



City of Portland

Remote Rental Housing Advisory Committee

Thursday, September 22, 2022 at 5:30 PM

To submit written public comment on an agenda item, email Vvolent@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the RHAC meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

REMOTE ACCESS INFORMATION:

The Rental Housing Advisory Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Please install the free Zoom app. If you are not able to attend via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:
<https://portlandmaine-gov.zoom.us/j/83225389362>

To join via Telephone dial: 1 646 931 3860

Webinar ID: 832 2538 9362

1. Review and Approval of Minutes of the July 28, 2022 meeting
 - a. Draft Minutes 7-28-22
2. Discussion of upcoming meetings and potential change(s) to future meeting dates. (see Doodle Poll results)
3. Discussion of upcoming citizen initiatives/ballot items regarding rental housing, including proposed provision prohibiting rental application fees. See attached
 - a. An Act to Protect Tenants in PortlandDiscussion of potential new recommendation to HEDC re: rental application and/or "holding" fees. See RHAC's February 5, 2020 recommendation to Housing Committee re:
4. rental application fees, City Council's Order 206 - 19/20 amending City Code to add provisions regarding rental application fees, and upcoming ballot initiatives addressing rental application fees
 - a. Rental Application and/or "holding" fees
5. Development of Committee Work Plan and Ideas for 2022
6. Public Comment

City of Portland

**Rental Housing Advisory Committee
Minutes of Remote Meeting held on July 28, 2022**

Committee attendance: Meredith Cook, Jeremy Lock, Crow Norlander, William Sedlack, and Regan Sweeney

Absent: Nora Graves, Wendy Harmon, Jonathan Kurzfeld, Christopher Marot

Staff attendance: Victoria Volent

Item 1: Review and Approval of the Minutes of the May 26, 2021 Meeting

On motion made by Regan Sweeney, seconded by William Sedlack, the Committee voted (5-0) to accept the minutes.

Item 2: Discussion of upcoming changes to RHAC membership (departure of M. Cook, new Tenant rep. position open for application as of August 1, interviews in September)

Regan note Meredith Cook's departure from the Committee and noted the opening for a new tenant member.

Item 3: Nomination and selection of new Tenant Co-Chair

The Committee discussed and decided to table this item to allow absent members the opportunity to participate in the discussion.

Item 4: Discussion of upcoming meetings (no committee meetings in August) and potential change(s) to future meeting dates

Regan Sweeney asked if Committee members would like to changed the date of future meetings. The Committee discussed and decided to table this item to allow absent members the opportunity to participate in the discussion. The next meeting of the RHAC will be September 22. Staff was directed to conduct a doodle poll surveying what day of the week members prefer to meet.

Item 5: Discussion of upcoming citizen initiatives/ballot items regarding rental housing, including proposed provision prohibiting rental application fees.

Regan Sweeney opened the discussion by noting there will be thirteen citizen initiatives on the November ballot. One initiative, "An Act to Protect Tenants in Portland" (exhibit A of the packet of material), would prohibit all application fees for rental housing units, including but not limited to any fees or charges to applicants for background checks, credit reports, rental history records and/or reference checks, eviction records and/or employment verification.

Item 6: Discussion of potential new recommendation to HEDC re: rental application and/or “holding” fees,. See, RHAC’s February 5, 2020 recommendation to Housing Committee re: provisions regarding rental application fees, and upcoming ballot initiatives addressing rental application fees.

Crow Norlander presented amending the definition of “rental application” from Chapter 6 Section 6-221 to include “deposits, or other potentially refundable payments made prior to the signing of a lease or other contractual housing agreement. The term further encompasses any additional expenditures or remuneration”. The Committee discussed whether or not there was still some ambiguity around rental fees versus “holding fees” to the extent that it merits moving the draft memo forward, with the proposed amendment, given the “Act to Protect Tenants in Portland” is proposing to prohibit all application fees. Members noted the memo and amendment underscores the new practice of requiring “holding fees” should be called out and specifically prohibited. Additionally, it is not certain the ballot initiative will be successful which subsequently is another reason to bring forward this item of concern to the Housing and Economic Development Committee. The Committee discussed and decided to table this item to allow absent members the opportunity to participate in the discussion.

Item 7: Development of committee work plan and ideas for 2022

The Committee discussed and decided to table this item to allow absent members the opportunity to participate in the discussion.

Item 8: Public Comment

The meeting was opened to public comment, seeing no members of the public present, the public comment period was closed.

On a motion made by Regan Sweeney, seconded William Sedlack, the Committee voted unanimously (5-0) to adjourn.

The meeting was adjourned at 6:07 PM.

Respectfully submitted by Victoria Volent

EXHIBIT A

An Act to Protect Tenants in Portland

An Act to Protect Tenants in Portland ensures that tenants receive 90-day notice for lease termination and/or rent increases. It discourages no-cause evictions by limiting the 5% rent increase to voluntary turnovers. It reduces costs to tenants by restricting deposits to one-month rent, prohibiting application fees, and further limiting the amount of standard annual rent increases that landlords are allowed to impose to 70% of CPI. It strengthens protections for tenants who exercise their rights under the ordinance, and provides greater clarity and authority to the rent board to ensure landlords receive a fair return on investment and that tenant complaints receive a fair hearing. It also sets a \$25,000 fee for condominium conversions. The Act also makes various technical changes and corrections to allow the ordinance to better effectuate its originally intended purpose.

BE IT ORDAINED:

1. That Chapter 6, Sections 6-151, 6-152, 6-223, 6-223.1, 6-223.2, 6-231, 6-232, 6-233, 6-234, 6-235, 6-235.1, 6-236, 6-237, 6-240, 6-241, 6-250, 6-251, and 6-263 of the Portland City Code are hereby amended to read as follows:

Sec. 6-151. Registration required.

(a) Registration of Ownership.

1. Rental units must be registered in accordance with this article by January 1st of each year; Rental units entering the rental housing market must be registered within fourteen days. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.

...

(f) *Additional Information Required for Covered Units.* A Covered Unit, as defined by Section 6-232 of this Chapter, shall not be considered registered unless and until the registrant has submitted the following additional information:

...

2. The increase in rent (if any) when compared to the previous ~~Rental Year's rent~~ rent registration;

...

4. The amount of Banked Rent, if any, accumulated ~~in~~ since the previous ~~Rental-Year~~ registration;

...

Sec. 6-152. Registration Fees.

...

(e) Registrations that are not ~~renewed~~ received by ~~February 1~~ January 15, or within 14 days after entering the rental housing market, whichever is later, shall be subject to a late fee of ~~\$10~~ \$50 per unit, and registrations that are not received by February 15, or within 45 days after entering the rental housing market, whichever is later, shall be subject to a late fee of \$200 per unit. Registrations shall not be renewed unless and until the registrant pays any applicable late fee. Incomplete or inaccurate registrations may be rejected and subject to all applicable late fees upon resubmission. The Permitting and Inspections Director may waive a late fee upon a showing of both hardship and good cause as to why the renewal was not timely.

