

MEMORANDUM

February 24, 2021

TO: Planning, Housing and Economic Development Committee

FROM: Christine Wellons, Legislative Attorney
Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 51-20, Landlord-Tenant Relations – Window Guards

PURPOSE: Worksession – Committee to make recommendations

Expected Attendees

Mitra Pedoeem, Director, Department of Permitting Services (DPS)
Rick Merck, Division Chief, Commercial Construction, DPS
Ehsan Motazed, Department of Permitting Services
Dan McHugh, Department of Housing and Community Affairs
Chris Anderson, Department of Housing and Community Affairs

Bill 51-20, Landlord-Tenant Relations – Window Guards, sponsored by Lead Sponsor Council President Hucker and Co-Sponsors Council Vice President Albornoz and Councilmembers Navarro, Rice, Riemer, Katz and Jawando, was introduced on December 8, 2020.¹ A public hearing was held on January 12, 2021.

Bill 51-20 would:

- (1) require the installation and maintenance of window guards in certain rental housing;
- (2) require certain notifications to tenants;
- (3) add lease requirements in certain circumstances;
- (4) provide for the enforcement of window guard requirements; and
- (5) generally amend laws regarding landlord-tenant relations.

BACKGROUND

Tragically, multiple children in the County have died from falling out of apartment windows in recent years. The purpose of Bill 51-20 is to prevent future tragedies of this nature by requiring the installation of window guards in certain multiple dwellings. New York City has a similar law requiring window guards to protect children.

¹#WindowSafety, #ASaferView4Kids

SPECIFICS OF THE BILL

Bill 51-20 would require a landlord of a multifamily dwelling to install and maintain a window guard in each window of a habitable room if: (1) a child of age 10 or younger occupies the dwelling; or (2) a tenant of the dwelling requests in writing the installation of window guards.

The Department of Housing and Community Affairs (DHCA) would be required to set minimum safety standards for the window guards. In addition, DHCA would enforce the window guard requirements.

Under the bill, a landlord would be required to include the window guard requirements within a lease or an addendum to the lease. The landlord would not be permitted to charge a tenant for the installation or maintenance of window guards.

SUMMARY OF PUBLIC HEARING

A public hearing was held on January 12, 2021, where several speakers testified in support of the bill. Councilmember Jarrett Smith of the City of Takoma Park testified about the family who lives in District 5 where a toddler last year died due to injuries sustained from a fall from a three-story apartment window. This was the second incident that occurred in Montgomery County. He further testified that research from *Journal Injury Prevention* supports evidence that window guards has reduced the number of children falls from 216 in 1976 to 9 in 2016.

There were two doctors who also testified in support, a Pediatric Emergency Medicine Doctor and Public Health Injury Prevention Specialist who testified as to the first-hand injuries they experienced when a child falls out of a window, e.g., broken bones, head injuries, and life threatening consequences. The occurrence of pediatric window falls in Montgomery County has increased and is expected to increase over the summer months. The Maryland Academy of Pediatrics and National Children's Hospital also supports this legislation.

A host of community advocates and individuals testified that window guards provide protection for households with children in multi-family properties and reiterated the critical nature for the County to ensure the safety of children living in rental housing.

Apartment and Office Building Association of Metropolitan Washington (AOBA) issued support for the bill and raised a few amendments for consideration, such as: 1) there should be no obligation for an owner to install a window guard when a child (under 10 years old) resides in a unit, unless the tenant makes an affirmative request in writing; 2) a tenant should bear the responsibility to notify the owner of a child in a unit, and DHCA should develop a tenant's rights and responsibilities pamphlet; and 3) if there is an undue hardship or structural defect that prevents the window guard from being installed, an owner should be exempt from installing the window guard.

Lastly, several testimonies referenced New York City as being a prime example for legislation that implemented the requirement for window guards, which resulted in a significant reduction of pediatric window falls.

ISSUES FOR THE COMMITTEE’S CONSIDERATION

1. Determining when a Landlord Must Install a Window Guard

Under the bill, a landlord of a multifamily rental property must install a window guard if:

- (A) a child of age 10 or younger occupies the dwelling unit; or
- (B) a tenant of the dwelling unit requests in writing the installation of window guards.

AOBA has requested an amendment to delete a landlord’s requirement to install a guard if a child of 10 or younger occupies the dwelling unit. Instead, under AOBA’s amendment, a guard would be required only if a child of 10 or younger occupies the dwelling ***and*** the tenant of that dwelling requests the installation of window guards.

The advantage of AOBA’s amendment would be that landlords would not have to guess the ages of children residing in a unit; the onus would be on the tenant to identify the ages and make a request for the guards. The disadvantage, however, would be that tenants might not be aware of the availability of window guards. As a result, it is likely that less children would be protected if tenants were required proactively to request guards based upon the ages of residents.

In order to avoid a guessing game for landlords – but at the same time to protect as many children as possible – the Committee might wish to consider the following amendment, which would require tenants to identify the ages of residents through the leasing process. Based on the ages identified by the tenant, the landlord would have a duty to install the window guards. This is the approach taken by New York City, which has a successful window-guard requirement.

After line 48, insert the following.

- (4) The lease or addendum under paragraph (3) must include a statement, signed and dated by the tenant, that indicates whether a child of age 10 or younger occupies, or will occupy, the dwelling.

A signed statement by the tenant would enable the landlord to know if a child who is 10 or younger will reside at the property and, therefore, whether a window guard is required for that reason.

Decision Point: Whether to amend the bill to require a signed statement by the tenant in the lease regarding whether a child of 10 or younger will occupy the dwelling.

2. Whether to Require Annual Notices by Landlords to Tenants

In its Racial Equity and Social Justice Impact Statement, the Office of Legislative Oversight (OLO) recommended the following amendment to Bill 51-20:

- Require landlords to send an annual notice to tenants, asking if children age ten or younger live in the apartment or if window guards are requested for any reason, regardless of whether there are children in residence.

