

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | www.mercerisland.gov



CITY USE ONLY

PROJECT#	APPEAL#	FEE
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Date Received:

Received By:

City Clerk
Received

MAR 14 2023

APPEAL

SITE ADDRESS OF PROPERTY WHERE THE DECISION IS BEING APPEALED:

2630 77th Ave SE Mercer Island WA 98040

PROPERTY OWNER NAME:	ADDRESS:	PHONE:	E-MAIL:
APPELLANT NAME (if different from property owner): Misty Cozzitorto, Managing Director	ADDRESS: 11235 SE 6th Street Suite 200 Bellevue	PHONE: 509-491-0378	E-MAIL: misty.cozzitorto@cushwake.com
APPELLANT ATTORNEY INFORMATION (if applicable):	ADDRESS:	PHONE:	E-MAIL:

What is the decision that you are appealing? Include any applicable project file number.

#CE23-0005

What are your reasons for appealing this decision? (Attach additional pages if necessary)

(You must indicate specifically that there were substantial errors, the decision is unsupported by the facts presented, the decision is in conflict with the standards for review of the action or there were irregularities in the procedure. Attachments or supporting information may be included.)

According to WA state landlord law RCW 59.18 "The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control.

Landlord provided remedial heat for tenants. Landlord has complied with all laws set forth. The speed at which parts from Japan can be obtained are beyond landlords control. The MICC sections quoted do not specify any time within repairs must be completed. We do maintain HVAC, but cannot get parts from Japan. That prevented compliance with the Voluntary Compliance Notice.

What is the outcome or changes in the decision that you are seeking? (Attach additional pages if necessary)

Removal of all fines as landlord has complied with all applicable landlord tenant laws and is acting in good faith to rectify the issue immediately.

Signature: Misty Cozzitorto

Date: 3/13/2023

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Notice of Violation

Pursuant to MICC 6.10.050, this Notice of Violation is issued as follows:

Date of Notice Issuance: February 28, 2023

Location(s): 2630 77th Ave SE, Mercer Island WA 98040

Subject Property: 2630 77th Ave SE, Mercer Island WA 98040

King County Tax Parcel # 5315101626

City of Mercer Island Compliance Case #: CE23-0005

Notification is being given to the following responsible person or persons:

1. T-C 77 Central LLC

730 Third Ave
New York, NY 10017

Notification also being given via registered agent for T-C 77 Central LLC:
Corporation Service Company
300 Deschutes Way SW, Suite 208
MC-CSC1
Tumwater, WA 98501

2. Jenny Richards, Regional Manager, Cushman & Wakefield

11235 SE 6th St, Suite 200A
Bellevue, WA 98004

3. Nora Grant, Property Manager, Cushman & Wakefield

77 Central Apartments
2630 77th Ave SE
Mercer Island, WA 98040

One or more of the responsible persons named above are believed to be responsible for the following violations that have occurred or are occurring at the location(s) identified above:

1) Violations of MICC 17.12 – Uniform Housing Code (UHC):

- a. **UHC SECTION 202- SUBSTANDARD BUILDINGS.** Building or portions thereof that are determined to be substandard as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Chapter 11 of this code.
- b. **UHC SECTION 204- VIOLATIONS.** It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use occupy, or maintain any building or structure or cause or permit the same to be done in violation of this code.
- c. **UHC 701.1 Heating.** Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Section 3102 of the Building Code, the Mechanical Code and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.
- d. **UHC 1001.1 General.** Any building or portion thereof that is determined to be an unsafe building in accordance with Section 102 of the Building Code, or any building or portion thereof, including any dwelling unit, guest room or suite of rooms, or the premises on which the same is located, in which there exists any of the conditions referenced in this section to an extent that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof, shall be deemed and hereby are declared to be substandard buildings.
- e. **UHC 1001.2 Inadequate Sanitation.** Buildings or portions thereof shall be deemed substandard when they are insanitary. Inadequate sanitation shall include, but not be limited to the following:
 6. Lack of adequate heating facilities
- f. **UHC 1001.4 Nuisance.** Buildings or portions thereof in which there exists any nuisance as defined in this code are deemed substandard buildings.

