


MEMORANDUM

June 16, 2017

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 17-17, Landlord – Tenant Relations – Duties of Director – Licensing of Rental Housing – Fees

Expedited Bill 17-17, Landlord – Tenant Relations – Licensing of Rental Housing – Fees - Amount, sponsored by Lead Sponsors Council President Berliner and Councilmember Elrich, was introduced on May 16, 2017. A public hearing was held on June 13.

On Monday, May 15, the Council considered whether to add two positions in the Office of Consumer Protection (OCP) to provide tenant advocacy services, as proposed by Council President Berliner, and Councilmembers Elrich and Hucker. Under the proposal, the positions would have been funded by a \$3 increase in the rental housing license fee for multi-family units (currently \$41), which would yield about \$210,000. A memorandum from the proposers is at ©5-6. While the Council ultimately decided not to add the proposed new OCP positions in the FY18 budget, there was support for the proposition that additional tenant advocacy services should be provided.

Expedited Bill 17-17 would require the Director of the Department of Housing and Community Affairs (DHCA) to “provide advocacy services and assistance to tenants in relation to their rights” under Chapter 29, Landlord-Tenant Relations. Also, current law provides that rental housing license fees are set by method (3) regulation. This Bill would set the amounts of the annual license fees per dwelling unit for each class of rental housing in the County Code, and provide the fees may be set at higher amounts by method (3) regulation. The fees will include the \$3 increase that was part of the proposal to provide tenant advocacy services through OCP.

Public Hearing

There was one speaker at the public hearing on the Bill held on June 13. Chris Perry testified on behalf of the Montgomery County Renters Alliance, stating that the Renters Alliance supports the creation of an Office of the Tenant Advocate as part of the Office of Consumer Protection (see ©7-8).

Background

As mentioned above, this Bill had stems from discussions during the consideration of the FY18 Operating Budget. A proposal from Council President Roger Berliner, Public Safety Committee Chair Marc Elrich, and Councilmember Tom Hucker (described in the memorandum at ©5-6) was discussed at the April 17 Public Safety Committee worksession.¹ This proposal arose from the Council's consideration and enactment of Bill 19-15, Landlord - Tenant Relations - Licensing of Rental Housing - Landlord-Tenant Obligations. During consideration of that Bill, Councilmembers heard concerns from tenants that the existing County Landlord-Tenant program, including its dispute resolution function, is challenging to navigate for tenants lacking the financial resources to hire legal counsel. As a result, some Councilmembers stated their interest in improving tenant advocacy services for County residents.

The proposal included a recommendation that the Council add two new positions to OCP to provide tenant advocacy services. The proposal provided that at least one of these positions would be an attorney to provide both general consumer assistance and legal advice regarding tenants' rights. Under the proposal, the individuals filling the positions would provide advice in both individual and group settings, assist tenants in completing tenant petitions and drafting court documents. Funding for the new positions would be obtained through a \$3 increase in the rental property license fee for multi-family units (currently \$41), which would yield about \$210,000. The Committee recommended approval (3-0) of these new positions, which were placed on the Reconciliation List.

At its May 15 worksession on OCP's FY18 budget, the full Council considered the proposal and was advised by staff that Executive did not support the addition of these positions in the Office of Consumer Protection, and that he would not propose a regulation increase the license fee to fund these positions.² Council was thus advised that approval of the new positions would require an expedited bill to increase the rental property license fee from \$41 to \$44. While Councilmembers generally expressed agreement on the desirability of improvements in tenant advocacy services, there was debate about the appropriateness of OCP providing the services. At the conclusion of the discussion, Council President Berliner proposed to introduce a bill to provide for enhancements tenant advocacy and assistance provided by DHCA, and the positions were removed from the Reconciliation List without objection.

This Bill was introduced on May 16. On May 25, the Council approved the FY18 Operating Budget, with a provision that \$210,000 of DHCA's appropriation "must only be spent on enhancements to tenant advocacy and outreach that assists tenants in determining how to resolve a complaint, including tenant rights in the mediation process, a hearing before the Commission on Landlord-Tenant Affairs, and an appeal to the Court."³

Staff Recommendation

Given that there appears to be near-consensus that tenants in the County would benefit from the enhancement proposed by the Bill, and the fact that its enactment was generally

¹ http://montgomerycountymd.granicus.com/Viewer.php?view_id=169&clip_id=13105&meta_id=134751

² http://montgomerycountymd.granicus.com/Viewer.php?view_id=169&clip_id=13345&meta_id=138858

³ See paragraph 50 on page 15 of Resolution No. 18-823 at:

http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/res/2017/20170525_18-823.pdf

anticipated in the approved FY18 Operating Budget, Council staff recommends enactment of Expedited Bill 17-17.

