



CITY OF SOUTH PORTLAND

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City Manager

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City Clerk

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District Two
KATHERINE W. LEWIS

District Three
MISHA C. PRIDE

District Four
LINDA C. COHEN

District Five
DEQA DHALAC

At Large
RICHARD T. MATTHEWS

At Large
NATALIE E. WEST

IN COUNCIL
SUBSTITUTE ORDINANCE #17-22/23
AS AMENDED 3/7/2023

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 (additions are underlined; deletions are ~~struck out~~):

Chapter 12

HOUSING

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ARTICLE XII. RENT STABILIZATION

Sec. 12-501. Title; Purpose.

This Article shall be known as the "City of South Portland Rent Stabilization Ordinance." The purpose of the ordinance is to address increasing rental costs within the City; to stabilize and make more predictable future rent increases; and to provide Landlords with a fair and reasonable return on their investment.

Sec. 12-502. Definitions.

Notwithstanding any other provision of this chapter to the contrary, as used in this Article, the following words and phrases shall have the meanings ascribed to them in this section.

Affiliate means, with respect to an Owner: (a) any partnership in which that Owner, or a spouse or domestic partner of that Owner, is a general partner, as well as any other general partner of that partnership; (b) any limited liability company of which that Owner, or a spouse or domestic partner of that Owner, is a member or manager; (c) any corporation or other entity of which that Owner, or a spouse or domestic partner of that Owner, is: (i) a director or officer; or (ii) in Control; (d) any individual who is a spouse or domestic partner of that Owner; (e) a general partner of an Owner that is a partnership, a member or manager of an Owner that is a limited liability company, or a director or officer of that Owner; (f) a Person that is in Control of that Owner or that is Controlled by that Owner; and (g) an Affiliate of a Person that is otherwise an Affiliate of that Owner.

Annual Rent Adjustment means the maximum percentage amount by which the Rent for an existing tenancy in a Housing Unit may be increased within a 12-month period.

Applicability Date means May 27, 2023.

Base Rent means the reference point from which the Annual Rent Adjustment shall be determined. For tenancies commencing on or before January 1, 2023 that remain in effect as of the Applicability Date, the initial Base Rent is the monthly rent in effect on January 1, 2023. For tenancies commencing after January 1, 2023 that are in effect as of or after the Applicability Date, the initial Base Rent is the monthly rent set forth in the Lease or Rental Agreement, or if there is no Lease or Rental Agreement, the amount charged by the Landlord upon the commencement of the first residential tenancy in the Housing Unit after January 1, 2023.

Control by an Owner means the direct or indirect ownership, control, or holding with power to vote, by that Owner of 20% or more of the outstanding voting securities issued by, or other ownership interests in, a Person, other than an Owner who holds such securities or ownership interests as a fiduciary or agent without sole discretionary power to vote the securities or ownership interests, or solely to secure a debt, if the Owner has not, solely or with others, exercised the power to vote or otherwise exercise management control over that Person.

Control of an Owner means directly or indirectly owning, controlling, or holding with power to vote, 20% or more of outstanding voting securities issued by, or other ownership interests in, that Owner, by a Person, and any spouse or domestic partner or Affiliate of that Person, other than one that holds such securities or ownership interests as a fiduciary or agent without sole discretionary power to vote the securities or ownership interests, or solely to secure a debt, if that Person has not, either solely or with others, exercised the power to vote or otherwise exercise management control over that Owner.

Effective Date means the Effective Date as set forth in Sec. 12-507 of this Article.

General Assistance program means the service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families and as further defined in 22 M.R.S. § 4301(5), as may be amended from time to time.

Housing Services means those services that the Landlord was contractually required to provide as of the date on which the currently effective Base Rent for that Housing Unit was established, in connection with a Lease Tenancy or Tenancy at Will in a Housing Unit, which may include, but are not limited to: repairs; replacement; maintenance; painting; light; heat; water; elevator service; laundry facilities and privileges; janitor service; trash removal; furnishings; appliances; telephone; parking; any rights permitted the Tenant under the terms of a Lease or Rental Agreement, including the right to have a specific number of occupants and the right to keep pets; and any other benefits, privileges or facilities.

