


Combating Junk Fees in Texas Rental Housing: A Pathway to Fairer and More Transparent Leasing Practices

 Town Square
Apartments

RENTAL INVOICE

Invoice to
Jonathan Patterson
+123-456-7890

#123456789
3rd January 2024

Rent	\$1435.00
Valet Trash	\$32.00
Pest Control	\$10.00
Administrative Fee	\$150.00
Facilities Fee	\$15.00
Cable	\$85.00
Parking	\$90.00
Security Deposit Waiver Fee	\$34.00
	\$50.00
	\$1001.00

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We welcome your feedback on the report at housingpolicy@law.utexas.edu. For electronic access to the report, visit <https://law.utexas.edu/clinics/housing-policy>.

Executive Summary

Texas tenants today face a troubling and growing array of junk fees in the rental housing market. These charges, which are tacked onto the rent, obscure the true price of housing and prevent comparison shopping; they impose financial strains on tenants and create barriers to affordable housing access.

Junk fees often surprise tenants, hidden from property advertisements and lease quotes—cropping up only after a tenant has already paid a hefty application fee or committed to a one-year lease. Even when fees are presented as optional, unscrupulous landlords often offer no clear method for tenants to opt out of charges. In government affordable housing programs, landlords are also using junk fees to bypass the programs’ rent restrictions.

Types of Junk Fees Charged to Texas Renters

Junk fees charged to Texas renters fall into two primary categories. The first category consists of **mandatory recurring fees** for services or amenities that tenants are not allowed to opt out of. This category also includes “quasi-optional fees”—fees for services that are marketed as optional, but tenants have not knowingly opted into the service and have not been informed how to opt out of the service.

Examples of Mandatory Recurring Junk Fees	
\$ Valet Trash Fees	Valet trash fees have become very common in the Texas apartment industry and are typically charged to all tenants at a property, regardless of whether they choose to access the valet trash service.
\$ Cable and Technology Fees	Landlords are charging tenants for cable and internet services when tenants do not want these services and even when units are not wired for cable.
\$ Facilities Fees	These add-on fees cover usage of core facilities at the complex that have historically been covered by rent, such as access to the pool and laundry room.
\$ Pest Control Fees	Pest control fees consist of an add-on fee charged to all tenants regardless of how often a unit is treated for pests.
\$ Administrative Fees	Landlords charge these fees for unspecified management tasks.

The second category of junk fees consists of **mandatory non-recurring fees**—which the report also refers to as “mandatory one-off fees.” These fees include charges to apply for housing, as well as charges tied to tenant behavior, such as fees for leaving trash on the property, where the fee is punitive in nature and exceeds the cost incurred to remedy the damage.

Examples of Mandatory Non-Recurring Junk Fees	
\$ Application, Processing, and Administrative Fees	These widespread one-time fees, which can total hundreds of dollars, are charged to applicants during the application process and at move-in.
\$ Notice Fees	Notice fees include charges for posting notices at the property or sending notices to individual tenants, such as late payment notices.
\$ High-risk Fees	Landlords charge these fees to tenants who lack a rental history, have a low credit score, or are otherwise deemed “high-risk” by a landlord.
\$ Punitive Fees for “Community Rules” Violations	These fees consist of excessive charges for tenant violations of the community rules—rules tenants may not even be aware exist.

While fees for truly optional services are not the focus of our report, these fees can take on “junk” qualities that harm tenants. First, these fees can far exceed a landlords’ cost of providing a service or benefit. For example, pet-related fees can cost a tenant \$1,800 or more over the course of a year. Second, fees for optional services or amenities, such as parking, are often not disclosed in the application process, weakening prospective tenants’ ability to engage in comparison shopping and make informed decisions when choosing an apartment.

Opportunities for Reining in Junk Fees in Texas

Policymakers have many different avenues for reining in junk fees in the Texas rental housing market. At a statewide level, reforms could be adopted to address junk fees across the rental housing market, as well as more targeted reforms to tackle junk fees in the state’s affordable housing programs such as the Low Income Housing Tax Credit program.

At a local level, cities and other local governmental entities can also take steps to protect tenants from junk fees. In particular, local governmental entities can revise their affordable housing development program rules to ensure that developers receiving subsidies, tax breaks, or density bonuses to create rent-restricted housing are not using junk fees to bypass the affordable rent restrictions in these programs and to otherwise jeopardize tenants’ housing stability. When a local governmental entity provides funding, tax incentives, or density bonuses to a development, the entity has broad legal authority to adopt a range of protections that rein in abuses with junk fees. The City of Austin’s Rental Housing Development Assistant Program, for example, includes some guardrails against junk fees but also includes lots of loopholes that could be eliminated through amendments to the program rules.

In the report, we present five broad categories of reforms to rein in junk fees:

- **Require disclosure.** Policymakers can increase transparency in the rental housing market by requiring landlords to inform applicants of all mandatory recurring fees when advertising rental prices. Similarly, policymakers can require landlords to disclose all fees in application materials, lease quotes, leases, and renewal notices.
- **Ban specific types of fees.** Policymakers can prohibit specific types of add-on fees, such as all or a subset of fees for mandatory services and amenities. In affordable housing programs, policies could be calibrated to ensure landlords cannot use fees to evade the rent restrictions in these programs.
- **Restrict fee amounts.** Policymakers can restrict the amounts landlords charge for certain types of services or lease violations, to protect against excessive and punitive charges. For example, policymakers could cap application fees or cap the amount landlords can charge for changing locks.
- **Prohibit mid-lease changes to fees and rent.** Policymakers could bar landlords from tacking on new fees or increasing the rent in the middle of a tenant’s lease.
- **Ban evictions for unpaid fees.** Tenants currently face eviction if they contest a fee, with tremendous unjust consequences, including bans from renting other housing. As a complement to banning evictions for unpaid fees, policymakers could require landlords to apply tenant payments to outstanding rent before applying payments to fees.

Introduction

Junk fees in rental housing are a growing area of abuse across the United States¹ According to the National Consumer Law Center, junk fees are “hidden charges attached to goods and services such as loans, bank accounts, or purchases. These unexpected fees obscure the true price, make profit off of ‘gotchas,’ and prevent comparison shopping.”²

Junk fees “obscure the true price, make profit off of ‘gotchas,’ and prevent comparison shopping.”

—National Consumer Law Center

In the rental housing market, junk fees consist of deceptive, excessive, or unnecessary charges that can seriously disrupt tenants’ financial well-being and housing stability.³ These fees often come as a surprise, cropping up after a tenant has already committed to a one-year lease, imposing financial strain on the tenant and adding barriers to affordable housing access.⁴ Even when fees are presented as optional, unscrupulous landlords often offer no clear method for tenants to opt out of charges.

Through tenant organizing work with thousands of residents, the citywide nonprofit project Building and Strengthening Tenant Act (BASTA) has heard firsthand from Austin tenants about the recent surge in junk fees and the crushing impact of these spurious fees on residents’ housing security. For example, at Altura Apartments, an apartment complex in Austin with a 50% property tax exemption, the landlord requires tenants to pay \$142 in monthly fees on top of the restricted rent. These fees include a \$15 facilities fee, a \$7 pest control fee, and a \$85 “cable/internet” fee for services the tenants are unable to opt out of, with some units not even wired for cable. For tenants with pets, the landlord also charges “pet rent” of \$25 per pet a month, along with a \$300 non-refundable pet fee. On top of all these charges, prospective tenants must pay a \$75 application fee for each person on the lease, along with a \$200 “administrative fee.”⁵

Policymakers nationwide are becoming increasingly aware of junk fee abuses and are taking action to crack down on these fees. As part of a broader effort to tackle junk fees across industries, state and federal policymakers across political parties have introduced an array of legislative reforms. For example, to stop hidden fees in live event ticketing, in 2023 U.S. Senator Ted Cruz introduced the TICKET Act, and Texas legislators introduced House Bills 1497 and 4084.⁶ The Texas Attorney General’s office has also been fighting junk fees, recently securing an agreement with Marriott to disclose hidden hotel fees.⁷

The recent crackdown on junk fees has extended to the rental housing market. In July 2023, the Biden-Harris administration announced new actions to tackle junk fees in rental housing,⁸ and in October 2023 the Federal Trade Commission proposed a rule to eliminate hidden and falsely advertised fees in rental housing, among other sectors, which is working its way through the rulemaking process.⁹ Several states and cities have also enacted or introduced legislation to tackle junk fees in rental housing,¹⁰ and representatives in Congress have introduced the End Junk Fees for Renters Act.¹¹

FTC proposes rule to ban hidden and ‘bogus’ fees

Washington Post, Oct. 11, 2023

In light of the rising tide of junk fee abuses and heightened awareness around the compelling need for reform, this report identifies emerging best practices and opportunities for policy changes. In particular, this report focuses on reforms that could be adopted statewide in Texas and local jurisdictions to inject more transparency into housing practices and eliminate the most egregious junk fees in the apartment industry. Part One provides an overview of typical junk fee abuses in the apartment industry. Part Two discusses opportunities for reining in junk fees in Texas’ apartment industry. And, finally, Part Three provides a deeper dive on particular reforms that could be adopted to address junk fees in local affordable housing programs. While this last part of the report focuses on the City of Austin’s affordable housing programs, these best practices could also be adopted by other local jurisdictions in the region, such as local housing authorities and county housing departments, as well as any other local jurisdiction in the state operating an affordable housing program.

