

30.01.086 Evaluation of Applicants for Dwelling Units.

(Added by Ordinance No. 189580; amended by Ordinance Nos. 189714 and 190063, effective August 21, 2020.)

A. Applicability.

In addition to the protections set forth in the Oregon Residential Landlord and Tenant Act (“Act”) and in Sections 30.01.085 and 30.01.087, the following additional Tenant protections regarding Screening Criteria apply to Rental Agreements for a Dwelling Unit covered by the Act. For purposes of this Section, unless otherwise defined in this Section or elsewhere in Chapter 30, capitalized terms have the meaning set forth in the Act.

In changing some terms from the Fair Housing Act, such as the term “Disability,” the City preserves the meaning of the Fair Housing Act while utilizing updated terminology that aligns with the City’s values.

B. Definitions. For purposes of this chapter, unless otherwise defined in this subsection, capitalized terms have the meaning set forth in the Act.

1. **“Accessible Dwelling Unit”** means a Dwelling Unit that qualifies as a “Type A Unit” pursuant to the Oregon Structural Building Code and ICC A117.1.
2. **“Accommodation”** means a reasonable accommodation requested pursuant to the Fair Housing Act, as amended in 1988 (42 U.S.C. § 3601) et seq. (“Fair Housing Act”), at 24 CFR § 100.204.
3. **“Applicant”** means a person applying to reside in a Dwelling Unit. When there are multiple persons who will reside in common within a Dwelling Unit, Applicant shall refer in common to those members of the household who intend to contribute financially to payment of the Rent and to sign the lease or Rental Agreement.
4. **“Dwelling Unit”** has the meaning given in ORS 90.100, as amended from time to time.
5. **“Disability”** has the meaning given to “handicap” as defined in the Fair Housing Act, 24 C.F.R § 100.204, as amended from time to time.
6. **“Mobility Disability”** or **“Mobility Disabled,”** with respect to a person, means 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.

7. “Modification” means a reasonable modification requested pursuant to the Fair Housing Act, 24 C.F.R § 100.203, pertaining to the physical characteristics of a Dwelling Unit.

8. “Multnomah County Coordinated Access System” means the system established by Multnomah County, Home Forward, the Joint Office of Homeless Services, and the City of Portland, and community partners to coordinate the referral and prioritization of high priority applicants for available Dwelling Units regulated as affordable housing by a federal, state or local government.

9. “Rules of Residency” means an agreement that a Landlord (as defined in the Act) may require prospective Tenants of the Landlord’s Dwelling Unit to acknowledge and sign that describes rules of conduct, and the rights and obligations of all adults residing in a Dwelling Unit. The Rules of Residency may be separate from or incorporated into a Rental Agreement and must comply with ORS 90.262.

10. “Screening Criteria” means a written statement of any factors a Landlord considers in deciding whether to accept or reject an Applicant and any qualifications required for acceptance. “Screening or admission criteria” includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the Applicant.

11. “Supplemental Evidence” means any written information submitted by the Applicant in addition to that provided on the Landlord’s form application that the Applicant believes to be relevant to the Applicant’s predicted performance as a Tenant.

C. Tenant Application Process; Generally.

1. Notice of Dwelling Unit Availability; Notice Content.

a. If a Landlord advertises a Dwelling Unit’s availability, the Landlord must publish notices for rental of the available Dwelling Unit at least 72 hours prior to the start of the date and time the Landlord will begin accepting applications (“Open Application Period”). The notice must specify the following:

(1) When the Landlord will begin to accept applications;

(2) A description of the factors the Landlord will consider in evaluating Applicants if the Landlord intends to charge a screening fee; and

(3) Whether the available unit is an Accessible Dwelling Unit.

b. The Landlord’s Notice may incorporate this information or may provide an address, website address, internet link or other written method of communicating this information to prospective Tenants.

2. Order of Processing Applications.

a. Applications Received in Response to an Advertised Notice.

(1) At the start of the Open Application Period, a Landlord must digitally or manually record the date and time the Landlord received each complete application.

(2) With regard to any applications received earlier than the Open Application Period, the Landlord must digitally or manually record the date and time of such complete applications as 8 hours after the start of the Open Application Period.

(3) A Landlord may simultaneously process multiple applications but must accept, conditionally accept, or deny Applicants in order of receipt.