This packet contains:

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Expedited Bill No. 17-17
Concerning: Landlord-Tenant Relations
- Duties of Director - Licensing of
Rental Housing - Fees
Revised: 05/15/2017 Draft No. 3
Introduced: May 16, 2017
Expires: November 16, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Council President Berliner and Councilmember Elrich

AN EXPEDITED ACT to:

- (1) require the Director of Housing and Community Affairs to provide certain advocacy services and assistance to tenants;
- (2) set the amount of the annual license fee per dwelling unit for each class of rental housing; and
- (3) generally amend the law related to landlord-tenant relations.

By amending

Montgomery County Code
Chapter 29, Landlord – Tenant Relations
Sections 29-6 and 29-20

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

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

Sec. 1. Sections 29-6 and 29-20 are amended as follows:

29-6. Duties of Director.

In addition to any other power, duty, or responsibility assigned in this Chapter, the Director has the following duties:

* * *

(i) The Director must provide advocacy services and assistance to tenants in relation to their rights under this Chapter.

* * *

29-20. Fees.

[The County Executive must establish an annual license fee per dwelling unit for each class of rental housing license by regulation under method (3) in an amount sufficient to pay the costs of administering this Chapter.] The annual license fee per dwelling unit is:

- (a) for a Class 1 multi-family rental facility license:
 - (1) \$44.00 per dwelling unit in an apartment complex or an accessory apartment approved by special exception; and
 - (2) \$59.00 per dwelling unit for all others;
- (b) for a Class 2 single-family rental facility license, \$101.00 per dwelling unit;
- (c) for a Class 3 accessory apartment license \$101.00 per unit.

The Executive may establish a higher annual fee by method (3) regulation in an amount sufficient to pay the costs of administering this Chapter,

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on July 1, 2017.

26 *Approved:*

27

Roger Berliner, President, County Council

Date

28 *Approved:*

29

Isiah Leggett, County Executive

Date

30 *This is a correct copy of Council action.*

31

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 17-17

Landlord-Tenant Relations – Duties of Director – Licensing of Rental Housing – Fees

DESCRIPTION: Require the Director of DHCA to provide certain advocacy services and assistance to tenants; set the amounts of the annual license fees per dwelling unit for each class of rental housing in the County Code; and provide the fees may be set at higher amounts by method (3) regulation.

PROBLEM: Additional advocacy services and assistance to tenants is necessary.

GOALS AND OBJECTIVES: Require, and fund, additional tenant advocacy services to be delivered by DHCA.

COORDINATION: Department of Housing and Community Affairs

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: N/A

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCIL PRESIDENT
DISTRICT 1

CHAIRMAN
TRANSPORTATION, INFRASTRUCTURE
ENERGY & ENVIRONMENT COMMITTEE

MEMORANDUM

April 13, 2017

TO: Council Colleagues

FROM: Roger Berliner, Council President
Marc Elrich, Chair, Public Safety Committee
Tom Hucker, Councilmember

SUBJECT: Tenant Advocate Services in the Office of Consumer Protection

Last November, the Council took significant steps to improve conditions for tenants through the enactment of Bill 19-15, *Landlord-Tenant Relations – Licensing of Rental Housing – Landlord Tenant Obligations*. The enhancements to the requirements for inspections and the increased resources to the Department of Housing and Community Affairs (DHCA) should keep poor maintenance and repairs from languishing and the requirement for a lease summary should help improve tenants' understanding of their rights and responsibilities.

During the Council worksession on Bill 19-15, we stated our interest in providing tenant advocacy services for our residents. While DHCA administers the Landlord-Tenant program and the Commission on Landlord-Tenant Affairs with a goal of evenly addressing the concerns of landlords and tenants, we believe that some tenants view the Landlord-Tenant program as too closely tied to landlords and do not come forward with questions or seeking the advice they need, particularly when trying to decide whether to file a formal complaint.

We are recommending that the Council add two new positions to the Office of Consumer Protection (OCP) to provide tenant advocacy services. We are recommending one of these positions be an attorney so that tenants can obtain both general consumer assistance and legal advice regarding tenants' rights under Montgomery County law. The District of Columbia has a robust Office of the Tenant Advocate that "advises tenants on resolving disputes with landlords, identifies legal issues and the rights and responsibilities of tenants and landlords, and provides legal and technical assistance for further action such as filing tenant petitions." Their attorneys may represent clients in certain cases but also refer clients to pro bono legal services. They provide advice in both individual and group settings. They assist tenants in completing petitions and drafting court documents.

In 2010, the Tenants Work Group recommended that the County "provide leadership in forming a Tenant Advocacy structure funded by the landlord-tenant fee." While the Work Group recommended an independent office, we are recommending that these positions work within the Office of Consumer Protection.

