

Office of Commissioner Eudaly
Screening Criteria Policy Concept
(Updated 8/10/18)
Working Draft – For Discussion Purposes Only

- 1) When screening an applicant for residential tenancy, a landlord must follow the procedures and guidelines outlined in this ordinance.
- 2) APPLICATIONS, GENERALLY.
 - a) Applications must be received and processed on a first- come, first-served basis.
 - b) All applications must be time stamped to indicate date and time of submission.
 - c) All applicants must receive a written or electronic receipt within 1 business day of their application submission that matches the time stamp on their application and includes a queue number.
 - d) All applications must include:
 - i) Notice to applicants of their right to request a reasonable accommodation at any point before, during or after the application process and that a landlord may not deny an application because of a reasonable accommodation request or because of the nature of the accommodation requested.
 - ii) Notice to applicants of their rights under this Ordinance available in 5 harbor languages. The Portland Housing Bureau shall create this notice and post it on its website in compliance with the language access requirements of Title VI of the Civil Rights Act of 1964 and Executive Order 13166. Landlords must provide to applicants the website link and a printed copy of the notice that PHB creates.
 - iii) A clear description of the screening criteria such that an applicant has the ability to accurately assess whether or not they might qualify for the unit.
 - e) A landlord, property manager, or housing provider, owning or managing less than fifty (50) units within the City of Portland, may refuse submission of a completed application only if the applicant has a verifiable pattern of lease violations with that same landlord/property manager/housing provider and the most recent of such lease violations occurred within a one year period.
 - f) When a unit is at least 60% ADA compliant, preference must be given to any applicant who identifies as disabled with mobility challenges within the first 24 hours of the open application period.

- g) If more than one applicant identifies as mobility challenged in the first 24 hours, the preferred applications will be processed in the order they were received.
 - h) When using an established waitlist policy to rent vacant units, this application section would not apply to those units filled by the waitlist only when:
 - i) The waitlist policy establishes a first come-first serve priority queue,
 - ii) Applications meet the notice of rights requirements, and
 - iii) The preference for the applicant with disabilities supersedes other applicants on the waiting list for units that are at least 60% ADA compliant.
- 3) ADVERTISEMENTS
- a) Except as otherwise prevented from complying due to format of advertising service (e.g. ILS), screening criteria required by the landlord (income ratio, credit check, eviction history check, previous rental check, and criminal history), or a website link to the criteria, must be included in any public advertisement for available units as well as included on the application.
 - b) Except as otherwise prevented from complying due to format of advertising service (e.g. ILS), all public advertisements must also include if the unit is 60% or more ADA compliant/accessible.
 - c) When requiring applicants to pick-up or submit applications in person (as opposed to online or by mail) any open application period that is publicly advertised must be published at least 1 week in advance of the application pick-up or submittal period.
- 4) IDENTIFICATION
- a) Landlords must accept any of the following as forms of identification:
 - i) Valid Social Security Number (SSN),
 - ii) Valid Permanent Resident Alien Registrations Receipt Card,
 - iii) Immigrant Visa,
 - iv) Individual Taxpayer Identification Number (ITIN),
 - v) Non-Immigrant Visa,
 - vi) Any other government-issued identification, or
 - vii) Any other non-government issued identification that would allow verification of identity and enable the landlord to screen for both credit and criminal history in the United States.
 - b) A landlord may not reject an application as incomplete due to lack of Social Security Number (SSN).
 - c) Landlords may not inquire about the immigration status of the applicant or require that the applicant prove citizenship.

5) INCOME

- a) Landlords cannot require income to rent ratio greater than two times the amount of rent listed for the unit.
- b) Calculation of income to rent ratio under this section:
 - i) Must include all sources of an applicant's income, including but not limited to wages, rent assistance, verifiable family assistance, and public benefits,
 - ii) May include the cost of any utilities, averaged over one year,
 - iii) May include a co-signer (family member, non-profit, or government agency as decided by the tenant) when the applicant's income falls at or below two times the amount of rent listed for the unit,
 - iv) May not require individual co-signer to have income greater than 3x the current stated rent,
 - v) Must apply as a household when more than one adult applies as a group,
 - vi) When the applicant receives state or local rent assistance, including federal rent subsidy payments under 42 U.S.C. 1437f , must include only the applicant's share of the rent, and
 - vii) May only screen applicants responsible for paying the rent. Co-applicants not responsible for paying the rent may be screened for criminal history pursuant to procedures and guidelines in this ordinance.

