



**Rent Stabilization Board
Legal Department**

DATE: September 18, 2025

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the LIRA Committee
By: Matt Brown, General Counsel

SUBJECT: Recommendation to adopt Regulation 412 [Definition of Occupied Rental Unit Under B.M.C. section 13.76.135] and substantive amendments to the following existing Regulations to administer Right to Organize established by Measure BB: 411 [Property Management Company; definition], 1209 [Parties] – Second Reading

Recommendation

That the full Board adopt Regulation 412 [Definition of Occupied Rental Unit Under B.M.C. section 13.76.135] and substantive amendments to the following two existing Regulations to administer Right to Organize established by Measure BB: 411 [Property Management Company; definition], 1209 [Parties]. The LIRA Committee reviewed staff's proposed amendments at their June 24, 2025 meeting and unanimously recommended adoption of this proposal and the Board recommended adoption on first reading at its July 17, 2025 meeting.

Background

The Board and a number of key stakeholders have expressed considerable interest in adopting regulations to help operationalize the Right to Organize section of the Ordinance (B.M.C. section 13.76.135) as adopted by the Berkeley voters in November of 2024. This memo addresses the proposed substantive amendments to existing regulations, as well as the adoption of a new one to accomplish this purpose.

➔ New Regulation:

Regulation 412 [Definition of Occupied Rental Unit under B.M.C. section 13.76.135]

B.M.C. section 13.76.135A. allows tenants to establish a Tenant Association if they are able to provide the landlord a petition signed by at least 50% of the occupied rental units of the residential property. California case law makes clear that tenant employees are treated

differently from other tenants in that they are employees first and tenants second in situations where they entered their units as employees. In other words, a tenant employee who has their employment terminated may be displaced from their unit by virtue of their employment being terminated; they are employees first and do not enjoy the same eviction protections as other tenants at the property. LIRA Commissioners were concerned that their occupancy in the building not affect the threshold requirement of occupied rental units, since they are technically agents of the landlord. While the proposed regulation makes clear that tenant employees may join a Tenant Association, neither the staff nor the LIRA Committee made any comment regarding whether a particular Tenant Association may establish rules to prevent their membership.

Additionally, in situations where there is an owner occupant or a relative occupant who occupies a unit rent-free, the LIRA Committee expressed concern that these units not count toward the total number of occupied units. Proposed Regulation 412 clarifies that units that are owner or relative-occupied shall not count toward the total number of occupied units for the purpose of establishing a Tenant Association. “Relative” is defined the same as it is in the owner move-in just cause for eviction (B.M.C. section 13.76.130A.8.(b)).

The proposed text of Regulation 412 is below.

412. Definition of Occupied Rental Unit under B.M.C. section 13.76.135

(A) For the purposes of determining the number of occupied units on a property in Berkeley under Municipal Code section 13.76.135.A, a rental unit shall not be an occupied rental unit if the landlord of the property employs a tenant who resides in that rental unit, and the tenant did not occupy that rental unit on the property prior to their employment with the landlord. Nothing in this Chapter shall prevent a tenant who is employed by the landlord from joining a tenant association as defined under Berkeley Municipal Code section 13.76.135.

(B) Owner occupied units, units occupied by a landlord’s spouse, units occupied by relatives of an owner, or units occupied rent-free shall not be occupied rental units under Berkeley Municipal Code section 13.76.135.A. For purposes of this regulation, only a landlord’s child or parent shall qualify as a relative.

➔ Substantive Amendments to Existing Regulations:

1. Regulation 411 [Property Management Company; definition]

As mandated by B.M.C. section 13.76.135A., the Board adopted this regulation in January of 2025. In the interim, staff became aware of a situation in which a group of tenants who otherwise would have met the threshold requirements for establishing a Tenant Association were

prohibited from doing so, because the landlord shifted from a property management company to a landlord-managed LLC. The LIRA Committee asked staff to draft amendments to Regulation 411 to make clear that a corporation would be considered a property management company. In other words, the landlord must be an individual operating separately from a corporate entity; otherwise the entity will be considered a property management company for purposes of B.M.C. section 13.76.135A.

The proposed text of Regulation 411 is below. Additions are in red text; deletions are in strikethrough.

411. Property Management Company; definition

(A) For the purposes of Berkeley Municipal Code section 13.76.135, a property management company is any entity which provides any of the following services to a record owner of a residential rental unit ~~in the City of Berkeley~~:

- (1) New tenant intake, including marketing, establishing and maintaining any waiting list, determination of applicant eligibility, applicant screening, and tenant selection;
- (2) Lease execution, including explaining the lease and all attachments;
- (3) Collection of rent and any charges in addition to rent;
- (4) Lease enforcement, including executing terminations of tenancy;
- (5) Performance of maintenance or repairs on a unit, including subcontracting with other services to perform such maintenance;
- (6) Communication with current tenants regarding concerns and requests arising from their tenancy; or
- (7) Any activities necessary to maintain compliance with laws and ordinances regarding the rental of residential property units.

(B) A revocable living trust, as defined in Regulation 503(B), is not a property management company for purposes of Berkeley Municipal Code section 13.76.135.

(C) An individual is not a property management company unless that individual is the officer, director, or agent of an entity defined in subsection (A) or otherwise directs, controls, or manages, such an entity.

2. Regulation 1209 [Parties]

Following a request from community stakeholders at the May 8, 2025 meeting, the LIRA Committee asked staff to draft language that would expand the definition of party to allow Tenant Associations to represent an entire building in Rent Board hearings, so that rent adjustments would apply to all tenants, not just members of the association itself. Currently, tenant parties are defined only as those who have placed their names on a petition. Assuming the Rent Board hearing examiner awards a reduction for common area issues, for example, the only tenants who would be entitled to those adjustments would be those who filed the petition.

The proposed amendments to this regulation make clear that the Tenant Association may file on behalf of the entire building, and any resulting rent decreases will apply to all units impacted by the reduction in service. Nevertheless, Tenant Associations will be required to send opt-out forms to all tenants impacted by the alleged substandard conditions. Any tenant household that does not want to be a party to the petition may indicate this on the form. All other tenants in the building impacted by the alleged habitability defects will be parties to the petition.

The proposed text of Regulation 1209 is below. Additions are in red text; deletions are in strikethrough.

1209. Parties

(A) Parties are the landlord of the affected property, the tenants in each affected rental unit (with all the tenants in one unit constituting one party), and any representatives designated pursuant to Section 1234. The person listed as the landlord in a tenant petition for rent adjustment shall be the landlord party, unless the Board is notified to the contrary.

(B) If established under Berkeley Municipal Code section 13.76.135, parties are tenant associations filing a petition on behalf of tenants in one or more rental units in the buildings they represent. The tenant association petitioner shall send a Board-adopted opt-out form to every tenant in the building impacted by the alleged reduction in services. The form shall identify the common-area issues raised in the petition and shall state that every tenant in the building is deemed a party to the petition unless they opt otherwise. The form shall include a statement that the tenant may sign indicating that they opt not to be a party to the petition. Any tenant who signs the form and returns it to the Board shall not be deemed a party. Tenants shall otherwise be deemed parties and shall be entitled to any rent adjustment awarded in the hearing decision.

Name and Telephone Number of Contact Person

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