Part One: Overview of Junk Fee Issues in Rental Housing

Breakdown of the Junk Fee Problem

Junk fees produce several harmful issues that this report seeks to address. First, these problematic fees can pop up at any point in the tenancy, often surprising tenants.¹² After tenants have paid a hefty application fee, many discover while signing their leases or when they receive their first bill that they are on the hook for additional charges such as mandatory valet trash fees, pest control fees, and mail sorting fees—robbing tenants of their opportunity to fairly participate in comparison shopping in the rental housing market.¹³

Preserve at Hyde Park Avenue A Fee Schedule	
Application Fee	\$55
Administrative Fee	\$100
Security Deposit	\$300
Pet Deposit	\$150
Pet Fee	\$150
Pet Rent	\$20
Trash/Recycle Flat Fee	\$15
Pest Control	\$12
Cable/Internet	\$75

For example, at the Preserve at Hyde Park Avenue A Apartments in Austin, a lease quote provided in December 2023 does not include information about any of the following mandatory fees at the property: administrative fee of \$100, trash/recycle fee of \$15, pest control fee of \$15, and cable/internet fee of \$75.¹⁴ Similarly a lease quote for the Mueller Flats Apartments fails to disclose the \$26 valet trash fee and \$3 pest control fee at the property.¹⁵

Tenants are also getting hit with surprise fees added unilaterally by the landlord during the lease term. For example, at the Creeks Edge apartment complex in Austin, the landlord added steep clean-up fees, additional payment processing fees, and eviction prevention fees in the middle of tenants' leases.¹⁶ Tenants then confront junk fees at the end of a tenancy in the form of onerous move-out deposits, separate from the original security deposit.¹⁷

A second issue arises with landlords charging fees for services that are presented as “optional” when tenants are not actually allowed to opt out of the service—or landlords do not provide tenants with information about how to opt out of the service. For example, several tenants at Heritage Pointe Apartments were automatically “opted” into cable services when they signed their leases but were unaware of how to opt out of this service.¹⁸

This lack of clarity about which fees are truly optional also creates issues in subsidized housing and other affordable housing programs. The federal regulations for the Low-Income Housing Tax Credit (LIHTC) program, for example, require all non-optional fees to be included in maximum rent computations.¹⁹ By representing fees as optional without providing a clear method for tenants to opt out of such fees, landlords can charge tenants more than the maximum allowable rent. On top of that, many affordable housing programs, including Chapter 303 public facility corporation developments in Texas and Austin's Rental Housing Development Assistance program, do not clearly require non-optional fees to be included in maximum rent computations, leaving latitude for landlords to skirt these programs' rent limitations.

Finally, landlords are charging tenants steep fees that far exceed the cost a landlord incurs in providing a service or remedying damage to a property. These exploitative fees often come in the form of “one-off” fees that are charged on a non-recurring basis, such as clean-up fees, eviction prevention fees, and high-risk fees, some of which are popularly characterized as fines.²⁰

Contesting these one-off fees is especially difficult, if not impossible, for renters. If a tenant does not pay a fee, Texas landlords have regularly applied the tenant's rent payment towards the fee before applying it to rent,²¹ subjecting the tenant to a range of harsh consequences from late rent fees all the way to eviction.²² Unpaid fees may also become an alleged rental debt, subjecting renters to collection lawsuits and negative credit reports, creating long-term barriers to housing access.²³

Types of Junk Fees that Landlords Charge Renters in Texas

Renters in Texas have become all too familiar with junk fees. These fees can take many different forms. In this report, we define junk fees as charges that fall into one of two categories: (1) mandatory recurring fees and (2) mandatory “one-off” fees, which include charges popularly characterized as fines. In the following discussion we further explain these categories of junk fees, along with issues that can arise with optional fees.

MANDATORY RECURRING FEES

Mandatory recurring junk fees consist of fees landlords charge tenants in a rental housing community on a regular basis, in addition to rent. Landlords assess these fees for services or amenities that tenants are not allowed to opt out of, or assess these fees for amenities that are normally associated with a rental property, such as access to common-area facilities. These fees also include “quasi-optional fees.” Quasi-optional fees are fees for services or amenities that landlords market as optional; however, these fees are charged regardless of whether a tenant opts into the service or amenity, and landlords do not provide tenants with a clear way to opt out of the service or amenity.

Mandatory recurring fees reported by Texas tenants include:

Altura Apartments Mandatory Fees

Application	\$75/person
Administrative Fee	\$200
Trash	\$32
Pest Control	\$7
Cable/Internet	\$85
Administrative Billing Fee	\$3
One-Time Utility Service Connection Fee	\$5



Utility-related fees. These fees include utility-related processing fees, administrative fees, and other fees beyond the actual cost of third-party utility services incurred by a landlord for the delivery of utility services to tenants at a complex.²⁴



Insurance fees. These fees include payments to cover insurance for a landlord’s property, as well as fees tenants must pay when they do not carry renter’s insurance.²⁵



Valet trash and other trash collection fees. Per a recent Austin-based study, valet trash fees are among the most common junk fees charged to tenants,²⁶ despite the fact that, if given the choice, most tenants would opt to not use the service. Valet fees have been charged even in facilities with trash chutes on every floor and at properties where value services are not provided.²⁷



Cable and technology package fees. Fees for cable and internet are often mandatory, even if a tenant does not want to subscribe to those services.²⁸ For example, tenants at Stonegate Mobile Home Park in Austin received notice in the middle of their lease term about a new mandatory cable fee they would have to pay. And tenants at Altura Apartments in Austin are being charged \$85 a month for mandatory cable services, while tenants at the Hyde Park Preserve Avenue A Apartments are being charged \$75 for mandatory “cable/internet” services.²⁹ These fees also dilute competition in the cable and internet technology market by locking tenants into a particular provider.



Facilities fees. These fees cover usage of core facilities at the complex, including common areas and laundry rooms.



Pest control fees. Fees for pest control services can show up as regular monthly fees charged to all tenants at the property or can be more sporadic fees. Most of the fee schedules we came across include a mandatory monthly fee for pest control services. For example, all eight apartment complexes that are part of the Hyde Park Preserve portfolio of apartments in Austin charge a monthly pest control fee of \$12 per unit. Tenants at properties report not receiving pest control services even when they pay this fee.



Payment type fees. These fees, which are sometimes called convenience fees or processing fees, add a charge depending on the method a tenant uses to pay rent.³⁰ Tenants have reported properties that charge payment type fees for every single payment option offered.³¹



Administrative fees. Landlords charge these fees for unspecified management tasks; they often come in the form of a monthly charge in addition to rent.³²

MANDATORY “ONE-OFF” FEES

Mandatory “one-off” junk fees consist of non-recurring fees (e.g., non-monthly fees) charged to tenants where they have not chosen to participate in the services or amenities connected to the fee. One-off fees also include fees tied to tenant behavior, such as fees for leaving trash on the property—a type of one-off fee that is often referred to as a “fine.” Fines can constitute junk fees when the charge to the tenant does not correspond with the cost their landlord must pay to remedy the harm the tenant caused.

Mandatory one-off fees can appear at any point, from a tenant’s application submission to move out. Mandatory one-off fees may apply to specific tenants or all tenants at the property.

The following are examples of just some of the types of one-off fees being charged to Texas tenants:

- **Rental application fees.** These required fees are widespread in rental housing and range from \$25 to more than \$100 per adult applicant, far exceeding the landlord’s cost of conducting background or credit checks for an applicant.³³
- **Processing and administrative fees.** These fees most often accompany application fees, or are charged once a prospective tenant’s application has been approved. These are usually one-off fees, but monthly processing or administrative fees are also becoming more common.³⁴
- **Notice fees.** Notice fees include charges to tenants for landlords printing and posting notices at the property or sending notices, such as late payment notices, to individual tenants.³⁵
- **High-risk fees.** These are additional fees charged to tenants who lack a rental history, have a low credit score, or are otherwise deemed “high-risk” by a landlord.³⁶

The following are examples of one-off fees based on individual tenant behavior that Texas renters have confronted, identified through BASTA’s work with renters. Some of these types of fees are also often thought of as fines.