...

Sec. 6-223. Notification of rent increases.

Notwithstanding 14 M.R.S. Section 6015, a Landlord shall give ~~seventy-five (75)~~ ninety (90) days' written notice of any rent increase to a Tenant.

(Ord. No. 76-16/17, 11-21-2016)

Sec. 6-223.1. Rental applications, generally; application fees ~~restricted prohibited.~~

...

~~(b) Disclosure of Application Fee. Before accepting a rental application fee, a landlord shall disclose in writing to the applicant the rental application fee amount. The applicant shall not be charged more than the disclosed rental application fee for that application.~~

(eb) Availability of Units. Landlords shall only advertise rental housing units, receive applications, and screen applicants, ~~and accept application fees for rental housing units~~

when such rental housing units are actually available and ready for occupancy or are expected to be available for occupancy within a reasonable time period; provided, however, that an applicant may consent to be screened and placed on a waiting list. For purposes of this Section, a rental housing unit is no longer considered available if a different applicant has been screened by the landlord, has been offered the rental housing unit and accepted it, and has placed a deposit on the rental housing unit. A rental housing unit may be considered available if a tenant of a unit has declared they will not be renewing a lease or have otherwise vacated the property. Landlords shall document the date and time that deposits are placed on rental housing units.

(dc) Application Fees. ~~All application fees for rental housing units are prohibited shall not exceed the actual cost of the screening process or thirty dollars (\$30.00), whichever is lower. The actual cost of the screening process includes only the hard costs associated with a background check. Labor costs and other soft costs associated with application process must be excluded. Hard costs may include, including, but not be limited to, any fees or charges to applicants for the following:~~ national, state and local criminal background checks, credit reports, rental history records and/or reference checks, eviction records and/or employment verification. ~~Each adult who intends to reside in a rental housing unit may be charged an application fee.~~

~~(e) Disposition and Use of Application Fee. Within ten (10) days of receipt of an application fee, a landlord must provide an explanation for the disposition and use of the application fee and provide a receipt to the applicant detailing how the application fee was used. An application fee shall be refunded in its entirety if a landlord does not incur hard screening costs. A landlord shall also provide the applicant with any paperwork or copies of electronic correspondence generated as result of the screening process, to the extent permitted by State and Federal law.~~

~~(f) Current Tenants. A current tenant of a rental housing unit shall not be charged an application fee to move to another rental housing unit owned by the same landlord.~~

~~(g) Exemption. The provisions of this Section shall not apply to any landlord who does not charge a rental application fee.~~

Sec. 6-223.2 Maximum deposit.

Notwithstanding 14 M.R.S. Section 6032, a lease or tenancy at will agreement for a dwelling intended for human habitation may not require a security deposit equivalent to more than the rent for one (1) month.

...

Sec. 6-231. Applicability.

...

(d) Rental Units within a building containing only two (2), three (3) or four (4) dwelling units, one of which the Landlord property owner currently occupies as his or her principal residence;

...

Sec. 6-232. Definitions.

Allowable increase percentage means the standard amount that the rent of a Covered Unit may be raised within a the following Calendar ~~Rental~~ Year, unless a Landlord is entitled to additional increases as ~~laid out~~ provided in Sections 6-233 or 6-234 below. The allowable increase percentage shall be determined on September 1 of each year beginning on September 1, 2021, and shall be equal to ~~100~~ 70 percent of the change in the Consumer Price Index (CPI-U) for Greater Boston Metro Area for the preceding twelve months, as published in August by the United States Bureau of Labor Statistics or its designee. For the purposes of this ordinance, the Rent Board shall presume that the Allowable increase percentage is sufficient to allow a reasonably prudent landlord who received a fair return on investment prior to the enactment of this ordinance to continue to maintain a fair net operating income that increases over time at a just and reasonable rate, yielding a fair return on investment under the normal course of doing business.

Base rent means the initial amount of rent that a Landlord charged for a Covered Unit prior to the increases allowed under this ordinance, as more specifically defined in Section 6-233 of this Article. For the purposes of the ordinance, the Rent Board shall presume that the Base Rent was sufficient to have provided the Landlord a fair return on investment prior to the enactment of this ordinance.

Banked rent means the Base Rent for a Covered Unit, plus any

increase in rent to which the Landlord was entitled under Sections 6-233 and 6-234 below, but that was not yet applied to the Rent charged to a Tenant during a particular Rental Year.

...

Fair return on investment means an amount sufficient to allow a just and reasonable rate of return, to encourage the investment of capital in the rental housing market, to fairly compensate investors for the risks they have assumed, and to achieve minimum constitutionally protected standards. For the purposes of this ordinance, a Fair return on investment must be calculated using Maintenance of Net Operating Income methodology, as that term is used in other jurisdictions with similar ordinances, that presumes the net operating income the landlord earned from a Covered unit during calendar year 2019 yielded a fair return on investment, unless the landlord proves that special or peculiar circumstances prevented the landlord from receiving a fair return on investment during that period. The Rent Board may adopt rules or regulations to ensure the fair and consistent application of such methodology.

...

Major renovation or reconfiguration means one or more capital investments or improvements where the total cost of construction or improvement attributable to the Rental unit involved exceeds 20% of the property value, prior to improvement, of the Rental unit involved, as determined by the city's tax assessor.

...

Rent stabilization allowances means collectively the Allowable Increase Percentage, ~~the Tax Rate Rent Adjustment,~~ and any additional rent increase exemptions approved by the Rent Board under Section 6-234 of this Article.

Rent stabilization ordinance means Chapter 6, Articles XII and XIII of the Code of Ordinances, City of Portland, Maine, as amended.

Rental agreement means a ~~written legal~~ contract between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

...

~~Tax rate rent adjustment means the additional amount by which a Landlord may increase the rent of a Covered Unit within a given year. The Tax Rate Rent Adjustment may be added to the Allowable Increase Percentage if and only if the City changes the mil rate as compared to the previous Rental Year. In this case, the tax rate rental adjustment is equal to the actual increase in property taxes attributable to the individual Covered Unit.~~

...

Tenants Union means any group, organization, committee, collective, association or entity, whether incorporated or unincorporated, of any kind, whatsoever, in which tenants participate and which exists for the purpose, in whole or in part, of dealing with Landlords concerning rental conditions or any matter related to the Landlord-tenant relationship, including but not limited to the rights and interests of tenants under this Chapter.

Sec. 6-233. Establishment of base rent.

(a) *Base Rent for Current Covered Units.* Beginning on January 1, 2021, each Covered Unit shall be registered with the City in accordance with Section 6-151(e). Such registration must include proof of the rent charged by the Landlord for each Covered Unit as of June 1, 2020 (i.e., through presentation of a valid Rental Agreement, rent payment receipt, or other acceptable means within the opinion of the City). This amount shall be the Base Rent for purposes of the Rent Stabilization Ordinance, except as otherwise provided within this section.

