



## ADMINISTRATIVE SERVICES COMMITTEE

### Agenda

Wednesday, April 9, 2014  
3:30 pm

Madison Avenue Meeting Room  
500 SW Madison Avenue

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|------------------------------------|---|
| Discussion/ <b>Possible Action</b> | I. Neighborhood/Property Maintenance Code Program<br>(Attachment) (3:30 to approximately 5pm) |
| Discussion/ <b>Possible Action</b> | II. Utility Rate Structure Review<br>(Attachment) (approximately 5pm)                         |
| Information                        | III. Other Business   |

### **Next Scheduled Meeting**

Wednesday, April 23, 2014 at 3:30 pm  
Madison Avenue Meeting Room, 500 SW Madison Avenue

### **Agenda**

Visit Corvallis Second Quarter Report  
Downtown Corvallis Association Economic Improvement  
District Second Quarter Report  
Enterprise Zone Sustainability Criteria Follow-up  
Neighborhood/Property Maintenance Code Program  
Utility Rate Structure Review

## Memorandum

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April 2, 2014

**To:** Administrative Services Committee

**From:** Ken Gibb, Community Development Director



**Re:** Information for Continued ASC Consideration of a Neighborhood Outreach/Education and Property Maintenance Code Program

### **I. Issue**

As discussed at the conclusion of the March 5, 2014 Administrative Services Committee meeting, Staff are providing follow-up information regarding questions raised by the Committee during and subsequent to that meeting.

### **II. Background**

The concept for implementing a Neighborhood Outreach/Education and Property Maintenance Code Program arose as a recommendation based on the work carried out in support of the Corvallis/OSU Collaboration project by that project's Neighborhood Livability Work Group. The Program as envisioned was and will be a combination of both an expanded effort to provide education and outreach to landlords, tenants, neighborhood residents, and other community members, and a comprehensive property maintenance code compliance program to help address community and neighborhood conditions and livability.

Subsequent to the Work Group's program development recommendations in the spring of 2013, staff formed a Property Maintenance Code Advisory Group (PMCAG) to provide input and guidance regarding both the Community Development Department's overall approach to implementation of the larger Neighborhood Outreach/PMC program, and the content, structure and applicability of a Corvallis PMC. The model code upon which the Corvallis PMC is based is the International Code Council's International Property Maintenance Code.

Following the work of the PMCAG, the Administrative Services Committee (ASC) took up consideration of the Neighborhood Outreach/PMC program. Topics covered by the ASC to date have included:

- Identification, photo-illustration, and discussion of the property condition issues that current City codes cannot address (the "gaps");
- An overview and discussion of the model Property Maintenance Code and how it would provide City staff with the capacity to address the gaps; and
- An overview of a proposed reorganization of the City's current Housing Division under which it would become the Housing and Neighborhood Services Division, providing the City with the structural capacity needed for delivery of the Neighborhood Outreach/Education and Property Maintenance Code.

At the conclusion of the March 5 ASC meeting staff were asked to prepare feedback for the April 9 meeting regarding the questions and issues raised by ASC members, both during the March 5 meeting and in advance of April 9. The information that follows provides that feedback.

### III. Discussion

The discussion items that follow have been drawn either from the minutes of the ASC meeting of March 5, or from subsequent communications by ASC members to staff. A separate attachment addresses specific, PMC-related questions, comments and suggestions submitted to staff March 26 by ASC Chair Traber.

1. *What codes would be eliminated or modified as a result of enactment of the Property Maintenance Code?* The City's Rental Housing Code would be eliminated, as its provisions would be covered by the Property Maintenance Code; the City's Dangerous Building Code would also be eliminated, again because its provisions would be covered, in Sections 108 through 110 of the PMC. No other current City codes would be eliminated, but passages of the Corvallis Municipal Code would need to be amended to reflect the adoption of and include appropriate references to the PMC.
2. *Total calls to/deficiencies with current Rental Housing Code.* A table reflecting numbers of phone calls to the City's Rental Housing Program, and the number of issues raised in those calls that were not subject to the Rental Housing Code (RHC), was provided to ASC on March 5 by John Wydronek. Those numbers appear to coincide accurately with data tracked by Housing Division staff; they reflect that an average of 127 issues reported per year over the last three years were not subject to the RHC. Projecting year-to-date data suggests that there will be approximately 170 such issues reported during FY 13-14.

The submitted data does not include calls to the Development Services Division and its Code Enforcement program regarding issues not covered by other City codes. While such calls report condition issues in all types of properties, the majority of which are rentals, the numbers of calls and issues reported are not tracked. Over the last three calendar years that program has opened, on average, 500 violation cases a year. A set of slides displayed at the March 5 ASC meeting was illustrative of the types of issues that are reported for owner-occupied, renter-occupied and non-residential properties for which the City currently lacks code enforcement authority.

3. *Use of the word "clean" in reference to interior and exterior surface conditions.* See the discussion of this usage in the attachment to this staff report.
4. *There was a suggestion that the City contact a landlord directly to report a maintenance issue, prior to accepting the issue as a complaint, after a tenant complains to the City and states that they do not want to report the issue directly to that landlord.* It seems to staff that this would not respect the complaining tenant's decision to not contact their landlord prior to filing a complaint with the City. However, once a complaint is accepted, if a violation is determined, staff will follow up with the landlord to inform them of the issue and work through a compliance process. As noted during the March 5 ASC meeting, City staff intend to encourage any potential complainant who has not yet communicated directly with their landlord about a PMC-covered issue to do so prior to filing a complaint.

5. *What is the City's strategy for transitioning from the current set of code enforcement processes and procedures to a new, PMC-based approach? How will the current backlog of unresolved code enforcement complaints be addressed?* Councilor Traber asked that staff address a transition strategy for the new Neighborhood Outreach/Education and Property Maintenance Code program, especially in light of the number of currently outstanding code enforcement cases. A transition approach that includes anticipated actions is outlined below.

- Existing General Fund-supported Code Enforcement resources will be moved from the Development Services Division to the reorganized Housing and Neighborhood Services Division and become the Code Compliance Program. These resources will include the Code Enforcement Supervisor position and associated funding for operations, supplies, and other overhead, along with a small amount of funding for casual code enforcement staffing.
- Levy-generated funding to support .5 FTE for Property Maintenance Code compliance work will also be allocated to the Housing and Neighborhood Services Division.
- The proposed increase in rental housing fee income will support an additional .5 FTE for Property Maintenance Code compliance, and also provide funding for casual code compliance staff. This fee will also support the expanded outreach and education program within the Division.
- The net impact will be an increase in code compliance staffing from 1 to 2 FTE, which will provide capacity to address the increased areas of responsibility associated with the Property Maintenance Code.
- In regard to the current number of outstanding cases, it is noted that:
  - When the code enforcement program was first envisioned, up to 3 FTE were projected as necessary to address the anticipated case load on a timely basis;
  - Initial funding for the program provided for 2 FTE. Shortly after program initiation, staffing was reduced to 1 FTE (with some limited casual staffing) due to budget pressures. It was acknowledged at the time that the ongoing case load could not be fully addressed, and that a prioritized response would be necessary.
  - A significant percentage of the outstanding code enforcement cases are related to violations of the Building Code and Land Development Code. These cases will stay under the purview of the Development Services Division; the Division is working through procedural changes in order to address them. In implementing these changes the Development Services Division will allocate resources necessary to manage that portion of the current and future caseload.
  - While recognizing that for some PMC and livability cases there will be a need for coordination and shared responsibilities with the Development Services Division, the reorganized Housing and Neighborhood Services Division will be able to focus on the complaint-based Property Maintenance Code and other livability related codes along with education, outreach and other proactive programs.
- Given this anticipated approach, staff believe that the proposed permanent and casual staffing levels and related recommendations (e.g. a pre-established set of program protocols and progressive penalty system) will allow the Housing and Neighborhood Services Division to respond to code compliance cases on a timely basis.

6. *What approach will the City use under the PMC to notify property owners or responsible landlords or tenants about violations? What time frames for action will be applied?* The general approach to gaining compliance for violations of the PMC was outlined in discussions with the PMC Advisory Group, and has been included in the program protocols that were first presented to the ASC on February 5. The protocols applicable to this discussion are repeated, with additional detail, below.

**PMC complaints related to renter-occupied properties:**

- The standards of the PMC will pertain to interior and exterior conditions.
- Intended time frames for and types of response by Property Maintenance Code Compliance staff will be determined based on the potential severity of the complaint description:
  - Life/safety/dangerous building issues will receive priority response (ex: dangerous wiring, failing structural components, lack of smoke detectors).
  - Next priority - health/livability issues with a targeted 48-hour response (ex: lack of water/hot water, complete lack of heat, rodent harborage).
  - Other issues will receive a targeted 7- to 10-day response (ex: inadequate heat, exterior door locks).
- Code Compliance staff will provide written notice to the responsible party subsequent to receipt of a complaint and determination of a violation; other methods of communication (phone, e-mail) will likely be used to supplement written notices.

**PMC complaints related to owner-occupied residences, commercial, and other building/property types:**

- PMC standards will apply only to exterior conditions and dangerous building provisions for these use types.
- The timeframes and noticing methods outlined above will be applied for exterior issues or life/safety/dangerous building compliance responses.
- Staff will respond in person for investigations of life/safety, dangerous building, or health issues.
- For other exterior-related issues that do not meet PMC standards but have not yet reached a point of structural deterioration, staff will send a letter noting the reported complaint, provide the applicable Code standard, and provide direction/instruction to reach compliance within a stated timeframe.

**Scope of investigations:**

- Investigations of complaints regarding specific, limited conditions would not be used as an opportunity to conduct comprehensive property inspections; complaints alleging a broader scope of concerns may require a correspondingly broad response.
- Issues of a life/safety nature that are identified in the course of a complaint investigation would be addressed under the guidelines outlined above.

**Achieving compliance:**

- In situations that receive in-person responses but are not deemed to be dangerous buildings, Code compliance will be achieved through a series of violation notices. Example of possible scenario:
  - A first notice will identify the Code deficiency and require compliance and a call for inspection within a stated timeframe.

- A second notice will be provided if there is no call for inspection or if mitigation is determined to be inadequate or incomplete. The second notice will:
    - 1) Require compliance and call for inspection within a stated timeframe, and
    - 2) State the City's intent to initiate legal action if compliance is not achieved within that timeframe.
  - If there is no call for inspection or there is a staff determination of failure to comply with the second notice, legal action will be initiated.
7. *How much fine revenue would be generated by the PMC, and how might that affect the per unit fee that would be charged to landlords?* Given that the City's approach to code enforcement has been focused on gaining compliance rather than imposing fines, there is no clear data or basis on which to project potential fine revenue. As staff shared with the PMC Advisory Group when they raised the same question, to build a fine-based budget before the PMC is in place and patterns of complaints, enforcement and compliance become clear would be very speculative at best. In addition, setting a budgetary "target" for fines would leave staff and the City open to accusations of trying to achieve quotas rather than being perceived as trying to work reasonably with owners and other responsible parties to achieve compliance. As experience with the collection of fines is gained over the course of the first few years of Property Maintenance Code Program operation, it will become possible to budget fine-related revenues and in turn, to potentially reduce or delay increases in the per unit annual rental housing fee.

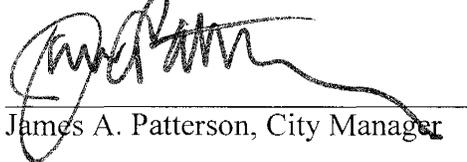
#### **IV. Next Steps and Requested Action**

As discussed in prior ASC meetings, it is recommended that the outcome of the Committee's consideration of the Neighborhood Outreach/Education and Property Maintenance Code Program proposal be a recommendation to the City Council on how best to proceed. To move forward with a recommendation in support of the Program as presented or in an otherwise modified form, the Committee might consider developing a program outline broken into the elements considered to date. Those elements have included:

- An outline of the content of the Property Maintenance Code, including changes that have been presented and recommended to date;
- Operating protocols related to implementation of the Property Maintenance Code;
- An outline of the outreach and education element of the Program;
- The operating structure of the reorganized Housing and Neighborhood Services Division;
- A recommendation relative to the reinstatement of the Neighborhood Empowerment Program; and
- A Program budget and funding strategy.

Staff will be prepared to provide additional information if requested by the Administrative Services Committee, or to move forward with preparation of a final program outline for Committee consideration and recommendation to City Council.

Review and Concur:



James A. Patterson, City Manager

Attachment 1: Chair Traber's questions/comments regarding specific PMC provisions

**The following set of questions and comments relative to the proposed Corvallis Property Maintenance Code were provided by Administrative Services Committee Chair Traber for consideration by staff in advance of the April 9 ASC meeting. As presented below, Chair Traber's questions and comments are in bold and italicized, and staff responses are neither bold nor italicized.**

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1. ***Section 108 – impact of condemning property vs. severity of problem. Will we be reducing housing stock by condemning property that does not meet code (law) but is livable? See specific concerns below. My understanding is that condemning means eviction of tenants and I am not clear how quickly one gets to the placarded stage.*** The City has had a dangerous building code in effect for many years, and operates currently under the model 1997 Uniform Code for Abatement of Dangerous Buildings (UCADB). It has not been necessary to declare a building dangerous with any frequency within the timeframe of current City records. The model Property Maintenance Code (PMC) includes dangerous building provisions which, if adopted, will replace the UCADB. The PMC dangerous building provisions are the International Code Council's (ICC) model code update of the 1997 UCADB, and therefore are very similar to the City's current code.

As noted in the ICC's guidance with regard to the IPMC model code, "Condemnation is the result of the most serious of code violations in that it represents a condition, which in the opinion of the code official, poses a serious threat to the health and safety of the public or another structure or property." The intent of seeking compliance under the PMC will be to address complaints regarding buildings and properties while the conditions described in those complaints are still maintenance issues, rather than after they have deteriorated to the point of constituting a dangerous building. When the PMC is applied in this way, staff anticipate that dangerous building declarations will continue to occur only in extreme cases.

As defined in the PMC, the effect of condemnation is "to adjudge unfit for occupancy." Condemnation by the City may lead to the demolition of a structure, but historically it has more frequently resulted in the repair of a property to resolve deficiencies. Of note, determinations to condemn do not necessarily result in an order by the City to vacate the building or premises. Due notice would be provided to the owner and posted on the premises, and a correction order would be included. If the owner fails to comply with or appeal the notice and order, then the City would be required to post a placard of condemnation and order to vacate. The exception would be in situations of imminent danger whereby a building must be immediately vacated. Under state law, if the City posts an order to vacate a building or structure, a landlord is prohibited from continuing a tenancy or from entering into a new tenancy.

- a. ***108.1.3 – are there some guidelines for "degree". Concern is that blocked toilet or mice in the attic (in the extreme) could be used to condemn.*** Consistent with current practice under the adopted 1997 UCADB, structures and premises that are determined by the PMC standards to be dangerous, unsafe, or unlawful would be subject to condemnation. Specific criteria for determining what constitutes an unsafe, unlawful or dangerous condition are provided in the model PMC under Sections 108.1.1-5, 305.1.1 and 604.3. As noted above, staff anticipate that in a high percentage of cases for which the Property Maintenance Code is used to seek compliance, the routine actions will not lead to the declaration of a building as dangerous.
- b. ***108.1.5 – dangerous seems to mean condemned and several of the sections below leave a wide range of things leading to condemnation. e.g., loose vinyl floor, sagging porch.*** Conditions will be evaluated for applicability under the specific standards before moving forward with a declaration. For example, a vinyl floor that is merely loose or defective would be addressed as a maintenance issue under Section 305.3 or 305.4;

however, a walking surface of an egress path that is so “unsafe as to not provide safe and adequate means of egress” could be deemed contributive to a dangerous building condition. Again though, it is anticipated that most actions on the part of the City will lead to seeking compliance with PMC provisions through repairs, not through dangerous building declarations.

- c. **108.1.5, 7. – Should it refer to abandoned buildings? Can occupied buildings be used in this fashion?** Both abandoned buildings, and occupied buildings or portions thereof, have been and may be used as described. In such cases, the PMC would require abatement (repair or demolition). Requirements to close and secure vacant buildings are described in section 108.2.
2. **Section 111 – I assume this section needs to be modified to match our current appeals procedure.** This section will simply refer to the appeals process that is described in Corvallis Municipal Code chapter 9, section 9.01.090 – Appeals.
  3. **Section 202 – what do the [A] etc. mean? Perhaps an explanatory footnote is needed.** These bracketed letters refer to and identify the code development committee that wrote and maintains specific sections of the International Property Maintenance Code. The references will not be needed in the Corvallis Property Maintenance Code.
  4. **301.3 – does vacant land fit here? It could require all undeveloped land to have wild black berries or other invasive species removed. Perhaps this should refer to something more like lots?** This section applies to both improved and unimproved properties, and is consistent with the provisions of Corvallis Municipal Code (CMC) Section 5.03.110.020. Enforcement of this CMC section is carried out by the Corvallis Fire Department, so this section of the PMC could be removed.
  5. **302.1 (and beyond) – I suggest removing “clean”. Sanitary is the minimum and well defined criteria for cleanliness. Having it here seems very broadly applicable. If not removed, find a word or phrase that connotes filth avoidance.** Staff note that neither “clean” nor “sanitary” is an easily or precisely defined term. However, these terms and/or others that may be interpreted with relative subjectivity are found consistently in building and other codes, including the City’s current Rental Housing Code, as well as in state law. As an example, both “clean” and “sanitary” are used with frequency in state landlord-tenant law (ORS 90) in reference to the responsibilities of both landlords and tenants. City staff are consistently called on to use their trained, professional judgment and discretion in determining whether a condition is “safe” or “unsafe,” “capable” or “incapable,” or “adequate” or “inadequate.” This same judgment and discretion would be applied to determinations of whether a condition is “clean” or “sanitary.”
  6. **302.3 – clarify that it is the city who maintains most street sidewalks. So this ought to refer to other sidewalks.** This section should acknowledge that the City maintains the structural safety of public sidewalks in the rights of way. However, consistent with current CMC Section 5.04.050, PMC section 302.3 also addresses owner/occupant responsibilities for preventing conditions that make sidewalks dangerous, such as allowing water to flow over a sidewalk, allowing accumulations of snow or ice, or allowing or placing debris or other materials on a sidewalk.
  7. **302.5 – how does this relate to the natural area backyard efforts underway now – separating wild animal environments from rodents harborage?** Consistent with current provisions in CMC Chapter 4.02, conditions that create or contribute to rodent harborage would not be allowed.

