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Mystery Maintenance Call

Why is Smoke Detector Alarm Going Off?

KEEPE

This mystery maintenance call and job call came from Portland. The property manager called maintenance to say the tenant was reporting their fire alarms going off randomly even though there was no smoke or fire.

You might assume the battery in the smoke detector was bad, right? Not so.

After the Keepe handyman came onsite to check out the problem, he realized that the smoke detector had been replaced recently.

When he removed the unit to look further, he saw that it was full of ants! The ants had been overwhelming the smoke detector, making it malfunction.

The handyman replaced the smoke detector and added Hot Shot to kill the ants and prevent them from coming back. Now, the smoke detector works properly.

Keepe is an on-demand maintenance solution for property managers and independent landlords and provides our weekly mystery maintenance call.

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Denver Rents Inch Up in July

APARTMENT LIST

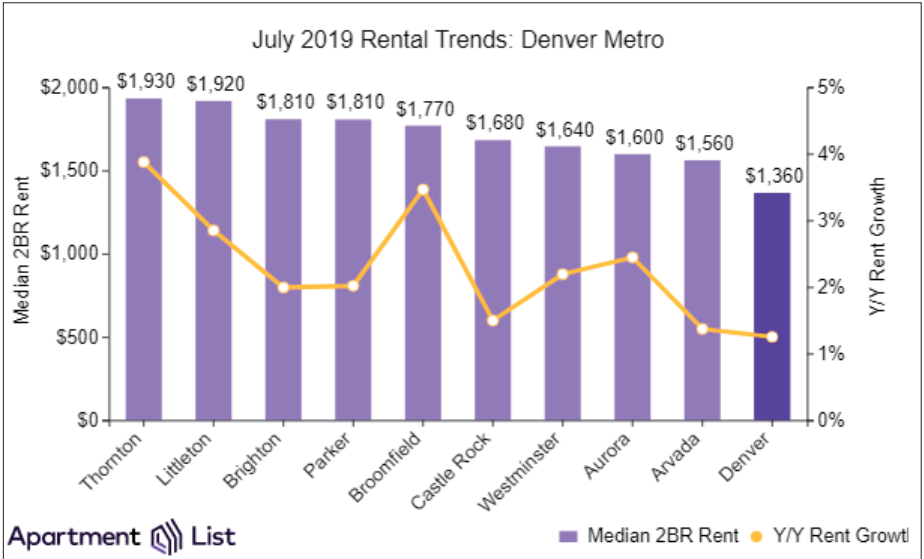
Denver rents have increased 0.2 percent over the past month, and are up slightly by 1.2 percent in comparison to the same time last year, according to the August report from Apartment List. Currently, median rents in Denver stand at \$1,078 for a one-bedroom apartment and \$1,365 for a two-bedroom. This is the sixth straight month that the city has seen rent increases after a decline in January.

Denver’s year-over-year rent growth lags the state average of 1.9 percent as well as the national average of 1.6 percent (see graphic at right).

RENTS RISING ACROSS THE DENVER METRO

Throughout the past year, rent increases have been occurring not just in the city of Denver, but across the entire metro. Of the largest 10 cities that Apartment List has data for in the Denver metro, all have seen prices rise.

Here’s a look at how rents compare



- across some of the largest cities in the metro.
- Thornton has the most expensive rents in the Denver metro, with a two-bedroom median of \$1,932; the city has also seen rent growth of 3.9 percent over the past year, the fastest in the area.
 - Over the past month, Arvada has seen the biggest rent drop in the metro, with a decline of 0.3 percent. Median two-bedrooms there cost \$1,561, while one-bedrooms go for \$1,233.
 - Denver proper has the least expensive
- See ‘Denver’ on Page 5*

Can a Landlord’s Lease Specify ‘No Guns Allowed in Apartments’?



By JOHN TRIPLETT

State laws vary on the issue of what landlords can mandate regarding saying, “no guns in my apartments,” and on gun possession in general by tenants in privately owned rental properties.

Landlords and property managers need

to be aware of whether their state and/or local governments have specific laws, Dobbins said in an interview with Rental Housing Journal.

Only four states have specific laws regarding landlords and guns at rental properties:

- **Minnesota:** A landlord cannot restrict the lawful carry or possession of firearms by tenants or their guests. Minnesota Statute 62A.714
- **Tennessee:** A private landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within a leased premises. Such a prohibition may be imposed through a clause in the lease. Tennessee Statute § 39-17-1307(b).
- **Virginia:** Public housing prohibits landlords from restrictions on gun possession for tenants – Virginia Rental Housing Act 1974 Tennessee 55-248.9.6.
- **Wisconsin:** This state has a complicated maze of where a weapon can or cannot be possessed. Wis. Stat. § 175.60(21)(b).

All other states are generally silent on the issue, Dobbins said, meaning that private housing providers can choose

See ‘Can’ on Page 6

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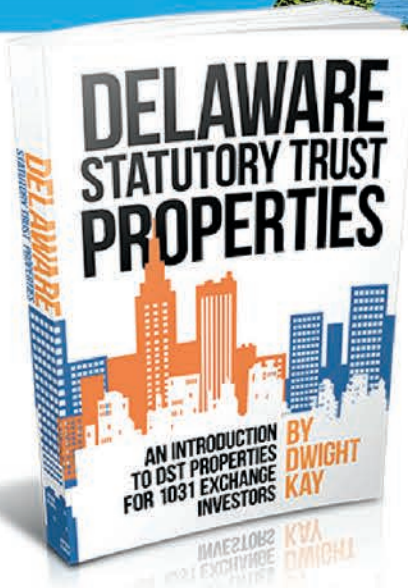
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Triple Net Properties and Delaware Statutory Trusts

By **SEBASTIAN MOYA**
ASSOCIATE - KAY PROPERTIES AND INVESTMENTS, LLC

The Great Recession probably resulted in a seismic shift in many real estate investors’ risk profiles. In 2007, the primary investment strategy was aimed at residential properties with large amounts of market speculation. These properties were largely financed with debt and when the market collapsed ... well, we all know the story.

In 2019, we are experiencing a 1) very peaky market with 2) compressed cap rates on residential properties 3) throughout secondary markets that are assigned values relative to 4) large growth in that market. This all sounds a little too familiar.

There is no need to be Chicken Little in this market, as the imminent correction (and it IS imminent) will probably not strike investors as starkly as it did in 2008. Multifamily and single-family homes can be worthwhile investments with the right placement of capital. However, there are lessons to be learned about other investment strategies that were pervasive in the years following the recent economic downturn.

Many investors who held onto their real estate or invested in the price-trough from 2008 until now are considering what to do with their properties, givbe the price peak we are currently experiencing. It is an excellent time to sell, but with cap rate compression across the board it is a difficult time to find the right placement of capital. Investors who are looking for lucrative IRRs may go toward the residential route, which is fair but potentially risky. Other investors who want to weather the ensuing market slowdown have looked toward a less speculative route. Triple Net properties have skyrocketed in the last 10 years as a result of this investor desire

TRIPLE NET LEASED PROPERTY

A piece of property that is usually being leased by a single tenant (i.e., single-tenant net-leased or STNL). The building on that property is typically built to their needs and business model. The tenant typically has contractual obligations in their lease to make monthly rent payments to the property owner over the life of the lease. Higher quality tenants would usually be of a high credit grade, large in scale, and/or are financially robust in a way that will assure they pay their rent consistently.

WHY WOULD A COMPANY DO THIS?

In an effort for companies to reduce the amount of liabilities on their balance sheet, they choose not to purchase the real estate on which they conduct business. Instead, the companies decide to rent it from real investors who own said properties.

WHAT DOES TRIPLE NET MEAN?

“Net” helps describes the responsibilities attributed to either the tenant or the landlord. A “Single Net” lease hands over more costs and responsibilities to the landlord in exchange for higher rent. The rent may be higher in a Single Net, but the costs vary much more and affect cash flow.

“Triple Net” is a type of lease structure wherein little to no responsibilities are given to the landlord and the variable costs of the property (taxes, insurance, maintenance, etc.) are handled by the tenant. Triple Net properties have emerged as a pervasive investment strategy over the last decade for many reasons.

CONSISTENT CASH FLOW

The lease structure described for NNN properties should allow for dependable cash flow that passes through to investors on a monthly basis. These cash distributions are effective income, and yours to keep. There are little to no costs that bite into your bottom line. This is ideal for the retirement or passive income profile investor.

LEASE GUARANTEES

More often than not, the tenant will guarantee payment of rent throughout an established period of time. A typical rent period exists between seven and 15 years. In shorter leases, tenants will incentivize investors with “rent bumps” that could increase their net operating income by 1%-2% each year. If a tenant vacates the building, or “goes dark,” they would be liable to pay the remaining term. The tenants have varying degrees of credit quality as ranked by the large ratings agencies or backed by large franchisees. This is not a total guarantee, however. Any business

can go bankrupt or fail to meet its obligations for any number of reasons. It is important to understand your tenants’ profile and backing before entering into a contract with them. Triple Net Properties provide the opportunity to invest money into real estate and benefit from potential appreciation on property, while playing it relatively safe with a consistent cash flow from their asset. But at the end of the day, this is still real estate we are talking about. There are many risks and obstacles that investors should be wary about.