In support of the amendment, OLO noted that New York City law requires landlords to notify tenants annually of the window-guard requirements. Under New York City law, the following notice must be provided by a landlord, and signed by a tenant, annually:

DEPARTMENT OF HEALTH
CITY OF NEW YORK
NOTICE TO TENANT OR OCCUPANT

You are required by law to have window guards installed in all windows* if a child 10 years of age or younger lives in your apartment.

Your landlord is required by law to install window guards in your apartment:

- if a child 10 years of age or younger lives in your apartment. OR
- if you ask him to install window guards at any time (you need not give a reason)

It is a violation of law to refuse, interfere with installation, or remove window guards where required, or to fail to complete and return this form to your landlord. If this form is not returned promptly an inspection by the landlord will follow.

CHECK WHICHEVER APPLY:

- CHILDREN 10 YEARS OF AGE OR YOUNGER LIVE IN MY APARTMENT
- NO CHILDREN 10 YEARS OF AGE OR YOUNGER LIVE IN MY APARTMENT
- WINDOW GUARDS ARE INSTALLED IN ALL WINDOWS*
- WINDOW GUARDS ARE NOT INSTALLED IN ALL WINDOWS*
- I WANT WINDOW GUARDS EVEN THOUGH I HAVE NO CHILDREN 10 YEARS OF AGE OR YOUNGER
- WINDOW GUARDS NEED MAINTENANCE OR REPAIR
- WINDOW GUARDS DO NOT NEED MAINTENANCE OR REPAIR

(New York City Health Code, Chapter 12, Appendix B).

In addition to providing this notice annually, a landlord in New York must follow-up if the tenant does not respond to the notice:

If by February 15th of the year for which the notice was sent a landlord does not have a written communication signed by the tenant, and does not otherwise have actual knowledge of the need or desire for window guards, then the landlord or his agent shall at reasonable times inspect the dwelling unit to ascertain whether a child 10 years of age or younger resides in the dwelling and if so, whether approved window guards are properly installed and maintained.

(*Id.* at § 12-03(c)).

If the Committee wishes to require annual notifications and follow-up, similar to New York City, it could *amend lines 38-43 of the bill as follows.*

(d) Notification to tenants; lease requirements.

- (1) The landlord of a multifamily dwelling unit annually must notify the tenant of the unit about the requirements under this section.
- (2) The notification under paragraph (1) must:
 - (A) be in writing [[and must]];
 - (B) be provided to the tenant in the form and manner prescribed by the Director; and
 - (C) include, at a minimum, a checklist, to be signed and dated by the tenant, that indicates:
 - (i) whether a child of age 10 or younger occupies or will occupy the dwelling unit;
 - (ii) if no child of age 10 or younger occupies or will occupy the dwelling unit, whether the tenant requests a window guard; and
 - (iii) whether an existing window guard requires repair or maintenance.
- (3) If a landlord does not receive a signed notification from the tenant within 30 days after providing the notification to the tenant under paragraph (2), and does not otherwise have actual knowledge of the need or desire for window guards, then the landlord must, at reasonable times and with the consent of the tenant, inspect the dwelling unit to ascertain whether a child 10 years of age or younger occupies the dwelling and if so, whether approved window guards are properly installed and maintained.

Decision Point:

Whether to amend the bill to require annual notifications by landlords and annual signed statements by tenants, and whether to require follow-up by the landlord.

3. Whether to Permit Exemptions from the Window-Guard Requirement

Under New York City’s window guard law, a landlord may obtain a “variance” if “the installation of an approved Health Department window guard proves to be impossible for structural reasons or infeasible.” The variance request must include – among other information – “The alternative device presented for consideration must meet the same criteria and standards of safety as the prescribed window guards”.

AOBA has suggested that Bill 51-20 similarly should contain a variance process. Since the bill provides already that window guards must meet safety requirements established by the Director of DHCA, Council staff suggests that the issue of “alternative” window guards for structurally unusual cases could be addressed by the Director’s safety standards or regulations.

The Committee might wish to consider the following amendment to make clear that regulations could address unusual structural situations.

Amend lines 30-31 as follows.

(4) The Department may adopt method (2) regulations to implement the requirements of this section. The regulations may include procedures for the Director to approve a landlord’s request for a variance, to use a safe alternative to a window guard in a particular window, if a window guard meeting the requirements of paragraph (3) is infeasible in the window for structural reasons.

Decision Point: Whether to amend the bill to explicitly allow the Director of DHCA to establish a variance process when standard window guards are infeasible for structural reasons.

4. Transition Period

The Committee might wish to recommend an uncodified transition clause in order to direct landlords and DHCA regarding the initial implementation of the bill. A potential clause would be:

Sec. 2. Transition. The Department of Housing and Community Affairs must, within 30 days of the effective date of this Act, publish on its website a sample annual notification that a landlord must use to notify tenants under this Act. A landlord must, within 60 days after the effective date of this Act, provide an initial annual notification to tenants under this Act.

Decision Point: Whether to amend the bill to include transition periods for DHCA to provide a sample notification, and for landlords to provide initial notifications to tenants.

5. Technical Amendments

The Office of the County Attorney has suggested the following technical corrections to the bill, which Council staff supports:

- Replace “Department” with “Executive” in line 30.
- Delete the penalties provision (lines 49-50), which is subsection (e). Since Section 29-8 already states that “any violation” of Chapter 29 is a Class A violation, subsection (e) is needed.

Decision Point: Whether to accept the suggested non-substantive, technical amendments.

NEXT STEP: The Committee is expected to recommend whether to enact Bill 51-20. The Committee might wish to recommend enactment with some or all of the amendments discussed above in Items #1-5.

