

2017 ORS 90.532¹

Billing methods for utility or service charges

- **system maintenance**
- **restriction on charging for water**

- (1) Subject to the policies of the utility or service provider, a landlord may, except as provided in subsections (2) to (5) of this section, provide for utilities or services to tenants by one or more of the following billing methods:
- (a) A relationship between the tenant and the utility or service provider in which:
 - (A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; **and**
 - (B) The landlord does not act as a provider.
 - (b) A relationship between the landlord, tenant and utility or service provider in which:
 - (A) The provider provides the utility or service to the landlord;
 - (B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; **and**
 - (C) The landlord:
 - (i) Includes the cost of the utility or service in the tenant's rent; **or**
 - (ii) Bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning on a pro rata basis the provider's charge to the landlord as measured by a master meter.
 - (c) A relationship between the landlord, tenant and utility or service provider in which:
 - (A) The provider provides the utility or service to the landlord;
 - (B) The landlord provides the utility or service directly to the tenant's space; **and**
 - (C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.
- (2) A landlord may not use a separately charged pro rata apportionment billing method as described in subsection (1)(b)(C)(ii) of this section:
- (a) For garbage collection and disposal, unless the pro rata apportionment is based upon the number and size of the garbage receptacles used by the tenant.
 - (b) For water service, if the rental agreement for the dwelling unit was entered into on or after January 1, 2010, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010.
 - (c) For sewer service, if sewer service is measured by consumption of water and the rental agreement for the dwelling unit was entered into on or after January 1, 2010, unless the landlord was using a separately charged pro rata apportionment billing method for all tenants in the facility immediately before January 1, 2010.
- (3) Except as allowed by subsection (2) of this section for rental agreements entered into on or after January 1, 2010, a landlord and tenant may not amend a rental agreement to convert water or sewer utility and service billing from a method described in subsection (1)(b)(C)(i) of this section to a method described in subsection (1)(b)(C)(ii) of this section.

- (4)** Except as provided in ORS 90.543 (Utility or service charge billing for large manufactured dwelling parks) (3), a landlord for a manufactured dwelling park containing 200 or more spaces in the facility may not assess a tenant a utility or service charge for water by using the billing method described in subsection (1)(b)(C)(ii) of this section.
- (5)** (a) A landlord of a manufactured dwelling park built after June 23, 2011, may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water.
- (b)** A landlord of a manufactured dwelling park that expands to add spaces after June 23, 2011, may use only the submeter billing method described in subsection (1)(c) of this section for the provision of water to any spaces added in excess of 200.
- (6)** To assess a tenant for a utility or service charge for any billing period using the billing method described in subsection (1)(b)(C)(ii) or (c) of this section, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that the tenant is to pay the landlord and the due date for making the payment. The due date may not be before the date of service of the notice. The amount of the charge is determined as described in ORS 90.534 (Allocated charges for utility or service provided directly to space or common area) or 90.536 (Charges for utilities or services measured by submeter). If the rental agreement allows delivery of notice of a utility or service charge by electronic means, for purposes of this subsection, "written notice" includes a communication that is transmitted in a manner that is electronic, as defined in ORS 84.004 (Definitions for ORS 84.001 to 84.061). If the landlord includes in the notice a statement of the rent due, the landlord shall separately and clearly state the amount of the rent and the amount of the utility or service charge.
- (7)** A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394 (Termination of rental agreement for failure to pay rent), but is grounds for termination of a rental agreement for cause under ORS 90.630 (Termination by landlord). A landlord may not give a notice of termination of a rental agreement under ORS 90.630 (Termination by landlord) for nonpayment of a utility or service charge sooner than the eighth day, including the first day the utility or service charge is due, after the landlord gives the tenant the written notice stating the amount of the utility or service charge.
- (8)** The landlord is responsible for maintaining the utility or service system, including any submeter, consistent with ORS 90.730 (Landlord duty to maintain rented space, vacant spaces and common areas in habitable condition). After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.
- (9)** A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:
- (a)** Public utility as defined in ORS 757.005 (Definition of public utility);
 - (b)** Municipal utility operating under ORS chapter 225;
 - (c)** People's utility district organized under ORS chapter 261;
 - (d)** Cooperative organized under ORS chapter 62;
 - (e)** Domestic water supply district organized under ORS chapter 264; **or**
 - (f)** Water improvement district organized under ORS chapter 552.
- (10)** A landlord that provides utilities or services only to tenants of the landlord in compliance with this section and ORS 90.534 (Allocated charges for utility or service provided directly to space or common area) and 90.536 (Charges for utilities or services measured by submeter) is not a public utility for purposes of ORS chapter 757.
- (11)** The authority granted in this section for a utility or service provider to apply policy regarding the billing methods described in subsection (1) of this section does not authorize the utility or service provider to dictate either the amount billed to tenants or the rate at which tenants are billed under ORS 90.534 (Allocated charges for utility or service provided directly to space or common area) or 90.536 (Charges for utilities or services measured by submeter). [2005 c.619 §6; 2007 c.71 §24; 2009 c.305 §1; 2009 c.816 §§6,6a; 2011 c.503 §§6,6a; 2013 c.443 §14]

¹ Legislative Counsel Committee, *CHAPTER 90—Residential Landlord and Tenant*, https://www.oregonlegislature.gov/bills_laws/ors/ors090.html (2017) (last accessed Mar. 30, 2018).

