




AUSTIN CODE DEPARTMENT

To: Mayor and City Council
From: Cora D. Wright, Director, Austin Code Department 
Date: Monday, December 16, 2019
Subject: Repeat Offender Program – Registration Suspension & Revocation

This memorandum provides an overview of the Repeat Offender Program (ROP) Registration Suspension & Revocation procedures recently adopted by the Austin Code Department (ACD).¹ Austin City Code [§ 4-14-50 \(Suspension\)](#) and [§ 4-14-51 \(Revocation\)](#) authorizes the Code Official and the Building and Standards Commission (BSC) to utilize additional code enforcement options against property owners who fail to correct recurring substandard or dangerous rental property conditions.

Timely implementation of the suspension and revocation provisions of the City Code was deferred pending the creation of enforcement criteria and standard operating procedures. I re-prioritized resources to this effort and the criteria are now established. Over the next 60 days, the department will launch a code education campaign for ROP property owners and the general public. This period will extend ROP property owners additional time to achieve compliance prior to the Code Official activating the use of the new enforcement tools in **February 2020**.

IMPORTANT: It is critical to emphasize that suspension/revocation of a ROP property registration will **not** result in housing displacement of tenants. The effect of suspension/revocation enforcement action is that the ROP property owner will be prohibited from leasing any multi-family or single-family residential rental unit that is confirmed vacant (i.e., unoccupied units not under an executed lease agreement) at the time the suspension/revocation goes into effect. Such units are required to remain vacant until all cited substandard or dangerous property conditions are properly corrected, and the ROP registration has been restored by the Code Official.

ROP Program Requirements

There are 73 rental properties currently registered in the ROP program. This represents 9,723 dwelling units, 886 buildings and common spaces across the city. If a non-owner-occupied residential rental property repeatedly violates City Code, the property is automatically registered as a ROP property. Such properties are required to undergo periodic inspections and progressive

¹ Under Chapter 4-14 of the City Code, ROP consists of a series of enforcement actions against multi-family and single-family rental properties that have received numerous health and safety complaints within a 24 consecutive month period. See Ordinances No. [20130926-012](#) and [20141120-003](#).

enforcement up to and including judicial and quasi-judicial enforcement action(s). Subsection [§ 4-14-33](#) requires ROP property registrants to display signage notifying the public of its registration status.

Initial ROP Registration: Pursuant to Austin City Code [§ 4-14-3](#), there are three criteria (informally referred to as “*2-5-2*” *criteria*) that can qualify a non-owner-occupied rental property to be registered as ROP property. They are as follows:

- (1) Two or more separate notices of violation are issued for the same property within a consecutive 24-month period and the owner of the property fails to correct the violations within the time frame required by the code official;
- (2) Five or more separate notices of violation are issued on separate days for the same property within a consecutive 24-month period regardless of whether the owner of the property corrects the violations within the time frame required by the code official; or
- (3) Two or more citations are issued for the same property within a consecutive 24-month period.

The “2-5-2” Determination Process: Utilizing the above criteria, the assigned field inspector is the first to identify and recommend properties for ROP registration. The ROP review committee determines whether the property meets the necessary requirements for required registration. Following property owner notification, the property is registered within 14 days, unless an appeal of the determination is submitted to and upheld by the Code Official.

As required by Austin City Code [§ 4-14-31](#), once a property is registered it must remain in the program for at least two consecutive years and until none of the conditions in Section § 4-14-3 occur for two years.² If a property meets all necessary requirements to be removed from ROP, but then falls into disrepair again, it is subject to ROP registration for at least five years.

Overview of the Suspension & Revocation Criteria & Process

As provided in Austin City Code § 4-14-50(A), ROP properties are subject to registration suspension/revocation if any (or a combination) of five criteria exist. However, this process is reserved for properties that are enrolled in ROP and continue to exhibit habitual non-compliance. The assigned field inspector in consultation with their supervisor may recommend suspension/revocation of a ROP property’s registration. The recommendation and supporting documentation are then subject to review by several management levels whose role is to confirm evidence of current property conditions that reflect a clear pattern of repeated non-compliance. Suspension of rental registration is applicable to non-hazardous violations. On the other hand, revocation of rental registration is reserved for the most extreme violations of City Code that rise to hazardous conditions that create a risk to public safety.

Suspension

² If a new buyer purchases a ROP property and brings the property into compliance with City Code (e.g. addresses all outstanding violations) within 90 days of the purchase, then the property is no longer required to be registered with ROP.

Once the Code Official has determined a property's rental registration will be suspended, that property owner/management and tenants of the property are notified of the determination through a Notice of Intent to suspend pursuant to Austin City Code § 4-14-50(D)-(F). During suspension, the property owner/management cannot lease or allow occupation of vacant units until that property has achieved compliance. If a property owner fails to comply with suspension of their rental registration and continues to lease or allow occupation of vacant rental units, the owner will be subject to citation up to \$2,000 per day for each violation.³

During Suspension, property owners will not be allowed to lease vacant units to new tenants. However, they would be permitted to temporarily accommodate existing tenants in the vacant units during the repair of leased units deemed uninhabitable due to hazardous conditions. While rental registration is suspended, a ROP property's required program registration period is placed on hold and resumes when their ROP status has been restored.

Revocation

The Code Official may revoke a property's rental registration for one of two reasons. First, the Code Official may immediately revoke a suspended rental registration if a condition exists at the property during suspension that is dangerous or impairs habitability and the registrant fails to correct that condition. Second, the Code Official may immediately revoke a non-suspended rental registration if the BSC or a court of competent jurisdiction issues an Order to Vacate for that rental property. The Code Official's decision to revoke a property's rental registration in these cases is effective immediately. Upon reinstatement in the ROP program, the property owner will be required to pay a new registration fee, and their two-year registration requirement will start over.