This packet contains:

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Bill No. 51-20
Concerning: Landlord-Tenant Relations
- Window Guards
Revised: 12/03/2020 Draft No. 3
Introduced: December 8, 2020
Expires: June 8, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Hucker
Co-Sponsors: Council Vice President Albornoz and Councilmembers Navarro, Rice, Riemer, Katz
and Jawando

AN ACT to:

- (1) require the installation and maintenance of window guards in certain rental housing;
- (2) require certain notifications to tenants;
- (3) add lease requirements in certain circumstances;
- (4) provide for the enforcement of window guard requirements; and
- (5) generally amend laws regarding landlord-tenant relations.

By amending

Montgomery County Code
Chapter 29, Landlord-Tenant Relations
Section 29-30

By adding

Montgomery County Code
Chapter 29, Landlord-Tenant Relations
Section 29-35D

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<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:

- 28 (3) A window guard installed under paragraph (2) must meet
 29 minimum safety standards prescribed by the Director.
- 30 (4) The Department may adopt method (2) regulations to implement
 31 the requirements of this section.
- 32 (5) The Director should educate landlords and tenants of multifamily
 33 dwelling units about the requirements of this section.
- 34 (c) Responsibility of tenants and other persons. A person must not:
- 35 (1) obstruct or interfere with the installation of a window guard
 36 required under this section; or
- 37 (2) remove or disable a window guard required under this section.
- 38 (d) Notification to tenants; lease requirements.
- 39 (1) The landlord of a multifamily dwelling unit must notify the
 40 tenant of the unit about the requirements under this section.
- 41 (2) The notification under paragraph (1) must be in writing and must
 42 be provided to the tenant in the form and manner prescribed by
 43 the Director.
- 44 (3) The landlord:
- 45 (A) must include in the lease, or an addendum to the lease, the
 46 requirements of this section; and
- 47 (B) must not charge the tenant for the installation or
 48 maintenance of a window guard under this section.
- 49 (e) Penalties. A violation of this section is a Class A violation under
 50 Section 29-8.

LEGISLATIVE REQUEST REPORT

Bill 51-20

Landlord-Tenant Relations – Window Guards

DESCRIPTION: Bill 51-20 would:

- (1) require the installation and maintenance of window guards in certain rental housing;
- (2) require certain notifications to tenants;
- (3) add lease requirements in certain circumstances;
- (4) provide for the enforcement of window guard requirements; and
- (5) generally amend laws regarding landlord-tenant relations.

PROBLEM: Lack of adequate safety of windows in certain multifamily dwelling units

GOALS AND OBJECTIVES: Require the installation of window guards to protect children

COORDINATION: DHCA, DPS

FISCAL IMPACT: OMB

ECONOMIC IMPACT: OLO

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: New York City

SOURCE OF INFORMATION: Christine Wellons, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Variable

PENALTIES: Sections 26-15 and 26-16

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Economic Impact Statement

Office of Legislative Oversight

BILL 51-20 Landlord-Tenant Relations – Window Guards

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 51-20 would create short-term costs for landlords. While the costs would be partially offset by benefits to certain businesses and workers, OLO anticipates Bill 51-20 would have a net negative economic impact on the County.

BACKGROUND

If enacted, Bill 51-20 would require landlords of multifamily dwelling units to install and maintain window guards (i.e., physical barriers attached to windows to prevent occupants from falling out) in every unit where a child of age 10 or younger occupies the dwelling or at the request of a tenant.¹ However, landlords would not be required to install window guards to ground-floor windows or windows in which the guard would cause violations of fire safety or egress requirements.² Landlords would be required to notify tenants about the requirement and prohibited from charging tenants for the installation and maintenance of the window guards.³ The Department of Housing and Community Affairs (DHCA) would be required to establish the safety standards for the window guards and responsible for enforcement. Violations of the requirements would be classified as Class A violations under Section 29-8.⁴

Analysts from Montgomery County Planning and OLO estimate that between 5,000 and 6,000 rental apartment units above the ground floor are leased by households that have a child under the age of 10. The majority of rental units that would require window guard installations—approximately 75%—would be in low-rise buildings. The estimated number of rental apartment units is based on the number of Montgomery County Public School (MCPS) elementary school children known to live in rental apartments. That known number of children was manipulated to arrive at an estimate of all children below the age of 10 in rental units by:

- Using Census data to adjust from total children to households that contain children.
- Using CoStar data to estimate the number of low-rise apartment buildings that are on a ground floor, and thus to which this bill is not applicable.
- Using Census data to estimate the number of toddlers and infants who are too young to attend public school but live in rental apartment buildings.

This process indicates that there are between 7,000 and 8,000 rental apartment units above the ground floor that are leased by households that have children under the age of 10 throughout the entire County. These estimates must be adjusted to reflect geographic exemptions from the Bill 51-20. In particular, the window guard requirement would not apply to municipalities, such

¹ Montgomery County Council, Bill 51-20, Landlord-Tenant Relations – Window Guards, Introduced on December 8, 2020, 1 and 2. See bill in Introduction Staff Report, [https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2689_1_12108_Bi](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2689_1_12108_Bi%2051-2020%20Introduction%2020201208.pdf)

² Ibid.

³ Ibid, 3.

⁴ For details on Class A violations, see Montgomery County Code, Section 29-8, Enforcement procedure, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-14663.

Economic Impact Statement

Office of Legislative Oversight

as Rockville and Gaithersburg, that have not opted into Chapter 29 of the Montgomery County Code. Using the proportion of units subject to the Department of Housing and Community Affairs (DHCA) enforcement to the total number of rental units in the County (approximately 74%), analysts arrived at the estimate—between 5,000 and 6,000—of the number of renter households/rental units (assuming one household per unit) that would be affected by Bill 51-20.

