



# Prince George's County, Maryland

## Inter-Office Memorandum

### Office of Law

#### LEGISLATIVE COMMENT

**DATE:** October 15, 2024

**TO:** Jennifer Jenkins, Council Administrator

**THRU:** Rhonda L. Weaver, County Attorney

**THRU:** Joseph C. Ruddy, Deputy County Attorney

**FROM:** Dinora A. Hernandez, Associate County Attorney

**RE:** CB-97-2024

The Office of Law has reviewed the above referenced bill as it was presented on September 24, 2024, and finds it to be in proper legislative form. The Office of Law does find that this bill, as drafted, raises the following possible legal impediments that could subject the bill to legal challenges:

#### **1. Takings Clause (Fifth Amendment)**

The U.S. Constitution's Takings Clause prohibits the government from taking private property for public use without just compensation. Rent control laws that are excessively restrictive might be challenged as an unconstitutional "taking" if they significantly interfere with a property owner's ability to earn a reasonable return on their investment.

However, courts have upheld rent control laws in the past, provided they allow landlords to receive a "fair return" on their property. Exemptions (like those for new construction or substantial improvements) help ensure that rent caps do not become too burdensome and violate this clause.

#### **2. Due Process Clause (Fourteenth Amendment)**

Rent control laws must also satisfy the requirements of the Due Process Clause. This means they must be rationally related to a legitimate government interest, such as preventing excessive rent increases or addressing housing affordability. If a rent cap were imposed, to include those that are exempt, it might be challenged as overly broad or arbitrary.

A law imposing a rent cap on all units that are exempt might face greater scrutiny under this clause, as it could be seen as denying landlords reasonable flexibility, especially in cases like new construction or substantial renovations where costs justify higher rents.

### **3. State Constitutional Concerns**

Maryland's state constitution also contains provisions that could impact a rent cap law. For example, under Maryland law, economic regulations (including rent control) generally need to balance the public good with private property rights. Imposing a rent cap on all units that have been exempt might be seen as failing to balance these interests, which could lead to legal challenges under state constitutional provisions on due process or takings.

### **4. Precedents**

Maryland courts and courts across the U.S. have typically upheld rent control measures when they include mechanisms that allow landlords to adjust rents in certain situations (e.g., for reasonable returns, new buildings, or renovations). If a rent cap law in Maryland lacked these kinds of exemptions, it might face challenges from landlords as being too rigid or confiscatory.

### **Conclusion**

Enacting this legislation could face legal challenges. Most rent control laws include exemptions to avoid violating constitutional protections for property owners. This bill imposes a cap on all properties that qualify for an exemption, which would likely be heavily scrutinized by the courts in Maryland.