

M E M O R A N D U M

March 10, 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 2 – Committee to make recommendations

Expected Attendees

Mitra Pedoeem, Director, Department of Permitting Services (DPS)
Rick Merck, Division Chief, Commercial Construction, DPS
Ehsan Motazedi, Department of Permitting Services
Aseem Nigam, Director, Department of Housing and Community Affairs
Dan McHugh, Department of Housing and Community Affairs
Chris Anderson, Department of Housing and Community Affairs
Rosie McCray-Moody, 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. An initial Planning, Housing and Economic Development (PHED) Committee worksession was held on March 1.

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.

¹#WindowSafety, #ASaferView4Kids

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. Other jurisdictions, including New York City and New Jersey, have similar laws requiring window guards to protect children.

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.

SUMMARY OF FIRST WORKSESSION

During an initial worksession on March 1, the PHED Committee decided (3-0) to amend the bill to require, at leasing, a signed statement by the tenant identifying whether a child 10 or under occupies or will occupy the dwelling. Specifically, the Committee approved the following amendment.

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.

The Committee also recommended the following amendment, which would allow DHCA to establish a variance process by regulation.

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.

The Committee discussed, but needed additional information from DHCA regarding, several additional issues:

- Whether tenant notifications should occur annually, at lease renewal, and at notification of rent increases (Item #1 below);
- A transition period between the Bill's effective date, education by DHCA, and an initial notice to tenants (Item #2 below).

Finally, due to its schedule on March 1, the Committee did not have sufficient time to discuss several issues:

- Technical amendments identified by the Office of the County Attorney (Item #3 below);
- The potential exclusion of condominiums from the scope of the bill (Item #4 below);
- Clarification that the bill does not apply to a basement window, a window containing a properly installed air-conditioning unit, or a window designed not to open (Item #5);
- Expanding the definition of “window guard” to include certain physical barriers “or limiting device[s]” (Item #6);
- The identification of windows needed for fire safety and egress (Item #7);
- Education and outreach by DHCA (Item #8); and
- Whether a landlord should be permitted to charge the tenant for the costs of installing and maintaining window guards (Item #10).

ISSUES FOR THE COMMITTEE’S CONSIDERATION

1. 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.

Alternatively, the Committee might wish to require notices – not annually – but simultaneously with other types of notices that already are provided to tenants. AOBA has suggested requiring the notices at the signing of the original lease, the signing of lease renewals, and notices of rent increases. DHCA has indicated to Council staff that it agrees with AOBA’s suggestion.

Regarding landlord follow-up, an alternative to inspections upon consent would be providing a second written notice.

Decision Point: Whether to amend the bill to require periodic notifications by landlords, and whether to require follow-up by the landlord.

2. 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 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 notification to tenants under this Act.

Another approach for the Committee’s consideration would be to delay the effective date of the Act. AOBA suggested an effective date of October 1, 2022. DHCA has suggested an effective date of January 1, 2022.

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.

3. 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.

4. Potential Exclusion of Condominiums

The Executive has asked for clarification regarding whether the bill applies to condominiums. According to DHCA, the County licenses 10,128 rental units within condominium buildings. If the Committee wishes to exclude condominiums from the scope of the bill, it could recommend the following amendment.

Amend line 13 as follows.

- (1) This section applies to any multifamily dwelling unit, except a multifamily dwelling unit within a common ownership community.

New Jersey’s window guard law does not apply to common ownership communities. AOBA has expressed opposition to the exclusion of common ownership communities.

Decision Point: Whether to adopt the amendment described above to exempt condominiums from the scope of the bill.

5. Clarification that Window Guards are not needed in Certain Windows

To make clear that basement windows and windows with air-conditioning units do not require window guards, the Committee could recommend the following amendment.

Amend lines 14-18 as follows.

- (2) This section does not apply:
 - (A) to a ground-floor or basement window;
 - (B) to a window containing an air-conditioning unit, if the unit is bolted to the window opening and not surrounded by an open space exceeding 4 inches;
 - (C) to a window that is not designed to open; or
 - [[~~(B)~~]] (D) to the extent that a window guard would cause a violation of a fire safety requirement, or an egress requirement, under Chapter 26, Chapter 8, or Chapter 22.

Decision Point: Whether to adopt the amendments above to clarify that the window guard requirement does not apply to certain types of windows.

6. Definition of “Window Guard”

The Committee might wish to expand the definition of “window guard” under the bill to include “limiting devices” – not simply “barriers” – that prevent a window from opening to an unsafe degree.

Amend lines 20-22 as follows.

- (1) For purposes of this section, a window guard means a physical barrier or limiting device attached to a window to prevent occupants from falling out of the window.

Decision Point: Whether to adopt the amendment above to expand the definition of “window guard”.

7. Fire Safety – Certification by a Licensed Professional

With respect to fire safety, the bill as originally drafted provides that:

- (1) the window guard requirements do not apply “to the extent that a window guard would cause a violation of a fire safety requirement, or an egress requirement, under Chapter 26, Chapter 8, or Chapter 22”;
- (2) window guards must meet the safety standards set by the Director of DHCA; and
- (3) the Director may adopt regulations necessary to implement the requirements of the bill.

DHCA has informed Council staff that it is considering implementing the fire-safety requirements of the bill by requiring landlords to hire professionally licensed inspection services to identify which windows require window guards, and which windows should not have guards for fire-safety and egress purposes. DHCA has further stated that the above-mentioned provisions in the current bill (regarding fire-safety and regulatory authority) would not allow DHCA to implement the bill in this manner.

Specifically, DHCA has requested the following amendment.

Amend lines 28-29 as follows.

- (3) A window guard installed under paragraph (2) must be installed only in those windows identified by a professionally licensed and certified inspection service hired by the landlord and otherwise meet minimum safety standards prescribed by the Director.

For context, Council staff has researched how the laws of other jurisdictions handle the issue of fire-safety as related to window guard requirements. In both New Jersey and New York City, the window guard laws specify the types of windows that require guards, but they do not mention third-party certification. New York City’s law provides:

Window guards may not be installed selectively. They must be installed in all windows except fire escape access windows and a secondary egress window in a first floor apartment, where there are fire escapes on the upper floors. Choice of unguarded window is optional, in the latter cases.

(NYC Health Code § 12-07).

Similarly, New Jersey’s law provides:

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 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 [of community affairs] may provide by rule.

(N.J. Stat. § 55:13A-7.13).