INFLATION RISK

Triple Net buildings can act as a sort of “one-trick pony.” You know what you are getting for how long and how much, but your property could end up being stagnant in cash flow or relative value. The longer the lease that is negotiated with a tenant, the less they are willing to pay. This means the likelihood of “rent bumps” goes down or does not exist. You are effectively trading a longer “guaranteed” income for less cash to your bottom line. If inflation increases on average 1% a year, then without significant cash flow escalations you may be losing money on your cash investment. This is why it is important to analyze a lease structure when you are looking for a tenant and negotiate rents and lease terms appropriately.

TENANT RISK

Although a tenant may be guaranteed on the lease, there is always the possibility that they default on their payments or go dark. If they default on their payments this is really the worst-case scenario. Your cash flow stops completely, and the value of your building potentially decreases immensely. With Triple Net leases, the value is inherently tied to the tenant filling the property and paying rent. The cash flow is what would entice potential investors to buy the property from you. Even if the building goes dark and cash flows are rolling in, there is no exit strategy when the lease terminates. Again, the building’s value is inherently tied to the tenant that provides cash flow to it.

RE-TENANT RISK

The leases on these properties are structured for extensions, or “options.” This means tenants can exercise a clause in the lease that would add more time to their rental period. However, this usually involves a lot of negotiation with a large company that has many units across the country. Since your property value is tied to the tenant, and the tenant knows this all too well, they will try to strong-arm you into paying tenant improvements or adjusting the lease to their benefit. If you don’t play ball, there is a chance they will relocate or simply vacate upon termination of the lease. In reality, a lot of these large companies don’t care to negotiate at all and may move before the lease is up. Then it is potentially the job of the investor to commit capital toward finding a new tenant through brokerage, advertising, attorney fees when negotiating the lease, and other costs.

OPERATIONS

Although this property is a relatively cost-free venture, you are still in charge of managing the property. If there is a power outage, you are in charge of finding a solution. If it hails, you may have to repair the roof. The tenant might reimburse you for the costs, but ultimately it is the investor’s obligation to take care of the building. Those looking for a completely hands-off investment may be turned off by this.

INVESTMENT RISK

The ultimate risk in investing in Triple Net properties is that you are investing in a venture that costs hundreds of thousands of dollars, if not millions, into one investment. As any person who has remote financial knowledge will tell you, diversification is key when investing. Putting all your eggs in one basket is scary. It is a large risk in any real estate venture, but with Triple Net properties it is nonetheless a substantial factor to recognize.

So, there are many ways to look at Triple Net properties. The benefits are unique to most real estate assets. The risks are also diverse and require astute attention when considering them as an investment opportunity. It seems that the risks can outweigh the benefits in many ways. How would someone who is looking to exercise passive investments mitigate the risks mentioned above. Let’s talk about Delaware Statutory Trusts. The tools that a Delaware Statutory Trust can give you to smooth out some of the obstacles you would encounter when investing in triple net

properties while emphasizing the positive points.

DELAWARE STATUTORY TRUST (DST)

DSTs are a financial structure that allows for investors who are looking to invest in real estate to diversify their opportunities into different properties. It is a shared ownership structure wherein an investor puts in a piece of capital for a property instead of the entire backing. DSTs are passive investments, which means that all management responsibilities are removed from investors and income is passed through. This is meant to be a refresher on DSTs and if you are interested in learning more we recommend you visit our website, www.kpi1031.com, or speak to one of our representatives.

In a DST structure, your eggs are not all in one basket. Chunks of capital can be distributed to different assets. Amongst the types of properties that can utilized in this structure are Triple Net properties. There are several advantages to investing in Triple Nets through DSTs that help absorb some of the risks you may encounter when investing in one on your own.

An important concept to understand when it comes to DSTs are their sponsor companies. Sponsor companies are the entities that underwrite, acquire, and manage properties for investors. These large entities manage billions of dollars in real estate and have years of experience under their belt that help investors make educated DST investments. They are a huge advantage when it comes to investing.

NEGOTIATION

One of the primary ways to mitigate risks when investing in Triple Net properties is the way in which the lease between the tenant and the investor is negotiated. In a situation wherein an investor is investing in a property on their own or perhaps in a small group of investors (such as an LLC or LP), negotiating a lease will be difficult. Large tenants that are creditworthy and therefore in-crease the value of a potential property also have more negotiat-ing leverage. These large companies negotiate leases all the time in ways that may affect rent bumps, which means an investor could be exposed to inflation risks. The tenant improvements they require in order to stay, or their capacity to leave overnight, are also pieces of a lease that can be negotiated and need to be considered. DST properties are managed and negotiated by sponsor companies that have years of experience and immense deal flow that allows them to get more at the negotiating table than the average investor could.

OPERATIONS

In a DST structure, investors will experience a more realized pas-sive investment. Instead of worrying about management of the property or fretting about tenant demands, sponsor companies take care of all operations and management concerns. Investors are given monthly or quarterly updates about any changes to the properties, but there are no hands-on requirements asked of anyone participating in a DST.

DIVERSIFICATION

Of the benefits offered by DSTs, arguably the most helpful is the diversification that they can provide. When you are investing into DSTs, it is possible to split a chunk of capital into pieces and distribute said capital amongst several properties. For example, you can invest \$100,000 in a FedEx property in Seattle, and \$300,000 in a Triple Net Walgreens in Phoenix. The point is that you are not placing all of your capital into one place. If your property in Seattle “goes dark,” for some reason, you are not at a total loss because you still have your investment in Phoenix. Hedging your investment and receiving a blended return on those investments protects you from more risks. This is especially useful in Triple Net properties where tenants can be finicky. Protecting yourself from risk is something rarely afforded in the world of real estate.

Through DSTs, the benefits of Triple Net properties are real-ized while spreading the risks through negotiation, operation, and diversification advantages. At the end of the day, we are talking about real estate. Any property can have a bad run or sail smoothly throughout an ownership period. Anyone interested in DSTS should consult their CPA or attorney about their specific situation. DSTs are not for everyone, but they can provide an alternative way to invest in Triple Net properties if that is your interest.

About Kay Properties and Investments, LLC:

Kay Properties and Investments, LLC is a national Delaware Statutory Trust (DST) investment firm with offices in Los Angeles, San Diego, San Francisco, Seattle, New York City and Washington, D.C. Kay Properties team members collectively have over 114 years of real estate experience, are licensed in all 50 states, and have participated in over \$7 billion of DST real estate. Our clients have the ability to participate in private, exclusively available, DST properties as well as those presented to the wider DST marketplace, with the exception of those that fail our due-diligence process. To learn more about Kay Properties please visit www.kpi1031.com.

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Dear Landlord Hank: Fighting Tenants, Repainting Requests & Rental Inspections



Dear Landlord Hank,

I have a tenant couple that fight on a regular basis and call the police. I do not want the police in my park. I feel it makes for a bad reputation. Can I evict them? And how?

Thanks in advance. Debbie

Hi Landlady Debbie,

I'm not an attorney so I can't give legal advice. I would look at your lease.

In my lease, in the section "USE OF PREMISES," it reads: "Tenant shall maintain the premises in a clean and sanitary condition and not disturb surrounding residents or the peaceful and quiet enjoyment of the premises or surrounding premises."

I would warn these tenants in writing that this kind of behavior will not be tolerated and is in violation of the lease. Then, I would talk to an attorney for advice. This kind of conduct in your establishment will definitely lead to a bad reputation and it may attract exactly the kind of tenants you don't want.

Good luck, Debbie.

Dear Landlord Hank,

A new tenant has moved into one of my units and has asked if he could repaint. I just paid to have the unit painted white so it would go with everything. What do you think?

Sincerely, Mike

Dear Landlord Mike,

I would tell the tenant that he cannot make any changes to the paint. In the past, tenants have sworn they would repaint to



original color and it has never happened. The tenants often paint some color that is difficult to cover — very bright or very dark — so when they move out it will cost you two times as much to repaint for next family.

I like to give tenants a nicely painted, neutral color, normally bright white to make the units feel even larger. But, occasionally someone asks if they can repaint. Now the answer is 'NO.' If you don't like the color, I'm sorry but repainting is not an option.

In my experience, either tenants don't repaint, as promised, or they do a poor job and get paint on carpet, or use the wrong color, etc., therefore costing even more money to fix and repair.

I even had a tenant that worked as a painter (not for me on my rentals), but promised he'd repaint. That promise went out the window when his divorce occurred and he couldn't find the time. I have over 20 years of learning from my mistakes. I've had prospects say they will take an unpainted unit after viewing the unit prior to the current tenant leaving. I thought that I couldn't really lose, since I would not be supplying the paint or labor.

Wrong.

These tenants added accent walls in bold colors and designs which made repainting far more work when they moved out.

Dear Landlord Hank,

Do you conduct rental inspections? How often?

— Dorothy

Dear Landlady Dorothy,

How often do I conduct rental inspections? It depends. I do a very thorough vetting process to clear a prospect to become a tenant.

The most important criteria for me is good rental history. When I put a tenant into one of my properties, I feel very good that the tenant will take care of the property.

That being said, if I have the slightest hint that something may be off or if another resident nearby says something to me about a particular unit, then I inspect right away.

The folks that we have doing pest control are in units every month. They know to not only kill pests but to look for water leaks, drips, or unsanitary conditions and let me know right away.

If a tenant has great rental history then I normally conduct an inspection at the 10-month mark. That is when we contact tenants to see if they are going to renew or leave. If they are going to leave, I start showing right away for next tenant and want to make sure all is right with the unit. Then when tenant leaves we do walk-through inspection for any damages.

