

# **DRAFT REPORT: Waitlists for Rental Units in Ann Arbor**

A Report Produced by The Waitlist Working Group of the Ann Arbor Renters Commission

## Purpose

This report was commissioned by the Ann Arbor Renters Commission and written by a subgroup of its members in response to public input from city residents regarding waitlists for rental units. These waitlists were recently instituted by many landlords in the city and often include mandatory fees, raising concerns about their impact on tenants, particularly low-income tenants. In this report, we compile available information on the waitlist policies of Ann Arbor landlords and also discuss what we know about the impact of waitlist fees on tenants. We seek to provide these important facts to the Renters Commission and to City Council with the hope that this report can inform any future efforts to regulate waitlists and waitlist fees.

## Background

In August 2021, the Ann Arbor City Council passed an [amendment](#) to the already existing Early Leasing Ordinance (ELO) ([8:530](#)) that prohibits landlords from showing apartments in person or signing new lease agreements with prospective tenants before 150 days are remaining on the current tenant's lease. For instance, for a lease that ends August 20th, 2023, the landlord cannot show or sign a lease with a prospective tenant until March 23rd, 2023. Before the ELO was amended in 2021, the older version of the ELO allowed landlords to start showing apartments, or signing subsequent leases, after 70 days of the current leasing period had passed. Under the old ELO that is no longer in effect, a lease that began on August 20th, would be available to lease to any tenant on October 29th.

About one month after the new ordinance was passed, the [Washtenaw Area Apartment Association \(WA3\)](#), which represents rental property owners, [filed a lawsuit](#) against the city of Ann Arbor seeking to overturn the ordinance. The WA3 voluntarily [dismissed the lawsuit](#) in December 2021.

As the current ELO prohibits landlords from signing leases with new tenants for the fall until March of that same year (generally about 5 months before the lease would begin) many landlords began to maintain reservation lists or waitlists for prospective tenants interested in certain units. Several landlords charge a fee to be placed on the waitlist. Some landlords charge fees that are refundable, others charge only nonrefundable fees. Other landlords instruct prospective tenants to sign leases before the 150-day point but wait to countersign the lease.

After the passage of the amended ELO, Landlords began reaching out to existing tenants to request renewal commitments from them well in advance of the 150-day time point (before the end of the lease) required by the newly amended ELO. As an incentive to renew early, some [landlords are offering](#) to cap the rental rate for the following year.

## Waitlist Policies

### Waitlist Agreements

Since September 2021, landlords have begun asking tenants to enter into verbal or written (Figures 1, 2) waitlist agreements to secure a spot on reservation lists or waitlists for occupied apartments. These agreements are also known as “holding” and “options” agreements. [Table 1](#) contains a non-exhaustive list of landlords who have been following this practice. Two sample waitlist agreement forms received by tenants since Fall 2021 are shown in [Figures 2](#) and [3](#). Tenants on the waitlist will be offered a lease in the order of when they joined; when a tenant refuses the offer, the offer goes to the next tenant(s) on the waitlist. The exact details of these waitlist agreements differ from landlord to landlord and it is not known what if any communication between landlords occurred before the adoption of these waitlist agreement systems.

### Waitlist Fees

Some landlords charge current and prospective tenants a waitlist fee to join a list of prospective tenants who will be prioritized in an ordered manner to receive the opportunity to sign a lease. Landlords use different terms to describe these fees such as “no hassle fees,” “holding fees,” and “option fees.” According to our research, the dollar amount of these fees ranges from \$150 to approximately \$10,000 per rental unit (Table 1) although we do not have information on the practices of all landlords in the city. These fees are usually different from other kinds of fees such as application fees, but in some instances applications fees are in effect a fee to be placed on a waitlist.

### First Notification to Tenants

Many landlords begin advertising apartments for the next leasing cycle less than three months after the current leasing period begins. Tenants whose leases began in August 2021 were notified that landlords would open waitlists for their apartments by November 2021. This practice continued in 2022 and many tenants who started their leases in August 2022 have already been contacted to apply to join a waitlist for the next leasing cycle.