If the Committee wishes to pattern the language of Bill 51-20 after the laws in New York City and New Jersey – instead of the more general statement about fire-safety contained in the bill as currently drafted – it could adopt the following amendment to lines 14-18 of the bill:

- (2) This section does not apply to:
 - (A) [[to]] a ground-floor window; [[or]]
 - (B) [[to the extent that a window guard would cause a violation of a fire safety requirement, or an egress requirement, under Chapter 26, Chapter 8, or Chapter 22]] a window that provides access to a fire escape; or
 - (C) a window required for egress, except that the Director may, by regulation, require the installation of an egress-compliant window guard.

Decision Point: Whether to amend the bill as requested by DHCA. Alternatively (or additionally), whether to amend the bill to give greater specificity regarding windows that are exempt due to fire safety.

8. Education and Outreach by Department of Housing and Community Affairs

Council President Hucker has requested an amendment to require DHCA to conduct education and outreach regarding window-guard requirements. A potential amendment would be:

Amend lines 32-33 as follows.

- (5) The Director [[should]] must conduct outreach and educate landlords and tenants of multifamily dwelling units about the requirements of this section, including through:
 - (A) the Department’s website;
 - (B) sample notification and lease language; and
 - (C) the Landlord-Tenant Handbook.

Decision Point: Whether to adopt the amendment described above regarding outreach and education.

9. Whether Landlords may Charge Tenants for Window Guard Installation and Maintenance

AOBA has requested an amendment to allow landlords to recoup the costs of installing and maintaining window guards. Under the bill as currently drafted, landlords are prohibited from charging any fees for the installation and maintenance of window guards. The amendment would be as follows.

Amend lines 44-48 as follows:

(3) The landlord:

(A) must include in the lease, or an addendum to the lease, the requirements of this section; and

(B) [[must not]] may charge the tenant for the installation or maintenance of a window guard under this section.

Decision Point: Whether to amend the bill to permit landlords to charge tenants for the installation and maintenance of window guards.

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.

<u>This packet contains:</u>	<u>Circle #</u>
Bill 51-20	1
Legislative Request Report	4
Economic Impact statement	5
Racial Equity and Social Justice Impact statement	9
Fiscal Impact Statement	11
Public Testimony	13
New York City Publication regarding its window guard law	24
Supplemental AOBA Comments	26
New Jersey Window Guard Statute	34
New York City Window Guard Statute	37

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

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

Sec. 1. Section 29-30 is amended, and Section 29-35D is added, as follows:

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:

* * *

(11) install and maintain window guards if required under Section 29-35D.

* * *

29-35D. Window guards.

(a) Applicability.

(1) This section applies to any multifamily dwelling unit.

(2) This section does not apply:

(A) to a ground-floor window; or

(B) to the extent that a window guard would cause a violation of a fire safety requirement, or an egress requirement, under Chapter 26, Chapter 8, or Chapter 22.

(b) Window guards required.

(1) For purposes of this section, a window guard means a physical barrier attached to a window to prevent occupants from falling out of the window.

(2) The landlord of a multifamily dwelling must install and maintain a window guard in each window of a habitable room 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.

(3) A window guard installed under paragraph (2) must meet minimum safety standards prescribed by the Director.

(4) The Department may adopt method (2) regulations to implement the requirements of this section.

(5) The Director should educate landlords and tenants of multifamily dwelling units about the requirements of this section.

(c) Responsibility of tenants and other persons. A person must not:

(1) obstruct or interfere with the installation of a window guard required under this section; or

(2) remove or disable a window guard required under this section.

(d) Notification to tenants; lease requirements.

(1) The landlord of a multifamily dwelling unit must notify the tenant of the unit about the requirements under this section.

(2) The notification under paragraph (1) must be in writing and must be provided to the tenant in the form and manner prescribed by the Director.

(3) The landlord:

(A) must include in the lease, or an addendum to the lease, the requirements of this section; and

(B) must not charge the tenant for the installation or maintenance of a window guard under this section.

(e) Penalties. A violation of this section is a Class A violation under 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

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/ccllims/DownloadFilePage?FileName=2689_1_12108_Bill_51-2020_Introduction_20201208.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

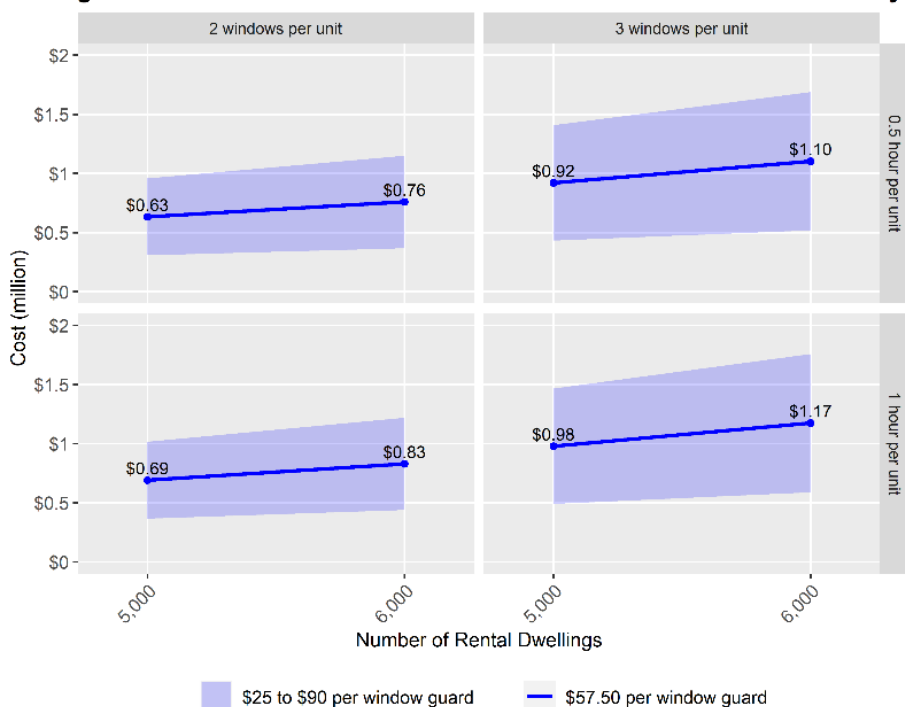
The economic impacts of enacting Bill 51-20 would occur through creating economic costs for landlords of affected units. OLO determined a forecast range for installing the window guards. The range is based on the number of renter households with children (between 5,000 and 6,000) and the following assumptions:

- **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

Figure 1. Cost of Window Guard Installations for Rental Units in the County



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.dllr.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 Goetzinger, 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 be 'J Mosley', with a stylized, cursive 'J' and 'M'.

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.

Window Guards: What Building Owners Need to Know

In all buildings with three or more apartments, New York City (NYC) law requires that building owners install window guards if a child age 10 years or younger lives there, or if the tenant or occupant requests window guards for any reason. Building owners who do not comply with this law (NYC Administrative Code §27-2043.1) may receive a violation subject to fines.

