



Committee: PHP

Committee Review: At a future date

Staff: Ludeen McCartney, Legislative Attorney

Purpose: To introduce agenda item – no vote expected

Keywords: #rentstablization#thhomeact

AGENDA ITEM #1B

March 7, 2023

Introduction

SUBJECT

Bill 16-23, Landlord-Tenant Relations – Rent Stabilization (The HOME Act)

Lead Sponsors: Councilmembers Jawando and Mink

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Bill introduction

DESCRIPTION/ISSUE

Bill 16-23 would:

- (1) establish an annual maximum rent increase for rental housing in the County;
- (2) provide exemptions for certain buildings from rent stabilization requirements;
- (3) permit a landlord to submit a petition for a fair rent increase;
- (4) establish an excise tax for vacant rental units;
- (5) specify the use of certain tax revenues for the acquisition of affordable housing; and
- (6) generally amend County law concerning rent increase, landlord-tenant relations, and taxation.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

Staff Report

Bill 16-23

Pages 1-4

©1

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M E M O R A N D U M

March 2, 2023

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 16-23, Landlord-Tenant Relations – Rent Stabilization (The HOME Act)

PURPOSE: Introduction – no Council votes required

Bill 16-23, Landlord-Tenant Relations – Rent Stabilization (The HOME Act), sponsored by Lead Sponsors Councilmembers Jawando and Mink, is scheduled to be introduced on March 7, 2023.¹ A public hearing is tentatively scheduled for March 28, 2023, at 1:30 p.m. and 7:00 p.m. A Planning, Housing, and Parks (PHP) Committee worksession will be scheduled at a later date.

Bill 16-23 would:

- (1) establish an annual maximum rent increase for rental housing in the County;
- (2) provide exemptions for certain buildings from rent stabilization requirements;
- (3) permit a landlord to submit a petition for a fair rent increase;
- (4) establish an excise tax for vacant rental units;
- (5) specify the use of certain tax revenues for the acquisition of affordable housing; and
- (6) generally amend County law concerning rent increase, landlord-tenant relations, and taxation.

BACKGROUND

While the County does not have rent control or rent stabilization, the County Executive publishes annually by March 1 of each year, the Voluntary Rent Guidelines (VRG) to aid landlords with recommended percentages for a rent increase.² The VRG is based on the increase or decrease in the residential rental component of the Consumer Price Index for All Urban Consumers (CPI-U) for the local Washington-Arlington-Alexandria area.

Effective February 24, 2023, the VRG this year is 5.8%. As a reference, here is a chart provided by the Department of Housing Community Development Affairs (DHCA) that reflects the rates over the last 40 years, [Voluntary Rent Guideline Chart 1983 – 2023](#).

¹ #rentstabilization #thhomeact

² See, Section 29-53 of the County Code.

Since 2020, the Council has reviewed, discussed, and enacted certain legislation that would limit a landlord from increasing rent during and following the COVID-19 pandemic emergency. Below is a legislative snapshot with efforts related to temporary rent stabilization:

Legislative History of Council Bills Related to Limiting Rent Increases

- [Expedited Bill 18-20 - Landlord-Tenant Relations - Rent Stabilization During Emergencies](#), also referred to as the COVID-19 Rent Relief Act was sponsored by Lead Sponsor Councilmember Jawando and Co-Sponsors former Council President Katz, and Councilmember Rice and Councilmember Navarro, was introduced on April 14, 2020, and enacted by the Council on April 24, 2020.

The law prohibited a landlord from increasing rent during a catastrophic emergency (defined as a COVID-19 emergency declared by Governor Hogan) or providing notice of a rent increase until 30 days after the emergency expires. Under this Act, the temporary rent stabilization law was sunset on November 15, 2021, 121 days after the Governor declared the emergency had expired. This law is no longer in effect.