6) INDIVIDUALIZED ASSESSMENT

- a) A landlord may not deny an applicant for residential tenancy unless the landlord conducts an individualized assessment of that applicant and provides in writing to the applicant how, taking into account any supplemental evidence as defined in this ordinance, there is a nexus between the specific circumstances surrounding the reasons for denial and a substantial, legitimate, non-discriminatory interest of the landlord. "Non-discriminatory" under this section refers to discrimination in rental housing pursuant to ORS 659A.421.
- b) When evaluating an applicant with a criminal record when the landlord intends that the criminal record will be a reason for denial, the landlord must consider the following as part of the individualized assessment:
 - i) The nature and severity of the conviction,
 - ii) The number and types of convictions,
 - iii) The time that has elapsed since the date of conviction,
 - iv) Age of the individual at the time of conviction,
 - v) Evidence of good tenant history before and/or after the conviction occurred; and

- vi) Any supplemental evidence related to the individual's rehabilitation, good conduct, and additional facts or explanations provided by the individual, if the individual chooses to do so.
- c) Including any information the landlord is required to consider as a part of an individualized assessment performed pursuant to this section, when an applicant's criminal history shows any of the following alone, or in combination with any other factor listed below, it is presumed that the crime or conduct for which the applicant was convicted or charged is not of a nature that would adversely affect property of the landlord or a tenant, nor is it likely to adversely affect the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent:
 - (1) An arrest that did not result in conviction, unless the resulting charge is pending at the time that the applicant submits 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,
 - (5) A conviction or any other determination or adjudication in the juvenile justice system,
 - (6) A conviction or pending charge for any of the following:
 - (a) When the date of sentencing is 3 or more years or the date of release is greater than 1 year, whichever is latest, before the applicant submits the application:
 - (i) Felony assault and battery,
 - (ii) Misdemeanor domestic violence,
 - (iii) Robbery offenses (no weapon involved),
 - (iv) Sex offenses (non-forcible),
 - (v) Stalking,
 - (vi) Felony burglary or felony breaking and entering-related offenses,
 - (vii) Theft, stolen property, or fraud-related offenses when the history shows two or more felony convictions within the timeframe in this section,
 - (viii) Felony destruction, damage, or vandalism of property offenses,
 - (ix) Drug possession when the history shows two or more felony convictions within the timeframe in this section,

- (x) Drug Manufacture, distribution or possession with the intent to distribute, or
 - (xi) Weapons offenses, other than use of a firearm against a person,
 - (b) When the date of sentencing is 1 or more years or the date of release is greater than 1 year, whichever is latest, before the applicant submits the application, driving under the influence-related offenses, when the history shows two or more convictions within the timeframe in this section, or
 - (c) A criminal conviction older than 7 years for any conviction, the date of conviction being the date of sentencing, or more than 4 years from the date of release, whichever is latest.
 - (d) A criminal conviction older than 10 years for any convictions, the date of conviction being the date of sentencing, when the history shows two or more misdemeanor or felony convictions within the timeframe in this section, or
 - (e) A criminal conviction older than 20 years for any convictions, the date of conviction being the date of sentencing, when the history shows four or more misdemeanor or felony convictions within the timeframe in this section.
- d) Including any information the landlord is required to consider as a part of an individualized assessment performed pursuant to this section, when an applicant's history that is not related to criminal history shows any of the following alone, or in combination with any other factor listed below, it is presumed that no nexus exists between the factor in the application and a substantial, legitimate, non-discriminatory interest of the landlord:
- i) Credit history that shows any of the following alone or in combination with 3 or fewer of the following:
 - (1) Insufficient credit score,
 - (2) Lack of credit history, unless the applicant in bad faith withholds credit history information that might otherwise form the basis for denial,
 - (3) Adverse accounts under \$1000, unless the account is related to debt from a prior tenancy,
 - (4) Property debt under \$300,
 - (5) Bankruptcy filed by the applicant more than 5 years ago,
 - (6) Medical or secondary education debt.

- ii) Rental/Eviction history that shows any of the following alone or in combination with 2 or fewer of the following:
 - (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 submits the application.
 - (b) Resulted in a general judgment against the applicant that was entered five or more years before the applicant submits the application.
 - (c) Resulted in a general judgment against the applicant that was entered fewer than five years before the applicant submits the application if:
 - (d) The termination of tenancy upon which the action was based was without cause (no-cause eviction) pursuant to ORS 90.427,
 - (e) The termination of tenancy upon which the action was based pursuant to ORS 90.394 and the termination occurred within six months of the effective date of a rent increase, if that rent increase caused the total rent to increase by 10% or greater within the prior twelve months,
 - (f) The judgment against the applicant was a default judgment due to a failure to appear, if 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 that notice of the action was served.
 - (2) Any information that the landlord obtains from an oral rental reference, except defaults in rent, outstanding balance due to the landlord or behaviors as a tenant that resulted in a termination with cause. Any information provided from an oral rental reference that the landlord intends to use as the basis for denial must be recorded in writing and attributed to the prior landlord, or
 - (3) Lack of rental history, unless the applicant in bad faith withholds rental history information that might otherwise form the basis for denial.
- e) A landlord may rebut the presumption in Subsections (6)(c) and (d) above and/or deny housing after an individualized assessment only with a written "Notice of Denial" to the applicant that includes,

