

## CHAPTER 5. APPLICABILITY

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503. Definition of Principal Residence

(A) **Background and Purpose.** Like many of the exemptions listed in Berkeley Municipal Code Section 13.76.050, the exemptions identified in Berkeley Municipal Code Sections 13.76.050F. and 13.76.050G. (Sections 5(f) and 5(g) of the Ordinance) are transitory. A landlord may not claim an exemption pursuant to Sections 5(f) or 5(g) of the Ordinance unless the landlord occupies a unit on the property as his/her principal residence at the time the landlord asserts or claims the exemption.

(B) “Person” limited to “natural person.” Only a natural person may claim principal residence in a unit when claiming an exemption under Sections 5(f) or 5(g) of the Ordinance. For purposes of this Regulation, “person” shall mean only a “natural person.” A successor in interest is not entitled to the exemptions in either Sections 5(f) or 5(g) of the Ordinance merely because a previous landlord claimed entitlement to one of these exemptions. A bank, corporation, or other business entity may never claim a unit as exempt under Sections 5(f) or 5(g) of the Ordinance as such entities are not natural persons. A natural person who has granted the subject property into a revocable living trust may claim principal residence only as follows:

(1) The person claiming principal residence is both the grantor and the trustee of the revocable living trust, or

(2) The grantor has named another natural person as trustee but has retained oversight over the amount of rent charged at the property and any decision to evict any tenant from the property.

(3) A natural person who is the sole surviving beneficiary of a revocable living trust for which all grantor(s)/trustee(s) are deceased may claim principal residence.

(4) All applicable criteria set forth in Subsections C and D shall apply equally to natural persons claiming principal residence pursuant to a revocable living trust as if they were owners of record. The Board may require appropriate documentation, including but not limited to an affidavit signed under penalty of perjury and/or a Certification of Trust for the purpose of establishing exemption.

(C) Principal residence, as used in Sections 5(f) and 5(g) of the Ordinance, is that dwelling place where the person actually resides a majority of the time. For the purpose of this Ordinance, a person may have only one principal residence.

(D) In the determination as to the principal residence status of the dwelling place, the following factors shall be considered:

(1) whether the person carries on basic living activities at the dwelling place;

- (2) whether the person maintains another dwelling and, if so, the amount of time that the person spends at each dwelling place;
- (3) whether the person has filed for and obtained a homeowner's exemption for the dwelling place;
- (4) whether the person is a registered voter at the dwelling place;
- (5) other relevant factors.

[Effective Date: 11/26/80; renumbered 04/09/99; added new Sections A and B, and enumerated sub-section identifiers of new Section D (previously A through D) 06/17/13; amended Section B to make clear that properties held in certain types of revocable living trusts will qualify for exemption when applicable criteria is met; sunset provision identified in Section E – 9/19/19; 10/21/21: Eliminated Section E.]

504. Transient Units

A rental unit in an establishment such as a hotel, motel, inn, tourist home, or rooming or boarding house, shall be presumed to be rented primarily to transient guests and exempted from the Ordinance if all of the following facts exist:

- (A) The establishment is properly licensed as a hotel, motel, inn, tourist home, rooming or boarding house, or similar establishment and said usage is lawful under the zoning laws of the City of Berkeley;
- (B) The unit has been continuously occupied by its current occupant(s) for less than 14 days;
- (C) The current occupant(s) of the unit have continuously resided in the property for less than 14 days. For purposes of this regulation, the term property shall be defined as set forth in Section 4(h) of the Ordinance;
- (D) The occupancy is subject to the hotel tax; and
- (E) The unit has been occupied by persons described in (B) through (D) above, for at least 184 days in the 12-month period immediately preceding September 1 of each year and/or has been vacant and available for rent to transient guests for 184 days.

[Effective Date: 10/27/82, renumbered 04/09/99.]

505. Non-Transient Units

A rental unit in an establishment such as a hotel, motel, inn, tourist home, or rooming or boarding house, shall be presumed to be rented primarily to non-transients and subject to the provisions of the Ordinance if:

- (A) The occupancy is not subject to the hotel tax; or
- (B) The current resident(s) have continuously resided in any unit on the property for at least 14 days.