- [Bill 52-20, Landlord-Tenant Relations – Protection Against Rent Gouging Near Transit](#), Sponsored by Councilmember Jawando and introduced on December 8, 2020. Bill 52-20 would seek to prevent rent increases for rental units near transit stations and establish a base rent amount for those units, among other things. This bill is still pending before the Council with no immediate date set for a Committee worksession.
- [Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions Following Emergencies – Extended Limitations](#), sponsored by Councilmember Jawando and introduced on July 13, 2021. Bill 30-21 was enacted by the Council on November 9, 2021, to extend the limitation for a rent increase, which was already provided for in Expedited Bill 18-20 (see above).

Specifically, the law continued the limitation on rent increases and extend the timeframe from 90 days to 1 year after the expiration of the emergency – this would extend until August 15, 2022. In addition, it prohibited landlords from charging late fees that accrued during the emergency until August 15, 2022. The rent increase restriction following the COVID-19 emergency is now expired and is no longer in effect.

- [Expedited Bill 22-22, Landlord-Tenant Relations – Limitations on Rent Increases](#), Sponsored by the Council President on behalf of the County Executive. Introduced on July 12, 2022. Expedited Bill 22-22 would seek to temporarily limit rent increases to no more than 4.4% for up to six months. This Bill had a Committee worksession on October 24, 2022, with no further action scheduled.

Other Jurisdictions with Rent Control or Rent Stabilization laws

Maryland does not have statewide rent control; however, some cities and counties do have provisions related to rent control. For example, Washington County and Frederick County have enabling legislation to enact laws or regulations to control increases in rent. The City of Takoma Park has rent stabilization laws in effect since August 2013 with provisions related to increases, frequency of rent increases, notice to tenants, and reporting requirements.³ Prince George's County recently enacted Council Bill-007-2023 on February 28, 2023, a temporary rent stabilization act that would limit rent increases by up to 4% for a 12-month period.

There are approximately 22 other states that have rent control, including Washington D.C., California, and New York.

SPECIFICS OF THE BILL

Bill 16-23 would generally prohibit a landlord of a rental dwelling unit from increasing a tenant's rent more than the maximum allowed. Under Bill 16-23, **the maximum allowance for a rent increase is up to 3% or the rental component of the Consumer Price Index (CPI)⁴ percentage, whichever is lower.** The increase may only occur once within a 12-month period and the landlord must provide at least a 90-day notice before increasing the rent. Landlords would be required to submit annual reports regarding their rent amounts to DHCA.

DHCA is required to post on its County Register and website the annual maximum allowance and notify landlords of licensed rental dwelling units.

Subject to limitations, a landlord may be authorized to "bank" any forgone revenue and apply it to a future year, but this is dependent on whether the CPI is above or below the 3% standard. The Bill also provides certain restrictions for units after a vacancy by a tenant, and for vacant units that return to the market for rent, there is an option to include an allowable rent increase for each year it was vacant, up to a maximum amount, see lines 146-165.

Rent stabilization would not apply to certain rental properties. Specifically, newly constructed units for ten years, accessory dwelling units, certain owner-occupied properties, with at least two dwelling units, certain MPDU buildings, health facilities, religious and non-profit organizations, and licensed facilities, among others, would be exempt.

Fair Return Petition

Generally, a landlord has a right to petition for a rent increase to obtain a fair return, if the landlord proposes the rent increase should be more than allowed in this Article. The landlord has the burden of proof to submit a petition that includes income and expense information for DHCA to review and determine whether a fair return is permitted. If the petition is granted, the landlord must provide the tenant a 90-day notice before increasing the rent, if a petition is denied, the landlord has the right to appeal to the Commission on Landlord-Tenant Affairs. DHCA also has the authority to "roll back" a rent increase if a fair return petition was submitted in bad faith.

³ Takoma Park Rent Stabilization Law, City Code Chapter 6.20 Rent Stabilization
<https://www.codepublishing.com/MD/TakomaPark/#!/TakomaPark06/TakomaPark0620.html>

⁴ Bill 16-23 defines, Consumer Price Index (CPI) means the residential rent component of the Consumer Price Index for All Urban Consumers for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), or any successor, designation of that index that may later be adopted by the United States Bureau of Labor Statistics.

