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Portland’s “FAIR” Ordinance

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INTRODUCTION

In June 2019, the Portland City Council voted 3-1 in favor of the passage of sweeping new regulations governing advertisement, screening, and security deposits. Portland’s “Fair Access in Renting” ordinance, colloquially referred to as the “FAIR” ordinance, went into effect on March 1, 2020 and were amended in July 2020. The Portland Housing Bureau enacted temporary Administrative Rules which ultimately became permanent in January 2021.

ADVERTISEMENT, APPLICATIONS, SCREENING

EXEMPTIONS FROM PCC 30.01.086

Basic Exemptions: Section 30.01.086 does not apply to a Dwelling Unit that is:

- a. Affordable Housing.** Regulated as affordable housing by a federal, state or local government for households that earn no more than 80 percent of the median household income and is subject to the Multnomah County Coordinated Access System or a formal referral agreement between landlord and a non-profit service provider or government agency working to place low income or vulnerable Tenants into housing;
- b. Not Advertised or Rented to Public.** Not rented to, or advertised for rental to the general public, including advertisements on online platforms with or without a fee; or
- c. Landlord-Shared Housing.** Shared with a landlord using the Dwelling Unit as a primary residence, where the Dwelling Unit is defined by PCC 33.910, and not by ORS 90.100; or shared with an existing Tenant with a separate Rental Agreement for the same Dwelling Unit, where the Dwelling Unit is defined by PCC 33.910, and not by ORS 90.100; or

d. Landlord-Shared Duplex. Tenancies where the Applicant would occupy one Dwelling Unit in a Duplex where the landlord’s principal residence is the second Dwelling Unit in the same Duplex; or

e. Landlord-Shared Property with ADU. Tenancies where the Applicant would occupy an Accessory Dwelling Unit, as defined by PCC 33.205, that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site, or Tenancies where the owner occupies the Accessory Dwelling Unit and the Dwelling Unit the Applicant would occupy is on the site.

Funding or Loan Requirements: Wherever local, state, or federal funding or loan requirements for Tenant screening conflict with any portion of Section 30.01.086, the funding or loan requirements will take precedence over only those portions in conflict.

These exemptions are very narrow. If you think you may be exempt, get legal advice (*do not assume*).

KEY PROVISIONS

I. Advertising (Notice of Dwelling Unit Availability) vs. Wait List

A. 72 Hour Notice of Dwelling Unit Availability

If a landlord advertises the availability of a dwelling unit, the landlord must publish a “Notice of Dwelling Unit Availability” for 72+ hours prior to accepting applications.

[NOTE: Although it is called a Notice of Dwelling Unit Availability, this is somewhat of a misnomer. The “Notice” can be the advertisement itself, as long as it contains the required information].

1. Contents: The Notice (ad, sign, banner, etc.) must include the following information, OR must contain a link, website, address at which it can be found:

a) **Open Application Period.** When (date and time) landlord will begin to accept* applications, which must be at least 72 hours after the first** advertisement for the unit is published;

* The original language was “process,” but the July 22, 2020 amendment changed this to “accept.”

** The July 2020 amendments clarified that if a landlord advertises the unit at different times or through different methods (e.g., one day on Craig’s List and another day on Zillow), the Open Application Period must be at least 72 hours after the *first* ad is published.

b) **Criteria.** A description of the factors landlord will consider in evaluating applicants if landlord intends to charge a screening fee; and

c) **Accessibility.** Whether an available unit is an Accessible Dwelling Unit.

[NOTE: “Accessible Dwelling Unit” has a highly technical definition. It means “a Dwelling Unit that qualifies as a ‘Type A Unit’ pursuant to the Oregon Structural Building Code and ICC A117.1.” Landlords may need assistance from professionals such as contractors or architects to determine whether a subject unit is an Accessible Dwelling Unit].

2. Required Information Must Be Included on ALL Advertisements

The July 2020 amendments added a new requirement, i.e., that the required info (“Contents” above) must be included on all published advertisements used to communicate the availability of a dwelling unit including, but not limited to, outdoor signage, sandwich boards, banners, fliers, printed materials, audio recordings, video media, or online platforms. *In lieu of the actual info, again, the ad (sign, banner, flier, etc.) can simply contain a link, address, etc. at which prospective applicants can find the required information in writing.*

3. Advertising Availability of Multiple Units in Same Property

If a landlord simultaneously advertises the availability of more than one dwelling unit at the same property, the landlord can use one combined Notice of Dwelling Unit Availability the following info (or links, address etc. where this info can be found):

- a) The number of dwelling units available
- b) The range of numbers of bedrooms in the available dwelling units
- c) The range of available dwelling unit sizes
- d) The range of rents for available dwelling units
- e) When Open Application period begins
- f) The screening criteria (if the landlord intends to charge a screening fee)
- g) Which specific units, if any, are Accessible Dwelling Units.

B. Alternative: Waitlist

1. A landlord can elect to use a waitlist to fill vacancies *instead of advertising* an available unit. If a landlord uses a waitlist, then the landlord:
 - a) Must add names to the waitlist in the order of receipt
 - b) Must accept, conditionally accept, or deny waitlist applicants in order of receipt of application
2. If a landlord advises the availability of a waitlist, then the landlord's ad must include the following information, OR must contain a link, website, address at which the information can be found:
 - a) The number of dwelling units that can be filled from waitlist
 - b) The range of numbers of bedrooms in the dwelling units that can be filled from waitlist
 - c) The range of rents for dwelling units that can be filled from waitlist
 - d) When the landlord will begin to accept waitlist applications (Open Application period), which must be at least 72 hours after the first ad is published.
 - f) The screening criteria (if the landlord intends to charge a screening fee)
 - g) Which specific units, if any, are Accessible Dwelling Units.

The ad can simply contain a link, address, etc. at which prospective applicants can find the required information.

