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UTILITY CHARGES FOR WATER AND SEWER IN MANUFACTURED HOUSING PARKS AND FLOATING HOME MARINAS

This handout describes how, under Oregon law, a landlord of a manufactured home park (“park”) or a floating home marina (“marina”) (collectively referred to as facilities) may recover the cost of providing water and wastewater/storm water utility service to tenants of parks and marinas. “Recover” generally refers to how a landlord bills tenants for that utility service. This handout also describes when and how a landlord may change that method of recovery. And, finally, it describes the rights tenants have when it comes to utility billing.

Unless otherwise stated, these provisions apply equally to park tenancies and marina tenancies. Park tenants own and occupy their manufactured home and rent a space for it in a “park,” defined as four or more spaces for rent for manufactured homes. There are approximately 80,000 manufactured homeowners in approximately 1,000 parks in Oregon. There are approximately 1,500 floating homeowners who rent a slip for their home in approximately 50 marinas, defined as four or more slips, in Oregon.

1. GENERAL RULES

a. Under Oregon law, **landlords are required to provide water and wastewater connections** to the homes in parks and marinas, per Oregon Revised Statute (ORS) 90.730 (3) (a) and (c). Some local governments also require provision for disposal of storm water.

b. Landlords are also required to provide a written statement of policy to prospective tenants, describing, among other things, (i) what utilities are available along with who furnishes them and who is responsible for paying for them and (ii) the **policy regarding the method of billing for those utilities**. There must be a written rental agreement attached to the statement of policy, per ORS 90.510.

c. There are multiple possible utilities that a landlord may provide, such as electricity and garbage and cable TV/internet, per ORS 90.315. This **handout only addresses water and wastewater** (what goes down your sink drains and toilets into a sewer or septic system) - in other words, water into the home and water out of the home, along with storm water (rain runoff).

d. Generally, with some exceptions, Oregon law does not allow a landlord to **amend the written rental agreement** without the consent of the tenant. One of those exceptions has to do with water billing, as explained in this handout, per ORS 90.512 (4) (b).

e. The **statutes** governing all this are found in [ORS Chapter 90](#), specifically in ORS sections 90.560 to 90.584.

f. A **landlord violation** of these statutes entitles the tenant to recover the greater of one month's rent or twice the tenant's actual damages per ORS 90.582 (3).

g. This handout does not address billing for water provided by the landlord from a **well** that the landlord owns.

h. **New parks built, or expanded to more than 200 spaces, after June 23, 2011**, must use submeter billing for the new/expanded-over-200 spaces per ORS 90.580 (5). Any park with 200 or more spaces was required to use submeter billing after December 31, 2012, unless the water comes from a well. There is an exception to this requirement for large parks described in ORS 90.578 (3), but it is not outlined in this handout. These rules apply only to parks and not to marinas.

i. Except for conversions from rent-included billing to pro rata billing, a **landlord is not required to test or maintain the water lines** within a tenant's space. See 'CONVERSIONS FROM ONE BILLING METHOD TO ANOTHER' below.

2. BILLING METHODS

A landlord may recover for the cost of providing water/wastewater in one or more of the following billing methods. The landlord may choose any one or more of these (for example, submeters for water billing for a tenant's space combined with pro rata billing for water use in common areas), as long as the landlord describes that choice in written documents given to the tenant at the beginning of the tenancy. After that, there are statutes that govern how a landlord determines the amount of the bill, how the landlord collects the bill, and if and how a landlord may change the water billing method. Those rules are described in this handout.

These are the **allowable billing methods**:

a. **Direct billing**, in which the utility provider provides the utility service directly to the tenant and the provider bills the tenant (for example, electricity or garbage). The landlord has no direct role in providing or billing for the utility service. The relationship is solely between the tenant and the utility provider. This method is rare for water service.

*NOTE: In the remaining billing methods, the **relationship among the water utility provider, the landlord, and the tenant is the same**, but they differ in how the cost is assessed or apportioned. The water utility provider provides water to the park, as measured by a master meter which measures all of the water into the park, and bills the landlord for the cost as measured by that master meter. The landlord has pipes within the park which deliver the water to the space and any common areas and other pipes which take away the wastewater and storm water to a sewer or septic system.*

b. **Rent-included billing**, meaning that the cost of the provision of water and wastewater/storm water service is included in the rent that the tenant pays, just as with most other landlord expenses, such as property taxes and maintenance and management. There is no individual assessment of the cost of the utility. The practical result is similar to pro rata billing, except that the tenant never sees the actual utility charge broken out separate from the rent.

c. **Pro rata billing**, in which the landlord bills the tenant for a portion (pro rata means ‘in proportion’) of the water provider’s charges to the landlord, in equal portions to the tenants. Those portions could be based on the number of occupied spaces (for example, if there are ten spaces with a tenant residing in the manufactured home, each tenant pays one-tenth) or some other reasonable measurement that correlates with consumption or use of the service (for example, the number of occupants in the home

compared to the number of all occupants in the park, since more occupants generally means more water consumed). This is outlined in ORS 90.568.