Rental Housing Vacancy Tax

This Bill establishes a rental housing vacancy excise tax. An owner of rental property with two or more units, not condemned, and determined by DHCA as vacant for more than 12 calendar months would be subject to the excise tax. The rental housing vacancy tax is \$500 per year per unit subject to interest and penalties. Funds collected through the tax would be deposited and credited to the County's Housing Production Fund (the Housing Initiative Fund – HIF) and can only be used for the acquisition of affordable housing and enforcement and administration of this Act. The tax would take effect 1 year after this Act becomes law.

This packet contains:
Bill 16-23

Circle #
1

Bill No. 16-23
Concerning: Landlord-Tenant Relations –
Rent Stabilization (The Home Act)
Revised: 2/28/2023 Draft No. 5
Introduced: March 7, 2023
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Jawando and Mink

AN ACT to:

- (1) establish an annual maximum rent increase for rental housing in the County;
- (2) provide exemptions for certain buildings from rent stabilization requirements;
- (3) permit a landlord to submit a petition for a fair rent increase;
- (4) establish an excise tax for vacant rental units;
- (5) specify the use of certain tax revenues for the acquisition of affordable housing; and
- (6) generally amend County law concerning rent increase, landlord-tenant relations, and taxation.

By adding

Montgomery County Code

Chapter 29, Landlord-Tenant Relations

Article VIII. Rent Stabilization

Sections 29-81, 29-82, 29-83, 29-84, 29-85, 29-86, 29-87, 29-88, 29-89, and 29-90

Chapter 52, Taxation

Sections 52-21, 52-60, 52-61, 52-62, 52-63, 52-64, and 52-65

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. Short Title.

This Act may be cited as “The Housing Opportunity, Mobility, and Equity (HOME) Act.”

Sec. 2. Article VIII (Sections 29-81, 29-82, 29-83, 29-84, 29-85, 29-86, 29-87, 29-88, 29-89, and 29-90) of Chapter 29 and Article VI (Sections 52-21, 52-60, 52-61, 52-62, 52-63, 52-64, and 52-65) of Chapter 52 are added, as follows:

Article VIII. Rent Stabilization.

29-81. Definitions.

In this Section, the following terms have the meanings indicated:

Base rent means a fixed periodic sum charged for the use and occupancy of a unit or property, as agreed to, by the tenant and stated in the lease. Base rent does not include other charges or payments to cover operating or maintenance expenses, even if the lease characterizes the charges as “rent” or “additional rent.”

Consumer Price Index (CPI) means the residential rent component of the Consumer Price Index for All Urban Consumers for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), or any successor, designation of that index that may later be adopted by the United States Bureau of Labor Statistics.

Fair return means the base year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index from the base year until the effective date of this Act.

Rental dwelling unit or rental housing means a residential building or unit licensed for rent or lease, and is designated, intended, or arranged for use or occupancy as a residence by one or more persons. A rental dwelling unit or rental housing includes a unit in a single-family home, townhome, condominium, or multifamily dwelling.

Newly constructed rental dwelling unit means a rental unit that, when constructed, results in a net gain, or an additional number of new rental units more than the number of rental units that previously existed, provided that the size of an existing rental unit or any indoor common area of the rental facility is not reduced. A newly constructed rental dwelling unit does not include reconfiguration, renovation, alterations, change in description, or change in identification of a rental unit.

Operating expense means all reasonable operating and maintenance expenses.

Tenant has the same meaning as stated in Section 29-1.

29-82. Application of rent stabilization – scope.

(a) Scope. Except as provided in Sections 29-83 and 29-84, this Article applies to all rental dwelling units.

(b) Rent increase. A rent increase must be limited to the amount authorized by this Article for a rental dwelling unit.

29-83. Buildings exempt from rent stabilization without an application.