- 2) Violation of MICC 6.10.020(A) Declaration of public nuisance.** All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances. All conditions determined to be code violations may be subject to and enforced pursuant to the provisions of this chapter, except where specifically excluded by law or regulation.

Facts Supporting Violation(s):

1. On November 15, 2022, the City received a code compliance request from a tenant at 77- Central Apartments regarding the lack of permanent heating facilities within their unit, stating that they have been without heat since mid-October 2023 and had notified the property manager in writing, but their permanent heating system had not been restored. On November 17, 2023, an inspection was made by Building Official, Don Cole, confirming the permanent heat was not operational. The tenant stated that the Property Manager informed her the heat would be restored by the first week of December 2023. **The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:**
 - **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances.

2. On December 15, 2023, the City received further tenant complaints about the continued lack of heat within their respective dwelling units. The Building Official contacted the property manager at 77 Central Apartments, Nora Grant with Cushman & Wakefield, and she confirmed that there were still units without heat but that heat should be restored within two weeks (by the end of December). **The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:**
 - **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances.

3. On January 4th, 5th and 6th, 2023, the city received further tenant complaints that the heat had not been restored to their respective dwelling units. On January 6, 2023, Building Official, Don Cole, called the property manager office and the assistant property manager, Ivy Knapp, informed him that the service company was onsite, had isolated the leak and anticipated all heating systems would be back in service by the end of the workday. **The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:**

- **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances.
4. On January 9, 2023, the city received further tenant complaints that the heat had not been restored to their respective dwelling units. Building Official, Don Cole, called the regional manager for Cushman & Wakefield, Jenny Richards, she stated the heating repairs at the 77 Central Apartment are their top priority and they will continue their repair efforts until all units have their permanent heating systems restored. She apologized for their mistaken predictions about the anticipated restoration dates for the heating systems, citing several factors including their team’s unfamiliarity with the repair times for some of the equipment, mentioning delays in the supply chain, holidays and bad weather, limited availability of service technicians, and unfortunately finding that some of the repaired systems needed further repairs. Expressing her reluctance to make another prediction given their track record, she believed that permanent heating facilities serving all units would be operational before the end of January 2023. The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:
- **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisance.

Voluntary Compliance Notice:

5. On January 19, 2023, the Building Official contacted the local property manager, Nora Grant. She confirmed 27 units were currently without heat, and provided an update that testing determined the need for additional parts, further stating that restoration of heat to all units was now delayed until mid-February 2023. Based on this information, on January 25, 2023, the City issued a voluntary compliance notice to Jennifer Richards, Regional Manager Cushman & Wakefield, to restore the permanent heating facilities to all dwelling units by February 17, 2023. As of the date of this notice of violation, the person(s) responsible did not complete the corrective actions listed in the Voluntary Compliance notice. The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70° F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:

- **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances.
6. On February 18, 2023, the City received further tenant complaints that permanent heating facilities had not been restored to their respective dwelling units. The Building Official, Don Cole, contacted the property manager at 77 Central Apartments, Nora Grant, she confirmed that permanent heat had been restored to one dwelling unit, but that 26-dwelling units were currently without heat, stating that the parts were still being manufactured in Thailand and the status of their completion and shipping was not known at this time. The failure to maintain the permanent heating system within each dwelling unit to be capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms are violation(s) of Mercer Island City Code as follows:
- **UHC Sections 701.1 Heating, 202, 204, 1001.1, 1001.2** – The person(s) responsible did not maintain a permanent heating system within each dwelling unit that is capable of maintaining a room temperature of 70°F at a point 3 feet above the floor in all habitable rooms. The City has found that due to the lack of adequate heating facilities, each affected dwelling unit is substandard, is a public nuisance, constitutes a code violation, and shall be abated by repair.
 - **MICC 6.10.020** - All code violations are determined to be detrimental to the public health, safety, welfare and environment and are declared to be public nuisances.