(b) *Base rent for Discontinued Covered Units.*

- (i) If a Covered Unit ~~is~~ was not required to be registered with the City as of ~~January~~ April 1, 2021, but is required to be registered with the City after such date, the Base Rent shall be the amount of Rent charged 120 days prior to the date when the Covered Unit became required to be registered, or if no Rent was charged at such time, the first Rent charged by the Landlord any time thereafter. The Base Rent for any new Covered Unit entering the rental housing market for the first time shall be the Rent charged to the first Tenant, as set by the Landlord.
- (ii) If a Covered Unit ~~is~~ was required to be registered

with the City as of ~~January~~ April 1, 2021, but is removed from the rental housing market, the Base Rent for such a Covered Unit upon reentry to the rental housing market shall be the Banked Rent, as measured from the ~~Rental Year in which time~~ the Covered Unit was removed from the rental housing market.

- (iii) If a Covered Unit ~~is~~ was required to be registered with the City as of ~~January~~ April 1, 2021, but is subsequently removed from the rental housing market for a period of ~~five (5) or more Rental Years~~ at least sixty (60) months, the Base Rent for such a Covered Unit ~~upon reentry into the rental housing market~~ shall be set by the Landlord the Rent charged to the first Tenant upon reentry into the rental housing market, as set by the Landlord.

(c) *Base rent following major renovation or reconfiguration of Covered Units.* Upon ~~the~~ a major renovation or reconfiguration of a Covered Unit, the Landlord may charge no more than the Banked Rent for that unit, or may apply to the Rent Board for determination of the appropriate ~~increased in rent~~ Base Rent. When determining the appropriate ~~increased in rent~~ Base Rent, the Rent Board may consider factors including the increase in floor area, the addition or upgrade of amenities, the amount necessary to ensure a fair return on investment, and any other factor determined relevant in the opinion of the Rent Board; the Rent Board may consider any amount of Banked Rent accrued for that unit, but after determining the appropriate Base Rent, all previously accrued Banked Rent shall be forfeited.

...

Sec. 6-234. Rent increase limitations.

(a) Beginning on September 1, 2021, and occurring no later than September 1 of each subsequent year, the Housing Safety Office shall establish and publish the Allowable Increase Percentage ~~and the Tax Rate Rent Adjustment~~ for the following calendar year, and shall announce and explain the methodology for calculating the Allowable Increase Percentage at the first meeting of the Rent Board following such publication. The Rent Board shall hear public comment after such announcement.

(b) A Landlord may not only increase the rent charged for a Covered Unit ~~once within a Rental Year~~ twelve (12) months

following a previous Rent increase. After twelve (12) months, the Landlord may only increase the rent charged for a Covered Unit⁷ by an amount that conforms to the following specifications:

...

- ~~2. Tax Rate Rent Adjustment. If the mil rate within the City of Portland is altered for the subsequent fiscal year a Landlord may, in addition to the Allowable Increase Percentage, increase rent by the Tax Rate Rent Adjustment for the subsequent Rental Year.~~
32. New Tenancy. A landlord may increase the rent on a Covered Unit by five percent (5%) of the base rent in addition to any other allowable increases when a new tenant occupies a unit, but only if the previous Tenancy was terminated voluntarily by the previous Tenant, without coercion or unreasonable influence from the Landlord. This increase may be applied at most once per year twelve (12) months, regardless of the number of new tenancies. The Housing Safety Office shall investigate any report that the Tenancy was not terminated voluntarily by the Tenant, or that the Tenant was coerced or unreasonably influenced by the Landlord to terminate the Tenancy. Any tenancy in which the property owner served the tenant with a notice to quit or summons and complaint for forcible entry and detainer shall not be deemed to be a situation in which the previous tenant voluntarily terminated the tenancy.
43. Banked Rent. If the Landlord has banked additional rent increases, in accordance with Section 6-235 below, this banked amount, in whole or in part, may be added to the increases permitted by subsections (i) and (ii) above.
54. Additional Rent Board Approved Increases necessary to ensure a fair return on investment. In addition to the above rent adjustments, upon receipt of an application submitted by the Landlord, the Rent Board may approve additional rent increases necessary to ensure a fair return on investment. properly demonstrated by the Landlord, attributable to:

To calculate what amount is necessary to ensure a fair return on investment, the Rent Board shall employ generally acceptable Maintenance of Net Operating Income methodology, and may not consider any valuation-

based or capitalization-based methodology or any calculation or methodology factoring market rent or market value of the Covered Unit.

Rent board approval under this provision is intended to ensure a fair rate of return under abnormal, unexpected, or irregular circumstances, including, but not limited to, capital improvements and minor renovations, uninsured repairs, the provision of new housing services, revaluation for property tax assessment, or other unusual expenses. The Rent Board shall presume that the Allowable Increase Percentage will be sufficient to satisfy all regular increases in operating costs, routine maintenance expenses, and other normal or regular costs or expenses, allowing the Landlord to maintain a fair return on investment.

The Landlord submitting an application for an additional rent increase bears the burden of proof, including the burden of providing all necessary documentation, to demonstrate that the increase is necessary to receive a fair return on investment. Such documentation shall include, but is not limited to: historical net operating income, revenue and expenses; the costs and expenses requiring Rent board approval of an additional increase; and what portion of shared costs and expenses can be fairly attributed to each individual covered unit.

- ~~a. Capital improvement costs, including financing costs;~~
- ~~b. Uninsured repair costs;~~
- ~~c. Increased housing service costs; and~~
- ~~d. Any additional increase, within the opinion of the Rent Board, required to allow the Landlord to receive a fair rate of return.~~

(c) At no time ~~Under no circumstances~~ may a Landlord raise the rent of a Covered Unit by more than ten (10) percent ~~within a Rental Year~~. Any rent increases available to a Landlord in excess of ten percent must be banked for later ~~use in a subsequent Rental Year~~.

(d) Before increasing the rent of a Covered Unit, a Landlord

must send a signed document to the Tenant(s) no fewer than ~~seventy-five (75)~~ninety (90) days before the effective date of the rent increase. This document must include the date on which the Tenancy began, the date on which the rent will be increased, the amount of the increase, any remaining Banked Rent that has not been included in the Rent increase, and the appropriate justifications for such a rent increase as defined in Section 6-234(b) above. Failure to provide such documentation shall be considered a violation of this Article, and any notice not containing all such documentation shall be void.