II. Application Form and Screening Fees

A. Landlord Application Form Must Include:

- 1. Disability.** An opportunity on the application for an applicant to affirmatively indicate a mobility disability or other disability status;
- 2. PHB Form: Right to Request Modification/Accommodation Notice**
- 3. PHB Form: Statement of Applicant Rights and Responsibilities Notice**
- 4. Fee/Criteria.** If the landlord charges a screening fee, a description of the landlord's Screening Criteria and evaluation process; and
- 5. Supplemental Evidence.** An opportunity for applicant to include Supplemental Evidence for the landlord's consideration to mitigate potentially negative screening results.

B. Screening Fees

In addition to the requirements of ORS 90.295, the following FAIR restrictions apply:

- 1. When Solely Using a Screening Company (Can't Charge Extra):** If the landlord conducts the entirety of an applicant screening through professional screening company, the landlord must not charge applicant a screening fee greater than that charged by the screening company.
- 2. When Partially Using a Screening Company (25% Add-On Limit):** If the landlord conducts some but not all of an applicant screening through the use of a professional screening company, the landlord must not charge a screening fee that is more than 25 percent greater than the cost charged by the screening company.
- 3. When Not Using a Screening Company (Comparable Charges/Formula):** If the landlord performs the applicant screening and does not use the screening services of a professional screening company, the landlord must not charge a screening fee that exceeds 10 percent more than the cost for a professional screening company serving the Portland-Metro area to complete the same work.

III. First Come, First Served (and Exceptions)

Landlords must use a first-come-first-processed application system for open units, although as explained further below, it's not strictly first-come in that it gives priority to mobility-disabled applicants applying for an Accessible Dwelling Unit.

A. Applications Received in Response to Notice of Dwelling Unit Availability

- 1. Must Record Dates/Times:** The landlord must digitally or manually record the date and time each complete application was received. Per the July 2020 amendments, if the landlord received multiple applications at the same time and cannot reasonably determine the actual order of receipt, the landlord can develop and apply its own policy for determining order of receipt. The policy must be:
 - a) Written and provided to the applicant for review upon request by an applicant; and
 - b) Uniformly applied by the landlord during the Open Application Period.
- 2. Premature Applications Subject to Eight Hour Penalty:** The landlord must digitally or manually record the date and time of any application received prior to the Open Application Period as having been received 8 hours after the start of the OAP.
- 3. Use Order of Receipt:** Landlords can simultaneously process multiple applications but must accept, conditionally accept, or deny applicants in order of receipt.

[NOTE: ORS 90.295(1)(b), enacted by SB 484 and effective statewide on January 1, 2020, provides that landlords must refund the applicant screening charge within a reasonable time if the landlord fills the vacant unit before screening the applicant, or if the landlord does not screen the applicant for any reason. It also provides that a landlord can only charge an applicant a single screening charge in any 60-day period, regardless of the number of units owned or managed by the landlord].

- 4. Can Refuse to Process Portland Violator's Application:** A landlord may refuse to process the application of an applicant who has verifiable repeated rental agreement violations with *that landlord* if the most recent violation occurred within 365 days before the applicant's submission date. [Note: This provision has such serious limitations that it's almost useless and will very rarely be available. Get legal advice if you think it may apply, because it probably doesn't].
- 5. Can Refuse to Process Defective Application:** A landlord may refuse to process an application that is *materially* incomplete, that fails to include information concerning an applicant's identification, income, or upon which an applicant has *intentionally* withheld or misrepresented required information.
- 6. Must Provide Record of Application Receipt Upon Request (5 Business Days)**
Within 5 business days of receiving a request from an applicant, the landlord must provide the applicant with a record of the date and time the landlord received the complete application.
- 7. Can Reject Application if Unit No Longer Available**

The July 2020 amendments added a provision that if the unit is no longer available, which includes the landlord (truly) deciding not to rent the unit, the landlord can refuse an application or refuse to process one that has been received and does not need to accept/conditionally accept/or deny in writing, perform an individualized assessment, or allow an appeal.

If the landlord has already processed an application when the unit becomes no longer available, the landlord must deny the applicant in writing, but does not need to perform an individualized assessment or allow an appeal.

B. Applications for Accessible Dwelling Unit

- 1. Must Give Priority to Mobility-Disabled Applicant During First 8 Hours:** If a landlord receives a completed application for an Accessible Dwelling Unit from any applicant with a mobility-disabled household member, the landlord must accept, conditionally accept, or deny the application prior to considering other applicants.

2. Multiple Mobility-Disabled Applicants: If the landlord has received multiple completed applications for an Accessible Dwelling Unit from applicants with mobility-disabled household members, the landlord must process these applications in order of receipt (and prior to all other applications).

3. Definition of Mobility-Disabled: A disability that causes an ongoing limitation of independent, purposeful, physical movement of the body or one or more extremities and requires a modifiable living space because of, but not limited to, the need for an assistive mobility device.

IV. Applicant Identification Requirements

A. Prohibitions. A landlord cannot:

1. Require an applicant to provide a social security number;
2. Require an applicant to prove lawful presence in the United States; or
3. Inquire as to the immigration status of any applicant or household member.

B. Landlords Must Accept Certain Types of Identity Verification

A landlord can require an applicant to prove identity but must accept any of the following, or a combination thereof, to verify the name, date of birth and photo of the applicant:

1. Evidence of Social Security Number (SSN Card);
2. Valid Permanent Resident Alien Registration Receipt Card;
3. Immigrant visa;
4. Individual Taxpayer Identification Number (ITIN);
5. Non-immigrant visa;
6. Any government-issued identification regardless of expiration date; or
7. Any non-governmental identification or combination of identifications that would permit a reasonable verification of identity.