- **Eviction prevention fees.** Landlords charge these fees to tenants when a tenant violates their lease, as an alternative to eviction.
- **Clean-up fees.** These fees include charges for litter on the property that far exceed the actual cost a landlord incurs to clean the property. For example, at Creeks Edge Apartments, a leader of the tenants’ association was fined \$175 for a plastic bag and half empty water bottle left on her porch, while another tenant was threatened with a \$125 fine after her child left a bicycle on the porch while the family had lunch inside the unit.

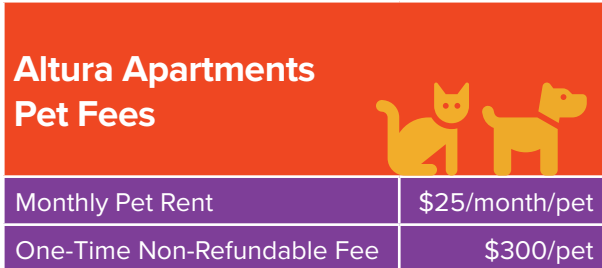
Examples of Mandatory One-Off Fees

- \$ Rental Application Fees
- \$ Processing and Administrative Fees
- \$ Notice Fees
- \$ High-Risk Fees
- \$ Eviction Prevention Fees
- \$ Clean-up Fees
- \$ Punitive Fees for Violations
- \$ Repair Fees

- **Punitive fees for “community rules” violations.** These fees are excessive charges for tenant violations of the community rules—rules tenants may not even be aware exist. For example, a tenant at an Austin complex was recently charged \$300 for having a grill on their deck.³⁷
- **Repair fees.** These fees have been charged even in instances when a tenant did not cause the damage (for example, storm damage) and can far exceed the actual cost of the repair.

OPTIONAL FEES

This report excludes truly optional fees from the definition of junk fees. We define as “optional fees” those fees for services or other benefits that a tenant has chosen to receive and that do not pertain to amenities typically associated with a rental property, such as common area facilities. While optional fees are not the focus of our report, it is important to note that these fees can take on “junk” qualities that harm tenants in two key respects.



Altura Apartments Pet Fees	
Monthly Pet Rent	\$25/month/pet
One-Time Non-Refundable Fee	\$300/pet

First, optional fees can far exceed a landlords’ cost of providing tenants a service or benefit. For example, in the case of pets, landlords are increasingly charging tenants high non-refundable fees and monthly “pet rent” for having pets in a unit. For instance, as mentioned above, the Altura Apartments in Austin charges tenants monthly pet rent of \$25 per pet, along with a non-refundable pet fee of \$300 per pet.³⁸ With a maximum limit of three pets, these fees can quickly add up to \$1,800 over the course of a year.³⁹

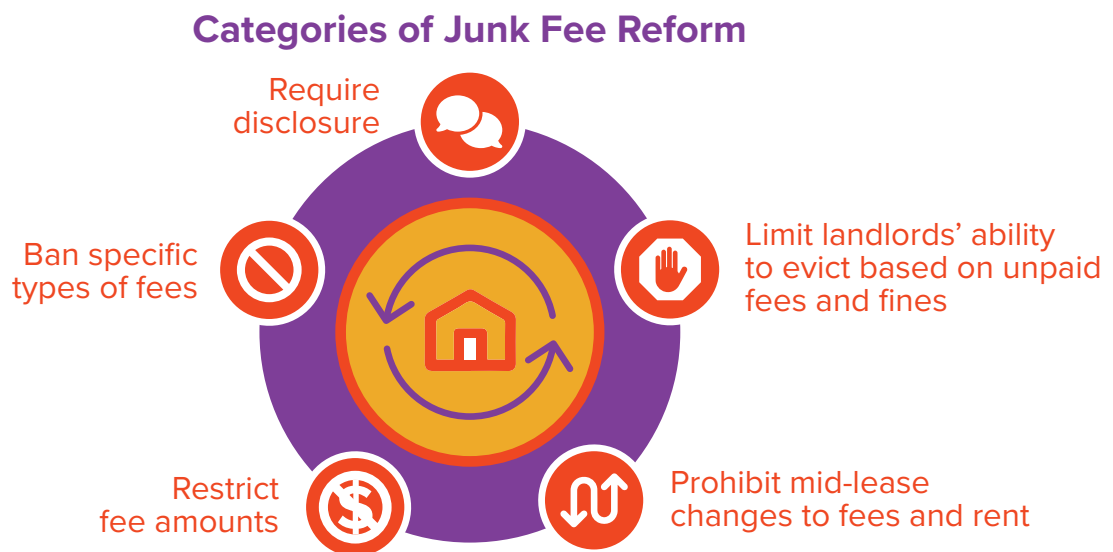
Second, some landlords do not disclose fees for optional services or amenities in the application process, weakening prospective tenants’ ability to comparison shop and make informed decisions when choosing an apartment. When these tenants finally learn about the optional fees, such as fees for parking and other services tenants may deem essential, they have already paid the application and administrative fees for the unit.

A relatively new type of optional fee is a fee in lieu of security deposit, also referred to as a security deposit waiver fee. In 2021, the Texas Legislature passed a law allowing landlords to offer renters the option of paying a monthly fee to cover damages at the unit, as an alternative to an up-front security deposit.⁴⁰ Unlike a security deposit, however, if a landlord uses a deposit waiver fee to purchase insurance to cover tenant damages to the unit, the landlord does not have to refund the fee when the tenant’s lease ends, even if a tenant has not caused any damages to the unit.⁴¹ For tenants who remain in their units for a long period of time, the deposit waiver fee, as it is paid out over time, can far exceed the cost that a tenant would have incurred with a one-time security deposit. Tenants have reported to BASTA being charged a security deposit waiver fee even when did not choose to opt into the fee, as well as when the landlord is assessing them a fee for insurance.

Part Two: Opportunities for Reining in Junk Fees in Texas

In this section, we provide several broad categories of reforms that could rein in landlords' abusive practices with fees and fines in Texas. In addition, we present policy opportunities in the tenant organizing space that could support junk fee monitoring and policy enforcement, as well as potential policy changes specific to the Low Income Housing Tax Credit program.

Five-part framework for reining in junk fees



#1: Require disclosure

Laws regulating the disclosure of landlord fees can take two primary forms: disclosure to tenants and disclosure to government officials.

- **Disclosure to tenants: Policymakers can strengthen consumers' ability to make informed decisions when choosing an apartment by requiring that landlords inform applicants of all recurring fees when advertising or listing rental prices.** Similarly, policymakers can require landlords to disclose all fees in application materials, lease quotes, leases, and renewal notices.
 - **Policymakers in other states have implemented similar disclosure laws.** Minnesota, for example, passed a law requiring landlords to display all mandatory fees on the first page of the lease agreement and in all advertisements.⁴² Similarly, Utah's "Renter Expenses Disclosure Act" requires the up-front disclosure of any "fixed non-rent expenses," including recurring fees.⁴³ Seattle requires rental agreements to disclose all "monthly or periodic payments."⁴⁴
 - **Policymakers could impose a claw-back provision related to fees.** If property owners fail to adequately disclose fees to tenants prior to a tenant being obligated to pay the fee, the owners could be prohibited from collecting the fees and barred from evicting tenants on the basis of unpaid fees.

- **Disclosure to the government.** Another possible reform is to require property owners participating in affordable housing programs to disclose all of their tenant fees during the administering governmental agency’s compliance monitoring process for the program. Additionally, cities with rental registration programs could require disclosure of fees as part of the registration process.



#2: Ban specific types of fees

Another way to rein in abusive fees is to prohibit specific types of fees, such as all or a subset of fees for mandatory services. This reform can be implemented in a broad or narrow manner. Oregon took the approach of creating a list of permissible fees and banning all other fees.⁴⁵ Connecticut banned the use of heat and utility surcharges.⁴⁶ In Montgomery County, Maryland, landlords must pay for trash collection, effectively barring valet trash fees.⁴⁷

With a broad prohibition on fees for mandatory services, policymakers must carefully outline when a fee is “mandatory” versus truly “optional.” A fee should be considered optional only if a tenant has knowingly opted into a particular service and their tenancy is not contingent upon opting into the service. In crafting a policy, particular consideration should be given to language ensuring the optional nature of the service is clearly disclosed to tenants—rather than, for example, being hidden in the middle of a lease—and that the tenant has expressly consented to the service and fee tied to the service.

In affordable housing programs, policies could be calibrated to make sure landlords cannot use fees for mandatory services as a way to evade the maximum rent restrictions in these programs. These programs could either bar fees for mandatory services or require them to be included in the maximum rent calculation.