(e) ~~A~~Tenants, individually or collectively, who receives notice of a rent increase that they believe does not conform with this Section may file ~~an~~ complaint with the Housing Safety office. The Housing Safety office shall promptly investigate such complaint and take appropriate action. If, within fourteen (14) days of filing such a complaint, the notice is not rescinded by the Landlord, an appeal of said rent increase may be filed with the Rent Board. Upon receipt of the appeal, the Rent Board shall schedule a public hearing to be held no more than twenty-one (21) days after the filing of the completed appeal application. At the public hearing, the Board will consider de novo the rent charged under the existing Rental Agreement, the amount of the proposed new rent, and the factors which may or may not allow such an increase in accordance with this Article. Upon consideration of such evidence, the Board will render a decision as to whether the increased rent is allowable. ~~If such a~~An increase is determined by the Board to be more than is allowed by this Article shall be considered a violation, and the Board may ~~impose such fines as are allowed by this Article~~ determine the appropriate penalty for any such violation in a manner consistent with the provisions of this Code. Multiple tenants collectively alleging the same or similar violations against a single Landlord, including but not limited to a Tenants Union or members of or participants in a Tenants Union, may file their complaints or appeals collectively as a single document, and the Rent Board shall hear all such matters together as a single complaint or appeal; but notwithstanding such consolidated hearing the Rent Board may elect to issue separate decisions.

(f) A landlord who is not in substantial compliance with any provision of this chapter, including but not limited to the Rent Stabilization Ordinance, may not demand, accept or retain any rent increase otherwise permitted by this section or any other provision of this Code or Maine statute.

Sec. 6-235. Process of banking rent increases.

If a Landlord chooses to not impose any rent increases to which they are entitled pursuant to Section 6-234 above, these increases may be banked, in whole or in part, with the annual registration required under Sec. 6-151. Banked increases may be used to raise the rent of Covered Units in subsequent Rental Years in addition to the Rent Stabilization Allowances established for that year by the Rent Board, subject to the limitations in Sec. 6-234, including provided that no single the total increase of such rent shall not exceed ten (10) percent within a single Rental Year.

Sec. 6-235.1. Alternative calculation of maximum allowable rent.

At no time shall any Landlord charge Rent on a Covered Unit that exceeds the Base Rent plus any accrued increases allowed under this Ordinance, and any Landlord who charges Rent on a Covered Unit that is greater than such amount is in violation of this Ordinance. This section shall not be construed to retroactively revoke any allowable increases accrued under previous versions of this Ordinance.

Sec. 6-236. Termination of Tenancies-At-Will

(a) In order to be terminated by a Landlord, all tenancies-at-will must be terminated by providing a minimum of 90 days' written notice to Tenant except as provided below:

1. "For Cause" tenancies terminable on 7 days' notice pursuant to 14 M.R.S. § 6002(1) may be terminated in accordance with Section 6002(1);
- a2. Short-term rentals with a term of fewer than 30 days' are exempt from the 90-day notice period outlined herein;
- b. ~~Holdover tenancies are exempt from the 90 day notice period outlined herein;~~
- e3. Where a Landlord provides \$500.00 the amount of one month's Rent as reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of sixty (60) to eighty-nine (89) days;
- d4. Where a Landlord provides \$1000 the amount of two

months' Rent as reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of thirty (30) to fifty-nine (59) days.

(2b) Reimbursement amounts outlined ~~in~~ under subsections (ea) ~~and (d)~~ above are lump-sum amounts payable in a single installment for the collective benefit of all tenants of a unit. Tenants are responsible for allocating the reimbursement amount among themselves.

...

Sec. 6-237. Discrimination prohibited in sale or rental of housing units.

...

(e) It shall be prohibited for a Landlord to refuse to rent or negotiate for the rental of, otherwise make unavailable or deny a dwelling to a Tenant, retaliate against, or otherwise discriminate against a Tenant because the Tenant, or a Tenants Union on behalf of the Tenant, has complained or initiated a complaint or appeal to assert the Tenant's rights or interests under this Ordinance, or because the Tenant is a member of or participates in a Tenants Union. There is a rebuttable presumption that any adverse action by the Landlord, including but not limited to forcible entry and detainer, was commenced in retaliation against the Tenant if, within 6 months prior to the commencement of the adverse action the Tenant, or a Tenants Union on behalf of the Tenant, complained or initiated a complaint or appeal to assert the Tenant's rights or interests under this Ordinance.

...

Sec. 6-240. Enforcement and remedies.

Any violation of this Article is considered a civil infraction; all such violations, including any penalty determined to be appropriate by the Rent Board, and shall be enforced pursuant to the Portland City Code Chapter 1, §1-15. Violations of this Article, including enforcement of penalties for all such violations, shall be given the highest enforcement priority by the City.

Sec. 6-241. Limitation of Liabilities

...

~~(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.~~

...

Sec. 6-243. Tenant Unions

(a) Any Tenants Union shall have standing as a party to assert the rights or interests of any Tenants, individually or collectively, under this Chapter in any complaint, appeal, or other proceeding brought before the Housing Safety Office, the Rent Board, or the Superior Court in an appeal from any final decision under this Chapter in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(b) The Housing Safety Office shall create a registration form, and accept the registration of Tenants Unions representing Tenants with rights and interests under this Chapter. Such registration shall include the name, telephone number, and e-mail address of a principal contact for the Tenants Union. The Housing Safety Office shall maintain and publish a list of Tenants Unions registered under this section, including contact information, for use by Tenants wishing to join or contact a Tenants Union. Nothing in this Section shall be construed to require a Tenants Union to register with the City. The City shall be prohibited from requesting, collecting, maintaining or publishing the names of individual Tenant members of any Tenants Union.

...

Sec. 6-250. Creation; composition.

There shall be a Rent Board of seven (7) members. Members of the Rent Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments.

Two (2) members shall be appointed to fill at-large seats, and may reside in any part of the city. The remaining five (5) members shall be comprised of one member from each of the five (5) city council ~~wards~~ districts with the highest concentration of Rental units. Should the ~~number or~~ location of said city council ~~wards~~ districts be changed, the districts ~~and number of~~ Rent Board members shall change to mirror such changes.

...

Sec. 6-251. Appointment; terms.

The members of the Rent Board shall be appointed by the Mayor, subject to the approval of the City Council for terms of three (3) years. Such members shall serve until their successors are duly appointed and qualified. Such terms shall be staggered so that the terms of not more than three (3) members shall expire in any calendar year.

...

Sec. 6-263. Jurisdiction and authority.

In addition to the jurisdiction conferred on it by other ordinances of the City and in accordance therewith, the Rent Board shall have the following jurisdiction and authority:

(a) To hear, review, and approve or deny Landlord applications for rent increases greater than the Allowable Increase Percentage, as provided for in Section 6-234 above~~those allowed by the Rent Stabilization Ordinance;~~

(b) To hear, review, and approve or deny Landlord applications for increases in Base Rent due to the major renovation or reconfiguration of existing Covered Units, as provided for in Section 6-2334 above;

(c) To hear, review, and grant or deny complaints or appeals from Tenants, individually or collectively, regarding Rent charges or Rent increases not in compliance with the Rent Stabilization Ordinance, or other matters falling within the scope of the Rent Stabilization Ordinance, or allegations violations of Maine statute regarding the habitability of residential units; such appeals shall be heard and decided de novo;

...

