

## City of Portland Ordinance on Relocation Assistance

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On February 2, 2017, the Portland City Council unanimously passed an amendment to its renter protection ordinance. The amendment requires a landlord to pay tenants relocation assistance if: (i) the landlord issues an end of tenancy termination notice or fails to renew a fixed term lease upon substantially the same terms; or (ii) increases the rent by 10% or more in a 12-month period and the tenant elects to vacate. The ordinance applies only to dwelling units located within the City limits.

Termination notice. If the landlord issues a termination notice without cause (which includes a landlord declining to renew a fixed-term lease on substantially the same terms except for rent) the landlord must pay relocation assistance not later than 45 days prior to the termination date.

Rent Increase. If a landlord issues a rent increase notice of 10% or more in a 12 month period, and the tenant, within 14 days after receipt of the increase notice, gives written notice that the tenant will terminate the tenancy, the landlord must pay relocation assistance within 14 days after receiving the tenant's termination notice. Rent increases include all associated housing cost increases, such as adding utility costs or increasing a fixed monthly utility payment, garage/carport rent, etc. A notice that conditions the renewal or replacement of an existing fixed-term tenancy on paying increased rent or associated housing costs is subject to this ordinance.

Amount of Relocation Assistance. The amount of relocation assistance depends on the size of the unit.

\$2,900 for a studio or single room occupancy  
\$3,300 for a one-bedroom  
\$4,200 for a two-bedroom  
\$4,500 for a three-bedroom or larger.

Exemptions. The new ordinance does not apply to:

- (i) week-to-week tenancies;
- (ii) a landlord who temporarily rents out their principal residence during the landlord's absence of not more than 3 years;
- (iii) tenants who occupy the same dwelling unit as the landlord; and
- (iv) a landlord who rents only a single dwelling unit in the City of Portland.

Transition. **The ordinance applies to all end of tenancy notices and rent increase notices pending as of February 2, 2017.** To clarify transition issues, the ordinance provides: (i) for pending termination notices, a landlord must, no later than March 4, 2017, either notify the tenant that they are rescinding the termination notice or pay the relocation assistance; and (ii) for

pending rent increase notices of 10% or more, no later than February 16, tenants must notify the landlord they are electing to terminate the rental agreement, and the landlord then has 14 days from the tenant's notice to either rescind the rent increase, reduce the rent increase to 9.9% or less, or pay the relocation assistance.

Expiration Date. The ordinance expires on October 7, 2017, unless the housing emergency declared by the Council is extended by a new Council vote.

## FAQ

Following are some questions we have already received and our best guidance at this time.

Q. Does the ordinance apply to a termination notice that expired prior to February 2, 2017?

A. No.

Q. If we timely rescind a currently pending 90-day termination notice or pending rent increase notice and the tenant vacates anyways, are we responsible for relocation assistance?

A. No. The ordinance allows you to rescind a pending termination notice by March 4, or rent increase notice within 14 days after the tenant notifies you they are terminating, and avoid paying any relocation assistance. However, it is unclear what happens if the tenant vacates prior to March 4 based on a pending termination notice that expires prior to March 4, which you have not rescinded as of the date the tenant vacates. Based on the language of the ordinance, you should not have to pay relocation assistance. However, to be safe, if you are going to rescind a notice that expires prior to March 4, we recommend issuing the rescission prior to the termination date.

Q. There is a pending rent increase notice of 10% or more. If a tenant notifies you of their election to terminate the rental agreement on or before February 16, what are your options?

A. You may either: (i) give written notice rescinding the rent increase notice; (ii) give written notice reducing the rent increase to less than 10%; or (iii) pay relocation assistance. Based on the language of the ordinance you can elect to reduce the rent increase amount to 9.9% or less without having to issue a new 90-day notice. It is unclear if this complies with the 90-day rent increase notice requirement under state law, but we feel confident a judge would allow the original notice to stand since the rent increase is being decreased and not increased.

Q. How do we determine if a rental unit is within the City of Portland?

A. Do not rely on street addresses or zip codes. Refer to the map of the city boundaries which can be found at <https://www.portlandoregon.gov/bps/article/51672> Only areas within the incorporated city are subject to the ordinance.

