

Staff-Created Ordinance As Amended by City Council on 1/6/25

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LANDLORD TENANT RELATIONS, ADOPTING A NEW CHAPTER IN TITLE 6 OF THE BELLINGHAM MUNICIPAL CODE PROHIBITING LANDLORDS FROM CHARGING TENTANTS UNFAIR OR EXCESSIVE FEES IN RESIDENTIAL RENTAL AGREEMENTS AND LEASES

WHEREAS, rental vacancy rates continue to be below what is widely considered a healthy market of five to seven percent and continue to remain around two or three percent; and

WHEREAS, more than twenty-thousand Bellingham renters are cost-burdened, including at least 6,450 are severely cost-burdened, according to 2023 HUD Comprehensive Housing Affordability Strategy Dataset; and

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 2021 Zillow Consumer Housing Trends Report finds that renters of color pay more application fees and are required to pay higher security deposits; and

WHEREAS, the White House issued Fact Sheet: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters on July 19, 2023, which describes steps that the Biden-Harris administration has taken to crack down on rental junk fees and lower costs for renters; 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, Bellingham residents have shared their personal experiences with junk fees with the City Council during open public meetings including, most recently, during the Council meeting on September 16, 2024; and

WHEREAS, this ordinance is an exercise of the City of Bellingham's police and regulatory authority derived from Washington Constitution article XI, section 11 and is consistent with RCW 35.22.280; and

WHEREAS, the City of Bellingham's practice in rental housing is to prioritize compliance, providing notice and opportunity to rectify and remedy alleged noncompliance prior to seeking or imposing fines or other applicable penalties.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

SECTION 1. A new chapter, designated as BMC 6.16, is added under the chapter heading “Prohibited Fees and Deposits in Residential Rentals” to read as follows:

BMC 6.16.010 - Definitions.

For the purposes of this chapter:

“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. An “assistance animal” is not a “pet”.

“Director” means the director of the department of planning and 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 ordinance, 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.

“Landlord” has the same meaning as in RCW 59.18.030(16).

“Late fee” means any fee, cost, or charge imposed by the landlord for the tenant's failure to pay rent in full after the specified grace period of at least five (5) days following its due date.

“Mandatory fee” means a fee, cost, or charge (whether one-time or recurring) for a service or amenity that is required as a condition for the use and occupancy of a dwelling unit where a tenant cannot opt-out or substitute for that service including, for example, fees for mandatory parking permits, tenant benefit package, technology fee, renter insurance plan, utility service where the tenant does not have a direct account with the utility service provider, or a shared amenity costs. “Non-optional service” does not include utility charges where the cost is for the actual usage by the tenant, or a variable charge for utilities that is apportioned equitably among units where utility charges apply simultaneously to more than one unit.

“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. If the

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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.

"Move-in fee" means any fee, cost, or charge imposed by the landlord before a tenant takes possession of a dwelling unit, including fees required to apply for tenancy (including processing fees and credit and background check charges), any fee to hold the unit, but excluding prepayment of rent (e.g., "last month's rent") and a pet damage deposit.

"Optional fee" includes any fee, cost, or charge for a 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.

"Pet deposit" 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.

"Rapid rehousing program" means a program that provides short-term rental assistance and services designed to help individuals and families obtain housing quickly, increase self-sufficiency, and stay housed, [consistent with the local Homeless Housing Strategic Plan as described in RCW 43.185C.045](#).

"Rent" has the same meaning as in RCW 59.18.030(29).

"Rental agreement" or "lease" has the same meaning as in RCW 59.18.030(30).

"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.

"Subsidized housing program" means a program that pays all or a portion of a tenant's rent based on the tenant's financial need.

"Tenant" has the same meaning as in RCW 59.18.030(34).

"Total monthly payment" means the sum of the rent plus all mandatory fees and optional fees, if any, associated with the rental of a dwelling unit.

"Unfair or excessive fees" means fees, costs, or charges that are prohibited by State, Federal, or local law including any mandatory or optional fees, costs, or charges that are not conspicuously disclosed in a rental agreement or lease, or later agreed to by a tenant, in a writing that complies with the requirements of this chapter.