(e) ~~To hear, review, and mediate decide the appropriate outcome of any disputes arising between Landlords and Tenants on matters falling within the scope of Article XII of this Chapter, if where both parties request consent to such mediation and resolution by submitting the landlord/tenant dispute mediation form, as maintained and edited by the Housing Safety Office,~~

signed by both Landlord and Tenant no later than fourteen (14) days before the date on which such a hearing shall be scheduled; all parties to such mediation must agree and shall be required to mediate in good faith; such authority to mediate disputes shall not be construed to limit the Rent Board's authority to hear, review or decide any tenant complaint or appeal without the consent of the Landlord; the Board may appoint one or more of its members, in lieu of the full Board, to mediate disputes on a rotating basis, and such mediation may be conducted outside of a public hearing, and a quorum of the Rent Board shall not be required for such mediation;

(f) To ~~impose such fines as are necessary and allowed~~ determine, in a manner consistent with the provisions of this Code, what penalties are appropriate for violations of the provisions of the Rent Stabilization Ordinance that are determined by the Board;

...

(h) To prepare an annual report on the state of the City's rental unit availability, which shall be presented to the City Council as part of a regularly-scheduled public hearing. This report shall include a summary of rents within each of the five council wards district. Such reporting may or may not be done in conjunction with similar reporting required of the City's Rental Housing Advisory Committee, as established by this Chapter; and

(i) To adopt or amend, subject to approval by the City Council, such rules and regulations as are necessary to implement, or to allow for the efficient and consistent application of, the provisions of the Rent Stabilization Ordinance, including but not limited to rules and regulations governing the proceedings of the Rent Board's hearing of Landlord applications or of Tenant complaints or appeals and rules and regulations providing standard procedures and methodology for calculating the amount of rent necessary to allow the Maintenance of Net Operating Income and yield a Fair Return on Investment under various circumstances; the Board may adopt, subject to approval by the City Council, rules and regulations, including methodology, allowing the Housing Safety Office or a hearing officer to review Landlord applications and to complete standard calculations in order to provide for or facilitate an expeditious process and efficient consideration by the Rent Board; Rules and Regulations adopted pursuant to this authority, and any amendments thereto, shall become effective only when approved by the City Council, and shall be kept on file in the Housing Safety Office;

(4j) To initiate changes and amendments to ~~this Article, as well as to~~ the city's Rent Stabilization Ordinance.

2. That Chapter 14, Section 14-18.4.5 of the Portland City Code is hereby amended to read as follows:

Sec. 14-18.4.5 Conversion permit

Before conveying or offering to convey a converted unit, the developer shall obtain a conversion permit from the Building Authority. The permit shall issue only upon receipt of a completed application therefore in a form to be devised for that purpose, a fee as established by the City Council of \$25,000 per converted unit, to be adjusted annually in the same way as the fee under Chapter 14, Subsection 18.1.8 of this Code, at least \$1,000 of which shall be appropriated to the Housing Safety Office for the administration and enforcement of the Rent Stabilization Ordinance, Chapter 6, Articles XII and XIII of this Code, and the remainder of which shall be paid into the Jill C. Duson Housing Trust Fund, and a finding, upon inspection, that each unit, together with any common areas and facilities appurtenant thereto, is in full compliance with all applicable provisions of Chapter 6, Articles II, III, and V and Chapter 10, Article II of the City of Portland Code of Ordinances, and the Life Safety Code as adopted by the state. The developer shall post a copy of the permit in a conspicuous place in each unit and shall make copies available to prospective purchasers.

3. That, except as specified herein below, all such amendments shall take effect thirty (30) calendar days after the official canvass of the return of the election at which this ordinance is approved, provided that:

(a) Notwithstanding any notice given prior to such effective date, all rent increases taking effect on or after January 1, 2023 must comply with the amendments to sections 6-223 and 6-234(d), such that any tenant charged such rent increase must receive at least 90 days notice, and such notice must include all newly required information, before any such increase may be implemented;

(b) Notwithstanding any Tax Rate Rent Adjustment announced by the Housing Safety Office prior to such effective date or any notice given prior to such effective date, all rent increases taking effect on or after January 1, 2023 must comply with the

amendments to Sections 6-232 and 6-234 repealing the Tax Rate Rent Adjustment, such that no Tax Rate Rent Adjustment may be included in any rent increase taking effect on or after such date;

(c) Amendments to Sections 6-232 and 6-234(a) changing the calculation of the Allowable Increase Percentage shall take effect for the Allowable Increase Percentage established and published by the Housing Safety Office on or before September 1, 2023, applicable to all rent increases taking effect on or after January 1, 2024; and

(d) Amendments to Sections 6-232 and 6-234(b) changing the requirements for Additional Rent Board Approved Increases shall be applicable for all landlord applications submitted to the Rent Board on or after March 1, 2023. For all landlord applications submitted prior to March 1, 2023, the Rent Board may continue to apply the previous version of this ordinance and to approve increases allowable pursuant to such previous version.

MEMORANDUM

FROM: Rental Housing Advisory Committee
DATE: June 21, 2022
SUBJECT: Rental Application Fees

I. SUMMARY

The Rental Housing Advisory Committee recommends that the City amend the ordinance banning application fees for rental housing units.

II. BACKGROUND

The Rental Housing Advisory Committee (RHAC) is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's meeting on May 24, 2022, group members brainstormed issues of concern to landlords and tenants. One of the items was a recent discovery that a major landlord, Princeton Properties, which owns several large complexes in Portland, is requiring a "holding fee" in order to process an application as someone comes up on their waitlist.

In practice, a prospective tenant submits an application fee to Princeton Properties at the time of application. They are put on a waiting list. Once they come up on the waiting list, they must pay a \$500 "holding fee" within seven (7) days in order to be eligible for the vacant unit. If they cannot come up with the fee within that time, they are put back on the waitlist and are considered ineligible for the unit.

If accepted, the tenant's fee is ultimately applied to move-in costs associated with first month's rent and security deposit. If the tenant is rejected, then the tenant receives the money back. However, the processing time for viewing the unit, background checks, and unit preparation can result in significant delays of 45 days or more between payment of the holding fee and the availability of the unit. Effectively, unless a prospective tenant has \$500 at their disposal that they will not need for 45 or more days, they will not be able to obtain a unit for which they are otherwise qualified.

The RHAC discussed that this is contrary to the intention behind the City ordinance limiting application fees that was adopted in 2020.

III. ANALYSIS AND BACKGROUND

RHAC understands that the Housing Committee would like to see "more than anecdotal" evidence demonstrating that fees are a significant problem in the community.

RHAC member, Chris Marot of Pine Tree Legal Assistance (PTLA), indicates that this practice has been occurring at Princeton Properties since at least the Fall of 2021. Pine Tree has received several requests for information and assistance around these policies.