### Rationale Provided by Landlords

In their communication to tenants, landlords have provided the following reasons for maintaining these waitlists:

- Landlords claim to receive phone calls from hundreds of tenants who prefer to look for rental housing 10 months ahead of time.
- If they comply with ELO timelines, the landlord claims their operations would be negatively affected because their leasing staff would have limited work in the fall and winter months.

- Following ELO timelines would “flood the housing market causing a wave of demand and inflation.”

### **Refund Policies**

Landlords did not adopt a uniform refund policy. Some landlords state that their waitlist fee is entirely non-refundable if the applicant decides not to proceed with the preferred unit. A sample email between a local landlord and tenant in Oct 2022 on the subject of waitlist fees is shown in [Figure 4](#).

### **Non-Waitlist Rental Policies**

Wessinger Properties does not maintain a waitlist for its rental units. [Wessinger Properties Policy](#)

### **Impacts of Waitlist Fees**

Members of the Commission have received the following concerns from tenants, parents of tenants, and landlords regarding waitlist fees:

- Waitlist fees are much higher than other fees they are aware of such as application fees that often range between \$50-100. Waitlist fees are in some cases over \$500 per tenant. In many instances the waitlist fees are in addition to other fees, making the overall renting experience very costly.
- High-income tenants have the money to join multiple waitlists at once, but many low-income tenants are unable to do so, giving high-income tenants an unfair advantage in finding a rental unit.
- Asking current tenants to join waitlists for their own apartments can be used to coerce tenants into committing to renewing their leases early.
- Tenants on a waitlist for a unit who did not sign the lease reported difficulties getting their waitlist deposits back (in the cases of refundable fees). Student Legal Services has been working with students who paid waitlist fees but did not secure an apartment unit.

In addition to these concerns, the Commission has discussed the probable disproportionate effect of waitlist fees on low-income renters and renters of color. According to data in the national 2021 Zillow Consumer Housing Trends Report,<sup>1</sup> Black and Latino renters on average submit more applications than white renters and pay fees that are 30% more expensive. While waitlist fees are distinct from application fees, waitlist fees would possibly follow this existing trend. Additionally, because renters of color submit more applications, they would have to pay more money to join more waitlists, potentially having a disproportionately negative impact on renters of color.

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<sup>1</sup> <https://www.zillow.com/research/renters-of-color-higher-fees-30922/>

## Recommendations

1. Waitlist fees (refundable as well as non-refundable fees) to prospective tenants should be prohibited for the following reasons:
  - a. In our view, landlords are not providing a service to tenants in return for waitlist fees, nor are they covering any costs associated with leasing the apartment. Therefore there is no justifiable purpose for charging these fees.
  - b. Waitlist fee policies are disadvantageous to low-income tenants who might not be able to afford to incur these costs.
2. Reservation lists for any apartment that has more than 150 days remaining on the lease should be prohibited for the following reasons:

## Sections 8:530 and 8:531 in Chapter 105 of the housing code were Relevant Policies in Other Cities

- Outright bans on application and screening fees (Massachusetts, Vermont).
- Landlords can only charge enumerated fees (and no others) (Seattle, Massachusetts).
- Fees must be connected to the reasonable cost for the purpose of the fee charged (Alaska).
- Application fees are capped at a certain dollar amount or percentage (California, Delaware).

Many states and municipalities regulate application fees. Like waitlist fees, application fees constitute pre-leasing fees that don't guarantee a lease. Because of this parallel, we believe the reasoning behind regulating application fees applies to regulating waitlist fees as well. Thus, it can be helpful to look at the policies of other localities that regulate application fees, even if they don't explicitly mention waitlists.

## Sources of Information

We reviewed several sources while preparing this report:

1. The Ann Arbor Department of Rental Housing developed a [form](#) to address tenants' complaints of ELO violations. The Renters Commission received access to the log of complaints, copies of redacted leasing complaint forms, and attachments of emails exchanged between tenants and landlords in September 2022.
2. Since the Fall of 2021, tenants have informed the University of Michigan Graduate Employees' Organization (GEO) and the Ann Arbor Tenants Union (AATU) about what they considered violations of ELO. The authors of this report reviewed all complaints pertaining to waitlist agreements.
3. The University of Michigan Student Legal Services received complaints from tenants who were being asked to join waitlists in Fall 2021, and tenants who were having difficulty getting waitlist fees refunded in 2022.
4. Tenants submitted complaints directly to members of the Renters Commission.
5. Members of the Renters Commission contacted landlord companies directly to inquire about their waitlist policies.