Housing Unit means one or more rooms, including a building, physically located within the City and that form a single unit used or intended for use as a residence under the terms of a Lease or Rental Agreement.

Landlord means the Owner(s) of a Housing Unit, or the sub-lessor(s) of a Housing Unit, and any Person acting as an agent, representative, successor, or assignee of any such owner or sub-lessor with respect to the Housing Unit.

Lease means a written agreement between, and signed by, a Landlord and a Tenant, or a sub-lessor and a subtenant, for the lease or sub-lease of a Housing Unit for residential purposes during a Lease Term, including any amendments to, and extensions of, that agreement, but shall not include any agreement to the extent that it creates a Tenancy at Will.

Lease Tenancy means any tenancy, other than a Tenancy at Will, created in a Lease.

Lease Term means the period, including any extensions of the same, during which the tenancy granted to the Tenant in a Lease is to run as provided in that Lease, unless earlier terminated as provided in that Lease for breach of its terms or other contingent event.

Notice to Increase Rent means a written notice provided by a Landlord to a Tenant that sets forth the amount of the increase in the monthly rent.

Owner means any Person that holds title, singly or with others, to one or more Housing Units in any manner that permits that Owner, by itself or in combination with other Owners of any such Housing Units, to create a Lease Tenancy or Tenancy at Will in those Housing Units.

Person means an individual, corporation, business or other trust, estate, limited or general partnership, limited liability company, association, joint venture, Affiliate, or any

other legal or commercial organization, and also includes any employee, agent, member, manager, independent contractor, servant, or other representative of the same with respect to a Housing Unit.

Rent means the monetary payment by a Tenant to a Landlord for the use and occupancy of a Housing Unit and any other charge or fee imposed for a Housing Service in the terms of a Lease or Rental Agreement other than increases resulting from, and not exceeding, increases in costs or expenses imposed by parties other than the Landlord, but which are incurred by the Landlord and that, under the terms of the Lease or Rental Agreement, are to be paid by the Tenant.

Rental Agreement means any written or oral agreement that creates or extends a Tenancy at Will for residential purposes in a Housing Unit.

Tenant means any individual, other than a Landlord, who becomes entitled to possession of a Housing Unit for residential purposes as a Tenant at Will or as the holder of a Lease Tenancy.

Tenancy at Will means a tenancy at will as that term is used in 14 M.R.S. § 6002, as may be amended from time to time, in or for any Housing Unit.

Tenant at Will means any Person who is in possession of, or is entitled to be in possession of, a Housing Unit as a party to and under the terms of a Rental Agreement.

Sec. 12-503. Exemptions.

The following Housing Units are exempt from the provisions of this Article:

- (a) Any Housing Unit for which the first certificate of occupancy was issued or after May 27, 2023;
- (b) Any Housing Unit for which the amount, or maximum amount, of Rent charged is otherwise controlled, limited, or set by a federal, state, or local governmental agency; provided, however, that any Housing Unit participating in the Housing Choice Voucher program shall maintain its exempt status only while the local public housing agency responsible for administering the Housing Choice Voucher program determines that the rent for the Housing Unit is reasonable; and provided further that the phrase "Rent . . . otherwise controlled, limited, or set by a federal, state, or local governmental agency" does not include Rent or any portion thereof that is paid by or through the General Assistance program;
- (c) Any Housing Unit owned, in whole or in part, by an Owner where that Owner and all Affiliates of that Owner at the time that the Housing Unit was or is rented to a

Tenant, are Owners of fifteen (15) or fewer Housing Units, not including Housing Units that are exempt under other subsections of this Sec. 12-503¹;

