



# Portland Housing Bureau

Mayor Ted Wheeler • Interim Director Shannon Callahan

## Rental Services Commission (RSC)

August 21, 2018

2:30 – 5:00 p.m.

Portland Housing Bureau, Suite 500

421 SW 6th Ave.

Portland, OR 97204

### August 21, 2018 Meeting Minutes (Approved)

✓ = RSC member action item

▶ = PHB staff member action item

Full audio recordings of all RSC meetings – as well as all documents discussed – are available on the PHB website here:

<https://www.portlandoregon.gov/phb/76570>.

**Members Present:** Margot Black, Christian Bryant, Ian Davie (via WebEx), Laura Golino de Lovato, Jessica Greenlee, Allen Hines (via WebEx), Katrina Holland (via WebEx), Deborah Imse, Yoni Kahn-Jochnowitz, Mike Nuss, Raul Preciado Mendez (via WebEx), Leah Sykes

**Members Excused/Absent:** (excused): Christina Dirks

**Staff Present:** Jamey Duhamel, Cupid Alexander, Matthew Tschabold, Andrés Oswill, Stacy Jeffries

Agenda Item	Discussion Highlights	Outcomes / Next Steps
<b>Call to Order, Roll Call, Minutes</b>	Co-Chair Christian Bryant called the meeting to order at 2:35 pm. Quorum was reached. Deborah Imse moved to approve the June 19 meeting minutes. Yoni Kahn-Jochnowitz seconded the motion, and the minutes from the June 19, 2018 meeting were unanimously approved, with Ian Davie abstaining because he wasn't at the June meeting. Deborah Imse moved to approve the July 17 meeting minutes, and Yoni Kahn-Jochnowitz seconded the motion. The July 17, 2018 meeting minutes were unanimously approved.	
<b>Staff Update</b>	<u>4:26 – 8:42</u>  Andrés Oswill informed commissioners that the executive committee had decided to postpone further discussion on security deposits and focus today's meeting on screening criteria. He has been holding 1-on-1 phone conversations with commissioners regarding their positions on screening criteria, and urged commissioners who had not yet weighed in to contact him for an appointment. Given that Council will review the screening criteria and security deposit policies on September 20, and considering the amount of work the RSC has to do, the executive committee felt it would be best to hold two meetings in September. Commissioners have a Sept. 7 hold on their calendars for an additional meeting, and we would keep the standing meeting already scheduled for September 18.	