(a) Scope of exemptions. This Article does not apply to:

- (1) a licensed facility that is used primarily for the diagnosis, cure, mitigation, and treatment of illnesses;
- (2) a dwelling unit owned or leased by an organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code and used primarily to provide temporary sanctuary or shelter for qualified individuals;
- (3) an owner-occupied group home;
- (4) a religious facility such as a church, synagogue, parsonage, rectory, convent, and parish home;

- (5) group living facilities as defined in Section 59-3.3.2 of the Zoning Ordinance;
- (6) a dwelling unit governed by a State or County agreement that limits the rent charged and the agreement remains in effect;
- (7) moderately priced dwelling units in a building constructed after 2005 that is governed by a 99-year agreement with the County and that are affordable to families at 120%, or lower, of area median income;
- (8) a transient lodging facility subject to Chapter 54;
- (9) a school dormitory;
- (10) a licensed assisted living facility or nursing home;
- (11) an accessory dwelling unit; and
- (12) a building originally constructed to contain only two dwelling units, one of which the owner occupies as a permanent residence.

29-84. Application for grant of exemption.

- (a) Grant of exemption. After submission of an application by an owner, the Department must grant an application for an exemption from this Article for the following:
 - (1) a rental facility that is subject to a regulatory agreement with a governmental agency that controls the rent levels of one or more rental dwelling units so that they are available only to low- and moderate-income tenants; or
 - (2) a newly constructed rental dwelling unit for a period of 10 years after it is first offered for rent.
- (b) Termination of exemption.

(1) An exemption granted under subsection (a)(1) of this Section expires upon the termination of the agreement with the governmental agency entitling the rental facility to the exemption.

(2) Exemptions granted pursuant to subsection (a)(2) of this Section must expire on the ten-year anniversary date of the issuance of the rental housing license, regardless of when the application for an exemption was made by the owner.

(c) Rents after termination of exemption.

(1) For rental dwelling units receiving an exemption under subsection (a)(1) of this Section, after the termination of the exemption, the base rent for the unit and the reference point from which the rent must be increased in accordance with this Article must be the allowable rent as reported in the annual rent report, under Section 29-87(a), for each unit at the time the exemption commenced plus the annual rent increase allowance for each year that the unit was exempt.

(2) For rental dwelling units receiving an exemption under subsection (a)(2) of this Section, after the termination of the exemption, the base rent for the units and the reference point from which the rent must be increased in accordance with this Article must be the rent for each unit set forth in the most recent annual rent report, under Section 29-87(a), preceding the expiration of the exemption. For any units not rented when the exemption period terminates, the base rent must be the rent charged when the unit is first rented to a tenant. If the actual rent paid by a tenant differs from the rent stated in the report or the lease, then the lesser of the two must be the base rent.

29-85. Base rent for certain units – established.

(a) Reset of base rent for owner-occupied condominiums. When the owner, or successive owners, of a condominium unit, occupies the unit for at least 24 consecutive months as a principal residence, the owner may charge market rent for the unit when the owner rents the unit to a tenant. The rent the owner charges the tenant must establish the base rent for the unit until the owner again occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the lesser of the two must be the base rent.

(b) Rents following the sale of a condominium unit. The owner of a condominium unit that purchases a condominium unit in a bona fide arms-length transaction may charge market rent for the unit when the owner first rents the unit to a tenant after purchasing the unit. The rent the owner charges the tenant must establish the base rent for the unit until the owner occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the lesser of the two must be the base rent.

(c) Base rent for certain rental units not subject to rent increase. For rental dwelling units that are subject to rent stabilization, the base rent must be the rent charged for the unit when the unit is first rented to a tenant after the effective date of this Act. If the actual rent paid by the tenant differs from the rent stated in the lease, then the lesser of the two must be the base rent.

29-86. Annual rent increases – allowance; notice, frequency; and vacant units.

(a) Annual rent increases.

(1) Maximum allowance. A landlord must not increase the base rent for any rental housing unit by an amount greater than 3% per year,

or the increase in the rental component of the CPI from March 1 of the preceding year to March 1 of the current year, whichever is lower.