## Figure 1: Communication Regarding Verbal Waitlist Agreement with Hanna Realty LLC

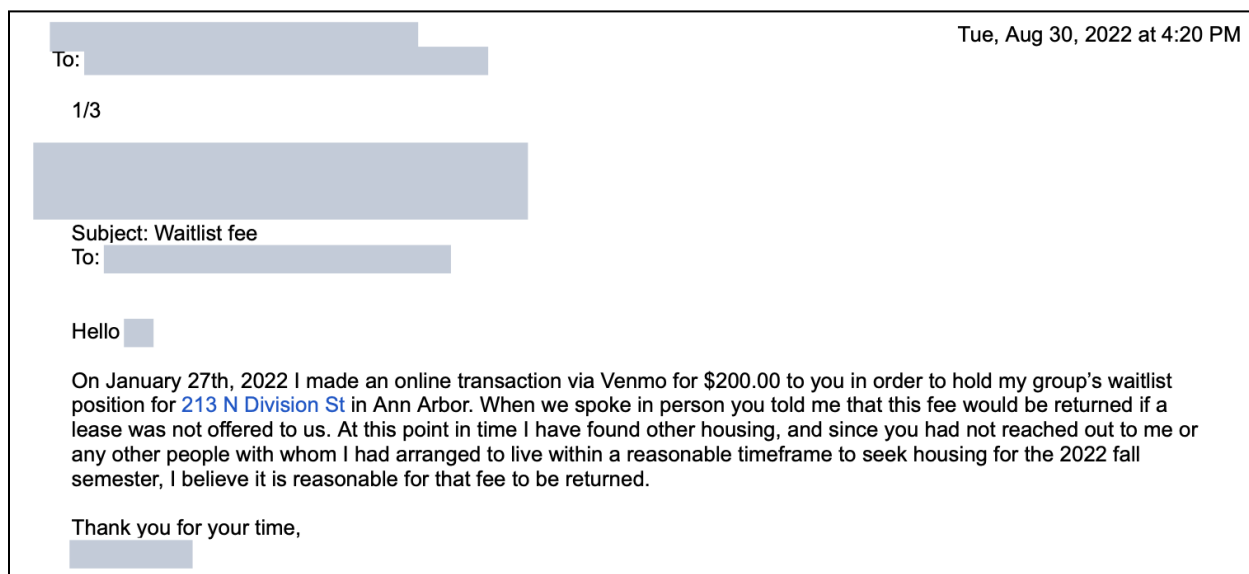


Figure 1. This email was sent by an Ann Arbor tenant to a member of the Renters Commission. It describes a verbal agreement waitlist agreement that involved a \$200 waitlist fee paid via Venmo. After five attempts to contact the landlord and reacquire the supposedly refundable waitlist fee from Hanna Realty LLC, the tenant communicated to the landlord that they were going to file a case in small claims court; the waitlist fee was returned within 30 minutes.

**Figure 2: Prime Student Housing Priority Waitlist Form**

Good afternoon,  
Here is the main document that needs looking over:

**Office Use:** Date \_\_\_\_\_ Time \_\_\_\_\_ Available Date to Sign \_\_\_\_\_  
 Transfer from bld \_\_\_\_\_, apt \_\_\_\_\_ Name of Resident Transferring: \_\_\_\_\_  
 Parking: YES / NO # of Pass \_\_\_\_\_ \$ \_\_\_\_\_ per month

**OPTION AGREEMENT**  
Priority Wait List

I (We) \_\_\_\_\_ hereby agree to purchase an Option, as described below, from Prime Student Housing, Inc. (Prime), agent for Landlord, in the amount of **\$9,850.00**  
 This Option is not binding until the Option Fee is paid in full and all monies paid towards this purchase are non-refundable. Below are our choices:

	Building	Apt/Style	Price Range
<b>1st Choice:</b>	<u>312 S Thayer</u>	<u>Sb 2b - Apt 2</u>	<u>\$3,860.00</u>
<b>2nd Choice:</b>	_____	_____	_____
<b>3rd Choice:</b>	_____	_____	_____
<b>4th Choice:</b>	_____	_____	_____

I (We) acknowledge that by signing this Option Agreement I (We) are not signing nor obligated to sign a Lease Agreement of any apartment. Further, I (We) acknowledge the Option amount described above will be non-refundable if the apartment, or similar apartment in the building is available and I (We) decline to exercise the Option to sign a Lease Agreement for any reason.

