

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

Frequently Asked Questions (FAQs)

Supplement Regarding Relocation Issues in Unpermitted Units

(This FAQ is a supplement to March 29, 2017 FAQs Regarding Non-Conforming Residential Units in Light of the December 2, 2016 Warehouse Fire (1315 - 31st Avenue).)

Issued: March 29, 2017

Supplement Issued: September 1, 2017

Issued by: Barbara J. Parker, Oakland City Attorney

I. INTRODUCTION

This memorandum answers frequently asked questions regarding relocation issues in unpermitted units. This memorandum supplements the March 29, 2017 FAQ regarding non-conforming residential units in light of the December 2, 2016 Warehouse Fire (1315 - 31st Avenue). Like other FAQs our Office has issued, this memorandum provides general information and does not constitute legal advice or legal conclusions or analysis. These FAQ's are intended to be general in nature and do not cover all issues or circumstances that might apply to a particular fact situation.

For more information please refer to the Oakland Municipal Code and any applicable City regulations. You also may contact the Housing Assistance Center Rent Adjustment Program or an attorney. The Housing Assistance Center is located at 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, 94612. The telephone number is (510) 238-6182 and email address is housingassistance@oaklandnet.com. The Rent Adjustment Program's website is rapwp.oaklandnet.com; the office is located at, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland, 94612 and the telephone number is (510) 238-3721.

Supplemental Frequently Asked Questions Regarding Relocation Issues in Unpermitted Units

- 1. What can a tenant do if a property owner denies relocation payments or a tenant claims eligibility for relocation payments but the property owner believes the tenant is ineligible?**

Answer: The Code Compliance Relocation Ordinance allows a tenant or a property owner to seek a determination of eligibility for relocation payments. O.M.C. 15.60.120. City staff can review eligibility for relocation payments. If either the tenant or the property owner disagrees with the City staff

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determination of eligibility, that party may appeal the determination to the Relocation Appeals Board (currently the Housing, Residential Rent, and Relocation Board (“Rent Board”).

While the Relocation Ordinance only cites a “reasonable time” after a staff determination for filing an appeal, because of the need for a quick determination in view of the potential immediacy of the tenant’s displacement, the appeal should be filed within seven (7) days of the City staff determination. A property owner seeking to appeal to Rent Board must deposit the relocation payments with the appeal, unless the property owner can show significant hardship or extraordinary circumstances. If either party disagrees with the decision of the Rent Board, that party must pursue the matter in the Superior Court and file within 90 days of the Rent Board’s decision. There is no appeal to the City Council.

2. Can the tenant return to the unit following correction of the code compliance issues?

Answer: The Code Compliance Relocation Ordinance (O.M.C. 15.60.100) gives the tenant the option to return to the unit under the following circumstances:

- The tenant provides the property owner with her/his current address (meaning an address where the tenant can be contacted while the tenant is displaced from the unit). If the tenant fails to provide the property owner with a current address, the property owner may not be able to inform the tenant of the status of the work on the unit, or when the unit will be available to reoccupy; and
- If and when the property owner repairs the unit and makes it ready to reoccupy.

3. Is a property owner required to replace a unit that is vacated due to code violations?

Answer: No. Example: The City determines that a garage used as a housing unit is not permitted and must not be used for housing because the garage cannot be physically converted into a permitted housing unit (e.g., problems with providing plumbing, sanitation, ventilation, etc.). There is no

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City requirement that the property owner convert the garage into a permitted housing unit or that the property owner provide a permitted housing unit for those persons who were displaced from the unpermitted garage unit. Example: A warehouse is used for unpermitted live-work units. The City determines the warehouse is too unsafe for residential occupancy. The City red-tags the property or the owner evicts the tenant because the unit is unpermitted. There is no City requirement that the property owner replace the units that were removed from the rental market or provide replacement units in another location for the displaced tenants. Note: In both of these examples, the property owner is required to make relocation payments to displaced tenants pursuant to the Code Compliance Relocation Ordinance (O.M.C. 15.60, et seq.).

- 4. If a property owner renovates a property that previously contained unpermitted living units by providing new permitted living units, is there a City requirement that the renovated property contain units that are the same as or equivalent to the previous unpermitted units?**

Answer: No. The Code Compliance Relocation Ordinance gives a displaced tenant the “option of moving back into that rental unit or room, or, if this is not possible, to move into an equivalent unit or room in the same building, **if** and when the unit or room is ready for occupancy.” (emphasis added.) O.M.C. 15.60.100A. Thus, the Relocation Ordinance gives the tenant the option to move-back only if the property owner corrects the problems that caused the unit to be vacated or restores units that formerly existed at the property.

If the property contained unpermitted units (meaning units that were not created with proper City building and/or zoning permits) and the property owner creates permitted units at the property, there is no requirement under the Oakland Planning or Building Codes that these permitted units be the same or equivalent in terms of size or amenities to the unpermitted units that formerly existed at the property.

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- 5. What can a tenant do if the tenant wishes to exercise her/his option to return to his/her unit or an equivalent unit and the owner is either preventing the tenant from returning or did not restore that tenant's unit or an equivalent unit?**

Answer: Because the Planning and Building Code does not require that a property owner restore the same unit that was removed, the tenant's options are limited. Further, the Code Compliance Relocation Ordinance does not define what constitutes an "equivalent" unit. If the property owner agrees, the tenant can work with the property owner to create the replacement unit and negotiate an arrangement to return to the unit. The tenant's options for administrative review through the City or taking legal action against the property owner are limited to the property owner's failure to follow procedures that require the property owner to notify the tenant that a unit is ready to be reoccupied, not to require that the owner restore the same or an equivalent unit.

- 6. What would the rent be for a tenant who returns to a rental unit or an equivalent unit that replaces an unpermitted unit?**

Answer: The rent for a tenant who returns to the same unit would start at the rent that was in effect when the tenant was displaced. If the unit is the same unit the tenant vacated, but the unit has been modified, the landlord may have the right to increase the rent or the tenant may have the right to a decrease the rent depending on the circumstances. The property owner may be entitled to an increase in rent due to eligible capital improvements to the unit. The tenant may be entitled to a decrease in the rent due to reductions in the "housing services" from the prior unit to the renovated unit. ("Housing services" means services the owner provides to the rental unit, including, but not limited to, parking, utilities, elevator, unit size, laundry, and habitable premises.) For example, if the renovated unit is smaller than the previous unit, the tenant may be entitled to a rent decrease for the reduction in size. The tenant also may be eligible for a rent reduction and reimbursement for overpaid rent for habitability violations during the tenant's occupancy of an unpermitted unit.

To address the rent at the unit, if the housing services at the unit decreased, the tenant could file a petition with the Rent Adjustment Program to have the rent adjusted. If the property owner seeks to have the rent increased to

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reflect any capital improvements, the property owner must first file a petition with the Rent Adjustment Program. The foregoing applies only to rental units that are covered by the Rent Adjustment Ordinance. Generally, units covered under the Rent Adjustment Ordinance are rental units built before January 1, 1983, except for subsidized units or units exempted by state law (e.g.--single-family houses and most condominium units). For detailed information on Rent Adjustment Program coverage, exemptions, and petitioning, please refer to the Rent Adjustment Program's website and O.M.C. 8.22.010, et seq.

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