#3: Restrict fee amounts

Policymakers can also regulate junk fees by restricting the amounts landlords can charge for certain types of fees. This category of junk fee regulation can take three forms:

- **Policymakers can place a cap on the amount landlords are allowed to charge for specific types of fees, such as fees for changing locks and for bounced checks.**
- **Policymakers can cap fees to the actual cost the landlord incurs when providing the service or benefit related to the fee.**
- **For fees related to tenant-created damages, policymakers can cap the fee in accordance with state common law to just compensation for the loss or damage actually sustained by the owner.**



#4: Prohibit mid-lease changes to fees and rent

Another important regulation to consider is an explicit prohibition against landlords adding new mandatory fees or increasing fees in the middle of a lease, an issue BASTA has seen in properties where it works with tenants. Tenants should not have to pay for services beyond what they agreed to in their leases. This prohibition could also be extended to ban mid-lease increases in rent.



#5: Limit landlords' ability to evict based on unpaid fees and fines

A final opportunity for reform is to prohibit evictions for the nonpayment of fees and fines. To complement this approach, policymakers could require landlords to apply tenant payments to outstanding rent before applying payments to fees and other charges. Seattle and Oregon both have laws requiring landlords to credit tenant payments towards rent before applying them to other charges.⁴⁸ As an additional approach, policymakers could establish an administrative process for resolving disputes between landlords and tenants regarding fees.

Additional opportunities to rein in junk fees and help tenants address abuses with fees

- **Tenant Organizing.** Tenant organizing is an important and effective tool for identifying landlords' latest junk fee abuses and violations of existing protections. To support tenants' capacity to engage in organizing activities, policymakers can invest in tenant organizing support, as well as adopt legal protections for tenant organizing along the lines of Austin's tenant organizing ordinance.⁴⁹
- **LIHTC Reforms.** The LIHTC program, one of the country's largest affordable rental housing programs, already includes important protections against junk fees, including a federal requirement that gross rent (which is subject to the program's maximum rent limitations) include the cost of non-optional services.⁵⁰ The program's regulations define a service to be optional "if payment for the service is not required as a condition of occupancy."⁵¹

There is still room to strengthen these protections at a state level, particularly with respect to increasing disclosure requirements and preventing the assessment of quasi-optional fees. The Texas Department of Community and Housing Affairs (TDHCA), which oversees the implementation of the LIHTC program in Texas, could adopt many of the specific reforms proposed in other sections of this report within the LIHTC program. Specifically, TDHCA could:

- **explicitly ban specific types of mandatory fees such as insurance fees, administrative fees, valet trash fees, and cable fees;**
- **require fees for optional services to be opt-in rather than opt-out;**
- **cap allowable fees to the actual cost incurred by a landlord for providing the service or benefit related to the fee and, for fees related to tenant-created damages, the actual cost incurred by a landlord in repairing the damages; and**
- **require property owners to disclose fees for optional services in advertising and in application materials, lease quotes, leases, and lease renewal materials.**

Part Three: Opportunities for Reining in Junk Fees in Austin

Opportunities for reining in junk fees in Austin include increasing transparency through a citywide disclosure ordinance, as well as revising Austin’s affordable housing development incentive guidelines, Rental Housing Development Assistance (RHDA) guidelines, and RHDA lease addendum.



#1: Increase transparency through a citywide disclosure ordinance

The City of Austin could adopt a city-wide ordinance, covering both market-rate and affordable properties, requiring landlords to disclose all fees to tenants and prospective tenants. The disclosure requirement could encompass application materials, lease quotes, and leases for prospective tenants, as well as lease renewal materials for current tenants. A disclosure requirement would help applicants understand the total cost associated with renting a unit before paying hefty application fees, increasing their ability to price compare.



#2: Strengthen protections against junk fees in the City’s affordable housing programs

A second approach the City of Austin could take to rein in junk fees would be revising the City’s development incentive guidelines and RHDA program guidelines and lease addendum. The City’s development incentive programs, also known as density bonus programs, include the Vertical Mixed-Use (VMU); University Neighborhood Overlay (UNO); and Safe, Mixed-Income, Accessible, Reasonably-Priced, Transit-Oriented Housing (S.M.A.R.T. Housing) programs.⁵² The City of Austin’s RHDA program finances the acquisition, rehabilitation, and new construction of affordable housing.⁵³ The City’s RHDA guidelines bind developers participating in the program to heightened requirements in order to advance the City’s housing affordability goals.⁵⁴ The RHDA lease addendum, which is published by the City, must accompany the lease for every unit participating in the program.⁵⁵

Overall, the City’s regulations concerning junk fees would ideally be uniform across both the development incentive programs and the RHDA program. Tenants and the general public, if not also landlords and developers, find the existence of multiple separate regulatory schemes for the City’s affordable rental housing programs confusing. A uniform regulatory scheme would mitigate this confusion.

The following is a summary of policy changes we have identified for the development incentive programs and the RHDA program to better rein in junk fees. See Appendix A for specific wording suggestions to incorporate these changes in the RHDA guidelines and lease addendum.

- **Ban and cap problematic mandatory fees.** If a landlord has expenses that the landlord needs to recover in leasing the unit, those expenses should generally be incorporated into the rent, rather than tacked on as additional fees the tenant must pay atop rent. The RHDA program and development incentive programs could explicitly prohibit all fees except certain types of legitimate fees, such as: (1) fees for truly optional goods and services that the tenant has opted into, (2) reasonable fees or fines to remedy damages caused by a tenant, (4) reasonable fees for bounced checks, and (5) fees a tenant is required to pay under state or federal law.

- **Prohibit certain optional fees.** Both the development incentive and RHDA programs could also prohibit certain optional recurring and one-off fees that are especially harmful to low-income tenants. For example, the RHDA program bans landlords from charging a tenant an additional fee for using a money order, cashier’s check, or check to pay rent. The program could go further, banning fees for any type of payment the landlord accepts.

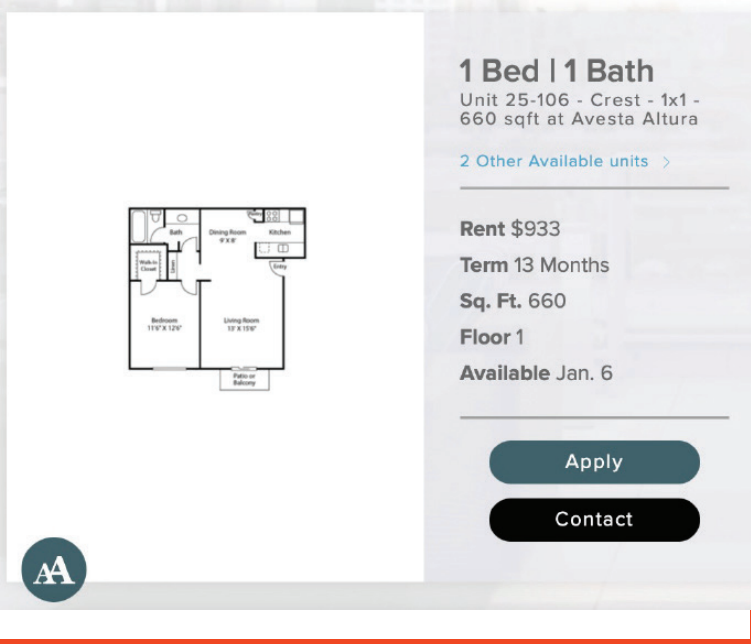
Furthermore, the programs could rein in pet fees, which appear to have become more abusive in recent years, with some landlords charging a nonrefundable pet deposit as well as monthly “pet rent,” all of which can add up to hundreds of dollars in fees.⁵⁶ One approach could be to limit pet fees to only a refundable pet deposit. If the pet causes any damages to the unit, the landlord could deduct expenses for the damage from the deposit at the end of the lease term. This policy would allow landlords to recover up to, but not more than, any actual damages they incur, without reaping a windfall from tenants with pets.