The Responsible Person(s) are Ordered to Complete the Corrective Actions as Follows:

- 1) The responsible person(s) shall immediately repair the permanent heating system within all dwelling units to effective operation capable of maintaining a temperature of 70 degrees Fahrenheit at a point 3-feet above the floor within all habitable rooms. The responsible person(s) shall submit to the City confirmation from the installing contractor that the repair work has been satisfactorily completed. The compliance date for completion of these Corrective Actions is March 14, 2023.
- 2) The responsible person(s) shall not allow the occupancy of any vacant dwelling units unless the permanent heating system within the dwelling unit is currently capable of maintaining a temperature of 70 degrees Fahrenheit at a point 3-feet above the floor within all habitable rooms.

The compliance date for satisfactory resolution of the Corrective Actions above is March 14, 2023. If the violation is not corrected on or before this date and this notice is not appealed, the determination is final, and penalties are due and additional daily penalties shall begin to accrue. Pursuant to MICC 6.10.050, penalties for noncompliance with this Notice of Violation shall be as follows:

MICC 6.10.050(D)1

D. Civil penalties.

1. Civil penalties. A civil penalty for violation of the terms and conditions of a notice of violation, stop work order or voluntary correction agreement shall be imposed at the rate of \$100.00 per day for each violation, accruing for every day after the compliance date listed in the notice of violation. Thirty days after the compliance date, the penalty will increase to a rate of \$250.00 per day for each violation. Sixty days after the compliance date, the penalty will increase to a rate of \$500.00 per day for each violation, up to a maximum total penalty of \$50,000.00 for each violation.

Under MICC 6.10.050, the City may suspend, revoke, and/or place a hold on future permit applications and/or file a notice with the King County recorder's office to notify the public of the presence of an unresolved Notice of Violation on the property if the penalty is not paid. Additionally, unpaid penalties will be sent to a collection agency for the purposes of collecting penalties and costs assessed pursuant to MICC 6.10.100 and RCW 19.16.500. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law.

Appeal Procedure:

- Pursuant to MICC 6.10.050(B)(5), you have the right to appeal this Notice of Violation & Civil Penalties before a hearing examiner. An appeal must be filed with the City Clerk within 14 days of the service of this Notice. Failure to appeal within 14 days shall render this Notice a final determination that the conditions described therein existed and constitute a code violation(s), that assessed and accrued civil penalties are due, and that the named party(ies) is/are liable as a person responsible. An appeal form can be found at: <https://www.mercerisland.gov/cpd/page/appeals>

If you would like to discuss the resolution of this code case or schedule a compliance inspection, please contact me by email at Don.Cole@mercergov.org. Thank you for your cooperation.

