

March 16, 2023

MEMORANDUM

To: Sustainability and Renters' Rights Committee
From: Asha Venkataraman, Analyst
Subject: CB 120530: Limits on fees for late payment of residential rent and notice fees

On March 17, 2023, the Sustainability and Renters' Rights Committee will discuss [Council Bill \(CB\) 120530](#), which would limit the amount of the fee residential landlords can charge tenants upon late payment of rent and fees associated with notices of late payment of rent. This memo will provide background, describe CB 120530, identify issues for Council's consideration, present potential amendments for discussion, and lay out next steps.

Background

Landlords may charge fees in association with the late payment of rent as well as fees for notices issued to tenants, including a notice of a late fees.

Existing regulations prohibit a landlord from charging a fee for late payment of rent until rent is more than five days past due.¹ The terms and conditions of any fees, including late fees, must be described in the rental agreement.² A landlord must first apply any payment made by a tenant toward rent before applying any payment toward late payments, damages, legal costs, or other fees, including attorneys' fees and tenants cannot be evicted for failure to pay late or notice fees.³ However, neither existing City law nor the State level Residential Landlord-Tenant Act (RLTA) place any limitations on how much a landlord can charge in fees associated with late payment of rent or notices for those late fees.

There are several bills in front of the state legislature in the current legislative session intended to regulate late fees⁴ and other kinds of rental agreement-related fees.⁵ However, at this stage in the state legislative process, those bills did not pass out of their house of origin by the required deadline, making it unlikely they will move forward to become law.

Late Fees in Other Jurisdictions

Other jurisdictions, both within Washington and nationally, vary in the existence of limitations on the amount of late fees and the degree and structure of limitation. Many simply require that

¹ RCW §59.18.170(2).

² SMC §7.24.030.E.

³ RCW §59.18.283; SMC §7.24.030.E. This provision applies except that if "the payment is made in response to a notice issued pursuant to RCW 59.12.030 during the period of that notice, the landlord shall first apply the payment to the amount specified in that notice, before applying it to the rent due or to other payments due by the tenant to the landlord."

⁴ H.B. 1124 (2023-2024 Legislative Session).

⁵ H.B. 1389 (2023-2024 Legislative Session).

the late fee is reasonable; some require reasonableness and define a maximum amount considered reasonable.

Local jurisdictions include but are not limited to:

- Redmond: 1.5 percent of monthly rent;⁶
- Unincorporated King County: 1.5 percent of monthly rent;⁷
- Burien: \$10 per month; no fees permitted for late rent notices ;⁸
- Auburn: \$10 per month; no fees permitted for late rent notices unless in writing, signed, and agreed to in initial rental agreement.⁹

At the state level, the following are examples of the range and types of maximums on fees for late payment of rent:

- Colorado: five percent of the rent past due or \$50, whichever is greater;¹⁰
- New York: five percent of monthly rent or \$50, whichever is less (rent controlled properties may be subject to different limitations);¹¹
- Washington D.C.: five percent of amount of rent due;¹²
- Oregon: a reasonable flat amount per rental period; a reasonable daily amount with a daily maximum of six percent of any flat late fee charged; or no more than five percent of the periodic rent;¹³
- Minnesota: eight percent of overdue rent;¹⁴
- Texas: reasonable if no more than 12 percent of the periodic rent (structures with fewer than four rental units); ten percent of the periodic rent (structures with four units or more); can be more than previous limitations under specific conditions;¹⁵
- Illinois: reasonable is \$20 or 20 percent of the rent, whichever amount is greater; additional reasonable expenses must be itemized but can be charged to tenant.¹⁶

⁶ Renton Municipal Code §9.54.050, available at <https://redmond.municipal.codes/RMC/9.54.050>.

⁷ King County Code §12.25.060, available at https://kingcounty.gov/council/legislation/kc_code/15_Title_12.aspx.

⁸ Burien Municipal Code §5.63.090, available at <https://www.codepublishing.com/WA/Burien/#!/Burien05/Burien0563.html#5.63.090>.

⁹ Auburn City Code §5.23.040.A.3, available at <https://auburn.municipal.codes/ACC/5.23.040>.

¹⁰ Colo. Rev. Stat. §38-12-105(1)(b), available at <https://advance.lexis.com/documentpage/>

¹¹ N.Y. RPP CHAPTER 50, ARTICLE 7 Section 238-A9(b)(2), available at <https://www.nysenate.gov/legislation/laws/RPP/238-A>.

¹² DCC §42–3505.31, available at <https://code.dccouncil.gov/us/dc/council/code/sections/42-3505.31>.

¹³ ORS §90.260, available at https://www.oregonlegislature.gov/bills_laws/ors/ors090.html.

¹⁴ MINN. STAT. §504B.177(a) (2023), available at <https://www.revisor.mn.gov/statutes/cite/504B.177>.

¹⁵ 8 Tex. Admin. Code §92.019 (2023), available at https://texas.public.law/statutes/tex._prop._code_section_92.019. Fee can be more than statutory limitation if it is no more than uncertain damages related to late payment of rent.

¹⁶ 770 ILCS 95/7.10.

