



# Building Performance Improvement Board

**2/21/2024**

Learn more at <https://www.montgomerycountymd.gov/green/energy/beps.html>

# Agenda

- **Admin Items**
- **County BEPS Regulation Update**
- **State BEPS Regulation Update**
- **Open discussion: BEPS and Rent Stabilization regulations**
- **Open discussion: BEPS/Building Performance Improvement Plans and permitting**



## Administrative Items

# Actions

- Approve 1/21 meeting notes

# Terms / Vacancies

- No news yet on getting vacancies/term expirations posted.



# County BEPS Regulation Update

# Process Overview

- ✓ Draft regulations appeared in the November register for a 30-day public comment period
- ✓ Staff reviewed comments received and revised regulations which went through additional review/approval by County Attorney. Changes made because of the comments were included in the transmittal memo to Council.
- ✓ County Executive issued Method (2) regulations to County Council on Jan 12
  - Transmittal packet now on the [BEPS website](#)
- ✓ OMB completed Fiscal Impact Statement and transmitted to Council
- ✓ Transportation & Environment Committee holding series of work sessions
- For Method 2 Regulations – Approval is done by the County Council.
- If the regulation is not approved, it may go back to the department for changes requested by the Council. If so, the amended regulation will require approval by the County Attorney and County Executive, and the final version will have an AM (amended) after the number.

# Next Steps

- T&E Committee to hold BEPS listening sessions / hearings for different sectors:
  - **Jan 24, 2:30 pm:** Healthcare [staff packet](#) / [slides](#) / [recording](#))
  - **Feb 26, 1:30 pm:** Affordable Housing
  - **Mar:** Date/sector TBD, likely Life Sciences





# State BEPS Regulation Update

## State-Level Activity: BEPS

- ✓ Presentation of regulation proposal to Air Quality Control Advisory Council ([AQCAC](#)) on 9/11
- ✓ MDE published [proposed statewide building energy performance standard \(BEPS\) regulations](#) the MD register for public comments through 1/18
- Publication adoption process:
  - ✓ MDE submits the regulations to the Joint Committee on Administrative, Executive, and Legislative Review (AELR)
    - AELR review “on hold”
  - MDE submits to Division of State Documents (DSD) for publication, Notice of Proposed Action (NPA) in the Maryland Register
  - Public Hearing
  - MDE submits to Division of State Documents (DSD) for publication
    - Notice of Final Action (NFA) in the Maryland Register
    - Final Effective 10 days after publication date

## State-Level Activity: BEPS

- Maryland law permits AELR to request a delay so the joint committee can review the proposed regulations and request modifications.
- Although the AELR committee can request changes to the regulations, the Maryland Department of the Environment (MDE) is not required to accept the changes. AELR can also vote to oppose the regulation.
- If AELR votes to oppose, the Governor can override the opposition and proceed with the regulations as proposed or make changes.

# State-Level Activity: BEPS



## Regulatory Schedule – Key Dates



Propose  
Regulation and  
Present to AQCAC



Signatures for  
Adoption Process,  
AELR Review



Proposed  
Regulation



Public Hearing and  
Final Adoption



Sept. 11

Jan - ?

## State-Level Activity: General Assembly Session

- Better Buildings Act ([SB 1023](#) / [HB 1279](#))
  - Requiring the Maryland Department of Labor, on or before certain dates and as part of the Maryland Building Performance Standards, to adopt a requirement that new buildings and significant improvements of buildings and structures meet all water and space heating demands of the building or structure without the use of fossil fuels, energy conservation requirements, and an electric– and solar–ready standard for certain buildings; and generally relating to the Maryland Building Performance Standards.