[Effective Date: 10/27/82; renumbered 04/09/99.]

506. Changes in Status of Transient Unit

If a unit becomes subject to the provisions of the Ordinance by virtue of Regulation 505, it shall be registered within 60 days as set forth in Section 8(I) of the Ordinance. If thereafter the unit becomes vacant and is rented to a transient, it shall be exempt for the period of time of such transient occupancy.

During such period of exemption, the provisions of the Ordinance relating to limitations on rents and eviction controls shall not apply. When the unit is again occupied by a nontransient, the rent must revert to the level which would have been lawful under the Ordinance had the unit continuously been occupied by a nontransient. A unit which is subject to the Ordinance need only be registered once each year regardless of the number of times its status changes.

[Effective Date: 10/27/82; renumbered 04/09/99.]

507. Posting of Rents for Non-Transient Occupancy

The maximum lawful rent for non-transient occupancy shall be posted in a readily visible place in each unit subject to registration by virtue of these regulations. Such posting shall be done on a form approved or provided by the Board.

[Effective Date: 10/27/82; renumbered 04/09/99.]



508. Exemption for Certain Single Family Residences

(A) Effective July 1, 1999, the following single-family residences shall be exempt from the terms of Berkeley Municipal Code Section 13.76.080 [Rent Registration]; Section 13.76.100 [Establishment of Base Rent Ceiling and Posting]; Section 13.76.110 [Annual General Adjustment of Rent Ceilings] and Section 13.76.120 [Individual Adjustment of Rent Ceilings - except as it relates to the recovery of security deposits]:

(1) A single-family residence that first became subject to the Rent Ordinance on or after January 1, 1996.

(2) As of January 1, 1999, a single family residence for which a new tenancy began on or after January 1, 1996 except where:

(a) The preceding tenancy was terminated by the landlord by notice pursuant to Section 1946 of the Civil Code or was terminated upon the change in terms of tenancy noticed pursuant to Section 827 of the Civil Code;

(b) The landlord has otherwise agreed by contract with the City of Berkeley or any other public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code; or

(c) The dwelling unit contains serious health, safety, fire or building code violations, excluding those caused by disasters, for which a citation has been issued by the appropriate governmental agency, and which citation has remained unabated for six months or longer preceding the vacancy.

(B) For purposes of this Regulation, a single family residence is defined as a unit that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) section 11004.5 of the Business and Professions Code but does not include a condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value as provided in Civil Code section 1954.52(a)(3)(B)(ii).

(C) Except as provided in this regulation, single-family residences remain subject to the terms of the Rent Ordinance, including Berkeley Municipal Code Section 13.76.070 [Security Deposits] and Section 13.76.130 [Good Cause Required for Eviction].

[Effective Date: 4/23/99; revised Section (B) added lines after.. Professions Code.. 2/4/02]

509. Definition of New Construction for Legal Rental Units – **\*\*REPEALED\*\***

(A) Authority and Scope. Section 5(i) of the Ordinance exempts newly-constructed rental units from Chapter 8 (Rent Registration), Chapter 10 (Establishment of Base Rent Ceiling and Posting), Chapter 11 (Annual Adjustment of Rent Ceilings), and Chapter 12 (Individual Adjustments of Rent Ceilings) of the Ordinance. This Regulation addresses only newly-constructed rental units for which the owner has secured the necessary and proper City permits for legal construction.

(B) Definition. As defined in Section 5(i) of the Ordinance and consistent with California Civil Code Section 1954.50, et. seq., new construction of legal units shall include:

- (1) units that receive a Certificate of Occupancy issued after February 1, 1995; or
- (2) units that have already been exempt from the Ordinance prior to February 1, 1995, pursuant to Section 5(i) of the Ordinance.

All units constructed as the result of rehabilitation, conversion, or partial demolition of existing units and which do not meet either of the definitions as stated in Paragraphs (B)(1) or (B)(2) above shall not qualify as new construction and shall be subject to the terms of all Chapters of the Ordinance including Chapter 8 (Rent Registration), Chapter 10 (Establishment of Base Rent Ceiling and Posting), Chapter 11 (Annual Adjustment of Rent Ceilings), and Chapter 12 (Individual Adjustments of Rent Ceilings).

