

**MEMORANDUM**

November 13, 2019

TO: Planning, Housing and Economic Development Committee

FROM: Christine M.H. Wellons, Legislative Attorney  
*Christ Wellons*

SUBJECT: Bill 24-19, Landlord-Tenant Relations – Obligations of Landlord – Air Conditioning<sup>1</sup>

PURPOSE: Worksession 3 – Committee to make recommendations

**EXPECTED ATTENDEES**

Aseem Nigam, Director, Department of Housing and Community Affairs (DHCA)  
Rosie McCray-Moody, Department of Housing and Community Affairs  
Christopher Anderson, Department of Housing and Community Affairs  
Dan McHugh, Department of Housing and Community Affairs

**OVERVIEW**

Bill 24-19, Landlord-Tenant Relations – Obligations of Landlord – Air Conditioning, sponsored by Lead Sponsor Councilmember Huckler and Co-Sponsors, Councilmembers Jawando, Alborno, Council President Navarro and Councilmember Riemer, was introduced on July 16, 2019. A public hearing was held on September 10. The Planning, Housing, and Economic Development (PHED) Committee held an initial worksession on the bill on September 23, and a second worksession on October 28.

Bill 24-19 would require a landlord to provide and maintain air conditioning service for rental housing located in the County during certain months of the year.

**BACKGROUND**

The County Code does not currently require a landlord to supply and maintain air-conditioning in rental housing. Bill 24-19 would amend County Code Chapter 29, Landlord-Tenant Relations, to require a landlord to provide and maintain air conditioning service in a safe and good working condition so that it provides an inside temperature of eighty degrees Fahrenheit (80° F.)

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<sup>1</sup>#MoCoRentalAC

Search Terms: air conditioning, AC unit, air conditioning in rental housing, obligations of landlords, landlord-tenant relations

or less between May 1 and September 30. According to DHCA, approximately 3.9 percent of rental housing in Maryland lacks air conditioning.

### SUMMARY OF PUBLIC TESTIMONY

Testimony received at the public hearing is described in the staff report dated September 23, 2019. Correspondence received after the public hearing is described in the staff report dated October 28, 2019.

### SUMMARY OF PRIOR WORKSESSIONS

An initial PHED worksession was held regarding the bill on September 23, 2019. Participating in the worksession were the bill's Lead Sponsor, Councilmember Hucker; Aseem Nigam, Director of DHCA; Dan McHugh and Chris Anderson, DHCA; Hemal Mustafa, Department of Permitting Services; and Christine Wellons, Council staff. Issues discussed included the required temperature in degrees Fahrenheit; the method DHCA should use to measure temperature; and which rooms should be subject to the air conditioning requirement.

Participants in the second worksession, on October 28, 2019, included Aseem Nigam, Director of DHCA; Rosie McCray-Moody, Dan McHugh and Chris Anderson, DHCA; and Christine Wellons, Council staff. At the October 28 worksession, **the Committee voted to make the following recommendations** regarding Bill 24-19:

1. Retain the required temperature of 80 degrees Fahrenheit (3-0 vote);
2. Amend the bill to clarify the method DHCA will use to measure temperature (3-0 vote);
3. Amend the bill to apply to "habitable spaces"<sup>2</sup> (2-1 vote, with Councilmember Friedson opposing);
4. Amend the bill to apply to the time period of June 1 through September 30 (2-1 vote, with Councilmember Jawando opposing);
5. Amend the bill to exempt single-family homes (2-1 vote, with Councilmember Jawando opposing);
6. Amend the bill to exclude farmhouses and historical properties (3-0 vote);
7. Clarify that the air conditioning requirement must not be construed to conflict with fire safety requirements (3-0 vote);
8. Adopt certain clarifying technical amendments (3-0 vote); and
9. Allow the Director of DHCA to temporarily exempt certain properties that are subject to redevelopment (3-0 vote).