(4) A Landlord owning Dwelling Units within the City of Portland, may refuse to process the application of an Applicant who has verifiable repeated Rental Agreement violations with this Landlord if the most recent violation occurred within 365 days before the Applicant's submission date.

(5) 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) Within 5 business days of receiving a request from an Applicant, a Landlord must provide the Applicant with a record of the date and time the Landlord received the complete Application.

b. Applications Processed from a Waitlist.

(1) If a Landlord maintains a waitlist for filling vacancies instead of advertising notice of vacancies, the Landlord must add names to the waitlist in the order of receipt.

(2) When members of a waitlist apply for a vacancy, a Landlord may simultaneously process multiple applications but must accept, conditionally accept, or deny Applicants in order of receipt of a completed application.

c. Applications for Accessible Dwelling Units.

(1) When, during the first 8 hours of the Open Application Period, a Landlord receives an application for an Accessible Dwelling Unit from an Applicant with a household member that is Mobility Disabled, the Landlord must give priority to such application and accept, conditionally accept, or deny the Applicant prior to considering other Applicants.

(2) If there are multiple Applicants for an Accessible Dwelling Unit with a household member that is Mobility Disabled, the Landlord must accept, conditionally accept, or

deny such applications in order of receipt, but prior to processing completed applications for any Applicants without household members that are Mobility Disabled.

d. The requirements of this Subsection C. do not apply to applications for Dwelling Units 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 are leased through a lottery or preference process, or through the Multnomah County Coordinated Access System.

e. Upon a Landlord's approval and the Applicant's acceptance of the Dwelling Unit, the Applicant and the Landlord must enter into a Rental Agreement. The Landlord may require all adult Tenants or persons intending to occupy the Dwelling Unit to sign Rules of Residency.

3. Content of Landlord Application Forms. Landlord Application forms for rental of a vacant Dwelling Unit must include the following:

a. An opportunity on the application for an Applicant to affirmatively indicate a Mobility Disability or other Disability Status;

b. A City of Portland Notice to Applicants relating to a Tenant's right to request a Modification or Accommodation;

c. A City of Portland Housing Bureau (PHB)'s Statement of Applicant Rights and Responsibilities Notices;

d. If the Landlord charges a screening fee, a description of the Landlord's Screening Criteria and evaluation process; and

e. An opportunity for Applicant to include Supplemental Evidence for the Landlord's consideration to mitigate potentially negative screening results.

D. General Screening Process. Landlords must apply the General Screening Process described in this Subsection D. but may screen Applicants using additional Screening Criteria. If applying additional Screening Criteria, the Landlord must: 1) use a Screening Criteria no more prohibitive to the Tenant than the low-barrier criteria ("Low-Barrier Criteria") described in Subsection E.; or 2) use a Screening Criteria of the Landlord's choosing ("Landlord's Screening Criteria"); however, when using the Landlord's Screening Criteria, a Landlord must conduct an individual assessment ("Individual Assessment") in accordance with the requirements of Subsection F, before denying an Applicant.

A Landlord must comply with the following General Screening Process:

1. Applicant Identification. A Landlord may not reject an application as incomplete because an Applicant or member of the Applicant's household does not produce a

social security number or prove lawful presence in the U.S. A Landlord may not inquire about the immigration status of a member of the Applicant's household or require proof of their lawful presence in the U.S. A Landlord must accept any of the following, or a combination thereof, to verify the name, date of birth and photo of the Applicant:

- a.** Evidence of Social Security Number (SSN Card);
- b.** Valid Permanent Resident Alien Registration Receipt Card;
- c.** Immigrant Visa;
- d.** Individual Tax Payer Identification Number (ITIN);
- e.** Non-immigrant visa;
- f.** Any government-issued identification regardless of expiration date; or
- g.** Any non-governmental identification or combination of identifications that would permit a reasonable verification of identity.