About Landlord Hank: "I started in real estate as a child watching my father take care of our family rentals- maintenance, tenant relations, etc , in small town Ohio. As I grew, I was occasionally Dad's assistant. In the mid-90s I decided to get into the rental business on my own, as a sideline. In 2001, I retired from my profession and only managed my own investments, for the next 10 years. Six years ago, my sister, working as a rental agent/property manager in Sarasota, Florida convinced me to try the Florida lifestyle. I gave it a try and never looked back. A few years ago, we started our own real estate brokerage. We focus on property management and leasing. I continue to manage my real estate portfolio here in Florida and Atlanta." Visit Hank's website at <https://rentsrq.com>.

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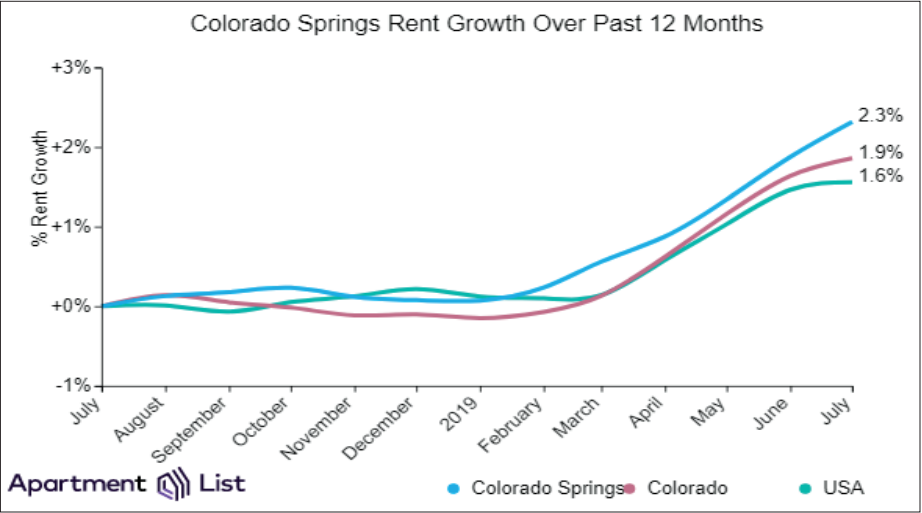
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Denver Rents Up

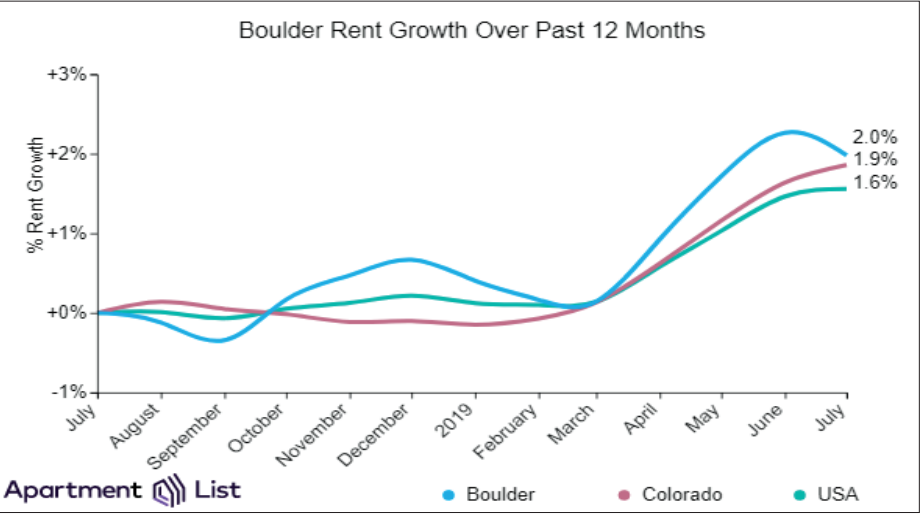
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rents in the Denver metro, with a two-bedroom median of \$1,365; rents were up 0.2 percent over the past month and 1.2 percent over the past year.



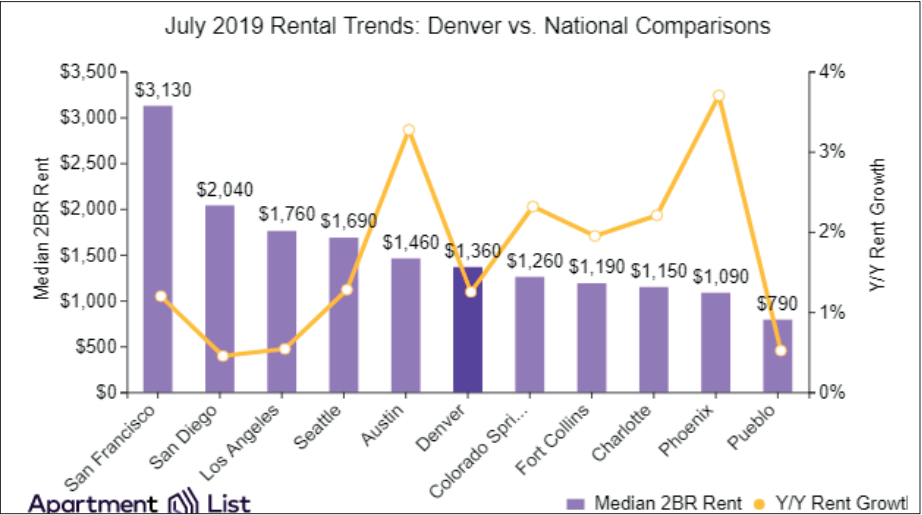
COLORADO SPRINGS RENTS INCREASED SIGNIFICANTLY LAST MONTH

Colorado Springs rents increased 0.4 percent over the past month, and have increased moderately by 2.3 percent in comparison to the same time last year. Currently, median rents in Colorado Springs stand at \$976 for a one-bedroom apartment and \$1,258 for a two-bedroom. This is the sixth straight month that the city has seen rent increases after a decline in January. Colorado Springs’ year-over-year rent growth leads the state average of 1.9 percent, as well as the national average of 1.6 percent.



BOULDER RENTS DECLINED MODERATELY OVER THE PAST MONTH

Boulder rents have declined 0.3 percent over the past month, but have increased moderately by 2.0 percent in comparison to the same time last year. Currently, median rents in Boulder stand at \$1,179 for a one-bedroom apartment and \$1,439 for a two-bedroom. Boulder’s year-over-year rent growth leads the state average of 1.9 percent, as well as the national average of 1.6 percent.

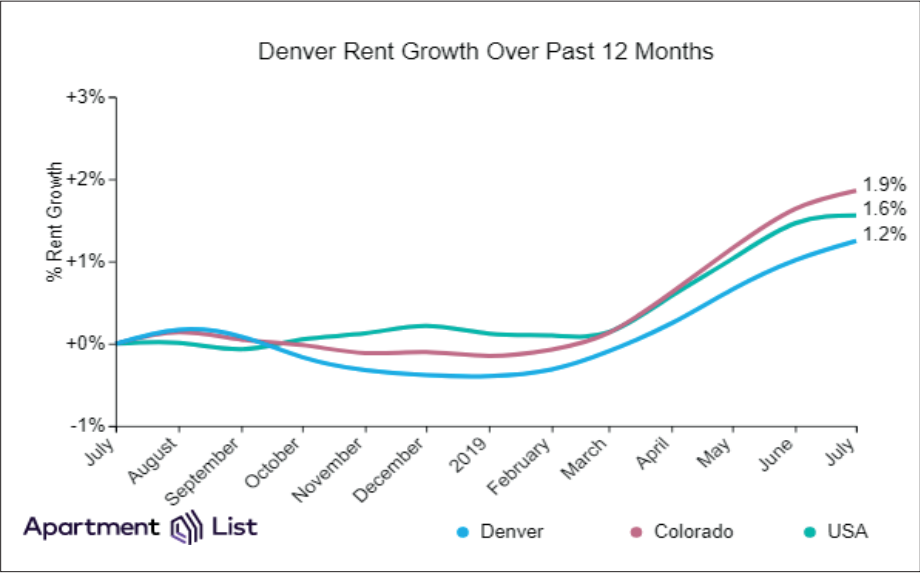


DENVER RENTS MORE AFFORDABLE THAN MANY SIMILAR CITIES

As rents have increased slightly in Denver, a few comparable cities nationwide have also seen rents grow modestly. Denver is still more affordable than most other large cities across the country.

- Rents increased slightly in other cities across the state, with Colorado as a whole logging rent growth of 1.9 percent over the past year. For example, rents have grown by 2.3 percent in Colorado Springs and 1.9 percent in Fort Collins.
- Denver’s median two-bedroom rent of \$1,365 is above the national average of \$1,191. Nationwide, rents have grown by 1.6 percent over the past year compared to the 1.2 percent rise in Denver.
- While Denver’s rents rose slightly over the past year, many cities nationwide also saw increases, including Phoenix (+3.7 percent), Austin (+3.3 percent), and Charlotte (+2.2 percent).
- Renters will find more reasonable prices in Denver than most similar cities.