We do not view this recommendation as inconsistent with the responsibilities DHCA has under Chapter 29 of the County Code, but rather as a complement to them. DHCA remains responsible for handling and resolving complaints. Tenant outreach, education, and tenant association organizing will continue to be performed by non-profit partners. OCP exists to advocate for our residents. For example, OCP today provides patient advocacy services for the EMS Insurance Reimbursement Program.

Montgomery County Fire and Rescue Services does an excellent job of administering the billing program, yet it is important for residents to know that they have a resource independent from MCFRS to address questions, concerns, and billing complaints. We expect the tenant advocates within OCP will work with DHCA to resolve complaints and problems and more tenants will access services because they may speak with advocates that have independence and a focus on tenants.

We are recommending a \$3 increase to the Landlord-Tenant license fee for multi-family units (currently \$41), which will yield about \$210,000 for this initiative.

The Public Safety Committee will discuss this proposal during its worksession on the Office of Consumer Affairs operating budget on Monday, April 17th.



Testimony

Chris Perry
 Vice-Chair, Board of Directors
 Montgomery County Renters Alliance, Inc.
 June 13, 2017
 info@RentersAlliance.org

Good afternoon, Council Members.

First, we would like to thank Council President Berliner and Council Members Marc Elrich, Sydney Katz and Tom Hucker for their initial support for this proposal to create an Office of the Tenant Advocate.

Over the past seven years, the Renters Alliance has worked with scores of renters whose pursuit of their rights could have been a shorter journey, was instead long and sometimes emotionally and economically harrowing because they lacked the legal “muscle” on their side.

In many cases pursued through the Office of Landlord and Tenant Affairs, tenants sit alone on one side of the table, while landlords weight the table with staff and lawyers who prosecute their client’s case with expert vigor, while tenants, unskilled in the law and unaware of their rights and the procedures to protect them, are forced to reduce or relinquish their rights or forced out of their homes.

Advocacy, tenant organizing and education remain critical needs in the renter community. And despite the success of our work at the Renters Alliance, it is woefully underfunded and understaffed in comparison to the need for such work by more than 36% of the County who living in rental housing. But even fully supported, our work is simply not enough and not always what is singularly required. Professional legal advice is sometimes critical to the swift and just resolution of a tenant/landlord dispute. And we have seen many such examples:

In one case, we assisted a senior citizen being threatened with eviction because she sought to petition the landlord to lower rent increase—which were hovering at 10% annually—to within the County’s voluntary rent increase guidelines. She was then told that her lease was now in

jeopardy and the her renewal—her 35th annual renewal—would be rescinded. The Renters Alliance advocated for her well being, navigated the dispute resolution process, but the attorney we eventually arranged zeroed in the law: the signed renewal 1) could not be rescinded and 2) a case for retaliation would be won with damages. Her lease was immediately renewed.

In another case of unjust threat of eviction, a tenant pursuing her rights to proper maintenance, was told in response by the landlord that her lease would not be renewed. The Renters Alliance, again, advocated for the renter, counseled her fear and navigated the county's complaint process terrain, but the lawyer we obtained, zeroed in on the contract: notification of nonrenewal could not be made without certified notice at least 60 days in advance. The case was dropped and she received her renewal.

In another case where a landlord refused to return a security deposit to a family in desperate need of the funds, a well-crafted demand letter outlining the case and the risk of treble damages by an attorney prompted an immediate cutting of a check.

Time and again, tenants, most of whom lack the kind of funds necessary to engage a lawyer to protect their homes or pursue common rights, suffer the loss of required services, poor maintenance—and sometimes the loss of their homes, because they lack a legal advocate who can help balance the terms of engagement in a dispute.

When Council President Berliner and Council Member Elrich first agreed to pursue the establishment of an Office of the Tenant Advocate, we hoped that the office would be created with the heft the goals of the office deserve. We submitted our proposal for consideration which includes an initial projection for staff requirements as well as positioning and function.

We are concerned that this proposal lacks what we view as sufficient staffing to address a growing county-wide challenge. We have been told that in time, as the needs of an OTA become clearer, additional staffing can be addressed. But our greatest concern centers on the ability of an OTA to act independently without fear of organizational retaliation, neglect or even sabotage.

It has long been understood by renters that because of its mission and culture, the Department of Housing and Community Affairs is possessed of an inherent bias in support of landlord concerns and against tenants rights. DHCA is responsible for encouraging the investment in and development of rental housing, while at the same time is charged with enforcing laws against the same industry. This has led to DHCA's initial resistance to the formation of the Tenants Work Group, support for the Renters Alliance and opposition to many elements of the recently passed renter protection bill.

While we are pleased to have developed a working relationship with DHCA to pursue a modest measure of tenant organizing and education, it is our belief that an OTA, as a legal advocate for renters, should be independent from DHCA in order act freely, passionately and without reservation on behalf of tenant interests. We ask the Council to take this concern into serious consideration and position the OTA in the Department of Consumer Affairs.

Thank you.