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Portland's "FAIR" Ordinance: Screening **Anna S. McCormack, Attorney at Law**

DISCLAIMER

This is a work in progress. The associated PHB administrative rules were just finalized on January 31, 2020. It is impossible to foresee with certainty when and how Portland may edit the ordinance and administrative rules, and we certainly don't know how judges will interpret it. Accordingly, this document is simply a work in progress, *i.e.*, a mere snapshot of the most current version of the ordinance and rule, as well as my initial analysis based upon current language. This document does not replace up-to-date legal advice and is not a substitute for tailored legal advice from your own attorney regarding your factual situations and practices.

A final note: When you see crossed-out language followed by italicized language, this is not a typo. A "clean" version of the ordinance has not been published, and thus the cross-outs with italicized replacement language reflects the most current published version of the ordinance at the time these materials were drafted.

INTRODUCTION

In June 2019, the Portland City Council voted 3-1 in favor of the passage of new screening regulations addressing how Landlords screen their prospective tenants. Portland's "Fair Access in Renting" ordinance, colloquially referred to as the "FAIR" ordinance, has a March 1, 2020 effective date. The articulated purposes include:

- * Requiring a first-come-first-served system for rental applications
- * Prioritizing accessible units for people with disabilities
- * Capping the rent-to-income ratio that landlords can require
- * Limiting the use of credit and criminal histories in screening criteria

EXEMPTIONS FROM PCC 30.01.086

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

- a.** *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 a the Multnomah County Coordinated Access System or a formal referral agreement between a Landlord and a non-profit service provider or government agency working to place low income or vulnerable Tenants into housing;*
- b.** Not rented to, or advertised for rental to the general public, including advertisements on online platforms with or without a fee; or
- c.** *Shared with a Landlord, roommate, ~~or a sub-lessor~~ 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.** 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.** 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 processing 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 contents].

1. Contents: The Notice must indicate

- (a) When (date and time) Landlord will begin to process applications ("Open Application Period");
- (b) A description of the factors Landlord will consider in evaluating applicants if Landlord intends to charge a screening fee; and

(c) 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. Contents, Part Two: The foregoing information can be in the notice, or the notice can provide an address, website address, internet link or other method of communicating this information to prospective tenants. *In other words, the ad can contain a link, address, etc. at which prospective applicants can find the required information.*

B. Alternative: Waitlist

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:

1. Must add names to the Waitlist in the order of receipt
2. Must Accept, Conditionally Accept, or Deny Waitlist Applicants in order of Receipt of Application

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. **Portland Notice:** City of Portland Notice to Applicants relating to a Tenant’s right to request a modification or accommodation; *FORM: PHB Right to Request Modification/Accommodation Notice*
3. **Portland Notice:** A City of Portland Notice to Applicants referencing where an applicant could obtain the Portland Housing Bureau (PHB)’s Statement of Applicant Rights; *FORM: PHB 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-served 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: Digitally or manually record the date and time each complete application was received.

2. Premature Applications (Submitted Prior to Open Application Period) and Eight Hour Penalty: Digitally or manually record the date and time of such complete applications as 8 hours after the start of the Open Application Period.

3. Use Order of Receipt: Landlords can simultaneously process multiple applications but must accept, conditionally accept, or deny applicants in order of receipt.

[NOTE: SB 484, which went into effect 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. Okay to 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. Provide Record of When Landlord Received Application (5 Business Days Deadline): 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.

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, and
3. Inquire as to the immigration status of any applicant or household member.

B. Landlords Must Accept Certain Types of 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.

FORM: PHB 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.

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* ~~80 percent MFI~~ as published annually by the Portland Housing Bureau.

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* ~~80 percent MFI or more~~ as published annually by the Portland Housing Bureau.

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* 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 amount.

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.

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: Medical or 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, 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. ~~When evaluating the effect of Supplemental Evidence on a Landlord's decision of acceptance or denial of an Applicant~~ *In evaluating an Applicant using the Individual Assessment*, the Landlord must also 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; and

(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) Can't Discriminate: The denial is non-discriminatory in accordance 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) Written Notice of Denial (Within Two Weeks): The Landlord provides a written "Notice of Denial" issued from the Landlord to the applicant within 2 weeks of the denial that...

(i) Meets the requirements of ORS 90.304

(ii) Complies with general screening process denials under PCC 30.01.086 Subsection D.4. (the "Application Denial" section of the "General Screening Process")

(d) Explanation: Includes an explanation of the basis for denial; and

(e) Explanation re Inadequacy of Supplemental Evidence: Includes an explanation of the reasons that the Supplemental Evidence did not adequately compensate for the factors that informed the Landlord's decision to reject the application.

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. 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 3 months following the date a Landlord approves an application reviewed on appeal; and
- 3. Waive Screening Fee for Three Months:** Waive the applicant's screening fee for the 3 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.

[NOTE: The term "prequalify" is not defined, and no one knows what it means. Does it mean they "prequalify" for a unit that has higher rent, or even in an entirely different building that may have different criteria? Time—and litigation—will tell. In the meantime, keep in mind that the "prequalification" only comes into play when the Landlord *grants* the appeal].

XI. Damages

A Landlord that fails to comply with any of the requirements of the FAIR Ordinance shall be liable to the applicant for an amount up to \$250 per violation plus actual damages, reasonable attorney fees and costs (collectively, "Damages").

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.

XII. PHB Regulations

Delegation of Authority (For Director of Portland Housing Bureau). In carrying out the provisions of this Section 30.01.086, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.086.

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.**

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.

PHB RIGHT TO REQUEST ACCOMMODATION/MODIFICATION FORM

Must Be Included with Application Forms
(4-Page Document following this cover page)



Portland Housing Bureau

Rental Services Office

Mayor Ted Wheeler • Director Shannon Callahan

421 SW 6th Avenue, Suite 500 • Portland, OR 97204

PHONE 503-823-1303 • FAX 503-865-3260

portlandoregon.gov/phb/rso

Rental Services Helpdesk Hours

MON, WED, FRI 9–11am and 1–4pm

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
TTY at 503-823-6868 or Oregon Relay Service at 711

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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.

The information in this form is for educational purposes only. You should review appropriate state statute, city code, and administrative rule as necessary. If you need legal guidance, or are considering taking legal action, you should contact an attorney.

PHB STATEMENT OF APPLICANT RIGHTS AND RESPONSIBILITIES NOTICE

Must Be Included with Application Forms
(3-Page Document following this cover page)



Portland Housing Bureau

Rental Services Office

Mayor Ted Wheeler • Director Shannon Callahan

421 SW 6th Avenue, Suite 500 • Portland, OR 97204

PHONE 503-823-1303 • FAX 503-865-3260

portlandoregon.gov/phh/rso

Rental Services Helpdesk Hours

MON, WED, FRI 9-11am and 1-4pm

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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PHB Rental Housing Application and Screening Minimum Income Requirement Table

For Landlord Use in Determining Which Rent-to-Income Ratio Can Be Applied to Financially Responsible Applicants; Does Not Have to be Provided to Applicants; PHB Will Update in Spring 2020 and Annually Thereafter

(2-Page Document following this cover page)



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Rental Housing Application and Screening Minimum Income Requirement Table Required by PCC 30.01.086.D.2.a-b

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	\$1,232
1	\$1,320
2	\$1,584
3	\$1,829
4	\$2,040
5	\$2,251

These rent amounts are based on Department of Housing and Urban Development (HUD) 2019 limits.

These rent amounts will be valid until new rent amounts are published by HUD in the Spring of 2020, and the Rental Housing Application and Screening Minimum Income Requirement Table is updated.





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