(2) Notice of rent increase allowance by the Department. The Department must calculate an annual rent increase allowance and notify each landlord by publishing it in the County Register and on the County's website.

(3) Time period for increase. The annual rent allowance remains in effect for a 12-month period beginning July 1 of each year and ending on June 30 of the following year.

(4) Banking permitted based on CPI. A rent increase less than permitted in this Section may be banked as provided in Section 29-88.

(5) Rent increase following vacancies.

(A) Vacant rental unit – banking allowed. If a unit previously vacant returns to the market for rent, the new rental amount may include the allowable annual rent increase for each year the unit was vacant, but not to exceed 30% of the base rent amount paid by the prior tenant.

(B) Rent increase following a tenant vacancy – prohibited. A landlord, who terminates a tenancy for a reason not provided for in the lease or during the first year of a tenancy, may not reset the rent for the next tenant in an amount higher than the base rent paid by the prior tenant. Any subsequent rent increase must be in accordance with this Section.

(b) Frequency of rent increases. Except as provided in subsection (b)(1), a landlord must not increase the base rent for any rental housing unit more often than allowed under Section 29-54.

(1) A base rent may be increased in accordance with the terms and the conditions of a fair return increase petition approved by the Department under Section 29-89.

(c) Notification of annual rent increase. A landlord must provide notification of a rent increase as required under Section 29-54.

29-87. Annual reporting requirements.

(a) Reporting requirements. By September 30 of each year, a landlord of any rental housing must complete and submit to the Department a rent report for the 12-month period ending on the preceding June 30 on a form provided by and in the manner prescribed by the Department.

(b) Penalty for failure to comply with reporting requirements. Failure to file a complete or accurate rent report by September 30 of each year must constitute a Class A violation of this chapter unless an extension of time for a good cause is granted by the Department.

29-88. Banking of authorized annual rent increases.

(a) Authorized banking based on CPI metric. A landlord may bank foregone revenue when the CPI metric is above 3% and may determine to recover the foregone rent increase in subsequent years when the CPI metric is below 3%.

(b) Limit on banking rent increases. A landlord is not permitted to bank increases for a period greater than 5 years.

(c) Subject to fair return petition. Under this Section, a landlord must not exceed the 3% rent increase allowance unless an application for a fair return petition is granted.

29-89. Rent increases pursuant to a fair return petition.

(a) Fair return rent increase. Except as provided in subsection (b), a landlord has a right to petition for a rent increase to obtain a fair return.

(b) Exemption from fair return petition. A landlord must not file a fair return petition for a rent increase if a unit in the property is designated by the Department as “troubled” or “at risk” under Section 29-22(b). The unit for which the landlord is requesting the increase must have passed a rental housing inspection within one year of the application date.

(c) Standards for rent increases pursuant to a fair return petition.

(1) Base year. The base year for submission of a fair return petition must be the preceding year prior to the submission of the fair return petition.

(3) Current year. The current year must be the 12-month period preceding the date that the petition is filed.

(4) Current year CPI. The current year CPI must be the annual CPI for the 12-month period preceding the date that the petition is filed.

(5) Net operating income. Net operating income equals gross income minus operating expenses.

(6) Base year net operating income. The base year net operating income may be calculated, at the option of the landlord, to equal 40% of the gross income of the rental facility in the prior preceding year.

(7) Gross income. Gross income is the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed by the tenants) the landlord included as part of the rental agreement or lease.

(8) Operating expenses. Operating expenses may include the following:

(A) utilities paid by the landlord, unless the costs are specified in the lease and passed through to the tenants;

(B) administrative expenses, such as advertising, legal fees, and accounting fees;

(C) management fees, whether performed by the landlord or a property management firm. It is assumed that management fees increased by the percentage increase in the CPI between the base year and the current year, unless the level of management services either increased or decreased during this period. Management fees must not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable;

(D) payroll;

(E) the amortized cost of capital improvements. An interest allowance must be allowed on the cost of amortized capital expenses; the allowance must be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum;

(F) maintenance-related material and labor costs, including self-labor costs computed in accordance with any regulations adopted pursuant to this Section;

(G) property taxes;

(H) licenses, government fees, and other assessments; and

(I) insurance costs.