- **Bar mid-lease changes in fees and rent.** Many landlords adopt—in addition to leases—separate rules or policies governing tenant conduct at the property. These rules or policies, often called “house rules” or “community policies,” sometimes give landlords authority to increase fees or impose new fees on tenants. Some landlords are also increasing tenants’ rent in the middle of their leases. To combat these abusive practices, the City could explicitly prohibit mid-lease changes to fees and rent. The City could also require owners to provide tenants with advanced notice of any increases in fees or rent upon lease renewal.
- **Increase disclosure to tenants.** To protect tenants from surprise fees, the RHDA and development incentive programs’ guidelines could require property owners to disclose all fees in any advertisements for the unit listing the unit’s rent price. The guidelines could also require more extensive disclosures within the application materials, lease quotes, the unit’s lease, and any lease renewal notices. Any fee schedule that a landlord maintains should also be provided to a tenant with their lease.
- **Enhance monitoring and enforcement.** The City of Austin’s monitoring process for the development incentive and RHDA programs could include collecting information about the types and amounts of fees tenants pay. The monitoring process could capture whether a fee is “optional” or “nonoptional,” and how tenants can opt out of optional fees. This type of enhanced monitoring would discourage properties from charging abusive fees and fines and allow the City to penalize properties that defy the City’s fee and fine policies. Just as importantly, the City needs to ensure it has the enforcement mechanisms in place to crack down on landlords who persistently violate the City’s fee restrictions—this is particularly an area of reform needed to the development incentive programs. The City reported to us that its enforcement of the existing requirements in the development incentive programs is weak.
- **Clarify optional versus non-optional fees.** The development incentive program guidelines could clearly spell out the meaning of “optional” versus “non-optional” fees for the purpose of the program’s maximum rent restrictions. The guidelines currently define “non-optional” fees as “fees for services, amenities, views, or any charges that are considered to be mandatory,” with the exception of specific utility services that are delineated in the guidelines.⁵⁷ We recommend also including in the definition of “non-optional” fees specific examples of mandatory recurring fees that are covered by the definition, such as administrative fees, insurance fees, valet trash fees, and cable fees that a tenant has not explicitly chosen to opt into. See Appendix 2 for sample new language for the RHDA guidelines on this subject, which could be adapted for the development incentive program guidelines.
- **Restrict abuses with application fees.** A final change the programs could adopt is a limitation on excessive application fees. Appendix 2 presents two options for this change: (1) banning application fees, or (2) restricting fees to the lesser of \$25 or defined third-party costs such as credit and background checks. Another approach would be to allow tenants to provide their own background and credit checks from a qualified third-party source. Alternately, the City of Austin could create a portal for these screenings, similar to the system that the City of Spokane adopted in 2023.⁵⁸

Appendix 1

Examples of Rental Properties Failing to Disclose Mandatory Fees

Altura Apartments Advertised Rent Price
(Names of applicants have been removed.)



1 Bed | 1 Bath
Unit 25-106 - Crest - 1x1 - 660 sqft at Avesta Altura

2 Other Available units >

Rent \$933
Term 13 Months
Sq. Ft. 660
Floor 1
Available Jan. 6

Apply
Contact

The website for this property does not disclose mandatory fees with the total rent.

Source: www.alturaaustin.com

Altura Apartments, Lease Quote, September 2023

Lease Details	
Unit Number	25-107
Lease Term Length	10 Months
Move-In Date	October 3, 2023
Total Monthly Charges	\$1,371.00
Total Due by Move-In	\$350.00
Monthly Recurring Charges	
Rent	\$1237.00
Cable/Internet Charges	\$85.00
Waiver Deposit Fee	\$34.00
Facilities Fee	\$15.00
One-Time Charges	
Administrative Fee	\$200.00
Application Fee: [REDACTED]	\$75.00
Application Fee: [REDACTED]	\$75.00

The lease quote provided to a prospective tenant at the property disclosed some fees but failed to disclose the following additional mandatory recurring fees charged to tenants (see the following page): pest control (\$7), trash (\$32), and administrative billing (\$3). The lease quote also failed to disclose the mandatory one-time utility service connection fee (\$5).

Source: BASTA

Altura Apartments Fee Schedule, 2023

Altura

APARTMENTS

Proudly Managed by

RESPROP
MANAGEMENT

Application Fee: \$75 per person

Administrative Fee \$200

Deposits:

\$0 Deposit Community

Security Deposit Monthly Waiver Fee: \$34

Reserved Parking

Monthly covered parking \$75

Monthly uncovered reserved parking \$50

Pets

No Breed/Weight Restrictions

Maximum of 3 Pets

Pet Rent \$25 monthly per pet

One time non-refundable pet fee \$300 per pet

Monthly Recurring Charges

Trash \$32.00

Pest Control \$7.00

Cable/Internet \$85

Facilities fee \$15

Administrative billing fee \$3

Allocated Water/ Waste Water

One time utility service connection fee \$5

Renters insurance is required

Electricity with Austin Energy

The Preserve at Hyde Park Avenue A, Lease Quote, December 2023

Quote Summary

Review your quote and apply before your choices expire.



A1 550sf

Apartment	#110
Floor Level	1
Bedrooms	1
Bathrooms	1
Square Feet	550
Occupancy	2
Deposit	\$300.00
Effective Rent	\$1,050.00

Quote

Quote	495534
Expires	March 3, 2024

Lease Information

Lease Term	12 months
Lease Start	January 14, 2024
Lease End	January 13, 2025

Application Deposits And Fees

Online Application Fee	\$55.00
------------------------	---------

Monthly Charges ⓘ

Gross Rent	\$1,050.00
Total Monthly Charges	\$1,050.00

Source: www.preservehydepark.com

The lease quote does not inform applicants about any of the additional mandatory fees charged to tenants at the property (see fee schedule below), other than the online application fee. Mandatory fees excluded from the lease quote include the administrative fee of \$100, trash/recycle flat fee of \$15, pest control fee of \$12, and cable/internet fee of \$75.

The Preserve at Hyde Park Avenue A Fee Schedule

Application Fee	\$55	Pet Deposit	\$150	Trash/Recycle Flat Fee	\$15
Administrative Fee	\$100	Pet Fee	\$150	Pest Control	\$12
Security Deposit	\$300	Pet Rent	\$20	Cable/Internet	\$75

Source: Property management for The Preserve

Windsor Burnet Apartments, Lease Quote, January 2024

Welcome to Windsor Burnet

Rental Quote Sheet

Rental Options

Preferred Move-in Date: **Saturday, January 13, 2024** | Lease Term: **12** | Lease Start Date: **Saturday, January 13, 2024** | Lease End Date: **Sunday, January 12, 2025**

Apartment Summary

Floor Plan: **B1** | Apartment: **2213** | Area: **1,090 Sq.Ft.** | Bedrooms: **2**

\$

Move-in Charges

These are the charges you (and your roommate if applicable) will pay upon move-in.

Rent for 19 days	\$1,326.94
Deposit	Pending ***
Total Charges	\$1,326.94

Monthly Charges

These are the charges you (and your roommate if applicable) will pay each month.

Rent	\$2,165.00
------	------------

*** Deposit is not included in total move-in charges. It will be charged at the time of move-in.

The lease quote does not inform applicants about the application fee of \$65, administrative fee of \$400, or the following mandatory monthly fees charged to tenants at the property (see fee schedule below): valet trash fee of \$35, pest control fee of \$5, and lifestyle fee of \$30.

Source: www.windsorburnet.com

Windsor Burnet Apartments Fee Schedule

Monthly Fees	Amount	One-Time Fees	Amount
Valet Trash	\$35	Application Fee	\$65/applicant
Pest Control	\$5	Pet Fee	\$500/pet
Lifestyle Fee	\$30	Administrative Fee	\$400
Pet Rent	\$40/pet		

Source: *Austin Investor Interests.*

Mueller Flats, Lease Quote, January 2024

muellerFLATS

ONLINE APPLIC

QUOTE SHEET

[← Back to Leasing Options](#)

Floor Plan: 1 bedroom / 1 bathroom | 504Sq.Ft. | Terminal

Lease Terms: ApartmentM0617 | 12 months | 1/6/2024 - 1/5/2025

⑤ Monthly Charges

Rent	\$1,079	Main charge
Cable / Internet	\$79	Included

\$1,158 per month

⑤ Move-In Charges

Rent for 26 days	\$904.97
Deposit	\$500
Cable / Internet	\$66.26

Monthly charges prorated over 26 days.

\$1,471.23 due upon move-in

Apply Now

Source: www.muellerflats.com

The lease quote does not inform tenants about the application fee or the following mandatory monthly fees charged to tenants at the property (see fee schedule below): valet trash fee of \$26, pest control fee of \$3, and cable/internet fee of \$79.

Mueller Flats Apartments Fee Schedule

Monthly Fees	Amount	One-Time Fees	Amount
Valet Trash	\$26	Application Fee	\$50/applicant
Pest Control	\$3	Pet Fee	\$250/1st pet + \$150/2nd pet
Pet Rent	\$25/1st pet + \$15/2nd pet	Pet Deposit	\$150/pet
Cable/Internet Fee	\$79	Administrative Fee	\$150

Source: *Austin Investor Interests*

Appendix 2

Amendments to the City of Austin’s Rental Housing Development Assistance (RHDA) Program to Address Junk Fees

BACKGROUND

This document provides examples of amendments that could be adopted to the City of Austin’s Rental Housing Development Assistance (RHDA) program guidelines and Lease Addendum to better protect tenants from junk fees assessed by landlords. The RHDA program finances the acquisition, rehabilitation, and construction of affordable housing.⁵⁹ As part of the RHDA program, a City-promulgated RHDA Lease Addendum must accompany each tenant lease for an income-restricted RHDA unit. The RHDA Lease Addendum⁶⁰ currently contains several important safeguards against junk fees, but key regulatory gaps remain, leaving open opportunities for landlord abuses.