Building owners must:

- **Send the *Annual Notice* to tenants, asking if children age 10 or younger live in the apartment, or if window guards are requested for any reason, regardless of whether there are children in the apartment.** This notice must be sent in January of each year. With each new lease, building owners must also provide a *Lease Notice to Tenant or Occupant* to determine if children live in the apartment. (NYC Administrative Code §17-123)
- **Install and maintain NYC Health Department-approved window guards or limiting devices in apartments where these children reside or whenever the tenant requests guards.** Owners must also install guards or limiting devices in public hallways and any other common areas in buildings where children age 10 or younger reside.

All windows of all types — including those with screens — must have window guards or limiting devices, except (1) windows leading to fire escapes or those designated for other emergency escapes, (2) secondary exit windows in first-floor apartments and (3) windows in which air conditioner (AC) units are permanently installed (see next page for details).

- *Double-hung windows:* Window guards must be made of rigid metal and be a minimum of 15 inches tall with three or more horizontal bars. Space between the horizontal bars should be no more than 4 1/2 inches wide. Each window guard must have a Health Department approval number imprinted on a stile (vertical bar) of the window guard.
- *Nondouble-hung windows (such as sliding casement, slider, tilt and turn, awning, project-out, hopper):* Health Department-approved limiting devices, with an imprinted approval number, must be installed in pairs to prevent the window from opening more than 4 1/2 inches in any direction.

Condominiums, Co-op Buildings and Private Homes

- Condominium owners should check with building management to determine who needs to install and repair window guards in their apartments. Hallways in condominium buildings are the management's responsibility.
- In co-op buildings, building management needs to install and maintain all window guards and limiting devices.
- Private homes are not legally required to have window guards, but installation is recommended anywhere there are young children.

Window Guard Installation

- Make sure that window frames are sturdy and well-maintained.
- Use only tamper-resistant and one-way screws to secure window guards and limiting devices. These screws cannot be removed with an ordinary slotted-head or Phillips-head screwdriver.
- Use window stops, in addition to window guards, on double-hung windows that leave more than 4 1/2 inches of space when windows are opened. The L-shaped stops must be installed in the tracks on both sides of the window using tamper-proof screws. These stops will prevent the window from opening more than 4 1/2 inches.

Air Conditioner (AC) Unit Installation

If an AC unit is in a window in an apartment where a child age 10 or younger lives, it must be permanently and safely installed:

- Use tamper-resistant, one-way screws.
- Bolt the AC securely into the window frame without leaving any open space greater than 4 1/2 inches.

- Use secure rigid metal panels on either side of the AC instead of, or in addition to, the accordion vinyl panels that often come with an AC, if the spaces are greater than 4 1/2 inches. These metal panels must be able to withstand 150 pounds of pressure without bending or breaking.
- In double-hung windows, use two metal L-shaped stops in the window frame (one on each side of the bottom sash) to prevent the window from opening more than 4 1/2 inches above the AC.

Window Guard Costs

Building owners are responsible for purchasing all window guards in common areas. For apartment units, building owners can charge a one-time fee per window guard but cannot charge for window guards previously installed in the apartment.

- Window guard charges cannot be part of the base rent.
- These charges also cannot exceed \$10 per window guard for rent-controlled/rent-stabilized units.

For more information about window guard costs, please visit New York State Homes and Community Renewal (HCR) at hcr.ny.gov or email rentinfo@nyshcr.org.

For more information, visit nyc.gov/health and search for **window guards**, or email windowfallprevention@health.nyc.gov.



**BILL 51-20, LANDLORD-TENANT RELATIONS – WINDOW GUARDS
FEB. 26, 2021 AOBA COMMENTS ON WORKSESSION PACKET**

TOPIC	WORKSESSION PACKET	AOBA POSITION
Applicability	<p>Discussed by staff in Feb. 25 supplement included in packet.</p> <p>Exclusion of Condominiums. The Executive has asked for clarification regarding whether the bill applies to condominiums. According to DHCA, the County licenses 10,128 rental units within condominium buildings. If the Committee wishes to exclude condominiums from the scope of the bill, it could recommend the following amendment. Amend line 13 as follows. (1) This section applies to any multifamily dwelling unit, except a multifamily dwelling unit within a common ownership community.</p>	<p>AOBA. OPPOSE. If this is truly about child safety, the Council should ensure that such safety and the protection of our children do not depend on the type of housing in which they reside. We know too that the condo market represents a significant percentage of the County's rental housing stock.</p>
Additional exemption	<p>Discussed by staff in Feb. 25 supplement included in packet.</p> <p>Clarification that Window Guards are not needed in Certain Windows. To make clear that basement windows and windows with air-conditioning units do not require window guards, the Committee could recommend the following amendment.</p>	<p>AOBA. SUPPORT.</p>

	Amend lines 14-18 as follows. (2) This section does not apply: (A) to a ground-floor or basement window; (B) to a window containing an air-conditioning unit, if the unit is bolted to the window opening and not surrounded by an open space exceeding 4 inches; or [[B)] (C) to the extent that a window guard would cause a violation of a fire safety requirement, or an egress requirement, under Chapter 26, Chapter 8, or Chapter 22.	
(2) Definition of window guard (expansion)	<p>Discussed by staff in Feb. 25 supplement included in packet.</p> <p>Definition of “Window Guard” The Committee might wish to expand the definition of “window guard” under the bill to include “limiting devices” – not simply “barriers” – that prevent a window from opening to an unsafe degree.</p> <p>Amend lines 20-22 as follows. (1) For purposes of this section, a window guard means a physical barrier or limiting device attached to a window to prevent occupants from falling out of the window.</p>	AOBA. SUPPORT.
Tenant notification/ Determining when a Landlord Must Install a Window Guard	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.	AOBA. SUPPORT. Retains language limiting application of the bill to children 10 or younger and is consistent with AOBA’s position that the tenant should notify the housing provider that an eligible child resides in the unit.