8. **302.9 Does this replace any current graffiti ordinance? If not, are we embarking on a possibly new topic?** Current codes prohibit damaging property, such as with graffiti, but do not require it to be abated. The PMC would make explicit the prohibition, and would further require the property owner to restore the affected surface.
9. **Section 304 overall – I am not sure what the applicable metric for being subject to city action here. Granted all structures should be well maintained. However, not all are at all times. Without some further specification of when normal weathering changes to something worse that needs city action, this section could be regularly misused. Examples are:**
- a. **304.1.1 #6 – how does this apply to older structures? Is there a section that provides for exceptions to meeting the code at time of construction?** Yes, PMC section 102.2 states that a building and/or premises shall be maintained consistent with the code under which it was constructed, altered or repaired.
  - b. **304.2 – Third sentence beginning “Peeling, flaking ..” In my experience, many homes have such conditions for some period until the owner concludes it is severe enough to repaint/repair.** As with the interpretation of terms such as “clean” and “sanitary,” staff would use discretion and professional judgment in determining whether or not the condition of a painted surface constitutes a situation that is contributing to the deterioration of a structure and is thus in need of maintenance.
  - c. **304.7 – most gutters in the fall would fail.** Staff discretion and professional judgment would apply here as well.
10. **305.1 – again the clean and sanitary. I suggest only sanitary.** Please see the discussion in response to 5. above.
11. **305.3 – Is peeling flaking paint remediation the responsibility of the owner or tenant? Similarly the next sentence.** Section 305.1 of the PMC identifies the party (occupant or owner) with responsibility for maintenance of specific elements of the interior of a structure. Occupants are required to maintain the portion of the structure that they occupy or control in a clean and sanitary condition; owners are required to maintain the other portions of a structure or property in a clean and sanitary condition, including in most cases the condition of paint.
12. **308.1 – Perhaps qualify this with excessive. Note some yard waste does not have a container and the owner may be letting it rot. Also, does using leaves as a mulch violate this?** During discussions with the Property Maintenance Code Advisory Group, staff proposed adding provisions to the PMC to allow for composting. Materials that do not constitute rubbish or waste material may be composted or used as mulch.

*Summary staff comments:*

In response to these and other questions that have been raised during the process to review the proposed Property Maintenance Code and related compliance program, three points bear reiteration:

1. As established in the protocols for PMC implementation, the proposed Code compliance program will operate under a complaint-based approach, i.e., City staff will be responding to specific property condition complaints, and will not conduct routine property inspections or be in the field looking for potential violations.
2. There is no practical way to define all of the terms used to establish standards in the PMC or other similar codes. Therefore, staff will need to continue to exercise reasonable professional judgment in administering the PMC compliance program as it does in its application of other City codes.
3. Regarding concerns raised by some who have suggested in visitor comments that staff will not apply the PMC appropriately, there will be two levels of redress and review built into the program's implementation. First, a party who has received notice of a PMC violation may appeal staff's determination through the City's Board of Appeals process. Second, staff have recommended that an annual program review be completed. As a result of that review, the City Council will have an opportunity each year to evaluate the program and make adjustments to Code provisions and/or operating protocols as it deems necessary.

**RECEIVED**

MAR 17 2014

CITY MANAGERS OFFICE  
CITY OF CORVALLIS

March 17, 2014

Administrative Service Committee  
Councilor Biff Traber, Chair  
Councilor Hal Brauner  
Councilor Joel Hirsch

Re: Technological Alternatives to Cost of New IMPC Code and Personnel  
Concerning Livability and Dilapidated Structures Problem

Dear Committee Members:

The Corvallis Police Department has a Facebook page. It is used to address Special Response Notice (SRN), and Chronic Nuisance Property (CNP) properties in Corvallis. As I understand the program, police respond to these livability violations and issue a citation to the offenders. Police then publicize all the addresses where either or both of these two types of citations were issued on the police Facebook page. I am informed and believe this is a useful tool for dealing with livability issues in neighborhoods with these types of problems.

Is this a possible solution for Corvallis' existing Building Code enforcement officers? Could the code enforcement officers send a warning notice citation that such and such was a problem and enforcement shall follow? Then, post this citation on the Building Department Facebook page for the public. This peer pressure may or may not work. On the other hand, the public notice would alert Realtors, Investors, Developers, and others interested in purchasing city lots in Corvallis. These interested parties could either purchase the property or motivate the current owner to fix and repair the code violations. A win-win for everyone (Minimal City staff time, property either sold or fixed).

Perhaps technology and education should be tried and tested prior to committing funding to new staff where there is so much uncertainty as to consequences. Facebook gets educational information out to many diverse populations at a minimum cost.

Very truly yours,



Bill Cohnstaedt  
WC/st

**RECEIVED**

MAR 17 2014

CITY MANAGERS OFFICE  
CITY OF CORVALLIS

March 17, 2014

Administrative Service Committee  
Councilor Biff Traber, Chair  
Councilor Hal Brauner  
Councilor Joel Hirsch

Re: Regulating Residential Rental Property in Corvallis

Dear Committee Members:

One of my goals is to provide some basic information on the existing legislated system regulating Landlord and Tenant relationships and the structures they “rent.” This legislation fills many of the gaps in the Municipal Code as I presently understand Staff’s presentation on the Municipal Code gaps. Staff presentation on dilapidated/abandoned buildings was compelling. Something needs to be done. I have a tentative proposal in my head, but not yet articulated. I will send it when I can talk about it.

The following are my observations from the February 5 & 25, 2014, and March 5, 2014 meetings regarding residential housing and out-buildings in Corvallis, Benton County, Oregon.

Let us not forget the principle figures are the Landlord and Tenant who will remain under the State’s jurisdiction, even when overlaid by a new Municipal Code. There will be at least two sets of legislation - Oregon and Corvallis, that govern the property occupied and the individuals renting. The original version of the IPMC also included owner-occupied properties. Staff proposed not to include the interior of owner-occupied properties.

First, the Landlord/Tenant relationship has been in existence for eons. Historically, it is viewed as adversarial. Landlords’ and Tenant’s interests are distinct. This view has led to a regulatory system based in law and the state legislated legal system. The point being that the Oregon Legislature has extensively and continuously listened to representatives of both Landlords and Tenants interests (lobbyists), and the construction and utility industry’s representatives (lobbyists) and created an ongoing legislative system where these varied interests are regulated by the state judicial system. The state judges have several methods of communicating with each other, and the legislature as to what new creative ideas Landlords, Tenants, and their representatives are implementing.

Second, I hope this is helpful to understand the context and consequences of the testimony of the Tenants, their advocates’ interests, and the Landlords’ (property owners’) interests. Understanding of both the existing system structure and the proposed system structure will lead to an informed decision. It appears Staff is attempting to accomplish an understanding of the proposed system in terms of the existing Municipal Code and the proposed IMPC.

So, let us begin with a brief review of the concepts underlying the state statutory regulation:

1. All Landlords are in the business of providing their property for the Tenants’ use. It is a business. All are in the business of allowing the residential or commercial use of the Landlord’s property under the terms of an agreement with the Tenant.

2. The State has chosen to regulate this business of residential rental property by means of economic incentives. One incentive is “Money Damages” to those harmed by the other parties’ violation of the rental agreement and/or the government’s regulations of the Landlord property and Tenant relationship. This choice has historically lead to the State judicial system (State Judges) being the forum for dispute settlement. The State mandates for minimum standards of habitability utilize structural building codes based on health and safety. ORS 90.360, 90.250, 90.380. See attached Exhibit 1 for the language and editorial comment on these statutes.
  
3. For the system to work, both Tenants and Landlords and the City enforcement officials must have access to the Court system. The state provides this access in several distinct ways. First, by awarding money damages to the prevailing party. The second is an award of attorney fees, at trial and on appeal, to the prevailing party together with costs, and necessary disbursements, notwithstanding any agreement to the contrary. ORS 90.255. This means young or seasoned professional attorneys can earn a living representing responsible Tenants in litigating complaints against irresponsible Landlords.

Also, the Oregon State Bar and the Federal Government have programs providing attorneys to citizens of modest means and/or legal aid lawyer programs for the poor.

Staff appear to advocate a local Corvallis Appeals Board as decision maker. This appears to be a costly, or incompetent, or both, overlay of the State Judicial System. How often has the Appeals Board actually met?

4. Attached are selected copies from ORS code selections, Title 10, Chapter 90, copied from the Oregon Rental Housing Code 2012 Law Book. This is from an out of date copy. Its editorial comments are a good perspective of Oregon’s statutory scheme for legislating the residential Landlord and Tenant relationship. Oregon Revised Statutes (ORS) Sections 90.250, 90.255, 90.320, 90.322, and 90.380, are helpful in understanding the legislative goals of health and safety as necessary conditions for the property owner being able to rent their property. ORS 90.375 Effect of unlawful ouster or exclusions; willful diminution of services is also available to remedy Tenant problems with poor Landlords.

See ORS 90.360 to 365 for Tenant’s remedies for noncompliance with rental agreement and Landlord failure to supply essential services. Section 90.368 Tenant’s right to repair minor habitability defects and bill Landlord. Responsible Tenants have a variety of “money damage” remedies against irresponsible Landlords.

Education may be very effective in using this statutory system.

Administrative Services Committee  
Councilor Biff Traber, Chair  
Councilor Hal Brauner  
Councilor Joel Hirsch  
March 17, 2014  
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ORS 90.380 Effect of rental dwelling in violation of building or housing codes; remedy; is the last resort of Tenant and Landlord relations. Everyone loses if the City declares the property unsafe or uninhabitable. Tenants vacate and Landlord cannot rent to another Tenant.

No legislative system, State, County or City, will be effective if Tenants do not have available housing choices in their chosen community. There has to be a surplus of available housing (i.e., a vacancy factor) in the type of affordable housing Tenants can afford for legislative regulation to be effective. No Tenant can afford to complain and the City cannot afford to tear down nonconforming housing if it will displace citizens. "Lousy shelter is better than no shelter" is one of the bases for our history of ghettos in the United States. Tenants fear being evicted by actions of the City as much as by the Landlord when eviction means relocating to another community.

A high vacancy factor will also lower rents. Reading and comparing the advertising in the Barometer, Gazette Times, and Craigslist for the present cost of rentals with a low present vacancy factor, and past years with almost zero vacancy factor, will confirm this observation.

Very truly yours,



Bill Cohnstaedt  
WC/st

90.545	Fixed term tenancy expiration; renewal or extension; new rental agreements; tenant refusal of new rental agreement; written storage agreement upon termination of tenancy	112		
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90.634	Prohibition against lien for rent; action for possession; disposition of dwelling or home; disposition of goods			
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90.645	Closure of manufactured dwelling park; notices; payments to tenants			
90.650	Notice of tax provisions to tenants of closing manufactured dwelling park; rules			
90.655	Park closure notice to nontenants; report of tenant reactions			
90.660	Local regulation of park closures			
90.671	Closure of marina; notices; payments to tenants; rules			
	<b>(Ownership Change)</b>			
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			90.860	Definitions for ORS 90.865 to 90.875
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			90.875	Remedy for failure to give notice

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## GENERAL PROVISIONS

**90.100 Definitions.** As used in this chapter, unless the context otherwise requires:

- (1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

- (a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or
- (b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.
- (2) “Action” includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.
- (3) “Applicant screening charge” means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.
- (4) “Building and housing codes” includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.
- (5) “Carbon monoxide alarm” has the meaning given that term in ORS 105.836.
- (6) “Carbon monoxide source” has the meaning given that term in ORS 105.836.
- (7) “Conduct” means the commission of an act or the failure to act.
- (8) “Dealer” means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.
- (9) “Domestic violence” means:
- (a) Abuse between family or household members, as those terms are defined in ORS 107.705; or
- (b) Abuse, as defined in ORS 107.705, between partners in a dating relationship.
- (10) “Drug and alcohol free housing” means a dwelling unit described in ORS 90.243 [see page 19].
- (11) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. “Dwelling unit” regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational

What are commonly called *screening fees* or *application fees* are *applicant screening charges* in the law. See page 26 for expanded discussion.

Law changes in 2005 and 2007 provided certain rights for victims of domestic violence. See the discussion on page 87. ORS 107.705 defines abuse as “the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.

(c) Causing another to engage in involuntary sexual relations by force or threat of force.”

“Family or household members” are defined as “any of the following:

(a) Spouses.

(b) Former spouses.

(c) Adult persons related by blood, marriage or adoption.

(d) Persons who are cohabiting or who have cohabited with each other.

(e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.

(f) Unmarried parents of a child.”

The 2007 legislature added “dating violence” to the definition in order to have Oregon law agree with federal law (in the 2006 Violence Against Women Act). Hence the new paragraph (b).

vehicle or floating home itself.

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(12) “Essential service” means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

- (A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and
- (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320 [see page 40], the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the dwelling unit unfit for occupancy.

The term “Essential service” appears in tenant remedies for landlord noncompliance (primarily ORS 90.360 and 90.365). Though it doesn’t appear in 90.320 (the habitability section) it’s there by implication, because landlords are required to provide many of these items. The term also appears in 90.370 [tenant counterclaims] and 90.435 [willful diminution].

Paragraph (B) means virtually anything regarding the property you are supposed to provide can be considered an essential service.

A separate definition is provided for facilities, because responsibilities of landlords and tenants are different in those. There, essential services refer mostly to the utility services a landlord is required to provide: sewer, water, electric, and drainage.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:

- (A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and
- (B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730 [see page 141], the lack or violation of which creates a serious threat to the tenant’s health, safety or property or makes the rented space unfit for occupancy.

Wherever you see the word *facility* in Chapter 90, it is shorthand for a *manufactured dwelling park* (commonly called a *mobile home park* or simply a *park*) or a *marina*.

(13) “Facility” means a manufactured dwelling park or a marina.

(14) “Facility purchase association” means a group of three or more tenants who reside in a facility and have organized for the purpose of eventual purchase of the facility.

(15) “Fee” means a nonrefundable payment of money.

(16) “First class mail” does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(17) “Fixed term tenancy” means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(18) “Floating home” has the meaning given that term in ORS 830.700. “Floating home” includes an

*Fee* and *security deposit* are mutually exclusive. A fee is a “nonrefundable payment of money.” A deposit is “any refundable payment or deposit of money, however designated.” Using terms such as *nonrefundable deposit* or *refundable fee* will only get a landlord in trouble, with a judge undoubtedly deciding it means the opposite of what the landlord desired. It’s not necessary to use terms like refundable deposit. The word deposit means it is refundable.  
The rules on fees and deposits was changed significantly by the 2009 legislature. See page 33.

Here's how Oregon law defines a hotel:

699.005(1) "Hotel" or "inn" means a property, however owned and including a condominium under ORS chapter 100, in which rooms or suites of rooms generally are rented as transient lodgings and not as principal residences.

Transient lodgings are defined as follows:

699.005 (3) "Transient lodging" means a room or suite of rooms which is occupied not as a principal residence:

(a) By persons for periods of less than 30 consecutive days; or

(b) With which the services normally offered by hotels, including but not limited to daily or bidaily maid and linen service, a front desk and a telephone switchboard, are provided, regardless of the length of occupancy of a person.

This definition is more restrictive than that in 90.100(46). That's on purpose; to make it more difficult for landlords—especially those running residential motels—to evade tenant protections under Chapter 90.

accessory building or structure.

(19) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(20) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

(21) "Informal dispute resolution" means, but is not limited to, consultation between the landlord or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.

(22) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(23) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(24) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(25) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003. "Manufactured dwelling" includes an accessory building or structure.

"Manufactured dwelling" does not include a recreational vehicle.

(26) "Manufactured dwelling park" means a place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee.

(27) "Marina" means a moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary

Who is a landlord? Is it the owner? the management company? the on-site manager? all of them? any to the exclusion of the other? It is not always clear. The definitions (of both landlord and landlord's agent) are particularly pertinent to ORS 90.322 [access] and 90.396 [24-hour terminations].

Last month's rent deposit is a deposit meant to secure the tenant's obligation to pay for the last month of a tenancy. (If a landlord has a fixed term lease, better to charge last month's rent and apply it automatically without asking.) In the case of a month-to-month tenancy, if either party gives notice to the other, then the last month's rent deposit can be applied. Because it's a deposit, it doesn't fix the amount of rent for the last month. Nor can a tenant argue, after a landlord serves a non-payment of rent notice, that "Hey, you could've used my last month's rent." The landlord couldn't: he has a deposit to be applied to rent, but only after one party tells the other when the last month is.

Because of new law governing closure of parks, the 2007 legislature separated the definitions of “manufactured dwelling” and “marina.”

Here are the pertinent definitions of a manufactured dwelling from ORS 446.003:

“Manufactured home,” except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

(b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, “manufactured home” has the meaning given the term in the contract. “Mobile home” means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

“Residential trailer” means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

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purpose of which is to rent space or keep space for rent to any person for a charge or fee.

(28) “Month-to-month tenancy” means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

(29) “Organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(30) “Owner” includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

- (a) All or part of the legal title to property; or
- (b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(31) “Person” includes an individual or organization.

(32) “Premises” means:

- (a) A dwelling unit and the structure of which it is a part and facilities and appurtenances therein;
- (b) Grounds, areas and facilities held out for the use of tenants generally or the use of which is promised to the tenant; and
- (c) A facility for manufactured dwellings or floating homes.

(33) “Prepaid rent” means any payment of money to the landlord for a rent obligation not yet due. In addition, “prepaid rent” means rent paid for a period ex-

A residential tenancy is one of three types: a fixed-term tenancy, month-to-month tenancy, or week-to-week tenancy. If it doesn't fit in the definition of a fixed-term or week-to-week tenancy, it is by default a month-to-month tenancy.

Numerous types of non-residential tenancies exist; see page 152.

*Prepaid rent* is different from a *last month's rent deposit*. If a landlord terminates a tenancy with less than a thirty day notice (for example, with a 24-hour notice for outrageous behavior or a ten-day notice for an illegal pet), the landlord could end up holding rent money that has not yet been earned and may owe the tenant a refund. Similarly (though less usually), if the tenant prepaid a few months rent, the amounts due for future months is prepaid rent. If a tenancy terminates and the landlord is holding prepaid rent, he needs to comply with ORS 90.300.

tending beyond a termination date.

(34) "Recreational vehicle" has the meaning given that term in ORS 446.003.

(35) "Rent" means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others. "Rent" does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.532.

(36) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

(37) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

(38) "Screening or admission 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.

(39) "Security deposit" means a refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement. "Security deposit" does not include a fee.

(40) "Sexual assault" has the meaning given that term in ORS 147.450.

(41) "Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in ORS 90.427 (7). [see page 84; see also the exclusion for squatters on page 10.]

(42) "Stalking" means the behavior described in ORS 163.732.

(43) "Statement of policy" means the summary explanation of information and facility policies to be

A *rental agreement* contains all agreements, written or verbal. So the rental agreement comprises not only all those pieces of paper the two parties sign at the beginning, but also everything else the two agree to later, whether or not in writing. A rental agreement includes a lease. While in common parlance, a lease means a "fixed-term rental agreement," it doesn't always mean that.

