

AN INITIATIVE OF THE CITY OF FERNDALDE CONCERNING CONSUMER PROTECTIONS FROM UNFAIR AND EXCESSIVE FEES IN HOUSING TENANCIES

WHEREAS, the National Consumer Law Center 2023 report “Too Damn High How Junk Fees Add to Skyrocketing Rent” finds that excessive and unfair fees make quality and habitable rental housing harder to access and afford; and

WHEREAS, the US Department of Housing and Urban Development published a Policy & Practice brief in July 2023 providing an overview of the research on rental fees and encouraging local governments to take action to limit and better disclose fees charged to renters in advance of and during tenancy; and

WHEREAS, the Federal Trade Commission settled a lawsuit for \$48,000,000 in September 2024 with Invitation Homes, the country’s largest landlord of single family homes, for practices that included deceptive and unfair fees practices; and

WHEREAS, the economic impacts of extreme fees can also be severe, including putting housing out of reach and increasing homelessness; and

WHEREAS, nonprofits serving the community by working to secure housing for vulnerable and at-risk young families and seniors are forced to expend limited resources on inflated move-in fees and deposits, often at the expense of other needed help; and

WHEREAS, many Ferndale residents are struggling to make ends meet and the Ferndale Food Bank serves over one thousand local households a week; and

WHEREAS, according to the United Way’s Asset-Constrained, Income-Limited report, four out of ten Whatcom families earn less than the basic cost-of-living, vulnerable to any additional costs; and

WHEREAS, a basic value of consumer transparency is that the sticker price should be what you pay. All-in, upfront pricing is important to a fair and competitive rental market; and

WHEREAS, ten Washington cities have already passed laws that limit or ban unfair and excessive fees in rental housing; and

WHEREAS, as of the beginning of 2025, there are no local laws in the City of Ferndale to ensure fairness and balance in the rental market for landlords and tenants; and

THEREFORE, THE VOTERS OF THE CITY OF FERNDALDE DO ORDAIN:

A new chapter is added to Title V of the Ferndale Municipal code, to read as follows:

Section 1. Definitions.

For the purposes of this chapter:

“Actual damages” means economic and non-economic damages.

“Assistance animal” means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability, consistent with the Fair Housing Act 42 U.S.C. §§ 3601-3619. An “assistance animal” is not a “pet”.

“Director” means the director of the department of community development or the director’s designee.

“Dwelling unit” or “unit” has the same meaning as in RCW 59.18.030(10). For purposes of this initiative, a “dwelling unit” or “unit” shall also include real property that is rented to a tenant for the placement of a tiny house or similar structure that is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household.

“Family member” includes spouses, domestic partners, former spouses, former domestic partners, adult persons related by marriage, siblings, persons who are 16 years of age or older who have a dating relationship, persons with a parent-child relationship including parents, stepparents, grandparents, adoptive parents, guardians, foster parents, or custodians of minors.

“Fee” also means any payment by the tenant, not including the monthly rent or charges for damages to the unit caused by the tenant, that is proffered or imposed by the landlord. “Fee” also includes charges designated by the landlord as additional rent if those charges are conditionally and differentially imposed on otherwise similar tenancies, such as additional fees to rent month-to-month.

“Good faith” means an honest belief based on reasonable grounds according to information available at the time, without malice or intent to defraud.

“In-unit appliance” means any household device within a dwelling unit, including but not limited to refrigerators, stoves, ovens, dishwashers, washing machines, dryers, and air conditioners. This includes any appliance supplied by the landlord that must be maintained in reasonably good working order pursuant to RCW 59.18.060(8).

“Landlord” has the same meaning as in RCW 59.18.030(16), or as in RCW 59.20.030(7) for manufactured home parks.

“Late fee” means any fee, cost, or charge imposed by the landlord for the tenant’s failure to pay rent in full.

"Mandatory fee" means any fee required or presented as a condition for tenancy where declining the fee would result in the denial or termination of tenancy. "Mandatory fee" also includes any requirement to purchase a service from designated third-parties where the tenant cannot opt-out or independently select other alternatives.

"Manufactured home lot" has the same meaning as "mobile home lot" as in RCW 59.20.030(12).