V. Financial Criteria Screening Allowed only for Financially Responsible Applicants

A. Applicants Can Choose Who Will Be Financially Responsible

1. When multiple adults are applying together to live in a unit, the applicants can choose the person(s) who will be “financially responsible for the Dwelling Unit” (Financially Responsible Applicants) and the person(s) who will have no financial responsibility (Non-Applicant Tenants).

2. Landlords do not have a say in this designation.

B. Screening Limitations Related to Financially Responsible Applicants

- 1. Financially Responsible Applicants:** The landlord can screen only the Financially Responsible Applicants for financial criteria.
- 2. Non-Applicant Tenants:** Non-Applicant Tenants can only be screened for factors related to health, safety and property maintenance (*e.g.*, criminal convictions and some aspects of rental history).

VI. Rent-To-Income Ratios (Limits)

Again, only Financially Responsible Applicants can be screened for financial qualifications. FAIR now places clear limits on the maximum rent-to-income criteria that can be applied.

***PHB FORM:** Rental Housing Application and Screening Minimum Income Requirement Table. *This is not a form that must be provided to applicants, it is the PHB table that determines whether the relevant unit is a “less expensive unit” or a “more expensive unit” for purposes of the rent to income ratio. It is revised by PHB each spring.*

A. 2.5x Rent for Less Expensive Units.

- 1. 2.5x Cap:** Landlords can require Financially Responsible Applicants to demonstrate monthly gross income that is up to 2.5 times the monthly rent for less expensive units.
- 2. Definition of Less Expensive Units:** Less expensive units are those in which the monthly rent amount is below the maximum monthly rent for a household earning no more than 80 percent of the median household income published annually by the Portland Housing Bureau. *These figures changed effective May 1, 2021 and will change each year.*

B. 2x Rent for More Expensive Units.

- 1. 2x Cap:** Landlords can only require Financially Responsible Applicants to demonstrate monthly gross income that is up to 2.0 times the monthly rent for more expensive units.
- 2. Definition of More Expensive Units:** More expensive units are those in which the monthly rent amount is at or above the maximum monthly rent for a household earning no more than 80 percent of the median household income as published annually by the Portland Housing Bureau. *These figures changed effective May 1, 2021 and will change each year.*

C. Application of Rent-To-Income Ratio.

When applying the allowable ratio, the landlord must comply with the following:

- 1. All Income Sources:** Landlord must include all income sources of Financially Responsible Applicants (wages, non-governmental rent assistance, monetary public benefits). A landlord *may choose* to include “verifiable friend or family assistance.”
- 2. Effect of Vouchers/Subsidies:** Landlord must calculate based on rental amount reduced by governmental voucher/housing subsidy.
- 3. Cumulative Financial Resources:** Must be based on cumulative financial resources of all Financially Responsible Applicants.

VII. Guarantors or Additional Security if Applicant Doesn't Meet Income Requirements

If an applicant does not meet the minimum income ratios, but otherwise qualifies, a landlord may require additional and documented security from a guarantor, or in the form of an additional security deposit, subject to the following.

A. Notification of Conditional Approval

A landlord must communicate this conditional approval to the applicant in writing and indicate the amount of the additional security required. [Note: FAIR's security deposit rules limit this to an additional one-half month's security deposit, payable in installments over three months].

B. 48- Hour Response Period

The applicant has no less than 48 hours after the communication of conditional approval to accept or decline this opportunity.

C. Screening Guarantors

- 1. Demonstrate Financial Capacity:** If the landlord chooses to require additional documented security from a guarantor, the landlord may require the guarantor to demonstrate financial capacity.
- 2. Friend/Family Member 3x Rent:** If the guarantor is a friend or family member, the landlord cannot require the guarantor to have income greater than 3x the rent.

D. Duration of Guarantor Agreement

The landlord may not require an applicant's guarantor agreement to exceed the term of the Rental Agreement.

[NOTE: The additional security/guarantor option only applies if the Financially Responsible Applicant doesn't meet the applicable rent-to-income ratio. A landlord *cannot* grant a conditional acceptance based on payment of an additional security

deposit or guarantor if the tenant fails to satisfy some other criterion. Conversely, if a Financially Responsible Applicant doesn't meet the applicable rent-to-income ratio, the landlord is not *required* to grant a conditional acceptance and may simply deny the application].

VIII. Two Choices: Portland's Low-Barrier Criteria or Individualized Assessment

A. Low-Barrier Screening Criteria (Optional)

Landlords can elect to use the City's low-barrier screening criteria. If a landlord has even a single requirement that is more restrictive (*i.e.*, stricter) than the low-barrier standard, the landlord has not implemented the low-barrier criteria and must follow the individualized assessment process. To adopt the low-barrier criteria, the landlord must adopt criteria that conform to the following.

1. Criminal History: Landlords cannot reject applicants for...

- (a) **Non-Convictions:** An arrest that did not result in conviction, unless the resulting charge is pending on the date of the application;
- (b) **Diversions/Deferrals:** Participation in or completion of a diversion or a deferral of judgment program;
- (c) **Dismissals, Expungements:** A conviction that has been judicially dismissed, expunged, voided or invalidated;
- (d) **Crime No Longer Illegal:** A conviction for a crime that is no longer illegal in the State of Oregon;
- (e) **Juvenile Crimes:** A conviction or any other determination or adjudication issued through the juvenile justice system;
- (f) **Misdemeanors More Than Three Years Old:** A criminal conviction for misdemeanor offenses for which the dates of sentencing are older than 3 years from the date of the application, excluding court-mandated prohibitions that are present at the property for which the applicant has applied; or
- (g) **Felonies More Than Seven Years Old:** A criminal conviction for a felony offense for which the dates of sentencing are older than 7 years from the date of the application, excluding court-mandated prohibitions that are present at the property for which the applicant has applied.

Exception for Court-Mandated Prohibitions: If the applicant is subject to a court-mandated prohibition that prevents the applicant from living at a particular property, the landlord would not be required to approve the application.