Sexual assault, according to ORS 147.450, means "unwanted sexual contact." Sexual contact is defined, in ORS 163.305, as "any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party."

Here is how ORS 163.732 defines stalking:

(1) A person commits the crime of stalking if:

(a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

provided to prospective and existing tenants under ORS 90.510.

(44) “Surrender” means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit. *[see page 14 for more discussion.]*

(45) “Tenant”:

(a) Except as provided in paragraph (b) of this subsection:

(A) Means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.

(B) Means a minor, as defined and provided for in ORS 109.697 *[see page 194]*.

(b) For purposes of ORS 90.505 to 90.840, means only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(c) Does not mean a guest or temporary occupant.

(46) “Transient lodging” means a room or a suite of rooms.

(47) “Transient occupancy” means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

The line between a motel—which doesn’t offer residents rights under Chapter 90—and residential tenancies—which do—has always been difficult to draw. Transient occupancy has the following characteristics: [1] rent is charged on a daily basis; [2] rent is not collected in more than six day increments; [3] the rent includes maid service at least every other day; and [4] the occupancy doesn’t exceed 30 days. Many residential motels that, for instance, collect rent weekly or don’t provide maid service are covered by Chapter 90.

(48) “Vacation occupancy” means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

Vacation occupancy is separately defined in order to exclude such from protection of landlord and tenant law. See ORS 90.110. Take careful note of the restrictive definition. A vacationer has another address, is there for vacation purposes, and has a rental agreement that has a duration of 45 days or less. Month-to-month tenancies, that renew every thirty days, do not fall within this definition.

(49) “Victim” means:

(a) The person against whom an incident related to domestic violence, sexual assault or stalking is perpetrated; or

(b) The parent or guardian of a minor household member against whom an incident related to domestic violence, sexual assault or stalking is perpetrated, unless the parent or guardian is the perpetrator.

(50) “Week-to-week tenancy” means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

**90.105 Short title.** This chapter shall be known and may be cited as the "Residential Landlord and Tenant Act."

**90.110 Exclusions from application of this chapter.** Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service, but not including residence in off-campus nondormitory housing.

(2) Occupancy of a dwelling unit for no more than 90 days by a purchaser prior to the scheduled closing of a real estate sale or by a seller following the closing of a sale, in either case as permitted under the terms of an agreement for sale of a dwelling unit or the property of which it is a part. The occupancy by a purchaser or seller described in this subsection may be terminated

When a home is changing hands, the sale date is often a bit removed from the occupancy date. Commonly, a seller will continue to live in the dwelling unit for a period of time. While it is often for just a few days, until another real estate closing, it can be longer.

The law excludes both buyers before a closing and sellers after a closing; but only for up to 90 days, and only if the occupancy is pursuant to the terms of a purchase agreement. Because they are excluded, such tenancies do not create tenancy rights or landlord obligations (arguments about habitability, for instance).

Before such an occupant can be evicted, however, 24 hours written notice must be given (specified in ORS 91.120; see page 153). The regular FED procedure then follows.

only pursuant to ORS 91.130. A tenant who holds but has not exercised an option to purchase the dwelling unit is not a purchaser for purposes of this subsection.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel or motel.

(5) Occupancy by a squatter.

(6) Vacation occupancy.

(7) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises. However, the occupancy by an employee as described in this subsection may be terminated only pursuant to ORS 91.120.

(8) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

Squatters and vacationers are excluded from Chapter 90 protection. Both are carefully defined. (See definitions on pages 8 and 9.) Landlords should particularly note that squatters do not include those occupying the unit who were accepted by the landlord (or who were there, and the landlord knew it, when he accepted rent) or who were authorized or invited by a tenant: the tenant's guest, roommate, or "replacement," even when none of those individuals is authorized by the landlord. If a squatter—someone who has broken into the property (so is not authorized by either the landlord or the tenant)—is indeed present the landlord can call the police. The squatter is a trespasser and can be forcibly removed by them.

nected therewith; or

(d) Agrees to pay liquidated damages, except as allowed under ORS 90.302 (2)

(e).

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover in addition to the actual damages of the tenant an amount up to three months' periodic rent.

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Prohibited  
provisions

**90.250 Receipt of rent without obligation to maintain premises prohibited.** A rental agreement, assignment, conveyance, trust deed or security instrument may not permit the receipt of rent free of the obligation to comply with ORS 90.320 (1) or 90.730 [both, habitability requirements].

**90.255 Attorney fees.** In any action on a rental agreement or arising under this chapter, reasonable attorney fees at trial and on appeal may be awarded to the prevailing party together with costs and necessary disbursements, notwithstanding any agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

**90.260 Late rent payment charge or fee; restrictions; calculation.** (1) A landlord may impose a late charge or fee, however designated, only if:

(a) The rent payment is not received by the fourth day of the weekly or monthly rental period for which rent is payable; and

(b) There exists a written rental agreement that specifies:

(A) The tenant's obligation to pay a late charge on delinquent rent payments;

(B) The type and amount of the late charge, as described in subsection (2) of this section; and

(C) The date on which rent payments are due and the date or day on which late charges become due.

(2) The amount of any late charge may not exceed:

(a) A reasonable flat amount, charged once per rental period. "Reasonable amount" means the customary amount charged by landlords for that rental market;

(b) A reasonable amount, charged on a per-day basis, beginning on the fifth day of the rental period for which rent is delinquent. This daily charge may accrue every day thereafter until the rent, not including any late charge, is paid in full, through that rental period only. The per-day charge may

To collect a late charge, a landlord must state so in the rental agreement, how it is calculated, and when it is payable. Three types of late charge are allowed. A landlord must pick one of them (all three are on ORHA rental agreement forms; the landlord need only check which method and fill in the amount). The three options are:

1. A flat amount, due not before the fifth day of the rental period. The amount must be reasonable, meaning customary for that rental market. I understand late charges are as much as \$100 in most of the state.

2. A per diem charge, beginning on the fifth day of the rental period, that is not more than 6% of the allowable flat amount (so no more than \$6.00 per day). That's every day: so the late charge is \$6.00 if the rent is paid on the fifth; it's \$12.00 if the rent is paid on the sixth; it's \$18.00 if the rent is paid on the seventh...

3. Up to 5% of the rental amount for each five days the rent is past due. So, if the rent is \$1000, the landlord could charge \$50 on the fifth, another \$50 for a total of \$100 if the rent isn't paid by the tenth, another \$50 for a total of \$150 if the rent isn't paid by the fifteenth, and so on.

not exceed six percent of the amount described in paragraph (a) of this subsection; or

(c) Five percent of the periodic rent payment amount, charged once for each succeeding five-day period, or portion thereof, for which the rent payment is delinquent, beginning on the fifth day of that rental period and continuing and accumulating until that rent payment, not including any late charge, is paid in full, through that rental period only.

(3) In periodic tenancies, a landlord may change the type or amount of late charge by giving 30 days' written notice to the tenant.

(4) A landlord may not deduct a previously imposed late charge from a current or subsequent rental period rent payment, thereby making that rent payment delinquent for imposition of a new or additional late charge or for termination of the tenancy for nonpayment under ORS 90.394.

(5) A landlord may charge simple interest on an unpaid late charge at the rate allowed for judgments pursuant to ORS 82.010 (2) [currently 9%] and accruing from the date the late charge is imposed.

(6) Nonpayment of a late charge alone is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.392 or 90.630 (1). A landlord may note the imposition of a late charge on a nonpayment of rent termination notice under ORS 90.394, so long as the notice states or otherwise makes clear that the tenant may cure the nonpayment notice by paying only the delinquent rent, not including any late charge, within the allotted time.

(7) A late charge includes an increase or decrease in the regularly charged periodic rent payment imposed because a tenant does or does not pay that rent by a certain date.

Subsection (4) says a landlord may not deduct last month's late charge from this month's rent. Doing so would cause this month's rent to be deficient, thereby triggering another late charge, plus the possibility of issuance of a 72-hour notice. That's not allowed to happen. If the tenant pays rent, it's rent. Nonpayment of a late charge, however, is grounds for a 30-day for-cause termination notice.

Subsection (7) prohibits discounts. Some landlords, notably in Eugene and Portland, abused the concept of discounts by advertising rent of, say, \$700, but writing the contract such that the rent was \$800 unless paid by the twenty-fifth of the previous month, when a \$100 discount was available. This paragraph (along with ORS 90.220(7)(a), see page 17) treats such discounts as a late charge, meaning they must conform with the rest of the requirements in this section.

#### **90.262 Use and occupancy rules and regulations;**

**adoption; enforceability; restrictions.** (1) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use

and occupancy of the premises. It is enforceable against the tenant only if:

- (a) Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
- (b) It is reasonably related to the purpose for which it is adopted;
- (c) It applies to all tenants in the premises in a fair manner;
- (d) It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;
- (e) It is not for the purpose of evading the obligations of the landlord; and
- (f) The tenant has written notice of it at the time the tenant enters into the rental agreement, or when it is adopted.

(2) If a rule or regulation adopted after the tenant enters into the rental agreement works a substantial

(2) The landlord shall provide a new tenant with alarm testing instructions as described in ORS 90.317.

90.316  
CO alarms

(3) If a carbon monoxide alarm is battery-operated or has a battery-operated backup system, the landlord shall supply working batteries for the alarm at the beginning of a new tenancy.

**90.317 Repair or replacement of carbon monoxide alarm.** (1) A landlord shall ensure that a dwelling unit has one or more carbon monoxide alarms installed in compliance with State Fire Marshal rules and the state building code if the dwelling unit:

- (a) Contains a carbon monoxide source; or
- (b) Is located within a structure that contains a carbon monoxide source and the dwelling unit is connected to the room in which the carbon monoxide source is located by a door, ductwork or a ventilation shaft.

(2) The landlord shall provide the tenant of the dwelling unit with a written notice containing instructions for testing of the alarms. The landlord shall provide the written notice to the tenant no later than at the time that the tenant first takes possession of the premises.

(3) If the landlord receives written notice from the tenant of a deficiency in a carbon monoxide alarm, other than dead batteries, the landlord shall repair or replace the alarm.

(4) Supplying and maintaining a carbon monoxide alarm required under this section is a habitable condition requirement under ORS 90.320.

—CARBON MONOXIDE ALARMS—

The 2009 legislature (with some minor tweaks by the 2011 legislature) mandated that carbon monoxide alarms be installed in all rentals that have a “source” of carbon monoxide. That includes any home heated by just about anything but electricity, and also applies to a home with an attached garage.

Tampering with a CO alarm is like tampering with a smoke alarm: it is a violation of law and of tenant duties and grounds for a noncompliance fee.

The State Fire Marshal developed rules for the placement of such alarms. The Oregon Administrative Rules start at 837-047-0100. The guts of those are:

(1) All carbon monoxide alarms or detectors must be installed in accordance with the manufacturer’s recommended instructions and located in accordance with these rules and applicable building code at the time of construction or alteration of the dwelling.

(2) One and Two Family Dwellings and Manufactured Dwellings: A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms.

(3) Multi Family Housing:

(a) A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door in dwelling units containing a carbon monoxide source or are connected to a common area containing a carbon monoxide source. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms.

(b) A carbon monoxide alarm must be installed in any enclosed common area within the building if the common area is connected by a door, ductwork, or ventilation shaft to a carbon monoxide source located within or attached to the structure.

More statutes covering CO alarms are at ORS 105.836 through 105.844 found on pages 192-93.

**90.318 Criteria for landlord provision of certain recycling services.** (1) In a city or the county within the urban growth boundary of a city that has implemented multifamily recycling service, a landlord who has five or more residential dwelling units on a single premises or five or more manufactured dwellings in a single facility shall at all times during tenancy provide to all tenants:

- (a) A separate location for containers or depots for at least four principal recyclable materials or for the number of materials required to be collected under the residential on-route collection program, whichever is less, adequate to hold the reasonably anticipated volume of each material;
- (b) Regular collection service of the source separated recyclable materials; and
- (c) Notice at least once a year of the opportunity to recycle with a description of the location of the containers or depots on the premises and information about how to recycle. New tenants shall be notified of the opportunity to recycle at the time of entering into a rental agreement.

(2) As used in this section, “recyclable material” and “source separate” have the meaning given those terms in ORS 459.005.

In complexes with five or more units in communities that have multifamily recycling services (that includes most cities), landlords must provide recycling bins and recycling service. The landlord must also send tenants in those complexes an annual notice (such as ORHA Form #41) about recycling.

Here are definitions from ORS 459.005:  
 (19) “Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.  
 (26) “Source separate” means that the person who last uses recyclable material separates the recyclable material from solid waste.

**90.320 Landlord to maintain premises in habitable condition; agreement with tenant to maintain premises.**

(1) A landlord shall at all times during the tenancy maintain the dwelling unit in a habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if it substantially lacks:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including windows and doors;
- (b) Plumbing facilities that conform to applicable law in effect at the time of installation, and maintained in good working order;
- (c) A water supply approved under applicable law that is:
  - (A) Under the control of the tenant or landlord and is capable of producing hot and cold running water;
  - (B) Furnished to appropriate fixtures;
  - (C) Connected to a sewage disposal system approved under applicable law; and

A landlord’s primary duties are to provide quiet enjoyment and habitable premises. ORS 90.320 defines the latter. The law addresses eleven areas: [1] weathertightness, [2] plumbing, [3] water and sewer/septic, [4] heat, [5] electric, [6] safety and cleanliness, [7] garbage disposal, [8] general repair, [9] mechanical systems, [10] smoke and carbon monoxide detectors, and [11] locks. Most tenant complaints about habitability aren’t strictly about habitability (paint, carpet, old plumbing, poor insulation, dripping faucets, etc.) Those that are generally involve three areas: (f) cleanliness, particularly rodents and vermin—often mice, ants, and cockroaches; (h) general repair items, like broken floor boards, railings that are loose, holes in the walls; and (k) locks, either not changing them for new tenants (which isn’t actually required by state law, though it might be in some municipal housing codes) or they’re simply missing, particularly on windows. There’s more about the law concerning cleanliness—and rodents and vermin—on page 45.

- (D) Maintained so as to provide safe drinking water and to be in good working order to the extent that the system can be controlled by the landlord;
- (d) Adequate heating facilities that conform to applicable law at the time of installation and maintained in good working order;
- (e) Electrical lighting with wiring and electrical equipment that conform to applicable law at the time of installation and maintained in good working order;
- (f) Buildings, grounds and appurtenances at the time of the commencement of the rental agreement in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
- (g) Except as otherwise provided by local ordinance or by written agreement between the landlord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean condition and good repair at the time of the commencement of the rental agreement, and the landlord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their removal;
- (h) Floors, walls, ceilings, stairways and railings maintained in good repair;
- (i) Ventilating, air conditioning and other facilities and appliances, including elevators, maintained in good repair if supplied or required to be supplied by the landlord;
- (j) Safety from fire hazards, including a working smoke alarm or smoke detector, with working batteries if solely battery-operated, provided only at the beginning of any new tenancy when the tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 (1);
- (k) A carbon monoxide alarm, and the dwelling unit or the structure in which the dwelling unit is a part contains a carbon monoxide source as defined in ORS 105.836; or
- (L) Working locks for all dwelling entrance doors, and, unless contrary to applicable law, latches for all windows, by which access may be had to that portion of the premises that the tenant is entitled under the rental agreement to occupy to the exclusion of others and keys for those locks that require keys.

90.320  
Habitability

Subparagraph (g) allows landlords to require in the rental agreement that the tenant is responsible for providing both a garbage can and garbage service, unless the municipality dictates otherwise. Eugene, Medford, Pendleton, Portland and perhaps some other communities require the landlord to provide garbage service for certain properties. State law, by allowing landlords to put the responsibility on tenants, encourages tenants to become more responsible about garbage: generating less, recycling more.

90.  
320

(2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs, maintenance tasks and minor remodeling only if:

- (a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;
- (b) The agreement does not diminish the obligations of the landlord to other tenants in the premises; and
- (c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate consideration for the agreement is specifically stated.

(3) Any provisions of this section that reasonably apply only to a structure that is used as a home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating home,

rents the space and, in the case of a dwelling or home, the space is not in a facility. Manufactured dwelling or floating home tenancies in which the tenant owns the dwelling or home and rents space in a facility shall be governed by ORS 90.730, not by this section.

**90.322 Landlord or agent access to premises; remedies.** (1) A landlord or, to the extent provided in this section, a landlord's agent may enter into the tenant's dwelling unit or any portion of the premises under the tenant's exclusive control in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, perform agreed yard maintenance or grounds keeping or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors. The right of access of the landlord or landlord's agent is limited as follows:

(a) A landlord or landlord's agent may enter upon the premises under the tenant's exclusive control not including the dwelling unit without consent of the tenant and without notice to the tenant, for the purpose of serving notices required or permitted under this chapter, the rental agreement or any provision of applicable law.

(b) In case of an emergency, a landlord may enter the dwelling unit or any portion of the premises under a tenant's exclusive control without consent of the tenant, without notice to the tenant and at any time. "Emergency" includes but is not limited to a repair problem that, unless remedied immediately, is likely to cause serious damage to the premises. If a landlord makes an emergency entry in the tenant's absence, the landlord shall give the tenant actual notice within 24 hours after the entry, and the notice shall include the fact of the entry, the date and time of the entry, the nature of the emergency and the names of the persons who entered.

Rules for access by the landlord and its agents fall into six different categories: [a] to serve notices, [b] in an emergency, [c] at a tenant's request for repairs, [d] to show a property for sale, [e] for groundskeeping, and [f] all other reasons. Remember: rules of entry apply not only to the tenant's *dwelling unit* but also to *any portion of the premises under the tenant's exclusive control*. Many landlords forget the latter and trespass (that's what they're doing) by entering the tenant's yard without complying with the notice requirements.

(c) If the tenant requests repairs or maintenance in writing, the landlord or landlord's agent, without further notice, may enter upon demand, in the tenant's absence or without the tenant's consent, for the purpose of making the requested repairs until the repairs are completed. The tenant's written request may specify allowable times. Otherwise, the entry must be at a reasonable time. The authorization to enter provided by the tenant's written request expires after seven days, unless the repairs are in progress and the landlord or landlord's agent is making a reasonable effort to complete the repairs in a timely manner. If the person entering to do the repairs is not the landlord, upon request of the tenant, the person must show the tenant written evidence from the landlord authorizing that person to act for the landlord in making the repairs.

The repair rule allows a landlord to arrange for a repairman to come in without a 24-hour advance notice. But it can only happen if requested in writing by the tenant (ORHA Form #17 is designed for this), and the tenant can restrict the times of entry. This section should facilitate repairs by a plumber or appliance repairman, for instance.

