

# CITY OF FRESNO

## RENTAL HOUSING IMPROVEMENT ACT REGULATIONS



**February 2, 2017**

The following regulations are enacted to pursuant to Fresno Municipal Code Chapter 10, Article 16, to identify substandard housing violations through an effective pro-active and re-active inspection program to ensure rental housing units in the City meet minimum health and safety standards.

**A. Authority and Definitions**

1. These regulations are created under the authority provided in the Rental Housing Improvement Act, Fresno Municipal Code Chapter 10, Article 16. To the extent anything in these Regulations is inconsistent with the provisions of the Fresno Municipal Code, the Fresno Municipal Code shall take precedence.

2. Terms used in these Regulations shall have the same meaning as defined in Fresno Municipal Code Section 10-1602.

**B. Registration**

1. All Residential Rental Properties are required to be registered and the registration updated whenever there is a change of ownership or contact information. The City will mail a notice to the address listed as the address for service on the last certified tax roll.

2. A Residential Rental Property is registered with the City when the Owner submits the following to the City:

a. A completed registration form, made available by the City that contains the following information:

i. Description of the Residential Rental Property, including but not limited to, the street address and APN;

ii. Number and description, including identifying number, of all Residential Rental Units on the Property;

iii. Name and current contact information of the Owner;

iv. Name and current contact information for a local contact representative with full authority to act on behalf of the Owner for all

purposes under this program, including the acceptance of service of all notices from the City.

v. Date of first occupancy.

b. The registry will only include the information specified in Section i. through v., above.

c. Payment of any outstanding fees, [business] taxes, fines, penalties, or other monies owed to the City related to the Property.

3. To the extent legally permissible, the contact information shall remain confidential and for internal City use only, and not available to any member of the public.

4. It is unlawful pursuant to Fresno Municipal Code 10-1605 for any person to knowingly make a false statement or knowingly omit any information that is required to register a Residential Rental Unit pursuant to the Fresno Municipal Code or these Regulations.

5. Registration shall remain valid until one of the following occurs:

a. The Owner fails to notify the Director of any change in the information submitted pursuant to this section within thirty days of such change; or

b. The Owner fails to pay when due any fees set forth in these Regulations or the Rental Housing Improvement Act.

6. The City will cause the registration database to be updated annually.

**C. Baseline Inspection**

1. All Residential Rental Properties shall be subject to a baseline inspection, pursuant to a random sampling formula.

2. The City shall have the right to select first for inspection those Properties it has identified as frequent health and safety code violators, and/or Residential Rental Properties within a given census tract or precinct, using statistical and case information, including data compiled from FresGo, census data, and other data sources. Subject to these criteria, the City may next prioritize multi-family Properties of two units or more, and single family homes used as rental properties that are known frequent health and safety violators. As a third priority, the City may conduct baseline inspections of remaining single family homes used as rental properties. It is within the City's sole discretion to determine the order in which it will conduct baseline inspections of Residential Rental Units.

3. In advance of program implementation, the City shall promulgate and make available online and upon request a Rental Inspection Checklist. The Checklist shall clearly define and describe the criteria the Director will apply to determine whether or not violations of Health and Safety Standards exist on the Property.

**D. Number of Units Subject to Inspection for Both Baseline and Routine Inspections.**

1. For multi-family Properties containing the following number of Residential Rental Units, a percentage of units shall be randomly selected and subject to inspection as follows:

a. One unit: 100% of units inspected.

- b. Two to four units: 50% of units inspected.
- c. Five to fifteen units: 25% of units inspected.
- d. Sixteen to fifty units: 15% of units inspected.
- e. Fifty-one units and over: 10% of units inspected.

2. For single family home rental property owners (ownership share more than 50%) who own multiple single family rental homes, units shall be subject to inspection as follows:

- a. Two to nine homes: 50% inspected.
- b. Ten to twenty homes: 30% inspected.
- c. Twenty-one to forty-nine homes: 20% inspected.
- d. Fifty homes or more: 10% inspected.