City	Median 1BR price	Median 2BR price	M/M price change	Y/Y price change
Denver	\$1,080	\$1,360	0.2%	1.2%
Aurora	\$1,260	\$1,600	0.5%	2.4%
Thornton	\$1,530	\$1,930	0	3.9%
Arvada	\$1,230	\$1,560	-0.3%	1.4%
Westminster	\$1,300	\$1,640	-0.2%	2.2%
Broomfield	\$1,410	\$1,770	0.4%	3.5%
Castle Rock	\$1,330	\$1,680	0.1%	1.5%
Parker	\$1,430	\$1,810	0.3%	2%
Littleton	\$1,510	\$1,920	0.2%	2.8%
Brighton	\$1,430	\$1,810	0.5%	2%
Englewood	\$1,260	\$1,590	-1%	4%
Wheat Ridge	\$1,000	\$1,270	-0.2%	1.6%
Golden	\$1,270	\$1,590	-0.3%	2%
Lone Tree	\$1,600	\$2,030	-0.6%	1.1%



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Can You Put ‘No Guns in Apartments’ in Lease?

Continued from Page 1

what they want to do on the issue. California, Arizona, Colorado, Oregon, Utah, and Washington are six of the states that are silent.

For instance, Virginia law says public landlords cannot use a prohibition clause in their lease, and it does not require that a gun-free zone sign be applied or present on the property.

“Now in Minnesota, they have a different law. Generally, private landlords may not restrict the lawful carry of firearms by tenants,” Dobbins said. “All the other states are silent on whether private landlords can prohibit tenants from carrying weapons or possessing weapons on the property.”

Unless your landlord is a government entity, like a city or state agency or public housing, or receives state or federal funding for rental assistance on the property, the Second Amendment is unlikely to apply. However, private housing providers prohibiting tenants from possessing firearms in a residential rental unit raises other constitutional and insurance issues.

CAN A LANDLORD IMPLEMENT A ‘NO-FIREARMS’ PROVISION IN A LEASE AGREEMENT?

“Generally, the answer is yes. But, I think we need to take the most practical approaches we can for all the issues surrounding the question,” Dobbins said.

“I would simply say to private housing landlords that you have more issues to be concerned about than just whether or not you can implement such a “no firearm” policy. Look, the real issue that you want to protect against is tenants having guns willy-nilly, or just being carried around and shown off on the property common area

“You can stop that kind of behavior cold in the common areas altogether, so go ahead and put something in your lease to stop it in the common areas. Prohibiting the display of weapons in the common area, or even in the unit where handling or showing of a weapon that can be seen on the inside from the outside, will help protect against liability issues and insurance/liability issues and help avoid possible Second Amendment challenges.”

WHAT ABOUT PROHIBITING TENANTS FROM HAVING FIREARMS IN THEIR APARTMENT UNITS?

“Generally, a private landlord can do that too, but there are a wide variety of issues to think about when you do so,” Dobbins said.

“Most states have not made a decision whether or not to attempt to prohibit the constitutional rights of a citizen who wants to have a weapon in their rental unit for their own protection. What that means is that leaves it up to the private landlord to make a decision about their own property,” he said.

“Yes, a private landlord can say, ‘We prohibit all tenants from possessing a weapon anywhere on the property.’ The private landlord can make that decision because there hasn’t been a case yet that draws the Second Amendment into the private-landlord decision-making process on the issue, as has happened with Fair Housing issues like race, color, national origin, familial status, religion, gender, age, military status and Americans with disabilities.” Therefore, government assisted housing must respect a tenant’s



constitutional right to bear a firearm. However, the housing authority can still prohibit firearms in common areas.

But non-governmental landlords, with no applicable state or local laws, have the right to do what they want on their own property regarding firearms. “So, a private landlord can say, ‘No guns in my apartments’ or any weapon possession in the rented apartment unit’. But a non-government tenant can also say, ‘Well, I have a constitutional right to a weapon to protect myself.’ However, that case has not been heard yet,” Dobbins said. He believes the issue will eventually be heard because “someone is going to finally get that case to the Supreme Court.”

The predicament for any landlord on this issue is this: ”If I allow firearms and someone on the property gets hurt, am I liable?” The answer is “Mmaybe.” And, “If I prohibit a tenant from having a firearm on the property and that tenant or his family, occupant or invitee is hurt; and had that tenant had a firearm, they may not have been hurt, am I liable?” Again, the answer is “maybe.” Every situation is fact-specific.

“From a practical point of view on the liability issue, let’s say a landlord says, ‘No weapons possession in the rented apartment unit.’ The tenant moves in and he wants to possess a weapon in the rented apartment unit but he decides to live there without possessing a weapon. Now somebody breaks into his home and kills his wife and his kids and he didn’t have a weapon to protect himself and his family. I don’t want to be that landlord who says ‘No guns in my apartments’ because I don’t want to get sued because I took that personal constitutional right away,” Dobbins said.

“The landlord is going to say, ‘He agreed to it and he moved in.’ Of course, the person who had their family killed is going to say, ‘Yeah, but I still had a right and you made me not have a gun and took away my Second Amendment constitutional rights to protect my family.’

“I don’t want to be that landlord,” Dobbins said. On the other side, if weapons are allowed on the property and someone gets killed or injured by a tenant intentionally, or even negligently, from a discharge of a weapon on the property, even while inside their own apartment unit, you know the attorney for the injured person is going to go after the deep pockets of the landlord, manager and their insurance money. By the way, you better check your insurance policy and find out what is and is not covered regarding this issue.

“It is an ugly Catch 22,” Dobbins said. “It is possible that if a landlord has a

no-weapons policy in the lease that the landlord will immediately become a target by a victim of a tenant shooting injury claiming the landlord should have known about the tenant’s possession of the weapon and should have taken steps to remedy the possession, although not at all practical. If there is no prohibition for tenants having weapons, then all tenants know of the ‘no-prohibition’ standard, and in my opinion, the risk to the landlord diminishes not just for injuries to others, but for constitutional claims.”

ISSUES ON HOW ‘NO GUNS IN MY APARTMENTS’ WOULD BE APPLIED

“You run into a few issues in terms of how the prohibition can be applied in actual practice. For instance, where you have a law that says ‘landlords can prohibit gun possession in an apartment unit in a lease,’ well, how are you possibly going to enforce that? You don’t know what a tenant brings into the property,” Dobbins said.

“You don’t know what a tenant is going to have in their home. You don’t know if they have weapons in their apartment unit. You can’t really go in and inspect for weapons. If they have a safe, you can’t go look in the safe to see if they have weapons. Even if a state has a rule that says you can prohibit weapons, there’s no practical way to enforce that prohibition.

“The second issue then becomes really important: ‘Do you really want to be the case of first impression?’ Meaning, do you really want to be the landlord who takes on some attorney and a Second Amendments rights issue because the landlord says you can’t have a gun in your own apartment unit to protect yourself? We have all seen lately that mentally ill people, criminals, and terrorists can get guns. Look at Chicago, which arguably has the toughest gun laws in the U.S. Simply put, bad guys still get guns and cause havoc,” Dobbins said. No one is going to stop a mental ill person, or an evil person from bringing a gun anywhere.

“So, why should a private landlord have a such a prohibition where concerned tenants cannot possess a gun in their rented apartment unit? A private landlord does not want to become that trial case for a tenant who says, ‘Wait a second. I have a Second Amendment right to carry and to have weapons to protect myself and my family.’

“The landlord says, ‘Well, having a weapon on a private property is not a protected class like the protected classes listed above. Having a right to possess a weapon in one’s apartment unit is not a current enumerated protected class,” Dobbins said.

“But, I tend to disagree with those people who say it’s not a protected class, because it is clear that there is a constitutional “personal right” to bear arms – period. The protected classes in the housing arena listed above are all federal mandates. Well, an enumerated constitutional right in my mind is the same thing. A court case will determine that issue in a landlord-tenant relationship at some point.”

LET’S BACK UP AND LOOK AT THE ISSUE

Dobbins suggested looking at two Second Amendment cases that he thinks make the tenant’s right to a weapon in the tenant’s apartment unit a personal right, and thus, a protected class.

“Here’s what we know. The federal government can impose some restrictions

on gun possession. There have been a lot of debates over time as to what the Second Amendment means because it has a phrase in it regarding militias and it also talks about ‘the people’s right’ as opposed to a ‘person’s right.’ There’s been this idea that the ability or the right to bear arms is not a personal right. Rather, that it is a right of the people for a prepared militia.

“This issue came up in a case in the U.S. Supreme Court in 2008. It’s called the Heller Case. It dealt with individual rights to possess weapons. The Heller case made it very clear that there is an “individual right” to possess weapons as opposed to just a right of the people for the purposes of maintaining a militia,” Dobbins said.

“Heller goes on to say that the government can impose some possession restriction such as when dealing felons and the mentally ill. Such people have no personal rights because those rights are stripped for the mentally ill and felons. There still remained a question after Heller. The question after Heller was, ‘Well, that’s great, but what about the states? How does the federal law impact state laws on the subject?’

“In 2010, the McDonald case went before the Supreme Court and that dealt with the 14th Amendment, which forbids states from passing rules to the contrary of federal law. There were basically four elements in McDonald that they dealt with: whether there could be a state prohibition against handgun ownership, whether a state could force an annual gun registration and impose a fee for annual registration, whether it could be required that guns be registered prior to acquisition, and whether a gun could be forever unable to be registered if the registration lapsed. Those state laws were struck down in the McDonald case. Basically the opinion stated that the 14th Amendment applies as to the individual right to possess guns and that states cannot pass laws that infringe upon that federal constitutional right.

“So it seems to me that private landlords forbidding tenants from possessing firearms in their apartment unit could be successfully challenged based on the Second Amendment and Fourteenth Amendment, I think, because Heller and McDonald make possession of a weapon a personal right, which I think makes it a protected class,” Dobbins said.