The amendments recommended by the Committee on October 28 are reflected at ©1.<sup>3</sup>

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<sup>2</sup> "Habitable space" is defined in the County Code as: "Any space in a dwelling unit or individual living unit except a bathroom, water closet compartment, laundry, pantry, foyer or communicating corridor, closet, recreation room, private workshop or hobby room, storage space, and fallout or emergency shelter." County Code § 26-1.

<sup>3</sup> The amendments reflected at ©1 would exempt single-family homes, which would include farmhouses. Farmhouses are not separately mentioned in the bill.

**REMAINING ISSUE FOR THE COMMITTEE'S CONSIDERATION**

**Opting Out of the Air Conditioning Requirement**

**Issue:** The Committee has discussed whether a tenant should be permitted to opt out of the air conditioning requirement. In particular, when a tenant's air conditioning would be provided by one or more individual units controlled by the tenant, should the tenant be able formally to opt out of the air conditioning requirement and, thus, avoid any higher rent associated with the air conditioning?

**Analysis:** Whether to allow a tenant to opt out of the requirement is a policy question for the Committee. Arguments *in favor* of permitting an opt-out include that: (1) rent might be lower for a tenant who opts out of the requirement; (2) a tenant should have the option of choosing lower rent in lieu of air conditioning; and (3) allowing for an opt out would support affordable housing options to the extent that adding air conditioning raises rent. Arguments *against* permitting an opt-out include that: (1) tenants might effectively be coerced into foregoing air conditioning; (2) tenants' health would suffer without air conditioning; and (3) the opt out would undermine the purpose of mandating air conditioning as a health and safety requirement.

In both Dallas, Texas and Phoenix, Arizona – where air conditioning is required under the minimum standards for rental property – there is no option to lease around the requirement, just as there is no option to lease around heating requirements. See Dallas City Code § 27-11; Phoenix City Code § 39-5. Many jurisdictions, however, provide simply that *if* a landlord provides air conditioning under a lease, the air conditioning must be in good working order. See, e.g., D.C. Municipal Regulations § 14-510; North Carolina Gen. Stat § 42-42; Ohio Rev. Code Ann. § 5321.04; Virginia Code Ann. § 55.1-1220.

**Staff recommendation:** If the Committee wishes to allow tenants to opt out of the air conditioning requirement, staff recommends the following amendment, which has been reviewed by DHCA:

A tenant may elect to have no air conditioning service installed and provided if:

- (1) the air conditioning, if installed, would be provided by one or more individual air conditioning units controlled by the tenant; and
- (2) an addendum to the lease:
  - (A) specifies any additional amount of rent that would be required if air conditioning were provided;
  - (B) acknowledges that the tenant has been offered, but has elected not to have air conditioning; and

(C) acknowledges that the tenant has been informed of the tenant's right to file a complaint with the Director of the Department of Housing and Community Affairs under Section 29-36.

**NEXT STEPS**

**The amendments previously recommended by the Committee** are incorporated into the bill text at ©1 for the Committee's final review and approval. The Committee also might wish to adopt the **amendment** discussed above regarding a tenant opt out.

This packet contains:

Bill 24-19, Including Amendments Recommended  
by PHED Committee on Oct. 28, 2019  
Legislative Request Report

Circle #

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Bill No. 24-19  
Concerning: Landlord-Tenant Relations –  
Obligations of Landlord – Air  
Conditioning  
Revised: 11/04/2019 Draft No. 4  
Introduced: July 16, 2019  
Expires: January 16, 2021  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker  
Co-Sponsors: Councilmembers Jawando and Alborno, Council President Navarro, and  
Councilmember Riemer

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**AN ACT** to:

- (1) require a landlord to provide and maintain air conditioning service for rental housing located in the County during certain months;
- (2) establish standards for air conditioning service provided by a landlord; ~~[[and]]~~
- ~~(3) establish certain exceptions from the air conditioning requirement; and~~
- ~~[[3]]~~ (4) generally amend the law governing rental housing in the County.

