

ADMINISTRATIVE ORDER NO. 53-15-16-F
of the
City Manager

**AMENDMENT OF CITY RENTAL HOUSING CODE ADMINISTRATIVE
RULE R-8.430 AND REPEAL OF ADMINISTRATIVE ORDER NO. 53-05-
02-F.**

The City Manager of the City of Eugene finds that:

A. Pursuant to the authority contained in Sections 2.019 and 8.430 of the Eugene Code, 1971, City Rental Housing Code Administrative Rule R-8.430 was adopted by Administrative Order No. 53-05-02-F on July 7, 2005.

B. On October 14, 2015, I issued Administrative Order No. 53-15-16 proposing to amend City Rental Housing Code Administrative Rule R-8.430 to require rental housing owners to appoint or employ agents who are located in close proximity to Eugene, thus, making it more efficient for City staff and the City Police Department to contact someone, when the need arises, who can provide assistance in a timely manner.

C. Notice of the proposed amendment was published in the Register Guard newspaper on October 24, 25, 26, 27, and 28, 2015, and made available to any person who had requested such notice. The Notice provided that written comments would be received for a period of 15 days from the first publication date. Forty-nine comments were received in response to the Notice. Summaries of the comments, and my responses to the comments, are set out below:

Comments in Support of the Amendment:

- It is important to have local representatives available within a reasonable timeframe to assist or secure the premises if needed and that it is imperative to the life safety of the tenants.
- Easily contacting owners will make the owners aware of, and held responsible for, the condition of their property, and would provide protection for people who live in the neighborhood.

Findings. The City appreciates this feedback. No changes to the Rule are necessary as a result of these comments.

Comments Re: Increased Cost Issues:

- Proposal requires owners to employ a property manager against their will at significant cost;
- This cost will be passed on to renters, driving up rents;

- Owners who cannot afford a property manager will sell their property and buy elsewhere;
- There will be costs to the city to collect this data and create a database;
- The requirement that an owner pay a property manager is unfair.

Findings: The existing rental housing rule already requires an owner to include in the city's rental housing registration form a name and address of an agent for purposes of service when the owner does not reside within the state of Oregon. The proposed rule merely changes that requirement to include those who reside more than 60 miles from the city limits. Further, the rule does not require an owner to hire a property manager; the requirement is simply one method of addressing situations where out-of-town owners cannot be reached to deal with maintenance or other issues. The City already has a rental housing database in place to collect this information. Registration forms will be sent out with the annual billing statements which will minimize any costs.

Comments Re: Authority of Agent to Act:

- "Agents" may not have authority to act without a real estate license or property management license;
- Confusion over what authority the "agent" will have;
- Many landlords manage their own property and do not want to hire a property management company.

Findings: If an "agent" will be conducting acts that constitute "property management" or "professional real estate activity", the agent will have to comply with relevant state law. However, the rule does not require that an owner hire a property management company. It merely requires that the rental housing registration form include the name and address of a local person to contact for service and other reasons.

Comments Re: Inadequate Process:

- There has not been adequate opportunity for public input;
- Affected parties had only one week to comment;
- The proposal should be reviewed by the real estate agency and Rental Housing Code Advisory Board.

Findings: The City published a Notice of proposed rule change in the Register Guard for five consecutive days, October 24, through October 28, 2015, advising the public of the opportunity to submit comments for 15 days from October 24. A notice was also e-mailed to approximately 1,000 interested parties. The proposal of a rule change was raised at Housing Policy Board Rental Housing subcommittee meeting prior to the July 27, 2015 work session and again prior to the publication of proposed rule change. Following the comment period the Rental Housing subcommittee briefly discussed. Staff has followed the required process for the adoption of rule amendments. Staff also made attempts to

contact interested persons and rental housing organizations to alert them that the rule amendment was being processed. Several of those organizations provided timely comments.

Comments Re: Contact Information Issues:

- Lease agreements already contain owner information on them;
- In this day and age, everyone is easily accessible by phone or e-mail so this rule is unnecessary.

Findings: While technology has made it easier to contact individuals who may live far away, issues with contacting rental owners has continued to be a problem for the city. The proposed change will expand the existing requirement that a rental housing registration form include contact information for a local contact. This is just one way the city hopes to simplify its work in contacting out of area owners. Further, the registration form does not require that the owner include a copy of the lease, so the city is not privy to the information that may appear in a rental agreement with the tenant.

Comments Re: Proposed Solution will not solve the identified Problem:

- Rules will be ignored;
- Proposed rule places burden on all, when only a few are unresponsive;
- An alternative that would better address the problem would be to fine those who are derelict;
- The issue is already addressed through rules that require that landlords maintain a dwelling unit in a habitable condition.

Findings: While the proposed change may not completely solve the problem it aims to address, it is one more tool the city will have in its attempts to remedy ongoing issues. The proposal attempts to require information at the front end of the process so the city is not required to seek remedies after the fact or fine owners. The fact that an owner could be fined later does nothing to minimize the occurrences of unsafe conditions in the first place. The process for tenants to seek remedies for problems with landlords who maintain uninhabitable residences can be onerous, and the city's attempt to obtain local contact information on the front end of the process will hopefully minimize the need for tenants to seek assistance in the courts.