#### **E. Inspection Procedures.**

##### 1. Notification

a. Written notice of inspection shall be provided to the Owner of the Property and the tenant of affected units stating the date and time of the inspection. The notice of inspection shall provide a minimum fourteen days' notice. It shall be the responsibility of the Owner to provide actual notice to individual tenants to facilitate access to the units to be inspected. At the same time that the City issues the notice of inspection to the Owner, it shall send by U.S. Mail a written notice, addressed to "Occupant," to each unit scheduled for inspection. Notices mailed to occupants must be in English, Spanish, and Hmong. Notice shall provide a phone number to which questions may be directed.

b. If an inspection is cancelled or rescheduled by the Inspector, a written notice shall be provided to the Owner and occupants at least five days prior to the scheduled inspection date.

c. If an inspection is cancelled or rescheduled by the Owner, the new inspection date must be within thirty days of the prior scheduled inspection date. The Owner must provide notice to occupants of the changed inspection date, and provide proof of notice upon request by the City.

d. If an Owner or tenant in possession of the Property refuses to allow access to conduct the inspection, the City Attorney may use all legal remedies permitted by law. Inspections under the Rental Housing Improvement Act are considered a "necessary service" for which entry by the Owner, upon proper notice, is allowed per Civil Code 1954.

2. Payment of the Inspection Fee.

a. The Notice of Inspection shall contain an invoice for the amount of the inspection fee. The inspection fee shall not exceed \$100 per unit to be inspected. Payment of the inspection fee is due at the time of the inspection, and a unit shall not pass inspection until the fee is paid.

3. If an Inspector sees other obvious health and safety violations not within the scope of the inspection, the Inspector shall refer the unit to the Code Enforcement Division for review.

**F. Inspection Cycle.**

1. Following an initial inspection of a Property, the Property shall be classified into a tier, and periodic re-inspections shall occur as follows:

a. Tier 1: Properties that pass the initial inspection or correct any deficiencies within thirty days, and are not delinquent on owing the City for fees, penalties, or [business] taxes, shall be inspected again no sooner than five years after the date of the initial inspection. All Tier 1 Properties shall be self-certified pursuant to the self-certification program set forth in these Regulations.

b. Tier 2: Properties in Tier 2 shall be inspected every two years, and every unit shall be inspected. Once the Property passes two consecutive inspections, is in compliance with all City codes, and is current on all fees, penalties, or [business] taxes owed the City, it may be reclassified into Tier 1. A Tier 2 Property meets one or more of the following criteria:

i. Properties that fail the initial inspection and first compliance re-inspection.

ii. Properties with some code violations, but not violations posing imminent danger of death or serious injury to occupants, or otherwise rising to the level of a Tier 3 Property.

iii. Properties whose fees, penalties or [business] taxes are delinquent longer than 90 days.

c. Tier 3: Tier 3 shall be inspected annually, and every unit shall be inspected, until all units are brought into compliance with all City code requirements and are current on all fees, penalties or [business] taxes owed the City. Thereafter, a percentage of units shall be inspected annually for the next three years. If the Property passes inspection all three years, is in compliance with all City codes, and is current on all fees, [business] taxes, and penalties

owing to the City, it may be reclassified into Tier 1. A Tier 3 Property meets one or more of the following criteria:

- i. The Property failed two or more consecutive compliance re-inspections;
- ii. Fees, penalties, or [business] taxes are delinquent longer than 120 days.

2. Following initial inspection, an Owner will be notified what tier their Property is classified in, and what the inspection cycle will be.

3. Properties in Tiers 2 and 3 may be referred to the Code Enforcement Division for further review and action, so long as the noted violations are not caused by a tenant's breach of Tenant's Affirmative Obligations. A Property's classification, and the enforcement measures associated with that classification, do not limit the City's discretion to impose any and all other sanctions, fines, fees, penalties, or enforcement measures otherwise available under this code, or under state or federal statute.