I (We) understand the Option amount will be refundable only if the apartment or similar apartment in the building is unavailable, at Prime's sole discretion, and this will fulfill all of Prime's obligations under this Agreement.

I (We) further agree that within 72 hours after 12:01am on March 19, 2023, will choose whether or not to exercise this Option by executing a Residential Lease. Upon execution of a Residential Lease by me (us), the Option Fee shall be applied to the Residential Lease. If I (We) fail and/or refuse to execute a Residential Lease, the Option Fee shall be retained by Prime as liquidated damages.

1st Payment	<u>\$3,860.00</u>	Due at Signing	<u>11/14/2022</u>
2nd Payment	<u>\$5,990.00</u>	Due in 60 Days	<u>1/13/2023</u>

Agreement entered into this 14 day of November, 2022, by \_\_\_\_\_

Figure 2. This waitlist agreement from Prime Student Housing includes a \$9,850 waitlist fee that is to be refunded only if “the apartment or similar apartment in the building is unavailable.” Prime Student Housing waits to offer the lease according to the timeline put forth by the amended Early Leasing Ordinance.



**Figure 3: “Lease Option” Form from ISSA Properties**

**LEASE OPTION**

I/We \_\_\_\_\_ (Prospects) hereby agree to pay \$ \_\_\_\_\_ (Option Fee), to ISSA Properties, agent for Landlord, for the right and option (Option) to execute a Residential Lease for the apartment below. This Option is not binding until the Option Fee is paid in full and all monies paid towards this purchase are non-refundable.

Landlord: \_\_\_\_\_  
 Address: \_\_\_\_\_ Apt # \_\_\_\_\_

**Option Payment Schedule**

Due Upon Option Signing: \$ \_\_\_\_\_ = First Month's Rental Installment  
 Due Date \_\_\_\_\_: \$ \_\_\_\_\_ = 1.5 x Rental Installment + \$150.00

Prospects further agree that within 72 hours after 12:01am on March 19, 2022, they will choose whether or not to exercise this Option by executing a Residential Lease. Upon execution of a Residential Lease by Prospects, the Option Fee shall be applied to the Residential Lease. If Prospects fail and/or refuse to execute a Residential Lease, the Option Fee shall be retained by ISSA Properties as liquidated damages.

The foregoing \_\_\_\_\_ 20\_\_\_\_ by,  
 Signature \_\_\_\_\_  
 Email \_\_\_\_\_  
 Cell \_\_\_\_\_

Signature \_\_\_\_\_  
 Email \_\_\_\_\_  
 Cell \_\_\_\_\_

Signature \_\_\_\_\_  
 Email \_\_\_\_\_  
 Cell \_\_\_\_\_

Signature \_\_\_\_\_  
 Email \_\_\_\_\_  
 Cell \_\_\_\_\_

Authorized ISSA Properties Representative: \_\_\_\_\_

Office Use: Date \_\_\_\_\_ Time \_\_\_\_\_ Available Date to Sign \_\_\_\_\_  
 Transfer from bld \_\_\_\_\_, apt \_\_\_\_\_ Name of Resident Transferring: \_\_\_\_\_  
 \_\_\_\_\_ per month

Figure 3. ISSA Properties sells “Lease Options” for the cost of one month’s rent. The price of one month’s rent at the ISSA Properties’ locations listed on their website ranges from \$985-1,695. Like some of the other options contracts, there is a window of time during which the contract can be executed, allowing the prospective tenant to sign a lease.