d. **Submeter billing**, in which the landlord installs a submeter on the water line into the tenant's space or home and measures the actual water consumption by the tenant. The landlord then reads the meter to confirm the tenant's consumption or arranges with a third party company (not the landlord or a company owned by the landlord) to read the meter, probably remotely. Then whichever party read the meter bills the tenant; see 'ADDITIONAL NOTES ABOUT BILLING' below for more information. This process is outlined in ORS 90.572.

e. **Park specific billing**, in which the landlord and the tenants agree to convert from a different billing method to one that a majority of tenants support and that allocates the cost for water and wastewater service fairly among the tenants. The landlord does not collect more from all tenants than the water provider bills to the landlord. The landlord may not include any installation or repair costs to the water infrastructure required by the new billing method. Otherwise, this billing method is entirely up to the landlord and tenants.

3. ADDITIONAL INFORMATION ABOUT SUBMETERS

a. Per ORS 90.562 (5), the **landlord owns and must maintain** the submeter.

b. There is no requirement in Oregon law that a **landlord test** a submeter after installation, per ORS 90.580 (4) and ORS 90.574 (4). In fact, most experts say that failing submeters "read" water consumption "slow," so the tenant's water bill will be lower than it should be.

c. The landlord may **place the submeter** at the point at which the water line enters the space or anywhere within the space, including under the manufactured home, so long as the location does not interfere with the tenant's access to their home.

d. The landlord is responsible for ensuring that the submeter and the water line are adequately insulated or located **to prevent damage from freezing or weather**, per ORS 90.580 (2).

e. While generally a landlord or agents of the landlord, including a meter reading company, must give actual notice before entering the tenant's space, **no notice is required before they enter the space to read the meter** - but only to read the meter at reasonable times between 8 am and 6 pm, and no more than once a month per ORS 90.580 (3).

f. The **submeter bill may include** the following:

i. The **charge for the water into the space**, as measured by the submeter (at a rate no greater than the average rate the water provider charges the landlord);

ii. The charge for **wastewater as a percentage of the water bill**, if the water provider charges for sewer service as a percentage of water provided to the space. The assumption is that there is a correlation between water into the space and (waste) water flowing out of the space. Not all water providers do this;

iii. A pro rata portion of the **water provider's charge for sewer service**, for storm water (rain) and waste water, if not charged by the water provider as a percentage of the water into the space.

iv. A pro rata portion of any **public service charge**, see

ADDITIONAL NOTES ABOUT BILLING below for more information;

v. A pro rata portion of any utility **service to the common areas**, see ADDITIONAL NOTES ABOUT BILLING below for more information;

vi. A pro rata portion of any **base or service charge** billed to the landlord by the water provider, including any tax passed through by the provider; and

vii. A pro rata portion of the **cost to read the submeters** and to bill tenants but only if by a third party service, see ADDITIONAL NOTES ABOUT BILLING below for more information.

4. CONVERSIONS FROM ONE BILLING METHOD TO ANOTHER

a. **Background:** Conversion is a process by which a landlord may convert the original water billing method to another billing method. Except for park specific billing, a landlord may make this change to the written rental agreement unilaterally, meaning that the tenants have no control over the change, as long as the landlord follows the rules (statutes) described here. As noted earlier, this is unusual for park tenancies, where a landlord cannot make unilateral changes. The legislature changed the law to allow unilateral changes in water billing because recovery in the rent (“rent-included billing”) does not give tenants any control over their water bills and does not encourage water conservation. Many parks were built in the 1970s and 1980s, when water was inexpensive, so landlords simply included the cost to provide water in the rent. Water and wastewater disposal are no longer inexpensive. The most effective and fair way to bill for water is to measure the actual consumption and bill each tenant only for that. (Note that direct billing of a utility is essentially the same as submeter billing.)

Several years ago the Oregon Legislature took steps to encourage landlords to switch from rent-included billing to submeter billing. It was more expensive and complicated than anticipated, so the legislature has allowed landlords to also switch from rent-included billing to pro rata billing; the price signal mechanism is not as clear as with submeters, but it is better than with rent-included billing, and it avoids the capital expenses associated with installing submeters.

b. **Conversion to submeter billing** from either rent-included billing or pro rata billing (ORS 90.574):

i. At least **one month prior** to installing submeters, the landlord must do all of the following:

A. Give the tenants a **written “notice of conversion,”** describing the landlord’s intention to convert the water billing method; the proposed new water billing method (in this case, submeters); the landlord’s reason for the conversion; and the process and schedule for the conversion;