**G. Inspection Compliance.**

1. Upon initial inspection, the Inspector may require the Owner of a Residential Rental Unit to perform work, take action, or refrain from an action to ensure compliance with the inspection standards.

2. During the inspection, the Owner may make immediate repairs to correct any violation noted in the course of the inspection. If all necessary repairs are made in a timely manner as determined by the severity of the violation, and in no case later than thirty days after inspection, the unit shall pass the inspection and shall not be subject to



a Compliance Re-Inspection. Repairs that cannot be made within thirty days of an inspection shall be subject to a Compliance Re-Inspection.

3. Violations that are a result of a breach of Tenant's Affirmative Obligations shall not be a basis for a unit to fail an inspection, but are still subject to issuance of a correction notice and correction. The burden is on an Owner to prove (a) that a tenant of an inspected unit is in substantial violation of Tenant's Affirmative Obligations, and (b) that any such violation caused the existence of dilapidation or interferes substantially with the Owner's obligation to effect necessary maintenance or repairs. An Owner shall be required to provide proof to the City that a tenant of an inspected unit is in substantial violation of Tenant's Affirmative Obligations. By example, this could be established by providing an inspection form signed by a tenant that the unit passed inspection, provided the inspection occurred no more than twelve months before the inspection, or the Owner was legally unable to obtain access to the unit. If it is determined the dilapidation is caused by a breach of Tenant's Affirmative Obligations, the City will not impose additional restrictions under subsection 4, and shall not assess a Compliance Re-Inspection fee. Irrespective of who is at fault, the Owner is responsible to correct all deficiencies. In situations that are a result of a breach of Tenant's Affirmative Obligations, an Owner is given reasonable time to correct violations.

4. In the event a unit fails an inspection and initial compliance re-inspection, all of the remaining units on the Property shall be subject to inspection.

#### **H. Exemptions.**

1. The following shall be subject to registration, but shall be exempt from routine inspections:

a. Newly constructed buildings. Newly constructed buildings shall be exempt for a period of ten years. The ten year period begins to run on the date of issuance of the certificate of occupancy.

b. [Government Regulated,] Subsidized Residential Rental Units [or those with Government-Sponsored Financing]. Those Properties that are subject to routine inspections by another government agency~~], or government-sponsored enterprises (i.e., Fannie Mae, Freddie Mac, etc.)].~~

2. An Owner is required to provide an affidavit signed under penalty of perjury certifying that the Property is exempt.

3. A Residential Rental Unit that is determined to be exempt shall become subject to the requirements of this article if a notice and order relating to the Property is issued pursuant to the provisions of the Fresno Municipal Code. A Property that loses its exemption may reinstate its exemption if:

a. After the last inspection conducted pursuant to this program, the Inspector determines that no violations exist; and

b. The Owner is not delinquent on any payment to the City of fees, penalties, [business] taxes or other monies related to the Property.

#### **I. Self-Certification Program.**

1. Qualification. Following an initial inspection, a Property may be placed in the self-certification program if:

a. The Property is classified as a Tier 1 Property.

b. The Property is inspected at least once every twelve months (plus a thirty day grace period), and re-inspected upon change of tenancy, by a

professional property management company licensed by the State of California or an Owner or manager with a demonstrated track record of responsible management, and the Owner can provide adequate documentation that such annual and routine inspections take place and the substance of such inspections. Such documentation shall be on forms provided by the City, or forms the Director determines to be substantially equivalent to those forms.

c. The Owner and property manager certify the Property(ies) are in compliance with all applicable provisions of the Rental Housing Improvement Act.

d. The Owner is not delinquent on any payment to the City of fees, penalties, business taxes or other monies related to the Property.

e. If a Residential Rental Property in the self-certification program is transferred to a new Owner, the Property shall remain in the self-certification program for one year following the date of transfer, unless it is sooner removed from the self-certification program pursuant to Section 2, below. After the one year period, the Residential Rental Housing Property shall become subject to routine inspection unless the new Owner self-certifies the Property.

