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RETROACTIVE PERMITTING



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CITY OF OAKLAND



RETROACTIVE PERMITTING



A Guide to Retroactive Approval and Permitting of Undocumented Dwelling Units, Additions, and Alterations (Work)

I. General

Property owners have two alternatives to “legalize” undocumented work created without required permits.

Each alternative depends on information from City and County Assessor records. *

Alternative 1

- ✚ Evaluates the undocumented unit against current Housing Code maintenance and construction standards; and
- ✚ Retroactively evaluates an undocumented unit for the Zoning Regulations in effect at the time the unit is identified in City or County records to have been constructed.

Alternative 2

- ✚ Requires the space be constructed to current Planning Regulations and Building Codes as a new dwelling unit or other approved use (habitable or non-habitable space).

II. Records Research

Step 1. City Building Records Research

(see Master Fee Schedule for fees)

The property owner files an application for a Report of Residential Record (“3R Report”), which lists all digital and microfilm building records in the City’s archives.

A. Building permit creating a dwelling unit

Occasionally, the archive research will find a copy of the permit which created the dwelling unit or included the work in question (either new construction or conversion of existing space). If the permit is not finalized, the unit and/or work will **not** be included in the determination of the number of “legal” units (shown at the bottom of the 3R report), but the owner has the option of filing for permits to complete the construction (see Alternative 2 above).

If the permit was finalized, the unit will be included in the 3R determination. In most circumstances, this determination will be sufficient documentation for the

property owner to demonstrate that the unit is approved as a separate dwelling (if not, see Premises Inspection below).

B. Building permit(s) altering undocumented dwelling unit

Occasionally, the research will only find permits altering an undocumented dwelling unit. Since there is no permit creating the unit, it will **not** be included in the 3R determination of the number of “legal” units. The issuance date of an alteration permit or a Housing Report for the undocumented unit is important for determining whether Alternative 1 or Alternative 2 will be applicable (see Premises Inspections below)

Step 2. County Assessor Records Research

(see Assessor for fee)

If no City record is found for either of the following:

- ✚ a finalized permit creating the dwelling unit, or
- ✚ a finalized permit (or Housing Dept Report) issued before December 19, 1957, altering an undocumented unit, then

the property owner should provide a “red-stamped” copy of the microfilmed Residential Building Record maintained by the County Assessor. This document establishes the uses of the building’s rooms (kitchens, bathrooms, etc.) back to the 1950’s. City staff will make a determination from this information whether Alternative 1 or Alternative 2 will be applicable.

Online Permitting:

[Oakland Online Portal \(accela.com\)](https://oaklandca.com)

Email:

Records: Recordsinfo@oaklandca.gov

Code Enforcement: bbcode-inspect@oaklandca.gov

ADU Amnesty Program Checklist/application:

[Amnesty Handout and Checklist_05.13.2022 \(cao-94612.s3.amazonaws.com\)](https://oaklandca.com/Amnesty_Handout_and_Checklist_05.13.2022_cao-94612.s3.amazonaws.com)

ALTERNATIVE I

(see Master Fee Schedule for fees)

Housing Code Certificate of Occupancy

If a City Building Permit, Housing Report or County Assessor record establishes that an undocumented dwelling unit was constructed prior to December 19, 1957, City staff will make a Zoning determination for applicable land use regulations, and the owner may then file for a Housing Code Certificate of Occupancy (CO).

Step 1. Zoning Determination

Units must meet the Zoning regulation (residential use allowed, number of dwelling units allowed, etc.) in effect at the time the unit is established to have been constructed.

Step 2. Housing Code CO

(OMC Chapter [15.08](#))

After a Zoning determination is made, a Certificate of Occupancy (CO) application is filed, and a premises inspection of the entire building is made for maintenance and substandard construction deficiencies. Deficiencies include, but are not limited to the following:

- ✚ Room addition/ detached building conversion
- ✚ Missing concrete floor moisture barrier
- ✚ Structural hazards and deficiencies
- ✚ Missing required fire-rated assemblies
- ✚ Undersized windows / low ceiling height
- ✚ Missing sewer lateral backwater valve
- ✚ Electrical / plumbing without permits
- ✚ Handrail / stair rise and run
- ✚ General maintenance

All deficiencies identified during the premise inspection must be corrected or a **Code Enforcement action will be initiated**. After required permits have been finalized, a renewal Housing Code CO will be issued for the entire building.

ALTERNATIVE II

(see Master Fee Schedule for fees)

Building Code Certificate of Occupancy

When a City Building Permit, Housing Report or County record cannot establish that an undocumented dwelling unit was constructed before December 19, 1957, the owner may apply for a Building Code Certificate of Occupancy (CO).

Step 1. Zoning Determination

([OMC Title 17](#))

The building must comply with current Planning Regulations (density, height, setback, parking, etc....) for the property's zone, or be granted a variance.

Zoning Determination Dates

EFFECTIVE DATE	REGULATION
1930	Zoning Ordinance adopted. No residential density or parking regulations
02-05-1935	Zoning Ordinance amended. Residential density regulations established
subsequently	Zoning Ordinance amended. Various changes on various dates
12-19-1957	Housing Code adopted Maintenance regulations established.
08-31-1965	Planning Code adopted. Zoning regulations amended (density, height, setback, parking, etc.)

Step 2. Building Code Certificate of Occupancy

A. Building Code

(OMC Chapter [15.04](#))

After Zoning approvals have been obtained, a building permit application with required drawings is filed, and a premise inspection (“field check”) of the entire building is conducted for current Building Code (rather than Housing Code) deficiencies. The undocumented unit and all other work in the building for which a finalized permit does not exist (see 3R Report above) must be corrected to current building standards. All deficiencies identified during the premises inspection and subsequent plan check must be corrected, or a **Code Enforcement abatement action will be initiated**.

After required permits have been finalized, a Building Code CO will be issued for the entire building.



B. Infrastructure and Encroachments

(OMC Chapters [12.08](#) and [12.16](#))

The property must also comply with current Municipal Code regulations, including EBMUD testing/replacement of the sewer lateral, sidewalk repairs, and approval of existing encroachments in the public right-of-way.

C. Fire Code

(OMC Chapter [15.12](#))

The building must also comply with current Fire Code standards, potentially including installation of fire sprinklers and class A roofing.



D. Amnesty Program (ADU)

The Accessory Dwelling Unit (ADU) Amnesty Program provides a temporary delay for Property owners determined to have an unpermitted ADU. Property Owners must:

- a. Correct dangerous public health and safety violations.
- b. Complete the Amnesty Program application.
- c. Allow an inspection to identify habitability issues.

Code Enforcement Services

Code Enforcement Services will grant a 5 year or until January 1, 2035, **enforcement delay** and temporary suspension of any associated penalties including Planning Code violations i.e., setbacks, height, size, lot coverage and location for an existing unpermitted ADU or Junior accessory unit (JADU) that was created and occupied prior to January 1, 2021, until the violation is corrected.

**Please note:* Current property owners are responsible for obtaining permits and correcting violations even if the alterations, additions or conversions were constructed by the previous owners of the property.