



CITY OF KIRKLAND
Planning and Building Department
123 Fifth Avenue, Kirkland, WA 98033
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Adam Weinstein, AICP, Planning and Building Director
Dawn Nelson, Planning Manager

Date: April 26, 2022

Subject: TENANT PROTECTION POLICIES AND A REGIONAL COALITION FOR HOUSING (ARCH) MONITORING FEES, FILE PLN22-00001

RECOMMENDATION

It is recommended that the City Council provide staff direction on two issues that will increase tenant protections and help monitor compliance with affordable housing covenants but will also impact owners of rental housing in Kirkland. The first item is proposed residential tenant protections related to significant rent increases and fees. The second is proposed monitoring fees for affordable housing units administered by A Regional Coalition for Housing (ARCH).

BACKGROUND DISCUSSION

As described in more detail in Attachment 1, a combination of economic factors associated with the COVID-19 pandemic and the increasing influx of high-wage jobs into the region has created housing affordability challenges across the community, but particularly for lower-income households. The ongoing growth in median income in the community has exerted additional pressure on the housing market, raising housing prices, while land costs, supply chain issues and constraints in the construction labor market have made it more difficult to increase housing supply. The net result is that it is more difficult than ever for lower-income households to find and remain in affordable housing. These factors are also compounded by the highest inflation in decades. The first policy change described below relates to providing some tenant protections for lower-income residents by requiring expanded notice of large rent increases and capping move in fees and late fees. The second policy change helps ensure that compliance monitoring of ARCH affordable housing units can be achieved with a long-term, sustainable funding source in order to preserve the existing limited supply of ARCH affordable housing.

TENANT PROTECTION POLICIES

At its April 14, 2022 meeting, the ARCH Executive Board passed Resolution No. 2022-01 (see Attachment 2) recommending that member jurisdictions consider adopting consistent local measures that establish, at a minimum, the following tenant protections:

1. Notice of Rent Increase. Require landlords to provide a minimum 120 days written notice of rent increases greater than 3%, and 180 days notice of rent increases greater than 10%, except in subsidized housing where rent is based on tenant income.
2. Limits on Late Fees. Establish a cap on fees for late payment of rent at 1.5% of a tenant's monthly rent.
3. Limits on Move-In Fees. Establish a cap on move-in fees and security deposits of no more than one month's rent, except in subsidized tenancies where rent is based on tenant income, and allow tenants to pay in installments.

The basis of this recommendation is the convergence of multiple housing issues including: anticipated double digit increases in the United States Department of Housing and Urban Development (HUD) area median income (AMI) for the region and the resultant increases to rent limits established for affordable housing units; the lifting of the COVID-related state moratorium on rent increases; high inflation; and high housing demand. Attachment 2 provides background information from the ARCH Executive Board supporting its recommendation. If adopted by the Kirkland City Council, the proposed tenant protection policies would apply to all rental property owners.

Staff recommend that an ordinance implementing these tenant protection policies be brought to the Council at the May 17, 2022 Council meeting for discussion and possible action. However, staff is seeking Council direction on whether to proceed.

ARCH MONITORING FEES

In 2019, the ARCH Executive Board authorized the creation of a dedicated staff position at ARCH to monitor compliance with affordable housing covenants in both owner-occupied and rental units that are overseen by ARCH. Along with that, the Board expressed support for establishing annual monitoring fees to be paid by the owners of market-rate developments that include affordable housing units in order to support ARCH compliance monitoring staff costs. Monitoring fees are common among housing agencies like ARCH as shown in Attachment 3. At this time, ARCH staff are responsible for monitoring over 70 rental properties with affordable housing covenants created through development agreements with market-rate developers throughout east King County, with more affordable units in market-rate properties being added every year.

In July 2021, the ARCH Executive Board voted to approve a recommendation that for certain affordable housing units, member cities should impose an annual monitoring fee of \$50 per unit for affordable housing units created through inclusionary or bonus based affordable housing programs, with annual adjustments based on the Consumer Price Index (CPI). (Due to the CPI increase effective for fees in January 2022, the current recommended fee is \$54 per unit.) In addition, the Board recommended that where a property requires significantly greater efforts than typical to achieve compliance, that property should be charged based on the actual hourly cost of staff time (currently \$65 per hour). Attachment 3 includes the staff report presented to the ARCH Executive Board, along with a listing of the activities involved in compliance monitoring. The average project that would be subject to monitoring has 15 affordable housing units, resulting in a current annual monitoring cost of \$810.