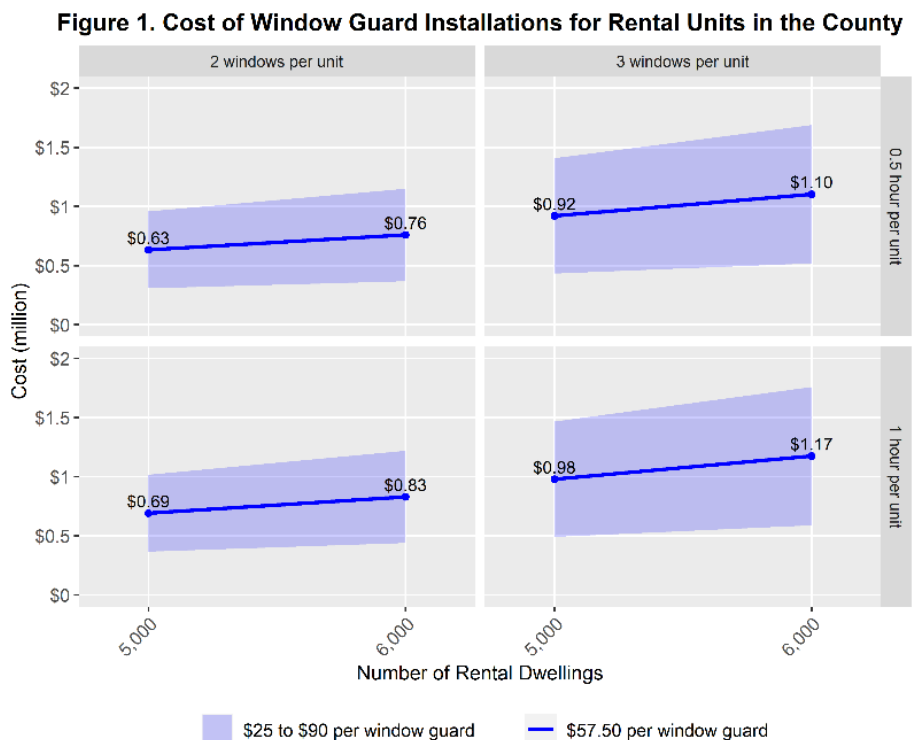
METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

The economic impacts of enacting Bill 51-20 would occur through creating economic costs for landlords of affected units. OLO determined a forecast range for installing the window guards. The range is based on the number of renter households with children (between 5,000 and 6,000) and the following assumptions:

- **Number of Windows Per Unit:** A review of floor plans for a (non-random) sample of rental units in the County suggests that an average of 2 or 3 windows per dwelling unit may require window guard installation.
- **Price Per Window Guard:** A review of “window guards for children” on Amazon indicated that depending on length, width, and other specifications, the range of possible prices for each window guard is between \$25 and \$90, with a midpoint of \$57.50.
- **Labor Cost Per Unit:** Occupational wage estimates from the Maryland Department of Labor indicate that the median hourly wage for maintenance and repair workers in 2019 was \$23.13.⁵ To install the window guards, OLO assumes that it would take 1 hour per dwelling unit at a labor cost of \$23.13 or 0.5 hours at a labor cost of \$11.57.

Figure 1 presents separate estimates of the total cost of installing window guards in 5,000 and 6,000 dwelling units, based on the number of windows and labor hours assumed in each model. As indicated in the figure, the total cost of installation at \$57.50 per window guard is projected to range between \$630,000 to \$1,170,000, depending on the number of dwelling units that require window guards, windows that require covering, and labor hours needed to perform the installations.

There are several factors that create uncertainty around the forecasted range of costs. First, the average number of windows that would require window guards would depend on how many windows in the affected dwelling units that are exempt from the regulation due to fire safety or egress requirements. Second, the average price of window



⁵ Maryland Department of Labor, Maryland Occupational Employment and Wage Estimates 2019, <https://www.dllr.state.md.us/lmi/wages/2415001007/49-9071.htm>.

Economic Impact Statement

Office of Legislative Oversight

guards may depend on bulk purchasing by landlords, supply disruptions caused by the Covid-19 pandemic, or other factors. Third, the average labor cost associated with installing the window guards would depend on how many landlords rely on in-house maintenance staff on salary or outside labor paid for on an hourly basis.

VARIABLES

The primary variables that would affect the economic impacts of Bill 51-20 are:

- Number of dwelling units that require window guards;
- Average number of windows per dwelling unit;
- Average price of window guards;
- Percentage of window guards purchased by local distributors;
- Average labor costs; and
- Percentage of costs passed onto tenants.

IMPACTS

WORKFORCE ▪ **TAXATION POLICY** ▪ **PROPERTY VALUES** ▪ **INCOMES** ▪ **OPERATING COSTS** ▪ **PRIVATE SECTOR CAPITAL INVESTMENT** ▪ **ECONOMIC DEVELOPMENT** ▪ **COMPETITIVENESS**

Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 51-20 would have negative economic impacts on the private organizations that own and manage rental properties in the County.⁶ The estimated \$630,000 to \$1,170,000 in total costs would be distributed among the owners of rental properties. Because approximately 75% of renter households with children are in low-rise apartment buildings, the total costs would disproportionately fall on owners of these buildings, relative to owners of high-rise rental properties. These costs would increase operating costs for owners of rental properties at the time of purchase and installation of window guards. Holding all else equal, the increase in operating costs would reduce business incomes. While Bill 51-20 would not allow landlords to charge tenants for the window guard installations, the change in law could not prevent landlords from passing the cost onto tenants in the form of higher rents. The extent to which landlords could do so would mitigate the increase in operating costs and loss of income.

The overall economic impact to the County would be *modestly* offset by gains to local businesses that would install and distribute windows. The offset would be modest because all manufacturers and some distributors of the window guards purchased by landlords would be based outside the County and some portion of the properties would rely on their own maintenance staff for the installation of window guards, as opposed to contracting out to third-party businesses. For these reasons, OLO believes Bill 51-20 would have a net negative impact on private organizations in the County.

OLO does not expect Bill 51-20 to have impacts on the Council's other priority indicators, particularly taxation policy, property values, private sector capital investment, economic development, or competitiveness.