## Open discussion: BEPS and Rent Stabilization regulations

# Rent Stabilization Act

- Bill No. 15-23, Landlord-Tenant Relations- Rent Stabilization signed into law in July 2023.
- The Department of Housing and Community Affairs (DHCA) will not enforce the law until the Council approves regulations.
- [Proposed regulations](#) in Register for public comment until March 1

# Rent Stabilization Act

- Highlights (from [DHCA's website](#)):
- On July 1 of every year, DHCA will issue and publish in the County Register and on the County website the annual rent increase allowance for regulated units. The allowable rent increase will be the Consumer Price Index + 3%, capped at 6%. This yearly allowable increase will be applicable for 12 months, from July 1 – June 30 of the following year.
- **Substantial Renovation Petition:** A landlord may petition DHCA for a 23-year exemption from rent stabilization for an existing building if they conduct substantial, permanent renovations that enhance the value of a building and cost an amount equal to at least 40% of the value of the building, as assessed by the State Department of Assessments and Taxation.
- **Capital Improvements:** A landlord may increase rents above CPI-U + 3% or 6% if they have incurred expenses to enhance the value of their unit. These expenses do not include ordinary repair or maintenance. To do so, the landlord must file a Capital Improvement Petition with DHCA and have the petition approved. If the unit is subject to a surcharge for capital improvements, the tenant has the right to request copies of all plans, contracts, specifications and permits related to the capital improvements. In addition, if the tenant was displaced during the improvements, they will be allowed to return to their unit upon completion of improvements.



# Rent Stabilization Act

- **The primary requirements for granting a Capital Improvement Petition are as follows:**
  - the proposed surcharge must be limited to the amount necessary to cover the costs of capital improvements to the unit;
  - capital improvements must be completed before implementing the proposed surcharge;
  - if the capital improvements are for all units within the building, the proposed surcharge cannot exceed 20% of the base rent;
  - if the capital improvements are for a subset of rental units within the building, the proposed surcharge cannot exceed 15% of the base rent;
  - the capital improvements must protect or enhance the health, safety, and security of the tenants or the habitability of the rental housing;
  - if the capital improvements result in energy cost savings, the savings must be passed onto the tenant, and the improvements must result in a net savings in building energy usage or be intended to comply with applicable law;
  - the capital improvement must be depreciable under the Federal Internal Revenue Code;
  - all capital improvements costs, including any interest and service charge must be included; and
  - all governmental permits and approvals must have been approved for the work.

# Rent Stabilization Act

- **How will a capital improvement surcharge for a rental property be distributed among the units?**
  - If a Capital Improvement Petition for all rental units at the property is granted by DHCA, the surcharge must be divided equally among the units and prorated over at least 96 months, and the surcharge cannot exceed 20% of the base rent.
  - If a petition for Capital Improvements for a subset of rental units within the building is granted, the surcharge must be divided equally among the affected units and prorated over at least 60 months, and the surcharge cannot exceed 15% of the base rent.
  - The surcharge ends once the costs of the capital improvements, including any interest and service charges, have been recovered by the landlord. DHCA is developing regulations via Method (2) to establish processes and requirements for the Capital Improvement Petition.
- **What obligations does a landlord have to tenants if a Capital Improvement Petition is approved ?**
  - If the unit is subject to a surcharge for capital improvements, upon request of the tenants, the landlord is obliged to provide copies of all plans, contracts, specifications, and permits related to the capital improvements. In addition, if tenants are displaced during the improvements, the landlord must allow the tenant to return to their unit upon completion of improvements.
  - If the capital improvement results in energy savings, the savings must be passed on to the tenant.

# Rent Stabilization Act

- Impacts on BEPS?
- Impacts on BPIP process?
  - Economic infeasibility / cost effectiveness criteria
  - Timeline
  - Coordination between DEP and DHCA (e.g. capital improvements “intended to comply with applicable law”)



## **Open discussion: BEPS/Building Performance Improvement Plans and Permitting**

# BPIPs and Permitting

- After including an energy improvement measure in the BPIP, building owners may need to obtain a permit to complete the work
- Some buildings may have barriers to obtaining permits – as built drawings, modifications triggering other requirements, etc
- Impacts on BPIP process?
  - Economic infeasibility / cost effectiveness criteria
  - Timeline
  - Coordination between DEP and DPS

# Questions?

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## BPIB Webpage

<https://www.montgomerycountymd.gov/green/energy/bpib.html>

## Stay Informed

Check BEPS website for real-time updates:

<https://www.montgomerycountymd.gov/green/energy/beps.html>

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