Return Applications to provide time for the landlord to implement the Fair Return increase and have time to gather enough data to demonstrate that another increase is warranted. If the Fair Return Application is denied, a landlord may not file a subsequent application for 12 months following a denial in order to gather enough data to demonstrate that a Fair Return increase is warranted.
- **Substantial Renovation** – Landlords of existing buildings that have undergone extensive renovations may file a Substantial Renovation Application when the cost of the renovation equals at least 40 percent of the value of the building as assessed by the State Department of Assessments and Taxation. This Regulation outlines the application requirements, processing, assessment criteria, tenant notification requirements, and guidance for considering loan interest and fees when calculating the total cost of the renovation. So long as there are no violations of Chapters 8, 26, or 29 of the Code, a substantial renovation exemption is effective on the date of the Director's approval of the Final Substantial Renovation Application Reconciliation Package. Once approved, the exemption must be implemented within twelve months of the approval, but no earlier than the conclusion of the current lease of a regulated rental unit if the unit is occupied.
- **Regulation of Fees** – The applicable fees for regulated units consist of mandatory and voluntary charges. Fee increases are limited to one increase per 12-month period. Permitted fees include application fees, late fees, pet fees, lost key fees, lockout fees, secure storage unit fees, internet or cable television fees, and motor vehicle or motorcycle parking fees, with regulations stipulating maximum amounts and allowable increases. Additionally, landlords may charge bicycle parking fees as permitted by law. A landlord may charge fees for unregulated optional services not included in this Regulation and

opted into by the tenant. For purposes of this Regulation, an optional service does not include a service required to ensure unit access, maintenance, or lease compliance.

COMMENTS RECEIVED

Pursuant to Section 2A-15 of the County Code, this Executive Regulation was published on January 31, 2024, in the County Register, with a 30-day comment period. DHCA received twenty-seven comments from residents, tenant organizations, and tenant and industry advocacy groups totaling 396 pages. These comments are provided as Enclosure A to this memo.

The comments generally provided feedback on the processes and timelines for Fair Return Applications, Capital Improvement Petitions, Substantial Renovation Petitions, and fee regulation.

As a result of the public comments, several changes were made to the proposed regulations:

Rent Increases

29.58.01.01 Rent Increase for New Lease or Lease Renewal

- Addition of a text detailing that a landlord may bank the unused rent increase allowance of a multi-year lease.

Troubled or At-Risk Properties

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- Addition of text detailing the required submission of a Final Substantial Renovation Reconciliation package after the completion of the substantial renovations.

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

- Addition of text clarifying the value of the rental housing building(s) is exclusive of land value.

29.60.01.10 Implementation of a Substantial Renovation Exemption

- Modification and addition of text to clarify that, barring any violations of Chapters 8, 26, or 29 of the Code, a substantial renovation exemption is effective on the date that the Director approves the Substantial Renovation Application Reconciliation Package.

Applicable Fees:

29.61.01.01 Applicable Fees

- Addition of text to include regulated fees and unregulated optional fees.
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 - Addition of motorcycle parking spaces to the fees.
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 - Addition of text to clarify a landlord cannot increase a parking fee by greater than the current charged fee plus CPI-U.
 - Modification of parking fees to provide a process for landlords who have not charged for parking previously to apply to begin charging for parking.

CONCLUSION

Executive Regulation 2-24 is necessary to implement Bill No. 15-23 enacted by the Montgomery County Council on July 18, 2023. This proposed regulation establishes procedures for the implementation of the Rent Stabilization law. This regulation establishes the base rental rate amounts and allowable fees for regulated rental units and provides protections against rent increases above an allowable threshold for regulated units. This regulation also provides procedures for Fair Return Applications, Capital Improvement Petitions, and Substantial Renovation Exemptions. Finally, the regulations consider a range of stakeholder opinions and public comments with the aim of improving housing stability, as approximately 40% of the Montgomery County population is renters.

Enclosures: Enclosure A – Comments on Regulation from 30-Day Comment Period
 Enclosure B – Apartment Complex collected fee report.
 Enclosure C – Montgomery County Apartment Complex Parking fees.