<p>Whether to Require Annual Notices by Landlords to Tenants</p>	<p>See next column with AOBA amendment in red. Council staff also proposed adding a new unit inspection requirement highlighted in yellow.</p>	<p>AOBA. SUPPORT WITH AMENDMENTS. Language should instead require notification at lease signing and then again at renewal or with a rent adjustment notice instead of new, additional notifications. Tenants are used to receiving and housing providers giving information at these times.</p> <p>Background: See, for example, Sec. 29-27. Contents of lease. Each lease for rental housing located in the County must:; Sec. 29-54 governing notice requirements for rent adjustments; and DC Official Code § 8-231.06. Tenant provision of access to dwelling unit. ... (c) If the owner demonstrates to the satisfaction of the Mayor that the tenant refuses to allow access after the owner provides notice of no less than 7 days, the owner shall be exempt from meeting any requirements of this subchapter that are dependent upon such access as long as that tenant occupies that dwelling unit or until the tenant provides written notice of the tenant's willingness to allow access or otherwise allows access.</p> <p>AOBA AMENDMENTS:</p> <p>(d) Notification to tenants; lease requirements.</p> <p>(1) The landlord of a multifamily dwelling unit annually must in the original lease and at lease renewal or when there is a rent adjustment under Sec. 29-54 notify the tenant of the unit about the requirements under this section.</p> <p>(2) The notification under paragraph (1) must:</p> <p>(A) be in writing [[and must]];</p> <p>(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:</p> <p>(i) whether a child of age 10 or younger occupies or will occupy the dwelling unit;</p>
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4

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Whether to Permit Exemptions from the Window-Guard Requirement	<p>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.</p>	<p>AOBA SUPPORT WITH AMENDMENT. The language should be modified to allow for more than just structural reasons such as lead-based paint, other environmental hazards, or where there is not a market for window guards for a building, etc. See AOBA amendment below in red.</p> <p>Alternatives could include but not be limited to: Window Operating Control Device (WOCD) such as window stops, retractable sash stops, and means of limiting window openings. Some will depend on window types. For example, sash stops are not an option for high-rise buildings with horizontal windows but could be an available alternative for other building types.</p>

51

		<p><i>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.</i></p> <p><i>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, <u>except those windows</u> which give access to a fire escape, <u>which are not designed to open</u>, or which are 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.</i></p> <p>AOBA AMENDMENT: (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 or where otherwise infeasible.</p>
<p>Transition. One time notice of new law.</p>	<p>In addition to regular notices, the worksession packet recommends a notice upon adoption of the bill to inform tenants of the new law</p> <p>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</p>	<p>AOBA. SUPPORT WITH AMENDMENT. AOBA recommends also providing a delayed effective date to facilitate compliance especially for those buildings which will receive numerous requests and face resulting costs. We are also mindful of the continuing financial pressures resulting from COVID-19. A delayed effective date will allow housing providers to budget for this new expense.</p> <p>AOBA AMENDMENT:</p> <p>Sec. 3. Effective date. This Act takes effect on October 1, 2022.</p>

	of this Act, provide an initial annual notification to tenants under this Act.	
Costs	<i>*AOBA addressed this issue in its testimony*</i>	<p><u>Cost to install:</u> 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. If hundreds of units require window guards or alternatives, this could pose a significant financial burden on housing providers still trying to respond to COVID.</p> <p><u>COVID effect:</u> Rent collections, the primary source of income for rental communities, continue to decline as a result of the ongoing economic fallout from COVID.</p> <p><u>Best practices:</u> In New York City, building owners can charge a one-time fee per window guard. See <u>Window guards: What Building Owners Need to Know</u> and <u>New York City- Window Guards: Information for Tenants</u>.¹ 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.²</p> <p><u>How much do Window guards cost?</u></p> <ul style="list-style-type: none"> • Bars on Windows Cost: The average cost to install window security bars is \$912. Most homeowners pay

¹New 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."*

²For 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.

		<p>between \$512 and \$1,346. The exact amount depends on three key factors: the size of your window, the number of technicians needed, and the type of security bars you select. http://sentrywindowguards.com/why-window-guards/ http://sentrywindowguards.com/window-guard-installation-services/</p> <p>AOBA AMENDMENT:</p> <p>(d) <u>Notification to tenants; lease requirements.</u></p> <p>(3) <u>The landlord:</u></p> <p>(A) <u>must include in the lease, or an addendum to the lease, the requirements of this section; and</u></p> <p>(B) <u>may charge the tenant for the installation or maintenance of a window guard under this section.</u></p>
Housing provider immunity	<i>*AOBA addressed this issue in its testimony*</i>	<p>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.</p> <p>AOBA AMENDMENT.</p> <p>(f) <u>Landlord liability:</u> Except in the case of the negligence or willful misconduct of landlord, a landlord shall not be liable to a 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</p>

		from any use or operation (by Landlord, Tenant or any other person or entity) of the window guards.
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8

N.J. Stat. § 55:13A-7.13

This section is current through New Jersey 219th First Annual Session, L. 2020, c. 146, and J.R. 6

LexisNexis® New Jersey Annotated Statutes > Title 55. Tenement Houses and Public Housing (Subts. 1 — 2) > Subtitle 1A. Hotels and Multiple Dwellings (Chs. 13A — 13C) > Chapter 13A. Hotels and Multiple Dwellings (§§ 55:13A-1 — 55:13A-31) > Article III (§§ 55:13A-7 — 55:13A-10)

§ 55:13A-7.13. Installation of window guards, maintenance, violations, penalties

a.

(1) Except as provided in subsection b. of this section, the owner, lessor, agent or other person who manages or controls a multiple dwelling, other than a multiple dwelling which is part of a common interest community, shall, upon the written request of a tenant of a unit in which a child or children 10 years of age or under reside or will reside or are regularly present for a substantial period of time, provide, install and maintain approved child-protection window guards on the windows of the dwelling unit and on any windows in the public halls of a multiple dwelling in which any child or children of such age reside or are regularly present for a substantial period of time.

(2)

(a) Except as provided in subsection b. of this section, the owner, lessor, agent or other person who controls a unit of dwelling space in a multiple dwelling within a common interest community, upon the written request of a tenant of a unit in which a child or children 10 years of age or under reside or will reside or are regularly present for a substantial period of time, shall provide, install and maintain child-protection window guards on the windows of the unit.

(b) The owner, lessor, agent or other person who controls a unit of dwelling space in a multiple dwelling within a common interest community shall provide written notice to the unit owners' association whenever a tenant of a unit, in which a child or children 10 years of age or under reside or will reside or are regularly present for a substantial period of time, has requested that child-protection window guards be installed on the windows in the common areas of the common interest community.

(3)

(a) Except as provided in subsection b. of this section, upon the written request of an owner or an occupant of a dwelling unit of a multiple dwelling within a common interest community, in which dwelling unit a child or children 10 years of age or under reside or will reside or are regularly present for a substantial period of time, the unit owners' association shall install and maintain child-protection window guards on the windows which are determined to be in common areas of the community property and maintained by the association.

(b) A unit owners' association shall not adopt or seek to enforce any restrictions or architectural controls which would prohibit or impede the installation of a window guard in compliance with P.L. 1995, c.120 (C.55:13A-7.12 et seq.).

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 on the first floor;

N.J. Stat. § 55:13A-7.13

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.