<p><b>Screening Criteria Overview</b></p>	<p><u>8:47 – 49:59</u></p> <p>Jamey Duhamel presented the current draft of the screening criteria policy concept. She started with an overview of the policy development process, which began in February 2017 when Commissioner Eudaly’s office began work on a separate security deposit code. That code was drafted by the summer of 2017, at which time community partners began voicing their concerns that caps on security deposits would cause landlords to be more restrictive with their screening criteria, and stressed that the policies needed to move forward together to address potential equity issues.</p> <p>An internal advisory group with a deep equity lens began work on the screening criteria policy in 2018, with the goal of fixing the most common equity barriers tenants face. The draft screening criteria policy that the RSC saw in January 2018 has undergone extensive revisions, due to meetings Jamey had with over 30 stakeholder groups beginning in May 2018. The policy is currently being written into code, but Jamey stressed that there is still room to tweak the details.</p> <p>Jamey said the goal of the screening criteria policy is to create clear channels to access housing for all renters, regardless of background, that is consistent, fair, and equitable. She stressed that landlords would still be able to use their discretion to determine if potential tenants posed a risk to their property, and would not be forced to rent to bad tenants.</p> <p>Jamey said the question that is asked the most in discussion of this policy is “Will this policy increase screening fees?” She said she’s heard from landlords who say they will quadruple screening fees, and from the National Association of Professional Background Screeners, which says they anticipate having to raise their fees by about \$20—from \$40 to \$60. She says she anticipates that the increase in price will be offset by applicants having to pay fewer screening fees to find housing. (At present, applicants pay an average of 4 screening fees, each between \$40 and \$80; Jamey expects this to go down to 1 – 2 screening fees.)</p> <p>Jamey noted that there are components in the policy that are still being worked on, and that one of them is the “Notice of Denial” section, which she describes as a “heavy-handed legal analysis” in its current version. She says that language will be redrafted to be more easily understandable to landlords.</p> <p>Commissioner Eudaly’s office is requesting a delayed implementation of 9 months for the new screening criteria framework, which means the policy would go into effect July 1, 2019. This is a significant change in business practice and tenant rights, and they want to make sure everyone is fully informed.</p> <p>Jamey brought up the possibility of a criminal history pilot involving the city and landlords who rent to applicants with extensive / certain criminal histories, but this project is still in the early planning phase and details have not yet been worked out.</p>	
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	<p>There is the possibility of a separate 3-month pilot being conducted during the 9-month delayed implementation period, during which time the screening criteria policy could be evaluated and modified as necessary. Jamey would be interested in seeing proposals from any landlord groups that would be interested in participating in that pilot.</p> <p>Deborah Imse expressed concern that the data Commissioner Eudaly’s office is relying on from OneApp (a relatively new company) may be limited, and encouraged Jamey to talk to the top 3 screening companies, which could provide millions of records. Jamey has a meeting with screening providers set for August 31st.</p> <p>Jamey stated that Commissioner Eudaly’s office sees these two policies – screening criteria and security deposits – as working together, and intends to have them voted on together on September 20th.</p> <p>Yoni Kahn-Jochowitz commented on why the Fair Housing Council of Oregon sees screening criteria as a fair housing issue, referencing statistics on criminal history from a 2016 HUD memo. He cautioned against the use of over-broad policies.</p>	
<p><b>Public Testimony</b></p>	<p><u>50:04 – 59:20</u></p> <p>Greg Ordway provided comments from his experience as a landlord in the Portland area for 20 years. He expressed concerns he has with the new screening criteria, including (1) the risk associated with accepting applications from tenants with prior lease violations; (2) identification requirements – he said the screening services he talked to wouldn’t screen without a SSN; (3) income-to-rent ratio requirements: Why would Portland go against long-established guidelines that paying more than 30% of your income in rent is considered cost-burdened? and (4) release time period for criminal history—is that released from confinement, or released from probation? Greg said the proposed policy would increase his administration costs, which he said would most likely be passed on to tenants as rent increases. He expressed concern that increased risks to small landlords like him and his wife might be untenable, and cause them to stop being housing providers in Portland.</p> <p>Sue Perkel is the landlord of a 12-plex – part of which is a boarding house – and describes her rents as “cheap.” She expressed concern about the proposed changes in the required income-to-rent ratio, using the example of her \$750 units: She says a prospective tenant earning \$1500/month would not have enough income left over to meet basic necessities, and she feels the result will be that rent won’t be paid. She asked if policymakers had considered exceptions for “mom and pop” landlords like herself, who own older buildings and fewer than 30 units.</p>	

