

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #3-17/18 – Amending Chapter 12, “Housing,” regarding Housing Security. First reading. Passage requires majority vote.

Position:

On April 19, 2017, the City Council extended the mandate for the ad-hoc Affordable Housing Committee and asked the group to begin work on a handful of policies related to renter security that were discussed at the March 13, 2017 Council Workshop. The Committee was also asked to continue their work from the previous year to further explore several recommendations outlined in their 2016 Affordable Housing Report to City Council, which includes a total of 26 actions and policies.

The policy issues the Council asked the Committee to tackle first included:

1. Creation of an education program for renters and landlords
2. Codification of anti-discrimination in housing in the City’s code of ordinances
3. Extending the notice period required for rent increase
4. Exploring the feasibility of a Rental Unit Registration Program

Since the spring, the Committee has been meeting regularly and has divided its tasks into three phases. Phase 1 is an amendment to Chapter 12 (Housing) of City Code, which as proposed covers the first three items listed above. Phase 2 will explore the feasibility of a Rental Unit Registration program. Phase 3 will further develop certain policies recommended in the Committee’s 2016 Report.

The amendments to Chapter 12 as proposed by the Committee would create a new Article IX (Housing Security). Definitions have been added for Discrimination, Landlord, and Tenant, and the definition of Dwelling Unit has been updated. The Housing Security Ordinance accomplishes the Council’s stated goals of codifying anti-discrimination in housing, extending the notice period for rent increases from 45 to 75 days, and creating an educational disclosure form for renters and landlords that describes their rights and responsibilities, tenancy at will, required disclosures, and a link to information and housing-related resources listed on the City website.

In addition to the ordinance, the Committee is proposing to roll out an education program with three key components. The first is the disclosure form described above. The second is an online information portal (webpage) that provides a variety of information and resources for tenants and landlords. The third is a series of educational events that are topical, covering a variety of housing issues, and serve several groups in the City with different housing needs (i.e. first time renters, first time homebuyers, seniors looking to downsize, owner training on

building codes and maintenance, etc.) The Council is not being asked to take action on the proposed education program but the Committee would like the Council to be aware that this is also being pursued.

Requested Action:

Council passage of first reading of the ordinance and set August 21, 2017 as the date for the City Council's public hearing and final action on the ordinance.



City Manager



Rights and Responsibilities of Tenants and Landlords

Federal and State Law regulate tenant and landlord relationships, in addition to the Ordinances of the City of South Portland. There are many housing-related resources and information available on the City of South Portland Housing Resources webpage. However, in the event of a grievance it is recommended that individuals obtain professional legal advice, as necessary.

City of South Portland – Housing Resources Webpage

INSERT URL HERE

Tenancy at Will

When a tenant rents a dwelling unit without a written lease, or when a tenant continues to live in a dwelling unit after the term of a lease has expired, that tenant is a “tenant at will”. For a tenancy at will, landlords must typically provide at least 30 days written notice to tenants that they must move out, and tenants must also typically provide landlords with at least 30 days written notice if the tenant chooses to move. However, the landlord cannot require a tenant to move out until after the last date for which rent has been paid. For example, if a tenant has already paid rent to the landlord through September 30th, then a landlord’s notice cannot end before September 30th. Landlords do not have to provide a reason for asking the tenant to leave, and tenants do not have to provide a reason for moving. A landlord and tenant may agree, in writing, to a shorter notice period.

Exceptions to 30-day Rule: A landlord may evict a tenant at will with a minimum 7-day written notice if the tenant: (1) has caused serious damage to the apartment and has not repaired the damage; (2) has been a nuisance to other tenants or neighbors; (3) has made the unit unlivable or unfit to live in; (4) has changed the door locks and refused to give the landlord a key; and/or (5) is 7 days or more behind in rent. If a tenant is a victim of domestic violence, sexual assault, or stalking, then the tenant may give the landlord a minimum 7-day written notice that they intend to move out.