(d) A landlord and tenant may agree that the landlord or the landlord's agent may enter the dwelling unit and the premises without notice at reasonable times

for the purpose of showing the premises to a prospective buyer, provided that the agreement:

(A) Is executed at a time when the landlord is actively engaged in attempts to sell the premises;

(B) Is reflected in a writing separate from the rental agreement and signed by both parties; and

90.322  
Access

(C) Is supported by separate consideration recited in the agreement.

(e)(A) If a written agreement requires the landlord to perform yard maintenance or grounds keeping for the premises:

(i) A landlord and tenant may agree that the landlord or landlord’s agent may enter for that purpose upon the premises under the tenant’s exclusive control not including the dwelling unit, without notice to the tenant, at reasonable times and with reasonable frequency. The terms of the right of entry must be described in the rental agreement or in a separate written agreement.

A tenant can authorize an entry. If a landlord knocks on the door and asks to come in and the tenant says okay, that is legal entry. Or if a tenant authorizes an entry—even over the telephone—that entry, too, does not require 24-hour notice. (But beware of being able to prove the invitation.)

(ii) A tenant may deny consent for a landlord or landlord’s agent to enter upon the premises pursuant to this paragraph if the entry is at an unreasonable time or with unreasonable frequency. The tenant must assert the denial by giving actual notice of the denial to the landlord or landlord’s agent prior to, or at the time of, the attempted entry.

(B) As used in this paragraph:

(i) “Yard maintenance or grounds keeping” includes, but is not limited to, weeding, mowing grass and pruning trees and shrubs.

(ii) “Unreasonable time” refers to a time of day, day of the week or particular time that conflicts with the tenant’s reasonable and specific plans to use the premises.

(f) In all other cases, unless there is an agreement between the landlord and the tenant to the contrary regarding a specific entry, the landlord shall give the tenant at least 24 hours’ actual notice of

A rule allowing access for yard maintenance or groundskeeping is particularly useful for single family residences and duplexes—where the tenant legally has the right to exclusive control of the yard area. Landlords and tenants can contract for the landlord to provide yard care, often by a yard maintenance company, without the notice requirements. The law specifically enables a landlord and tenant to agree that the landlord, or the landlord’s agent, will provide such services and that prior notice is not required to access the property. The right of access, of course, is just for the grounds, not the home. Entry must also be made at reasonable times and with reasonable frequency. “Reasonable time” depends on the circumstance: 8:00am on a Monday for mowing would be reasonable; 8:00am on a Sunday might not. “Reasonable frequency” means that the entry cannot be used as a means of harassing the tenant. Mowing weekly in April and May is reasonable; clipping the hedges daily (with the unstated goal of keeping an eye on things) is not. The tenant may reasonably deny the access. If the landlord comes to mow while a tenant is hosting a child’s outdoor birthday party, the tenant can say, “Come back later.” The denial can be at the moment the landlord or landlord’s agent is attempting to enter the property; indeed, it would only rarely be earlier because the tenant has no prior notice of the planned access.

Pay attention to who can enter. The law states when a landlord—as opposed to a landlord’s agent—may enter the rented property. Only a landlord (not the landlord’s agent) can enter in case of emergency [90.322(1)(b)]. Only the landlord can contract with the tenant to show the property to prospective purchasers or provide yard care, although the showing or the yard care may be performed by the landlord’s agent, and only the landlord can give the 24-hour notice for access for other reasons, such as to inspect. Remember that the definition of landlord now includes a property manager and certain site managers.

This section does not apply to facilities. A different section (ORS 90.725 on page 140) applies there.

the intent of the landlord to enter and the landlord or landlord's agent may enter only at reasonable times. The landlord or landlord's agent may not enter if the tenant, after receiving the landlord's notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord's agent or by attaching a written notice of the denial in a secure manner to the main entrance to that portion of the premises or dwelling unit of which the tenant has exclusive control, prior to or at the time of the attempt by the landlord or landlord's agent to enter.

- (2) A landlord may not abuse the right of access or use it to harass the tenant. A tenant may not unreasonably withhold consent from the landlord to enter.
- (3) This section does not apply to tenancies consisting of a rental of space in a facility for a manufactured dwelling or floating home under ORS 90.505 to 90.840.
- (4) If a tenancy consists of rented space for a manufactured dwelling or floating home that is owned by the tenant, but the tenancy is not subject to ORS 90.505 to 90.840 because the space is not in a facility, this section shall allow access only to the rented space and not to the dwelling or home.
- (5) A landlord has no other right of access except:
  - (a) Pursuant to court order;
  - (b) As permitted by ORS 90.410 (2); or
  - (c) When the tenant has abandoned or relinquished the premises.
- (6) If a landlord is required by a governmental agency to enter a dwelling unit or any portion of the premises under a tenant's exclusive control, but the landlord fails to gain entry after a good faith effort in compliance with this section, the landlord may not be found in violation of any state statute or local ordinance due to the failure.
- (7) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or may terminate the rental agreement under ORS 90.392 and take possession as provided in ORS 105.105 to 105.168. In addition, the landlord may recover actual damages.
- (8) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the reoccurrence of the conduct or may terminate the rental agreement pursuant to ORS 90.360 (1). In addition, the tenant may recover actual damages not less than an amount equal to one week's rent in the case of a week-to-week tenancy or one month's rent in all other cases.

### TENANT OBLIGATIONS

#### **90.325 Tenant duties.** (1) The tenant shall:

- (a) Use the parts of the premises including the living room, bedroom, kitchen, bathroom and dining room in a reasonable manner considering the purposes for which they were designed and intended.
- (b) Keep all areas of the premises under control of the tenant in every part as clean, sanitary and

Most often access requires 24 hours' prior notice. (ORHA Form #18 is available.) A tenant can deny access, by calling the landlord or leaving a note on the door or similar action. Tenants, after all, have the right to quiet enjoyment. But the denial must be reasonable. The tenant saying, "Please not tomorrow afternoon. We're having a birthday party for my great-Aunt Tillie" is reasonable; saying, "You're never setting foot in this place as long as I live here" isn't. The landlord's requests for access must also be reasonable. Monthly inspections, for example, are overly intrusive. A tenant's unreasonable denial of access is grounds for termination, using a 30-day for-cause notice; it isn't however grounds for forcible entry.

free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, as the condition of the premises permits and to the extent that the tenant is responsible for causing the problem. The tenant shall cooperate to a reasonable extent in assisting the landlord in any reasonable effort to remedy the problem.

90.325  
Tenant duties

(c) Dispose from the dwelling unit all ashes, garbage, rubbish and other waste in a clean, safe and legal manner. With regard to needles, syringes and other infectious waste, as defined in ORS 459.386 [definitions of infectious waste disposal], the tenant may not dispose of these items by placing them in garbage receptacles or in any other place or manner except as authorized by state and local governmental agencies.

(d) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.

(e) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises.

(f) Test at least once every six months and replace batteries as needed in any smoke alarm, smoke detector or carbon monoxide alarm provided by the landlord and notify the landlord in writing of any operating deficiencies.

(g) Behave and require other persons on the premises with the consent of the tenant to behave in a manner that will not disturb the peaceful enjoyment of the premises by neighbors.

(2) A tenant may not:

(a) Remove or tamper with a smoke alarm, smoke detector or carbon monoxide alarm as described in ORS 105.842 or 479.300 [see pages 193 and 204].

(b) Deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.

**90.340 Occupancy of premises as dwelling unit only; notice of tenant absence.** Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant give actual notice to the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

The “tenant duty” section is as important as any in Chapter 90. It spells out in a few short paragraphs what a tenant is required by law to do. Whether a written rental agreement exists or not, a tenant must [a] reasonably use and not damage the premises, [b] keep the place clean and dispose of garbage appropriately, [c] use appliances and fixtures reasonably, [d] maintain and not tamper with smoke and carbon monoxide alarms (and replace batteries when necessary), and [e] not disturb the neighbors. Of course, rental agreements are important. But most landlord complaints, other than paying rent, revolve around tenant violations of these items.

Landlords have an absolute duty to provide habitable premises. But what if the problem is caused by the tenant? This is particularly troublesome when it comes to cleanliness—and the corollary of its lack: rodents and vermin. For rodents and vermin, read mice and cockroaches. The law has always stated that a tenant is required to keep the premises reasonably clean. When the tenant has failed to do so, and mice or roaches appear, it has been the landlord’s responsibility. Of course, if the tenant’s housekeeping doesn’t improve, roaches won’t disappear for long, no matter what the landlord does. So the law requires that a tenant cooperate with a landlord in attempting to alleviate the problem. That means not only giving access for pest control treatment, but also improving the housekeeping.

This is an affirmative requirement. Tenants can’t use the landlord’s failure to cure habitability violations as a reason not to pay rent or terminate a rental agreement if the tenant’s own behavior has caused the violation.

ORS 90.340, though brief, is important to landlords. First, it says, “Tenants should occupy the dwelling unit only as a dwelling unit.” If a tenant wants to run a business out of the unit, the landlord’s permission is required. Second, landlords can require tenants to notify them of extended absences (ORHA forms have this wording). Vacant properties attract vagrants, thieves, arsonists, and other unwanted visitors; and too often it’s while tenants are away that the water pipes choose to burst. So such notice is important to landlords.

### TENANT REMEDIES

**90.360 Effect of landlord noncompliance with rental agreement or obligation to maintain premises; generally.** (1)(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with ORS 90.320 or 90.730, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after delivery of the notice if the breach is not remedied in seven days in the case of an essential service or 30 days in all other cases, and the rental agreement shall terminate as provided in the notice subject to paragraphs (b) and (c) of this subsection. However, in the case of a week-to-week tenancy, the rental agreement will terminate upon a date not less than seven days after delivery of the notice if the breach is not remedied.

(b) If the breach is remediable by repairs, the payment of damages or otherwise and if the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

ORS 90.360(1) gives tenants rights similar to those of landlords in that if a landlord doesn’t comply with the rental agreement or the habitability sections of the law (there are specific penalties allowed for most other landlord law violations—mostly a month’s rent or so), the tenant may give the equivalent of a 30-day for-cause notice: saying to the landlord, “Fix it or I’m leaving.”

### —TENANT REMEDIES—

Landlords tend to focus on the remedies available when a tenant doesn’t comply with either the law or the rental agreement. These sections—ORS 90.360 through 90.390—are the flip side of the coin: a tenant’s remedies if the landlord doesn’t comply with the contract or law. Each section covers a different type of landlord violation. Different landlord violations create different tenant remedies. They are:

90.360—for general noncompliance, the tenant may terminate the agreement with notice;

90.365(1)—for intentional or negligent failure to supply an essential service, the tenant may obtain substitute service, money, or substitute housing;

90.365(2)—for failure to supply an essential service, creating an imminent and serious threat to health or safety, the tenant may terminate with a quicker notice;

90.368—for failure to repair a minor habitability violation, the tenant may repair and deduct;

90.370—for any material breach of the rental agreement or Chapter 90 preceding a landlord’s termination notice for nonpayment of rent, the tenant may counterclaim;

90.375—for the landlord unlawfully locking a tenant out or diminishing services, the tenant may recover both possession and money damages;

90.380—for a dwelling unit posted as uninhabitable, the tenant may, in certain circumstances, terminate or receive money damages;

90.385—if a landlord retaliates against a tenant for certain behaviors (such as complaining), a tenant can retain possession and win money damages;

90.390—if a landlord discriminates illegally, a tenant can defeat any termination notice but for nonpayment of rent and, perhaps, outrageous conduct.

(c) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement. However, in the case of a week-to-week tenancy, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and date of termination of the rental agreement.

90.360  
Tenant  
remedies

(2) Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or ORS 90.320 or 90.730. The tenant shall not be entitled to recover damages for a landlord noncompliance with ORS 90.320 or 90.730 if the landlord neither knew nor reasonably should have known of the condition that constituted the noncompliance and:

(a) The tenant knew or reasonably should have known of the condition and failed to give actual notice to the landlord in a reasonable time prior to the occurrence of the personal injury, damage to personal property, diminution in rental value or other tenant loss resulting from the noncompliance; or

(b) The condition was caused after the tenancy began by the deliberate or negligent act or omission of someone other than the landlord or a person acting on behalf of the landlord.

(3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) The tenant may not terminate or recover damages under this section for a condition caused by the deliberate or negligent act or omission of the tenant or other person on the premises with the tenant's permission or consent.

(5) If the rental agreement is terminated, the landlord shall return all security deposits and prepaid rent recoverable by the tenant under ORS 90.300.

**90.365 Failure of landlord to supply essential services; remedies.** (1) If contrary to the rental agreement or ORS 90.320 or 90.730 the landlord intentionally or negligently fails to supply any essential service, the tenant may give written notice to the landlord specifying the breach and that the tenant

ORS 90.360 is the general section governing a landlord's noncompliance with either the rental agreement or the habitability (90.320) section of Chapter 90. It mirrors 90.392 which gives a landlord the right to serve a notice on a tenant who isn't complying with the rental agreement or the law either to come into compliance within 14 days or to move in 30 days. Here, the tenant can give the landlord a notice either to comply with the rental agreement or the law's habitability requirements within—here it's different—seven days in the case of an essential service, or 30 days for other violations. If the landlord does neither, the tenant can terminate the tenancy after the 30 days has run.

Landlords don't pay much attention to the landlord remedy found in 90.401 to collect damages. Most tenants who are evicted are pretty judgment proof. But the same penalty—money damages—is available to tenants from landlords who violate the rental agreement or habitability requirements. The landlord whose habitability defect caused the tenant to suffer damages may end up paying for those damages. In response to the Court of Appeals ruling in the case of *Davis v. Campbell* holding landlords strictly liable for habitability defects regardless of knowledge of the defect, the legislature in 1997 modified subsection (2) to say a landlord is not responsible if he didn't know, nor reasonably should have known, of the defect and either [a] the tenant did know or should have known, or [b] the defect was caused by a third party after the beginning of the tenancy.

Of course, if action or inaction by the tenant or guests is the cause, the tenant has no case against the landlord.

may seek substitute services, diminution in rent damages or substitute housing. After allowing the landlord a reasonable time and reasonable access under the circumstances to supply the essential service, the tenant may:

- (a) Procure reasonable amounts of the essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;
- (b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or
- (c) If the failure to supply an essential service makes the dwelling unit unsafe or unfit to occupy, procure substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance. In addition, the tenant may recover as damages from the landlord the actual and reasonable cost or fair and reasonable value of comparable substitute housing in excess of the rent for the dwelling unit. For purposes of this paragraph, substitute housing is comparable if it is of a quality that is similar to or less than the quality of the dwelling unit with regard to basic elements including cooking and refrigeration services and, if warranted, upon consideration of factors such as location in the same area as the dwelling unit, the availability of substitute housing in the area and the expense relative to the range of choices for substitute housing in the area. A tenant may choose substitute housing of relatively greater quality, but the tenant's damages shall be limited to the cost or value of comparable substitute housing.

ORS 90.365(1) [substitute service, diminution, substitute housing] requires that the landlord "intentionally or negligently fail" to provide the service. A later section (90.368) allows a tenant, in limited circumstances, to make repairs and deduct the cost from the rent.

- (2) If contrary to the rental agreement or ORS 90.320 or 90.730 the landlord fails to supply any essential service, the lack of which poses an imminent and serious threat to the tenant's health, safety or property, the tenant may give written notice to the landlord specifying the breach and that the rental agreement shall terminate in not less than 48 hours unless the breach is remedied within that period. If the landlord adequately remedies the breach before the end of the notice period, the rental agreement shall not terminate by reason of the breach. As used in this subsection, "imminent and serious threat to the tenant's health, safety or property" shall not include the presence of radon, asbestos

Different remedies are available to a tenant when a landlord fails to provide an essential service. But what is an essential service? When Oregon adopted a residential landlord tenant law in 1973, this section referred to "heat, running water, hot water, electricity or other essential service" but later changes to this section reduced that to "essential service." So, many people have assumed it means just utilities. Not so, Oregon's Supreme Court said in a footnote in the case of *Investment Co. v Morrison* [286 OR 397 (1979)], "Some, but not all, of the 'habitability' requirements... would appear to involve 'essential services'." The 1999 Legislature gave the term a new definition [90.100(10) on page 5] that includes a list of items: heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows, and any stove or fridge if the landlord supplies them. (Landlords are not required to provide a stove or refrigerator, but if they do provide them, they are responsible to keep them operable.) The definition also includes a catch-all phrase: "any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant's health, safety or property or that makes the dwelling unit unfit for occupancy." Those will generally have to do with other habitability requirements. For example, a minor roof leak that is only inconvenient (and which will cause damage to the landlord's property but not the tenant's) may technically be a habitability violation, but if it doesn't create "a serious threat" or make the place "unfit for occupancy," it won't be an essential service. If it's a major leak and it's winter, it may be.

tos or lead-based paint or the future risk of flooding or seismic hazard, as defined by ORS 455.447.

90.365  
Lack of  
essential  
services

(3) For purposes of subsection (1) of this section, a landlord shall not be considered to be intentionally or negligently failing to supply an essential service if:

(a) The landlord substantially supplies the essential service; or

(b) The landlord is making a reasonable and good faith effort to supply the essential service and the failure is due to conditions beyond the landlord's control.

(4) This section does not require a landlord to supply a cooking appliance or a refrigerator if the landlord did not supply or agree to supply a cooking appliance or refrigerator to the tenant.

(5) If the tenant proceeds under this section, the tenant may not proceed under ORS 90.360 (1) as to that breach.

(6) Rights of the tenant under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the tenant or a person on the premises with the tenant's consent.

(7) Service or delivery of actual or written notice shall be as provided by ORS 90.150 and 90.155, including the addition of three days to the notice period if written notice is delivered by first class mail.

(8) Any provisions of this section that reasonably apply only to a structure that is used as a home, residence or sleeping place does not apply to a manufactured dwelling, recreational vehicle or floating home if the tenant owns the manufactured dwelling, recreational vehicle or floating home and rents the space.

Tenant notices that are mailed to a landlord require the addition of three days, just as do those from the landlord to the tenant. Calculation of time for notices quickly becomes tricky, though. While a landlord need not only add three days for mailing a 72-hour or 144-hour notice, but also extend the time to midnight of the last day, your editor believes that isn't so with other mailed hour-denominated notices. So the tenant's 48-hour notice mailed to a landlord at noon on March 10 expires at noon (not midnight) on March 12.

**90.367 Application of security deposit or prepaid rent after notice of foreclosure.** (1) A tenant who receives actual notice that the property that is the subject of the tenant's rental agreement with a landlord is in foreclosure may apply the tenant's security deposit or prepaid rent to the tenant's obligation to the landlord. The tenant must notify the landlord in writing that the tenant intends to do so. The giving of the notice provided by this subsection by the tenant does not constitute a termination of the tenancy.