- (d) Any Housing Unit to the extent that the party occupying or in possession of the same holds only a tenancy at sufferance or license to use that Housing Unit, but does not hold any other tenancy in that Housing Unit;
- (e) Any Housing Unit or housing accommodations in a nonprofit hospital, religious facility, extended care facility, licensed residential care facility for the elderly, or continuing care retirement community facility;
- (f) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;
- (g) Housing Units and housing accommodations in which the Tenant shares bathroom or kitchen facilities with an individual Owner who maintains their principal residence at the residential real property;
- (h) Single-family Owner-occupied residences, including a residence in which the Owner-occupant rents or leases an “authorized accessory dwelling unit” as defined in Sec. 14-801 of Article XVII, Short-Term Residential Rentals, of Chapter 14 of the Code of Ordinances; or
- (i) “Short-term rentals” provided to “short-term rental guests,” as those terms are defined in Sec. 14-801 of Article XVII, Short-Term Residential Rentals, of Chapter 14 of the Code of Ordinances.

Sec. 12-504. Prohibitions; Base Rent Reset.

- (a) Subject to subsection (c) below, no Landlord shall increase the Rent for any Lease Tenancy or Tenancy at Will, other than a week-to-week tenancy, in an amount that exceeds the Annual Rent Adjustment. This provision applies to any such increase that becomes effective on or after the Applicability Date.
- (b) Subject to subsection (c) below, no Landlord shall increase the Rent for any Lease Tenancy or Tenancy at Will, other than a week-to-week tenancy, more than once in a 12-month period. This limit shall apply irrespective of the number of different Tenants occupying the Housing Unit during the 12-month period or of any change of any Owner of the Housing Unit during the 12-month period.
- (c) Base Rent Reset. A Landlord may establish a new Base Rent for a Tenant under a new Lease or Rental Agreement entered into after a Housing Unit has

¹ For example, if an Owner and its Affiliates own 22 Housing Units and 12 of those Housing Units are exempt under Sec. 12-503(a), then the 10 non-Sec. 12-503(a) exempt Housing Units are exempt under Sec. 12-503(c).

become completely vacant. This subsection does not apply to partial changes in occupancy of a Housing Unit where one or more of the occupants of the Housing Unit remains an occupant in lawful possession of the Housing Unit or where a lawful sublessee or assignee remains in possession of the Housing Unit. Nothing herein shall be construed to enlarge or diminish an Owner's right to withhold consent to a sublease or assignment.

- (d) Any Rent increase permitted for a particular Housing Unit under this Article that a Landlord chooses not to impose in part or in full for that Housing Unit shall expire and shall not be carried forward with the Housing Unit or be imposed with respect to that tenancy or any subsequent tenancies in that Housing Unit.
- (e) Any late charges or fees imposed by a Landlord for non-payment or late payment of any increase in Rent not permitted by this Article are prohibited.
- (f) Unless the Housing Unit is exempt under Sec. 12-503, no Landlord shall reduce any Housing Services provided to any Tenant or Housing Unit except as part of a Base Rent reset as provided under subsection (c) above.

Sec. 12-505. Annual Rent Adjustment; Notice to Increase Rent; Exception.

- (a) The Annual Rent Adjustment is 10%. A Tenant may not waive this limitation on the increase in Rent.
- (b) Except as otherwise provided in subsection (d) below, any increase in Rent will not be effective until 90 calendar days after the Landlord delivers a written Notice to Increase Rent as required by Sec. 12-223 of Article IX. The content of the Notice to Increase Rent provided to a Tenant shall include the information as prescribed by Sec. 12-223(a) of Article IX.
- (c) An increase in the Rent of a Housing Unit otherwise permitted by the terms of this Article and the terms of the Lease or Rental Agreement for a tenancy in that Housing Unit to occur during the period on or after the Applicability Date and on or before August 24, 2023 may be made, but shall not become effective until 90 calendar days after the Landlord delivers a written Notice to Increase Rent as otherwise required by Sec. 12-505(b).
- (d) Notwithstanding Sec. 12-223 of Article IX or any other provision of law to the contrary, a Landlord may not increase the Rent for any week-to-week tenancy without giving the Tenant written notice at least seven (7) days prior to the effective date of the Rent increase. A Landlord must comply with all other provisions of Sec. 12-223 of Article IX with respect to any increase in Rent for a week-to-week tenancy in a Housing Unit, and, with respect to any increase in Rent permitted by this Article with respect to all other tenancies subject to this Article, a Landlord must comply with all provisions of Sec. 12-223. Any failure of a Landlord to comply with the applicable portions of Sec. 12-223 for any

particular Rent increase shall mean that the increase is not permitted by this Article.