Landlord Must Consider Supplemental Evidence Before Denying Based on Criminal Conviction: Even when applying the above low-barrier criminal criteria, the landlord cannot deny an applicant *solely on the basis of criminal history* without considering any Supplemental Evidence provided by the applicant at the time of application submittal. Supplemental Evidence is any written information submitted by the applicant that the applicant believes to be relevant to the applicant's predicted performance as a tenant. In other words, if an applicant meets all criteria except for the criminal criteria, and would thus be rejected solely on the basis of the relevant criminal conviction, then the landlord must conduct an individualized assessment of the criminal conviction, including consideration of any Supplemental Evidence submitted by the applicant.

2. Credit History: Landlords cannot reject Financially Responsible Applicants for...

- (a) **500:** A credit score of 500 or higher;
- (b) **Insufficient Credit History:** Insufficient credit history, unless the applicant in bad faith withholds credit history information that might otherwise form the basis for a denial;
- (c) **Negative Credit Report:** Negative information provided by a consumer credit reporting agency indicating past-due unpaid obligations in amounts less than \$1,000;
- (d) **Prior Rental Property Damage Less Than \$500:** Balance owed for prior rental property damage in an amount less than \$500;
- (e) **Discharged Bankruptcy:** A Bankruptcy filed by the applicant that has been discharged;
- (f) **Active Chapter 13 Bankruptcy:** A Chapter 13 Bankruptcy filed by the applicant under an active repayment plan; or
- (g) **Medical/Education/Vocational Training Debt**

3. Rental History: Landlords cannot reject an applicant for...

- (a) **An FED case if:**
 - (i) **The tenant won:** The FED was dismissed or resulted in a general judgment for the applicant before the applicant submitted the application;
 - (ii) **The tenant lost the FED but:**
 - a. **Judgment More Than 3 Years Old:** the general judgment was entered 3 or more years before the date of the application;
 - b. **Other Reasons:** The general judgment was entered less than 3 years before the application, but (1) the FED was based on a no cause, or (2) it was a default

judgment and the applicant presents credible evidence that they had already moved out at the time of the default; or (3) the relevant FED judgment was later set aside or sealed.

- (b) **Information From References:** Any information that the landlord obtains from a verbal or written rental reference check with the exception of defaults in rent, three or more material violations of a Rental Agreement within one year prior to the date of the application that resulted in notices issued to the tenant, an outstanding balance due to the landlord, or lease violations that resulted in a termination with cause. *No other reference information may be the basis of a denial.*
- (c) **Insufficient Rental History:** Insufficient rental history—unless the applicant in bad faith withholds rental history information that might otherwise form a basis for denial.

B. Individual Assessment (When Not Using Low Barrier Criteria)

A landlord that applies screening criteria that is *more prohibitive* (stricter) than the low-barrier criteria must conduct an individualized assessment of any basis upon which the Landlord intends to deny an application, including any Supplemental Evidence, *before* issuing a denial.

1. Consideration of Supplemental Evidence: In evaluating an Applicant using the Individual Assessment, a landlord must accept and consider all Supplemental Evidence provided with a completed application to explain, justify or negate the relevance of potentially negative information revealed by screening. In an individual assessment, the landlord must consider:

- (a) **Nature and Severity:** The nature and severity of the incidents that would lead to a denial;
- (b) **Number and Type:** The number and type of the incidents;
- (c) **Passage of Time:** The time that has elapsed since the date the incidents occurred;
- (d) **Age at Time of Incident:** The age of the individual at the time the incidents occurred.

2. Denials: After performing an individual assessment, the landlord may deny the applicant, so long as:

- (a) **Non-Discriminatory:** The denial must comport with the Fair Housing Act;
- (b) **Complies with the General Screening Process and All Other Laws:** The denial is in accordance with the “General Screening Process” (Subsection D of FAIR Ordinance) and all other applicable federal, state, and local laws;

(c) Landlord Provides Written Notice of Denial (Within Two Weeks)

i) Basis for Denial: Must include an explanation of the basis for denial; and

ii) Explanation re Inadequacy of Supplemental Evidence: Must include an explanation of the reasons that the Supplemental Evidence did not adequately compensate for the factors that informed the landlord's decision to deny.

IX. Disability- Related Modification Requests

A. Alternative Requests (Two Successive 24-Hour Periods)

If a landlord denies an applicant's request for modification, the landlord must provide the applicant two successive 24-hour periods within which to request alternative modifications.

B. Request for Modification Can't Be Basis for Denial

A disabled applicant who is otherwise approved and who requests a modification may not be denied housing based solely on the landlord's denial of a requested modification.

C. Applicant Can Accept Unit without Modification

If no reasonable modification can be made to the dwelling unit to address the applicant's disability, the applicant, if otherwise eligible, may accept the dwelling unit without modification.

X. Denials and Appeals

A. Compliance With 30.01.086 and Other Laws

A Landlord may deny any applicant or Non-Applicant Tenant in accordance with the requirements of 30.01.086 and all applicable federal, state, and local laws.

B. Approving Financially Responsible Applicant and Denying Non-Applicant Tenant

If a Financially Responsible Applicant qualifies for a dwelling unit, the Landlord may not deny the Financially Responsible Applicant based on the denial of a Non-Applicant Tenant that the Financially Responsible Applicant included on the application. Instead, the Landlord must allow the qualifying Financially Responsible Applicant to accept the dwelling unit without the Non-Applicant Tenant.

C. Reasonable Modifications/Accommodations

Neither an applicant's request for reasonable modification or accommodation for a disability, nor the nature of the modification or accommodation requested, may be a factor for a landlord's denial.

D. Communication of Determination (Two Week Limit)

Within 2 weeks after a landlord or its screening company completes its evaluation of an applicant, the landlord must provide the applicant with a written communication of acceptance, conditional acceptance, or denial. In the case of a conditional acceptance or denial, the written communication must describe the basis for the decision.