“I guess the simple answer is in those six states that we mentioned ... private landlords in those states can choose what they want to do, but when a private landlord chooses to ban tenants’ ability to possess a firearm in their apartment unit they face the ugly music of liability issues and constitutional infringement issues,” he said.

A PROPOSED LEASE CLAUSE ON HOW LANDLORDS MIGHT WALK THE FINE LINE OF DEALING WITH TENANTS’ POSSESSION OF GUNS IN THEIR APARTMENT UNITS AND HOMES

Dobbins said he would propose the following lease clauses for landlords to consider.

1. “This is a landlord-tenant relationship and the landlord has no control over your unit or the home. Tenant has sole control of the dwelling unit.

In a sad 2006 Kansas City case where a landlord rented a single-family home the lease agreement expressly gave the tenant the right to sole possession of the

See ‘Guns’ on Page 7

‘Guns or No Guns?’ Remains Complex Issue

Continued from Page 6

premises, prohibited any member of the household from engaging in any illegal activity on or near the premises, and prohibited the unlawful discharge or unauthorized possession of firearms, the tenant minor child accidentally discharged a loaded gun, killing a visitor. The tenant and the landlord were sued for damages. The court indicated that because there was a landlord-tenant relationship where the landlord had no control over the property, the landlord was found NOT liable. *Thompson v. Tuggle*, 183 S.W.3d 611 (Mo. App., 2006).

However, in a multifamily setting, when the landlord is aware of, or should be aware, that tenant has a weapon, and the tenant acts erratically, then the landlord must analyze the landlord’s duty to the tenants for reasonable safety and make a determination with its legal counsel if the tenant’s action make it foreseeable that the tenant may cause harm to another person on the property. If so, then the landlord must take reasonable steps to remedy the situation. *Lozano v. Awi Mgmt. Corp.* (Cal. App., 2016). When weapons are allowed on the premises, it is imperative that the landlord always monitor the property to see that the weapons are not misused, brandished, or unnecessarily displayed. *Rosales v. Stewart*, 169 Cal. Rptr. 660, 113 Cal.App.3d 130 (Cal. App., 1980).

2. “If you have any firearms, you must keep your weapons inside your unit at all times and out of view of open windows and doors, absent legitimate self-defense or the defense of others.”

3. “If you openly bring a firearm onto the common areas you will be evicted. You must keep your weapon to yourself, safely tucked away in the private confines of your apartment unit or home and not visible to other tenants, neighbors or staff.”

4. “As a landlord, I say, ‘No weapons in the common area.’ This is something that I put in my leases and in my client leases. It provides reason, accountability and protections for the landlord, the tenants and staff. It’s a section called ‘Weapons’ for the lease and this is what it says:

“Weapons of any kind, including, but not limited to, dart guns, air guns, BB guns, slingshots, handguns, rifles, or any mechanism that could be used to propel an object that could cause harm to person or property, are not allowed in the common areas, are not allowed in the office, are not allowed anywhere on the premises outside of the actual unit, and are not allowed to be displayed, shown, exposed, demonstrated, or exhibited anywhere in the community premises, except in case of self-defense or the need for imminent and immediate protection of residents’ life or property, or for self-defense or immediate and imminent protection of resident, resident’s occupants, guests or invitees’ life, or property. If a resident desires to possess a legal weapon in resident’s unit, in that case the resident must safely and inconspicuously carry said legal weapon to and from the resident’s unit in a manner that resident ensures other residents and staff do not see said weapon. Illegal weapons are never allowed visibly on the property outside of the unit. If resident or resident’s occupants do possess a legal weapon in the unit, resident shall be responsible for the proper and safe possession, handling and storage of said weapon. Landlord is not and shall not be responsible in any way to resident, occupants, guests, or invitees for any accidental, negligent, or intentional act involving any weapon or discharge thereof on, near, or off the property.”

“That’s my clause,” Dobbins said. “It covers a lot of ground because I don’t want to take away tenants’ right under after the *Heller* and *McDonald* cases, yet we need to make sure that tenants understand, in the common areas especially, if they brandish or show a weapon they will be evicted. However, I do not think it is a good idea to take away a tenant’s right to possession in their own apartment unit or home. That is just how I personally look at it. Each private landlord has to make a decision on this subject based on an analysis of all the factors set forth in this article. I suggest you talk to your attorney and your insurance broker to make your own decision on the subject is sound,” Dobbins said.

WHAT ABOUT RESTRICTIONS ON AMMUNITION IN APARTMENTS?

Can the private sector and private landlords say you can only have so much ammunition? Or no ammunition at all?

“Yeah, private landlords can if they want to, but



the same factors are at issue as for gun possession in a tenant-rented unit,” Dobbins said.

“Here’s another issue to think about. Let’s say a private landlord prohibits the possession of firearms and the private landlord calls their property now a ‘gun-free zone’ or a ‘weapon-free zone.’ In my mind, they’ve done exactly what the schools have done when you call a school a gun-free zone. You’ve just opened it up to the crazy people and you’ve said, ‘Hey, nobody here has weapons. Come over here and break in. Come over here and cause havoc to our property because no one is allowed to have weapons here and cannot defend themselves. Come in and steal from them, rob them, do whatever you want to do with them.’

“I think that sets a very bad precedent and as a premises-liability expert, I would say that by doing that you’ve now opened yourself up to say you called yourself a gun-free zone, when it is just not true. You’ve invited bad guys to your property and you intentionally, unknowingly maybe, but still intentionally put your residents at risk of harm. That’s how I look at it.

“Once you invade someone’s privacy in their home for their own protection and their own desires regarding the Second Amendment, now you’re creating some issues that you don’t really need to create. Even if a landlord has a prohibition for tenants regarding guns or ammo, it’s not going to stop someone from having weapons if they want them in their apartment unit. So why have the rule at all? Why take on extra liability and extra problems when we know that possessing a weapon in one’s apartment unit or home is practically unenforceable? A tenant should be able to possess a firearm if they want one, but if the tenant goes around bragging about it, or showing it off, that tenant needs to go.

“Now if a management company maintenance employee goes in and he sees a stockpile of ammunition or weapons, I would immediately contact the authorities and let them deal with it as they will,” Dobbins said.

SHOULD PROPERTY MANAGERS HAVE GUNS?

Two property managers in Portland were shot by a tenant following an eviction. Should property managers have guns?

“Well, I think we’re getting into that debate a little bit with one of the remedies that’s been brought up about possibly arming teachers. For many years no in Israel the government trains and allows trained teachers to be armed. Israel has no problem with gun violence in schools because everyone knows the teachers are not only armed, but they’re trained.

“Now that’s something for management companies to decide because they’re put in bad situation, for example: ‘Okay, if my managers and staff have a weapon and they use it, am I going to be sued? If they don’t have a weapon and can’t use it, am I going to be sued?’ If they have a weapon and don’t use it, am I going to get sued? They’re in a real pickle because if they do allow staff to carry they need to make sure those staff members

are very well-trained, use the weapon when they need to and don’t misuse that weapon. I do not know of any management company that wants to tackle that giant.”

“For me as a property owner I would not mandate my staff to possess weapons. However, I would not take my staff’s constitutional right to protection away either. If the staff lawfully carries a concealed weapon, that is their choice. However, I would not want them to carry openly. Again, you have to decide as a landlord how to handle this issue after consultation with your attorney and your insurance carrier.”