- Q. If a landlord offers to renew a fixed term lease, and any one of the options (including the MTM option) involves a rent increase of 10% or more, and the tenant timely elects to vacate, does the ordinance apply?
- A. Yes. The ordinance applies to any rent increase of 10% or more, even if the tenant has the option of accepting a lower increase under a fixed term option.
- Q. Does the ordinance apply to a “for cause”, 24-hour or non-payment of rent termination notice?
- A. No. The ordinance only applies to a “no-cause” end of tenancy notice, or the refusal of a landlord to renew or replace a fixed-term tenancy on substantially the same lease terms, except rent.
- Q. How must a tenant give notice of his/her election to terminate after receiving a rent increase notice?
- A. State law requires a tenant to give a written termination notice at least 30 days prior to the termination date. The ordinance does not change this requirement. The ordinance simply says the tenant must give written notice “of the Tenant’s intent to terminate the Rental Agreement”. We read this as requiring a formal termination notice since you must pay relocation assistance based on the tenant actually terminating the tenancy.
- Q. If the tenant timely elects to vacate after receiving a rent increase notice of 10% or more, must the tenant specify that they are leaving because of the rent increase, as opposed to other reasons, as a condition to receiving payment?
- A. No, the tenant is not required to provide any reason for terminating.
- Q. What is the penalty for failure to follow the ordinance?
- A. The tenant can recover the relocation assistance amount PLUS a penalty of up to three months’ rent, attorney fees and court costs.

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- Q. A landlord issues a rent increase of 10% or more and the tenant timely elects to terminate. May the landlord rescind or reduce the rent amount to avoid paying relocation assistance?
- A. No, the ability to rescind or reduce a rent increase is only available for notices pending on 2/2/17 when the ordinance was enacted.
- Q. For a tenant with a Housing Choice Voucher (Section 8), does the 10% trigger on rent increases apply only to the tenant portion of the rent or to the stated rent?
- A. The 10% trigger is based on the stated rent. The ordinance does not mention vouchers or the tenant’s portion.

- Q. A tenant is charged \$1,000 rent, \$50 pet rent, and \$100 flat monthly utility charge (not based on usage) per month. What is the maximum increase that does not trigger the ordinance?
- A. 9.9% of \$1,050 = \$103.95. The 9.9% allowable increase is based solely on “rent.” However, while utility charges are not “rent” they do count towards the total amount of increase. If you increase the rent by \$103.95, but also increase the flat monthly utility charge any amount, you have triggered the ordinance.
- Q. Do utility charges that are based on usage count towards the calculation of “rent” or “associated housing costs”?
- A. No. Utility charges that are based on usage are not considered “associated housing costs” and are not counted towards the amount of an increase unless the rental agreement is being changed to add utility charges the tenant was not previously paying.
- Q. If a landlord offers to renew or replace a fixed term tenancy with a rent increase of less than 10%, but does not offer a MTM option, and the tenant does not accept the new fixed term, must the landlord pay relocation assistance when the fixed term expires and the tenant is required to leave?
- A. No. If the landlord has offered to renew or replace a fixed term agreement with “substantially the same terms except for the amount of Rent or Associated Housing Costs” and the amount of increase is less than 10%, no relocation assistance is due.
- Q. If a tenant requests a pet can the landlord require the tenant to pay additional rent?
- A. Yes, however, relocation assistance is triggered whenever rent is increased by 10% or more in any 12 month period and the tenant timely elects to terminate. If, within 12 months of adding the pet rent, the landlord gives a rent increase notice of 9.9% from the then current rent, and the tenant timely elects to leave, relocation assistance will be due.
- Q. At the end of a 6-month fixed term tenancy, the landlord offers to renew with a 9.9% rent increase. Will relocation assistance be due if the tenant timely elects to leave?
- A. It depends on whether the rent was increased at the beginning of the currently expiring 6-month rental agreement. The 10% increase trigger is based on all increases during the preceding 12 months. If the rent was increased on the last renewal and the current offer is an additional 9.9% increase, then relocation assistance will be due if the tenant timely elects to terminate.
- Q. What is a “dwelling unit” for purposes of the single-unit exemption?
- A. “Dwelling Unit” is defined in the City Code as “A building, or a portion of a building, that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by a group of people. Kitchen facilities for cooking are described in Section 29.30.160 of Title 29, Property and Maintenance Regulations. Buildings with more than one set of cooking facilities are

considered to contain multiple dwelling units unless the additional cooking facilities are clearly accessory, such as an outdoor grill.”

- Q. An individual owns multiple dwelling units in the City of Portland all of which are rented out. Each dwelling unit is owned in a separate LLC. Does the “one-unit” exemption apply?
- A. Yes. Each LLC is a separate “person” for all purposes under Oregon law. Thus each LLC would be renting only a single dwelling unit within Portland and the exemption will apply.
- Q. A person owns a single dwelling unit in the City of Portland and other rentals in other places. Does the “one-unit” exemption apply?
- A. Yes, the exemption applies to a “Landlord who rents out or leases only one Dwelling Unit in the City of Portland.”
- Q. The owner of a single dwelling unit in the City of Portland uses a property manager who rents other units in the City. Does the use of the property manager affect the “one-unit” exemption?
- A. This is a grey area. If the rental agreement is in the name of the property manager, it is arguable the “Landlord” (which includes the owner’s agent under state law) rents more than one unit in the City. For owners of a single unit in Portland, we recommend listing the owner as the landlord on all rental agreements to strengthen the argument in favor of the “one-unit” exemption.