Moreover, because Princeton Properties is a large entity, it is important to proactively address this issue in an effort to limit the opportunity for the practice to spread to other housing providers as well.

What further complicates the \$500 holding fee is that Princeton Properties requires the fee to be paid directly by the prospective tenant and not third parties. That means that if someone were receiving housing assistance, for example, that subsidy could not directly pay the fee to Princeton Properties.

Most, if not all, subsidies that the RHAC is aware of do not provide funds directly to tenants for payment to a landlord. This further forecloses the ability of low income tenants to pay the fee, and subsequently to obtain housing through one of the largest landlords in Portland.

IV. RECOMMENDATION

RHAC recommends that the following provision be added to Chapter 6 of the City's ordinances:

“Unless an applicant has been approved for tenancy, no lessor may require any applicant to pay fees beyond the initial application fee as limited by City Code.

ARTICLE XI. TENANT HOUSING RIGHTS

6-219. Purpose.

The purpose of this Article is to address housing insecurity in the City of Portland; to minimize the potential adverse impacts of un-noticed or short-notice rent increases; to educate at-will Tenants of their rights; and to help bring about through fair, orderly and lawful procedures, the opportunity of each person within the City of Portland without regard to, among other things, receipt of public benefits, to rent, enjoy and retain secure housing.

(Ord. No. 76-16/17, 11-21-2016)

6-220. Applicability.

This article shall apply to any and all rental housing units in the City limits of Portland.

(Ord. No. 76-16/17, 11-21-2016)

6-221. Definitions.

Applicant means a prospective tenant for a rental housing unit, who signs or intends to sign a lease or other contractual agreement in relation to the unit.

Discrimination means the unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religious creed, sex, sexual preference, national origin, age, physical handicap or mental handicap, and based on receipt of public assistance, as provided in 5 M.R.S. §4581-A and as amended from time to time.

Housing unit means one (1) or more rooms forming a single unit including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

Landlord means an owner, manager, lessee, sublessee, managing agent or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

Rental Application means the written document used by a landlord to determine if an applicant is qualified to become a tenant of a rental housing unit.

Rental Application Fee means any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, deposits, or other potentially refundable payments made prior to the signing of a lease or other contractual housing agreement. The term further encompasses any additional expenditures or remuneration that an applicant is required to pay in order to have their rental application considered by the landlord.

Tenant means an individual, individuals, an entity, entities, a lessee or sub-lessee, or other person having the right to rent any housing unit or rental property or any agent of these individuals or entities. This definition includes a Tenant at will as described in 14 M.R.S. §6002, as amended from time to time.

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: July 15, 2020

SUBJECT: **Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: A member(s) of the Rental Housing Advisory Committee will be available for questions.

I. SUMMARY

The Rental Housing Advisory Committee recommends the City enact an ordinance to ban application fees for rental housing units.

II. AGENDA DESCRIPTION

On May 13, 2020, the Housing Committee voted (2-1) to forward this item to the City Council with a recommendation for passage.

On December 16, 2019 the Rental Housing Advisory Committee (RHAC) voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees.

The RHAC is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are also generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee.

At the October 28, 2019 meeting of the RHAC, members of the Committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant; landlords who

collect application fees from multiple applicants and do not conduct background checks; and landlord who do not supply copies of reports to applicants who are not selected as tenants. During multiple meetings, the Committee discussed the concern that application fees price low and moderate income tenants out of the Portland rental market.

Members of the Committee proposed language banning fees phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

This item must be read on two separate days. It received its first reading on June 15, 2020. It received a second reading on July 13 and was postponed to this meeting. Staff is requesting that this item be passed as an emergency; Amendment 3 in the back-up material adds emergency passage to the order. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Enact an ordinance to ban application fees for rental housing units.

Increase access to rental and home ownership that is safe, affordable, and accessible

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

The Rental Housing Advisory Committee is requesting the City Council to enact an ordinance to ban application fees for rental housing units.

VIII. LIST ATTACHMENTS

1. Ch. 6 Sec. 6-223.1 Rental Application Fees 6.15.2020
2. Staff Amendment 1 re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
3. Staff Amendment 2 Enforcement re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
4. Staff Amendment 3 Passage as an emergency re Ch. 6 Sec. 6-223.1 Rental Application Fees 8.3.2020
5. Amendment 4 Order 206-FY20 Councilor Duson Rental Application Fee 8.3.2020
6. 2020-07-15 Rental Application Fee Memo for 8.3.2020
7. RHAC Committee Memo re Application Fees
8. Email from Wendy Harmon

Prepared by:

Mary Davis, Division Director

Date: 7/15/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
Chapter 6 BUILDINGS AND BUILDING REGULATIONS
RE: RENTAL APPLICATION FEES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may
require a tenant or prospective tenant to pay any amount in
excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

**AMENDMENT TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: DEFINITION AND TERMS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Section 6-223.1 of the Portland City Code is hereby added to read as follows:*

6-223.1. Rental application fees restricted.

~~At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:~~

~~_____ (a) Rent for the first full month of occupancy; and~~

~~_____ (b) A security deposit as defined in 14 M.R.S. §6032.~~

_____ (a) For purposes of this section, a rental application fee shall mean any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant for a rental housing unit is required to pay in order to have their rental application considered by a landlord.

_____ (b) No landlord may charge an applicant for a rental housing unit any rental application fee.

_____ (c) No landlord may charge an existing tenant who wishes to move to a different apartment under the control of the landlord any rental application fee.

**AMENDMENT TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: ENFORCEMENT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Section 6-223.1 of the Portland City Code is hereby added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

...

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-223.1, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. §§4551, et seq.

AMENDMENT 3 TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL PER STAFF RECOMMENDATION
RE: EMERGENCY PASSAGE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

...

**BE IT FURTHER ORDAINED, that this amendment is enacted as an
Emergency, pursuant to Article II, Section 11 of the
Portland City Charter, in order to immediately allow
persons affected by the pandemic to more easily seek
new rental housing.**

**AMENDMENT 4 TO ORDER 206-19/20
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR DUSON
RE: RENTAL APPLICATION FEE LIMITATION**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That Sections s 6-221 and 6-223.1 of the Portland City Code ~~is~~are hereby added to read as follows:

~~**6-223.1. Rental application fees restricted.**~~

~~At or prior to the commencement of any tenancy, no landlord may require a tenant or prospective tenant to pay any amount in excess of the following:~~

- ~~—— (a) Rent for the first full month of occupancy; and~~
- ~~—— (b) A security deposit as defined in 14 M.R.S. §6032.~~

6-221. Definitions.

Applicant means a prospective tenant for a rental housing unit, who signs or intends to sign a lease or other contractual agreement in relation to the unit.

...

Rental Application means the written document used by a landlord to determine if an applicant is qualified to become a tenant of a rental housing unit.