HOW THE RHDA LEASE ADDENDUM CURRENTLY ADDRESSES JUNK FEES

The RHDA Lease Addendum currently contains several important junk fee safeguards. First, the Lease Addendum **includes limits on specific types of junk fees**:

- Property owners cannot charge tenants more than actual damages for repairs.⁶¹
- Property owners must accept rental payment in the form of money order, cashier’s check, or regular check and cannot impose additional fees on tenants for using these rental payment methods.⁶²
- Property owners cannot charge tenants late fees above a City-specified amount.⁶³
- Utilities must be included in the maximum rent calculation for the unit, except for tenant-paid utilities, whereby the maximum allowable rents must be reduced by the amount of the applicable HUD utility allowance for the Austin area.⁶⁴

Additionally, the Addendum **prohibits owners from terminating a tenant’s lease for failure to pay fees or fines**.⁶⁵ The Lease Addendum is unclear, however, as to whether repeated nonpayment of fees constitutes a “serious or repeated” lease violation, which under the Addendum would allow a landlord to not renew the lease, subject to the opportunity to cure right in the Addendum.⁶⁶

CHANGES TO THE RHDA LEASE ADDENDUM

The City’s protections against junk fees could be significantly strengthened in the RHDA Lease Addendum in several respects:

- The Lease Addendum could explicitly ban and cap certain kinds of add-on charges, such as fees for landlord-provided utilities that are master-metered and fees that serve no legitimate purpose, such as “administrative fees” or fees for services that tenants have not chosen to receive.
- In addition to the current protections regarding charges to recover tenant damages to the unit, the Lease Addendum could address other types of excessive charges for tenant-related damages and violations of community rules at the property.
- The Lease Addendum could improve transparency and fairness by including disclosure requirements for fees, such as disclosure of parking fees and other optional services that are allowed under the addendum.

- The Lease Addendum could explicitly prevent mid-lease increases to rent and fees.
- The Lease Addendum could provide tenants with information on how to report landlord violations of the addendum, such as fee violations, to the City of Austin.
- Lastly, landlords' remedies for unpaid fines and fees in the Lease Addendum could be clarified.

Below are examples of provisions that the City could adopt to implement these changes.

#1: Ban and cap problematic fees

The City could amend the Lease Addendum to ban and cap fees for goods and services that do not serve a legitimate purpose as an add-on charge. If a landlord has expenses that they need to recover in leasing the unit, those expenses should be incorporated into the rent, rather than tacked on as additional fees the tenant must pay in addition to rent. The language below includes exceptions for fees for truly optional goods and services that the tenant has knowingly opted into and fees a tenant is required to pay under state or federal law.

The language also reins in pet fee-related abuses, allowing fees only to address actual damages caused by pets, while also allowing for a refundable security deposit to cover pet-related damages.

Also included is a prohibition on landlords or third-parties hired by landlords from charging a tenant for utilities, except for sub-metered water and electrical utilities. This language does not prevent landlords from requiring tenants to procure utility services directly from a utility service provider. For any utilities that tenants pay, rather than the landlord, the current RHDA Guidelines (Section IX.D.2.) provide that the maximum allowable rent must be reduced accordingly by the applicable HUD utility allowance for the Austin area.

Add a new Section 8 (and renumber the subsequent sections):

8. Prohibition on Fees for Goods and Services.

8.1. The Owner may not charge the Tenant any fee outside the rent (including but not limited to pest control fees, renter's insurance, utility fees, eviction prevention fees, administrative charges, trash fees, and fees for type of payment method accepted by Owner), unless the fee:

8.1.1. is in exchange for an optional ancillary good or service that the Tenant has opted into in writing via separate, express, and informed consent in close proximity to a clear and conspicuous disclosure of (1) what the good or service covers; (2) the amount of the charge for the good or service; (3) how the tenant can cancel the good or service; and (4) the tenant's right to receive access to the housing even if the tenant does not opt in to receiving the good or service;

8.1.2. is for electrical or water services that are individually sub-metered for the Tenant's unit, limited to the actual cost incurred by the Owner;

8.1.3. is a fee that tenants are required to pay under federal or state law; or

8.1.4. is allowed under Section 9 (Charges for Repairs and Recovery of Damages).

8.2. For the purposes of 8.1.1, a fee is not for an "optional ancillary good or service" if:

8.2.1. the Owner does not provide the Tenant with an easy method of cancelling the good, service, or other benefit within ten days, such as through an email to the Owner or Owner's agent; or

8.2.2. the fee is for use of areas that are reasonably associated with the rental property, including common area facilities, unless the fee is associated with providing the tenant with exclusive access to a common area facility on a temporary basis, such as rental of a rental property's club house or pool for a special event.

8.3. The prohibition on charges in Section 8.1 includes fees charged to Tenants by a third party pursuant to a contract between the third party and the Owner.

8.4. The prohibition on fees in Section 8.1 includes charges for having pets in the unit, except that an Owner is allowed to charge:

8.4.1. a reasonable fee covering the Owner's expenses incurred in remedying any damages caused by pets in the unit, provided that the Owner provides the Tenant with an accounting of the expenses; and

8.4.2. a refundable pet security deposit at the beginning of the leasehold term or upon the Tenant's acquisition of a pet to cover any future damages caused by pets in the unit.

#2: Protections from excessive fines and fees for lease violations and community rules violations.

A second area of reform is to address excessive fees and fines for tenant violations of the lease and property's community rules, as well as for recovery of damages that are not currently covered by the RHDA Lease Addendum. Section 8 of the current RHDA Lease Addendum addresses when and how an owner may charge a tenant for repairs to the tenant's unit—but doesn't cover charges for other types of tenant-caused damages at the property or violations of the lease or community rules. As a result, for example, excessive charges for items such as cleaning up trash on the property and bounced checks are not currently covered by the RHDA Lease Addendum.

The language below reins in abuses with these other types of charges, by incorporating them into the Section 8 repair section, which is included here as a new Section 9. The Texas Supreme Court has held that damages for breach of contract are limited to "just compensation for the loss or damage actually sustained"; the provision below incorporates this standard.

Substitute the current Section 8 with the following revised section, renumbered as Section 9:

9. Charges for Repairs and Recovery of Damages

9.1. Limits on charges for repairs and recovery of damages. Subject to the charges allowed for under Section 8, the Owner may not charge a Tenant any fee or fine outside the rent unless the charge falls within one or more of the following:

9.1.1. charges for repairs made to the unit only if the damage is caused intentionally or by the gross negligence of the Tenant or guests of the Tenant and the damage does not constitute normal wear and tear. If the Owner intends to charge the Tenant for the repair, prior to making the repair, the Owner must give the Tenant written notice that includes the estimated costs.

9.1.2. charges for dishonored checks because of insufficient funds, which are limited to the amount that a bank or other financial institution has charged the Owner for processing the dishonored check.

9.1.3. charges for late payments, subject to the limits in 4.12 (late fees).

9.1.4. charges for damages allowed for under the Texas Property Code, Section 92.2611, relating to the Tenant's disabling of a smoke alarm.

9.1.5. towing charges, subject to the legal limits in City of Austin code.

9.1.6. charges for costs incurred in an eviction of the Tenant if the Tenant loses in court, limited to court costs and attorney's fees.

9.1.7. subject to the restrictions in 9.1.1 through 9.1.6., charges for Tenant's noncompliance with the Lease Agreement, limited in accordance with state common law to just compensation for the loss or damage actually sustained by the Owner arising directly out of the Tenant's noncompliance with the Lease Agreement.

9.2. The limitations on charges in 9.1 includes charges by a third party pursuant to a contract between the third party and the Owner.

9.3 Invoice procedures. Upon the Tenant's request, the Owner must provide Tenant with an invoice for any charges covered by Section 9.1.

9.4. Disputes. The Owner agrees that the Tenant may dispute the necessity and extent of a charge to Tenant that falls under Section 9.1. If the Tenant disputes the charge, the Owner agrees to provide reasonable evidence of the need for the charge and cost of remedying the damage.

9.5. Payment plan. Failure to comply with any agreed upon payment plan shall not constitute grounds for termination or nonrenewal under Section 5.1.

9.6 Remedies. In the event Tenant fails to pay any charges allowed for under Section 9.1, the Owner remedies for recovering the unpaid charges are restricted to the following: (1) withholding a portion or all of the Tenant's security deposit or payment in lieu of security deposit upon move-out, in accordance with the procedures governing security deposits and payments in lieu in the Texas Property Code; or (2) filing suit for damages in a court of competent jurisdiction.

9.6.1. The Owner agrees that its damages are limited to actual damages.

9.6.2. Except as provided in Subsection 5.1., the Owner agrees not to seek to evict Tenant solely because the Tenant failed to pay for alleged damages or other charges allowed for under Section 9. Payment of any charges allowed for under Section 9 shall not be connected to nor supersede rent payment.