⁶ For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

Economic Impact Statement

Office of Legislative Oversight

Residents

OLO believes that Bill 51-20 would have negligible economic impacts on renter households in the County. Renters would incur a portion of the costs from installing the window guards, if landlords pass down some of or all the costs in the form of higher rents. The costs would be negligible even if landlords distribute the entire costs to all tenants in their properties over the mid-term, meaning after the expiration of current leases and signing of new leases. To illustrate, given that 75% of renter households with children are in low-rise properties, OLO assumes that owners of low-rise buildings would incur 75% of the total costs presented in **Figure 1** above. If these owners were to eventually pass on these costs to renters in their units (44,163 units in low-rise buildings in the areas affected by the bill),⁷ the total per unit rental increase would range from \$11 to \$20. When distributed over a year-long lease, the monthly rent increase would be between \$0.92 and \$1.67. Based on these assumptions, rent increases would be even smaller for units in high-rise properties.

OLO does not believe Bill 51-20 would impact residents in terms of the Council's other priority indicators.

QUESTIONS FOR CONSIDERATION

OLO has recently produced economic impact statements for three bills (Expedited Bill 50-20, Bill 51-20, and Bill 52-20) related to rental housing and landlord responsibilities. All three are likely to have a negative economic impact on landlords. Should the Council desire more economic analysis, OLO suggests conducting an examination of the aggregate economic impact of these bills.

WORKS CITED

Maryland Department of Labor. Maryland Occupational Employment and Wage Estimates 2019. <https://www.dlr.state.md.us/lmi/wages/2415001007/49-9071.htm>.

Montgomery County Council. Bill 10-19, Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council, Bill 51-20. Landlord-Tenant Relations – Window Guards. Introduced on December 8, 2020.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) drafted this economic impact statement.

⁷ Figure provided by Montgomery County Planning Department.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 51-20: LANDLORD-TENANT RELATIONS-WINDOW GUARDS

SUMMARY

The Office of Legislative Oversight (OLO) expects Bill 51-20 to have a favorable impact on racial equity and social justice in the County.

BACKGROUND

The main goal of Bill 51-20 is to increase the child safety standards of rental properties in the County. In the past two years, three children have fallen from residential windows located on the second story of the property or higher in Montgomery County; one of the children died.¹ According to the Cincinnati Children's Hospital, every year in the United States between 15 and 20 children under the age of 11 die from window falls annually and about 15,000 suffer injuries.² Additionally, window falls typically occurred in low-income neighborhoods with "deteriorating housing, unsatisfactory window construction and no air conditioning."³

Bill 51-20 will increase landlord responsibilities and rental property safety standards in the County.⁴ If enacted, the bill would:

- Require the installation and maintenance of window guards in certain rental housing;
- Require certain notifications to tenants;
- Add lease requirements in certain circumstances;
- Provide for the enforcement of window guard requirements; and
- Generally amend laws regarding landlord-tenant relations.

DEMOGRAPHIC DATA

A review of the demographic data suggests that Black, Latinx, and Indigenous (Native American) residents will disproportionately benefit from Bill 51-20 compared to White and Asian residents. For example, a review of 2019 data from the American Community Survey demonstrates higher rental rates among Black, Latinx, and Indigenous households where 50% of Latinx and Indigenous residents and 58% of Black residents lived in rented housing compared to 25% of White and Asian residents.⁵

ANTICIPATED RESJ IMPACTS

OLO predicts that the implementation of Bill 51-20 would favorably impact racial equity and social justice within the County because Black, Latinx and Indigenous residents are over-represented among the renters who would benefit from the enhanced safety standards required under this bill as compared to residents in owner-occupied housing.

RESJ Impact Statement

Bill 51-20

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

This RESJ impact statement and OLO's analysis rely on several sources of information, including the American Community Survey,⁶ Bill 51-20 and the Economic Impact Statement for Bill 51-20⁷.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequalities are warranted in developing RESJ impact statements.⁸ As identified by the New York City law that requires building owners to install window guards,⁹ this RESJ impact statement offers one recommended amendment for Bill 51-20:¹⁰

- Require landlords to send an annual notice to tenants, asking if children age ten or younger live in the apartment or if window guards are requested for any reason, regardless of whether there are children in residence.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Dr. Theo Holt drafted this racial equity and social justice impact statement.

¹ Montgomery County Council, Bill 51-20, Landlord-Tenant Relations- Fire Safety- Removal of mercury Service Regulators, Introduced December 8, 2020, Montgomery County, Maryland.

² Cincinnati Children's, Window Fall Prevention, 2015. <https://www.cincinnatichildrens.org/health/w/window-falls>

³ Ibid

⁴ Bill 51-20

⁵ American Community Survey (ACS), Selected Housing Characteristics, The United States Census Bureau, 2019. https://data.census.gov/cedsci/table?g=0400000US24_0500000US24031&tid=ACSDP5Y2019.DP04

⁶ Ibid

⁷ Stephen Roblin, Economic Impact Statement, Bill-51-20, December 2020. OLO, Montgomery County, Maryland.

⁸ Montgomery County Council, Bill No. 27-19 Racial Equity and Social Justice, Effective on March 2, 2020, Montgomery County, Maryland.

⁹ NYC Administrative Code, Article 11, Protective Devices and Fire Protection, Code 27-2043.1, New York, New York <https://www1.nyc.gov/assets/doh/downloads/pdf/win/win-savelives-bro.pdf>

¹⁰ EPA Factsheet

Fiscal Impact Statement
Bill 51-20 - Landlord-Tenant Relations - Window Guards

1. Legislative Summary

Bill 51-20 would require a landlord of a multifamily dwelling to install and maintain a window guard in each window of a habitable room if: (1) a child of age 10 or younger occupies the dwelling; or (2) a tenant of the dwelling requests in writing the installation of window guards.

The Department of Housing and Community Affairs (DHCA) would be required to set minimum safety standards for the window guards. In addition, DHCA would enforce the window guard requirements.