- i) The specific adverse information in the application that matches the screening criteria information as provided on the application,
 - ii) The supplemental evidence, if any, that the landlord considered and how it influenced the decision of the landlord to deny the application,
 - iii) The nexus between the specific circumstances surrounding the reasons for denial and a substantial, legitimate, non-discriminatory interest of the landlord, and
 - iv) How, given the above assessment, it is highly and substantially more probably to be true than not that the applicant as a tenant will adversely affect the substantial, legitimate, non-discriminatory interest of the landlord.
- f) Notwithstanding Section (6)(e), the presumptions in (6)(c)(1) and (6)(d)(iii)(1)(a) and (b) are not rebuttable.
- g) Under this ordinance, "Supplemental evidence" may include, but is not limited to:
 - i) Proof of rental payments to a prior landlord,
 - ii) Credit score,
 - iii) Proof of job or income stability,
 - iv) Proof of payment toward outstanding debt,
 - v) Completion of Rent Well program,
 - vi) Availability of a co-signer,
 - vii) Demonstrated or formal relationship with a service provider for rent assistance or other support services,
 - viii) Participation in a rehabilitation program, including but not limited to a certification program that assists people with criminal histories to evidence reform,
 - ix) Evidence of work to address outstanding debt, or
 - x) Explanation for changed circumstances or reform that would decrease likelihood that tenant would repeat historical adverse behavior (e.g., crime, property damage, etc.), or
 - xi) Any other information, whether written or oral, that the applicant believes to be relevant to the applicant's predicted performance as a tenant.
- h) A landlord must consider any supplemental evidence that an applicant submits if the supplemental evidence is provided to the landlord at the time the applicant submits the application. A landlord may consider supplemental evidence that an applicant submits at any time before or after the applicant submits the application.
- i) Landlords must meet the requirements of both this Section and ORS 90.304. The written notice of denial must be given to the applicant within 2 weeks of the determination.

7) APPEALS

- a) An applicant who is denied for residential tenancy by a landlord must have the opportunity to appeal that denial directly to the landlord or property manager based on:
 - i) incomplete or inaccurate information on application,
 - ii) newly acquired supplemental evidence,
 - iii) evidence of inappropriate nexus identified in denial
- b) The landlord is not required to hold the unit for the application during the pendency of the appeals process.
- c) If the appeal results in the denial being overturned, the landlord must place the applicant on a waitlist for the next available unit, for up to 6 months.

8) ADDITIONAL DEPOSIT

- a) Landlords may charge additional security deposit as described in code____, only if they determine that supplemental evidence provided by the applicant is not adequate to offset a substantial, legitimate, non-discriminatory interest of the landlord.
- b) To request additional deposit, the landlord must provide a written notice of "Conditional Denial" to the applicant as described in section ____ to inform the applicant of the specific circumstances surrounding the reasons for the request.

9) SCREENING FEES

- a) If documentation of denial is not provided to the applicant within 2 weeks, the owner must refund their entire application fee within the same 2 week period.
- b) If using a professional screening company exclusively, screening fee charged by the landlord cannot be more than what is charged by the company.
- c) If using a professional screening company in addition to screening work by the landlord or property manager, fees cannot exceed 50% above what is charged by the screening company.
- d) If landlord or property manager screens independently without the use of a professional screening company, rates cannot exceed 10% of the average professional screening company fee rate in the Portland-Metro area.

10) MODIFICATION REQUESTS

- a) An applicant who experiences disabilities cannot be denied housing based on a denial of reasonable modification alone.
- b) If an applicant's modification request is denied, the applicant must be allowed 24 hours to request an alternative modification that meets their needs.

- c) If the second modification request is denied, the applicant must be allowed another 24 hours to request an alternative modification that meets their needs.
- d) If no reasonable modification can be made in the unit the applicant applied for, they may still accept the unit if they meet the eligibility criteria.

11) EXEMPTIONS

- a) Any housing provider that enters into a partnership or referral agreement with a non-profit service provider working to place low income or vulnerable clients into housing is exempted from the policy only for the units the agreement applies to.
- b) All sections must be followed except when otherwise complying with state or federal funding or loan laws.

12) DAMAGES

- a) 3x the current stated rent or actual damages, whichever is higher.
(PLACEHOLDER)

13) DEFINITIONS

- a) 60% ADA compliant: Any unit that provides 12 out of 21 features defined by a general Type A unit in the Accessible and Usable Buildings and Facility ICC A117.1-2009 American National Standard.