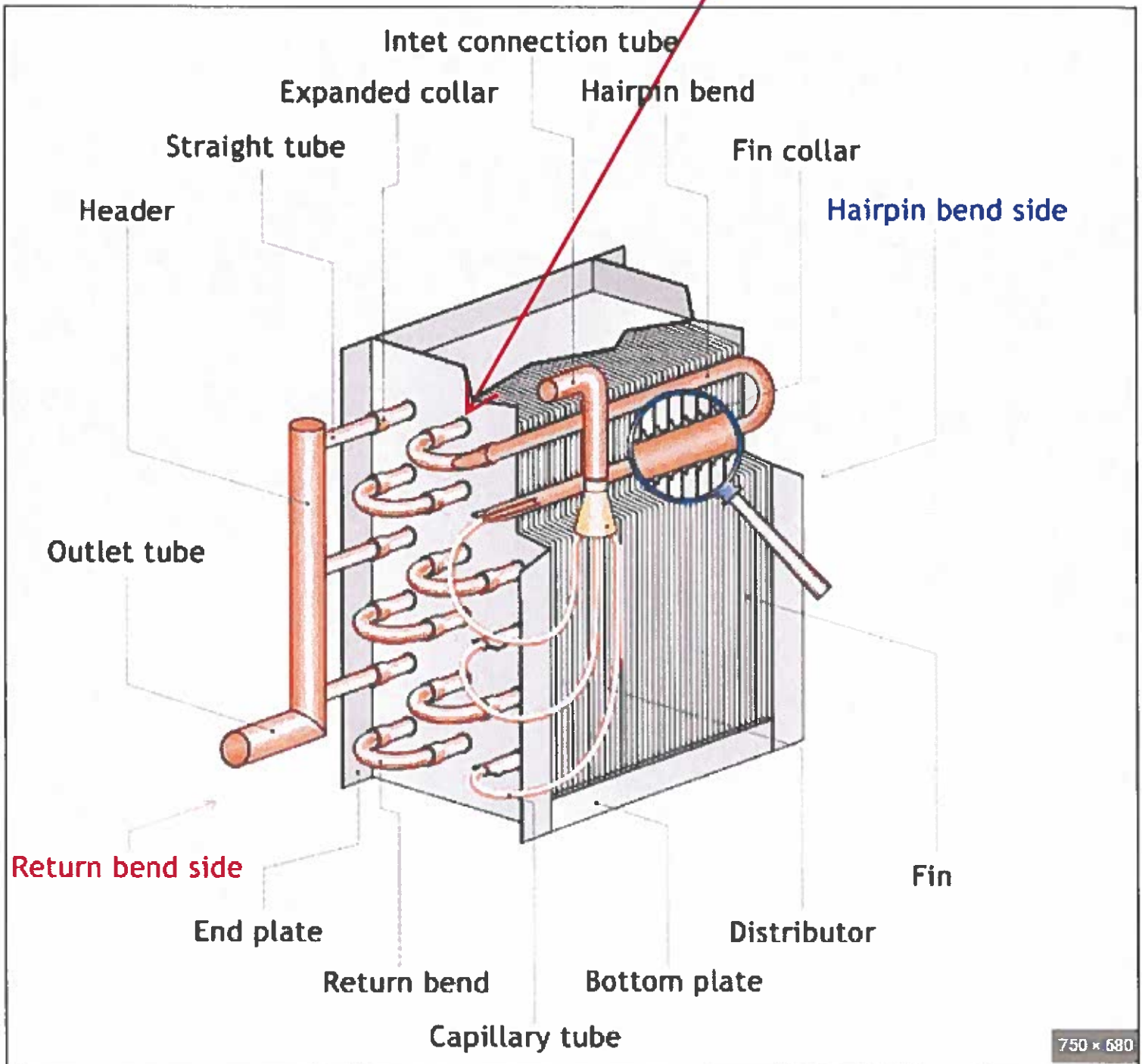
Sincerely,

Don Cole
Building Official
City of Mercer Island, Community Planning and Development

77 Central Indoor Coils

The leaks that are appearing on the indoor coils are in a very hard place to repair between the steel header end plates and the copper tubes. At the factory, the tubes are expanded to create a tight fit between the tubes, steel end plates and the aluminum fins.

The problem with the coils at 77 Central is that there are several small leaks on several tubes on both ends of the coils, and there's really no way to fix this problem other than replacement.



Misty Cozzitorto/USA

From: Terry Graham/USA
Sent: Monday, March 6, 2023 2:17 PM
To: Misty Cozzitorto/USA; Jenny Richards/USA
Cc: Erik Pettit/USA
Subject: FW: 77 Central / HVAC issues
Attachments: 20230228134559.pdf; 8075 Auth 26107 Specs - Rplc Coils - AubMech - 77Cen - \$140,293.82.pdf

Importance: High

Misty and Jenny,

I spoke to Erik this morning after he sent over an email from Woody with their concerns about this project and the now the cities involvement.

Erik spoke to Lex and this is our plan. The email that I sent to the City of Mercer Island this morning was intended to get them to give us a call to discuss a possible waiver as we have a plan in place with Auburn Mechanical.

1. Our Management team has meet the needs of the resident by offering heaters and concessions while we have been working on the project diligently. But with supply chain crisis it has been difficult at best.
2. We have a contract in place with Auburn Mechanical and sent the timing of the parts and units to him in the email. It will basically be in two to three phases. The first and second phase will be the coils themselves. The final phase will be the 10 fan coil units to replace the coils that are not made any longer.
3. Auburn Mechanical said if the city needs more information, they will try to supply that but right now this is all we have.

So if you would like to read me email to the city it is below.