B. Give each tenant a **copy of this handout;** and

C. **Meet with the tenants** to explain the conversion and answer questions, including distributing a sample of the water bill after conversion with an explanation of each entry on the bill.

ii. After all of the above are complete, including the installation of the submeters, but before the landlord begins using submeter billing, the landlord shall treat the first three billing periods (monthly or other) as a **trial period** during which the landlord will continue with the initial billing method (rent-included or pro rata billing) but will give each tenant a mock-up of what the tenant’s bill would be if the billing method were by the submeter. This allows time for the landlord and the tenant to make sure that the

system is working properly before it goes “live” - to see if the meter is reading correctly, the pipes are not leaking, and the landlord or billing service is doing it right.

iii. If the landlord converts to submeters from rent-included billing, at the same time the landlord may convert to **pro rata billing for any common areas**, by including that in the notice required and explaining it at a tenant meeting.

iv. If the landlord converts to submeters from rent-included billing, the landlord must **reduce the rent** to reflect that the cost of water is being billed directly to the tenant and no longer included in the rent. This is not required for conversions from pro rata billing to submeters, since tenants with pro rata billing are already paying the cost of water separately from the rent.

v. The landlord determines **the amount of the rent reduction** by averaging the water and sewer service cost over the 12 months immediately preceding the first live billing using the submeter and applying it to reduce the rent, by a reasonably comparable amount, on a pro rata basis. Before that first live billing, the landlord must implement the required rent reduction and must provide the tenant with written documentation from the water provider showing the landlord’s cost during that 12 month look-back period. A landlord may offset all or part of the required rent reduction against a future rent increase provided in a fixed term rental agreement entered into prior to the notice of conversion.

A. The landlord may, after converting to submeters for the tenant’s space, continue to recover the cost of water service to common areas with the rent-included billing method. If so, then that cost need not be

backed out of the rent (the rent reduction). If the water provider cannot provide an accurate cost for that service, the landlord may assume that the cost of the water service for the common areas is 20 percent of the total amount billed during the 12 month look-back period (ORS 90.574 (8)).

vi. Installing submeters typically requires some **alteration** to the tenant's space, to connect the submeter to the water line where it can measure the tenant's water consumption. If the installation is next to or under the home, there may be alterations to the home itself, for example, the skirting. The landlord must give at least 24 hours actual notice (see ORS 90.725) before entering the space to do this work, and is responsible for restoring the space and the home to the previous condition per ORS 90.562 (5). Please note that landlords are responsible for damage done by their employees or contractors.

vii. The **cost** of the submeter itself (submeters that are accurate, require less maintenance, and can be read remotely are typically more expensive), and the cost to install it, plus any upgrades required to the water delivery system as a result, can be recovered by the landlord in the following ways:

A. By raising the rent; or

B. By imposing a special assessment pursuant to a **special assessment plan** (the "SAP") adopted unilaterally by the landlord. The concept of the SAP is to allow tenants to pay for the submeter installation outside of the rent. Tenants are sometimes concerned that their rent will not go down once the landlord has recovered costs; a separate charge is clearer to tenants. The plan may include only the landlord's actual costs, to be recovered on a pro rata basis from each tenant with payments due no

more frequently than monthly over a period of at least 60 months.

Payments must be stated separately from the water utility charge on the bill. Each tenant is entitled to a copy of the plan at least 90 days before the first payment is due. Payments may not be due before the completion of the installation (meaning when the submeter billing goes live, after the trial billing periods), and must begin within six months of the installation.

Payments must end when the plan ends. Note that the SAP provision is not applicable to marina tenancies.

viii. The landlord must amend the rental agreement to fairly describe the above provisions.

c. **Conversion to pro rata billing** from rent-included billing (also found in ORS 90.574):

i. Note that a landlord cannot switch from submeter billing to pro rata billing, only from rent-included billing, since with submeter billing the tenants will have likely already paid for the submeters, and submeter billing is more fair, since a tenant pays for the tenant's own consumption.

ii. The process for a landlord to convert from rent-included billing to pro rata billing is largely the same as the conversion to submeters, with some differences.

A. The following are the same: The notice to the tenants one month prior to the conversion with the explanation including the process and schedule, the requirement to provide this handout, and the meeting with tenants (b-i above); the conversion for common areas (b-iii above); the rent reduction/one year lookback (b-iv and b-v above); and the requirement to amend the rental agreement to fairly reflect these provisions (b-viii above).

B. The following are not the same as the conversion process to submeters: The trial billing period (b-iii above); the installation issues (b-vi above), and the special assessment plan (b-vii above). These are only applicable to conversion to submeters.