Under the bill, a landlord would be required to include the window guard requirements within a lease or an addendum to the lease. The landlord would not be permitted to charge a tenant for the installation or maintenance of window guards

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No changes in County expenditures or revenues are anticipated due to this regulation. Bill 51-20 would require DHCA to set minimum safety standards for the window guards. In addition, DHCA would enforce the window guard requirements. It is expected that compliance with this bill can be accomplished through existing staffing and with little modification to current inspection and administrative protocols, including responding to specific constituent complaints and following the established “troubled property” and triennial inspection protocols. This cost estimate is based on the following assumptions:

- There will not be an ongoing proactive enforcement of this new requirement, and that it will be accomplished through complaints and during our regular inspection processes; and,
- no additional code inspectors will be required beyond what has been approved for DHCA, even if the position is currently subject to the hiring freeze.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No changes in County expenditures or revenues are anticipated over the next six fiscal years due to this bill.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 51-20 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Per item #2, the bill can be implemented through existing staffing and with little modification to current inspection and administrative protocol.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

It is expected that these new duties can be managed with current staffing.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed to implement Bill 51-20.

10. A description of any variable that could affect revenue and cost estimates.

Not applicable.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

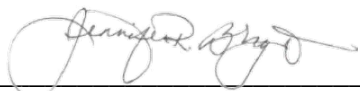
Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Tim Goetzing, Department of Housing and Community Affairs
Frank Demarais, Department of Housing and Community Affairs
Pofen Salem, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

1/11/21

Date

Montgomery County Council Testimony

Thank you for this opportunity. More than 20 years ago, I earned a PhD from the Johns Hopkins School of Public Health. I have been conducting Injury Prevention research since that time. Now you know a little bit about me. I know nothing about most of you, but I suspect that if you saw a toddler falling from a high rise building, you would run to save its life. It is no exaggeration that you will have the chance to do just that when you vote on Bill 51-20.

New York City passed its first window guard legislation in 1976. With strengthening and strict enforcement, their policies have reduced children's fatal falls from windows by **92%**. Such compelling evidence has caused the American Academy of Pediatrics to support window guard mandates.

And it is important to remember that more than 4,000 children a year are treated for **non**-fatal window falls in the United States. Most of those victims are less than five years of age. And 10% of them are left with permanent neurological damage, which is not surprising because children who fall out of windows tend to impact concrete.

This is not an easy time for landlords in Montgomery County. I hope that the DHCA makes it easy for them to comply with this law. For example, they could refer landlords to products that meet the U.S. Consumer Product Safety Commission's standards for window guards, they might negotiate bulk pricing, and provide sample language for use in leases and tenant notifications. If the County makes it easier to comply with this safety regulation, more landlords will comply.

Please do not delay your action on this measure. Toddler deaths from window falls are most common in the spring and summer. This bill may be your best chance to leave a legacy that endures far beyond your term as a member of the County Council.

Delivered January 12, 2021

by Dr. Deborah Girasek



Testimony of Dr. Katie Donnelly MD, MPH, Medical Director Safe Kids DC

Bill 51-20, Landlord-Tenant Relations-Window Guards

January 12, 2020

Good morning President Hucker and the members of the Council. Thank you for the opportunity to testify today. My name is Katie Donnelly and I am a practicing emergency medicine physician at Children's National Hospital in Washington, DC. Children's National Hospital is the trauma center for children in this region, including Montgomery County, that treats approximately 120,000 children per year. I also am the Medical Director for Safe Kids DC, an organization dedicated to decreasing accidental childhood injury in the District, Maryland and Virginia. I am speaking to you today both in my role as an emergency medicine doctor and as an injury prevention specialist and researcher.

I am here today to express my strong support for Bill 51-20, Landlord-Tenant Relations-Window Guards. As a pediatric emergency provider, I have seen firsthand the damage a fall from a window can do to a child. From broken bones to head injuries to intra-abdominal bleeding, these injuries can be life threatening and life altering. It is heartbreaking to have to tell a mother that her child has died needlessly from a fall. These injuries are entirely preventable with simple window guards and stops. Window guards are affordable, available and easy to install as the landlord.



Pediatric window falls, meaning children falling large distances out of building windows, are a preventable cause of childhood injury and death. In the past year we have seen pediatric window falls treated at Children's National Hospital double. We have seen window falls from Montgomery County double as well. Many of these falls were from building heights of two to four stories. We have also, tragically, had two fatalities in 2020, one from Montgomery County. This recent number of deaths from window falls is unheard of for our area, and these deaths are preventable. I commend the Council for acting now to intervene.

Children fall out of windows due to a combination of factors. One, they are naturally curious and will investigate and play with anything they can. Families underestimate a child's ability to access windows through climbing on or moving nearby furniture. Two, parents place too much faith in window screens, thinking they will keep their children safe from falls. Window screens are meant to keep bugs out, not children in. Three, families just generally don't think of windows as a threat to the safety of their children.

For these reasons, Children's National and Safe Kids DC strongly support the legislation proposed by the Council. A similar law that mandated landlords in an urban setting supply window guards for any family with children under the age of 10 was able to reduce pediatric window falls by 96%, thus saving lives. We also support the inclusion of any window above the ground floor as we know that children fall out of second and third story windows frequently. The death of a toddler last year in Montgomery County was from only a third story window. This legislation can prevent unnecessary injuries and deaths in children from window falls.





We thank the Council for its dedication to the safety and well-being of children in Montgomery County. We have full faith that this legislation will pass and will allow for a brighter and safer future for the children of Montgomery County. We look forward to continuing to work with the Council on pediatric injury prevention in the future. I am happy to answer any questions you might have about my testimony.



To: Montgomery County Council

RE: Bill 51-20 requiring Landlords to install window guards per request

FROM: N. Leslie Olson

Bill 51-20 was introduced on 12/8/2020 and sponsored by Councilmember Hucker. Based on falls through windows by young children in buildings deemed to be in poor condition with poor window construction, Bill 51-20 is proposing that all landlords with rentals in multi-family buildings be required to install window guards. The requirement becomes effective if there is a child under the age of 10, or if the tenant simply requests the installation. There may not even be a child, but the burden to landlord remains and cannot be foreseen.