- (e) Exception: Any Housing Unit for which the amount, or maximum amount, of Rent charged does not exceed the then-current U.S. Department of Housing and Urban Development (HUD) fair market rent as defined in 24 C.F.R. § 888.113, as may be amended from time to time, for the Portland, Maine HUD Metro Fair Market Rent Area, which area includes South Portland, is exempt from this Section and from the notice provisions of Sec. 12-506, but any increase in Rent must still comply with Sec. 12-223 of Article IX.

Sec. 12-506. Required Notice to Tenants.

(a) Written Notice to Tenants.

(i) Landlords must inform Tenants in any non-exempt Housing Unit of the existence of this ordinance as follows:

A. For any tenancy commenced or renewed on or after the Applicability Date, the notice language set forth in subsection (a)(i)(C) below must be included in the Lease or Rental Agreement. If any such Rental Agreement is oral, then the Landlord must deliver this notice to the Tenant in a writing signed by the Landlord at or before the time that the tenancy is granted to the Tenant.

B. For any tenancy existing prior to the Applicability Date, the notice language set forth in subsection (a)(i)(C) below must, on or before the last day of the month following the Applicability Date, be mailed or otherwise delivered to the Tenant in a written addendum to the Lease or Rental Agreement, or in another written notice, signed by Landlord.

C. The notice language shall be in no less than 12-point type and shall include the following: "City ordinance limits the amount your rent can be increased. See Article XII of Chapter 12 of the South Portland Code of Ordinances for more information."

(ii) Any Landlord claiming an exemption under Sec. 12-503 must provide a written notice to the Tenant concurrent with any Notice to Increase Rent or may include the notice in a Lease or Rental Agreement. If any such Rental Agreement is oral, then the Landlord must deliver this notice to the Tenant in a writing signed by the Landlord at or before the time that the tenancy is granted to the Tenant. The notice language shall be in no less than 12-point type and shall include the following: "This property is not subject to the rent limits imposed by Secs. 12-504 and 12-505 of the South Portland Code of Ordinances, which includes a prohibition on rent

increases more than 10% and/or multiple rent increases during a 12-month period for certain Housing Units. This property is exempt from those requirements due to meeting one or more of the criteria listed in Sec. 12-503 of the South Portland Code of Ordinances.” If Landlord does not provide the required notice, then the Housing Unit is not exempt from the Rent increase limit provisions.

(b) The provisions of Sec. 12-223(b) of Article IX shall apply to delivery of any notice required by this Sec. 12-506.

Sec. 12-507. Effective Date; Applicability Date; Sunset Provision.

This Article shall become effective pursuant to Sec. 225 of the City Charter (the “Effective Date”). Notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, and regardless of the Effective Date, this Article when enacted shall apply on or any time after May 27, 2023, the Applicability Date as defined herein. This Article shall be automatically repealed on May 27, 2030.

Sec. 12-508. Non-Waivability.

The provisions and requirements of this Article may not be waived, and any term of any Lease, Rental Agreement, contract, or other agreement that purports to waive or limit a Tenant’s substantive or procedural rights under this Article is contrary to public policy, unenforceable, and void.

Sec. 12-509. Conflicts; Savings Clause.

Any provisions of the City’s ordinances that are inconsistent with or conflict with the provisions of this Article are hereby repealed to the extent applicable. If any section or provision of this Article is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Sec. 12-510. Violations.

A Landlord’s failure to comply with any requirement of this Article is an affirmative defense in a forcible entry and detainer or other action brought by a Landlord to recover possession of a Housing Unit to the extent that such action is based upon a failure of the Tenant to pay any Rent increase that is not permitted by this Article, or in any action to seek collection of any Rent increase not permitted by this Article.

Fiscal Note: Less than \$1,000

Date: February 21, 2023