C. There is one additional requirement for the conversion to pro rata billing from rent-included billing that does not apply to the conversion to submeters. To make up for the loss in conservation and fairness achieved with submeters, a landlord who switches from rent-included billing to pro rata billing must also, after the conversion and at least every three years thereafter, test all water lines in the park (within the tenant's space and any common areas). The test results must be made available to tenants, and the landlord must repair any leaks discovered by the testing within a reasonable time. This is outlined in ORS 90.574 (5).

d. **Conversion to park specific billing** from rent-included billing or pro rata billing (ORS 90.584):

i. A landlord may propose to the tenants that they agree on any form of water billing so long as the method allocates the cost for water and wastewater service fairly among the tenants and the landlord does not collect more from the tenants than the utility provider bills the landlord. The landlord also may not include any repair or installation costs necessitated by the new billing method.

ii. Unlike landlord switches to pro rata billing or submeter billing, this is not a unilateral change. A majority of voting tenants must agree to this change, after a vote by ballot. A majority is calculated based on tenants who choose to vote, not a majority of all tenants, and each space gets one vote.

iii. The ballot may include no more than two choices and, if the ballot does include two choices, it must make clear that the tenant can vote yes for only one choice or no for both choices:

A. Conversion to the landlord's proposed park specific billing method; or

B. Conversion to either pro rata billing or submeter billing (consistent with the rules in this handout).

iv. The landlord must give the notice of conversion described above (b-i-A) at least one month before the vote and must hold the meeting described above (b-i-C) at least one week before the vote.

v. Park specific billing is not available for marina tenancies. Additionally, it is not available for a conversion from submeter billing.

5. ADDITIONAL NOTES ABOUT BILLING

a. **Wastewater billing** is typically, but not always, assessed by the water provider as a percentage of the water into the park as measured by the master meter. If the utility provider does not charge for wastewater as a percentage of the water consumed, the provider will usually have a separate flat charge for both waste and storm water – known as sewer service – and the landlord may then pass that cost onto tenants on a pro rata billing basis.

b. With pro rata billing, submeter billing, and park specific billing, the landlord must give each tenant a **written statement or bill** of the amount due - called the "utility or service charge" - and the due date. The notice may be mailed or delivered to the tenant (see ORS 90.155 for the methods and timing for delivery of notices under Oregon law) or, if the rental

agreement provides, it may be sent by “electronic means,” (i.e. email or text). The landlord may combine the utility charge billing with a rent statement, but the two amounts must be stated separately. The due date may be the date of delivery of the utility charge bill, but the utility or service charge is not late until at least seven days later per ORS 90.562 (3).

c. Utility or service charges are **not rent** (ORS 90.562 (4)). A landlord may not use a nonpayment of rent termination of tenancy notice for failure to pay the utility or service charge, but may use a 30-day curable termination notice under ORS 90.630 (given no sooner than the seventh day after the due date). For example, if the due date is the first day of the month, the utility charge would be late on the eighth and the termination notice could be given that day. A landlord may charge a limited late fee for utility or service charges, for a second violation after a warning notice. This is outlined in ORS 90.302 (3) (b) (A).

d. A **landlord may not make a profit** off of the utility or service, nor charge the tenant any of the landlord’s administrative expenses. All of the tenant payments together may not exceed the amount the landlord is charged by the water provider. See ORS 90.568 (4) and ORS 90.572 (3) for more information.

e. With submeter billing only, a landlord may pass through to tenants the **charge by a third party billing company to read the submeters** (often done remotely/electronically) and bill tenants for their usage as measured by the submeter. The billing company may not add any other costs, such as for repairs or collections or inspections, and the landlord must allow tenants to inspect the third party’s billing records.

f. With pro rata or submeter billing, a landlord may add to the utility or

service charge a pro rata portion of any **public service charge** if the rental agreement so allows. A public service charge means a charge imposed by a utility provider or a local government for a municipal service or provision of public resources to the park, such as street maintenance, transit, public safety, and recreational parks – but not including property taxes or license fees. A landlord may unilaterally amend the rental agreement to impose a new or increased public service charge 60 days after providing written notice. The public service charge must be stated separately in the utility or service charge bill as outlined in ORS 90.315 (1) and (4), ORS 90.562 (3), and ORS 90.570.

g. A landlord may add to the billing a pro rata charge for water and waste/storm **water service to common areas** available for tenants’ use, such as a community room or pool. This must be described in the rental agreement separately from a charge for water service to the tenant’s space.

h. With pro rata or submeter billing only, the landlord must **post the facility water bills** in a place accessible to tenants, which may include posting on the Internet. A landlord also must allow a tenant to inspect all billing records over the previous year showing the tenant’s charges for all utility or service charges, not just for water, after a written request and at a reasonable time in either a manager’s office or a location the landlord and tenant agree on.

This information is provided for educational purposes only and should not be considered legal advice.

*Please contact the [Manufactured & Marina Communities Resource Center](#) with any questions:
Toll free in Oregon – (800) 453-5511 or (503) 986-2145. Email: mcrc@oregon.gov*