The proposed monitoring fees are generally being established when cities create new affordable housing programs, as well as in cities like Kirkland that have existing affordable housing programs. Since late 2019, covenants recorded against properties with affordable housing units in ARCH jurisdictions have included placeholder language stating that the City reserves the right to establish fees to cover the costs of monitoring the affordable housing units for compliance with income and affordability restrictions. Kirkland staff chose not to propose new monitoring fees in 2021 due to the ongoing financial impact of the pandemic on landlords and tenants and Kirkland's focus on rental relief programs. However, as the economy rebounds and housing pressures spike, the need to monitor compliance for existing affordable units and prepare for affordable units that will come online is more important than ever. Staff is therefore initiating the conversation with the Council about implementing the authorized monitoring fees.

There are currently four properties in Kirkland where the covenant includes placeholder language for monitoring. Every future covenant will also include the monitoring language. The first of those covenants included the following placeholder verbiage:

Monitoring Fee. The City reserves the right to establish fees to cover the costs of monitoring the Affordable Units for compliance with the income and affordability restrictions of this Covenant. At least 90 days before the effective date of such fees the City shall provide the Owner notice of the proposed fee amount along with evidence supporting it and the date, time, and place at which the City will take public comment on the fee.

Based on this language, a public hearing on the fees must be scheduled, the fee must be adopted, and the effective date of the annual monitoring fee is proposed to be 90 days after adoption of the fee. Staff is recommending holding a public hearing at the May 17, 2022 Council meeting. Holding the hearing does not commit the Council to implementing the fee. Staff is seeking direction on whether to proceed with the hearing.

ATTACHMENTS

1. Letter to ARCH Members dated April 20, 2022
2. ARCH Resolution 2022-01
3. ARCH Rental Monitoring Fees dated July 2021

Cc: Lindsay Masters, ARCH, lmasters@bellevuewa.gov

April 20, 2022

ARCH Member Councils

Dear ARCH Member Mayors and City Councils,

We are writing to update you on the critical issue of rising rents that are significantly affecting affordability in our ARCH communities and share a set of recommended tenant protection policies from the ARCH Executive Board that we hope you will consider. Our goal in sharing these recommendations is to elevate the impacts of rent increases being experienced by renters in our region and encourage ARCH members to move quickly to consider a consistent set of protections focused on the economic impacts of rent increases.

As you know, the influx of high paying jobs into our region has created far reaching ripple effects in the housing market. One of these effects is to increase the basis by which rents are calculated for most affordable housing programs administered in our region, known as the HUD area median income (AMI). Based on preliminary data, ARCH expects that the newest increase in the HUD AMI will create **rent increases for low-income tenants upwards of 16% this year**. This follows a 6.5% increase that many tenants experienced after the state moratorium on rent increases was lifted last year. For a renter in a 2BR apartment, this could be the equivalent of a \$330 monthly rent increase.

Based on HUD data that was just published on April 19, ARCH is now required to prepare new rent limits and inform property owners, who are then allowed under the covenants to impose rent increases up to the new limits. Under current state law, a tenant would only have 60 days' notice before such an increase would take effect. This will have significant and immediate impacts on tenants, who you may hear from in the coming months.

These rent increases could not come at a worse time, with pressures from inflation compounding the impact of high housing costs, and King County's rental assistance fund soon to be exhausted. These increases will directly impact renters in the 1,843 affordable rental apartments currently monitored by ARCH, which are located in Bellevue, Issaquah, Kenmore, Kirkland, Mercer Island, Newcastle, Redmond, Sammamish and unincorporated King County. Further, the impacts of rent increases are not unique to affordable housing tenants, with rents surging 15% in the last year in East King County, and 13% in the broader Puget Sound.