#3: Increase disclosure requirements

Provisions could be added to the Lease Addendum requiring owners to disclose fees to tenants. Specifically, the City could amend the following sentence in paragraph 13 of the Lease Addendum:

Owner agrees to provide Tenant a copy of the Lease Agreement, and this Addendum, ~~and any existing fee schedule maintained for the property~~ in the language in which the lease was negotiated.

#4: Prohibit mid-lease increases of rent and fees

The City could better protect tenants from surprise fees by adding a provision to the Lease Addendum explicitly prohibiting increases of rent and fees during the lease term and requiring Owners to provide tenants with advanced notice of any increases in fees occurring during the lease renewal process.

[X]. Prohibition on Mid-Lease Changes to Fees and Rent. The Owner is prohibited during the lease term from increasing the rent or increasing the fees listed in the fee schedule for Tenant’s unit. The rent or fees may be increased upon renewal of the lease only if the Owner serves written notice to Tenant of the increase at least 60 days before the effective date of the renewal. Notice shall be served on Tenant by either: (1) both first class mail and either certified or registered mail; or (2) by personal delivery to the Tenant or a household member eighteen years or older.

#5: Include information on where tenants can file complaints of lease addendum violations

[X]. In the event Tenant has any complaints or concerns about Owner’s compliance with this Addendum or the Lease Agreement, Tenant may file a complaint with the City of Austin at [enter complaint information here]. The Owner may not retaliate against a Tenant for filing a complaint.

POTENTIAL CHANGES TO THE RHDA GUIDELINES

There are several opportunities to amend the RHDA Guidelines to include additional protections against junk fees, prior to a tenant’s execution of the lease. The changes below cover the following: (1) requiring disclosure of fees to prospective tenants and the City; (2) restricting abuses with application and administrative fees.

#1: Include disclosure requirements

First, the City could include disclosure requirements in the RHDA guidelines regarding any fees and fines the owner charges at the property. The following provisions address disclosures to the City as well as to prospective tenants/applicants for the property.

Disclosure to the City at initial occupancy: The City could amend the RHDA occupancy requirements found in Section IX of the RHDA Guidelines to require landlords to furnish information to the City about the fees charged to tenants at initial occupancy. This disclosure would provide the City an opportunity to confirm that those fees are in compliance with the RHDA guidelines.

A. Initial Occupancy.

4. Identification of current Fair Market Rents, and rents and fees charged to occupying tenants, along with information about how any fees charged are allowed under these guidelines and the RHDA Lease Addendum.

Disclosure to the City during the monitoring process: As a part of the City’s compliance monitoring process described in Section X of the RHDA Guidelines, the City could require landlords to provide information on fees and fines that have been charged to tenants, so that the City has enough information to ensure those fees are allowed under the program.

E. RHDA-assisted developments require long-term commitments by the owner/developer. Reporting to demonstrate compliance with the terms of the loan agreement will include:

2. Appropriate/applicable rents and fees and fines charged under existing lease agreements, along with information about how any fees and fines charged are allowed under these guidelines and the RHDA Lease Addendum; and

Disclosure to prospective tenants/applicants: To ensure that applicants for affordable rental housing are aware of the potential fees they could be subject to, the City could require landlords to provide applicants with notice of fees in advertisements, lease quotes, application materials and leases for the property. This type of disclosure is currently not being provided consistently across the RHDA program.⁶⁷

The language below requires a more detailed disclosure regarding fees whenever a tenant signs a lease or lease renewal, given the need for ensuring that tenants are knowingly and freely opting into any ancillary goods and services included in the lease. The language also requires that the disclosure include information about payments in lieu of security deposits, to supplement the disclosure requirements in the Texas Property Code. Given the importance of this disclosure and ensuring the disclosure language is clear and accessible to tenants, the language below envisions a disclosure template being created by AHFC.

XI. RESIDENT PROTECTIONS

A. Resident Leases.

3. Property Owners shall provide a copy of the Lease, and RHDA Lease Addendum and any fee schedule for the property to the Tenant in the language in which the Lease was negotiated.

E. Transparent Disclosure of Fees and Charges.

1. In any offer, display, or advertisement listing the rent for a residential unit at a development covered by these guidelines, the Owner must clearly and conspicuously disclose, adjacent to the listed rent price (1) any application fees or other fees charged to applicants prior to leasing the unit that are not included in the listed rent price; and (2) and fees or charges tenants must pay for goods or services that are not included in the rent price.
2. The Owner shall include a clear and conspicuous disclosure of the following adjacent to the rent price in any lease quotes provided to tenants:
 - a. information on fees or charges tenants must pay for goods or services that are not included in the rent price;
 - b. information on fees or charges for any optional goods or services that are not included in the rent price, including (1) the amount of the fee or charge; and (2) tenants' right to receive access to the housing even if a tenant does not opt into receiving the good or service;

- c. the amount of the security deposit for leasing the unit; and
 - d. a list of utility charges that tenants are responsible for.
3. The Owner shall include with any lease or lease renewal notice provided to the Tenant a separate disclosure form, using the template provided by AHFC and in the language in which the Lease was negotiated, that includes a clear and conspicuous disclosure of the following:
- a. all charges for optional goods and services not included in the rent price, including: (1) what each good and service covers; (2) the amount of the charge for each good and service; (3) how the Tenant can cancel each good and service; and (4) the Tenant's right to receive access to the housing even if the Tenant does not opt in to receiving the good or service;
 - b. the opportunity for the Tenant in the form to opt in or out of the optional goods or services;
 - c. a list of utility charges the Tenant is responsible for; and
 - d. if the Owner offers the Tenant the option of paying a fee in lieu of a security deposit: (1) the opportunity for the Tenant in the form to opt into or out of the payment of fee in lieu, (2) the notifications required by the Texas Property Code; (3) notification regarding whether the payment in lieu is refundable; and (4) information on how the Tenant has the option to instead pay a security deposit and on the refundability of the security deposit.

#2. Restrict abuses with application and related administrative fees

The following are two options for restricting abuses around application fees and other fees associated with the application process. The first option would ban application fees, which is the approach that the States of Vermont⁶⁸ and Rhode Island⁶⁹ have taken. The second option allows for application fees but restricts them to the lesser of \$20 or certain third-party costs such as credit and background checks. New York, for example, has adopted a \$20 cap.⁷⁰ A third approach to consider is to bar all application fees while also creating a central portal for tenant background and credit reporting, along the lines of a program the City of Spokane created earlier this year.⁷¹ New York and Colorado also allow tenants to provide their own background or credit check.⁷²

XI. RESIDENT PROTECTIONS

Option 1: Ban on application fees

- X. The Owner or Owner's agent shall not charge an application fee, credit check fee, tenant screening fee, administrative fee, or any other nonrefundable fee to any individual as a condition of applying to enter into a rental agreement for a residential dwelling unit at the property.

Option 2: Cap on application fees

- X. The Owner or Owner's agent shall not charge an application fee, tenant screening fee, administrative fee, or any other nonrefundable fee to any individual as a condition of applying to enter into a rental agreement for a residential dwelling unit at the property unless:
- a. the total charge is limited to the lesser of (i) the cost of using a third-party tenant screening service or a consumer credit reporting service or (ii) \$20;
 - b. the fee is assessed in compliance with fair housing laws and the screening guidelines in section XI.B.2.e of these guidelines; and
 - c. the Owner has provided the applicant with the Owner's screening or admission criteria.

#3. Prohibit administrative fees

Another common type of junk fee being utilized by landlords is an administrative fee charged after the tenant applies for and is approved for a unit, and prior to the tenant's occupancy of the unit. These fees are promoted as covering a landlord's cost for processing the lease for the unit or as a deposit to hold the unit for the tenant. The following provision would prohibit this type of fee.

- X. The Owner or Owner's agent shall not charge an administrative fee, hold fee, or similar type of fee to an individual approved to lease a unit at the property as a condition of reserving or entering into a lease for a residential dwelling unit at the property.

Endnotes

¹Will Parker, *What's Worse Than Record High Rent? Record High Rent, Plus Fees*, THE WALL ST. J. (Sept. 5, 2023), <https://www.wsj.com/real-estate/whats-worse-than-record-high-rent-record-high-rent-plus-fees-4ddb12f>; Irina Ivanova, *Rents are too damn high — and a scourge of “junk” fees is making it worse, studies say*, CBS NEWS (Apr. 14, 2023), <https://www.cbsnews.com/news/rent-inflation-junk-fees/>; MAJORITY STAFF OF H.R. COMM. ON FIN. SERVS., 117TH CONG., JUNE 28, 2022, SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS HEARING ENTITLED, “WHERE HAVE ALL THE HOUSES GONE? PRIVATE EQUITY, SINGLE FAMILY RENTALS, AND AMERICA’S NEIGHBORHOODS,” at 5 (June 23, 2022), https://www.merkley.senate.gov/wp-content/uploads/imo/media/doc/financial_service_committee_report.pdf (noting that from 2018 to 2021 the five largest owners and operators of single-family rental homes in the United States increased annual fees by approximately 40 percent).