CB 120530

This legislation would limit the amount of fees charged for late rent to ten dollars per month. It would also prohibit charging any other fees related to late payment of rent, including for the service of any notice required under state law as related to late payment of rent. Lastly, it would require the Seattle Department of Construction and Inspections (SDCI) to prepare a notice to inform landlords and tenants of their rights under the law, and states that any notice to pay or vacate should indicate the amount of owed money that is unpaid rent and the amount that is for late fees.

Issues for Council's Consideration

Amount and impacts of fees

Without a regulatory limitation on the amount of fees charged for late payment of rent or a late fee notice, a landlord may set the fee at any amount they choose, regardless of whether it is related to their actual costs. While there are costs that can accrue to landlords as a result of late payment of rent and issuing notices, there is a lack of data reflecting the amount of those fees and how closely fees imposed on tenants are related to actual costs to landlords.

Additional fees can pose a burden on tenants, particularly low-income tenants or tenants on a fixed income, adding financial stress when they are unable to pay and debt accrues. The King County Regional Affordable Housing Task Force's Final Report and Recommendations for King County notes that renting rather than owning a home increases the chances of being severely cost burdened, and recognizes an existing affordable housing crisis in King County.¹⁷ In addition, local and national research on homelessness shows that eviction is one of the leading cause of homelessness; that 51.7 percent of tenants evicted were people of color; and that tenants face steep financial costs resulting from eviction.¹⁸ To the extent that excessive late fees or notice fees increase the likelihood of an eviction, self-eviction, or debt aside from eviction, capping such fees could mitigate impacts of housing instability that are often experienced disproportionately by Black, Indigenous, and other communities of color.

¹⁷ King County Regional Affordable Housing Task Force, Final Report and Recommendations for King County, P8, December 2018 (rev. March 2019), available at https://kingcounty.gov/~media/initiatives/affordablehousing/documents/report/RAH_Report_Final.ashx?la=en.

¹⁸ Seattle Women's Commission and the Housing Justice Project of the King County Bar Association, *Losing Home: The Human Cost of Eviction in Seattle* (Sept. 2018) ("Losing Home Report").

Regulatory Environment

The Small Landlord Stakeholder report has identified concerns about the regulatory environment in which additional landlord-tenant regulations are being developed, noting that the “[t]he pace of new regulations is having significant impacts on small housing providers,” and that “[m]any new state and local regulations have gone into effect that increase risk for small landlords.”¹⁹ It also noted:

[s]mall landlords find the City and state rental housing regulations are complex, overlapping, and rapidly changing. Information and resources about these changes are hard to keep up with. The cumulative effect of these laws is more than each individual regulation, and small landlords don’t have the resources that corporate housing providers do to navigate them.

Councilmembers could consider several options to account for the level of complexity and different levels of flexibility in CB 120530:

1. Late fee limits and calculation methods

The current legislation would limit late fees to \$10 per month. The Council may want to consider whether:

- \$10 is the appropriate amount;
- If an alternative percentage element should be added; and
 - If that percentage should be applied to the periodic rental amount or the rent past due;
 - Whether the amount as a result of the percentage applied to rent should be greater or lesser than the dollar amount of the fee.

2. Prohibition on late fee notice charges

The current legislation prohibits any other fees associated with late payment of rent. The Council may want to consider whether to instead impose:

- A requirement that fees that reflect the actual cost to the landlord of late payments of rent and issuance of notices; or
- A fee of a certain dollar amount above which landlords cannot charge.

Implementation

Full costs of outreach and enforcement by SDCI are indeterminate at this time. This legislation may place additional workload strain on SDCI staff, who are processing additional intakes (questions, coaching, advice, cases) and an increase in call volume due to the amount and complexity of landlord-tenant policy that has gone into effect at the state and City levels over the past several years and the lifting of the eviction moratorium. These issues may impact SDCI’s ability to provide timely outreach and enforcement.

¹⁹ Response to SLI SDCI-009-B-001: Small Landlord Stakeholder Group, P 9 (Dec. 2022) (“Small Landlord Stakeholder Report”).

Proposed Amendments

While no amendments are being proposed for a vote at the March 17 meeting, Councilmember Sawant has indicated that she plans to bring forward two amendments for the committee's consideration.

The first amendment would broaden the prohibition on fees for notices related to late rent to a prohibition on all notice preparation fees. The amendment language is likely a version of the following:

"A landlord may not charge a fee associated with the issuance of a notice to a tenant, including but not limited to a fee for preparing and delivering a notice regarding late payment of rent, a notice to pay or vacate, or a notice of non-compliance with a rental agreement."

Because this amendment would broaden the scope of what is currently contemplated in the legislation, which covers notice fees specifically related to late rent rather than all notice fees, the title would also need amendment, necessitating introduction of a new bill for the committee's consideration at its next meeting.

The second amendment would clarify what language should be on any notice issued to the tenant about the late fee regulations and potential remedies. Central Staff is still working on this amendment language and will have it prepared for the Council's consideration before the next committee meeting.

Next Steps

Either CB 120530 or a new piece of legislation reflecting a title change in accordance with the first amendment described above will likely be considered for possible vote in the Sustainability and Renters' Rights committee on April 7.

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Greg Doss, Lead Analyst