ARCH MEMBERS

**BEAUX ARTS VILLAGE ♦ BELLEVUE ♦ BOTHELL ♦ CLYDE HILL ♦ HUNTS
POINT ♦ ISSAQUAH ♦ KENMORE ♦ KIRKLAND ♦ MEDINA ♦ MERCER
ISLAND ♦ NEWCASTLE ♦ REDMOND ♦ SAMMAMISH ♦ WOODINVILLE ♦ YARROW
POINT ♦ KING COUNTY**

While we are pursuing longer-term strategies to address the shortage of affordable housing, we also know that other safety nets can make a critical difference to households faced with large rent increases. In light of these circumstances, the **ARCH Executive Board approved the attached Resolution 2022-01, which includes a set of recommended policies aimed at mitigating the impacts of rent increases and encouraging consistency in local regulations in our region.** The primary recommendations are:

- a. Require landlords in most cases to provide a minimum of 120 days' written notice of rent increases greater than 3%, and 180 days' notice of rent increases greater than 10%.
- b. Establish a cap on fees for late rental payments of at 1.5% of a tenant's monthly rent.
- c. Establish a cap in most cases on move-in fees and security deposits of no more than one month's rent and allow tenants to pay in installments.

While city councils may wish to take more time to consider a much broader set of tenant protection measures, ARCH encourages your timely consideration of the three policies identified in the resolution.

We appreciate your ongoing commitment to promoting and preserving housing affordability and stability in our region. ARCH staff are ready to provide support and technical assistance to jurisdictions taking up these measures, including sharing information from other jurisdictions who have already enacted similar measures, or preparing sample ordinances for review. Please don't hesitate to contact us with any questions.

Sincerely,


Kurt Triplett
Executive Board Chair


Lindsay Masters
Executive Director

RESOLUTION NO. 2022-01

A RESOLUTION OF THE EXECUTIVE BOARD OF A REGIONAL COALITION FOR HOUSING (ARCH), MAKING RECOMMENDATIONS CONCERNING LOCAL TENANT PROTECTION POLICIES AND LAWS FOR CONSIDERATION BY ARCH MEMBER JURISDICTIONS.

WHEREAS, A Regional Coalition for Housing (ARCH) was created by interlocal agreement to help coordinate the efforts of Eastside cities to provide affordable housing; and

WHEREAS, the ARCH Interlocal Agreement (ILA) establishes a common purpose among ARCH members of acting cooperatively to formulate affordable housing goals and policies; and

WHEREAS, the ARCH ILA establishes an Executive Board with responsibility for providing recommendations to ARCH member jurisdictions regarding local and regional affordable housing policies; and

WHEREAS, recent Census data estimated that 25,870 renter households in ARCH member jurisdictions are cost-burdened, paying more than 30% of income toward housing costs, and 12,550 renter households are severely cost-burdened, paying more than 50% of income toward housing costs; and

WHEREAS, local rental assistance programs are finite and have exhausted or nearly exhausted available resources for renters, and such programs are often limited to tenants who have received eviction notices; and

WHEREAS, residents of affordable rental housing created by ARCH member jurisdictions' policies and programs are subject to annual rent increases, based on changes in the area median income (AMI) as published by the Department of Housing and Urban Development (HUD); and

WHEREAS, such residents will be subject to significant expected rent increases in 2022, which are anticipated to create significant cost burdens, economic displacement and other negative impacts;

NOW, THEREFORE, the ARCH Executive Board resolves as follows:

Section 1. Findings

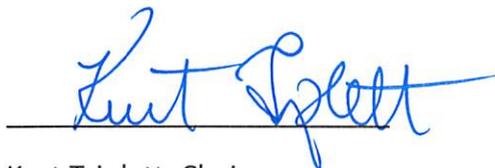
The Executive Board finds that preserving and promoting housing affordability and stability for existing residents living within ARCH member jurisdictions is an immediate and high priority. Further, the Executive Board finds that it is in the shared interests of ARCH member jurisdictions to advance common policies promoting and preserving housing affordability and stability, including policies establishing certain legal protections for tenants, and that such policies are urgently needed to help to mitigate the impact of significant rent increases expected this year and in coming years.