²FIGHTING JUNK FEES, NAT’L CONSUMER L. CTR. (Oct. 31, 2023), <https://www.nclc.org/fighting-junk-fees/>.

³*Id.*

⁴*Id.*

⁵See Appendix 1. Altura Apartments has a 50 percent property tax exemption under Chapter 11.1825 of the Property Tax Code, which requires the owner to charge affordable rents at the property.

⁶TICKET Act, S. 1303, 118th Cong. (2023); Tex. H.B. 1497, 88th Leg., R.S. (2023); Tex. H.B. 4084, 88th Leg., R.S. (2023).

⁷*Paxton Secures Agreement with Marriott to End Hidden Hotel Fees and Ensure Transparency*, ATT’Y GEN. OF TEX. (May 16, 2023), <https://www.texasattorneygeneral.gov/news/releases/paxton-secures-agreement-marriott-end-hidden-hotel-fees-and-ensure-transparency>.

⁸*Fact Sheet: Biden-Harris Administration Takes on ‘Junk Fees’ in Rental Housing to Lower Costs for Renters*, THE WHITE HOUSE (July 19, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/>.

⁹*FTC Proposes Rule to Ban ‘Junk Fees’*, FEDERAL TRADE COMMISSION (October 11, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-proposes-rule-ban-junk-fees>.

¹⁰See, e.g., N.Y. REAL PROP. § 238-a(1)(b) (2023); OR. REV. STAT. ANN. § 90.302 (2023); 2023 MINN. SESS. LAW SERV. Ch. 52 (S.F. 2909); UTAH CODE ANN. § 57-22-4 (2023); SEATTLE, WA., CODE § 7.24 (2023).

¹¹End Junk Fees for Renters Act, H.B. 4907, 118th Cong. (2023).

¹²See FIGHTING JUNK FEES, NAT’L CONSUMER L. CTR. (Oct. 31, 2023), <https://www.nclc.org/fighting-junk-fees/>.

¹³See *generally* Ariel Nelson et al, TOO DAMN HIGH, NAT’L CONSUMER L. CTR. (March 2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

¹⁴See Appendix A.

¹⁵See Appendix A.

¹⁶Interview with Shoshana Krieger, Project Dir., Building and Strengthening Tenant Action, in Austin, Tex. (Sept. 11, 2023).

¹⁷Ariel Nelson et al, TOO DAMN HIGH, NAT’L CONSUMER L. CTR., at 24 (March 2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

¹⁸Interview with Shoshana Krieger, Project Dir., Building and Strengthening Tenant Action, in Austin, Tex. (Sept. 11, 2023); Email from Shoshana Krieger, Project Dir., Building and Strengthening Tenant Action, Dec. 4, 2023 (on file with authors).

¹⁹26 C.F.R. § 1.42-11 (2005) (“The cost of services that are required as a condition of occupancy must be included in gross rent . . .”).

²⁰Interview with Shoshana Krieger, Project Dir., Building and Strengthening Tenant Action, in Austin, Tex. (Oct. 2, 2023).

²¹See *Residential Lease*, TEXAS ASSOCIATION OF REALTORS, at 3 (2022), <http://content.har.com/FormManager/pdf/79.pdf>.

²²Ariel Nelson et al, TOO DAMN HIGH, NAT’L CONSUMER L. CTR., at 7, 20 (March 2023).

²³*Id.* at 12-13.

²⁴*Id.* at 15.

²⁵*Id.* at 18.

²⁶Elizabeth J. Mueller, *Improving housing conditions and stability for residents of “Naturally Occurring Affordable Housing” in Austin, Texas*, at 9 (unpublished report) (on file with author).

²⁷Ariel Nelson et al, TOO DAMN HIGH, NAT’L CONSUMER L. CTR., at 26 (March 2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>.

²⁸*Id.* at 26.

²⁹See Appendix 1.

³⁰Ariel Nelson et al, TOO DAMN HIGH, NAT’L CONSUMER L. CTR., at 16 (March 2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>

³¹*Id.* at 18.

³²*Id.*

³³*Id.* at 10.

³⁴*Id.* at 16.

- ³⁵ *Id.* at 20-21.
- ³⁶ *Id.* at 22.
- ³⁷ Interview with Shoshana Krieger, Project Dir., Building and Strengthening Tenant Action, in Austin, Tex. (Oct. 2, 2023).
- ³⁸ See Appendix 1.
- ³⁹ *Id.*
- ⁴⁰ Acts 2021, 87th Leg., R.S., Ch. 189 (S.B. 1783), codified at TEX. PROP. CODE, § 92.111.
- ⁴¹ TEX. PROP. CODE, § 92.111(g).
- ⁴² MINN. STAT. § 504B.120 (2023).
- ⁴³ UTAH CODE § 57-22-4(3)(a)(i-ii) (2021).
- ⁴⁴ SEATTLE, WASH., MUN. CODE § 7.24.030(E) (2021).
- ⁴⁵ OR. REV. STAT. § 90.302 (2019).
- ⁴⁶ 2023 Conn. Acts No. 23-207 (Reg. Sess.).
- ⁴⁷ MONTGOMERY, MD., CODE § 29-30(a)(5).
- ⁴⁸ SEATTLE, WASH., MUN. CODE § 7.24.030 (2021); OR. REV. STAT. § 90.220 (2021).
- ⁴⁹ See AUSTIN, TEX., CODE Ch. 4-14, Art. 3 (2022).
- ⁵⁰ Treas. Reg. § 1.42-11(a) (2000).
- ⁵¹ *Id.* at §§ 1.42-11(b), (c) (2000).
- ⁵² CITY OF AUSTIN, DEVELOPMENT INCENTIVE PROGRAMS AND AGREEMENTS GUIDE TO INCOME DETERMINATION, RENTS, COMPLIANCE, AND MONITORING 1 (2023).
- ⁵³ *Affordable Housing Development Funding*, CITY OF AUSTIN, <https://www.austintexas.gov/page/affordable-housing-development-funding> (last visited Nov. 21, 2023).
- ⁵⁴ CITY OF AUSTIN, AUSTIN HOUS. FIN. CORP., PROGRAM GUIDELINES, RENTAL HOUSING DEVELOPMENT ASSISTANCE PROGRAM, https://www.austintexas.gov/sites/default/files/files/Housing_%26_Planning/RHDA%20Guidelines%20-%20Feb%201%2C%202021.pdf (hereinafter referred to as “RHDA Guidelines”) (2021).
- ⁵⁵ *Id.* at 35.
- ⁵⁶ See Appendix 1.
- ⁵⁷ CITY OF AUSTIN, DEVELOPMENT INCENTIVE PROGRAMS AND AGREEMENTS GUIDE TO INCOME DETERMINATION, RENTS, COMPLIANCE, AND MONITORING 3 (2023).
- ⁵⁸ See SPOKANE, WASH., ORD. C-36366 (Feb. 27, 2023).
- ⁵⁹ City of Austin, *Affordable Housing Development Funding*, <https://www.austintexas.gov/page/affordable-housing-development-funding> (last visited Nov. 21, 2023).
- ⁶⁰ RHDA Guidelines.
- ⁶¹ Tenant Protection Lease Addendum, § 8.5.1, at 4, App. A in RHDA Guidelines, Feb. 1, 2021 (hereinafter referred to as “RHDA Lease Addendum”).
- ⁶² RHDA Lease Addendum, § 4.16, at 2.
- ⁶³ RHDA Lease Addendum, § 4.12, at 2.
- ⁶⁴ RHDA Guidelines, § II. Definitions (“Affordable Rent/Eligible Rent”), at 2, and § IX.D.1., at 32.
- ⁶⁵ RHDA Lease Addendum, § 4.13, at 2.
- ⁶⁶ RHDA Lease Addendum, §§ 5.11 and 5.2.1.3, at 2-3.
- ⁶⁷ For example, at the apartment complexes in Hyde Park that were recently acquired by the City of Austin in partnership with the Austin Housing Conservancy with General Obligation bond funds, the tenants were being subjected to several add-on fees that were not disclosed with the lease quotes provided to prospective tenants. See Appendix 1 (based on information provided in December 2023).
- ⁶⁸ VT. STAT. ANN. tit. 9, § 4456 (Lexis Advance through 2023 Reg. Sess.).
- ⁶⁹ R.I. GEN. LAWS, § 34-18-58 (2023).
- ⁷⁰ N.Y. REAL PROP. LAW § 238-a(1)(b) (Consol., Lexis Advance through 2023 released Chapters 1-607).
- ⁷¹ Spokane, Wash., Ordinance C-36366 (Feb. 27, 2023).
- ⁷² N.Y. REAL PROP. LAW § 238-a(1)(b); COL. REV. STAT. § 38-12-902 (2023).