2. Financial Responsibility of Applicant. When there are multiple persons who will reside in common within a Dwelling Unit, the persons may choose which adults will be the Applicants financially responsible for the Dwelling Unit and which will be the Tenants with no financial responsibility ("Non-Applicant Tenant"). The Landlord may screen only an Applicant for financial responsibility, and not a Non-Applicant Tenant

a. A Landlord may require an Applicant to demonstrate a monthly gross income of up to but not greater than 2.5 times the amount of the Rent for the Dwelling Unit when the monthly Rent amount is below 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.

b. A Landlord may require an Applicant to demonstrate a monthly gross income of up to, but not greater than 2 times the amount of the Rent for the Dwelling Unit when 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.

c. For the purposes of this subsection, a Landlord's evaluation of an Applicant's income to Rent ratio must:

(1) Include all income sources of an Applicant, including, but not limited to, wages, rent assistance (non-governmental only), and monetary public benefits. The Landlord may also choose to consider verifiable friend or family assistance;

(2) Calculate based on a rental amount that is reduced by the amount of any local, state, or federal government rent voucher or housing subsidy available to the Applicant; and

(3) Be based on the cumulative financial resources of all Applicants.

d. If an Applicant does not meet the minimum income ratios as described in Subsection 2.a. and 2.b. above, a Landlord may require additional and documented security from a guarantor, or in the form of an additional Security Deposit pursuant to Subsection 30.01.087 A. The Landlord shall communicate this conditional approval to the Applicant in writing and indicate the amount of the additional security. Applicant will have no less than 48 hours after the communication of conditional approval to accept or decline this opportunity.

e. If a Landlord chooses to require additional documented security from a guarantor, the Landlord may require the guarantor to demonstrate financial capacity. If the guarantor is a friend or family member, the Landlord cannot require the guarantor to have income greater than 3 times the Rent amount. The Landlord may not require an Applicant's guarantor agreement to exceed the term of the Rental Agreement.

3. Evaluating Adult Tenants Who are Not Applicants. A Landlord may screen an adult Non-Applicant Tenant who will reside with an Applicant in a Dwelling Unit but who is not responsible for paying the Rent, only for factors related to maintaining the property, and for conduct consistent with the health, safety, or peaceful enjoyment of the premises by other residents or the Landlord and to evaluate prospective Tenants' ability to comply with the Landlord's Rules of Residency. A Landlord may not screen a Non-Applicant Tenant for financial responsibility.

4. Application Denial Generally.

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

b. If an Applicant qualifies for a Dwelling Unit, the Landlord may not deny that Applicant based on the denial of a Non-Applicant Tenant that the Applicant included on the application. Instead, the Landlord must allow the qualifying Applicant to accept the Dwelling Unit without the Non-Applicant Tenant.

c. An Applicant's request for reasonable Modification or Accommodation for a Disability, or the nature of the Modification or Accommodation requested, may not be a factor for a Landlord's denial of an Applicant.

5. Communication of Determination. Within 2 weeks after a Landlord or its screening company completes its evaluation of an Applicant, the Landlord must provide Applicant with a written communication of acceptance, conditional acceptance, or denial and in the case of a conditional acceptance or denial, describe the basis for the decision.

6. Disability Related Modification Requests.

a. An Applicant with a Disability that is otherwise approved through the screening process and requests a Modification may not be denied housing based solely on a Landlord's denial of a requested Modification.

b. If a Landlord denies an Applicant's Modification request, the Landlord must provide the Applicant 2 successive 24-hour periods within which to request alternative Modifications.

c. 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.

7. Screening Fees. In addition to the requirements of ORS Chapter 90.295, the following apply:

a. If a Landlord conducts all 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.

b. If a Landlord conducts some but not all of an Applicant screening through the use of a professional screening company, the Landlord must not charge Applicant a screening fee that is more than 25 percent greater than the cost charged by the screening company.

c. If a Landlord conducts all of an Applicant screening and does not use the screening services of a professional screening company, the Landlord must not charge Applicant 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.

8. Appeals. A Landlord must offer the Applicant an opportunity for appeal for 30 days following the denial of an Application. The Landlord's appeal process must:

a. Provide the Applicant the opportunity to correct, refute or explain negative information that formed the basis of the Landlord's denial;

b. Prequalify the Applicant for rental opportunities at the Landlord's properties in the City of Portland for the 3 months following the date a Landlord approves an application reviewed on appeal; and

c. 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.

E. Applicant Evaluation; Encouraging Most Inclusive Evaluation Process. If applying a Screening Criteria to an Applicant in addition to the General Screening Process, a Landlord is encouraged to apply criteria consistent with, or less prohibitive than, the Low-Barrier Criteria described in Subsection E. below. If the Landlord applies any single criterion more prohibitive than any of the Low Barrier Criteria listed in Subsection E.1.a.-c. below, then the Landlord must apply the Individual Assessment process as described in Subsection F. In applying Low-Barrier Criteria, Landlords must comply with all applicable federal, state, and local laws.