Thank you in advance

Terry Graham
Director, Construction
Multifamily, Construction Management Services
11235 SE 6th Street, Suite 200
Bellevue WA 98004

Direct: 206-215-9850
Mobile: 206-819-3974
Terry.Graham@cushwake.com

 **CUSHMAN &
WAKEFIELD**
201 California Street, Suite 800
San Francisco, CA 94111 | USA
cushmanwakefield.com
cushwakeliving.com

From: Terry Graham/USA
Sent: Monday, March 6, 2023 9:17 AM
To: Don.Cole@mercergov.org
Cc: Erik Pettit/USA <Erik.Pettit@cushwake.com>
Subject: 77 Central / HVAC issues
Importance: High

Good morning Mr. Cole,

Terry Graham here from Cushman Wakefield/Construction Management. I have been working on the 77 Central Apartment complex for the last year. Numerous projects, new capex projects and this HVAC major project.

Almost a year ago Auburn Mechanical reached out to the site team and said they could no longer top off the refrigerant in the Mitsubishi VRF units. This is due to the Dept of Ecology rules and regulations about refrigerant releasing into the atmosphere. The site team would have a heating issue and Auburn Mech would come on a service call and check the units. Add some charge to them and they would take off and everything was working. A few months later that same system or multiple systems would slowly lose charge and stop heating or providing A/C.

The building has 7 of these systems. Condensing units are on the roof, there is probably 5,000 lineal feet or more of refrigerant line sets, approx. 91 coils heat exchangers in the resident units and numerous manifold boxes behind access panels throughout the building. Five out of the seven system were having leaks that were being leak tested and repaired as we found them. This process is very labor intensive and time consuming. The reasoning behind the leak testing and repairing was Auburn Mechanical thought this would resolve our issues and we could get back up and running. CU 1 and CU 4 were the first two we worked on. The contractor found numerous leaks and we ended up replacing 4 coil heat exchangers. During this work the site team reported numerous other resident were having heating issues. CU 2, CU 3 and CU 7 all had numerous issues. So many leaks that it would be less expensive and faster to replace 38 coil heat exchangers within the three systems. The higher the pressures we would test at produced more leaks. These leaks would take weeks even upwards of a month to leak down to a level that the system would not heat or cool and we could top of the systems any longer.

These systems are very energy efficient but are extremely fragile when it comes to durability. The ownership of the property decided to move forward with replacing 28 coils and 10 complete units after Cushman Wakefield went out and retained two other proposals. Auburn Mechanical won the bidding war, and we went into contract with them.

Jim Moore and his team at Auburn Mechanical have been updating us weekly on the manufacturing, shipping, and delivery dates for the Mitsubishi coil heat exchangers. Yes, you read that right MANUFACTURING of the units. There are ten air handling units they don't even build anymore. The remaining 28 coil we have to get them put together before they can ship out. They don't have any in their back stock. Here is the most recent information we received from Mr. Moore last Friday.

The ETAs for the coils and the air handlers for 77 Central are listed below.

(17) of the coils will arrive in 2 to 3 weeks

(11) of the coils will arrive 3 to 4 weeks.

(4) of the air handlers are Estimated to ship in 6+ weeks (no specific date available yet) plus two weeks for shipping.

(6) of the air handlers are Estimated to ship 5/15 plus two weeks for shipping.

Install dates will vary as the parts and equipment arrive at our shop.

Thank you

Jim Moore

HVAC Service Account Manager

Auburn Mechanical

2623 W. Valley Hwy N., Auburn, WA 98001

C 253-740-0219 | D 253-838-9780 ext228

www.auburnmechanical.com

So, you can see we are at the mercy of the Japan based Mitsubishi company for the manufacturing, shipping and delivery of the units and parts for the units. The site team has been dealing with the residents as best as they can by providing portable space heaters to the disrupted residents. We ask the city "What else can we do?" with the supply chain issues. We continue to update the residents as we get updates from Auburn Mechanical.

If you would like to have a phone conversation about this, please reach out to myself and Erik Pettit. We would be more than willing to jump on a call and explain the issues more in depth and work with you to help come to a resolution.

Thank you for your time in advance

Terry Graham

Director, Construction

Multifamily, Construction Management Services

11235 SE 6th Street, Suite 200

Bellevue WA 98004

Direct: 206-215-9850

Mobile: 206-819-3974

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