2017 ORS 90.537¹

Conversion of billing method for utility or service charges

- (1) A landlord may unilaterally amend a rental agreement to convert a tenant's existing utility or service billing method from a method described in ORS 90.532 (Billing methods for utility or service charges) (1)(b) to a submeter billing method described in ORS 90.532 (Billing methods for utility or service charges) (1)(c). The landlord must give the tenant not less than 180 days' written notice before converting to a submeter billing method.
- (2) A landlord must give notice as provided in ORS 90.725 (Landlord or agent access to rented space) before entering a tenant's space to install or maintain a utility or service line or a submeter that measures the amount of a provided utility or service.
- (3) If the cost of the tenant's utility or service was included in the rent before the conversion to submeters, the landlord shall reduce the tenant's rent on a pro rata basis upon the landlord's first billing of the tenant using the submeter method. The rent reduction may not be less than an amount reasonably comparable to the amount of the rent previously allocated to the utility or service cost averaged over at least the preceding one year. A landlord may not convert billing to a submeter method less than one year after giving notice of a rent increase, unless the rent increase is an automatic increase provided for in a fixed term rental agreement entered into one year or more before the conversion. Before the landlord first bills the tenant using the submeter method, the landlord shall provide the tenant with written documentation from the utility or service provider showing the landlord's cost for the utility or service provided to the facility during at least the preceding year.
- (4) A landlord that installs submeters pursuant to this section may recover from a tenant the cost of installing the submeters, including costs to improve or repair existing utility or service system infrastructure necessitated by the installation of the submeters, only as follows:
 - (a) By raising the rent, as with any capital expense in the facility, except that the landlord may not raise the rent for this purpose within the first six months after installation of the submeters; **or**
 - (b) In a manufactured dwelling park, by imposing a special assessment pursuant to a written special assessment plan adopted unilaterally by the landlord. 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 assessed as part of the utility or service charge. The landlord must give each tenant 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, but must begin within six months after completion. A new tenant of a space subject to the plan may be required to make payments under the plan. Payments must end when the plan ends. The landlord is not required to provide an accounting of plan payments made during or after the end of the plan.
- (5) A landlord that converts to a submeter billing method under this section from the rent billing method described in ORS 90.532 (Billing methods for utility or service charges) (1)(b)(C)(i) may unilaterally, and at the same time as the conversion to submeters, convert the billing for common areas to the pro rata billing method described in ORS 90.532 (Billing methods for utility or service charges) (1)(b)(C)(ii) by including the change in the notice required by subsection (1) of this section. If the landlord continues to use the rent billing method for common areas, the landlord may offset against the rent reduction required by subsection (3) of this section an amount that reflects the cost of serving the common areas. If the utility or service provider cannot provide an accurate cost for the service to the common areas, the landlord shall assume the cost of serving the common areas to be 20 percent of the total cost billed. This offset is not available if the landlord chooses to bill for the common areas using the pro rata method.
- (6) If storm water service and wastewater service are not measured by the submeter, a landlord that installs submeters to measure water consumption under this section and converts to a submeter billing method from the rent billing method described in ORS 90.532 (Billing methods for utility or service charges) (1)(b)(C)(i) may continue to recover the cost of the storm water service or wastewater service in the rent or may unilaterally, and at the same time as the conversion to submeters, convert the billing for the storm water service or wastewater service to the pro rata billing method described in

ORS 90.532 (Billing methods for utility or service charges) (1)(b)(C)(ii) by including the change in the notice required by subsection (1) of this section. If the landlord converts the billing for the storm water service or wastewater service to the pro rata billing method, the landlord must reduce the rent to reflect that charge, as required by subsection (3) of this section.

(7) A rental agreement amended under this section shall include language that fairly describes the provisions of this section.

(8) If a landlord installs a submeter on an existing utility or service line to a space or common area that is already served by that line, unless the installation causes a system upgrade, a local government may not assess a system development charge as defined in ORS 223.299 (Definitions for ORS 223.297 to 223.314) as a result of the installation. [2005 c.619 §9; 2009 c.816 §8; 2011 c.503 §9]

¹ Legislative Counsel Committee, *CHAPTER 90—Residential Landlord and Tenant*, https://www.oregonlegislature.gov/bills_laws/ors/ors090.html (2017) (last accessed Mar. 30, 2018).