Section 2. Recommendations

The Executive Board recommends that ARCH member jurisdictions consider adopting consistent local measures that at a minimum establish the following tenant protections:

- a. Notice of Rent Increase. Require landlords to provide a minimum of 120 days' written notice of rent increases greater than 3%, and 180 days' notice of rent increases greater than 10%, except in subsidized housing where rent is set based on the income of the tenant.
- b. Limits on Late Fees. Establish a cap on fees for late payment of rent at 1.5% of a tenant's monthly rent.
- c. Limits on Move-In Fees. Establish a cap on move-in fees and security deposits of no more than one month's rent except in subsidized tenancies where rent is set based on the income of the tenant, and allow tenants to pay in installments.

Approved this 14th day of April, 2022.



Kurt Triplett, Chair

ITEM 4B: Rental Monitoring Fee

Recommendation for implementation of a new rental monitoring fee

Background

As described in item 4A, ARCH is currently responsible for monitoring over 70 rental properties with affordable housing covenants created through development agreements, land use and incentive programs with member jurisdictions, with more properties joining every year. The affordable units in these properties make up the ARCH Rental Program. In 2019, the Board approved ARCH's first dedicated position for rental compliance, and expressed its support for the following recommendations:

- For new land use/incentive programs, establish annual monitoring fees to be paid by individual property owners.
- Amend existing land use/incentive programs to authorize monitoring fees, and/or utilize existing authority in future agreements.
- Create a local dedicated revenue source to fund and sustain housing programs more broadly.

ARCH has since worked with cities on the first two recommendations, recommending that any new programs authorize monitoring fees, and incorporating provisions for collection of a monitoring fee in new covenants. The following language was developed in consultation with legal counsel:

Monitoring Fee. The City reserves the right to establish fees to cover the costs of monitoring the Affordable Units for compliance with the income and affordability restrictions of this Covenant. At least 90 days before the effective date of such fees the City shall provide the Owner notice of the proposed fee amount along with evidence supporting it and the date, time, and place at which the City will take public comment on the fee.

While there is no avenue for retroactively imposing fees on the large number of properties already under ARCH monitoring, new projects do provide an opportunity to begin laying a foundation for future revenue. To fully implement these fees, staff are seeking a recommendation from the Board to establish a unified policy and rate of the annual monitoring fee. This recommendation would be referred to individual cities, which may have additional processes or approvals needed to implement the proposed fee. ARCH would coordinate with cities to provide a public comment period.

Fees Charged by Other Programs

ARCH examined a sample of other agencies that perform compliance monitoring in affordable housing, and found a range of fees, with some including additional fees for properties that necessitated a high volume of monitoring or that submitted late reports. Some jurisdictions, like Seattle and Bellingham, have other dedicated funding sources to support administration, so there is less pressure to rely on fees. A per unit fee is typical, though the average number of units in a typical project varies widely depending on the affordable housing program.

Agency	Description
Washington State Housing Finance Commission	<p>Monitors compliance of tax credit and tax-exempt bond financed properties across Washington state (typically all affordable projects)</p> <p>Fee of \$45 per unit, with a minimum fee of \$450. Streamlined monitoring of \$35 per unit is available for qualifying properties after 15 years.</p>
Seattle Office of Housing	<p>Monitors compliance of MFTE projects, incentive zoning projects, Mandatory Housing Affordability (MHA) projects, and direct funded projects.</p> <p>Flat fee of \$10,000 for MFTE projects. Fee of \$165 per unit per year for MHA units. Fee of \$65 per unit per year for IZ units.</p>
City of Everett	\$650 base fee plus \$25 per unit, capped at \$1,000
City of Bellingham	<p>Monitors compliance of MFTE projects. \$500 flat annual fee</p>
City of Vancouver	<p>Monitors compliance of MFTE projects. \$500 flat annual fee. Late fees also apply.</p>
San Diego Housing Commission	<p>Monitors compliance with affordability requirements from the city’s Inclusionary Housing law, Density Bonus land-use regulations, state and federal Multifamily Housing Revenue Bond tax credits, and housing built with direct financial support.</p> <p>Fee of \$150 per monitored unit. In the event a Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports) the Commission, in its sole discretion, may elect to charge an additional fee based on an hourly rate of \$100.</p>
City of Berkeley Housing & Community Services Division	<p>Monitors below market rate (BMR) rental units created under the Inclusionary Housing and Affordable Housing Mitigation Fee Ordinances.</p> <p>Fee is \$432 per BMR unit per year, with a 30-day late fee equal to 10%, and 60-day late fee of 20%.</p>