I urge the council to vote no on this bill and coordinate with DHCA on addressing properties that truly have a deficiency. Landlords can then address the deficiency, or install window guards. Between DHCA and HOC, there is ample opportunity to review the rental housing stock by using guidelines already in place. Requiring all landlords in multi-family buildings to address a request for window guard installation is not appropriate. Some other difficulties with this bill are as follows:

1. The needs a tenant requires in a unit they are looking at to rent should be addressed by the tenant prior to leasing, and if window guards are needed, that should be a discussion at that time between tenant and landlord, to see if that request can be accommodated.
2. An open ended opportunity to request window guard installation provides a tactic that can be used by the tenant to further burden the landlord. It does not address the term left on a lease. After the required installation, the tenant might have had no intention to renew and choose to move.
3. It is assumed that a landlord will pass the window guard cost upon subsequent tenants, or in future increases by maximizing that increase when there might not have been one. Now the county has higher rents for no other reason than council has not selectively addressed problem buildings, instead opting to apply a requirement requiring an out of pocket expense onto all landlords. The concern for affordable housing has not been considered and there has actually been no improvement made to faulty window construction, the stated reason for prior falls from windows involving children. Improvements to windows is a capital improvement and a benefit; adding window guards is not.
4. Per the lease, it is tenant's responsibility to notify landlord of any changes in occupancy. (This is also true if the tenant has a rental voucher). It should not be landlord's responsibility to solicit that information in order to comply with bill 51-20.
5. The bill also does not clearly discuss referenced exclusions based on fire safety. A guard in a bedroom window might require the ability for one to escape in a fire emergency, and the cost for such a guard is considerable. Again, not addressing faulty window construction up front continues the very scenario this bill has hoped to end.

Again I urge the council to vote no on this bill and direct its energies to seeing that buildings with known window deficiencies are addressed, as determined by inspection procedures already in place.



Testimony on Bill 51-20 Landlord-Tenant Relations – Window Guards

Coalition Homes and Montgomery County Coalition for the Homeless

January 11, 2021

Good afternoon Council President Hucker and members of the Montgomery County Council. My name is Jeffrey Mosley and I am testifying on behalf of Coalition Homes (CH) and the Montgomery County Coalition of the Homeless (MCCH). MCCH provides solutions in Montgomery County to ensure that homelessness is rare, brief, and nonrecurring. This mission is underscored by our vision to build a community where everyone has a safe, stable, and affordable place to call home. MCCH's affiliate, CH, owns, manages and seeks to expand the supply of the county's affordable housing dedicated as permanent supportive housing (PSH).

CH and MCCH generally applaud the Window Guards bill 51-20. As an owner and manager of 186 affordable PSH units across Montgomery County dedicated to housing families with no or very low incomes and who have struggled with homelessness, the health and safety of our residents are paramount. The requirement of window guards to ensure the safety of children, particularly at or under 10 years of age, will help the landlord and tenant from unimaginable disasters. While we understand and agree with the spirit of the legislation, we believe that more information and consideration as to burden is required. We encourage, for example, the Council to estimate the cost burden based on industry standards and provide funding to help defray the cost of purchasing, installing and managing these devices. This bill comes at a time when owners and managers are substantially impacted by COVID-19 and an increased, unsupported requirement that would include added inspection accountability, so this presents an added cost and compliance burden at a very precarious time. Greater clarification is also needed on the second condition where guards will be required, if a tenant of a unit requests a window guard in writing. It is unclear if the second area is required even if children are not present in the unit. The net effect is that owners of multifamily properties may have to install window guards in all windows in each habitable room in each unit.

MCCH and CH supports efforts to maintain the safety of one of our most vulnerable residents, children. We hope the Council will look at the burden this requirement will place on property owners and managers, particularly those serving families with no or very low incomes. We look forward to working with the Council to ensure that our residents live in very safe environments.

Thank you for your time and giving me the opportunity to share these observations.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', with a large loop at the end of the signature.

Jeffrey Mosley
Director, Coalition Homes
Chief Real Estate Officer, Montgomery County Coalition for the Homeless



MONTGOMERY HOUSING ALLIANCE

www.montgomeryhousingalliance.org

A coalition of organizations focused on increasing the rate of preservation and development of affordable housing in Montgomery County

Testimony on Bill 51-20, Landlord-Tenant Relations – Window Guards

Montgomery Housing Alliance

January 12, 2021

Good afternoon Council President Hucker and members of the Council. My name is Mary Kolar, and I am testifying on behalf of Montgomery Housing Alliance (MHA). MHA is a coalition of organizations focused on increasing the rate of affordable housing preservation and development in Montgomery County. MHA members include non-profit developers, organizations that serve people in need of affordable housing, and other groups who count affordable housing as one of their policy goals.

MHA supports Bill 51-20, requiring the installation and maintenance of window guards in certain rental housing units. Window guards provide important protection for households with children in multi-family properties. It is imperative to ensure the safety of children living in rental housing, especially in light of several tragic incidents in the County.

As the Council considers Bill 51-20, we encourage you to consider potential effects on fire safety and emergency escape. We also encourage you to provide funding to facilitate housing providers' thorough and speedy compliance with the bill. Just as tenants have been economically impacted by the pandemic, so have housing providers. Many are struggling to ensure that their properties remain stable during these uncertain economic times, and this added expense may be difficult to absorb.

Again, MHA recognizes the importance of securing the safety of the County's children, and encourages you to pass and carefully implement Bill 51-20. Thank you for the opportunity to provide input as you consider this matter.



The Montgomery Housing Alliance is a coalition of the Community Development Network of Maryland



AOBA Statement on Bill 51-20 Landlord-Tenant Relations-Window Guards January 12, 2021

Good afternoon councilmembers and staff. My name is Nicola Whiteman and I appear today on behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is a non-profit trade association representing more than 133,000 apartment units and over 24 million square feet of office space in suburban Maryland. Here in the County, AOBA members own/manage over 60,000 of the [County's estimated 83,769 rental units](#) and 20,00,000 square feet of office space. I am pleased to testify in support of Bill 51-20 with amendments. While AOBA supports the spirit of this bill and shares the county's commitment to ensuring the safety of our residents, we have identified several issues that can be addressed by amendments.