E. Appeals

The landlord must offer the applicant an opportunity for appeal for 30 days following the denial of an application. The Landlord's appeal process must include the following:

- 1. Address Negative Information:** Provide the applicant the opportunity to correct, refute or explain negative information that formed the basis of the landlord's denial;
- 2. Three Month Prequalification Period:** Prequalify the applicant for rental opportunities at the landlord's properties for the three months following the date a landlord approves an application reviewed on appeal.

The July 2020 amendments "clarified" that if the landlord approves an application reviewed on appeal, the applicant is prequalified for rental opportunities with *dwelling units at the same or lower rental rate at the landlord's properties* for three months following the date of approval. Because the term "landlord" includes property management companies, this appears to mean that FAIR requires a management company to automatically accept an applicant who has successfully appealed at a *different property under different ownership and with different criteria*, as long as the rent was no higher.

- 3. Waive Screening Fee for Three Months:** Waive the applicant's screening fee for the three months following the approved appeal. Prior to waiving the screening fee, the landlord may require the applicant to self-certify that no conditions have materially changed from those described in the Landlord's approved application.

4. Affirmative Notification to Applicant of Available Prequalified Units

- a. If a landlord has prequalified an applicant through the appeal process, the landlord must notify the applicants of any available units for which they are prequalified before offering the units to the general public.
- b. The landlord must issue the notification to the prequalified applicant by email, phone or certified mail, as provided on the application or subsequently updated by the applicant.
- c. A prequalified applicant has 48 hours after delivery of the landlord's notification by email or phone, or 48 hours after *receipt* of the notice by mail to respond and declare intent to enter into a rental agreement before a landlord can

offer the unit to the general public. Notifications must include the date and time the landlord must receive the response and declaration of intent from applicants. If there are multiple prequalified applicants, the offers must be made in order of appeal submission dates. Landlords are not required to rent to prequalified applicants who respond after the deadline.

Once a Notice of Dwelling unit availability is published, prequalified applicants must submit an application and are subject to the general application process but will not be subject to screening fees or additional screening.

XI. Damages

A landlord that fails to comply with any of the requirements of the FAIR screening ordinance shall be liable to the applicant for an amount up to \$250 per violation plus actual damages, reasonable attorney fees and costs. Any applicant materially harmed by a landlord's intentional noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate.

SECURITY DEPOSITS: PCC 30.01.087

I. APPLICABILITY

New Rental Agreements Entered into *On or After March 1, 2020*: *All* of the below requirements apply to any new (i.e., initial) Rental Agreement entered into on or after March 1, 2020.

Rental Agreements Entered into *Prior To March 1, 2020*: For any Rental Agreement entered into prior to March 1, 2020, *only* the requirements in **highlights** apply.

II. LIMITS ON SECURITY DEPOSIT AMOUNT

A. One Month's Rent If No Last Month's Rent Deposit Required

- 1. Basic Rule:** The security deposit cannot exceed one month's rent, if no last month's rent deposit is required.
- 2. Exception (Condition Acceptance / Installment Payments):** Landlord may conditionally accept a Financially Responsible Applicant who does not meet the rent-to-income ratio criteria by requiring an additional half-month's rent as security deposit, but must allow tenant to pay the additional deposit in installments over a three-month period in "installment amounts reasonably requested by the Tenant."

B. One-Half Month's Rent If Last Month's Rent Deposit Is Required

- 1. Basic Rule:** The security deposit cannot exceed *one half* of one month's rent, if a last month's rent deposit *is* required.
- 2. Exception (Condition Acceptance / Installment Payments):** Landlord may conditionally accept Financially Responsible Applicant who does not meet rent-to-income ratio criteria by requiring an additional half-month's rent as security deposit, but must allow tenant to pay the additional deposit in installments over a three-month period in "installment amounts reasonably requested by the Tenant."

III. MUST KEEP SECURITY DEPOSIT IN SEPARATE ACCOUNT

A. Security Deposits Must Be in Account Segregated from Personal/Operating Account

B. Must Deposit Entire Security Deposit into FDIC-Insured Separate Bank Account Within 2 Weeks of Receipt

C. Rental Agreement Must Reflect Bank Name/Address, Whether It's Interest-Bearing

D. If Placed in Interest-Bearing Account, Interest Belongs to Tenant

- 1. Account Receipt Requests:** At tenant's request (max once every 12 months), landlord must provide an account receipt showing any interest earned
- 2. Keeping Interest (When Permissible):** If deposit plus interest is used entirely at end of tenancy, landlord "keeps" interest.
- 3. 5% Deduction:** If tenant is entitled to a deposit refund, refund must also include interest, minus (optional) 5% deduction *from the accrued interest amount* for administrative costs. (Query: Is this a violation of the ORLTA?)

IV. NEW RENTAL AGREEMENT PROVISIONS RE SECURITY DEPOSITS

A. Rental Agreement Must Reflect Bank Name/Address, Whether It's Interest-Bearing

B. Additional Security Deposit Installment Plan Addendum (if applicable)

C. Fixture, Appliance, Equipment, Personal Property Addendum

- 1. Itemization:** Fixtures, appliances, equipment, and personal property must be itemized in the Rental Agreement in order to withhold any portion of the security deposit for repair/replacement of said items

Note: “Structural elements” like subfloor, walls, framing, roofing, piping, staircases are not subject to the depreciation schedule and don’t have to be listed in Rental Agreement in order to withhold post-tenancy

2. Description Required: The itemizations must include descriptions

3. Depreciated Value Required: The itemization must include a depreciated value in accordance with PHB depreciation schedule; must include original purchase price and date.

