Testimony on Behalf of County Executive Marc Elrich on
Bill 15-23, Landlord-Tenant Relations - Anti Rent Gouging Protections
and
Bill 16-23, Landlord-Tenant Relations – Rent Stabilization (The HOME Act)

March 28, 2023
1:30 p.m.

Good afternoon, Council President Glass and Councilmembers, my name is Scott Bruton, Acting Director of the Department of Housing and Community Affairs (DHCA). I am testifying on behalf of the County Executive in support of Bill 16-23, Landlord-Tenant Relations – Rent Stabilization (The HOME Act) with comments on Bill 15-23, Landlord-Tenant Relations - Anti Rent Gouging Protections.

Given the affordable housing crisis in Montgomery County, our region, and the nation, it is heartening that the County Executive and a significant majority of the Council agree that limits need to be placed on rent increases.

The regulation of rent increases is not only a matter of stabilizing housing affordability, but also a matter of racial equity and social justice. Approximately 35% of County residents are renters: almost exactly half (49%) are housing cost burdened (paying more than 30% or more of their income for housing) and 23% are severely housing cost burdened (paying 50% or more of their income for housing). For renters making less than $75,000 annually, 84% are housing cost burdened. And non-White racial and ethnic groups are far more likely to be renters in the County (percent of total population/percent of renters): White (43%/22%), Black (18%/58%), Asian (15%/29%), Hispanic or Latinx (20%/45%), Other (5%/53%).[1]

Our analysis of more than 100,000 units in 23 communities across the County found that only Takoma Park, which has had rent stabilization since 1980, has rental housing affordable to the average household for all racial and ethnic groups. In every other community, the median rent leaves the average Black or Hispanic renter cost burdened (see Appendix 1).

Bills 15-23 and the HOME Act both contain the standard elements of rent stabilization legislation but differ in their implementation of each.

Maximum annual rent increases: Both bills set annual maximum rent increases for regulated units. Bill 15-23 would set the maximum at the Consumer Price Index (CPI) + 8%. The HOME Act would set the maximum at 3% or the increase in the rental component of the CPI, whichever is lower.[2]

The lower maximum rent increases allowed by the HOME Act would significantly assist low- and moderate-income Black and Hispanic or Latinx households who are disproportionally renters in the County. The HOME Act would also have a stabilizing effect on approximately 37% of rent increases that fall outside the historical averages for both the rent component of the CPI and the actual average rent

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[1] Montgomery CountyStat analysis of 2021 American Community Survey (ACS) and ACS 5-year estimates 2016-2020.

[2] For years when the rental component of CPI is greater than 3%, Bill 16-23 allows landlords to recover the foregone portion of the rent increase in future years when the rental component of CPI is below 3%. A landlord may not bank foregone rent increases for more than 5 years and may not exceed a 3% increase when using banked increases.

increases in Montgomery County, while Bill 15-23 would only limit the approximately 7% of rent increases that are roughly 10% or higher.

For context, the average rent component of the CPI over the past 41 years (1983-2023) was 3.1%. Based on annual DHCA Rental Rate Survey data 2016-2022, the median rent changed 1.1% year over year for all multifamily units in the sample regardless of whether the rent increased/decreased/or stayed the same. For units that reported an increase in rent year over year, the median increase was 2.98%. More than half (55.2%) of the units in the sample experienced at least one rent increase. Between 2016-2022, 36.8 % of units reported rent increases above the historical rental component of the CPI or the 3% maximum contained in the HOME Act. During the same period, 19.9% of units reported 3-10% increases, 5.5% of units reported 10-25% increases, and 1.3% of units reported increases above 25%.[3]

DHCA's Office of Landlord Tenant Affairs (OLTA) received 112 rent increase notifications between May 16, 2022, to January 9, 2023. Of those, roughly 90% reported increases over 5%, while 75% were over a 10% increase. There were a few reports of 100% increases for tenants going to month-to-month, but the highest increase for an annual lease renewal was 53%.

Exemptions: Both bills contain an exemption for new construction: an important provision that is standard in rent stabilization programs across the country. The new construction exemption provides adequate time for lenders and investors to receive their return and set the rents to encourage continued investment in rental housing production. The new construction exemption for Bill 15-23 is 15 years and for the HOME Act it is 10 years.

The bills also contain a range of exemptions for a range of special purpose housing, Accessory Dwelling Units, and properties that have government restrictions on affordability to serve low- and moderate-income households. Bill 15-23 also exempts single-family homes and condominiums owned by an individual.

Tables 1 and 2 contain data on the numbers of rental units in the County by property type and the number and types of units that would be exempt under the new construction exemptions of the two bills.[4]

Table 1: Number of rental units in Montgomery County based on DHCA licensing records

Property Type	Number of Units
Multifamily	73,668 (616 properties)
Single Family	16,020
Condominium	8,516
Accessory Dwelling Unit (Class 1 & 3)	436

Table 2: Estimate of current Montgomery County properties that would be impacted by a 10- or 15-year new construction exemption based on DHCA licensing records

Structure Type	10 Years	15 Years
Multifamily Properties	58	76

[3] Montgomery County CountyStat analysis of DHCA Rental Rate Survey data 2016-2022.