Rental Application Fee means any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant is required to pay in order to have his or her rental application considered by the landlord.

...

6-223.1. Rental application fees restricted.

(a) Disclosure of Application Criteria. Before accepting a rental application, a landlord must disclose to the applicant, in writing, the criteria on which the application will be judged.

(b) Disclosure of Application Fee. Before accepting a rental application fee, a landlord shall disclose in writing to the applicant the rental application fee amount. The applicant shall not be charged more than the disclosed rental application fee for that application.

(c) Availability of Units. Landlords shall only advertise rental housing units, receive applications, screen applicants, and accept application fees for rental housing units when such rental housing units are actually available and ready for occupancy or are expected to be available for occupancy within a reasonable time period; provided, however, that an applicant may consent to be screened and placed on a waiting list. For purposes of this Section, a rental housing unit is no longer considered available if a different applicant has been screened by the landlord, has been offered the rental housing unit and accepted it, and has placed a deposit on the rental housing unit. A rental housing unit may be considered available if a tenant of a unit has declared they will not be renewing a lease or have otherwise vacated the property. Landlords shall document the date and time that deposits are placed on rental housing units.

(d) Application Fees. Application fees for rental housing units shall not exceed the actual cost of the screening process or thirty dollars (\$30.00), whichever is lower. The actual cost of the screening process includes only the hard costs associated with a background check. Labor costs and other soft costs associated with application process must be excluded. Hard costs may include, but not be limited to, the following: national, state and local criminal background checks, credit reports, rental history records and/or reference checks, eviction records and/or employment verification. Each adult who intends to reside in a rental housing unit may be charged an application fee.

(e) Disposition and Use of Application Fee. Within ten (10) days of receipt of an application fee, a landlord must provide an explanation for the disposition and use of the application fee and provide a receipt to the applicant detailing how the application fee was used. An application fee shall be refunded in its entirety if a landlord does not incur hard screening costs. A landlord shall also provide the applicant with any paperwork or copies of electronic correspondence generated as result of the screening process, to the extent permitted by State and Federal law.

(f) Current Tenants. A current tenant of a rental housing unit shall not be charged an application fee to move to another rental housing unit owned by the same landlord.

(g) Exemption. The provisions of this Section shall not apply to any landlord who does not charge a rental application fee.

MEMORANDUM

TO: City of Portland City Council
FROM: Anne Torregrossa, Associate Corporation Counsel
DATE: July 15, 2020
RE: Rental Application Prohibition

The Rental Housing Advisory Committee proposed an amendment to the City Code intending to prohibit landlords from collecting application fees from prospective tenants. This amendment passed the Housing Committee with a 2-1 vote and is now before the City Council for consideration. The Council has requested the following:

1. An analysis of the draft ordinance from a legal standpoint.
2. Potential amendments to clarify the language of the proposed ordinance.
3. An analysis of the enforcement of the proposed ordinance.
4. Alternative models to regulating rental application fees.

Legality of Draft Ordinance

The *concept* of prohibiting prospective landlords from collecting a rental application fee is likely a lawful exercise of the City's home rule authority. Although Maine law is very robust in the area of landlord/tenant relationships, it does not address or govern application fees. Therefore, it is unlikely that a City of Portland ordinance regarding application fees would be preempted by state statute. On the flip side, it is likely that banning application fees is a legitimate use of the City's police power to protect its residents and would withstand legal challenge.

However, the language as drafted is more problematic. First, the language may be too broad. It currently prohibits a landlord from charging "any amount" at or prior to the commencement of tenancy. There may be fees or amounts of money that a landlord might choose to charge that are for additional services or features that are legitimate, not coercive, and agreed to by the tenant. Examples might include special parking, additional cleaning services, utility fees, etc. Although the City might be able to prohibit these types of fees, the legislative history does not currently reflect an intent to do so, or make the underlying policy reasons for doing so clear. In the absence of that legislative history and justification, the ordinance could be open to challenge with respect to fees that are not typically thought of as application fees.

Second, to the extent that prohibition is intended to apply to current tenants, that language is unclear and potentially problematic. There may be a variety of reasons why a landlord would charge an existing tenant some additional fee. Again, those reasons might be entirely legitimate and agreed upon by the tenant. If the intent is to protect tenants who are, for example, switching apartments with the same landlord, then that could be made clearer in the ordinance.

Recommendation for Changes to Draft Ordinance

If the Council's goal is to keep the same intended policy of prohibiting rental application fees, I would recommend clarifying the ordinance along the following lines. The definition is

adopted from an ordinance enacted in Boise, Idaho.

6-223.1. Rental application fees restricted.

(a) For purposes of this section, a rental application fee shall mean any cost, payment, charge or any other kind of expenditure or remuneration, including administrative costs, that an applicant for a rental housing unit is required to pay in order to have their rental application considered by a landlord.

(b) No landlord may charge an applicant for a rental housing unit any rental application fee.

(c) No landlord may charge an existing tenant who wishes to move to a different apartment under the control of the landlord any rental application fee.

Enforcement

There is no specific enforcement language in the current draft ordinance. Ordinarily that would not be an issue, as City Code § 1-15 covers most violations of City Code, stating, “Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense,” the City can enforce those violations and collect civil penalties. However, § 6-228(a) specifically lists certain sections of the Tenant Housing Rights Code that are enforceable under § 1-15. By leaving out the new section of this explicit enforcement authority, an argument could be made that the City did not intend the same enforcement mechanism for illegal rental application fees. To remedy this issue, I would recommend a minor addition to § 6-228(a) as follows:

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-223.1, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

...

Alternative models

In addition to an outright prohibition, which does not seem to be a model that has been widely adopted (other than Vermont, which has prohibited application fees since 1999, and Massachusetts under a recent court ruling), other jurisdictions have adopted one or more of the following approaches to regulating application fees:

- Limit fees to a certain dollar amount
 - New York: \$20 with some exceptions
 - Delaware: greater of \$50 or 10% monthly rent

- Virginia: actual costs +\$50 for market rent; actual costs +\$32 for public housing or HUD regulated housing
- Limit fees to the lesser of actual costs or a dollar amount
 - California: up to an amount that is adjusted annually, currently ~\$50
 - Wisconsin: up to \$25
- Limit fees to actual costs of a background check
- Prohibit a landlord from using an application fee to perform a background check unless and until the landlord has rejected other prior/higher choice applicants
- Prohibit a landlord from accepting application fees when they have no available apartments
- Require that a copy of the background check report be provided to the applicant
- Require that excess or unused amounts of the application fee be refunded
- Require that landlords allow a prospective tenant to provide a recent credit report or background check in lieu of an application fee

MEMORANDUM

FROM: Rental Housing Advisory Committee
DATE: February 5, 2020
SUBJECT: Rental Application Fees

I. SUMMARY

The Rental Housing Advisory Committee recommends that the City enact an ordinance to ban application fees for rental housing units.