Basis for Proposed Fee Amount

To establish a basis for the fee, staff created a summary of the basic tasks necessary to monitor compliance. Some of these are performed on a program-wide basis, which creates efficiencies because of the large number of projects already being monitored. These hours were spread across the existing properties in the program and divided by the total number of units in the program, resulting in a current estimated 14 hours of work per unit per year

on average. These hours represent solely the work required for monitoring compliance, and do not include time spent on program data analysis, evaluation, reporting, and development (for example, work to build out ARCH's website and online reporting tools, or analyze tenant demographics). Using the current average of 14 hours per project per year, applied to the hourly cost of salary and benefits for a program administrator position, the result is approximately \$50 per unit per year, based on an average of 15 units per project. This cost does not take into account other overhead costs (rent, utilities, office supplies, etc.).

ARCH staff are also supportive of an increased fee for properties that require significantly greater efforts to monitor and achieve compliance. Currently, contracts do not include practical administrative remedies to motivate properties to comply, and ARCH would like to use tools other than legal action to incentivize cooperation. Examples of properties that require high volumes of monitoring include:

- Properties that have not submitted reports on time and did not apply for extensions that were offered, requiring staff to follow up at least three times over a period of more than 30 days to obtain the required report
- Properties that did not respond to multiple requests for corrective actions identified in the ACR review checklist, requiring staff to continually follow up until corrections are made
- Properties that are frequent offenders, committing recurring compliance mistakes multiple years in a row (at least two years in a row)
- Properties that commit gross violations of covenant terms in a single year that require significant re-training and corrective actions (e.g., renting to multiple ineligible households, incorrectly charging rent/fees to multiple tenants, etc.)

Options

The Board has the following options:

1. Approve a recommendation to member cities and ARCH staff to institute a \$50 per unit per year monitoring fee, with annual adjustments based on CPI. The fee would be invoiced by ARCH when ACRs are submitted. An increase to the fee would apply to properties that require a high volume of monitoring based on the actual hourly cost of staff time (currently \$65/hour to cover salary and all benefits).
2. Do not recommend a monitoring fee, and continue to rely solely on member dues to pay for rental monitoring staff.
3. Provide other direction to staff.

Staff Recommendation

Staff recommend the Board approve Option 1. Note that staff will report to the Board on substantive comments provided during any public comment period coordinated with members.

Attachments

1. Compliance Monitoring Activities

Compliance Monitoring Activities

Initial

- Create project file (agreements, unit tracking sheet, contact info)
- Contact owner/property manager during construction
- Meeting to review covenant requirements
- Explain marketing process through ARCH
- Market available units to ARCH list, respond to interest

Annually for All Projects

- Prepare and distribute annual report form
- Develop and circulate new income/rent guidelines, allowances
- Develop and update educational materials/compliance manual
- Develop and update compliance procedures
- Prepare and conduct quarterly trainings for all property managers
- Maintain website, apartment list
- Maintain program database, updated contacts

Annually for Each Individual Project

- Review project annual compliance report
- Follow up on discrepancies/overdue reports
- Issue performance letters/certification of compliance
- Provide compliance assistance
- Follow up on tenant reports of potential violations
- Maintain project file (unit swaps, management/ownership changes)

Audit Cycle - Every 3 years, and Based on Report Discrepancies

- Contact PM to set up on-site inspection
- Conduct inspection of on-site files
- Follow up on file discrepancies, document resolution

Minor Enforcement – Estimated 4% of projects

- Conduct investigation into scope of violation
- Review agreements and determine appropriate remedy
- Develop and issue corrective notices
- Follow up to confirm/document corrective actions are completed

Major Enforcement – Estimated 1% of projects

- Conduct investigation into scope of violation
- Work with city attorney to determine remedy
- Develop and issue corrective notices
- Follow up to confirm corrective actions