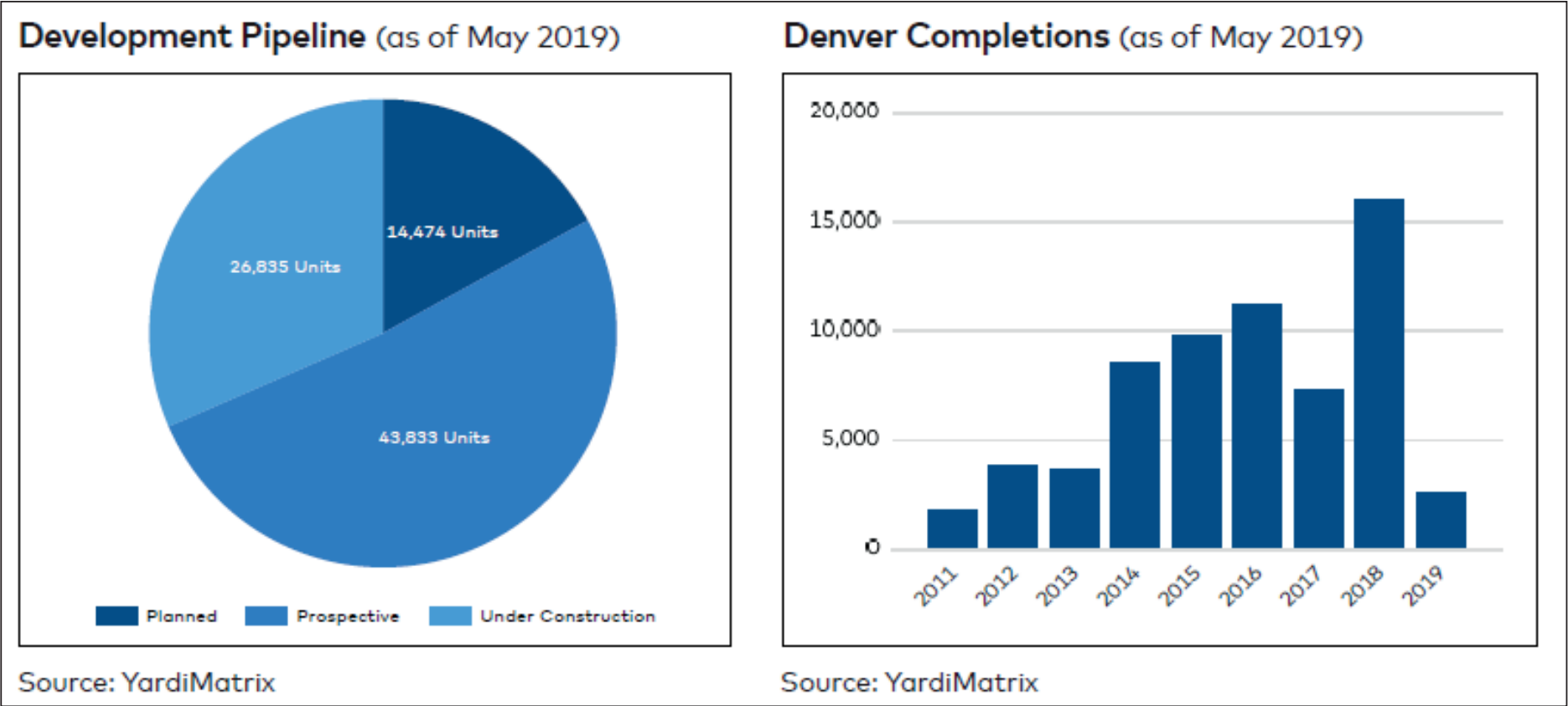
SUMMARY

“There’s something to the deterrent factor, whether you have a liberal slant on guns or a conservative slant on guns. The facts are the facts,” Dobbins said.

“We just have to deal with them in a practical way. There are no easy answers to what private landlords should do about whether or not they allow their tenants to possess a legal firearm in their own apartment unit or home in the face of constitutional rights, liability issues, insurance coverage and individual feelings about weapon possession. But, it is an issue that needs deep thought and consultation with professionals.

“I think we need to take the most practical approaches we can for all of these issues, having something in our lease that says, ‘keep your weapons inside’ and ‘if you bring a weapon in the common area we’re going to evict you.’ Or, ‘no weapon possession allowed period’ and ‘if we learn you possess a weapon on the property, we are going to evict you.’ Whatever your choice, make sure that it is in writing and cannot be misunderstood. Have something in your lease on the subject and make it crystal clear.”

About Denny Dobbins: J.D. “Denny” Dobbins, Jr. is CrimShield’s and Rent Perfect’s general legal counsel. He brings 30 years of experience and a passion for protecting landlords, tenants, businesses, and communities to his work. Dobbins works with company attorneys, managers, landlords and businesses to develop pertinent criteria to assess risk factors regarding their duties to their tenants, invitees, and customers. He also testifies as an expert on negligence, negligent hiring and negligent retention. His job is to help CrimShield and Rent Perfect investigators understand the laws of every state, as each state has different statutes and legal terminology. About CrimShield and Rent Perfect: CrimShield and Rent Perfect are companies devoted to protecting companies from negligent hiring and negligent retention as well as providing tools to stop management headaches, reduce customer complaints and eliminate lawsuits. This unique preventative approach to reducing criminal activity transforms the way companies hire and monitor employees, contractors, vendors and volunteers. CrimShield and Rent Perfect help companies assess potential risk and implement easy-to-use solutions for businesses who have close interactions in the homes or offices of their customers, and for landlords of every type in landlord-tenant relationships.



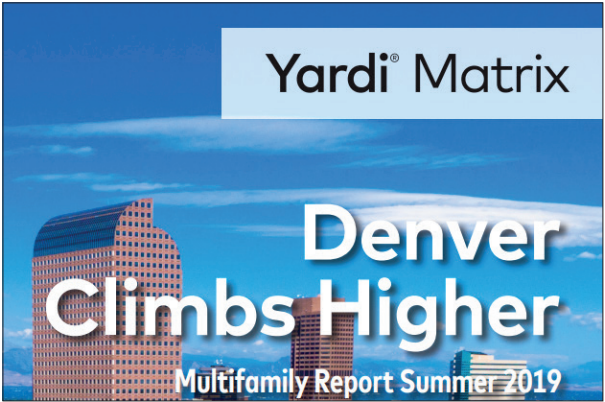
Denver Multifamily Growth Climbs Higher

YARDI MATRIX

Denver’s multifamily market was hot going into 2019, boosted by a decade-long economic and population boom that has transformed the metro, particularly its urban core, according to Yardi Matrix summer 2019 report.

Drawn by the market’s strong fundamentals, multifamily developers ramped up deliveries in 2018, when a massive supply wave of 15,984 units came online for a new cycle high. As a result, the occupancy rate in stabilized properties dropped 40 basis points over 12 months, to 94.7 percent as of April, the report says.

- DENVER RENT TRENDS**
- Rents in Denver rose 1.8 percent year-over-year through May, trailing the 2.5 percent national rate. The metro’s average rent stood at \$1,545, above the \$1,442 U.S. figure. Following the delivery of 15,984 units last year, occupancy in stabilized properties dropped 40 basis points over 12 months, to 94.7 percent as of April, slightly below the 94.9 percent national average.
 - Rents in the working-class renter-by-necessity segment rose 2.3 percent to \$1,309, while lifestyle rates were up 1.6 percent to \$1,727. Demand across asset classes remained strong in Denver, bolstered by above-average population growth, robust household formation and consistent employment gains, especially in high-



paying professional services. Considering an estimated supply of more than 10,000 new apartments this year, as well as the positive outlook for the metro’s long-running demographic and economic boom, Yardi Matrix expects the average Denver rent to advance 2.6 percent this year.

- Rents rose fastest in Brighton (6.2 percent to \$1,526), Windsor/Greeley West (5.4 percent to \$1,358) and Boulder (5.1 percent to \$2,002). The CBD/Five Points/ North Capitol Hill submarket, which boasts the largest pipeline and highest transaction volume, saw rents rise 2.1 percent to \$1,970. Rents declined in Champion (-1.0 percent to \$1,517), Fort Collins–South (-0.9 percent to \$1,366), Longmont (-0.6 percent to \$1,420), Fort Collins– Central (-0.1 percent to \$1,444) and East Colfax/Lowry Field/Stapleton (-0.1 percent to \$1,535).

- MULTIFAMILY SUPPLY OUTLOOK**
- A total of 26,835 units were under construction in Denver as of May, most of them in lifestyle developments. In 2019 through May, 1,857 units were completed, or 1.0 percent of the metro’s total stock. This follows last year’s 15,984-unit cycle peak, representing 6.1 percent of total stock, well above the 2.6 percent national average. The wave of new deliveries has put downward pressure on occupancy, which stood at 94.7 percent as of April, down 40 basis points year-over-year and below the 94.9 percent national average, the report says.
- The metro’s multifamily pipeline also included 58,307 units in the planning and permitting stages as of May. As Denver’s population is estimated to continue growing at twice the national rate through 2019, demand is expected to keep up with supply this year, supporting further rent gains.
 - Developers are heavily targeting the CBD/Five Points/North Capitol Hill submarket, which had 6,137 units under way as of May. The vibrant city center added 5,490 jobs in 2018, a 4.1 percent increase, according to the latest State of Downtown Denver report, while its population rose 13 percent to more than 25,000 people. More growth is expected for the area, which is estimated to host 33,000 residents by 2023. East Colfax/Lowry Field/Stapleton had 2,489 units under way, followed by Champion (1,935 units).

6 Tips for Fixing Annoying Clogged Toilets

KEEPE

We’ve been getting a lot of calls in the past few weeks at Keepe about how to fix clogged toilets.

Here’s some interesting information about toilets, and six unclogging tips from our professionals!

- The average person flushes the toilet five to six times each day, adding up to nearly 2,000 flushes per year.
- When a toilet stops working, it’s an emergency maintenance situation that needs to be fixed as soon as possible because it creates an immense inconvenience for your tenants.
- Toilets account for nearly 30 percent of the water usage in bathrooms, so keeping these essential plumbing fixtures in good condition is a must.

Doing routine maintenance for toilets can go a long way. If you do not catch simple leaks early, you may find the problem months later, when the water bill is \$100 more than usual.

Some actions as simple as having your maintenance people regularly clean and

- check for leaks can catch a toilet problem early and save money in the long run.
- If a toilet is clogged, the first thing you should try is using a toilet plunger, which can dislodge the clog so it can be flushed through.
- If the plunger doesn’t work, try using a toilet auger, which can reach deeper into the plumbing of the toilet in order to dislodge clogs.
- 6 TIPS FOR FIXING THOSE ANNOYING CLOGGED TOILETS**
1. Inspect the toilet’s inner workings every six months.
 2. Never pour a chemical drain cleaner down your toilet; it can cause damage to your plumbing pipes.
 3. Clean your toilet regularly with baking soda, vinegar or mild soap.
 4. Consider what kind of toilet paper you are using; some break down less effectively than others and can cause clogs to happen more often.
 5. If you get brown water backing up into your shower or sink when you flush,



call a plumber immediately; these are signs of a more serious issue.

6. Inspect for leaks using food coloring. Add 6 drops of food coloring to your tank. If your toilet bowl water changes color, you have a leak!