2. Removal. If any of the following occur, one or more of an Owner's Properties may be removed from the self-certification program:

a. A Residential Rental Unit inspected as part of the random inspection program fails to comply with the provisions of this article, and fails to comply after the initial re-inspection; or

b. Two or more Notice and Orders for serious health and safety violations relating to a Property are issued during any calendar year, even if the violations are abated within thirty days; or

c. Any of the circumstances set forth in subsection 1 of this Section cease to exist.

3. Certifying. Owners in the self-certification program shall inspect, or shall cause to be inspected by a licensed property manager, each and every Residential Rental Unit on the Property at least once every twelve months (plus a thirty day grace period) and upon each change in tenancy. Self-certification shall be accomplished as follows:

a. Inspect each Residential Rental Unit for health and safety violations, in compliance with the requirements of the self-certification form provided by the City, or other document deemed substantially similar by the Director.

b. Immediately make any repairs to the Residential Rental Unit that are necessary to achieve compliance with the requirements of the self-certification form; and

c. Complete the self-certification form and submit a copy to the occupants of the corresponding unit.

d. If any Residential Rental Unit cannot be self-certified because necessary repairs cannot or will not be made, the Owner shall immediately notify the City and the Property shall immediately be removed from the self-certification program.

e. Forms shall be signed under penalty of perjury and it shall be unlawful to knowingly falsify any material information on the self-certification form, and any such falsification may be prosecuted as a misdemeanor.

f. The Owner's local representative shall retain all completed self-certification forms for at least four years from the date the inspection was made, and shall produce all completed self-certification forms to any City representative upon request.

4. Sampling Inspections. 10% of Residential Rental Properties in the self-certification program, and the units thereon, will be inspected by the City on a random basis each year.

a. A Property that is selected for random inspection and passes will be exempt from further random inspections for five years.

b. If a Residential Rental Unit inspected as part of the sampling fails to comply with the provisions of the Rental Housing Improvement Act or these Regulations, it shall be subject to re-inspection. If the unit fails to comply after the initial re-inspection, the Property shall immediately be removed from the self-certification program, unless all violations are caused by tenant's breach of Tenant's Affirmative Obligations.

#### **J. Correction Notices**

1. Content. Whenever it is determined by the Inspector that a violation of Health and Safety Standards exists, the Inspector shall issue a written correction notice. The notice shall contain a description of the violation, the specific action required to correct the violation, and a demand the violations be corrected within the specified time

period listed in the notice. The notice shall contain the scheduled re-inspection date and time.

2. Time for Correction. The notice shall provide a reasonable time for correction. The time shall depend on the time it would take a reasonably diligent person to complete the required action; the potential harm to the public welfare, health and safety; the harm to the tenant or nearby properties; and the extent of the corrections required. Certain imminently dangerous life-safety violations shall require immediate correction.

3. Service of Notice. The notice of violation may be served personally on the Owner or local representative. If the Owner or local representative is not able to be personally served, a copy of the notice may be served by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to the Owner and local representative at the last known business or residence address as appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed complete at the time of mailing.

4. Compliance Re-Inspections. Compliance re-inspections shall be conducted to verify the violations identified in the correction notice have been abated. Violations that were not noted on the initial correction notice but are discovered during any re-inspection due to subsequent activities, damage or deterioration, shall be subject to correction.

**K. Enforcement; Penalties; Appeal**

1. If, after a correction notice has been issued, the Owner fails to abate the violations, the City may proceed with all remedies available under law to compel

compliance, including but not limited to issuing administrative citations, abatement proceedings, civil injunction, criminal prosecution, or any combination of remedies, with respect to all violations not caused by tenant's breach of Tenant's Affirmative Obligations. In any action or proceeding brought by the City to enforce the Rental Housing Improvement Act, the City shall be entitled to recover its attorney's fees when it is the prevailing party.

2. An Owner shall have appeal rights as set forth in the Rental Housing Improvement Act.

3. Delinquent fees, late fees, and penalties, shall be as set forth in the Rental Housing Improvement Act.

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