II. BACKGROUND

The Rental Housing Advisory Committee (RHAC) is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, group members brainstormed issues of concern to landlords and tenants. Several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue. City staff informed the group that the Housing Committee suggested that application fees might be a topic the RHAC could take up.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee. Mindful that RHAC's charge includes education, members of the group discussed whether there are education solutions to these issues.

At the October 28, 2019 meeting of the RHAC members of committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant, landlords who collect application fees from multiple applicant and do not conduct background checks, and landlord who do not supply copies of reports to applicants who are not selected as tenants. The group discussed the concern that application fees price low and moderate income tenants out of Portland at multiple meetings.

The RHAC discussed several ways to address application fees. Proposals included a limitation on the amount that could be charged, a requirement that fees collected be refunded to tenants, a requirement that landlords provide copies of background checks to tenants, a prohibition on charging application fees when a tenant provides a landlord with a copy of a recent background check, and a ban on application fees.

Members of the Committee expressed concern that landlords could continue charging application fees by giving those fees another name and the proposed language banning fees is phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

On December 16, 2019 the RHAC voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees. (the committee currently has 8 members because a tenant member resigned) The RHAC drafted a resolution at the December 16th meeting to accompany the recommendation to explain the committee's rationale and the RHAC approved the resolution 6-2.

III. ANALYSIS AND BACKGROUND

RHAC understands that the Housing Committee would like to see “more than anecdotal” evidence demonstrating that application fees are a significant problem in the community. RHAC members have researched this issue and we have not found any studies that are responsive to this request.

Pine Tree Legal Assistance (PTLA) was asked whether they track calls about application fees. RHAC member Katherine McGovern explained that PTLA tracks cases based on the legal issue involved and so can provide data on the number of tenants who called about issues like evictions or security deposits but because there are no state or local laws limiting application fees, inability to afford application fees is not categorized or tracked as a legal problem. Ms. McGovern shared throughout the RHAC’s discussion about this issue that PTLA’s clients struggle to find affordable housing in Portland and application fees are a significant problem for PTLA’s clients.

RHAC co-chair Meredith Cook, who has worked as a housing specialist at Through These Doors and is currently employed by Preble Street as the Maine Hunger Initiative Social Change Advocate, told the committee that application fees are such a significant barrier for low-income tenants that Preble Street caseworkers searching for housing with clients do not even apply with landlord who charge application fees.

RHAC member Wendy Harmon conducted a survey of members of the Southern Maine Landlord Association regarding members’ practices regarding application fees. Ms. Harmon submitted the results of the survey to the group and these results are attached. Some members reported not charging application fees and those that charge application fees reported that they charge between \$25 and \$50 per adult applicant. Landlords who charge application fees reported collecting those fees from somewhere between one and nine applicants per available apartment.

Each RHAC meeting has included time for public comment. At the November 25, 2019 RHAC meeting three members of the public offered their views and testimony about their experiences with application fees. Jenna Dorr described her family’s experience of scrambling to find new housing and spending more than \$500 in application fees without know whether background checks were actually being conducted or whether they were truly being considered for apartments. Alyssa Floyd described paying application fees and never knowing why she was not offered an apartment. Jim Devine encouraged the committee to propose rules that are easy to understand and coherent. (Public comment for this meeting is summarized the meeting minutes and in the Bangor Daily News story attached).

IV. RECOMMENDATION

RHAC recommends that the following provision be added to Chapter 6 of the City’s ordinances:

“At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy; and
- (ii) A security deposit as defined in 14 MRS 6032”

V. LIST ATTACHMENTS

1. Resolution including proposed ordinance language submitted to the Housing Committee
2. “Renters say application fees a barrier to living in Portland’s pricey housing market.” Bangor Daily News article by Nick Schroeder, December 2, 2019
3. “Unregulated application fees make Portland’s housing crisis even more expensive for renters.”

4. Examples of ordinances/statutes from other jurisdictions: Minnesota, Oregon, Minneapolis
5. Survey of Southern Maine Landlord Association members conducted by Wendy Harmon.

Prepared by: Katherine McGovern and approved by the Rental Housing Advisory Committee on a vote of 5-3

Date: February 5, 2020

Resolution

WHEREAS, application fees are a significant barrier to low and moderate income people in finding housing in the City of Portland; and

WHEREAS, tenants are likely to pay multiple fees before finally securing housing, and

WHEREAS, there are no laws in Maine regulating application fees.

THEREFORE BE IT RESOLVED, the Rental Housing Advisory Committee sees application fees as a significant burden on tenants when securing housing; and

THEREFORE BE IT FURTHER RESOLVED, the Rental Housing Advisory Committee recommends to the City Council Housing Committee to address this concern through the recommended policy change in City ordinance, below.

Application Fee Ban:

At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy, and
- (ii) A security deposit as defined in 14 MRS 6032



Jessica Grondin <jgrondin@portlandmaine.gov>

Fwd: Monday nights council meeting

Jessica Grondin <jgrondin@portlandmaine.gov>
To: Jessica Grondin <jgrondin@portlandmaine.gov>

Mon, Aug 3, 2020 at 10:42 AM

----- Forwarded message -----

From: **Pious Ali** <pali@portlandmaine.gov>
Date: Mon, Aug 3, 2020 at 6:39 AM
Subject: Fwd: Monday nights council meeting
To: Carolyn Dorr <cmh@portlandmaine.gov>, Katherine Jones <klj@portlandmaine.gov>

Ms. Dorr
Can you please add this to the packet?

Respectfully**Pious Ali**

City Councilor At-Large

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From: **Wendy Harmon** <wendyharmon@kw.com>
Date: Sun, Aug 2, 2020 at 7:58 PM
Subject: Monday nights council meeting
To: <ksnyder@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <sthibodeau@portlandmaine.com>, <jcosta@portlandmaine.gov>, <kcook@portlandmaine.gov>, <pali@portlandmaine.gov>, <jduson@portlandmaine.gov>, <nmm@portlandmaine.gov>

Dear Councilors, I am a member of the Rental Advisory Board, and I want to advise you that the vote for stopping the rental application fees was not a unanimous decision. Our committee was asked to provide documentation that the rental fees charged prohibited tenants from finding housing. There were no facts to support that.

I sent out a survey to our Southern Maine Landlords Association. Of the landlords surveyed, many did not charge a fee. Several only charged an application fee, one at a time, until they found a suitable tenant, and of those that charged the fees, some applied it towards the first month's rent.

An application fee bill is due to be presented this fall, to the legislature, it would make sense to wait and see what that looks like.

The SMLA board would appreciate the opportunity to meet and discuss this matter further. We would also like to be part of the homeless discussions. We talk with housing providers regularly and have many ideas that we could bring to the table, thank you,

Wendy Harmon, Realtor

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I love referrals!

--

Danielle P. West-Chuhta

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