(9) Reasonable operating and maintenance expenses do not include:

(A) expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments, or any other method;

(B) payments made for mortgage expenses, either principal or interest;

(C) judicial and administrative fines and penalties;

(D) damages paid to tenants as ordered by COLTA or the courts;

(E) depreciation;

(F) late fees or service penalties imposed by utility companies, lenders, or other entities providing goods or services to the landlord or the rental facility;

(G) membership fees in organizations established to influence legislation and regulations;

(H) contributions to lobbying efforts;

(I) contributions for legal fees in the prosecution of class-action cases;

(J) political contributions for candidates for office;

(K) any expense for which the tenant has lawfully paid directly or indirectly;

(L) attorney's fees charged for services connected with counseling or litigation related to actions brought by the County, unless the landlord has prevailed in such an action;

(M) additional, expenses incurred as a result of unreasonably deferred maintenance; and

(N) any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, loan fees, payments to real estate agents or brokers, appraisals, legal fees, or accounting fees.

(10) When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense must be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

(c) Rent increase petition based on fair return standard.

(1) Form of petition. Whenever a landlord proposes a rent increase of more than the amount permitted by this Article, the landlord must file a petition with the Department on a form provided by the Department.

(2) Income and expenses. A landlord must submit net operating income and expense information. The landlord must submit income and expense information for the two years prior to the current year with the petition.

(3) Petition restrictions. A petition filed pursuant to this Section must address an entire rental facility. The landlord filing a petition must own the rental facility for the entire current year.

(4) Adjustments to petition – base year net operating income.

(A) Adjustment of base year net operating income by Department. If the Department determines that the base year net operating income yielded other than a fair return, the base year net operating income may be adjusted. To adjust the base year net operating income, the Department must make at least one of the following findings:

i. base year net operating income was abnormally low due to one of the following factors:

(a) the landlord made substantial capital improvements that were not reflected in the base year rents and the landlord did not obtain a rent adjustment for these capital improvements;

(b) substantial repairs were made due to exceptional circumstances; or

(c) other expenses were unreasonably high, notwithstanding prudent business practice.

ii. base year rents did not reflect market transactions, due to one or more of the following types of circumstances:

(a) there was a special relationship between the landlord and tenant resulting in abnormally

315 low rent charges (such as a family
 316 relationship);

317 (b) the rents had not been increased for five years
 318 preceding the base year;

319 (c) the tenant lawfully assumed maintenance
 320 responsibilities in exchange for low rent
 321 increases or no rent increases; or

322 (d) other special circumstances which establish
 323 that the rent was not set as the result of an
 324 arms-length transaction.

325 (B) Establishment of a new base year net operating income –
 326 prior year petitions. The net operating income, income, and
 327 expenses, determined to be fair and reasonable pursuant to
 328 a prior petition for a fair return rent increase, constitute the
 329 base year income, expenses, and net operating income in the
 330 new petition.

331 (d) Consideration of fair return petition by the Department.

332 (1) Issuance of a decision by the Department. The Department
 333 must endeavor to issue its preliminary decision ruling on the
 334 petition within 90 days of the review or hearing on the
 335 petition. Upon its determination of the rent increase to be
 336 granted to the landlord, the Department must issue a
 337 decision and furnish a copy of the decision to the landlord.

338 (e) Rejection of petition.

339 (1) The Department must not consider the fair return
 340 petition submitted by the landlord:

(A) until the properly completed petition form,
including required supporting documentation,
has been submitted to the Department;

(B) when the landlord has not properly registered
the rental property with the County or when
the landlord has outstanding fees or fines with
the Department;

(C) when the landlord has not filed required rent
reports for the 3 years prior to the filing date of
the petition, provided that the Department
may, at its discretion, waive the above
requirement for good cause shown; or

(D) when the landlord has failed to comply with a
final order of the Department concerning any
rental unit owned by the landlord in the
County. However, the failure to comply with
an order of the Department must not constitute
a basis to decline to consider the landlord's
request if the order has been appealed to a
court and no decision has been rendered on
appeal.