1. Low-Barrier Screening Criteria. In adopting Low-Barrier Criteria, Landlords agree not to reject Applicants for:

a. Criminal History:

(1) An arrest that did not result in conviction, unless the resulting charge is pending on the date of the Application;

(2) Participation in or completion of a diversion or a deferral of judgment program;

(3) A conviction that has been judicially dismissed, expunged, voided, or invalidated;

(4) A conviction for a crime that is no longer illegal in the State of Oregon;

(5) A conviction or any other determination or adjudication issued through the juvenile justice system;

(6) 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

(7) 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.

b. Credit History:

(1) A credit score of 500 or higher;

(2) Insufficient credit history, unless the Applicant in bad faith withholds credit history information that might otherwise form the basis for a denial;

(3) Negative information provided by a consumer credit reporting agency indicating past-due unpaid obligations in amounts less than \$1,000;

(4) Balance owed for prior rental property damage in an amount less than \$500;

- (5)** A Bankruptcy filed by the Applicant that has been discharged;
- (6)** A Chapter 13 Bankruptcy filed by the Applicant under an active repayment plan; or
- (7)** Medical or education/vocational training debt.

c. Rental History:

(1) An action to recover possession pursuant to ORS 105.105 to 105.168 if the action:

(a) Was dismissed or resulted in a general judgment for the Applicant before the Applicant submitted the application;

(b) Resulted in a general judgment against the Applicant that was entered 3 or more years before the date of the Application;

(c) Resulted in a general judgment against the Applicant that was entered fewer than 3 years before the date of the Application if:

(i) The termination of tenancy upon which the action was based was without cause (no-cause eviction); or

(ii) The judgment against the Applicant was a default judgment due to a failure to appear, and the Applicant presents credible evidence to the Landlord that the Applicant had already vacated the unit upon which the action was based at the time notice of the action was served.

(d) Resulted in a judgment or court record that was subsequently set aside or sealed pursuant to procedures in state law.

(2) Any information that the Landlord obtains from a verbal or written rental reference check with the exception of defaults in Rent, 3 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, outstanding balance due to the Landlord, or lease violations that resulted in a termination with cause; or

(3) Insufficient rental history, unless the Applicant in bad faith withholds rental history information that might otherwise form a basis for denial.

2. Evaluation Denial; Low-Barrier.

a. When denying an Applicant using the Low-Barrier Criteria described in this Subsection, a Landlord must provide to the Applicant a written statement of reasons for denial in accordance with ORS 90.304(1).

b. Before denying an Applicant for criminal history using the Low-Barrier Criteria described in this Subsection, a Landlord must consider Supplemental Evidence provided by the Applicant if provided at the time of application submittal.

F. Individual Assessment. A Landlord that applies the Landlord's Screening Criteria which is more prohibitive than the Low-Barrier Criteria as described in Subsection E. above, must conduct an Individual Assessment for any basis upon which the Landlord intends to deny an application, before issuing a denial to an Applicant.

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

- a.** The nature and severity of the incidents that would lead to a denial;
- b.** The number and type of the incidents;
- c.** The time that has elapsed since the date the incidents occurred; and
- d.** The age of the individual at the time the incidents occurred.

2. Denial; Individual Assessment. After performing an Individual Assessment, a Landlord may deny the Applicant, so long as:

- a.** The denial is non-discriminatory in accordance with the Fair Housing Act;
- b.** The denial is in accordance with Subsection D. of this Code and all other applicable federal, state, and local laws;
- c.** The Landlord provides a written "Notice of Denial" to the Applicant within 2 weeks of the denial that meets the requirements of ORS 90.304, Subsection D.4. above, and includes an explanation of the basis for denial, 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; and
- d.** The notice of denial is issued to the Applicant by the Landlord.

G. Exemptions

- 1.** 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 the Multnomah County Coordinated Access System or 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 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 lot, or Tenancies where the owner occupies the Accessory Dwelling Unit and the Dwelling Unit the Applicant would occupy is on the lot.

2. 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.

H. Damages. A Landlord that fails to comply with any of the requirements set forth in this Section 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.

I. Delegation of Authority. 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.