(2) The requirements of subsection a. of this section shall not apply to seasonal rental units. "Seasonal rental unit" means a dwelling unit rented for a term of not more than 125 consecutive days for residential purposes by a person having a permanent residence elsewhere, but shall not include use or rental of living quarters by migrant, temporary or seasonal workers in connection with any work or place where work is being performed. The owner, lessor, agent or other person who controls a dwelling unit shall have the burden of proving that the rental is seasonal.

c. Any child-protection window guard installed pursuant to P.L. 1995, c. 120 (C.55:13A-7.12 et seq.) shall conform to the requirements of the State Uniform Construction Code with respect to means of emergency egress, and a window guard installed on an emergency egress window shall be releasable or removable from the inside without use of a key, tool or excessive force. Window guards installed on all other windows shall be designed, constructed, and installed so that they may not deliberately or through accident, ignorance or inadvertence, be removed, opened, or dislodged without the use of a key or tool.

d.

(1) Upon installation of a child-protection window guard in a dwelling unit, and annually thereafter, the owner, lessor, agent or other person who manages and controls that dwelling unit shall provide the tenant with an orientation concerning the safe use and manipulation of window guards in accordance with guidelines established by the Commissioner of Community Affairs pursuant to section 5 of P.L. 1995, c. 120 (C.55:13A-7.16).

(2) Upon installation of a child-protection window guard in the common areas of a multiple dwelling, and annually thereafter, the owner, lessor, unit owners' association, agent or other person who manages and controls the common areas of the multiple dwelling shall provide the occupants of the multiple dwelling with an orientation concerning the safe use and manipulation of window guards in accordance with guidelines established by the Commissioner of Community Affairs pursuant to section 5 of P.L. 1995, c. 120 (C.55:13A-7.16).

e. At least twice annually, the owner, lessor, unit owners' association, agent or other person who manages and controls a unit of dwelling space in a multiple dwelling, the common areas of the multiple dwelling, or both, in which child protection window guards have been installed, shall inspect each such window guard under their control to ensure that it remains sound and in conformance with the provisions of P.L. 1995, c. 120 (C.55:13A-7.12 et seq.), and shall enter a record of such inspection in a log, which shall be maintained as a permanent record so long as the window guard remains installed, and for five years thereafter, and which shall be available upon request to the department or its duly authorized representative.

f. A tenant or unit owner may file a complaint with the commissioner for the failure to comply with the provisions of P.L. 1995, c. 120 (C.55:13A-7.12 et seq.). The commissioner shall investigate complaints within a reasonable time period. The commissioner may impose penalties authorized under the "Hotel and Multiple Dwelling Law," P.L. 1967, c. 76 (C.55:13A-1 et seq.) for violations concerning the installation of child-protection window guards and may institute a criminal complaint for a repeat conviction after the imposition of a \$5,000 civil penalty for a continuing violation pursuant to section 19 of P.L. 1967, c. 76 (C.55:13A-19).

g. To the extent that a violation of P.L. 1995, c. 120 (C.55:13A-7.12 et seq.) has occurred within a rental unit in a common interest community, such violation shall be noticed to, and resultant penalties imposed upon, the unit owner of such rental unit and not the unit owners' association.

h. To the extent that a violation of P.L. 1995, c. 120 (C.55:13A-7.12 et seq.) has occurred within the common areas of a common interest community, such violation shall be noticed to, and resultant penalties imposed upon, the unit owners' association.

History

L. 1995, c. 120, § 2; amended 2006, c. 55, § 2, eff. July 31, 2006.

Annotations

Notes

Editor's Note:

New Jersey Uniform Construction Code, see N.J.A.C. 5:23-1.1 et seq.

Amendment Note:

2006 amendment, by Chapter 55, redesignated former a. as a.(1) and rewrote the paragraph, which formerly read: "Except as provided in subsection b. of this section, the owner, lessor, agent or other person who manages or controls a multiple dwelling shall, upon the written request of a tenant, provide, install and maintain a child-protection window guard on the windows of each dwelling unit in which a child or children 10 years of age or under reside and on any windows in the public halls of a multiple dwelling in which any child or children of such age reside"; added a.(2) and a.(3); redesignated former b. as b.(1) and rewrote the paragraph, which formerly read: "The requirements of subsection a. of this section shall apply to all windows, except those windows which give access to a fire escape or which are on the first floor. In addition, the provisions of this act shall not apply to any window in (1) an owner occupied dwelling unit, (2) a dwelling unit which is a part of a condominium or which is held by a proprietary lessee under a cooperative form of ownership, or (3) a dwelling unit occupied by a shareholder in a mutual housing corporation"; added b.(2); in the first sentence of c., substituted "P.L.1995, c.120 (C.55:13A-7.12 et seq.)" for "this act"; and added d. through h.

Research References & Practice Aids

Cross References:

Leases, required notices advising of availability; delivery, posting, see 55:13A-7.14.

Noninterference with window guards; removal, certain, see 55:13A-7.15.

JURY INSTRUCTIONS:

NJ Civil JI 5.20C, Duty Of Owner To Tenant Leasing Entire Premises And To Others On Premises (A) As To Residential Premises (B) Repairs By Landlord (C) Non-Residential Land and Buildings (D) Repairs By Landlord of Non-Residential Land and Buildings

Hierarchy Notes:

N.J. Stat. Title 55, Subtit. 1A, Ch. 13A, Art. III

CHAPTER 12
WINDOW GUARDS

New York
City

§12-01 Definitions.

When used in these regulations, the following words or terms shall have the following meaning:

Child or children. "Child or children" shall mean any person 10 years of age or younger.

Department. "Department" shall mean the New York City Department of Health.

Installation of window guard. "Installation of window guard" shall mean proper installation and maintenance of window guards in a manner approved by the Department.

Landlord. "Landlord" shall mean owner, lessee, agent, or other person who manages or controls a multiple dwelling or dwelling unit.

Tenant. "Tenant" shall mean lessee or other occupant regularly residing within a dwelling unit, regardless of whether said occupant is a party to a lease agreement.

§12-02 Lease Notice.

- (a) All leases offered to tenants in multiple dwellings shall contain, as a rider to the lease, a notice the form and content of which shall be as specified in Appendix A hereto.
- (b) Said notice shall be printed in not less than ten (10) point type, and shall bear the title "Window Guard Required" underlined and in bold face.
- (c) Said notice shall be separately signed and dated by the tenant who signed the lease indicating clearly whether a child ten years of age or under is, or will be, residing in the leased premises.

§12-03 Annual Notice.