(2) If the Department declines to consider the landlord's
request it must provide a written explanation for its
action.

(f) *Ceiling on fair return adjustments.*

(1) *Fair return rent increases on occupied rental units. Fair*
return rent increases must not exceed 15% in any 12-month

period. If the Department awards a fair return rent increase greater than 10%, then the landlord may impose the remainder of the increase in subsequent years in increments not to exceed 10% each year.

(2) Fair return rent increase following a vacancy. If the Department determines that a rental unit requiring an increase of more than 10% is vacant, the Department must allow the increase for that unit to be taken in one year, provided the unit became vacant as a result of:

(1) a voluntary termination by the tenant; or

(2) termination of the tenancy by the landlord for breach of the lease.

(g) Notification requirements.

(1) Notice of petition for a rent increase. The landlord must provide written notification to each tenant affected by a proposed rent increase within one week after the filing date of the petition. Such notification must include a copy of the petition form and a listing of all requested rent increases.

(2) Notice of a rent increase granted pursuant to a rent increase petition. The landlord must provide written notice to each affected tenant of the rent increase which has been authorized by the Department, no less than 90 days prior to the date the proposed increase is to take effect.

(h) Rollbacks - bad faith fair return petitions.

(1) Authority to require rollback. At the consideration of a fair return petition, if the Department finds that the adjusted base year net operating income included in the petition is less

than the actual petition year net operating income of the landlord and the fair return petition was filed in bad faith, the Department may require the landlord to rollback the rents charged on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

(2) *Purpose of rollbacks.* The purpose of the rollback provision in this subsection is to ensure that fair return petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this Section and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

(3) *Determination of bad faith by the Department.*

(A) The Department may determine whether bad faith existed when a landlord:

- (i) listed expenses for repairs or services never performed;
- (ii) materially misrepresented expenses claimed;
- (iii) knowingly filed a false rent report, in whole or in part; or
- (iv) acted in some manner which is a clear abuse of the petition process.

(B) The Department must not constitute the following as bad faith under this Section:

- (i) miscalculations and simple mathematical errors; or

(ii) claims for expenses or other items which are not specifically addressed in this Section and which the Department disallowed, but which could plausibly have fallen within this Section.

(C) The Department must verify the information upon which it makes its findings of bad faith and must issue a decision clearly stating the basis for its finding. The landlord must notify all tenants affected by the rent rollback, and, if the landlord was permitted to increase rents by the rent increases allowance pending a decision on the fair return petition, all rent increases so collected must be refunded to the affected tenants within 30 days. If the landlord fails to roll back the rent or fails to refund the rent increases collected, the affected tenants may begin paying the rolled-back rent or may deduct any rent refunds or rollbacks owed to the tenants in accordance with paragraph a of this Section.

(i) Department authority in setting rents. Notwithstanding any other provision of this Chapter or regulations instituted pursuant to this Article, the Department must consider any factors required by law and grant whatever rent increase is constitutionally required in order to yield a fair return.

(j) Burden of Proof. The landlord must have the burden of proof in demonstrating that a rent increase should be authorized pursuant to this Section.

(k) Appeal. A landlord that disputes the Department's calculation of income and expenses may appeal that determination under Section 29-14 to the

Commission on Landlord-Tenant Affairs which may decide whether the calculation is correct.

- (l) Regulations. The County Executive may establish Method (1) regulations to administer this Section.

29-90. [Reserved.] Enforcement.

- (a) Consistent with the provisions in Chapter 29, this Section would be enforced by the Department of Housing and Community Affairs.

- (b) Complaints by a tenant or landlord must be filed in accordance with Article V of Chapter 29.

Article VI. [RESERVED] Rental Housing Vacancy Tax – Excise Tax.

52-21. Excise tax; property lien.