(2) A landlord may not terminate the tenancy of a tenant:

(a) Because the tenant has applied the security deposit or prepaid rent as allowed under this section.

ORS 90.367 was added by the 2009 legislature as one of several changes driven by the foreclosure crisis. When a tenant receives notice the property is being foreclosed on, the tenant can apply the security deposit to rent. The logic is that the bank or other buyer at a foreclosure sale is not responsible to the tenant for the security deposit (unlike a conventional buyer). So the tenant would simply lose. This will be inconvenient, perhaps even costly, to a landlord who manages to redeem the property and then has a tenant without a security deposit.

The 2011 legislature clarified that application of the deposit to rent doesn't terminate the tenancy. Also, the tenant must notify the landlord in writing prior to expiration of a 72-hour notice, if any, of any intent to apply the deposit to that month's rent.

(b) For nonpayment of rent during the month in which the tenant applies the security deposit or prepaid rent pursuant to this section unless an unpaid balance remains due after applying all payments, including the security deposit or prepaid rent, to the rent.

(3) If the tenant has not provided the written notice applying the security deposit or prepaid rent as required under subsection (1) of this section before the landlord gives a termination notice for nonpayment of rent, the tenant must provide the written notice within the notice period provided by ORS 90.392 or 90.394. If the tenant does not provide the written notice, the landlord may terminate the tenancy based upon ORS 90.392 or 90.394.

(4) Application of the security deposit or prepaid rent to an obligation owed to the landlord does not constitute a partial payment under ORS 90.417.

(5) If the landlord provides written evidence from a lender or trustee that the property is no longer in foreclosure, the landlord may require the tenant to restore the security deposit or prepaid rent to the amount required prior to the tenant's application of the security deposit or prepaid rent. The landlord shall allow the tenant at least two months to restore the security deposit or prepaid rent.

**90.368 Repair of minor habitability defect.** (1) As used in this section, "minor habitability defect":

(a) Means a defect that may reasonably be repaired for not more than \$300, such as the repair of leaky plumbing, stopped up toilets or faulty light switches.

(b) Does not mean the presence of mold, radon, asbestos or lead-based paint.

(2) If, contrary to ORS 90.320, the landlord fails to repair a minor habitability defect, the tenant may cause the repair of the defect and deduct from the tenant's subsequent rent obligation the actual and

A tenant's repair and deduct remedy is spelled out here in ORS 90.368. If a landlord doesn't provide habitable premises, a tenant in certain circumstances can fix the problem and deduct the cost from the rent. Repair and deduct is a concept that has been in Oregon's landlord tenant law from the beginning (although it is not in the common law) but using it has been extremely tricky (and often discouraged even by legal aid lawyers because of the abnormally opaque wording of the law). The 2007 legislature re-wrote this section in its entirety, with the goals of making it easier to understand and use.

So a tenant can make a repair and deduct the cost from the rent if:

- The 'problem' is a habitability violation (leaking pipes are; broken blinds aren't)
- The cost of repair is \$300 or less
- The tenant hires out the work (no do-it-yourself)
- The tenant first gives the landlord 7-days written notice (add 3 days if mailed) (certain requirements for the notice)
- Repair must be made in workmanlike manner and comply with codes

The tenant cannot repair-and-deduct if:

- The landlord makes the repair
- The tenant prevents the landlord from making the repair
- The tenant caused the 'problem'
- The tenant has known of the problem for more than six months
- The tenant has used this remedy before for this defect

As further protections for landlords, a tenant can only apply the credit to future rent (so it's not a defense in a nonpayment FED), the tenant cannot use a 30-day cause notice for the same violation, and the tenant must provide a copy of the bill.

This is new law, adopted by the 2007 legislature. It is supposed to be a tool for responsible tenants to use against irresponsible landlords. If it has been used, it has been rare.

reasonable cost of the repair work, not to exceed \$300.

(3)(a) Prior to causing a repair under subsection (2) of this section, the tenant shall give the landlord written notice:

(A) Describing the minor habitability defect; and

(B) Stating the tenant's intention to cause the repair of the defect and deduct the cost of the repair from a subsequent rent obligation if the landlord fails to make the repair by a specified date.

(b) The specified date for repair contained in a written notice given to a landlord under this subsection must be at least seven days after the date the notice is given to the landlord.

(c) If the landlord fails to make the repair by the specified date, the tenant may use the remedy provided by subsection (2) of this section.

(d) Service or delivery of the required written notice shall be made as provided under ORS 90.155.

(4)(a) Any repair work performed under this section must be performed in a workmanlike manner and be in compliance with state statutes, local ordinances and the state building code.

(b) The landlord may specify the people to perform the repair work if the landlord's specifications are reasonable and do not diminish the tenant's rights under this section.

(c) The tenant may not perform work to repair the defect.

(d) To deduct the repair cost from the rent, the tenant must provide to the landlord a written statement, prepared by the person who made the repair, showing the actual cost of the repair.

(5) A tenant may not cause the repair of a defect under this section if:

(a) Within the time specified in the notice, the landlord substantially repairs the defect;

(b) After the time specified in the notice, but before the tenant causes the repair to be made, the landlord substantially repairs the defect;

(c) The tenant has prevented the landlord from making the repair;

(d) The defect was caused by a deliberate or negligent act or omission of the tenant or of a person on the premises with the tenant's consent;

(e) The tenant knew of the defect for more than six months before giving notice under this section;

or

(f) The tenant has previously used the remedy provided by this section for the same occurrence of the defect.

(6) If the tenant proceeds under this section, the tenant may not proceed under ORS 90.360 (1) as to that breach, but may use any other available remedy in addition to the remedy provided by this section.

**90.370 Tenant counterclaims in action by landlord for possession or rent.** (1)(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in pos-

When a landlord serves a termination notice, a tenant can counterclaim that the landlord is in violation of the rental agreement or the law (most counterclaims are about habitability or access violations) and use the counterclaim as a sort of set-off against the landlord's claim. For example, a landlord serves a notice for non-payment of rent—say \$500. The tenant counterclaims that the roof has leaked for the past six months, diminishing the value of the property by \$100 per month. If the tenant prevails, the landlord's termination fails and the landlord owes the tenant \$100 (six months at \$100 minus the rent of \$500) plus court costs and attorney fees. Although not always followed by judges, the law says that such counterclaims are valid only if the tenant can show that, before the landlord sent the termination notice, either [1] the landlord knew or should have known of the problem (the leaking roof, in this case), or [2] the tenant told the landlord of the problem.

90.368  
Repair and  
deduct

session, the tenant may counterclaim for any amount, not in excess of the jurisdictional limits of the court in which the action is brought, that the tenant may recover under the rental agreement or this chapter, provided that the tenant must prove that prior to the filing of the landlord's action the landlord reasonably had or should have had knowledge or had received actual notice of the facts that constitute the tenant's counterclaim.

(b) In the event the tenant counterclaims, the court at the landlord's or tenant's request may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and shall be paid the balance by the other party. The court may at any time release money paid into court to either party if the parties agree or if the court finds such party to be entitled to the sum so released. If no rent remains due after application of this section and unless otherwise agreed between the parties, a judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

(3) If the tenant does not comply with an order to pay rent into the court as provided in subsection (1) of this section, the tenant shall not be permitted to assert a counterclaim in the action for possession.

(4) If the total amount found due to the tenant on any counterclaims is less than any rent found due to the landlord, and the tenant retains possession solely because the tenant paid rent into court under subsection (1) of this section, no attorney fees shall be awarded to the tenant unless the tenant paid at least the balance found due to the landlord into court no later than the commencement of the trial.

(5) When a tenant is granted a continuance for a longer period than two days, and has not been ordered to pay rent into court under subsection (1) of this section, the tenant shall be ordered to pay rent into court under ORS 105.140 (2).

Landlords have been prohibited, since passage of the original Landlord Tenant Act in 1973, from locking out tenants, throwing them out, or cutting off or even reducing essential services (generally meaning utilities). Even attempting to do so violates the law. If a landlord does, the tenant is entitled to two months rent or twice the damages. The latter can add up to quite a sum. The 1997 legislature added that even threatening to cut off utilities or throw a tenant out will subject a landlord to these penalties.

There's one exception to the prohibition against locking out tenants: where domestic violence is concerned. See the discussion on page 92. And be very sure to follow the rules there if you lock out a tenant.

**90.375 Effect of unlawful ouster or exclusion; willful diminution of services.** If a landlord unlawfully removes or excludes the tenant from the premises, seriously attempts or seriously threatens unlawfully to remove or exclude the tenant from the premises or willfully diminishes or seriously attempts or seriously threatens unlawfully to diminish services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric or other essential service, the tenant may obtain injunctive relief to recover possession or may terminate the rental agreement and recover an amount up to two months' periodic rent or twice the actual damages sustained by the tenant, whichever is greater. If the rental agreement is terminated the landlord shall return all security deposits and prepaid rent recoverable under ORS 90.300. The tenant need not terminate the rental agreement, obtain injunctive relief or recover possession to recover damages under this section.

**90.380 Effect of rental of dwelling in violation of building or housing codes; remedy.** (1) As used in this section, "posted" means that a governmental agency has attached a copy of the agency's writ-

ten determination in a secure manner to the main entrance of the dwelling unit or to the premises or building of which the dwelling unit is a part.

90.380

Housing code  
violations

(2)(a) If a governmental agency has posted a dwelling unit as unsafe and unlawful to occupy due to the existence of conditions that violate state or local law and materially affect health or safety to an extent that, in the agency's determination, the tenant must vacate the unit and another person may not take possession of the unit, a landlord may not continue a tenancy or enter into a new tenancy for the dwelling unit until the landlord corrects the conditions that led to the agency's determination.

(b) If a landlord knowingly violates paragraph (a) of this subsection, the tenant may immediately terminate the tenancy by giving the landlord actual notice of the termination and the reason for the termination and may recover from the landlord either two months' periodic rent or up to twice the actual damages sustained by the tenant as a result of the violation, whichever is greater. The tenant need not terminate the tenancy to recover damages under this section.

(3)(a) If a governmental agency has given a written notice to a landlord that a dwelling unit has been determined to be unlawful, but not unsafe, to occupy due to the existence of conditions that violate state or local law and materially affect health or safety to an extent that, in the agency's determination, although the unit is safe for an existing tenant to occupy, another person may not take possession of the unit, the landlord may not enter into a new tenancy for the dwelling unit until the landlord corrects the conditions that led to the agency's determination.

(b) If a landlord knowingly violates paragraph (a) of this subsection, the tenant may recover from the landlord either two months' periodic rent or up to twice the actual damages sustained by the tenant as a result of the violation, whichever is greater.

(c) Notwithstanding paragraph (b) of this subsection, a landlord is not liable to a tenant for a violation of paragraph (a) of this subsection if, prior to the commencement of the tenancy, the landlord discloses to the tenant that the dwelling unit has been determined to be unlawful to occupy.

(d) A disclosure described in paragraph (c) of this subsection must be in writing, include a description of the conditions that led to the agency's determination and state that the landlord is obligated to correct the conditions before entering into a new tenancy. The landlord shall attach a copy of the agency's notice to the disclosure. The notice copy may provide the information required by this paragraph to be disclosed by the landlord to the tenant.

(e) A disclosure described in paragraph (c) of this subsection does not release the landlord from the duties imposed by this chapter, including the duty to maintain the dwelling unit in a habitable condition pursuant to ORS 90.320 or 90.730. A tenant who enters into a tenancy after the landlord's disclosure does not waive the tenant's other remedies under this chapter. The disclosure does not prevent the governmental agency that made the determination from imposing on the landlord any penalty authorized by law for entering into the new tenancy.

(4)(a) If a governmental agency has made a determination regarding a dwelling unit and has posted or given notice for conditions described in subsection (2)(a) or (3)(a) of this section, a landlord may not accept from an applicant for that dwelling unit a deposit to secure the execution of a rental agreement pursuant to ORS 90.297 unless, before accepting the deposit, the landlord discloses to the applicant as provided by subsection (3)(c) of this section that the dwelling unit has been determined to be unlawful to occupy.

(b) If a landlord knowingly violates paragraph (a) of this subsection or fails to correct the conditions leading to the agency's determination before the date a new tenancy is to begin as provided by the agreement to secure the execution of a rental agreement, an applicant may terminate the agreement to secure the execution of the rental agreement by giving the landlord actual notice of

## —CONDEMNED PROPERTY—

ORS 90.380 was substantially rewritten in 2001. This section covers a rental unit that some governmental authority has posted as unsafe or unlawful to occupy.

Whether the conditions and the posting precede a tenancy and whether the conditions make the property both unlawful and unsafe (meth lab) or simply unlawful (broken window pane) affect the posting process, the ability of the landlord to rent the property, and tenant remedies. Much of this is driven by Portland's Bureau of Buildings which has two separate practices. The first is posting a notice prominently on the premises (popularly called a "red tag") stating the property is both unlawful and unsafe to occupy. A landlord is prohibited from re-renting the property until the conditions are fixed and any present tenant is forced to move out. The second is posting, usually by mailing, a notice (now called a "little red tag" and so the former, more serious notice is called a "big red tag") that simply identifies some code violation. It doesn't require the current tenant to move out but does prohibit the landlord from re-renting the property until the problem is fixed.

ORS 90.380 can now be thought of as dealing with two separate situations:

[1] If the property is posted as both unsafe and unlawful to occupy, the current tenant must vacate and the landlord cannot re-rent. ORS 90.380 (2)

[2] If the property is deemed (in Portland, the notice comes by mail) unlawful—but not unsafe—to occupy, the current tenant can stay but the landlord cannot re-rent without disclosing the determination it's unlawful to occupy. ORS 90.380 (3)

But this section has nine subsections, most of which determine rights and responsibilities of the parties when the property is red-tagged. Here are those subsections:

[1] definitions

[2] what happens if the property is both unsafe and unlawful to occupy (tenant must move; landlord can't re-rent)

[3] what happens if property is unlawful to occupy, but not unsafe (tenant can stay; landlord can't re-rent until remedying situation)

[4] if property is unlawful to occupy, landlord cannot accept any deposit toward renting without disclosure about the conditions (and the applicant can void the agreement, collect damages)

[5] if the property is unsafe and unlawful to occupy, who can terminate the tenancy (landlord if conditions were not caused by landlord, tenant if conditions were not caused by tenant, either if neither caused conditions [like a flood or earthquake])

[6] if property is unlawful and unsafe to occupy, landlord must return money (deposits, prepaid rent, and any prorated rent for period after the termination date or when tenant moves)

[7] if conditions within 6 months of the beginning of a tenancy pose a serious threat to health or safety and were not caused by the tenant (think meth lab not properly cleaned up), the tenant may terminate immediately (and landlord must return deposits, prepaid rent, and any prorated rent for period after the termination date or when tenant moves, and if the landlord knew or should have known of conditions, landlord can owe two months rent or twice actual damages)

[8] how landlord is to return money to the tenant or applicant (by having it available to be picked up or by mail, at the tenant's option; mailed if the tenant doesn't specify)

[9] a double penalty applies if landlord violates [8]

Remember, each of these (except [7]) arises only after some governmental authority makes a determination.

That's Portland's Bureau of Buildings, other housing code inspectors, and more.

the termination and the reason for termination. As a result of a termination, the applicant may recover from the landlord an amount equal to twice the deposit. If an applicant recovers damages for a violation pursuant to this paragraph, the applicant may not recover any amounts under ORS 90.297.

90.380  
Housing code  
violations

- (5) If, after a landlord and a tenant have entered into a tenancy, a governmental agency posts a dwelling unit as unsafe and unlawful to occupy due to the existence of conditions that violate state or local law, that materially affect health or safety and that:
- (a) Were not caused by the tenant, the tenant may immediately terminate the tenancy by giving the landlord actual notice of the termination and the reason for the termination; or
  - (b) Were not caused by the landlord or by the landlord's failure to maintain the dwelling, the landlord may terminate the tenancy by giving the tenant 24 hours' written notice of the termination and the reason for the termination, after which the landlord may take possession in the manner provided in ORS 105.105 to 105.168.
- (6) If the tenancy is terminated, as a result of conditions as described in subsections (2), (4) and (5) of this section, within 14 days of the notice of termination the landlord shall return to the applicant or tenant:
- (a) All of the deposit to secure the execution of a rental agreement, security deposit or prepaid rent owed to the applicant under this section or to the tenant under ORS 90.300; and
  - (b) All rent prepaid for the month in which the termination occurs, prorated, if applicable, to the date of termination or the date the tenant vacates the premises, whichever is later.
- (7) If conditions at premises that existed at the outset of the tenancy and that were not caused by the tenant pose an imminent and serious threat to the health or safety of occupants of the premises within six months from the beginning of the tenancy, the tenant may immediately terminate the rental agreement by giving the landlord actual notice of the termination and the reason for the termination. In addition, if the landlord knew or should have reasonably known of the existence of the conditions, the tenant may recover either two months' periodic rent or twice the actual damages sustained by the tenant as a result of the violation, whichever is greater. The tenant need not terminate the rental agreement to recover damages under this section. Within four days of the tenant's notice of termination, the landlord shall return to the tenant:
- (a) All of the security deposit or prepaid rent owed to the tenant under ORS 90.300; and
  - (b) All rent prepaid for the month in which the termination occurs, prorated to the date of termination or the date the tenant vacates the premises, whichever is later.
- (8)(a) A landlord shall return the money due the applicant or tenant under subsections (6) and (7) of this section either by making the money available to the applicant or tenant at the landlord's customary place of business or by mailing the money by first class mail to the applicant or tenant.
- (b) The applicant or tenant has the option of choosing the method for return of any money due under this section. If the applicant or tenant fails to choose one of these methods at the time of giving the notice of termination, the landlord shall use the mail method, addressed to the last-known address of the applicant or tenant and mailed within the relevant four-day or 14-day period following the applicant's or tenant's notice.
- (9) If the landlord fails to comply with subsection (8) of this section, the applicant or tenant may recover the money due in an amount equal to twice the amount due.