<p><b>Screening Criteria Policy Issues</b></p>	<p><u>59:20 – 2:28:49</u></p> <p>Yoni Kahn-Jochowitz offered additional comments on the importance of removing barriers to housing for individuals with poor credit, poor rental history, or a criminal history. He urged housing providers to consider any evidence these applicants can offer to prove they might not be the risk that the label says they are. He said if there’s another proposal out there that addresses these equity issues in a way that’s less administratively burdensome to businesses, he’d be glad to hear it.</p> <p>Jessica Greenlee asked what criteria were used to set the cut-off at 50 units in Part 2, Section (e). Jamey answered that the cut-off was set after conversations with community partners; they felt allowing housing providers with fewer than 50 units greater leeway in rejecting applicants for past lease violations wouldn’t effectively “ban” an applicant from large sections of the city. Jessica countered that even a housing provider with 800 units still controls only a very small share of the 425K+ rental units in the city, and that this point should be reconsidered.</p> <p>Jessica also feels strongly that the income-to-rent ratio should be increased to 2.5 times the rent (instead of 2X), and she has concerns about screening fees, citing the figure of \$128 per screening, which she obtained from one of the major screening companies she’s contacted regarding the new rules. She said more administrative processes would amount to more labor costs.</p> <p>Katrina Holland voiced the opinion that both sides of this debate should be able to agree that the status quo does not work, and things need to change. She would like to flesh out the section in the policy that deals with bankruptcy, and include more language around open v closed bankruptcies (closed should have less of an impact), as well as Chapter 7 (which tends to be immediate) v Chapter 13 (which tends to carry 3–to–5-year payment plans). She would also like the policy to differentiate between different types of evictions (for example, repeat evictions v eviction for one-time nonpayment of rent).</p> <p>Raul Preciado Mendez urged commissioners and others to consider how pervasive housing discrimination is, citing a 2012 HUD study that found minority home-seekers are told about/shown fewer homes and apartments than their white counterparts. He says the process of securing housing is difficult under ideal circumstances, and that any issues with criminal record, credit, or prior evictions end up being de-facto life sentences, and those applicants end up having to sacrifice their living conditions indefinitely due to past mistakes. He urged landlords who are worried about not getting paid to consider that there are risks for any tenant: most people are one catastrophe away from not being able to pay rent. If someone has enough resources to survive that catastrophe, they’re probably not renting.</p> <p>Christian Bryant clarified that potential tenants would inform the landlord if they require accommodations for a disability, and that landlords would not be put in the position of asking for or collecting information on disability.</p>	
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	<p>Christian also asked why there were not more exemptions for small landlords. Jamey responded that small landlords tend to be more likely to rent to “second chance” tenants, and since those tenants are the ones most in need of protection, giving small landlords broad exemptions from the policy does the opposite of what they’re trying to accomplish.</p> <p>Margot Black commented on the income-to-rent ratio, and the concern that it’s “setting tenants up for failure.” She says tenants are already cost burdened, and it’s reflective of the fact that rents are too high. She said lowering the threshold reflects the current reality and allows more people into housing. She asked if the city was planning on tracking any of the data on approvals/denials, and if there was any way to know how many units a landlord owns for purposes of the less than 50 units exemption. Regarding the lottery system, and the problems with enforcing it, Margot wants to know if such a system could be considered if it’s approved by the Housing Bureau.</p> <p>Jamey responded that there is nothing built into the policy to require data tracking, and that we’re relying on landlords to be truthful about how many units they own. She welcomes recommendations regarding the use of a lottery system, but reminded everyone that Commissioner Eudaly’s office does not oversee the Housing Bureau, and would be careful about making them responsible for reviewing/approving a lottery system.</p> <p>Laura Golino de Lovato spoke to the challenges faced by low-income seniors. She said she would like to see the 2X rent reduced to 1.5, for the types of tenants who have, for example, \$750 SSI/month and nothing else, which effectively bars them from accessing housing. She added that if rent assistance is calculated in the income, then that allows the tenant to meet a 2X or 2.5X income-to-rent ratio.</p> <p>She would like clarification on who’s responsible for providing information when a tenant is denied—the screening company, or the landlord? She asked that this be strengthened in the Notice of Denial section. Laura was going to follow up with her staff on several other points, and Andrés asked that she send that information to PHB staff as well.</p> <p>Leah Sykes expressed concerns that this policy was being fast-tracked, and that the commission did not have adequate time to discuss it and provide feedback, given its complexity. She added that there are already 3 areas prescribed by law for which landlords must do assessments that are (to some degree) individualized:</p> <ol style="list-style-type: none"> <li>1) They are required to inform all applicants of their right to appeal if they are denied on the basis of criminal history;</li> <li>2) They must consider accommodation requests from any disabled applicant who is denied, and do an individualized assessment for applicants seeking to have their denials overturned based on disability; and</li> </ol>	<p>✓ Laura will follow up with her staff and provide information to PHB staff.</p>
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3) They must consider evictions and poor rental histories due to someone’s status as a victim of domestic violence.