***PHB Form: Fixture, Appliance, Equipment, and Personal Property Depreciation Schedule.** *The form does not have to be provided to the tenant, it’s just what the landlord must follow is determining the depreciated value in the Rental Agreement.*

a. When Approximations Are Required: If landlord doesn’t have original purchase price and/or date, landlord must approximate age and depreciated value using same or comparable item.

b. Documentation for Deviations from Depreciation Schedule: Landlord may provide “documentation reasonably acceptable to a Tenant” to justify a value calculation that deviates from the depreciation schedule. Must include current depreciated value (per landlord), explanation of why the PHB depreciated value is inapplicable, and justification of alternative repair or replacement cost has been calculated.

NOTE: The July 2020 amendments seem to suggest that the landlord can only ever deduct the depreciated value and not the replacement cost, but it’s not entirely clear.

V. CONDITION REPORT

A. Landlord Must Give to Tenant by Commencement Date

The landlord must provide a condition report form to the tenant by the “commencement date” (which is the date tenant is entitled to possession of the premises)

B. Tenant Has 7 Days to Submit Condition Report to Landlord

1. Tenant can return Condition Report noting damages and condition of the fixtures, appliances, equipment and personal property listed in the Rental Agreement
2. Tenant’s Condition Report establishes the baseline condition of the premises (*see exception below*)

C. Third-Party Validation if Landlord Disputes Tenant’s Condition Report

1. Tenant and landlord may obtain “joint third-party validation”
2. Third party must be neutral (no friends of family of either side)

3. If third-party validation is unsuccessful, then “the Tenant’s Condition report shall establish the baseline condition of the Dwelling Unit.”

The July 2020 amendments added a requirement that the tenant must participate in the validation process in good faith. The amendments did not, however, add any consequence for failure to do so.

D. If Tenant Does Not Submit Condition Report, Landlord Must Provide Completed Condition and Photos Within 17 Days

If tenant does not submit the completed Condition Report within 7 days, the landlord must provide Condition Report *and* digital photographs of premises to tenant within 17 days of the commencement date.

E. Landlord Must Provide Updated Condition Report After Repairs/Replacements

1. If Landlord intends to withhold any money from the security deposit to cover repairs or replacement, Landlord must update the Condition Report to reflect the repair/replacement.
2. Landlord must provide Tenant with an updated Condition Report, or with “maintenance work order history,” within 10 business days of the foregoing repair/replacement. The updated Condition Report must include:
 - a. Date(s) of repair/replacement
 - b. Damage being repaired/replaced
 - c. Updated depreciated value
 - d. Any funds applied from Security Deposit for repair/replacement
3. The PHB rule further provides:
 - a. “Replaced items should be noted along with the item purchase date, item condition, and depreciated value.”
 - b. “If the Tenant disputes the updated Condition Report or maintenance work order history, the Tenant and the Landlord may attempt to obtain third-party validation of the updated condition.”

VI. SECURITY DEPOSIT WITHHOLDINGS

A. Limitations on Types of Charges Against Security Deposits

1. Actual Costs or Estimated Damage*: Landlord can apply security deposit to “actual costs reasonably incurred to repair the premises to their condition existing at

the commencement of the Rental Agreement, or the amount reasonably necessary to make the repairs.”

** The original version limited withholdings to actual costs incurred, but the July 2020 amendments broadened this to allow for reasonable amounts necessary to make the repairs, in line with the ORLTA.*

2. Prohibited Charges/Withholdings: Landlord cannot charge for routine maintenance, ordinary wear and tear, replacement of fixtures/appliances/equipment/property not damaged by tenant’s acts/ omissions, or for preexisting damage noted on Condition Report.

3. Effect of Warranty: Landlord cannot charge for anything reimbursed by warranty or landlord’s insurance or a warranty.

4. Painting: Landlord cannot charge for painting except to repair specific tenant-caused damage beyond ordinary wear and tear or to repaint when tenant painted without permission.

5. Cleaning/Repair of Flooring/Carpet: Landlord can only charge if “additional cleaning or replacement is necessitated by use in excess of ordinary wear and tear,” and can only charge for the cost of cleaning/replacing the “discrete impacted area.”

B. Itemized Final Accounting

1. 31 Day Time Limit: The final accounting must be sent within 31 days.

2. Must Include Photos of Any Visual Damage

3. Labor Costs in Excess of \$200: If charging more than \$200 for labor, the itemized final accounting must include documentation demonstrating that labor cost is reasonable and consistent with typical hourly rates in metropolitan area.

4. Must Include Security Deposit Notice of Rights. Can consist of a copy of PCC 30.01.087, plus contact info for Legal Aid Services of Oregon or online/physical address of Oregon State Bar. (This is not a PHB form).

VII. FINAL INSPECTION

A. Mandatory within One Week of Termination and Landlord Obtaining Possession

Within one week following the termination date, the landlord must do a walk-through to document any damage beyond ordinary wear and tear that was not noted on the Condition Report. The landlord must give at least 24 hours’ advance notice of the time the walk-through will be conducted. The tenant (or a tenant’s representative) is entitled, but not required, to attend. The “termination date” is the date that the tenancy terminates and the landlord takes possession. [Query: does this mean that if a landlord waits and doesn’t

take possession for a week, this delays the deadline? It's unclear, but safest to assume that it's the date the tenancy has terminated and the landlord *could* take possession.]

VIII. *PHB FORM: RENTAL HISTORY FORM

A. Must Be Provided to Tenant Within 5 Business Days of Landlord Serving Any "Termination Notice" of Any Kind

**The July 2020 amendments clarified, astonishingly, that the PHB Rental History Form must be served with EVERY type of termination notice—not just no causes or qualifying landlord reasons. Now all 72s, 30-Day for Causes, 10-Day Repeat Violations, 24-Hour Outrageous Conduct, and any other kind of termination notice must include this form. It defies logic that curable notices should include this form, but that's what is now required.*

B. Must Be Provided to Tenant Within 5 Business Days of Tenant Request

C. Must Be Provided to Tenant Within 5 Business Days of TENANT Serving Any Termination Notice (?)

[Note: PCC 30.01.087(F) *does not* contain this requirement, and PHB's Permanent Administrative Rule (Rental Housing Security Deposits) *does not* contain this requirement. Accordingly, it does not currently appear to be law. Notwithstanding this, the actual PHB Rent History Form states that it must be served within 5 business days of "receiving notice from the tenant of intent to terminate the tenancy"].