Miscellaneous Comments:

- The 60-mile limit is arbitrary;
- The proposed rule discriminates against out of town owner/landlords;
- The proposal is an invasion of an owner's right to own and manage private property.

Findings: The choice to require agent contact information for owners who reside more

than 60 miles from the city limits was based on an analysis of what distance is reasonable to expect an agent to be able to address issues. That said, based on the comments, the city will adjust the distance to 75 miles.

Rental owners are not a protected class, and so long as there is some rational basis for treating out-of-town owners differently, the proposed requirement is legal. Staff has experienced difficulties contacting and requiring action by numerous out-of-town owners. The issues are not so acute with in-town owners.

Based upon the above findings, and pursuant to the authority of Sections 2.019 and 8.430 of the Eugene Code, 1971, City Rental Housing Code Administrative Rule R-8.430 is amended as proposed, except that the Rule is amended to set the limit at 75 miles before an owner must appoint an agent, rather than 60 miles. Therefore, I order that:

1. The unamended provisions of City Rental Housing Code Administrative Rule R-8.430 adopted by Administrative Order No. 53-05-02-F remain in full force and effect and are incorporated into amended City Rental Housing Code Administrative Rule R-8.430 set out in this Order.
2. Administrative Order No. 53-05-02-F is repealed as of the effective date of this Order.
3. City Rental Housing Code Administrative Rule R-8.430 is amended and adopted as of the effective date of this Order to provide as follows:

**CITY RENTAL HOUSING CODE
ADMINISTRATIVE RULE R-8.430**

R-8.430-A Definitions.

As used in these rules, words and phrases have the meaning set forth in Section 8.415 of the Eugene Code, 1971 ("EC").

R-8.430-B Registration.

1. The owner, or the owner's agent shall register every dwelling unit subject to the City's Rental Housing Code as required by EC 8.440. The registration form shall be provided by the City, and multiple units under the same ownership may be included on one form.
2. The registration form shall include:
 - (a) The names and addresses of all owners of the building or unit, and the name and address of the owner's agent, if applicable;

- (b) The address of the rental unit, or of the building, if it includes multiple rental units;
- (c) The total number of rental units if the building contains multiple units;
- (d) The mailing address for the owner(s), and the owner's agent, if different than the information provided in (a) above;
- (e) The telephone number(s) or other information for contacting the owner(s) and the owner's agent;
- (f) The identifier of any unit exempt from the registration fee requirement under EC 8.440(3), together with documentation that supports the exemption; and
- (g) The name and address of the owner's agent for service if the owner(s) does not reside within 75 miles of the Eugene City limits. The appointed agent must reside or have a principal place of business within 75 miles of the Eugene City limits.

3. The registration form shall be submitted within 30 days of the date of the establishment of a rental unit, change of ownership of a rental unit, or change in the number of units available for rent. For existing rental units subject to the City's Rental Housing Code, the registration form shall be submitted within 30 days of the date of this Order. The fee established by Administrative Order of the City Manager for each rental unit not exempt under EC 8.440(3), shall be payable by the owner or owner's agent within the time and in the manner provided in the payment notice.

R-8.430-C Applicability of Standards.

1. The standards in EC 8.425 apply to all rental housing located within the Eugene city limits, unless exempt under EC 8.410(2).

2. Although the following types of units are exempt from the requirement to pay the registration fee under EC 8.440(3), they are subject to compliance with the standards of EC 8.425 and the registration requirements of R-8.430-B:

- (a) A rental unit with a recorded deed restriction requiring the unit to be rented affordably to households at or below 60 percent of the Area Median Income; and
- (b) A rental unit that has been approved by the City for an exemption from property taxes pursuant to EC 2.910 to 2.922 and 2.937 to 2.940 for the duration of its exemption, or that is recognized by the City as exempt from property taxes pursuant to ORS 307.092.

R-8.430-D Complaint Procedure.

1. At least ten (10) days prior to filing a complaint with the City, a tenant or the tenant's agent who believes a violation of the City's Rental Housing Code exists shall provide a written notice of the alleged violation to the owner or the owner's agent, as required by EC 8.430(2). The notice shall be mailed by first class mail or hand delivered to the owner or the owner's agent.

2. If the owner fails to respond to the tenant or tenant's agent within the ten (10) day period, the tenant or tenant's agent may file a complaint with the City. The complaint shall be on a form provided by the City and shall contain all of the following information:

- (a) The name and address of the tenant and the tenant's agent, if applicable;
- (b) The tenant's and the tenant's agent's mailing address, if different than (a) above;
- (c) The telephone number(s) at which tenant and tenant's agent can be reached;
- (d) The address at which the alleged code violation(s) exists;
- (e) A description of the alleged code violation(s); and
- (f) The date on which written notice of the alleged code violation was mailed or personally delivered to the owner or the owner's agent.