If the building where the tenant lives has been sold and the new landlord does not intend to continue the tenancy at will, then they must give either a 30-day written notice or 7-day written notice of eviction, as described above, unless the former landlord already gave the tenant written notice.

If you are a tenant at will, then your landlord must return your security deposit within 21 days after you moved out and returned the keys, or send you a letter explaining why they are not returning some or all of the deposit.

Rent Increases

In the City of South Portland, landlords are required to give tenants a 75 calendar day written notice of any rent increase.

Contesting an Action of the Landlord

Tenants have the right to contest the landlord's decision in court and it is recommended that tenants seek legal advice prior to making any decision to pursue legal proceedings.

Required Forms & Informational Material

Landlords must provide the following informational material and forms to tenants:

- Energy Efficiency Disclosure
- Lead Paint Pamphlet "Protect Your Family From Lead in Your Home"
- Lead Paint Disclosure (Pre-1978 Construction)
- Smoking Policy Disclosure (to be drafted by the landlord)
- Radon in Rental Housing Pamphlet
- Radon Disclosure

By signing below, landlords and tenants acknowledge that they have read and understand the information contained within this document and landlords have provided tenants with copies of the informational material and forms noted above.

Landlord _____ Date _____

Tenant _____ Date _____

Tenant _____ Date _____



Housing Resources List

(Example of resources to be listed on City webpage)

Maine Rental Housing Guide (MaineHousing)

<http://www.mainehousing.org/docs/default-source/rental/rental-housing-guide.pdf>

Maine Attorney General Housing webpage, including Model Lease

<http://www.state.me.us/ag/consumer/housing/index.shtml>

Rights of Tenants in Maine Guide (Pine Tree Legal)

<http://ptla.org/rights-tenants-maine#>

U.S. Department of Housing & Urban Development (HUD) – Rental Help in Maine

<https://portal.hud.gov/hudportal/HUD?src=/states/maine/renting>

Maine DHHS – Housing & Homelessness

http://www.maine.gov/dhhs/housing_homeless.shtml

Maine Human Rights Act – Fair Housing

<http://www.maine.gov/mhrc/housing.shtml>

Maine Human Rights Commission – Filing a Complaint

http://www.maine.gov/mhrc/file_a_complaint/index.htm

Opportunity Alliance – Housing & Energy Services

<http://www.opportunityalliance.org/programs/housing-and-energy-services/>

HoMEworks – Homebuyer Education

<http://www.mainehomeworks.org/>

South Portland Housing Authority

<http://www.spha.net/>

Avesta Housing

<http://www.avestahousing.org/>

The Breathe Easy Coalition – Smoke Free Housing

<http://smokefreeforme.org/>

Maine CDC – Division of Environmental Health – Free Lead Test Kit

<http://www.maine.gov/dhhs/mecdc/environmental-health/eohp/lead/lead-kit-request.html>

Southern Maine Landlords Association (SMLA)

www.smlamaine.com

Maine HoMEworks – Landlord Education

<http://www.mainehomeworks.org/landlord/>

Maine Apartment Owners and Managers Association

<http://www.maineapartmentowners.com/>

Landlord Obligations & Information (MaineHousing)

<http://www.mainehousing.org/programs-services/rental/landlords>

National Fire Protection Association (NFPA) – Codes, Standards & Education

www.nfpa.org

South Portland Fire Department – Fire Prevention Division

<http://www.southportland.org/departments/fire-department/fire-divisions/fire-prevention-division/>

State of Maine – Office of the State Fire Marshall

www.maine.gov/dps/fmo/index.htm

South Portland Code of Ordinances

<http://www.southportland.org/our-city/code-ordinance/>

American Red Cross – Home Fire Campaign

<http://www.redcross.org/local/maine/home-fire-safety>

Required Forms & Informational Material

Landlords must provide the following informational material and forms to tenants:

Rights and Responsibilities of Tenant and Landlords (City of South Portland)

INSERT URL HERE

Energy Efficiency Disclosure

<http://www.maine.gov/mpuc/online/forms/EnergyEfficiencyDisclosure.html>

Lead Paint Pamphlet “Protect Your Family From Lead in Your Home”

<https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>

Lead Paint Disclosure

<http://www.maine.gov/dep/waste/lead/documents/lease.pdf>

Smoking Policy Disclosure (written notice to be provided by the landlord)

Radon Disclosure Statement

<http://www.maine.gov/dhhs/mecdc/environmental-health/rad/radon/documents/Maine%20radon%20gas%20disclosure-final.pdf>

Radon in Rental Housing Pamphlet

<http://www.maine.gov/dhhs/mecdc/environmental-health/rad/radon/documents/2013%20tipsheet%2011.pdf>



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City Manager

EMILY F. SCULLY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

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District Two
PATRICIA A. SMITH

District Three
EBEN ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
Maxine R. Beecher

At Large
SUSAN J. HENDERSON

**IN CITY COUNCIL
ORDINANCE #3-17/18**

THE COUNCIL of the City of South Portland hereby ordains that Chapter 12, "Housing," of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

ARTICLE I. IN GENERAL

Sec. 12-1. Definitions.

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Discrimination: The unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religion, sex, sexual orientation, familial status, ancestry, national origin, age, physical or mental disability, and based on receipt of public assistance, as provided in 5 M.R.S. § 4581-A, as amended from time to time.

• • •

Dwelling unit: Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating, including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

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Landlord: An owner, manager, lessee, sublessee, managing agent or other person having the right to rent or sell or manage any dwelling unit or rental property or any agent of these individuals or entities.

• • •

Tenant: An individual, individuals, an entity, entities, a lessee or sub-lessee, or other person having the right to rent any dwelling unit or rental property or any agent of these individuals or entities. This definition includes a tenant at will as described in 14 M.R.S. § 6002, as amended from time to time.

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Secs. 12-202--12-219. Reserved.

ARTICLE IX. HOUSING SECURITY

Sec. 12-220. Purpose.

The purpose of this Article is to address housing insecurity in the City of South Portland; to prohibit discrimination and ensure equal housing opportunity for residents of the City of South Portland without regard to, among other things, receipt of public benefits; to minimize the potential adverse impacts of short-notice rent increases; and to educate tenants and landlords of their rights and responsibilities.

Sec. 12-221. Applicability.

This Article shall apply to any and all dwelling units within the City limits of South Portland.

Sec. 12-222. Discrimination prohibited in sale or rental of dwelling units.

- (a) A Tenant shall have the right to secure a rental dwelling unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin, or familial status, pursuant to 5 M.R.S. § 4581-A, et seq., as amended from time to time.
- (b) A Landlord shall not refuse to rent or impose terms of tenancy on any Tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. § 4581-A(4), as amended from time to time.

Sec. 12-223. Notification of rent increases.

Notwithstanding 14 M.R.S. § 6015, as amended from time to time, a Landlord shall give seventy-five (75) calendar days' written notice of any rent increase to a Tenant. An acknowledgement of the written notice described above must be signed by all Tenants, and a copy kept on file by the Landlord for at least six (6) years and made available for

inspection at the request of the City of South Portland. In the event a Tenant refuses to sign an acknowledgement of the written notice, a Landlord may give notice to Tenant under this section by mailing the notice first class mail, postage prepaid, addressed to Tenant's last known mailing address, and obtaining a U.S. Postal Service certificate of mailing. The time when notice is given shall be the date Tenant receives it. The U.S. Postal Service certificate of mailing to Tenant shall be conclusive proof of receipt by Tenant on the 3rd calendar day after mailing. A copy of the certificate of mailing shall be kept on file by the Landlord for at least six (6) years and made available for inspection at the request of the City of South Portland.