- (a) Each year the landlord shall deliver to each dwelling unit, a notice, the form and content of which shall be in English and Spanish as specified in Appendix B, no earlier than January 1 and no later than January 16 of the year for which the notice is delivered. The foregoing notwithstanding, if such notice is delivered to the tenant by enclosure with the rent bill pursuant to §12-03(b)(3) below, then the notice may be delivered by the landlord at such time as the rent bill for the month of January is delivered. In addition said notice shall be so delivered within thirty (30) days of a change in occupancy not involving a written lease. This provision shall be effective January 1, 1987.
- (b) The landlord shall deliver said notice by any one of the following methods:
 - (1) by first class mail addressed to the tenant at the dwelling unit;
 - (2) by hand delivery to the tenant at the dwelling unit;
 - (3) by enclosure with the rent bill.
- (c) 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.

12

- (d) If by March 1 a landlord who has fully complied with subdivisions (b) and (c) of this section has been unable to ascertain the need or desire for window guards in any dwelling unit or units, then he shall write to the Department's Window Falls Prevention Program, 125 Worth Street, New York, New York 10013, fully describing what efforts have been made to comply with §131.15 of the New York City Health Code and these regulations, for the purpose of requesting assistance in regard to his further compliance. Such request shall include the name and telephone number of the landlord or his representative.

§12-04 Variation in Form of Notices Prohibited.

The wording and form of notices specified in this regulation shall not be altered or varied in any manner, except as permitted after an application made to the Commissioner under §12-08.

§12-05 Notice that Installation is Optional or That There is a Tie-in between Installation and Tenant Payment Prohibited.

- (a) No communication from a landlord to a tenant shall indicate that the installation of window guards is optional or in any manner dependent upon payments by the tenant.
(b) Landlords shall not impose any type of pre-condition such as fees or any other psychological deterrent, preliminary to the installation of window guards.

§12-06 Tenant Obligation to Provide Information and Access.

- (a) No tenant in a dwelling unit shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of children therein, or refuse, prevent or obstruct any inspection required by §12-03(c) above.
(b) A landlord who has been denied access to a dwelling unit for the purpose of installing window guards required by §131.15(a) of the New York City Health Code, shall write to the Department's Window Falls Prevention Program, 125 Worth Street, New York, New York 10013. Said statement shall specify the landlord's efforts to gain access and the circumstances of the denial thereof.
(c) Tenants or occupants must respond to mandated inquiries by landlord as to their window guard needs or desires. It is a violation of the law to fail to do this. Tenants or occupants must also provide access and permit installation of guards and stops, where required.

§12-07 Selective Window Guard Installation Prohibited.

Window guards may not be installed selectively. They must be installed in all windows except fire escape access windows and a secondary egress window in a first floor apartment, where there are fire escapes on the upper floors. Choice of unguarded window is optional, in the latter cases.

§12-08 Procedures for Manufacturers Applying for Approval of Window Guards.

- (a) A window guard application, available from Window Falls Prevention, must be completed and submitted with:
(1) a sample or prototype of the smallest and the largest of each model being submitted.

- (2) a schematic drawing of the guard indicating adherence to the specifications of the Health Department, and indicating the range of sizes for which approval is being sought.
- (3) installation hardware and stopping devices for each model.
- (4) a Professional Engineer's certification of the testing results for the largest and smallest guards, the test having been administered simulating the installation conditions and weight stress applied as recommended by the manufacturer in compliance with the specifications.
Testing certifications shall include information relative to the temporary and permanent deflection of the guards under 150 lb. weights.
- (5) a letter from the paint manufacturer attesting to the lead content of the paint.
- (6) installation instructions for each type of window guard.
- (7) manufacturer's identification number and/or coding symbol.
- (8) manufacturer's dating code.
- (b) When approved, the Health Department Approval Number, i.e., HDWG 06-88-99, must be indelibly imprinted on a flat surface of one vertical stile of each window guard fabricated. This imprint must be so located as to be readily visible from the inside of a room when the guard has been installed.
- (c) A packet containing the approved hardware/screws, and the stopping devices for installation, must be attached or accompany each window guard sold.

§12-09 Procedures for Requesting Window Guard Variances.

- (a) All requests for variances must be submitted in writing for review by the Window Guard Policy and Acceptance Board.
- (b) When necessary, the presence of the submitter at a meeting of the Board may be required to amplify or respond to questions.
- (c) Requests for variances will be entertained only if submitted by the owner or management of a building or by his authorized representative.
- (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.
- (e) A letter of application shall be submitted to the Window Guard Policy & Acceptance Board of the N.Y.C. Department of Health, Box 43, 125 Worth Street, New York, N.Y. 10013.
 - (1) Letters of application shall include the following:
 - (i) Name, address, and phone number of applicant.
 - (ii) Address of premise or premises for which variance is being requested, and the type and number of windows involved.
 - (iii) Reason for the request.
 - (iv) Description of condition or conditions warranting the request including a photo and/or mechanical drawing of the windows in question, depicting the particular structural idiosyncrasy or aberration making the request necessary.
 - (v) The alternative device presented for consideration must meet the same criteria and standards of safety as the prescribed window guards.
 - (vi) If requesting consideration of a limiting device, the submission must include: a sample of the alternative device with hardware for installation; namely: one-way screws or a viable approved equivalent tamper-proof mechanism.

- (vii) Application statement must commit to scheduled regular inspections and monitoring of the alternative installation by management, to ensure the ongoing integrity of the device.
- (f) All variances will be granted on a time limited basis, and will be subject to review, renewal or retraction at the expiration of the prescribed period or before should abuse of the procedural requirements be identified.

§12-10 Specifications for Window Guards for Double Hung Windows.

- (a) Guards shall be constructed of rigid metal, free of sharp projections, edges, or rough surfaces.
- (b) Guards shall be so constructed as to reject the passage of a solid five (5) inch sphere at every space and interval.
- (c) Guards shall bear a one hundred and fifty pound (150 lb.) load at centerspan when extended to maximum width. A test with the guard attached in accordance with the manufacturer's instructions for installation must be performed, and the results, including information as to temporary or permanent distortion, certified by a Professional Engineer, or independent testing laboratory.
- (d) (1) On guards utilizing non-telescoping bars, there shall be a permanent spot weld on at least two of the horizontal bars so as to provide a minimum of two (2) inches overlap when the guard is fully extended.
- (2) On telescoping bars, when the guard is extended to the maximum allowable width, there shall be a minimum overlap of five (5) inches or 1/3 of the length of the bar, whichever is greater.
- (3) A permanent label shall be affixed on at least one horizontal bar, on each facing surface. Said label shall read: WARNING! EXTENSION OF THIS GUARD BEYOND ____ INCHES IS DANGEROUS AND ILLEGAL. * (Insert the number of inches appropriate to the particular model in the space.)
- (4) On telescoping guards, there shall be an additional stile or other approved support(s), at the telescopic opening of the outer tubing of the bars, that shall prevent any spreading of the bars.
- (e) Guards shall be a minimum of 15 inches high measured along the vertical stiles.
- (f) The channel stiles shall each have at least two (2) holes for permanent window mounting. If guards are more than 15" in height, additional mounting holes are required to provide a maximum interval of 18" between mounting holes.
- (g) *Stops.*
 - (1) Rigid metal "L" shaped stops, to be a minimum of one half the width of the window track and each leg of which shall measure at least two (2) inches, shall be installed securely with two (2) screws in the upper tracks of each side of the bottom window to prevent the lower window from being raised more than 4 1/2 inches above the lowest section of the top horizontal bar of the window guard.
 - (2) Where "L" shaped stops cannot be placed in the window track without interfering with the normal operation of the window, a rigid metal strip may be securely fastened* across the track of the bottom window to prevent the lower window from being raised more than 4 1/2 inches above the lowest section of the top horizontal bar of the window guard. Strips shall be mounted on each of the windows and shall be secured by (2) screws on each side of the window track.