IX. DAMAGES

"A Landlord that fails to comply with **any** of the requirements of this Section **shall be** liable to the Tenant for an amount double to the amount of the Tenant's Security Deposit, reasonable attorney fees, and costs (collectively, "Damages"). Any Tenant aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate."

DISCLAIMER

THE INFORMATION AND MATERIALS PRESENTED BY ANNA S. McCORMACK AND WARREN ALLEN LLP ARE INTENDED TO BE EDUCATIONAL ONLY AND ARE NOT SPECIFIC LEGAL ADVICE. YOU SHOULD CONSULT YOUR OWN ATTORNEY FOR ADVICE REGARDING THE APPLICATION OF THE LAW TO YOUR INDIVIDUAL CIRCUMSTANCES. **THE LAW CAN CHANGE VERY RAPIDLY, SO DO NOT ASSUME THAT ANY LAW DISCUSSED HEREIN APPLIES IN PERPETUITY OR THAT IT REMAINS AS DESCRIBED HEREIN. THESE MATERIALS DO NOT COVER OTHER LOCAL, STATE AND FEDERAL LAWS THAT MAY APPLY.**

ABOUT THE AUTHOR

Anna S. McCormack has been a litigator with Warren Allen LLP since 2003 and represents many of the region's premier management companies and ownership groups. Ms. McCormack's civil litigation practice emphasizes landlord's rights and business disputes. She has appeared in state, federal, tribal, and municipal courts, as well as administrative and appellate proceedings. Ms. McCormack is committed to making the legal process understandable to her clients, and to finding practical and creative alternatives to litigation when possible. Ms. McCormack attained a B.A. summa cum laude from the University of Cincinnati and earned her J.D. cum laude from the Northwestern School of Law of Lewis and Clark College. When she is not parsing the Portland landlord/tenant ordinances or pondering Oregon's utility statute, Ms. McCormack enjoys imagining what she might do if she had spare time.



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Rental Services Office

Director Shannon Callahan

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Right to Request a Modification or Accommodation Notice Required Under Portland City Code Title 30.01.086.C.3.B

Within the City of Portland, a landlord is required to include this notice with application forms for the rental of a dwelling unit.

State and federal laws, including **the Fair Housing Act**, make it illegal for housing providers to refuse to make **reasonable accommodations** and **reasonable modifications** for individuals with disabilities. All persons with a disability have a right to request and be provided a reasonable accommodation or modification at any time, from application through to termination/eviction.

Some examples of reasonable accommodations include:

- Assigning an accessible parking space
- Transferring a tenant to a ground-floor unit
- Changing the rent payment schedule to accommodate when an individual receives public benefits
- Allowing an applicant to submit a housing application via a different means
- Allowing an assistance animal in a "no pets" building. More information about assistance animals is available here:
https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals

Some examples of reasonable modification include:

- Adding a grab bar to a tenant's bathroom
- Installing visual smoke alarm systems
- Installing a ramp to the front door

Under fair housing laws, a person with a disability is someone:

- With a physical or mental impairment that substantially limits one or more major life activities of the individual;
- With a record of having a physical or mental impairment that substantially limits one or more major life activities of the individual; or
- Who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

Major life activities include, but are not limited to seeing, walking, reaching, lifting, hearing, speaking, interacting with others, concentrating, learning, and caring for oneself.



Reasonable Accommodations

A reasonable accommodation is a change or exception to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. This includes public use and common spaces or fulfilling their program obligations. Any change in the way things are customarily done that allows a person with a disability to enjoy housing opportunities or to meet program requirements is a reasonable accommodation.

All housing or programs are required to make reasonable accommodations. Housing providers may not require persons with disabilities to pay extra fees or deposits or any other special requirements as a condition of receiving a reasonable accommodation.

Reasonable Modifications

A reasonable modification is a structural change made to the premises in order to afford an individual with a disability full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to public use and common areas.

Under federal law, public housing agencies, other federally assisted housing providers, and state or local government entities are required to provide and pay for structural modifications as reasonable accommodations/modifications. For private housing, the person requesting the reasonable modification will need to cover the costs of the modification.

Verification of Disability

In response to an accommodation or modification request and only when it is necessary to verify that a person has a disability that is not known or apparent to the housing provider, they, can ask an applicant/tenant to provide documentation from a qualified third party (professional), that the applicant or tenant has a disability that results in one or more functional limitation. If the disability-related need for the requested accommodation or modification is not known or obvious, the housing provider can request documentation stating that the requested accommodation or modification is necessary because of the disability, and that it will allow the applicant/tenant access to the unit and any amenities or services included with the rental equally to other tenants.

A housing provider cannot inquire into the nature or extent of a known or apparent disability or require that an applicant or tenant release his or her medical records. Housing providers can require that the verification come from a qualified professional, but they cannot require that it be a medical doctor.

Nondiscrimination laws cover applicants and tenants with disabilities, as well as applicants and tenants and without disabilities who live or are associated with individuals with disabilities. These laws also prohibit housing providers from refusing to rent to persons with disabilities, making discriminatory statements, and treating persons with disabilities less favorably than other tenants because of their disability.

Under fair housing laws, it is illegal for a housing provider to deny reasonable accommodations and reasonable modifications to individuals with disabilities. If wrongfully denied an accommodation or modification contact HUD or the Fair Housing Council of Oregon. Time limits apply to asserting any legal claims for discrimination.