By amending

Montgomery County Code  
Chapter 29. Landlord-Tenant Relations  
~~[[Section]]~~ Sections 26-7 and 29-30

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|---|--|
| <b>Boldface</b>                         | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>                      | <i>Added to existing law by original bill.</i>             |
| <del>[Single boldface brackets]</del>   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>               | <i>Added by amendment.</i>                                 |
| <del>[[Double boldface brackets]]</del> | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                                   | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. [[Section]] Sections 26-7 and 29-30 [[is]] are amended as follows:**

**26-7. Light, ventilation and heating, temperature control.**

The owner of each dwelling or dwelling unit must assure compliance with the following standards during human habitation:

\* \* \*

**(f) Temperature control – air conditioning in rental housing.**

**(1) For purposes of this subsection, rental housing has the meaning stated in Section 29-1, except that rental housing does not include:**

**(A) a single-family home; or**

**(B) a dwelling unit located on a site listed in the National Register of Historic Places.**

**(2) Between June 1 and September 30:**

**(A) Each owner of rental housing where cooling is not under the control of the tenant must maintain a temperature of no more than 80 degrees Fahrenheit (80° F.) in each habitable space at a distance of 3 feet above floor level; and**

**(B) Each owner of rental housing where the cooling is under the control of the tenant must provide an air conditioning system capable of maintaining a temperature of no more than 80 degrees Fahrenheit (80° F.) in each habitable space at a distance of 3 feet above floor level.**

**(3) This subsection must not be construed to permit any violation of a fire safety requirement under Section 26-8(a).**

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**29-30. Obligations of landlords.**

(a) Each landlord must reasonably provide for the maintenance of the health, safety, and welfare of all tenants and all individuals properly on the premises of rental housing. As part of this general obligation, each landlord must:

\* \* \*

(6) Supply water and hot water as reasonably required by the tenant and adequate heat as required by Chapter 26. In a dwelling unit located in a common ownership community, the landlord must provide water, hot water and adequate heat to the extent that the landlord is responsible for providing these services. This subsection [[does not]] must not be construed to impair any provision in a lease that obligates a tenant to pay for gas, heating oil, electricity, water, or sewer service that the tenant uses.

\* \* \*

(9) Supply and maintain air conditioning service either through individual air conditioning units or a central air conditioning system in a safe and good working condition so that it [[provides an inside temperature of eighty degrees Fahrenheit (80° F.) or less between May 1 and September 30]] meets the requirements of Section 26-7. This subsection [[does not]] must not be construed to impair any provision in a lease that obligates a tenant to pay for gas or electricity that the tenant uses.

\* \* \*

Sec. 2. Transition. For 12 months following the effective date of this Act, a landlord may request, and the Director may grant, delayed implementation of the

55 requirements of this Act for any real property that is the subject of a pending  
56 application for a necessary approval for development before the Planning Board, Board  
57 of Appeals, or Office of Zoning and Administrative Hearings. The period of delayed  
58 implementation for a property may not exceed the sooner of the completion of the  
59 development or 24 months.

## LEGISLATIVE REQUEST REPORT

Bill 24-19

### *Landlord-Tenant Relations – Obligations of Landlord – Air Conditioning*

**DESCRIPTION:** Bill 24-19, Landlord-Tenant Relations – Obligations of Landlord – Air Conditioning would amend Section 29-30 of the Code to require a landlord to provide and maintain a certain level of air conditioning service between May 1 and September 1.

**PROBLEM:** The County Code does not currently require a landlord to supply or maintain air conditioning service.

**GOALS AND OBJECTIVES:** To require a landlord to supply and maintain air conditioning service for rental housing located in the County.

**COORDINATION:** Department of Housing and Community Affairs

**FISCAL IMPACT:** OMB

**ECONOMIC IMPACT:** Finance

**EVALUATION:** To be done.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Christine M.H. Wellons, Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** Under Code Section 29-8, a violation of Chapter 29 is a Class A violation.