About Keepe: Keepe is an on-demand maintenance solution for property managers and independent landlords. We make hundreds of independent contractors and handymen available for maintenance projects at rental properties in the Greater Seattle, Greater Phoenix, Greater San Francisco Bay and Greater Portland areas. We’re also expanding. Learn more about Keepe at <http://www.keepe.com>

Affordable Apartments Skip Amenities

By Adam Artunian and Pete Reeb
John Burns Consulting

New apartment communities must have amenities, right? Not necessarily. Our consumer research shows that the most valued amenity is frequently “low rent.” A recent survey by the NHMC showed that the two top community amenities nationwide are:

- Reliable cell reception (78%)
 - Secure resident parking (71%)
- Only 60% desired a swimming pool, and 55% wanted a fitness center.

As rental rates continue to rise nationwide, rental affordability has become a big concern and the need for affordable rental options has never been greater.

Our Burns Intrinsic Apartment Rent Index, which measures apartment rent valuation based on the long-term median ratio of rents to incomes, suggests that about half of the major markets in the country are overvalued by more than 5% and many by 10%+.

San Francisco East Bay Area rents are 13% higher than they should be, meaning that we think a 13% correction is needed to get back to norm. This likely will not happen until the next recession.

Developers’ focus on building Class A apartments in expensive urban markets over the last decade increased the number of higher-priced apartments. At the same time, rents rising faster than

inflation and investors’ thirst for value-add opportunities decreased the overall supply of lower-priced apartments.

One way to provide more affordable rental options is by building smaller apartment communities without amenities or with fewer amenities.

Foregoing traditional community amenities (pool, fitness center, etc.) reduces development and operating costs, allowing for more affordable rental rates.

- Consider the following:
- Zoning laws and high land prices often make it difficult to build housing that low- and moderate-income people can afford.
 - Many renters don’t want to live in a 400-unit apartment complex because they feel less safe and just like a smaller number.
 - Land is scarce in infill neighborhoods close to jobs, limiting the feasibility for large, highly-amenitized communities.

EXAMPLE: 54 WOODSTOCK - PORTLAND, OR

54 Woodstock in Portland is an example of a small apartment community



with no amenities. The community is pet friendly and includes bike storage, surface parking, individual utility meters, outdoor mailboxes, and WiFi. The community has a high walk score (73) and is within a few miles of downtown Portland.

We suggest looking for locations where the amenities are nearby and free. Below are a few strategies to keep in mind:

- Walkability. Locations with easy access to parks, restaurants, shopping, and/or mass transit command high rents. Advertise your proximity to the local fitness center, park/community pool, hiking/bike trails, and dog park. If applicable, promote high walk or bike scores. Market the surrounding

neighborhood as the amenity.

- Create community. Allow your tenants to create a “high-touch” community where they can come together to enjoy life. Groups that do things together are wonderful amenities, and they are free. Social connection can be a wonderful amenity.

- Nearby businesses. Build partnerships with the local fitness centers where residents get discounted monthly gym fees, yoga/cycling classes, etc.

The rental market has changed, providing developers with great opportunities. If you have any questions, please contact Adam Artunian at (949) 870-1213 or Pete Reeb at (858) 281-7216, and we will put you in touch with the expert you need.

4 Ways to Avoid Tenant-Screening Pitfalls

grace hill

TRAINING TIP
OF THE MONTH

By Ellen Clark

Here are some tips for conducting applicant screening in a way that complies with fair housing law, and makes all people feel welcome in your community while helping you avoid screening pitfalls.

No. 1 – Think Before You Speak

It is natural to make friendly conversation with prospects during the application process. This is fine, but think carefully about questions you ask or comments you make.

For example, asking, “Where is your accent from?” or saying, “You have such an interesting look!” may seem harmless, but could be viewed as discrimination, particularly if you end up rejecting the applicant for some reason.

No. 2 – Know and Comply with Your State Laws and Company Policies

Applicant screening is an area in which it is particularly important to know and follow your state and local laws. Take the time to educate yourself. “I didn’t know” will not be an acceptable defense should you face a discrimination claim.

Your company should have clear policies and procedures for determining which applicants are accepted to live in your community. Follow these policies and procedures at all times, and apply them uniformly to all applicants.



Make sure all applicants understand selection criteria and related policies and procedures. This will help them see that you don’t choose residents arbitrarily; rather, you have a standard process that you follow for all applicants.

No. 3 – Ask for a ‘Government-Issued Photo ID’ Rather than a Driver’s License Specifically

Consult your company’s policies to determine which forms of photo identification are acceptable to verify identity during the application process.

However, be mindful that it is better to ask for a “government-issued photo identification” rather than to ask specifically for a driver’s license. Not everyone has a driver’s license, and asking for one could be viewed as discriminatory.

No. 4 – Be Consistent in All Interactions to Avoid Screening Pitfalls

Most importantly, be consistent in all of your interactions with applicants, and follow your company’s policies and procedures in the same way for all applicants. If you make an exception to any policy or procedure, make sure you provide the same information and options to all applicants who are in the same situation.

Making a habit of treating applicants fairly and equally reduces your risk of discrimination claims and creates a welcoming atmosphere for all people who meet your qualifications and wish to live in your community.

SUMMARY:

Avoid discrimination within the screening process by carefully considering how you approach your application process. Claims of discrimination often arise in relation to the applicant-screening process. This can be a tricky area to navigate, and one where even well-intentioned people can find themselves on the wrong end of a

discrimination claim.

About the author: Ellen Clark is the Director of Assessment at Grace Hill. Her work has spanned the entire learner lifecycle, from elementary school through professional education. She spent over 10 years working with K12 Inc.’s network of online charter schools – measuring learning, developing learning improvement plans using evidence-based strategies, and conducting learning studies. Later, at Kaplan Inc., she worked in the vocational education and job training divisions, improving online, blended and face-to-face training programs, and working directly with business leadership and trainers to improve learner outcomes and job performance. Ellen lives and works in Maryland, where she was born and raised. About Grace Hill: For nearly two decades, Grace Hill has been developing best-in-class online training courseware and administration solely for the Property Management Industry, designed to help people, teams and companies improve performance and reduce risk.

City Council in Portland Approves \$60/Unit Fee

RENTAL HOUSING JOURNAL

The Portland City Council has passed by a vote of 3-1 a new city ordinance to assess annual \$60 per unit rental fee to fund the rental services office.

The fee applies to all rental units with an exception for some affordable housing.

The council voted 3-1 to approve the fee with Commissioner Amanda Fritz opposed and Commissioner Jo Ann Hardesty absent. Fritz cited concerns about the number of new regulations on landlords as a reason for her no vote. She also questioned leveling a \$60 fee on mobile homes as well as apartments.

City Council members had heard testimony at their July 31, 2019 meeting from landlords opposed to the proposed \$60-per-unit fee who said it is nothing but a “tax on renters” and “one more thing being dumped on the backs of landlords.”

The city proposed the fee to fund the Rental Services Office. At the July 31 first reading of the ordinance, two landlords, Marc and Kathy Rogers, spoke against the proposed fee, saying they own an apartment building at 19th and Hawthorn and provide an affordable housing alternative in that area.

Marc Rogers shared information about an email exchange with another landlord whom he wanted to keep anonymous. The landlord wrote, “I would likely email all my tenants and let them know that due to policies of city council, their rents would be going up by \$25 a month.”

DEMONIZING LANDLORDS

“It’s a very polarizing subject and I think it’s easy to look at landlords and demonize them as not caring, and interested only in the bottom line,” Rogers said. Then, in response to a council question, he said, “I think that maybe the use of demonization was not the correct word to use. I think that the policies of council over the last couple of years have been very negative towards landlords.”

Commissioner Chloe Eudaly spoke up to say, “It’s not my intention to demonize landlords. Some of my best friends are landlords.” She also questioned why a landlord would raise rent \$25 a month to cover a fee that is \$60 a year.

Rogers said that any time the price of a commodity goes up, “that’s typically passed on to the end user. If the price of diesel to deliver bread to Fred Meyers goes up, Fred Meyers is going to pass that along for a loaf of bread at their store. And that’s just typically the way businesses work.

“I think sometimes, in my opinion, landlords aren’t necessarily looked at as small businesses. We’re a small business. We’re really not any different than any other mechanic shop or coffee shop or restaurant. We’re small-business people. In my opinion the attitude of this council in the last two years has been that we’re in some way not a small business. That we’re something different than that, and that we are not good people,” he said.

Eudaly responded that she was a small business owner of a bookstore for 22 years and said, “Granted, I had a bookstore and books come with a preprinted price on them. Unfortunately, rental units don’t.”

“I want landlords to recognize the fact that they are business owners. We hear from a lot of, especially small landlords, who feel like this is something they do on the side. It’s almost more of a hobby or a supplement. And, they feel some of the regulations are forcing them to professionalize in a way they’re not equipped to do. So I see you as a small business,” Eudaly said. In response to Roger’s friend who said he would raise rent \$25 a month to cover the new fee, she said it was “hard for me to take your friends’ comment seriously because that’s just not reasonable.”

Rogers gave some perspective to what is going on



in Portland, saying “we are commercial Realtors.” He said they deal in smaller properties such as duplexes and fourplexes.

MORE LANDLORDS PUTTING THEIR RENTALS UP FOR SALE

Rogers said two years ago you would be lucky to find a dozen duplexes on the market in close-in zip codes.

“I checked two days ago, there were 61 duplexes on the market” in those areas, he said.

“The feedback we get consistently is that the small mom-and-pops who own the duplexes don’t want to deal with the lower barrier of entry with security deposits, with amortization schedules, with rent control, and the sophistication level for them.