Call HUD toll-free at 1-800-669-9777 or TTY 1-800-927-9275 or visit https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process

HUD will investigate at no cost to the complainant.

For more information about reasonable accommodations and modifications visit www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications

Call the Fair Housing Council of Oregon at (503) 223-8197 ext. 2 or <http://fhco.org/index.php/report-discrimination>.



If you believe you have been harassed or discriminated against because of your race, color, national origin, religion, gender, familial status, disability, marital status, source of income, sexual orientation including gender identity, domestic violence, type of occupation, or age over 18 seek legal guidance regarding your rights under Fair Housing law.

For translation or interpretation, please call 503-823-1303
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This requirement is in addition to any other rights and responsibilities set forth in the Oregon Residential Landlord and Tenant Act under Oregon Revised Statute Chapter 90, and Portland Landlord-Tenant Law under Portland City Code Title 30.

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Statement of Applicant Rights and Responsibilities Notice Required Under Portland City Code Title 30.01.086.C.3.C

Within the City of Portland, a landlord is required to include this notice with application forms for the rental of a dwelling unit.

City of Portland Applicant Rights

The City of Portland has adopted local requirements that provide additional rights and responsibilities for landlords and applicants for rental housing, beyond state law requirements, during the rental unit advertising and application process.

Applicants are strongly encouraged to submit supplemental information to offset any reasons that could lead to denial. In the event of denial, applicants have the right to appeal the decision within 30 days.

Applicants are strongly encouraged to review their rights before submitting an application.

City requirements address the following landlord tenant topics: advertising and application process screening, security deposits, depreciation schedules, rental history, notice rights, and rights for relocation assistance.

The City of Portland city code, rules, required notices and forms are listed below, and are available at: [portland.gov/rso] or by contacting the Rental Services Office at (503) 823-1303 or rentalservices@portlandoregon.gov.

Residential Rental Unit Registration

- Portland City Code 7.02.890

Application and Screening Requirements

- Portland City Code 30.01.086
- Rental Housing Application and Screening Administrative Rule
- Statement of Applicant Rights and Responsibilities Notice
- Right to Request a Modification or Accommodation Notice
- Rental Housing Application and Screening Minimum Income Requirement Table

Security Deposit Requirements

- Portland City Code 30.01.087
- Rental Housing Security Deposits Administrative Rule
- Rental History Form
- Notice of Rights under Portland's Security Deposit Ordinance



Mandatory Renter Relocation Assistance

- Portland City Code 30.01.085
- Mandatory Relocation Assistance Exemption Eligibility and Approval Process Administrative Rule
- Tenant Notice of Rights and Responsibilities Associated with Portland Mandatory Relocation Assistance
- Relocation Exemption Application Acknowledgement Letter (If applicable)



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Rental Housing Application and Screening Minimum Income Requirement Table Required by PCC 30.01.086.D.2.a-b (effective 05/01/2021)

If the monthly Rent amount is **below** the amount listed for the number of bedrooms in a Dwelling Unit, a Landlord can require an Applicant to demonstrate a monthly gross income of up to but not greater than 2.5 times the amount of the Rent.

If the monthly Rent amount is **at or above** the amount listed for the number of bedrooms in a Dwelling Unit, a Landlord can require an Applicant to demonstrate a monthly gross income of up to but not greater than 2 times the amount of the Rent.

# of Bedrooms	Rent Amount
0	\$1,353
1	\$1,450
2	\$1,741
3	\$2,011
4	\$2,243
5	\$2,476

These rent amounts are based on Department of Housing and Urban Development (HUD) 2021 limits.

These rent amounts will be valid until new rent amounts are published by HUD in the Spring of 2022, and the Rental Housing Application and Screening Minimum Income Requirement Table is updated.





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Fixture, Appliance, Equipment, and Personal Property Depreciation Schedule Required Under Portland City Code Title 30.01.087.C.1

Within the City of Portland, a landlord may only apply security deposit funds for the repair and replacement of those fixtures, appliances, equipment, or personal property that are identified in the rental agreement and to which a value is attached in accordance with the depreciation schedule published in this notice.

A landlord may provide documentation reasonably acceptable to a tenant demonstrating why a different calculation is justified for a particular item so long as the documentation includes:

1. The current depreciated value of the fixture, appliance, equipment, or personal property;
2. An explanation of why the depreciated value derived from the Depreciation Schedule is inapplicable for the fixture, appliance, equipment, or personal property; and
3. A justification of how the repair or alternative replacement cost of the fixture, appliance, equipment, or personal property has been calculated or determined.

City of Portland Requirements

When determining the amount of security deposit funds to withhold for the repair and replacement of appliances or equipment, fixtures, or personal property, a landlord must discount the estimated original purchase price by the following depreciation schedule:

Appliances or Equipment (includes items such as refrigerators, microwave ovens, stovetops, ovens, dishwashers, etc.) depreciate over 15 years, or 6.67% per year.

Fixtures that are Carpets and Window Dressings (includes items such as carpet, flooring that is not permanently attached, blinds, curtains, etc.) depreciate over 10 years, or 10% per year.

Fixtures not including Carpets and Window Dressings (includes items such as faucets, sinks, toilets, tubs, permanently attached flooring, cabinetry, etc.) depreciate over 20 years, or 5% per year.

Personal Property (includes all other non-structural elements not covered by the fixtures, appliances, or equipment depreciation schedule) depreciate over 30 years, or 3.34% per year.



Example of Calculating Depreciated Value

Year 0: Appliance or equipment purchased for \$300

Year 8: **Depreciated Value = \$140**

Calculation

\$300 purchase price / 15-year depreciation = \$20 depreciation per year

\$20 depreciation per year x 8 years = \$160 of value depreciation

\$300 purchase price - \$160 of value depreciation = **\$140 of depreciated value**



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