Landlord may obtain the signature of Tenant by electronic signature pursuant to the Uniform Electronic Transactions Act if Landlord and Tenant have agreed to conduct transactions by electronic means.

Sec. 12-224. Tenant and Landlord rights and responsibilities.

- (a) The City Manager or his/her designee shall create and make available on the City's publically accessible web site a plain language document that explains tenancy at will and the rights and responsibilities of Tenants and Landlords of rental dwelling units. That document shall also include a checklist of required notices concerning environmental lead hazards, energy efficiency or radon testing, pursuant to 14 M.R.S. §§ 6030-B, 6030-C, and 6030-D, respectively, as amended from time to time.
- (b) The document referenced above shall be provided by Landlords to all Tenants in the City of South Portland at the commencement of the rental of a dwelling unit. It shall be the responsibility of the Landlord to ensure the most current version of the document is provided when required.
- (c) An acknowledgement of receipt of the document described above must be signed by all Tenants prior to the Tenants taking possession of the dwelling unit, and a copy of the acknowledgement kept on file by the Landlord for at least six (6) years and made available for inspection at the request of the City of South Portland.
- (d) Landlord may obtain the signature of Tenant by electronic signature pursuant to the Uniform Electronic Transactions Act if Landlord and Tenant have agreed to conduct transactions by electronic means.

Sec. 12-225. Variation by agreement.

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage or induce a Tenant to waive any provision hereof or right hereby shall be a violation of this Article. Nothing herein shall be construed to void any term of a lease that offers greater rights than those conferred hereby.

Sec. 12-226. Limitation of liabilities.

- (a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and
- (b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

Sec. 12-227. Enforcement and penalties.

- (a) Notwithstanding any other provision of this chapter to the contrary, it shall be the duty of the Code Enforcement Officer to enforce sections 12-223, 12-224 and 12-225 of this chapter. Any person who is found to be in violation of sections 12-223, 12-224 or 12-225 of this chapter shall be initially subject to a letter of warning from the Code Enforcement Officer. A second violation of sections 12-223, 12-224 or 12-225 of this chapter shall be punishable by a civil penalty of five hundred dollars (\$500); a third violation of sections 12-223, 12-224 or 12-225 of this chapter shall be punishable by a civil penalty of one thousand dollars (\$1,000); and any subsequent violation of sections 12-223, 12-224 or 12-225 of this chapter shall be punishable by a civil penalty of one thousand five hundred dollars (\$1,500). Each violation of sections 12-223, 12-224 or 12-225 of this chapter shall constitute separate offenses. Violators may be subject to legal action brought by the City seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief. All civil penalties shall inure to the benefit of the City of South Portland.
- (b) Notwithstanding any other provision of this chapter to the contrary, any violation of section 12-222 of this chapter shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. § 4551 et seq., as amended from time to time.
- (c) Any person aggrieved by a determination by the Code Enforcement Officer that a violation of sections 12-223, 12-224 or 12-225 of this chapter has occurred may appeal such a determination to the Board of Appeals in accordance with the administrative appeal provisions in Chapter 27 of the Code of Ordinances.

Sec. 12-228. Severability.

The provisions of this Article are severable. If any of its provisions are held invalid by act of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

Sec. 12-229. Effective date; Applicability date.

This Article shall become effective pursuant to Section 225 of the City Charter. In order to allow time for Landlords and Tenants to become familiar with the requirements of this ordinance, and notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to

the contrary, this Article as evidenced by Ordinance #3-17/18, when enacted, shall govern any tenancy commenced on or after October 1, 2017. For purposes of this Article, neither a tenancy at will created by a hold-over tenant at the end of a lease for a specific term nor the extension of a lease term is considered a new tenancy.

Secs. 12-230--12-250. Reserved.

Fiscal Note: Less than \$1,000

Dated: August 7, 2017