Obligation to install: Consistent with the stated intent to protect vulnerable children, the Council should amend the bill to clarify that the obligation to install and maintain window guards should be triggered by a written request from a tenant of a dwelling unit in which a child of 10 or younger resides.¹ This balances the safety reasons for the bill against the costs associated with compliance which will include, for some older properties, significant structural changes.

Tenant responsibility/Notification to tenants: AOBA further clarifies tenants' obligation to notify housing providers in writing when an eligible child resides in the unit which would require installation and maintenance of window guards. The form issued by DHCA should also, at a minimum, inform tenants of this right and responsibility. See, for example, the following language from New York City.

- **New York City [Window Guard General Information](#):** Pursuant to health code section 131.15:
 - Tenants must advise landlords or management at once, in any written form or by the forms required to be distributed on a yearly basis by the landlord, that they have children in the designated age category and must have window guards provided, installed and maintained.
 - **Tenants or occupants must respond to mandated inquiries by their landlords as to their window guard needs.** Failing to respond is a violation of the law!
- **[Window Guard Tenant Factsheet: Are Your Window Guards Installed Safely](#):** As a tenant, you must ... [n]otify your building owner in writing ... if a child age 10 or younger lives in your apartment..."

¹https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=28237&Dept=1 The second bill introduced today, known as the Window Safety Act, requires the installation of window guards to protect children from the risk of falling. ... Cincinnati Children's Hospital reports that, "Each year in the U.S. 15 to 20 children under the age of 11 die and nearly 15,000 are injured because of falls from windows."

Annual notification/lease renewals: AOBA recommends against consideration of an annual notification requirement as suggested in the hearing packet. A separate and additional notification which would impose another difficult to administer administrative requirement on housing providers. Further, it is important to note that the lease language tenants sign upon renewal would already include language specifying the window guard information. Notifying tenants through the initial lease and at renewal would be a much lower administrative burden on housing providers while still offering tenants adequate notification at regular intervals of their rights under this law. Finally, DHCA should also include information on the requirement in the Landlord-Tenant Handbook which housing providers are required to provide to residents under Montgomery County Code 29-28.²

Cost to install: Housing providers should have the option of passing the costs associated with the installation and maintenance of window guards on to tenants as is the case with other costs associated with operating and maintaining the County’s rental housing communities. **Best practices:** In New York City, building owners can charge a one-time fee per window guard. *See [Window guards: What Building Owners Need to Know](#) and [New York City- Window Guards: Information for Tenants](#).*³ The County should also consider developing a grant program to assist with installation costs or, for example, authorize a pilot program to offer free window guards for eligible rental housing communities, especially small housing providers.⁴

Undue hardship: AOBA also recommends adding language exempting housing providers from the requirement to install window guards where to do so would impose an undue hardship or where practical difficulties may result from strict compliance. Consider, for example, an older building for which there is no window guard on the market or where installing the window guard would require significant alterations to or replacement of the window frame or where one cannot be installed for other structural reasons.

- *New York City 24 § RCNY 2-09 procedures for Requesting Window Guard Variances.(d)* Requests for variances will be entertained *when the installation of an approved Health Department window guard proves to be impossible for structural reasons or infeasible.*
- *See also New Jersey code which provides that window guards are not required for windows that are designed not to be opened. N.J. Stat. § 55:13A-7.13 b.(1)* The requirements of subsection a. of this section shall apply to all windows, **except those windows** which give access to a fire escape, **which are not designed to open**, or which are

²Montgomery County Code § 29-28(f)(“At the beginning of a lease term, each landlord must provide each tenant with a copy of the Landlord-Tenant Handbook unless the tenant signs a statement declining a hard copy and accepting referral to the Landlord-Tenant Handbook maintained on the County website.”)

³[New York City- Window Guards: Information for Tenants](#) “*Building owners may charge tenants for the installation and cost of window guards in their apartments, but they may not charge for window guards in public areas. If you move out before paying for window guards in full, you must pay the balance immediately. Your building owner may deduct the remaining unpaid portion from your security deposit. If you move into an apartment that already has window guards, you cannot be charged for them. If the landlord chooses to replace the window guards due to renovation or window replacement, you cannot be charged for the new guards.*”

⁴For example, in 1972, the NYC Health Department launched a pilot program in the Bronx to distribute free window guards, record window falls and increase awareness through radio and TV ads. Under the program, New York provided free, easily installed window guards for families with young children living in high-risk areas.

on the first floor; provided, however, that the requirements of subsection a. of this section shall apply to first floor windows in such circumstances as the commissioner may provide by rule.

Housing provider liability: Housing providers should not be held liable where the actions of the tenant or other parties to impair, disable or otherwise damage the window guard result in injury or loss of life.

AOBA Amendment- Landlord liability: Except in the case of the negligence or willful misconduct of landlord, a landlord shall not be liable to tenant for any damage, injury, loss or claim based on or arising out of any of the following: installation and procurement of the window guard, repair to the window guards; interruption in the use of the window guards; any accident or damage resulting from any use or operation (by landlord, tenant or any other person or entity) of the window guards.

Environmental considerations: Finally, when installing the guards in buildings built before 1978, drilling into the window frames can become a lead-based paint issue, as window sills already tend to be likely areas for lead-paint dust chipping in other circumstances. Since these guards are being installed where children are present, this is another potential compliance cost that housing providers with older properties would likely face as the County is essentially requiring that housing providers disturb potentially toxic paint dust in occupied units by drilling into window frames. Compliance costs for housing providers facing this challenge could be significant, especially for small housing providers already struggling due to the economic impact of COVID-19.

Thank you for the opportunity to share AOBA's recommended changes to B51-20.