She stressed that tenant protections are already in place, and that the level of complexity required by the new policy will cause significant difficulties for housing providers.

She also noted some technical items:

- Applications: Could we clarify that we mean *fully completed* applications?
- Clarify that a landlord may not deny an application *solely* because of a reasonable accommodation request.
- Go with *ADA compliant* throughout, and get rid of *ADA accessible*.
- Include *regular, verifiable* family assistance under sources of income.
- Allow for rental history screening of tenants not responsible for paying rent (in addition to criminal history screening).
- ORS 659A doesn’t explain very well what non-discrimination in the context of rental housing is; this explanation could use more detail.
- It seems there is a ban on denying an application for a criminal conviction older than 7 years or more than 4 years from the date of release for any crime; it seems someone guilty of a more serious crime could receive more deference than someone who has committed a lesser crime.
- Regarding criminal convictions: there are concerns about renting to people in violation of their release terms (being close to schools, etc.)
- 7 (a) (iii) – what does “evidence of inappropriate nexus” mean?
- Subsection 9 (b), (c), and (d) – policy may not need all of this language.
- Include language to clarify that fees must be returned within two weeks of submission of a *fully completed* application.

Mike Nuss echoed Leah’s concerns about a rush to Council with this policy, and expressed additional concerns about commissioners’ opinions not being heard. He said that an ITIN is a business number, so he doesn’t see how it could be used as individual ID for screening purposes. He acknowledged that lowering the income-to-rent ratio was a hot-button issue, and said that lowering the ratio to 2X rent while at the same time counting rent assistance, family assistance, and public benefits toward income is going to produce heavily-skewed incomes. He feels we’re setting up the class of renters we want to protect for failure.

For 7 (c), Ian Davie asked if any thought had been given to what a waitlist would look like. For section 12 (regarding damages), he asked if any thought had been given to how this would be enforced. Jamey answered that it would be settled in civil court like all other landlord-tenant matters.

	<p>Deborah Imse urged commissioners and others to be aware of unintended consequences. She said the high level of subjectivity in this screening criteria policy increases the possibility of fair housing complaints. Based on conversations with screening companies, she says obtaining a date of release is problematic, almost to the point of not being do-able. She says margins are already thin for affordable housing providers, and that adding this layer of administrative process is going to be especially burdensome for them and could end up restricting affordable housing supply—an example of unintended consequences. She feels the \$20 increase Jamey quoted for screening fees is highly unrealistic, and said that the three screening companies she’s talked to are quoting a price of between \$125 - \$175, which doesn’t include administrative costs that the property management company/landlord/owner are going to have. Deborah said she would provide the names of the screening companies she’s spoken with – along with their findings – to PHB staff.</p>	<p>✓ Deborah will provide the names of the screening companies she’s spoken with – along with their findings – to PHB staff.</p>
<p><b>Wrap-up and Next Steps</b></p>	<p>Commissioners voted to schedule an additional meeting on Friday, September 7<sup>th</sup>. (9 voted in favor; 2 voted no; 2 abstained.)</p> <p>Katrina Holland proposed creating an ongoing work group to refine some of the issues with this policy. Christian Bryant said the executive committee would take this up and bring it back to the RSC.</p> <p>Jamey informed the group that the attorney’s draft of the policy will be done at the end of August.</p>	
<p><b>Good of the Order</b></p>	<p>Christian Bryant adjourned the meeting at 4:59 pm.</p> <p><b>Next meeting September 7, 2018</b></p>	