**90.385 Retaliatory conduct by landlord; tenant remedies and defenses; action for possession in certain cases.** (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

- (a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a governmental agency charged with responsibility for enforcement of any of the following concerning a violation applicable to the tenancy:
    - (A) A building, health or housing code materially affecting health or safety;
    - (B) Laws or regulations concerning the delivery of mail; or
    - (C) Laws or regulations prohibiting discrimination in rental housing;
  - (b) The tenant has made any complaint to the landlord that is in good faith and related to the tenancy;
  - (c) The tenant has organized or become a member of a tenants' union or similar organization;
  - (d) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding;
  - (e) The tenant successfully defended an action for possession brought by the landlord within the previous six months except if the tenant was successful in defending the action only because:
    - (A) The termination notice by the landlord was not served or delivered in the manner required by ORS 90.155; or
    - (B) The period provided by the termination notice was less than that required by the statute upon which the notice relied to terminate the tenancy; or
  - (f) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.
- (2) As used in subsection (1) of this section, "decreasing services" includes:
- (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of common areas or facilities by tenant associations or tenants meeting to establish a tenant organization; and

A tenant has a right to complain. A landlord's attempt to raise rent, reduce services, or terminate without cause may well be considered retaliatory if it follows a tenant's [1] complaint to a governmental agency responsible for housing issues (such as housing codes, building codes, discrimination issues, postal delivery); [2] complaint to the landlord about something related to the tenancy; [3] joining a tenants' association; [4] testifying against the landlord in court; [5] winning certain eviction actions, or [6] doing something else to protect or assert the tenant's rights under law.

At one time, the law protected only certain types of complaints (mostly about habitability and access). No more. Tenant protection was increased by language that prohibits retaliation because of "any complaint to the landlord that is in good faith and related to the tenancy." On the other side, a landlord's loss of an eviction action solely because the landlord didn't serve the notice as required by law or the landlord miscalculated the time period in the notice doesn't trigger retaliation defenses.

Subsection (4)(a) makes clear that, while a landlord cannot retaliate because a tenant complains, the landlord can retaliate—terminate the rental agreement, for instance—if the tenant's complaint is made in an unreasonable manner or at an unreasonable time, with the effect of harrasing the landlord. Reasonableness, as ever, depends on circumstances. Complaining about a leaky faucet every hour, or several times a day for several days, or at 3 am is not reasonable. Complaining about a burst water pipe at any hour is reasonable.

(b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment or use of the premises by the tenant.

90.385  
Retaliation

(3) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for possession.

(4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for possession if:

(a) The complaint by the tenant was made to the landlord or an agent of the landlord in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord. A determination whether the manner, time or effect of a complaint was unreasonable shall include consideration of all related circumstances preceding or contemporaneous to the complaint;

(b) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household of the tenant or upon the premises with the consent of the tenant;

(c) The tenant was in default in rent at the time of the service of the notice upon which the action is based; or

(d) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) For purposes of this section, a complaint made by another on behalf of a tenant is considered a complaint by the tenant.

(6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court pursuant to ORS 90.370 shall not be considered to be in default in rent.

(7) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under ORS 90.360 (2).

Not only does a tenant have the right to complain. But complaints made on behalf of the tenant are also protected. So the mother of a college-student tenant could complain about repairs, for instance. Those complaints, too, must be reasonable in both manner and time.

Subsection (4)(c) was amended by the 2011 legislature to clarify that "in default of rent" meant only that the tenant was in default when the notice of termination was served.

The 2007 legislature added another protected class: sexual orientation. The definition is quite broad, and includes gender identity, usually considered as a separate and distinct characteristic.

Subsection (3) was added by the 2003 legislature as part of the changes dealing with domestic violence. Since victims of domestic violence are mostly women, the facially neutral policy of evicting households in which violence occurs has the effect of adversely impacting mostly women. .

**90.390 Discrimination against tenant or applicant;**

**tenant defense.** (1) A landlord may not discriminate against a tenant in violation of local, state or federal law, including ORS 346.630, 346.660, 346.690, 659A.145 and 659A.421.

(2) If the tenant can prove that the landlord violated subsection (1) of this section, the tenant has a defense in any discriminatory action brought by the landlord against the tenant for possession, unless the tenant is in default in rent.

(3) A tenant may prove a landlord's discrimination

Discrimination is an area of law that is difficult for landlords to understand and abide by—in no small part because it is the fastest evolving area of law affecting the industry. Landlords need to be familiar with Federal Fair Housing laws, Oregon's law (see Chapters 346 and 659A starting on pages 196 and 205), case law, and even some municipal statutes (see page 210). Violating municipal discrimination ordinances creates a violation of state law.

in violation of ORS 659A.145 or 659A.421 by demonstrating that a facially neutral housing policy has a disparate adverse impact, as described in ORS 659A.425, on members of a protected class.

(4) A landlord may not discriminate against an applicant solely because the applicant was a defendant in an action for possession pursuant to ORS 105.105 to 105.168 that was dismissed or that resulted in general judgment for the defendant prior to the application. This subsection does not apply if the prior action has not resulted in a dismissal or general judgment at the time of the application. If the landlord knowingly acts in violation of this subsection, the applicant may recover actual damages or \$200, whichever is greater.

## LANDLORD REMEDIES

### 90.392 Termination of rental agreement by landlord for cause; tenant right to cure violation.

(1) Except as provided in this chapter, after delivery of written notice a landlord may terminate the rental agreement for cause and take possession as provided in ORS 105.105 to 105.168, unless the tenant cures the violation as provided in this section.

(2) Causes for termination under this section are:

(a) Material violation by the tenant of the rental agreement. For purposes of this paragraph, material violation of the rental agreement includes, but is not limited to, the nonpayment of a late charge under ORS 90.260 or a utility or service charge under ORS 90.315.

(b) Material violation by the tenant of ORS 90.325.

(c) Failure by the tenant to pay rent.

(3) The notice must:

(a) Specify the acts and omissions constituting the violation;

(b) Except as provided in subsection (5)(a) of this section, state that the rental agreement will terminate upon a designated date not less than 30 days after delivery of the notice; and

(c) If the tenant can cure the violation as provided in subsection (4) of this section, state that the violation can be cured, describe at least one possible remedy to cure the violation and designate the date by which the tenant must cure the violation.

(4)(a) If the violation described in the notice can be cured by the tenant by a change in conduct, repairs, payment of money or otherwise, the rental agreement does not terminate if the tenant cures

For-cause termination notices tell the tenant, in effect, "You are in violation of your rental agreement or the law. If you don't cure this within the next 14 days, we'll terminate your rental agreement in 30 days." The notice should be specific about the violation. For example, "Your sister, Mary Smith, is living with you in violation of the rental agreement" or "You have piles of garbage on the front porch." The notice must state what could be done to remedy the violation, such as "Mary Smith must move out" or "Dispose of the garbage and clean the porch." (Use ORHA Form #38 for for-cause terminations.)

### —LANDLORD REMEDIES—

The sections providing landlord remedies were re-written by the 2005 legislature. They are supposed to use simpler language (*breach*, *noncompliance*, *remediable*, and *pursuant* are all gone), making it more accessible to landlords and tenants alike. Landlord remedies are in several sections:

90.392 generic for-cause terminations

90.394 nonpayment of rent terminations

90.396 extremely serious violation terminations

90.398 violation of alcohol and drug free housing terminations

90.403 hold-over occupant terminations

90.405 unlawful pet violations

**RECEIVED**

MAR 25 2014

CITY MANAGERS OFFICE  
CITY OF CORVALLIS

Dear Biff, Hal & Joel,

Even though you have heard a great deal of testimony as well as written comments regarding the highly contentious International Property Maintenance Code, I was most pleased by your collective assurances that virtually all testimony whether verbal or written, will be given equal consideration in your deliberations on this issue.

Having served on the initial staff advisory group last fall I certainly came away with a far greater appreciation of how difficult it is to be in your position when it comes to public testimony.

We all have our own agenda and certainly feel our testimony is well thought out and appropriately documented. I have seen where two different but well informed individuals can present the same facts and figures in such a convincing and honest way that they both appear to be totally correct. And, having been involved in that process, they are in fact both correct in regard as to how the argument actually affects how that particular issue will impact their lives or businesses. We all see things differently due to the fact that our life experiences and expectations are formed over long periods of time and are thusly highly influential in our thought processes.

I will try to keep this email as short and to the point as possible but, given the gravity of the decisions you are being asked to make and virtually the entire citizenry of Corvallis that will be impacted by those decisions, I really believe a comprehensive overview of my particular involvement is in order.

In January of 2013 the OSU-Corvallis Collaboration Livability Group had a very contentious meeting at the Library with over 100 attendee and 25 or more testimonials. I spoke last because I sincerely believed that my proposal of self-regulation among the licensed professional property managers in Corvallis could be a key ingredient in solving the myriad of landlord-tenant issues that have been reportedly identified in our community.

As one of the senior Corvallis Real Estate Broker, I felt the responsibility to be one of the driving forces in organizing the Corvallis Landlords and Property Managers in order to develop initiatives to improve rental housing in Corvallis. At one of the first public meetings on the subject, I made the bold statement that we could coordinate virtually every property manager in town to improve the condition of all Corvallis rentals. I have organized regular monthly meetings with local Property Managers and Landlords. Those meetings started with approximately 25 participants. Our latest meeting was on Tuesday, February 25<sup>th</sup> where we had almost 50 participants. Following the theme set forth by the OSU-Corvallis Collaboration Livability Group, we have invited speakers each month that we felt embodied the

spirit and intent of enhanced livability in Corvallis. Those speakers included many influential people from Corvallis:

- Rob Reff, the OSU Drug & Alcohol Coordinator, and the chairman of the OSU-Corvallis Livability Committee
- Jim Patton, Corvallis Fire Department spokesman
- Marc Friedman, ASOSU Access the law executive director
- Captain Dave Henslee, Corvallis Police Department
- Carl Yeh, OSU Director of Student Conduct and Community Standards
- Jim Day, the Gazette Times.

In addition to those speakers at our regularly scheduled meetings, our group also made it a priority to attend virtually every Corvallis Collaboration Group and City Council meeting that discussed the rental housing issue during the spring and summer months. During those meetings we had conversations with Police Chief Jon Sassamon and City Manager Jim Patterson, both of whom were very supportive of our efforts.

You have been given many statistics on the subject, but I think the follow numbers will show that the initiatives I have discussed above ARE MAKING A DIFFERENCE.

1. A police report looking at quality of life violations in the last three months of 2012 and 2013 were as follows:

<u>Violations</u>	<u>2012</u>	<u>2013</u>
Disturbances	227	145
Loud Parties	169	93
Special Response Notice 1	167	130
Special Response Notice 2	13	3

2. Within the last 3 months a similar list has been posted regarding a Chronic Nuisance Property (CNP) "Watch List" with the following results.

<u>Violations</u>	<u>Dec. 2013</u>	<u>Jan. 2014</u>	<u>Feb. 2014</u>
CNP	99	84	55

Bob Loewen, Corvallis Housing Division Rental Housing Specialist, quoted as commenting “that might be a record.”

In addition to some of these recent statistics I would also like to offer a couple of statements from Corvallis Police Chief Jon Sassamon, Corvallis Police Captain Dave Henslee and City Manager Jim Patterson:

- Police Chief Jon Sassamon was quoted in a recent article by GT reporter Jim Day as follows: “I’m pleased with results so far. We anticipated a small degree of success based on the work and publicity these efforts have generated. The current data tells us the structural changes to the ordinances, the enhanced relationship between City, OSU, the students, the neighborhoods and the property managers/owners is having a positive effect.” He goes on to say that as a result of the local property tax levy Corvallis voters passed in November, three new police hires will be trained as “community livability officers.” “We envision positive movement, which includes a continued decrease in the calls for service, with improved quality of living in neighborhoods.”
- Corvallis Police Captain Dave Henslee was the keynote speaker at our last Tuesday’s meeting. We had our first formal meeting with him in early June 2013. At that time our group was asking for some type of formal communication between the CPD and landlords whenever they visited one of our properties. His comments regarding current staffing and budget constraints was not all that positive initially. Upon listening intently to our proposal that all we wanted was a heads up of some sort on their initial visit we would step in immediately and there would be no secondary visits. His email to me on June 13<sup>th</sup>, 2013 was short and to the point (i.e.) “Thanks, I have quickly come to realize our groups can be strong allies.” Subsequent to that exchange of ideas he came up with a Facebook posting of all Special Response Notices (SRNs) every Monday morning. At our most recent meeting he brought up an updated plan to have every police notice in our office by 8:00 every morning. Our mutually agreed upon plan is to have his officers visit our properties once and never have to return as they often do now. His comments to our group is that we are doing an “awesome” job. He went on to say that “he has never seen so much progress so quickly during any time in his lengthy career as an officer and now Captain with the CPD. He also stated that Chief Sassamon is “amazed” at the success of our collective efforts in such a short time.
- Corvallis City Manager Jim Patterson sent an email on July 8, 2013: “I want to thank Jerry Duerksen for following up on the commitment he made in January of this year to bring Property

Managers and Landlords together to help the City deal with rental housing issues in a thoughtful and cooperative way. The article in the GT from Sunday July 7<sup>th</sup> accurately reflected the landscape that existed prior to Mr. Duerksen's leadership in bringing people together. Thank you Jerry for stepping up and making a huge difference. I applaud your efforts and hope that if you need anything from the City of Corvallis you will contact me or members of our staff.

As you can see, a tremendous amount of progress has been and still is being made in many areas regarding livability issues in Corvallis. To my knowledge none of this has cost the City a nickel so far. Even though I was on the IPMC advisory group, the whole process was most intimidating due to its broad scope, unknown impact, and unintended consequences on the Corvallis home-owners and renters.

It is most obvious how important any decision will be and how much they impact everyone in Corvallis when our meetings appear on the front pages of both the GT and the Barometer within the next day or so. Jim Day even got two articles published on two successive days regarding the impact of our group.

I am very concerned about the consequences any elaborate change to our housing codes will have on the citizens of Corvallis. I would recommend that we all take a very conservative approach to the implementation of a very complicated and, in my opinion, not very well understood new housing code proposal. There are smaller, less complicated, changes that could be adopted to improve housing livability in Corvallis.

- Improving the enforcement process and penalty process to close the excessive open cases that currently exist.
- Improving the enforcement of currently dilapidated/abandoned properties.
- Implement new neighborhood and community outreach and education for tenants, landlords and neighborhood associations. The outreach would specifically look to integrate city services in parallel with the community and OSU student focused goals and services.
- Delaying the implementation of the additional IPMC housing codes to see how much more progress can be realized by the changes that have already been implemented.

In my opinion we would have a win-win situation where we could continue to build on our current successes and will delay committing such large amounts of money to implement an enormous new code change and the new staff that will be required to enforce the new housing codes. I am concerned that

the implementation of such an elaborate housing code will cause even larger expenditures of tax money than the city staff has included in their briefings.

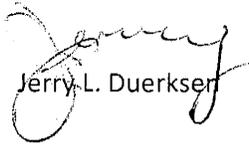
All of the professional real estate people as well as the general public fully understand and support the community outreach part of this proposal but are deeply concerned as to the methods currently being used to get the new code up and running.

A tremendous amount of good will and cooperation that has come to pass during this past year is being seriously threatened by the way this code issue is being perceived throughout the community and the public in general.

In closing, I would like to express my sincere thanks and appreciation for all your hard work and dedication to a very complex and most controversial issue.

I would hope that our joint efforts will produce a system that is fair and workable for all involved.

Sincerely,



Jerry L. Duerksen

**RECEIVED**

APR 01 2014

CITY MANAGERS OFFICE  
CITY OF CORVALLIS

**DUERKSEN & ASSOCIATES, INC.**

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March 31, 2014

Administrative Service Committee  
Councilor Biff Traber, Chair  
Councilor Hal Brauner  
Councilor Joel Hirsch

Dear Committee Members,

Hopefully you have had an opportunity to review my last letter to you regarding the debate on the International Property Maintenance Code (IPMC).

My apologies for its length but I wanted to recap an entire years worth of involvement on my part in an effort to assist you in any way I could. Thank you for getting through it all.

In order to keep you updated on our progress with our property management and landlord/owner group, we had our regular monthly meeting on Tuesday March 25<sup>th</sup> at the Corvallis Elks Lodge.

Our speakers for the meeting were Kim Farnham, the Lead Base Paint Compliance Officer/Inspector for Region 10 of the EPA which covers Alaska, Idaho, Oregon and Washington, and Cheryl Martinis of the Oregon Construction Contractors Board.

At that meeting Kim covered all aspects of lead based paint notifications and repairs. She went into great detail regarding exactly how and when all of our tenants need to be informed including a pamphlet titled Lead Base Paint Disclosure for each occupant. She also covered what documents, licensing and education are required of our contractors if they work on any of our rentals that may have lead based paint. In addition to Kim's presentation Cheryl made a brief statement on who is required to have a contractor's license and be registered with the CCB of Oregon.

Under Oregon Administrative Rules Chapter 812: Construction Contractors, it is very clear who needs to be licensed. OAR 812-002-0540 goes into much detail who is also exempt. Good information.

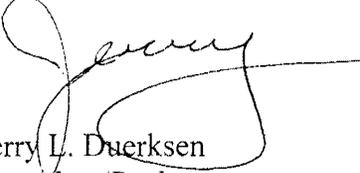
As you can see, our group is involved to a great extent in our attempts to make Corvallis a great place to live, work and raise a family.

I see we had another article by Jim Day in the GT last Thursday March 27<sup>th</sup>. Corvallis Police Department Captain Dave Henslee was quoted as saying “that the department has not issued a second special response notice (SRN’s) for months. SRN’s are written warnings to residents for quality-of-life violations that can carry hefty fines for repeat offenses. Our group has been very proactively involved in making sure the police never have to go back a second time. The CPD loves that action on our part and we take a lot of pride in doing what we promised them we would do.

In summary, I am still on my soapbox that we need to separate the code issue from the livability issue. They do indeed overlap to some extent but I truly believe they can be more fully addressed as separate issues.

As always, my sincere appreciation and thanks for all your hard work and dedication.

Sincerely,



Jerry L. Duerksen  
*President/Broker*

## MEMORANDUM

March 25, 2014

To: Administrative Services Committee

From: Mary Steckel, Public Works Director 

Subject: Utility Service Rate Study Review

### **Issue:**

Council direction is needed on decision points associated with the water, wastewater and stormwater utility service rate study conducted in June 2013.

### **Background:**

The City reviews water, wastewater and stormwater utility rates each year. Based on the annual decline in water consumption beginning in FY 06-07, staff proposed a project to undergo a rate structure study to determine whether or not changes should be made to the current structure to ensure an appropriate cost recovery method is in place. The primary goal of the study was to review fixed costs against base rate revenue and variable costs against consumption rate revenue to secure the financial viability of each utility.

The current rate structure was adopted by Council in 1998 after a consultant review and public outreach process was conducted. The review incorporated the on-going or fixed costs required to maintain water infrastructure, including the treatment plants, pump stations, distribution pipes, and fire hydrants, to meet peak and fire protection service capabilities for the community. It acknowledged that different customer types should be charged respectively for the different burdens they place on the system through irrigation in the summer and/or through higher demands for fire protection service. The rate structure change also addressed rate equity concerns by creating a tiered wastewater consumption rate charge based on the strength (level of biochemical oxygen demand and total suspended solids) of the wastewater a customer discharged to the collection system. The resulting structure defined water and wastewater base rates for each customer class (e.g. residential, commercial) that would cover infrastructure costs and varying consumption rates to recover treatment costs. See Attachment A for a copy of the current rate schedule structure.