- (3) In situations where the stops described in (1) and (2) above cannot be used, such as in ballast windows, rigid metal "L" shaped stops may be securely fastened to the frame of the window to prevent the lower window from being raised more than 4 1/2 inches above the lowest section of the top horizontal bar of the window guard. A stop shall be securely mounted on each side of the exterior lower window frame and shall be secured by two (2) approved screws in each stop.
- (4) In special situations where the stops described in (1), (2) and (3) above cannot be used, application may be made to the Window Guard Policy and Acceptance Board for approval of an alternative stopping device.
- (5) Stops are not required where approved window guards are installed that are of sufficient height to prevent an opening of more than 4 1/2 inches above the lowest section of the top horizontal bar of the window guard when the lower window is raised to its maximum open position.
- (h) *Screws.* Screws used to mount window guards and stopping devices shall be one-way sheet metal screws or metal tamper resistant screws. Tamper resistant screws are defined as screws requiring special tools for their installation and/or removal, which tools are not readily available in retail hardware stores. All tamper resistant screws must be counter sunk flush with the stile or stopping device. Appropriate screws shall be:
 - (1) minimum size #10 and long enough to penetrate one (1) inch into a wooden window frame or
 - (2) of an adequate type, size and length to be securely fastened to a metal window frame. Manufacturer shall supply all required screws with guards.
- (i) The coating of guards shall be unleaded. A statement from the paint manufacturer attesting to this fact must accompany application for window guard approval.
- (j) Coded manufacturer's identification symbol (guard model), Health Department Approval number, and fabrication date symbols, (month and year) shall be imprinted indelibly (die stamped), on one of the end stiles, so located as to be readily visible when viewed from within the room where the guard has been installed.
- (k) Each guard sold by a manufacturer shall be sold with a self-contained envelope or plastic bag containing:
 - (1) approved installation instructions
 - (2) "L" shaped or other approved stops, and
 - (3) specified screws for installation of guard and stops. If wood screws are supplied by the manufacturer, a warning label should be included stating that for metal installations, appropriate type, size, and length screws must be substituted. This warning shall be imprinted on the packaging container.
- (l) Instructions for safe installation shall be provided with each guard by manufacturer.
 - (1) Instructions shall specify maximum window width for which the guard is intended, and shall contain the following prominently printed wording: **WARNING: USE OF THIS GUARD BEYOND SPECIFIED MAXIMUM WIDTH IS DANGEROUS AND ILLEGAL.**
 - (2) Instructions shall prominently warn that guards and stops must be installed only in sound (non-rotting) window tracks.
 - (3) Instructions shall prominently specify: **WINDOW GUARDS MAY NOT BE INSTALLED IN WINDOWS PROVIDING ACCESS TO FIRE ESCAPES.**

- (4) Instructions shall specify that guards be installed so that the bottom horizontal members are mounted a maximum of 4 1/2 inches above the window sill.
- (5) Instructions shall specify the use of the supplied "L" shaped stops to be installed with screws provided, or alternative approved stopping devices also provided with prescribed screws, to limit the opening above the lowest section of the top horizontal bar to 4 1/2 inches when the bottom sash is raised.

§12-11 Specifications for Window Guards for Other Than Double Hung Windows.

- (a) Applications for approval of window guards for use in other than double hung windows shall specify the window type(s) for which the guard submitted is intended. Mounting materials and instructions for installation for each specific type of window must be included with the application and must be provided to the consumer with the guards.
- (b) Guards shall be constructed so as to reject the passage of a solid five (5) inch sphere at every space and interval.
- (c) Guards intended for casements, sliders, and other types or combinations of windows in which the height of the openings are not subject to limitation, must be of such size as to fill the entire aperture, and must reject passage of a solid five (5) inch sphere at every space and interval.
 - (1) When approved limiting devices are utilized in lieu of window guards the size of any unguarded opening may not exceed 4 1/2 inches so as to reject passage of a solid 5 inch sphere at every space or interval.
 - (2) On guards utilizing non-telescoping bars, there shall be a permanent spot weld on at least two of the horizontal bars so as to provide a minimum of two (2) inches overlap when the guard is fully extended.
 - (3) On telescoping bars, when the guard is extended to the maximum allowable width, there shall be a minimum overlap of five (5) inches or 1/3 of the length of the bar, whichever is greater.
 - (4) A permanent label shall be affixed on at least one horizontal bar on each facing surface. Said label shall read: WARNING! EXTENSION OF THIS GUARD BEYOND ____ INCHES IS DANGEROUS AND ILLEGAL. * (insert the number of inches appropriate to the particular model in this space.)
 - (5) On telescoping guards, there shall be an additional stile or other approved support(s), at the telescopic opening of the outer tubing of the bars, that shall prevent any spreading of the bars.
- (d) Guards shall bear a one hundred and fifty pound (150 lb.) load at its centerspan when extended to its maximum width. A test with guards attached in accordance with the manufacturer's instructions for installation must be performed and results certified by a Professional Engineer or independent testing laboratory. The information shall include any finding of a temporary or permanent distortion.
- (e) Each channel stile shall have at least two (2) mounting holes. If guard is more than 15 inches high, additional mounting holes are required to provide a maximum of 18 inches between mounting holes.
- (f) Coating of guards shall be unleaded. Statement from paint manufacturer attesting to this fact must accompany the application for window guard approval.
- (g) Coded manufacturer's identification symbol (guard model), Health Department Approval number, and fabrication date symbols, (month and year), shall be imprinted on one of the



end stiles so located as to be readily visible when viewed from within the room where the guard has been installed.