- (a) In this section:

- (1) Excise tax:

(A) [a.] Is any tax not directly imposed on the property; and

(B) [b.] Includes but is not limited to fuel-energy taxes, telephone taxes, room rental transient taxes, beverage container taxes, [and] transfer taxes, and rental housing vacancy taxes.

52-60. [Reserved.] Definitions.

The words and phrases used in this Section, have the following meaning:

Calendar year means tax year and applies to the period between July 1 - June 30.

Department means the Department of Housing and Community Affairs.

Director means the Director of Finance or the Director's designee.

Dwelling unit has the same meaning as in Section 29-56.

Owner means any person, agent, operator, firm, or corporation having a legal or equitable interest in a property; or recorded in the official records of the State or County as holding title to a property; or otherwise having charge, care, or control

of the property, including the guardian, executor or administrator of the estate of any such person.

Vacant dwelling has the same meaning as in Section 26-20.

52-61. [Reserved.] Imposition of tax; flat tax rate.

(a) Except as provided in Section 52-62, the Director has the authority to impose, collect, and administer a rental housing vacancy tax against an owner of rental housing.

(b) An annual rental housing vacancy tax must be imposed when:

(1) an owner of a dwelling has more than 2 rental units on premises;

(2) the dwelling unit is not considered condemned under Section 26-13; and

(3) the dwelling unit has been determined by the Department as vacant for more than 12 calendar months.

(c) *Flat tax rate.*

(1) The rental housing vacancy tax must be a flat rate of \$500 per year per dwelling unit.

(2) The County Council by resolution, after a public hearing advertised under Section 52-17(c), may increase, or decrease the rate set in subsection (c)(1).

(3) The County Executive may further specify the administration of this tax by Method (2) regulation.

52-62. [Reserved.] Exemptions.

(a) This Article does not apply to:

(1) any agency of the State or the United States;

(2) any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

- (3) owner-occupied single-family home;
- (4) an accessory dwelling unit;
- (5) the owner of the property who is deceased;
- (6) the owner of the property undergoing any medical care; or
- (7) major renovations are being completed to the property.

52-63. [Reserved.] Collection of tax.

(a) Collection of tax – general. The Director must collect the tax in the same manner as County real property taxes, apply interest and penalties as provided under Section 52-64, and other remedies, including property lien, if the tax is not paid.

(b) Use of funds – Housing Production Fund. All revenue collected under the rental housing vacancy tax must be deposited and credited to the Housing Production Fund (“Fund”) as established by the Montgomery Housing Initiative under Section 25B-9. The Fund must be subject to appropriation and fiscal provisions in the Charter. Funds provided for in the Housing Production Fund must only be used for:

- (1) the acquisition of affordable housing; and
- (2) enforcement and administration of this Article.

(c) Vacant units identified by the Department.

(1) The Department must assess and determine based on the annual rental housing survey data required under Section 29-51, the number of vacant rental units and whether a unit was occupied for more than 12 calendar months, or the owner qualified for an exemption under this Article.

(2) By April 15 of each year, the Department must provide any information under subsection (c)(1), or documentation required by

the Department of Finance to calculate the amount of the tax for
the preceding calendar year.

52-64. [Reserved.] Interest and penalties.

(a) If an owner does not pay the Director the tax due under Section 52-61,
the owner is liable for:

(1) interest on the unpaid tax at the rate of 1% per month for each
month or part of a month after the tax is due; and

(2) a penalty of 5% of the amount of the tax per month or part of a
month after the tax is due, not to exceed 25% of the tax.

(b) The Director must collect any interest and penalty as part of the tax.

52-65. [Reserved.] Appeal.

A person aggrieved by a final determination of tax or by a denial of a claim for
refund may, within 6 months from the date of assessment of the deficiency or
from the date of the denial of a claim for refund, appeal to the Maryland Tax
Court of Appeals the in the same manner as any other tax grievance.

Sec. 2. Transition; effective date. Article VI of Chapter 52 of this Act must
take effect 1 year after this Act becomes law.