The tenant, or the tenant's agent shall submit with the complaint a copy of the written notice provided to the owner and copies of an identification card, bill, rental agreement, or other items that demonstrate that the tenant is a party to a rental agreement at the address identified in the complaint.

3. The City Manager shall review the complaint and documentation submitted under paragraph 2 above, and upon a determination that:

- (a) The tenant or the tenant's agent has standing to file the complaint;
- (b) The alleged violation could constitute a violation of the City's Rental Housing Code; and
- (c) More than ten (10) days have elapsed between the tenant's or the tenant's agent's notice to the owner and the filing of the complaint, and the owner failed to respond, the City Manager shall provide written notice of the complaint to the owner or the owner's agent. The notice shall be sent by first class mail within five (5) business days from the date the complaint was filed with the City and shall include a copy of the complaint, the City Manager's written finding of potential validity of the complaint, and a statement indicating that an investigation will be initiated. The notice shall include the name and telephone number for the City staff contact.

4. Within ten (10) business days of the date the complaint is filed with the City, and subsequent to mailing the notice under paragraph 3 above, the City Manager shall initiate an investigation of any complaint found to be a potentially valid complaint unless prior to that time the complaint is withdrawn in writing by the tenant or tenant's agent. If the investigation results in a determination that the complaint is not valid, the City Manager shall notify all parties of that determination and the case shall be closed.

5. If the investigation results in a determination that the complaint is valid, the City Manager shall issue a written order and forward it by first class mail to the owner or the owner's agent, and to the tenant or the tenant's agent. The order shall include the following:

- (a) The complete address where the alleged violation has occurred;
- (b) A statement that the City Manager has found the premises to be in violation of EC 8.425, and a detailed description of the violation(s);

(c) A requirement that the owner complete the required repairs within ten (10) days from the date of the order, unless the City Manager determines the repairs cannot be completed within that period of time, in which case the owner or owner's agent shall, within the ten (10) day period, submit a compliance schedule for completion of the repairs that is accepted by the City;

(d) A statement advising the owner of the potential enforcement action that may result if the owner or the owner's agent fails to complete the repairs by the stated deadline;

(e) A statement advising the owner of the right to appeal the notice and order, and the procedure for doing so; and

(f) The date after which a reinspection will be scheduled to determine compliance.

R-8.430-E Appeal.

The owner or owner's agent upon whom an order is served under EC 8.430, against whom an administrative civil penalty is imposed, or other enforcement action taken under the City Rental Housing Code, shall have the right to appeal within the time and manner provided in EC 2.021. The appeal shall be accompanied by the required Appeal Fee.

R-8.430-F Determination of Amount of Administrative Civil Penalty.

1. If an administrative civil penalty is imposed for failure to comply with the notice and order issued pursuant to EC 8.430(5), the amount to be assessed shall be determined in accordance with the following formula:

(a) The dollar amount of the penalty per day per violation is calculated by multiplying the amount of the BASE (subsection (b)) by \$20. Notwithstanding this formula, the maximum assessment for a violation per day shall be \$2,000.

(b) The BASE is the sum of "E" and "P" where:

(1) "E" is the effort made by the owner or the owner's agent in taking all feasible steps necessary and appropriate to correct the violation. The value of "E" shall be:

a. 1, if the owner or owner's agent has made an active attempt to correct the violation by making required repairs.

b. 3, if the owner or owner's agent has made minor attempts to correct the violation by making required repairs.

c. 5, if the owner or owner's agent has taken little or no action to correct the violation by making required repairs.

(2) "P" is the frequency of prior violations of ordinances, rules, orders or permits attributed to the owner or owner's agent. The value of "P" is based on prior similar violations as verified as valid, regardless of whether enforcement action was taken. For the purposes of this rule, similar violations shall be violations of Chapter 8 of the Eugene Code, 1971, and rules, orders and permits issued under or related to that Chapter. The value of "P" shall be:

- a. 5, if the present violation is the first violation by the owner or the owner's agent, within 24 months of the date of issuance of the notice.
- b. 20, if the present violation is the second violation by the owner or the owner's agent, with 24 months of the date of issuance of the notice.
- c. 35, if the present violation is the third violation by the owner or the owner's agent within 24 months of the date of issuance of the notice.
- d. 50, if the present violation is the fourth or subsequent violation by the owner or the owner's agent within 24 months of the date of issuance of the notice.

R-8.430-G Penalty.

Pursuant to EC 8.995, failure to comply with a notice and order issued under EC 8.430(5) shall be subject to the imposition of an administrative civil penalty under EC 2.018, computed as set forth in R-8.430-F above, and/or a fine imposed by the Eugene Municipal Court in an amount not to exceed \$250 per violation. Each day a violation exists constitutes a separate violation for which an additional penalty may be assessed.

Dated and effective this 17th day of February, 2016.

Jon R. Ruiz
City Manager