"Monthly rent" or "one month's rent" means a recurring, periodic, and fixed monthly charge identified in the lease agreement for use and occupancy of residential rental property, or a manufactured home lot. If the rent varies from month to month, or is not paid or otherwise apportioned on a monthly basis, for the purposes of this chapter, "monthly rent" shall mean the amount prorated on an equal, monthly basis. Except if specified otherwise, if a tenant pays a portion of rent and the remainder is covered by a subsidy, for the purposes of this subsection, "monthly rent" includes both the tenant's payment and subsidy.

"Non-profit service organization" means a tax-exempt entity, including but not limited to religious institutions, higher education institutions, rapid rehousing programs, or other housing assistance programs, that offers services to support individuals and families in need.

"Optional fee" means a fee, cost, or charge for a non-essential service or amenity that is not a condition for the use and occupancy of a dwelling unit, such as fees for furnishings, optional parking permits, or additional storage space outside of the dwelling unit.

"Pet" or "Common household pet" means a domesticated animal, such as a dog or cat, that is commonly kept in the home for pleasure or companionship rather than commercial purposes. A "Assistance Animal" is not a Pet.

"Pet fee" means any monies collected by a landlord from current or prospective tenant as a condition of permitting the tenant's pet animals to reside in the dwelling unit of the tenant, including any additional deposit required for the tenant to have a pet.

"Rental agreement" or "lease" has the same meaning as in RCW 59.18.030(30) or, for a manufactured home lot, means a contract regulated as a rental agreement within the framework of RCW 59.20.

"Residential rentals" means tenancies under RCW 59.18.

"Security Deposit" means any monies collected by a landlord from a prospective or current tenant as security for the performance of the tenant's obligations set forth in the rental agreement.

"Standard business hours" means 8:00AM-5:00PM, Monday through Friday.

“Tenant” has the same meaning as in RCW 59.18.030(34), or, for manufactured home lot, the same meaning as RCW 59.20.030(27).

Section 2. Disclosure of Fees Required.

1. A landlord must disclose in any advertisement, listing, or application form of a dwelling unit, unless infeasible due to size constraints, unavoidable word limits, or similar impediments:

- A. The monthly rent of the dwelling unit,
- B. All utilities for which the tenant is responsible; and
- C. The amounts of any optional or mandatory fees.

Section 3. Reasonable Fees Permitted.

A landlord may charge only the following fees:

1. An applicant screening fee or application fee that does not exceed \$50.00, per tenant;
2. A refundable security deposit that does not exceed the monthly rent for one month. However, if the security deposit is paid by a non-profit service organization, the security deposit may be increased to the monthly rent for two month;
3. For residential rentals only, a pet damage deposit per unit that does not exceed 25% of the monthly rent. The receipt, handling, and disbursement of the pet deposit shall follow the requirements for a security deposit set under RCW 59.18.
4. A fee for utilities, if any, that cannot be feasibly included in the monthly rent. The fee for utilities may not exceed the actual cost of the utilities used by the tenant or tenants. Where the actual use of the utilities by the tenant or tenants cannot be determined, then the cost for utilities may be apportioned among the tenants on an equitable basis, provided that the landlord provides a clear accounting or methodology for calculating utility fees. A landlord may not charge a tenant an amount for utilities that exceeds the utility charges actually paid by the landlord on behalf of the tenant;
5. A late fee that does not exceed 1.5% of the portion of the outstanding monthly rent that is past due and owed by the tenant, provided that no late fee may be charged when a service provider is responsible for payment. If a tenant pays a portion of rent and the remainder is covered by a subsidy, for the purposes of this subsection “outstanding monthly rent” includes only the tenant’s portion;
6. A fee for any payment returned to the landlord for insufficient funds that does not exceed the actual costs imposed on the landlord by a financial institution; and

7. A reasonable fee for any optional good or service that is provided to the tenant if:

- A. The optional fee is reasonably avoidable;
- B. The optional fee is not for a good or service that a reasonable consumer would expect to be included within the rent of the unit, such as the use of an in-unit appliance;
- C. The tenant may accept or decline the optional fee without penalty; and
- D. The tenant opts in to receiving the good or service, in writing, after receiving a disclosure that contains:
 - i. A concise description of the optional good or service;
 - ii. The amount of the fee for the good or service;
 - iii. How the tenant may later opt out of receiving the good or service; and
 - iv. A clear statement of the tenant's right to rent the dwelling unit or continue to rent the dwelling unit if the tenant opts out of receiving the good or service.