### **Discussion:**

Staff initiated the latest study by conducting a request for proposals process and selecting the firm Raftelis Financial Consultants, Inc. (RFC). RFC began work in August, 2012 with a preliminary meeting and a request for extensive data from staff. In June, 2013 they completed an analysis of customer water consumption characteristics and created comprehensive financial planning models for each of the three utilities. These models differ from existing financial planning tools used by the City in that they incorporate consumption data from the City's utility billing software to forecast fixed and consumption revenue levels.

The existing utility charge for water and wastewater service is comprised of two pieces, one part of the charge is the fixed or base rate which is intended to recover infrastructure and minimum treatment requirements to ensure clean water comes out when a faucet is turned on and that wastewater disappears when a toilet is flushed. Base rate revenue should provide enough funding to ensure a functional water, wastewater and stormwater system is in place for the entire community. The other part of the charge is the consumption or variable rate which recovers expenses associated with the treatment and infrastructure needed to meet customer demand above and beyond the minimum service level. Consumption revenue should recover increased treatment costs and/or infrastructure needs associated with the delivery of larger volumes of treated water and the removal of resulting wastewater.

Utility billing data, from City Services bills, helps clearly identify the percent of expenses that are currently covered with fixed or base rate revenues. Identifying the percent of expenses covered with fixed rate

revenue provides staff with a better understanding of how a reduction in water use and corresponding consumption revenues can impact each utility's ability to meet requirements for operating and infrastructure replacement projects.

Revenue predictability has been an increasing problem over the last few years. For example, in FY 10-11, staff projected total water service revenue of \$8,277,330. This included both fixed and consumption revenue. A variety of factors including water conservation efforts, a slow economy, and most notably a very wet/cool weather pattern affected the amount of water used by the community and the resulting consumption revenue received. At the end of the fiscal year, water service revenue totaled \$7,765,525, a more than five-hundred thousand dollar (6.2%) shortfall from initial projections. Moving into FY 12-13, factors including a rebounding economy and an unusually dry year led to increased water use and sales increasing by \$558,200 or 6.8% over projections. While it is expected that consumer behavior and weather patterns will affect the amount of consumption revenue received to some extent, it is critical that the variance is not so large that it impacts the ability to cover core operational and on-going infrastructure investments.

A key component of the current rate study was for RFC to complete a cost of service analysis, using industry standards, to determine the level of expenditure that should be allocated to each customer class for infrastructure, treatment, distribution and collection. The cost components for each customer class were then compared to consumption history information to develop rates sufficient to generate the level of revenue needed for each utility to cover projected expenditures.

This analysis resulted in several recommendations for rate structure changes that will more accurately and appropriately recover revenue from each component for each utility. Due to the complexity of the current rate structure, and the possibility of several different outcomes depending on the decisions made by Council, staff is only addressing the Water Utility in this memo. The Wastewater and Stormwater Utilities will be addressed subsequently.

### **Water Utility**

The Water Utility has the following Customer Classes:

1. Single Family Residential
2. Multi-Family Residential/Group Residential/Fraternity/Sorority
3. Commercial
4. Irrigation-Only
5. Private Fire

The Water Utility Rate Structure consists of the following rate components:

1. Fixed/base rate charge
2. Private fire fixed/base rate charge (applies only to customers that have private fire service)
3. Consumption/volumetric rate charge
4. Public fire protection service charge

The Water Utility Cost of Service Analysis presents the following decision points:

1. Should Corvallis transition fixed/base rate charges to align with meter flow rate equivalencies that are in line with industry standards?
2. Should Corvallis increase Private Fire fixed/base rate charges to cost-based charges that are in line with industry standards?
3. Should Corvallis transition consumption/volumetric rate charges to align with customer class peaking factors that are in line with industry standards?
4. Should Corvallis transition the Public Fire Protection Service charge to a single common fire event charge as recommended by RFC?

The following sections detail RFC and staff recommendations for each customer class and rate component.

### **Fixed or Base Rates**

*The monthly charge for access to the water and wastewater system services whether or not there is water consumption. The base rate covers all costs associated with having water available, providing adequate pressure and flow for fire protection, and providing for wastewater removal in accordance with State and federal regulations.*

Under the existing rate structure, RFC estimates that Corvallis recovers the majority, approximately 65%, of its rate revenues from consumption charges. Because consumption can change dramatically from year to year, Corvallis, along with many other utilities throughout the United States are making modifications to their rate structures to deal with revenue stability/revenue volatility issues.

In a cost-recovery model, the base rate recovers expenses related to the minimum infrastructure required to provide all customers with water service. These expenses include the treatment plant, meter-related capital and maintenance costs, meter reading, customer billing and collection, public fire protection, a portion of the distribution system capital and operating costs, and a minimum level of treated water to charge the system. RFC used the *American Water Works Association (AWWA) Manual M6, Water Meters-Selection, Installation, Testing, and Maintenance* to determine an appropriate base-charge rate design to recover these expenses using an industry standard methodology employed by many utilities in Oregon and across the country. Their recommended rate design incorporates meter flow rate equivalencies in recognition that customers with larger meters have the ability to impose a higher instantaneous demand on the water utility system and therefore should pay for that capability. In addition to initial demand, the on-going costs to maintain and replace infrastructure increase in conjunction with infrastructure size; it is more expensive to replace an 8" water service and associated water main pipe than a ¾" water service.

The proposed change in base rates is reflective of a shift in the allocation of costs for the utility from the consumption component to the fixed component in conjunction with aligning cost recovery with the size of connection the customer has to the system. The table below provides a comparison of existing base charge rates to the proposed rates of the meter equivalency methodology used.

Comparison of Existing and Proposed Water Base Charges (by meter size)				
Single Family Residential	Existing Charge	Proposed Charge	Difference	Forecasted # of Accounts
3/4"	\$ 13.40	\$ 14.25	\$ 0.85	11,690
1"	\$ 19.29	\$ 21.87	\$ 2.58	530
1-1/2"	\$ 29.11	\$ 26.94	\$ (2.17)	0
2"	\$ 40.90	\$ 52.32	\$ 11.42	0
3"	\$ 72.33	\$ 179.19	\$ 106.86	0
4"	\$ 107.65	\$ 306.07	\$ 198.42	0
6"	\$ 205.85	\$ 509.06	\$ 303.21	0
Multi-Family Residential & Commercial	Existing Charge	Proposed Charge	Difference	Forecasted # of Accounts
3/4"	\$ 20.73	\$ 17.64	\$ (3.09)	950
1"	\$ 26.00	\$ 27.29	\$ 1.29	430
1-1/2"	\$ 34.81	\$ 33.72	\$ (1.09)	460
2"	\$ 45.34	\$ 65.87	\$ 20.53	150
3"	\$ 73.51	\$ 226.62	\$ 153.11	80
4"	\$ 105.17	\$ 387.37	\$ 282.20	40
6"	\$ 193.17	\$ 644.58	\$ 451.41	10
8"	\$ 298.73	\$ 1,030.39	\$ 731.66	0
10"	\$ 421.90	\$ 1,480.49	\$ 1,058.59	2
Irrigation-only	Existing Charge	Proposed Charge	Difference	Forecasted # of Accounts
3/4"	\$ 12.94	\$ 13.09	\$ 0.15	70
1"	\$ 19.31	\$ 20.00	\$ 0.69	40
1-1/2"	\$ 29.88	\$ 24.61	\$ (5.27)	10
2"	\$ 42.55	\$ 47.37	\$ 4.82	0
3"	\$ 76.41	\$ 162.85	\$ 86.44	0
4"	\$ 114.44	\$ 278.05	\$ 163.61	0
6"	\$ 220.20	\$ 462.38	\$ 242.18	0
8"	\$ 347.09	\$ 738.87	\$ 391.78	0
10"	\$ 495.12	\$ 1,061.44	\$ 566.32	0

Staff acknowledges that the proposed changes to base charges for larger meters are dramatic. In some instances the monthly base rate for Multi-Family Residential (MFR) and Commercial customers increases by more than 300%. This model shifts the burden away from one where everyone pays to maintain the full system to a model that requires individuals and businesses to pay for their individual impacts on the system. It also brings the existing rate structure in line with industry standard and other Pacific Northwest water utilities. Staff recognizes the impact this change can have on businesses that currently operate in Corvallis and Council's goal for economic development, but agrees with RFC that the base rates should be updated to align with meter flow rate equivalencies to ensure an appropriate cost recovery mechanism is in place.

*Decision point:*

1. Should Corvallis transition fixed/base rate charges to align with meter flow rate equivalencies that are in line with industry standards?

**Private Fire**

*Private fire protection systems consist of a fire service connection to the Corvallis water distribution system. They are for fire protection to the property on which they are installed and are not to be used for any other purpose without the express written permission of the City of Corvallis.*

Corvallis has 342 private fire protection customers. The City is responsible for installation and maintenance of the required infrastructure to provide adequate water flow to each of these customer connections. As an example, the south end of Four Acre Place requires the City to provide a series of 8 and 12" water mains to serve one retail establishment and six private fire service connections. The current rate design for private fire protection connections does not appropriately reflect the additional costs to maintain adequate pressure and flow for a private service. Corvallis' rates for this service have not been increased since the 1980s and are significantly lower than other Pacific Northwest water utilities. *AWWA Manual M1*

methodology recommends private fire line connections pay a monthly fixed charge that more accurately approximates the cost of the instantaneous capacity demands they can impose on a water utility system in the case of a fire. Staff agrees with RFC's recommendation to increase Private Fire connection rates to cost-based charges that are in line with industry standards. The table below provides a comparison of existing and proposed monthly base charge rates for private fire connections.

Comparison of Existing and Proposed Private Fire Base Charges (by meter size)			
Private Fire	Existing Charge	Proposed Charge	Difference
2" - 68 customers	\$ 2.00	\$ 3.02	\$ 1.02
3" - 15 customers	\$ 3.00	\$ 10.55	\$ 7.55
4" - 104 customers	\$ 4.00	\$ 18.09	\$ 14.09
6" - 120 customers	\$ 6.00	\$ 30.15	\$ 24.15
8" - 35 customers	\$ 8.00	\$ 48.24	\$ 40.24

*Decision point:*

- Should Corvallis increase Private Fire fixed/base rate charges to cost-based charges that are in line with industry standards?

**Consumption or Volumetric Rates**

*A charge placed on every unit or hundred cubic feet (HCF) of water as measured by the meter. The consumption rate covers the costs associated with treating and delivering the desired units of water and removing the associated wastewater that is above and beyond basic access to the system services.*

RFC performs water rate studies using industry standard rate making practices as established by the AWWA. A key determinant of the revenue requirement allocated to each customer class is the intensity of their water usage during periods of system peak demand. AWWA determines that customer classes with higher maximum day (MD) and maximum hour (MH) demands place a greater burden on the system and thus should be allocated a greater share of costs and charged a higher unit rate (\$/HCF). This methodology is in keeping with individual users paying for the burden they place on the system.

To establish the MD and MH peaking factors for each existing Corvallis customer class, RFC followed the AWWA methodology described in *AWWA Manual M1, Principles of Water Rates, Fees and Charges*. This methodology resulted in peaking factors shown below. The outcome was what one would expect for the vast majority of utilities with unique customer classes. Single Family Residential (SFR) and meters used only for irrigation have the highest peaking factors while Commercial customers, who generally have the most stable demand profile, have the lowest peaking factors. SFR and Irrigation customers tend to use water intensely during certain times of day i.e. when household members get up to shower in the morning or when sprinkler systems are set to turn on. This intense period of demand dictates the amount of infrastructure that is needed to maintain adequate flow and pressure in the system. Therefore, costs associated with the size of water storage reservoirs and pumping systems can be directly linked to customer classes with the highest daily or hourly peaking factors.

Estimated Customer Class Peaking Factors		
Customer Class	MD	MH
Single Family Residential	2.72	3.51
Multi-Family Residential	2.29	2.95
Commercial	1.99	2.58
Irrigation-only	5.05	6.54

Corvallis' existing water rate structure does not fully reflect these normative peaking factors. As a result, despite the fact that SFR and Irrigation customers impose a higher MD and MH peak demand, they are

charged lower rates than Commercial customers. Staff recommends the existing consumption rate structure be updated to incorporate the AWWA standard peaking factors as presented by RFC.

*Decision point:*

3. Should Corvallis transition consumption/volumetric rate charges to align with customer class peaking factors that are in line with industry standards?

Levels / Consumption Blocks

*Level – Corvallis has arranged the current consumption rates into Levels that correspond with areas served by the utility that require secondary pumping to provide for adequate service and pressure in accordance with State and federal regulations. Level 1, the lowest elevation level requires no additional pumping to provide adequate service; Level 2 requires some additional pumping; Level 3, the higher elevation areas in Corvallis, requires the most additional pumping. Secondary pumping requires additional infrastructure in the form of pump stations, water storage facilities and associated piping, and creates increased electricity expenses.*

*Consumption block – Corvallis has defined consumption blocks that align with data-driven consumption patterns that work together with tiered rates to encourage water conservation. Pricing is known to have an effect on water use by requiring the customer to pay more for above average water use. The block thresholds are set based on the average monthly consumption for households in Corvallis; in the winter seven (7) units, in the summer thirteen (13) units.*

The following table is a snapshot of unit rates for a Single Family Residential customer by Level and Consumption Block.

Single Family Residential 3/4" Service (by elevation level)			
Consumption Block	Level 1	Level 2	Level 3
0-7 units	\$ 1.44	\$ 1.74	\$ 1.79
8-13 units	\$ 1.89	\$ 2.19	\$ 2.24
14+ units	\$ 2.39	\$ 2.69	\$ 2.74

The existing structure for Multi-Family Residential (MFR) uses a similar three-tier rate design in which the consumption block thresholds increase by meter size. The current rates also incorporate the expenses required to provide water to each of the three elevation levels in Corvallis. RFC acknowledged the sophistication of Corvallis' current SFR/MFR rate structure in relation to other utilities in the Pacific Northwest. After an analysis of monthly and annual consumption by tier, elevation and meter size, they found no compelling financial, water conservation, or public policy justification for modifying the existing structure. Based on this review, staff recommends leaving the existing SFR and MFR rate designs unchanged.

Commercial customers account for approximately 33% of total annual billed water consumption in Corvallis. The current structure uses a two-tier rate design in which the consumption block thresholds increase by meter size. Elevation levels are also incorporated in the existing Commercial structure. After a thorough review of existing accounts, RFC found that 99% of Commercial customers are located in Elevation Level 1 and when consumption is averaged for the year on a per bill basis, all consumption falls within the first tier consumption block. These findings are not unusual; most Pacific Northwest water utilities employ a simple uniform design that charges Commercial customers a single dollar amount per unit rate for all billed consumption. Staff agrees with RFC's recommendation to move Commercial customers to a uniform rate structure to be in alignment with actual consumption patterns and industry standard.

Corvallis uses a three-tier Irrigation-only rate design with the same consumption block thresholds as those used for SFR customers. Based on Corvallis consumption data, the vast majority of Irrigation-only customer consumption is billed at the high Tier 3 (14+ units per month) rate which is appropriate given the heavy peak load demands that Irrigation-only customers impose on the water utility system. Staff

agrees with RFC's recommendation to keep the existing Irrigation-only rate design as is, sending a message of reduced cost for conservation efforts, and collecting appropriate revenue for high peak-demand.

The following table provides a comparison of existing water consumption rates and the proposed changes incorporating maximum day and maximum hour allocations as well as a uniform consumption rate for Commercial customers.

Comparison of Existing and Proposed Water Consumption Rates			
SFR	Existing Rate	Proposed Rate	Difference
<b>Level 1</b>			
0-7 units	\$ 1.44	\$ 1.66	\$ 0.22
8-13 units	\$ 1.89	\$ 2.16	\$ 0.27
14+ units	\$ 2.39	\$ 2.66	\$ 0.27
<b>Level 2</b>			
0-7 units	\$ 1.74	\$ 1.91	\$ 0.17
8-13 units	\$ 2.19	\$ 2.41	\$ 0.22
14+ units	\$ 2.69	\$ 2.91	\$ 0.22
<b>Level 3</b>			
0-7 units	\$ 1.79	\$ 2.01	\$ 0.22
8-13 units	\$ 2.24	\$ 2.51	\$ 0.27
14+ units	\$ 2.74	\$ 3.01	\$ 0.27
MFR	Existing Rate	Proposed Rate	Difference
<b>Level 1</b>			
0-7 units	\$ 1.72	\$ 1.20	\$ (0.52)
8-13 units	\$ 1.79	\$ 1.32	\$ (0.47)
14+ units	\$ 2.03	\$ 1.44	\$ (0.59)
<b>Level 2</b>			
0-7 units	\$ 2.02	\$ 1.45	\$ (0.57)
8-13 units	\$ 2.09	\$ 1.57	\$ (0.52)
14+ units	\$ 2.33	\$ 1.69	\$ (0.64)
<b>Level 3</b>			
0-7 units	\$ 2.07	\$ 1.55	\$ (0.52)
8-13 units	\$ 2.14	\$ 1.67	\$ (0.47)
14+ units	\$ 2.38	\$ 1.79	\$ (0.59)
Commercial	Existing Rate	Proposed Rate	Difference
<b>Level 1</b>			
0-14 units	\$ 1.72	\$ 1.15	\$ (0.57)
15+ units	\$ 2.13	\$ 1.15	\$ (0.98)
<b>Level 2</b>			
0-14 units	\$ 2.02	\$ 1.35	\$ (0.67)
15+ units	\$ 2.43	\$ 1.35	\$ (1.08)
<b>Level 3</b>			
0-14 units	\$ 2.07	\$ 1.55	\$ (0.52)
15+ units	\$ 2.48	\$ 1.55	\$ (0.93)
Irrigation-only	Existing Rate	Proposed Rate	Difference
<b>Level 1</b>			
0-7 units	\$ 1.37	\$ 2.19	\$ 0.82
8-13 units	\$ 1.79	\$ 2.85	\$ 1.06
14+ units	\$ 2.39	\$ 3.51	\$ 1.12
<b>Level 2</b>			
0-7 units	\$ 1.67	\$ 2.59	\$ 0.92
8-13 units	\$ 2.09	\$ 3.25	\$ 1.16
14+ units	\$ 2.69	\$ 3.91	\$ 1.22
<b>Level 3</b>			
0-7 units	\$ 1.72	\$ 2.89	\$ 1.17
8-13 units	\$ 2.14	\$ 3.55	\$ 1.41
14+ units	\$ 2.74	\$ 4.21	\$ 1.47

### **Public Fire Protection Service**

*The provision of water to premises, through adequate infrastructure and water flow, to allow for prevention or to help in minimizing the possible loss of life or property resulting from a fire.*

The Corvallis water utility is not directly compensated for public fire protection costs. The expenses associated with having an adequate fire protection system, including appropriate piping, hydrants and water pressure, are currently allocated to all customer classes on an equivalent meter basis. RFC has presented Corvallis with two distinct options for allocating fire flow costs in the water cost of service study.