“They’ve decided to get out. So that takes inventory off the market and adds cost,” Rogers said.

Eudaly responded by saying, “Well, I don’t think that we can draw a direct correlation between our regulations or policies and changes in the real estate market without adequate data.

“But I will say there’s a plus side to having more housing on the line. I don’t disagree with you at all. And that rental services office will actually help landlords navigate these little changes. So it kind of supports this item,” she said.

Kathy Rogers added to Marc’s comments, saying, “This fee in and of itself may not seem like a huge deal, but I think as Mark alluded to, coming on the heels of everything else that’s been thrown at landlords over the last two years, it feels a lot like the straw that’s breaking the camel’s back.

“And I think a lot of small landlords feel like all of the costs and fees and complexity are being dumped on the landlord and not shared by the tenant,” she said

“If this is to support the rental services commission, which I’ve been in contact with – and as far as I can tell about 90 percent of what they do supports tenants – why are the tenants not paying the fee?” she asked.

“How about with every lease renewal? The tenant pays the \$60 fee. Why is it 100 percent paid by landlords?”

“All of this has come at us in the last two years, you know, with the mandatory renting-relocation assistance, the elimination of no-cause notice evictions, rent control, new tenant-screening ordinances – which our attorney can’t even figure out, and he’s a real estate attorney – plus the security-deposit ordinance and the rental-registration program,” she said. “And now this.

“It’s very difficult to navigate and I will tell you that a lot of small landlords are afraid to rent out their properties. They’re afraid of being sued. They’re afraid of not following the rules. A lot of the single-family and duplexes that are being sold are now being purchased by owner-occupants. Those are rental units that are being taken off of the market,” she said.

HURTING THE PEOPLE YOU ARE TRYING TO PROTECT

“We never used to raise our rents every year,” Kathy Rogers said. “We have to now; every year on the anniversary, 100 percent of the time we raise our rents to the 100 percent maximum that we’re allowed to do because of the actions taken by the city council. And we never used to do that.

“So I just want you to think about (how) everything you’re throwing at us may be hurting the people you’re trying to protect,” she said.

Marc Rogers also told the council, “I’d like to share a

Opponents say the \$60-per-unit fee approved by the Portland City Council is just “one more thing being dumped on the backs of landlords.”

story and it might take more than 27 seconds. But for the last 11 years I’ve had somebody living in my building on 19th and Hawthorne for free.

“We pay his utilities and we provide him with a cell phone. Probably \$1,000 a month, maybe \$12,000 a year. We don’t have a formal agreement. We don’t even have a handshake, but what we have done is he looks out for my interest and I look out for his and I think that’s the right thing to do.

“I think it’s a Portland thing to do and I think that’s what we’ve shown that we’re willing to do and have done for the last 11 years. So that’s really my closing and I would hope that you would reconsider this and maybe take more input,” Rogers told the council.

\$60 A UNIT IS ‘JUST TOO HIGH’

Jill Warren, who described herself as a mom-and-pop landlord in Portland for the past 30 years, said she owns 34 units.

“So we will be paying \$2,040 a year to support the program. I just think that’s too high, \$60 per unit,” she said.

Then she added, “I appreciate the previous conversation about the demonization. I feel that some of the mandates that are being brought down by this body actually hurts our industry.

“For example, you don’t want us to factor in the criminal background for a tenant, and that’s very dangerous. I just screened an applicant who had 17 pages of felony convictions, including felony possession of a firearm, theft, burglary, possession of methamphetamine.

“I protect the safety of my tenants. My primary goal is their welfare and their safety. So that’s why I screen. It’s all about screening.

“Also the mandate to pick the first applicant that comes along: I mean, that’s not a very intelligent thing to do that. That’s why we screen. I run a criminal check. I do a background search. I check your credit history and your previous and current landlord referrals. So I just throw that all in a pot, and I stir it up, and that’s how I determine their eligibility,” Warren said.

Eudaly then responded to Warren saying, “I can’t allow this forum to be used to spread misinformation about our policy. We are not requiring landlords to not consider a prior convictions. That’s a choice.

“And the ‘first-come, first-served’ as ‘first-come, first-to qualify: We’re not requiring landlords to literally rent their units to the first person that applies. So those are two false statements that you made. And I just want to ask everyone else who comes up here to try to avoid spreading misinformation.”

PORTLAND’S PROPOSED FEE HIGHER THAN SEATTLE’S

Michael Havlik, deputy executive director of Multifamily NW, told the council, “My association members are dismayed with the current rendition of the proposed rental registration fee. It is yet another layer of tax on housing adding cost to a market already in crisis.

“Not only is the amount proposed excessive at \$60 per unit, but offends common sense that the implementation of our registration system will cost millions of dollars each year.”

Havlik said in the past he worked for several property management firms and the company Home Forward as director of asset management. “I have a passion for housing affordability and rental services and I’ve spent

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Portland Landlords Decry \$60-Per-Unit Fee

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my life dedicated to it all. I have 26 years of experience in property management including conventional multifamily housing, affordable tax credit, public housing, permanent supportive housing as well as special-needs housing.”

He said the members of Multifamily NW “make up 40 percent of Oregon’s rental housing supply, and as such we are the leaders in property management and development within the state.

He said for a comparable 200-unit property in Seattle the fee is \$575 for \$2.88 cents a unit compared to \$12,000 for a comparable 200-unit property in Portland.

ULTIMATELY A TAX ON RENTERS

“In other words, the city of Portland’s rate will be over 20 times the amount of Seattle. We estimate that by year 10 of this fee scheme, the city of Portland will have collected \$58 million that will do nothing to create more affordable housing,” Havlik said.

“It’s ultimately a tax on renters. Impacting those most who have lower incomes and do not have the good fortune of living in regulated affordable housing, which receives the special carve-out with a housing-supply shortage.”

The fee provides an exception for affordable housing.

“What rational jurisdiction would mete out punitive disincentives to housing providers? The city of Portland is creating inequity across all rental housing providers by imposing a fee for the sole purpose of funding multiple duplicative programs already implemented or

addressed by other better equipped agencies,.” Havlik continued.

“If you’re truly striving to provide solutions to the problem for the lack of affordable housing across the continuum of housing, then you would continue the path outlined by the legislature through house bills 2001 and 2003, which both work to create diverse, inclusive and vibrant housing opportunities throughout our city. Additionally, the city should reassess its posture towards housing providers It has demonized over the last several years. These providers are a big piece of the solution and you should view our members as willing partners in the goal of making housing more affordable and accessible to all Portlanders.”

Chris Nguyen, director of operations for Commerce Properties, said the fee “will be harmful to Portland renters by reducing new development in low- to moderate-priced rental housing, putting upward pressure on housing cost, and reducing the quality of existing rental housing.

Nguyen said the proposed rental fee reduces funds available for maintenance.

“This tax for the company I work for will have a \$27,000 annual impact. This fee could hire a part-time maintenance technician. Could allow us to replace 23 carpets. Allow us to put appliances in 16 new apartment homes.

“So, this means that many housing providers will have to pay fees with funds that they would have normally used to improve or maintain existing housing.”

TESTIMONY IN FAVOR OF THE FEE

Several people spoke in favor of the

new fee, including Margot Black from Portland Tenants United, a registered lobby organization with the city of Portland who is also a member of the rental services commission.

“I’m here to testify today in support of (the) rental registration fee with some minor reservations. But I’m going to bypass most of my testimony just to respond to a couple of the concerns that I’ve heard come before the council.

“Just so you know, fees are strictly regulated by the state, and the landlords of Portland would not be able to explicitly pass this fee on in their lease as a fee. However, I just got a 90 day notice for \$150 a month rent increase that will start this November. I’ll be paying \$150 every single month. One of the reasons my landlord gave me for that was increased fees by city council,” Black said.

“Frankly as a tenant every time we hear about tenant protections or things that are going to help tenants costing us money and ultimately hurting us, when my rent can already go up by hundreds of dollars a month, I would much rather some of that money be going to the city to provide programs and services for renters than just going in my landlord’s pocket,” Black said.

Mayor Ted Wheeler introduced the discussion on the fee by saying, “I’m pleased to bring forward the rental-registration fee, which has long been a commitment and a priority of mine to help support the office of rental services and establish a system to collect more accurate data of the rental market in Portland.

“In 2017 we set a rental-registration

requirement for all units in the city of Portland. In the first year of registration, we did not charge a fee. That was deliberate. We wanted to encourage voluntary compliance for landlords, but it’s been clear from the beginning that a fee would need to be established,” the mayor said.

“We asked the revenue division in the Portland Housing Bureau to return to us this year with the established fee. Since 2017 we’ve made consistent progress in increasing the city’s role in landlord tenant law and services, including establishing the rental services office, the Rental Services Commission, adopting local landlord-tenant law, increasing landlord-tenant services and increasing training and education services.

“Portland is one of the only cities our size to not have a rental system in place and fees to cover the basic services. We’re behind the curve and this is an imperative first step to allowing us to have a more robust and streamlined support for renters in our community.

“This council has also made clear the importance for data-driven policy making. This fee will support the maintenance of an expanded registration system. Something that I’ll be back in the fall bump to ask for support of this council for funding for the procurement of the expanded system so that we have data not just on the number of units and their location, but accessibility, general unit characteristics and other relevant market data. The recommended fee is in response to the budget note we included in our adopted budget this fiscal year, and it’s reasonable when compared to other cities in the region and across the country,” Wheeler said.

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