Section 4. Unfair or Excessive Fees Prohibited.

The following fees are deemed unfair and excessive fees and are prohibited:

1. . Fees other than those identified in Section 3, unless expressly permitted under state law, RCW 59.18 for residential rentals or RCW 59.20 for manufactured home lots respectively.
2. Fees which are unlawful under any local, state, or federal law.

Section 6. Unreasonable Optional Fees Prohibited.

The following fees shall be considered unfair and excessive fees and are prohibited, regardless of whether the fees is designated as optional:

1. Prohibited fees for both manufactured home lot rentals and residential rentals:

- A. Any fee to accept rent payments or other payments by personal check, money order, cashiers check, or ACH. If the landlord uses a third party payment vendor where the landlord may opt to either pay an additional fee or for the tenant to pay an additional fee to use a rental payment method such as ACH, the landlord is prohibited from opting to have the fee imposed on the tenant;

B. Any fee for an in-unit appliance to a tenant. If the landlord previously charged a fee for the use of an in-unit appliance, such as a washer-dryer, a landlord shall not deprive the tenant of the use of an in-unit appliance without payment of fee after the effective date of this chapter;

C. Any fee for mail and package collection and distribution; and

D. Any fee or forfeiture of a deposit for the early termination of lease agreement when the tenant has asserted victim protection rights under state law.

2.. Unfair and excessive fees specifically prohibited for manufactured home lot rentals:

A. Any fee for the performance of a landlord duty required under RCW 59.20.130;

B. Any fee for a services or amenity previously included in the monthly rent for the dwelling unit or provided to the current or immediately prior tenants at no additional cost;

C. Any fee for temporary guests not in compliance with RCW 59.20.060 or where charges exceed the actual cost to the landlord;

D. Any fee for a family member to occupy the unit. A landlord shall not enforce any restrictions on occupancy more restrictive than those required under local, state, or federal law;

E. Any fee for a tenant to park their vehicles within their manufactured home lot. A landlord shall not limit the number of vehicles a tenant can safely park on their manufactured home lot;

F. Any fee for the installation of an appliance within the manufactured home by the tenant or third party;

G. Any pet deposit or pet fee;

H. Any fee for a tenant's access to common areas. For the purpose of this paragraph, "common area" means any communal area, recreation hall, center, or any building or structure, including improvements thereto or open space provided by the manufactured home park owner for the benefit of residents and their guests.

i. This subsection does not apply when the fee is associated with providing the tenant exclusive access to a common area facility on a temporary basis, such as the rental of a clubhouse for a private event;

I. Any fee for not signing a new lease agreement, lease extension, or renewal;

3. Unfair and excessive fees specifically prohibited for residential rentals:

- A. Any fee for the performance of a landlord duty required under RCW 59.18;
- B. Any single-time or periodic fee required for a pet to occupy the unit, except as provided for in Section 3;
- C. Any fee for a change of tenancy, except for application fees as allowed under Section 3 for:
 - i. A partial change of tenancy at the end of the current lease, such as adding a tenant to lease; or
 - ii. The addition of a family member to the dwelling unit or lease agreement. To comply with this section, a landlord shall not impose limits to occupancy more restrictive than those required under local, state, or federal law for occupancy when considering the addition of a family member to the tenant's dwelling unit.

Section 7. Lease Agreement Provisions in Violation Null and Void.

1. Any provision of a rental agreement or lease that is entered into or renewed after the effective date of this chapter in violation of this chapter shall be deemed against public policy and shall be void and unenforceable.
2. After the effective date of this chapter, the inclusion of a prohibited provision in a new or renewed rental agreement is also a violation of this chapter.

Section 8. Retaliation Prohibited.