While a property's rental registration is revoked, the property owner/management cannot lease or allow occupation of vacant units until that property has achieved compliance. If a property's rental registration is revoked and that property continues to lease or allow occupation of vacant rental units, ACD may request an Order to Vacate from the BSC that would be applicable only to those units specified to remain vacant. It is important to note that if a condition exists on the property that is dangerous or impairs habitability, in addition to revocation of the property's rental registration the BSC may also issue an Order to Vacate that would be applicable to an individual building or possibly the entire rental property, rather than on a unit-by-unit basis. This result would only occur in the most extreme of circumstances and is used as a protective measure to ensure the safety and well-being of the tenants of that rental property.

Appeal Process

Pursuant to Austin City Code [§ 4-14-53](#), if a property's rental registration is suspended or revoked, that property may appeal a determination to the BSC. A property must start by filing a written appeal with the Code Official and include a brief statement of the facts that support the appeal, as well as the reason why the suspension/revocation should be reversed. In this situation, the BSC hears testimony from all interested parties, reviews and deliberates on the evidence presented, and

³ Each rental unit that is initially identified as vacant by ACD that is leased to a new tenant while that property's rental registration is suspended is one violation for purposes of the citation.

then determines whether to uphold or overturn the suspension/revocation. A modification to a property's rental registration status is placed on hold during the appeals process until a final decision has been made. Decisions of the BSC are appealable to the Travis County District Court.

Financial Impact to Property Owner

When suspension/revocation enforcement action is taken, inability to rent vacant units will have a direct financial impact on the property owner. The level of impact will depend on several variables, mainly the number of vacant units at the time of suspension/revocation and the per unit rental rate. (For example, the average rent for a one-bedroom apartment in Austin is \$1,200.⁴ If a ROP property has ten vacant units at the time of suspension/revocation, the property owner is prohibited from renting those units. This will result in approximately \$12,000 per month of lost revenue while the property remains in substandard or dangerous conditions in violation of City Code.) Revocation of a ROP registration can occur immediately upon the Code Official's determination that a dangerous or hazardous condition exists at the property, after notice and a reasonable time to correct the deficiencies, or immediately after a court or the BSC issues an order to vacate.

Stakeholder and BSC Engagement to Date

ACD hosted several engagements to brief participants on the ROP ordinance, hear stakeholder concerns, and solicit feedback on the proposed suspension/revocation procedures. Beginning in May 2019, ACD met with the ROP tenant community, tenant advocates, property managers/owners, and representatives of the Austin Apartment Association. This input proved valuable in drafting final suspension/revocation procedures. While the groups did not reach a consensus on every aspect or approach to be taken for ROP suspension/revocation, all agreed that property owners should progressively be held accountable for recurring or persistent substandard or dangerous property conditions. ACD considered all feedback in developing suspension/revocation procedures.

During the November 2019 Annual BSC Retreat, ACD provided the BSC with a brief overview and understanding of the Suspension & Revocation component of the ROP program. Included in that presentation were steps on how the department plans to implement the process, and the potential impact to property owners whose registration is suspended or revoked.

Next Steps

Beginning in December 2019 ACD will:

1. Conduct two orientation sessions for ROP property owners and property managers.
2. Launch a public information campaign to inform the interested public on what exactly it means for a ROP property's registration to be suspended or revoked.
3. Host informational meetings for tenant advocate representatives to reinforce understanding that the process will only affect vacant units and tenants will not be displaced.
4. Prepare to consider ROP properties for suspension or revocation.

⁴ This information is based on the average rent amount for the City of Austin provided by Zumper as of November 30, 2019. <https://www.zumper.com/research/average-rent/austin-tx>

Repeat Offender Program (ROP) Escalation Process



REGISTRATION SUSPENSION & REVOCAION

1

REPEAT OFFENDER PROGRAM CRITERIA

All single-family and multi-family rental properties that have received numerous health and safety complaints within 24 consecutive months are required to register with the City of Austin Repeat Offender Program (ROP).

Austin City Code § 4-14-3(A), ROP

2

PERIODIC INSPECTIONS

If a non-owner-occupied residential rental property repeatedly violates city code, the property is automatically registered as a ROP property. Such properties are required to undergo periodic inspections and progressive enforcement up to and including judicial enforcement action(s).

Austin City Code § 4-14-41, ROP

3

SUSPENSION

Properties are subject to registration suspension if any (or a combination) of five criteria exist. This process is reserved for those properties that are enrolled in ROP and continue to exhibit habitual noncompliance. While a property's registration is suspended, the property owner/management cannot lease or allow occupation of vacant units until that property has achieved compliance.

Austin City Code § 4-14-50(A), ROP

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CITATIONS

If a property fails to comply with suspension of their rental registration and continues to lease or allow occupation of vacant rental units, that property will be subject to citations of up to \$2,000 per day for each violation.

Austin City Code § 4-14-53, ROP

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REVOCAION AND ORDER TO VACATE

The Code Official may revoke a ROP registration if a condition exists on the property during suspension that is dangerous or impairs habitability and the registrant fails to correct that condition or if the Building and Standards Commission (BSC) or a court of competent jurisdiction issues an order to vacate for that rental property. Revocation in this circumstance does not require Austin Code to provide the property with notice of intent to revoke. Instead, determination by the Code Official to revoke a property's ROP registration occurs immediately.

Austin City Code § 4-14-51, ROP