[4] The 2021 American Community Survey (ACS) estimates a total of 405,755 housing units and 388,396 occupied housing units, with 255,211 owner occupied and 133,185 renter occupied. The difference between ACS and DHCA licensing data for rental units

Multifamily Units	13,612	17,747
Single Family Properties	435	750
Condominium Units	74	147

Fair return / hardship petitions: The HOME Act ensures that landlords can make a fair return on their investments. The HOME Act allows landlords to petition for a fair return on investment and provides detailed criteria for determining the base Net Operating Income of the property and calculating rent increases beyond the maximum annual to maintain it. Net operating income is a standard industry measure that calculates includes revenue and expenses from property operations. Revenue includes rental income, rental losses and other income. Expenses include all property operating expenses generally covered by the following categories: payroll, administrative, marketing, operating and maintenance, utilities, taxes, and insurance. A fair return increase may not exceed 15% in any 12-month period, and if greater than 10% may be imposed incrementally over subsequent years to limit displacement pressures on tenants. Also, as a means of tenant protection, the HOME Act does not allow the landlord of a property that is out of compliance with County laws and regulations, including those designated as “troubled” or “at risk” under housing code provisions in Section 29-22(b), to file a fair return petition.

While Bill 15-23 allows landlords to petition DHCA for a one-year exemption from the maximum annual increase if compliance would cause an undue hardship, the criteria for approving such an exemption is undefined and puts no limit on the rent increases a landlord could charge during the exemption. Bill 15-23 also does not make significant compliance with the housing code a factor in seeking an exemption from the maximum annual rent increase.

Capital improvement petitions: Both bills allow landlords to petition to increase rents for capital improvements, which encourages improvements to the building; however, their methods for paying for capital improvements result in different short- and long-term impacts on affordability. The HOME Act allows landlords to include capital improvements in a fair return petition for the entire property. Bill 15-23 allows landlords to petition DHCA after capital improvements are completed for a 12-month surcharge on unit-specific capital improvements or a 24-month surcharge for property-wide capital improvements: both surcharges are prorated and only cover the cost of the capital improvements. Depending on the cost of capital improvements, a 12- or 24-month surcharge could be very costly for tenants and could result in displacement; for example, Washington, DC amortizes approved capital improvement surcharges over 8 years to lessen the impact on tenants and exempts elderly and disabled tenants from the surcharge.

Vacancy tax: The HOME Act also includes the ability for DHCA to impose a tax on vacant units to discourage withholding units from the market during the ongoing housing availability crisis. The proceeds of the vacancy tax would be deposited in the County’s Housing Initiative Fund solely for the acquisition of affordable housing and administration of the rent stabilization program.

Annual reporting requirements: Both bills require the submission to DHCA of an annual rent report on September 30 covering the preceding July 1 to June 30. The Council should evaluate the purpose of this requirement and consider merging it with the similar mandate in County Code Section 29-51 for DHCA to conduct its annual rent survey.

Thank you for the opportunity to testify.

Rental Affordability: Contracted Rent

MONTGOMERY COUNTY COUNTYSTAT

Percent of 50th percentile estimated contracted rent as a percent of county-wide median monthly income by Race and Ethnicity

What does this table tell us? This table displays the estimated rental burden of county-wide renters across demographic categories and within geographic rental markets. The rents in this table are not changing but the income disparities across demographic categories have an impact on the percentage of income that renters pay for rent across geographic rental markets and can ultimately afford.

Tabulation Area	Number of Rental Occupied Households	Estimated Median Contracted Rent	Percent of estimated median rent within a tabulation area as a percent of 50th percentile **White Alone** monthly income	Percent of estimated median rent within a tabulation area as a percent of 50th percentile **Asian Alone** monthly income	Percent of estimated median rent within a tabulation area as a percent of 50th percentile **Black or African American Alone** monthly income	Percent of estimated median rent within a tabulation area as a percent of 50th percentile **Hispanic** monthly income
Downtown Silver Spring	15,298	$1,660	23%	27%	40%	41%
Gaithersburg	14,866	$1,643	23%	26%	40%	41%
Rockville	11,739	$1,866	26%	30%	45%	46%
North Bethesda	11,319	$1,886	27%	30%	46%	47%
Germantown	10,506	$1,584	22%	25%	38%	39%
Bethesda	8,304	$2,124	30%	34%	**52%**	**53%**
Aspen Hill	6,457	$1,412	20%	23%	34%	35%
Wheaton	6,324	$1,636	23%	26%	40%	41%
Montgomery Village	5,263	$1,522	21%	24%	37%	38%
Long Branch	4,956	$1,403	20%	22%	34%	35%
Fairland	4,358	$1,510	21%	24%	37%	38%
White Oak & Hillandale	4,303	$1,590	22%	25%	39%	40%
Chevy Chase	3,343	$2,210	31%	35%	**54%**	**55%**
Takoma Park	3,214	$1,133	16%	18%	28%	28%
Potomac	2,011	$1,607	23%	26%	39%	40%
North Potomac & Travilah	1,527	$1,967	28%	32%	48%	49%
Kensington	1,455	$1,936	27%	31%	47%	48%
Olney	1,298	$1,395	20%	22%	34%	35%
Leisure World	1,249	$1,647	23%	26%	40%	41%
Forest Glen	1,212	$1,554	22%	25%	38%	39%
Glenmont	1,191	$1,573	22%	25%	38%	39%
Colesville	1,181	$1,343	19%	22%	33%	33%
Burtonsville & Ashton-Sandy Spring	1,087	$1,634	23%	26%	40%	41%

Filtered: MCTAs with 1,000 or more Renter-Occupied Units