In both options fire protection units of service are calculated assuming a fire event of a specific length and duration which translates into an estimate of the maximum day and maximum hour extra capacity needed in the system to fight a fire. It is a standard cost of service approach to allocate costs between public fire protection and private fire protection on an equivalent 6" meter basis (most public fire hydrants have 6" connections).

#### **Option #1 - Single Common Fire Event**

Option #1 is a standard cost of service approach and it is the approach that RFC recommends for Corvallis. RFC assumed a 4,000 gallon per minute (GPM) fire of a four-hour duration that results in a total maximum hour units of service of 5,760,000 gallons. When public fire protection costs are recovered from customers under this approach, the amount of the monthly fixed rate attributable to public fire service charge is the same at each meter size for all customer groups.

#### **Option #2 - Unique Fire Events for Single Family vs. Multi-Family and Commercial Customers**

Under the Option #2 approach, the intensity and duration of fire events are assumed to be different for a fire at a SFR property vs. a fire at a MFR or Commercial property. The 1998 cost of service study assumed that a fire event impacting SFR customers would require flow rates of only 1,000 GPM. It also assumed that fire events involving MFR and Commercial customers would result in flow rates of up to 4,000 GPM. The outcome of using this approach is that the amount of the current monthly fixed charge allocated for public fire protection for SFR customers is less than for MFR and Commercial customers.

RFC generally does not recommend using unique fire flow events for each customer class. From their perspective, the probability of a fire in a SFR property is no more or less than the probability of fire in a MFR or Commercial property. Further, when a fire does occur in a modern MFR or Commercial property, the duration is generally quite brief due to the fact that building codes require these properties to have automatic sprinkler systems.

The monthly impact of the two different options is detailed in the table below. The selected rate would become a component of the base water rate.

Comparison of Rates for a Single Common Fire Event vs. Separate Fire Events (by meter size)			
SFR	Single Fire Event	Separate Fire Events	
3/4"	\$ 2.45	\$	0.79
1"	\$ 3.92	\$	1.27
1-1/2"	\$ 4.90	\$	1.59
2"	\$ 9.80	\$	3.18
3"	\$ 34.31	\$	11.13
4"	\$ 58.82	\$	19.07
6"	\$ 98.04	\$	31.79
MFR & Commercial	Single Fire Event	Separate Fire Events	
3/4"	\$ 2.45	\$	4.69
1"	\$ 3.92	\$	7.50
1-1/2"	\$ 4.90	\$	9.38
2"	\$ 9.80	\$	18.75
3"	\$ 34.31	\$	65.63
4"	\$ 58.82	\$	112.50
6"	\$ 98.04	\$	187.50
8"	\$ 156.86	\$	300.00
10"	\$ 225.49	\$	431.25

The single fire event methodology proposed by RFC provides a significant discount in the public fire component of MFR & Commercial base rates and places that burden on SFR customers. This would be a change from the existing rate structure.

*Decision point:*

- 4. Should Corvallis transition the Public Fire Protection Service charge to a single common fire event charge as recommended by RFC?

**Summary**

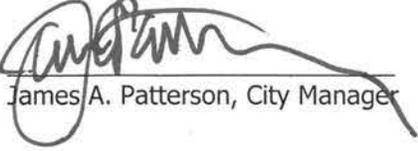
The existing Water Utility rate structure is complex. Staff recognizes the difficulty in following how different decision points add to the complexity of understanding how an individual customer’s bill will be impacted by the recommended changes. The table below provides a summary of proposed increases and decreases by customer class and rate component discussed in this staff report as recommended by RFC. Attachment B provides a snapshot of how the optional water rate scenarios would impact different customer classes on a monthly basis.

	Single Family Residential	Multi-Family Residential	Commercial	Irrigation-only	Private fire
<b>Water</b>					
Update base rates to reflect flow rate equivalencies and replacement costs	↑	↑	↑	↑	
Update private fire base rates to reflect instantaneous capacity demands					↑
Update consumption rates to reflect maximum hour and maximum day peaking factors	↑	↓	↓	↑	
Update public fire base rates to using a single fire event methodology	↑	↓	↓		

**Requested Action**

That the ASC review this information, ask questions and provide direction on whether or not any changes should be implemented to the current Water Utility rate structure.

Reviewed:



James A. Patterson, City Manager



Nancy Brewer, Finance Director

Attachment A – Current Rate Schedule  
Attachment B – Sample Monthly Bills

## ORDINANCE 2013-14

AN ORDINANCE RELATING TO UTILITY RATES AMENDING CORVALLIS MUNICIPAL CODE CHAPTER 3.06, "CITY SERVICES BILLING," ESTABLISHING RATES FOR 2014, AND STATING AN EFFECTIVE DATE.

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

**Section 1.** Municipal Code Section 3.06 is hereby amended as follows:

**Section 3.06.140 Rates.**

Effective for all utility bills rendered on or after February 1, 2014, service rates shall be as follows:

1) Rates for single family customers:

Meter Base Size Rate	Water Consumption Rates - per hcf			Wastewater Consumption Rate - per hcf		Storm Water Per ESU	
	hcf	1 <sup>st</sup> Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Base Rate		All Usage
5/8" - \$13.40 3/4"	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
1.0" - \$19.29	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
1.5" - \$29.11	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
2.0" - \$40.90	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
3.0" - \$72.33	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
4.0" - \$107.65	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			
6.0" - \$205.85	0-7	\$1.44	\$1.74	\$1.79	\$11.13	\$3.31	\$6.27
	8-13	1.89	2.19	2.24			
	≥ 14	2.39	2.69	2.74			

2) Rates for irrigation meters:

MeterBase Size Rate	hcf	Water Consumption Rates - per hcf		
		1 <sup>st</sup> Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
5/8" - \$12.94 3/4"	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
1.0" 19.31	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
1.5" 29.88	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
2.0" 42.55	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
3.0" 76.41	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
4.0" 114.44	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
6.0" 220.20	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
8.0" 347.09	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74
10.0" 495.12	0-7	\$1.37	\$1.67	\$1.72
	8-13	1.79	2.09	2.14
	≥ 14	2.39	2.69	2.74

3) Rates for Multi-Family:

Meter Base Size Rate	hcf	Water Consumption Rates - per hcf			Wastewater Consumption Rate - per hcf		Storm Water Per ESU
		1 <sup>st</sup> Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Base Rate	All Usage	
5/8" - \$20.73 3/4"	0-7	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	8-13	1.79	2.09	2.14			
	≥ 14	2.03	2.33	2.38			
1.0" 26.00	0-18	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	19-33	1.79	2.09	2.14			
	≥ 34	2.03	2.33	2.38			
1.5" 34.81	0-35	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	36-65	1.79	2.09	2.14			
	≥ 66	2.03	2.33	2.38			
2.0" 45.34	0-56	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	57-104	1.79	2.09	2.14			
	≥ 105	2.03	2.33	2.38			
3.0" 73.51	0-112	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	113-208	1.79	2.09	2.14			
	≥ 209	2.03	2.33	2.38			
4.0" 105.17	0-175	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	176-325	1.79	2.09	2.14			
	≥ 326	2.03	2.33	2.38			
6.0" 193.17	0-350	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	351-650	1.79	2.09	2.14			
	≥ 651	2.03	2.33	2.38			
8.0" 298.73	0-560	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	561-1040	1.79	2.09	2.14			
	≥ 1041	2.03	2.33	2.38			
10.0" 421.90	0-805	\$1.72	\$2.02	\$2.07	\$11.13	\$3.31	\$6.27
	806-1495	1.79	2.09	2.14			
	≥ 1496	2.03	2.33	2.38			

4) Rates for Group Residential/Fraternity/Sorority:  
(D = Domestic; M = Medium; H = High; VH = Very High)

MeterBase Size Rate	hcf	Water Consumption Rates - per hcf			Wastewater Consumption Rate - per hcf		Storm Water	
		1 <sup>st</sup> Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Base Rate	All Usage	Per ESU	
5/8" \$20.73 3/4"	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
1.0" \$26.00	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
1.5" \$34.81	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
2.0" \$45.34	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
3.0" \$73.51	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
4.0" \$105.17	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
6.0" \$193.17	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
8.0" \$298.73	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				
10.0" \$421.90	0-7	\$1.72	\$2.02	\$2.07	\$11.13	D- \$3.31 M- 3.86 H- 5.28 VH- 7.14	\$6.27	
	8-13	1.79	2.09	2.14				
	≥ 14	2.03	2.33	2.38				

5) Rates for Commercial and all other customers:

(D = Domestic; M = Medium; H = High; VH = Very High)

Meter Base Size Rate	Water Consumption Rates - per hcf	Wastewater Consumption Rate - per hcf			Base Rate	All Usage	Storm Water Per ESU
		1 <sup>st</sup> Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level			
5/8" - \$20.73 3/4"	0-14 ≥ 15	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
1.0" 26.00	0-43 ≥ 44	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
1.5" 34.81	0-67 ≥ 68	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
2.0" 45.34	0-179 ≥ 180	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
3.0" 73.51	0-208 ≥ 209	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
4.0" 105.17	0-341 ≥ 342	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
6.0" 193.17	0-1,000 ≥ 1,001	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
8.0" 298.72	0-1,040 ≥ 1,041	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
10.0" 421.90	0-23,207 ≥ 23,208	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27
12.0" 502.71	0-23,207 ≥ 23,208	\$1.72 2.13	\$2.02 2.43	\$2.07 2.48	\$11.13	D - \$3.31 M - 3.86 H - 5.28 VH - 7.14	\$6.27

- 5) Rates for Fire Service:
- a) Standby (minimum) charges for automatic fire service. Charges are based on wet or dry sprinkling systems without hose or other connections; combined systems will pay the regular service meter minimums and the regular meter rates:
    - 1] 2": \$2.00 per month
    - 2] 3": \$3.00 per month
    - 3] 4": \$4.00 per month
    - 4] 6": \$6.00 per month
    - 5] 8": \$8.00 per month
  - 6) Properties without a Water Meter:
    - a) Single family property that does not have utility provided water service and therefore has no water meter, but that has connection to the utility's wastewater service shall pay \$30.00 per month, plus the applicable storm water and other City Services fees.
    - b) Multi-family unmetered rates shall be \$30.03 per month for the one residential unit and \$18.89 for each additional living unit above one, plus the applicable storm water and other City Services fees.
    - c) Commercial accounts with wastewater service, but no water service, shall be billed as identified in section 3.60.050 (1)(c)[5].
    - d) Billing for accounts where there is wastewater service, but no water service shall be billed each month, regardless of whether or not the property is vacant, as long as the property remains connected to the utility's wastewater line.
    - e) As provided in ORS 454.225, when wastewater charges are not paid when due, the amounts thereof, together with interest at the statutory rate and penalties from the due date, may be recovered using the procedures provided in Section 3.06.080, in an action at law brought by the City, or certified and presented to the County Assessor.
    - f) The liability for all accounts billed for wastewater only shall be that of the person who applied for service.
    - g) The City shall recover its costs and any reasonable attorney's fees in any action to recover charges pursuant to this Section.
  - 7) Storm Water Special User Unit (per ESU to the nearest 0.1 ESU): \$1.28.

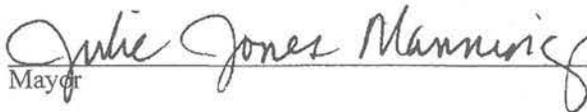
(Ord. 2013- § , Ord. 2012-15 § 1, 2012; Ord. 2011-19 § 1, 12/19/11; Ord. 2011-04 §1, 2/07/2011; Ord. 2010-29 §1, 12/06/2010; Ord. 2009-14 §1, 12/07/2009; Ord. 2008-19 §1, 12/01/2008; Ord. 2007-26 §1, 11/19/2007; Ord. 2007-02 §1, 02/05/2007; Ord. 2006-30 §1, 12/18/2006; Ord. 2006-07 §1, 04/03/2006)

**Section 2.** This ordinance shall become effective February 1, 2014.

PASSED by the City Council this 18<sup>th</sup> day of November, 2013.

APPROVED by the Mayor this 18<sup>th</sup> day of November, 2013.

EFFECTIVE this 1st day of February, 2014.

  
Mayor

ATTEST:

  
City Recorder

## Sample Monthly Bills

### Water Scenario 1:

Increase water fixed rates based on AWWA flow rate equivalencies.

Incorporate AWWA peaking factors in water volumetric rates.

Use a single common fire event methodology for the public fire charge.

\* The Public Fire Charge is incorporated in the Base Charge for current rates and therefore is not reflected in the Total Base Charge.

Customer	Units	Meter size	Base Charge	Public Fire Charge	Total Base Charge	Consumption Charge	Total Water Charge	Monthly \$ Difference
<i>Average residential customer:</i>								
SFR - current	6	3/4"	\$ 13.40	\$ 0.79	\$ 13.40	\$ 8.64	\$ 22.04	
SFR - proposed	6	3/4"	\$ 14.25	\$ 2.45	\$ 16.70	\$ 9.96	\$ 26.66	\$ 4.62
<i>Small apartment complex (8 apartments):</i>								
MFR - current	30	1"	\$ 26.00	\$ 7.50	\$ 26.00	\$ 60.90	\$ 86.90	
MFR - proposed	30	1"	\$ 27.29	\$ 3.92	\$ 31.21	\$ 43.20	\$ 74.41	\$ (12.49)
<i>Large apartment complex (90 apartments):</i>								
MFR - current	175	3"	\$ 73.51	\$ 65.63	\$ 73.51	\$ 355.25	\$ 428.76	
MFR - proposed	175	3"	\$ 226.62	\$ 34.31	\$ 260.93	\$ 252.00	\$ 512.93	\$ 84.17
<i>Restaurant:</i>								
Commercial - current	60	1"	\$ 26.00	\$ 7.50	\$ 26.00	\$ 127.80	\$ 153.80	
Commercial - proposed	60	1"	\$ 27.29	\$ 3.92	\$ 31.21	\$ 69.00	\$ 100.21	\$ (53.59)
<i>Grocery store:</i>								
Commercial - current	300	2"	\$ 45.34	\$ 18.75	\$ 45.34	\$ 639.00	\$ 684.34	
Commercial - proposed	300	2"	\$ 65.87	\$ 9.80	\$ 75.67	\$ 345.00	\$ 420.67	\$ (263.67)
<i>Large retail store:</i>								
Commercial - current	35	1 1/2"	\$ 34.81	\$ 9.38	\$ 34.81	\$ 74.55	\$ 109.36	
Commercial - proposed	35	1 1/2"	\$ 33.72	\$ 4.90	\$ 38.62	\$ 40.25	\$ 78.87	\$ (30.49)
<i>Commercial business:</i>								
Commercial - current	2100	10"	\$ 421.90	\$ 431.25	\$ 421.90	\$ 4,473.00	\$ 4,894.90	
Commercial - proposed	2100	10"	\$ 1,480.49	\$ 225.49	\$ 1,705.98	\$ 2,415.00	\$ 4,120.98	\$ (773.92)
<i>Large retail store irrigation meter:</i>								
Irrigation - current	30	1 1/2"	\$ 29.88	\$ -	\$ 29.88	\$ 71.70	\$ 101.58	
Irrigation - proposed	30	1 1/2"	\$ 24.61	\$ -	\$ 24.61	\$ 105.30	\$ 129.91	\$ 28.33

## Sample Monthly Bills

### Water Scenario 2:

Increase water fixed rates based on AWWA flow rate equivalencies.

Incorporate AWWA peaking factors in water volumetric rates.

Maintain separate fire event methodology for the public fire charge.

\* The Public Fire Charge is incorporated in the Base Charge for current rates and therefore is not reflected in the Total Base Charge.

Customer	Units	Meter size	Base Charge	Public Fire Charge	Total Base Charge	Consumption Charge	Total Water Charge	Monthly \$ Difference
<i>Average residential customer:</i>								
SFR - current	6	3/4"	\$ 13.40	\$ 0.79	\$ 13.40	\$ 8.64	\$ 22.04	
SFR - proposed	6	3/4"	\$ 14.25	\$ 0.79	\$ 15.04	\$ 9.96	\$ 25.00	\$ 2.96
<i>Small apartment complex (8 apartments):</i>								
MFR - current	30	1"	\$ 26.00	\$ 7.50	\$ 26.00	\$ 60.90	\$ 86.90	
MFR - proposed	30	1"	\$ 27.29	\$ 7.50	\$ 34.79	\$ 43.20	\$ 77.99	\$ (8.91)
<i>Large apartment complex (90 apartments):</i>								
MFR - current	175	3"	\$ 73.51	\$ 65.63	\$ 73.51	\$ 355.25	\$ 428.76	
MFR - proposed	175	3"	\$ 226.62	\$ 65.63	\$ 292.25	\$ 252.00	\$ 544.25	\$ 115.49
<i>Restaurant:</i>								
Commercial - current	60	1"	\$ 26.00	\$ 7.50	\$ 26.00	\$ 127.80	\$ 153.80	
Commercial - proposed	60	1"	\$ 27.29	\$ 7.50	\$ 34.79	\$ 69.00	\$ 103.79	\$ (50.01)
<i>Grocery store:</i>								
Commercial - current	300	2"	\$ 45.34	\$ 18.75	\$ 45.34	\$ 639.00	\$ 684.34	
Commercial - proposed	300	2"	\$ 65.87	\$ 18.75	\$ 84.62	\$ 345.00	\$ 429.62	\$ (254.72)
<i>Large retail store:</i>								
Commercial - current	35	1 1/2"	\$ 34.81	\$ 9.38	\$ 34.81	\$ 74.55	\$ 109.36	
Commercial - proposed	35	1 1/2"	\$ 33.72	\$ 9.38	\$ 43.10	\$ 40.25	\$ 83.35	\$ (26.01)
<i>Commercial business:</i>								
Commercial - current	2100	10"	\$ 421.90	\$ 431.25	\$ 421.90	\$ 4,473.00	\$ 4,894.90	
Commercial - proposed	2100	10"	\$ 1,480.49	\$ 431.25	\$ 1,911.74	\$ 2,415.00	\$ 4,326.74	\$ (568.16)
<i>Large retail store irrigation meter:</i>								
Irrigation - current	30	1 1/2"	\$ 29.88	\$ -	\$ 29.88	\$ 71.70	\$ 101.58	
Irrigation - proposed	30	1 1/2"	\$ 24.61	\$ -	\$ 24.61	\$ 105.30	\$ 129.91	\$ 28.33