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BMC 6.16.020 Disclosure of Fees Required

1. A landlord must disclose in any advertisement or posting of a dwelling unit the total cost of the rental unit, including all mandatory fees, which shall be described as the Total Monthly Payment. A landlord must disclose all individual mandatory and optional fees, if any, that make up the Total Monthly Payment as provided in subsections 2 and 3 below.
2. A landlord must disclose the utilities, if any, that are included in the Total Monthly Payment in any advertising or posting of a dwelling unit for rent and on the first page of the lease including:
 - a. Electricity,
 - b. Gas,
 - c. Water,
 - d. Garbage and recycling,
 - e. Cable or satellite television, and
 - f. Internet service.
3. A landlord must disclose all mandatory fees associated with a dwelling unit in the rental agreement or lease. The sum of rent, mandatory fees, and optional fees, if any, that must be paid by the tenant each month must be conspicuously disclosed on the first page of the rental agreement or lease.

BMC 6.16.030 – Reasonable Fees Permitted

A landlord may charge a tenant for following fees in addition to rent:

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 ~~Total~~ Monthly RentPayment for one month if it is paid by the tenant and the ~~Total~~ Monthly RentPayment for two months or in accordance with a written negotiated agreement if it is paid by a rapid rehousing program,
3. A pet damage deposit that does not exceed 30% of the ~~Total~~ Monthly RentPayment. 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 are not included in the 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

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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 reasonable fee for any optional good or service that is provided to the tenant where the tenant opts in to receiving the good or service, in writing, after receiving a disclosure that contains:
 - a. a concise description of the optional good or service,
 - b. the amount of the fee for the good or service,
 - c. how the tenant may later opt out of receiving the good or service, and
 - d. 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,
6. A late fee that does not exceed 2% of the portion of the outstanding Total Monthly RentPayment past due and owed by the tenant. A landlord shall not charge the tenant a late fee for the portion of the outstanding Total Monthly RentPayment past due and owed by a subsidized housing program in accordance with a written agreement, and
7. A fee for any payment returned to the landlord for insufficient funds that does not exceed the actual costs to the landlord.

BMC 6.16.040 - Unfair or Excessive Fees Prohibited.

1. A landlord may not require a tenant to pay any mandatory or optional fee, except as provided in this chapter or in RCW 59.18. Mandatory or optional fees other than those identified in BMC 6.16.030 or in RCW 59.18 constitute unfair or excessive fees, which are prohibited.
2. In addition, the following fees also constitute unfair and excessive fees and are prohibited:
 - a. Any fee for the use of an in-unit appliance by a tenant;
 - b. Any additional fee to rent month-to-month rather than a fixed term lease, or vice versa; and
 - a-c. Any fee for a tenant's access to common areas. This section 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.

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BMC 6.16.050 - Rental 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 BMC 6.16.020 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.

BMC 6.16.060 - 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 90 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.

BMC 6.16.070 - 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.

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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 if actual damages are difficult to ascertain, then an amount equal to three times the Total Monthly Rent for the dwelling unit for a tenant, or up to \$1,000 for a prospective tenant;
 - b. Double the amount of any deposit unlawfully charged or withheld; and
 - c. Costs of suit or arbitration, reasonable attorney's fees, as well as other forms of relief.

BMC 6.16.080 - 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 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.

BMC 6.16.090 - City Enforcement.

1. The Director is authorized to enforce this chapter, and it is unlawful to violate or fail to comply with any provision of this chapter.
2. The Director may investigate any possible violations of this chapter by a landlord or other person.
- 2.3. [The Director shall give a landlord or other person in violation of this chapter an opportunity to voluntarily cure the violation before pursuing penalties under BMC 6.16.100.](#)
- 3.4. 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

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person where other persons may also be potentially responsible persons, nor is the City required to take enforcement action against all potentially responsible persons.

BMC 6.16.100 Penalties

1. A person violating this chapter commits a civil infraction and 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 for any offenses 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.
2. A citation is final unless it is contested within 15 days of the date it is issued. Any person who receives a notice of infraction may contest the citation by requesting a hearing from the Bellingham Municipal Court within 15 days of the date of the citation.

BMC 6.16.110 - 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. All provisions in this chapter should be read in harmony with state and federal law, and if there is any question or conflict between Bellingham and state law, state law will apply.

BMC 6.16.120 - 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

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provision and the remainder of this chapter, or the application of those provisions to other persons or circumstances, shall not be affected.

PASSED by the Council this _____ day of _____, 2025.

Council President

APPROVED by me this _____ day of _____, 2025.

Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

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