## Figure 4: Correspondence Regarding Waitlist Policy of Landmark Apartments

<p>Subject: Re: Follow-Up for Landmark Apartments: To: &lt;<a href="mailto:landmark5@emailrelay.com">landmark5@emailrelay.com</a>&gt;</p> <p>Hi,</p> <p>Is the application and service fee refundable if we do not get a space?</p> <p>Thank you,</p> <p>██████████</p> <p>On Tue, Oct 4, 2022 at 1:22 PM &lt;<a href="mailto:landmark5@emailrelay.com">landmark5@emailrelay.com</a>&gt; wrote:</p>	<p>Hi ██████████,</p> <p>We unfortunately do not refund the application fee and admin fee.</p> <p>Thank you,</p> <p>██████████ Leasing and Marketing Manager</p> <p>Our mailing address is:</p> <p>Landmark <a href="#">1300 South University Ave</a> <a href="#">Ann Arbor, MI 48104</a></p>
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Hello

I am writing with questions about the leasing practices of Landmark apartments, and what appears to be most of the high rise buildings for student housing in AA.

My ██████████ is a ██████████ living in a ██████████ and feeling the pressure to sign something now for next year.

Below please see her email thread with Landmark.

They are charging \$375 application fee and admin fee NOW to get on the waitlist.

They are not counter-signing leases until Mar 5, 2023, which I guess is good to abide by the new ordinance. But it does not even guarantee an apartment to lease until that time.

So... if accepted, the kids have paid \$375 fee which goes toward nothing. Just an additional fee in their pockets.

If NOT accepted, this fee is non-refundable, the kids are out \$375 - or more depending on how many buildings they applied to - and they also have nowhere to live, and need to restart their search on, or more likely after, March 5, which is quite late in the game. In the meantime, they may lose out on another housing opportunity.

Per Landmark's website, they have 608 occupants at \$375 each is \$228,000 for the kids who get accepted! How many kids do we think they are NOT accepting because of space limitations? I find this practice ridiculous and should be illegal.

I could perhaps understand a \$100 non-refundable application fee. Anything other than that is criminal honestly.

Figure 4. This email chain was received by the Renters Commission regarding the waitlist policy of Landmark Apartments. The application and admin fee of \$375 is paid to be considered for a waitlist. (Top Right) If an applicant is not accepted or does not receive a rental unit, the money is not refunded according to the Leasing and Marketing Manager. (Bottom) The parent of the tenant is complaining that this practice is unethical and should be illegal.

**Table 1. List of Landlords Maintaining Waitlists**

<b>Landlord</b>	<b>Maintaining waitlists?</b>	<b>Waitlist fee amount (per unit)</b>	<b>Refundable?</b>
University Towers	Yes	\$0	N/A
Varsity Management	Yes	\$150	Nonrefundable
Varsity Apts	Yes	\$325	Partially refundable (\$75 refunded) if the landlord cannot provide unit
Landmark	Yes	\$375	Nonrefundable
The One	Yes	\$50	<i>Unknown</i>
Issa Properties	Yes	\$500	Refundable if the landlord could not provide the unit. Nonrefundable if the tenant does not sign the lease.
Cabrio Properties	Yes	NA	Refundable if the landlord cannot provide a unit. Nonrefundable if the tenant does not sign a lease.
Campus Management	Yes	NA	<i>Unknown</i>
Cappo/Deinco	Yes	NA	<i>Unknown</i>
Eladott	Yes	NA	<i>Unknown</i>
IPM (Investor Property Management)	Yes	NA	<i>Unknown</i>
Michigan Rental	Yes	NA	<i>Unknown</i>
NAM Investment	Yes	NA	<i>Unknown</i>
Old Town	Yes	NA	<i>Unknown</i>
Oxford	Yes	NA	<i>Unknown</i>
Prime Student Housing	Yes	\$9,850	Refundable if the landlord cannot provide the unit or a similar unit. Nonrefundable if the tenant does not sign the lease.
Vic Village	Yes	NA	<i>Unknown</i>

Table 1. This is a non-exhaustive list of prominent landlords, reported by tenants to the city/GEO/U-M Student Legal Services for maintaining waitlist agreements. Much of this information was acquired by speaking directly with representatives from these landlords on the phone or by email