- (h) Sliding windows and vertical pivoting windows may use stopping devices in lieu of window guards as follows:
 - (1) *Sliding windows.* A solid metal block, measuring at least one half the depth of the window track and one half the width, shall be securely fastened by two (2) screws into the bottom window track, and a solid metal block or an "L" shaped metal stop shall be securely fastened* by two (2) screws into the upper window track, to prevent the window from opening more than 4 1/2 inches.
 - (2) *Vertical pivoting windows.* Metal stopping devices shall be securely fastened to the upper and lower window frames by two (2) screws so as to prevent the window from pivoting open more than 4 1/2 inches. The height of the stopping devices shall extend no less than one inch nor more than two inches beyond the window frame as needed to stop the window. The protruding edge of the stopping device shall be smooth and rounded.
- (i) For types of non-double hung windows, other than those described in subdivision (h), and in special situations where the stops described in subdivisions (h)(1) and (h)(2) cannot be used, application may be made to the Window Guard Policy & Acceptance Board for approval of an alternative stopping device.
- (j) Screws used to mount window guards and stopping devices shall be one-way metal screws or metal tamper resistant screws. Tamper resistant screws are defined as screws requiring special tools for their installation and/or removal, which tools are not readily available in retail hardware stores. All tamper resistant screws shall be counter-sunk flush with the stile or stopping device.
 - (1) Appropriate screws shall be a minimum size #10 and shall be long enough to penetrate one inch into a wooden window frame, or;
 - (2) shall be of adequate type, size and length to be securely fastened to a metal window frame. Manufacturers shall supply all required screws.
- (k) Each guard sold shall be sold with a self-contained envelope or plastic bag containing:
 - (1) approved installation instructions,
 - (2) approved stopping devices, and
 - (3) specified screws needed for installation of the window guard and/or stopping devices. If wood screws are supplied by a manufacturer, a warning label or message imprinted on the packaging container shall warn that for metal installations, appropriate type, size, and length screws must be substituted. This warning shall be imprinted on the packaging container.
- (l) Instructions for safe installation of window guards shall be provided by the manufacturer for each specific type of window for which they are intended.
 - (1) Instructions shall specify that window guards may not be installed on windows providing access to fire escapes.
 - (2) Instructions shall specify maximum window width and height for which guard is intended, and shall contain the following prominently printed wording: WARNING! USE OF THIS GUARD BEYOND SPECIFIED MAXIMUM WIDTH IS DANGEROUS AND ILLEGAL!
 - (3) Instructions shall prominently warn that guards must be installed only in sound (non-rotting) mountings or tracks.

§12-12 Modification by Commissioner.

When the strict application of any provision of this regulation presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this regulation and upon such condition as, in his opinion, are necessary to protect life and health.

§12-13 Penalties.

Penalties for violation of these regulations shall be as provided for in §17-123* of the Administrative Code of the City of New York.



**APPENDIX A
LEASE NOTICE TO TENANT**

**WINDOW GUARDS REQUIRED
LEASE NOTICE TO TENANT**

You are required by law to have window guards installed 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 you ask him to put in window guards at any time (you need not give a reason)

OR

☐ if a child 10 years or younger lives in your apartment.

It is a violation of law to refuse, interfere with installation, or remove window guards where required.

CHECK ONE

- ☐ CHILDREN 10 YEARS OF AGE OR YOUNGER LIVE IN MY APARTMENT
- ☐ NO CHILDREN 10 YEARS OF AGE OR YOUNGER LIVE IN MY APARTMENT
- ☐ I WANT WINDOW GUARDS EVEN THOUGH I HAVE NO CHILDREN 10 YEARS OF AGE OR YOUNGER

TENANT (PRINT)

TENANT SIGNATURE

DATE

FOR FURTHER INFORMATION CALL:

Window Falls Prevention Program
New York City Department of Health
125 Worth Street, Room 222A
New York, New York 10013
(212) 566-8082

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

Window Falls Prevention Program
New York City Department of Health
125 Worth Street, Room 222A
New York, New York 10013
(212) 566-8082

* Except windows giving access to fire escapes or windows on the first floor that are required means of egress from the dwelling unit.

APPENDIX B¹
NOTICE TO TENANT OR OCCUPANT
[SPANISH]

DEPARTMENT DE SALUD
CIUDAD DE NEUVA YORK
AVISO A LOS INQUILINOS O A LOS OCUPANTES

Usted esta' obligado por ley a hacer instalar rejas en todas las ventanas si un nino de 10 anos de edad, o menor, vive en su apartamento. Su Casero esta obligado por ley a instalar rejas en las ventanas de su apartamento si:*

- ☐ un nino de 10 anos de edad, o menor, vive en su apartamento; o si
- ☐ usted le *solicita* en cualquier oportunidad que instale rejas en las ventanas (no necesita dar una explicacion).

Constituye una infraccion de la ley negarse, interferir con la instalacion, o retirar las rejas de las ventanas cuando se requiere tenerls, o dejar de llenar y devolver este formulario a su casero. Si este formulario no es devuelto oportunamente, se procedera a realizar una inspeccion por parte del casero.

MARCAR SEGUN CORRESPONDA:

- | | |
|--|---|
| <input type="checkbox"/> NINOS DE 10 ANOS DE EDAD O MENORES VIVEN EN MI APARTAMENTO | <input type="checkbox"/> SE HAN INSTALADO REJAS EN TODAS LAS VENTANAS* |
| <input type="checkbox"/> NINGUN NINO DE 10 ANOS DE EDAD O MENOR VIVE EN MI APARTAMENTO | <input type="checkbox"/> NO SE HAN INSTALADO REJAS EN TODAS LAS VENTANAS* |
| <input type="checkbox"/> DESEO QUE SE INSTALEN REJAS EN LAS VENTANAS AUN CUANDO NO TENGO NINOS DE 10 ANOS DE EDAD OR MENORES | <input type="checkbox"/> LAS REJAS DE VENTANAS NECESITAN MANTENIMIENTO O REPARACION |
| | <input type="checkbox"/> AS REJAS DE VENTANAS NO NECESITAN MANTENIMIENTO O REPARACION |

Nombre del
Inquilino: _____
(Letra de Imprenta) (Direccion/No. de Apto)

Nombre del
Inquilino: _____ Fecha: _____
(Signature)

DEVOLVER

A: _____
NOMBRE Y DIRECCION DEL PROPIETARIO, AGENTE O ADMINISTRADOR

PARA PEDIR MAYORES INFORMES DIRIGASE A:

Programa de Prevencion de Accidentes en Ventanas Departamento de Salud de la Ciudad de
Neuva York

125 Worth Street, Oficina 222A

New York, New York 10013

Telefono: (212) 566-8082

* Con excepcion de las ventanas que den acceso a las salidas de incendios o las ventanas del
primer piso que constituyan un medio obligatorio de salida de la vivienda.