1. It is a violation of this chapter for any landlord or other person to retaliate against a tenant, prospective tenant, or other person attempting to exercise rights conferred by this chapter. Retaliation includes, but is not limited to, any of the following:
 - a. Refusing to provide, accept, or approve a rental application, rental agreement, or renewal of a rental agreement;
 - b. Applying more onerous terms, conditions, or privileges to a rental application process or rental agreement, including increased rent;
 - c. Misrepresenting any material fact when providing a rental reference against a tenant; or

- d. Alleging, or threatening or making an implied willingness to allege, to a government agency that a tenant, prospective tenant, or a family member of the tenant or prospective tenant is without lawful presence in the United States.
- 2. If a person takes any of the actions identified in this subsection within 150 days of the date that a tenant or prospective tenant has exercised their rights under this chapter, there shall be a rebuttable presumption that the action was taken in retaliation for the exercise of those rights.
- 3. Protections in this section apply to those who mistakenly but in good faith allege violations of this chapter.

Section 9. Civil Action Remedy.

- 1. In addition to any other remedy provided by this chapter or allowed by law, any tenant, prospective tenant, or other person claiming injury may bring an action in a court of competent jurisdiction to enforce the provisions of this chapter and is entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including declaratory or injunctive relief.
- 2. A landlord or other person who is in violation of this chapter is liable to the tenant, prospective tenant, or other person in a private right of action for:
 - a. Three times the actual damages suffered by the tenant or prospective tenant or \$1,000, whichever is greater;
 - b. Double the amount of any deposit unlawfully charged or withheld;
 - c. Effective January 1st, 2027, \$250 for including any provision prohibited by this chapter in a new or renewed rental agreement; and
 - d. Costs of suit or arbitration, reasonable attorney's fees, as well as other forms of relief.

Section 10. Additional Affirmative Defense to An Unlawful Detainer and Other Actions.

In addition to any other legal defense a tenant may have:

- 1. It is an additional affirmative defense to an unlawful detainer or other eviction action where a cause is the default of the payment of rent that a landlord is in violation of this chapter; and

2. It is a defense to any action to enforce a rental agreement, to impose penalties, or to forfeit a deposit contrary to the requirements of the chapter that the landlord is in violation of this chapter.
3. A tenant or other person who prevails in either defense shall be awarded reasonable attorney fees and costs.

Section 11. City Enforcement and Implementation.

1. Within 60 days of the passage of this initiative, the city shall publish a webpage explaining the rights and responsibilities of tenants and landlords under this chapter and provide for a process for complaints and referral to outside resources.
2. The Director and the City Attorney are authorized, but not required, to enforce this chapter, including investigate and, if deemed appropriate, initiate legal or other action.
3. In addition to the provisions under this section, the provisions of FMC 1.12 apply to City enforcement of this Chapter.
4. Responsibility for violations subject to enforcement under this chapter is joint and several, and the City is not prohibited from taking enforcement action against a person where other persons may also be potentially responsible persons, nor is the City required to take enforcement action against all potentially responsible persons.
5. A person violating this chapter may be issued a citation and assessed a monetary penalty as described in this section:
 - A. A fine not to exceed \$500.00 for a first violation; or
 - B. A fine not to exceed \$1,000.00 for a second or subsequent violation or a violation involving retaliation.
 - C. For the purposes of this section, it may be considered a separate violation for each tenant or prospective tenant affected and for each day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by the landlord.

Section 12. Miscellaneous Provisions.

1. Remedies and penalties provided in this chapter are in addition to any other existing legal remedies and are not intended to be exclusive.
2. Nothing in this chapter eliminates a tenant's rights under a rental agreement, including the right to civil relief if a landlord violates a rental agreement.

3. The provisions of this chapter may not be waived, and any term of any rental agreement or other agreement that purports to waive or limit a tenant's substantive or procedural rights under this chapter are contrary to public policy, unenforceable, and void.

4. Statements that non-compliance with certain provisions constitutes a violation of this chapter and/or are subject to penalties are provided for emphasis only and such statements shall not be construed to mean that non-compliance with other provisions does not constitute a violation subject to penalties.

5. All provisions in this chapter should be read in harmony with state and federal law, and if there is any question or conflict between Ferndale and state law, state law will apply.

Section 13. Severability.

If any section, sentence, clause, phrase, or provision of this chapter or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, that invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision and the remainder of this chapter, or the application of those provisions to other persons or circumstances.