[Adopted 11/17/14. *Repealed 4/24/17.*]

## **510. Definition of New Construction for Units that Lack a Certificate of Occupancy.**

### **(A) Scope and Authority.**

Since 1980, the Rent Ordinance has distinguished between newly-constructed rental units and those created through conversion or substantial rehabilitation. Effective December 18, 2016, the new construction exemption was amended. See Berkeley Municipal Code Section 13.76.050. Consistent with California Civil Code Section 1954.50 et seq., certain newly-constructed rental units for which a Certificate of Occupancy has not been issued are exempt from Chapter 8 (Rent Registration), Chapter 10 (Establishment of Base Rent Ceiling and Posting), Chapter 11 (Annual Adjustment of Rent Ceilings), and Chapter 12 (Individual Adjustment of Rent Ceilings) of the Ordinance. This Regulation sets forth the criteria for exemption of such rental units.

### **(B) Conversion.**

A rental unit that is created as the result of conversion or substantial rehabilitation of an existing structure shall not be exempt unless a Certificate of Occupancy has been issued for that unit after June 30, 1980.

### **(C) Units constructed before February 1, 1995.**

A detached rental unit constructed from the ground up after June 30, 1980 but before February 1, 1995 shall be exempt from the Chapters detailed in Subsection A.

### **(D) Units constructed after February 1, 1995.**

A detached rental unit constructed from the ground up after February 1, 1995 shall be exempt from the Chapters detailed in Subsection A only where all applicable building permits have been issued and finally approved by the City.

### **(E) Definition of “ground up” construction.**

For the purposes of this regulation, construction from the ground up is defined as the construction of an entirely new structure, not attached to any other structure and not created by the partial demolition of an existing structure.

### **(F) Units with a formal determination of exemption.**

Notwithstanding the foregoing, where a formal determination of exemption was made before February 1, 1995, the subject rental unit shall remain exempt consistent with California Civil Code Section 1954.50 et seq.

[Adopted April 24, 2017.]

511-519

RESERVED

## **520. Exemption for Fraternities and Sororities**

**(A) Background and Purpose.** The Rent Board has long exempted rental units in properties owned by fraternities and sororities (or companies that manage units occupied by active members of these organizations). Tenants who live in these units that are not active members of fraternities and sororities, however, are not exempt from any section of the Rent Ordinance. The Board recognizes that many of these rental units are occupied seasonally (typically during the summer months) by non-members and has charged the landlord a partial Registration Fee required by B.M.C. 13.76.080. This regulation clarifies this exemption and identifies the tenants that are covered by the Rent Ordinance.

**(B) Exemption under B.M.C. 13.76.050M.** Rental units – as defined by Regulations 403 and 403.5 – occupied as a primary residence by a member of a fraternity or sorority in which the fraternity or sorority owns the rental unit (or a unit owned by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority’s rental units) are exempt from Berkeley Municipal Code Chapter 13.76.

**(C) Rental units not subject to exemption under B.M.C. 13.76.050M.** Rental units located within a property as defined by subparagraph (B) that are occupied by a tenant who is not an active member of a fraternity or sorority are subject to all sections of Berkeley Municipal Code Chapter 13.76 including Section 13.76.080, Rent Registration.

Tenants who occupy rental units for only part of the year in properties primarily occupied by fraternities and sororities shall be considered “authorized seasonal rentals” as further defined in Regulation 808. Tenants who occupy authorized seasonal rentals shall have the same rights and responsibilities as a tenant who occupies any another rent-controlled unit not subject to an exemption identified in B.M.C. 13.76.050. The Board shall charge a reduced registration fee, however, for these authorized seasonal rentals as defined by Regulation 808.

[Adopted April 24, 2017.]

521. Procedure for Claiming Exemption

(A) The landlord of any rental unit claimed to be exempted from the provisions of the ordinance shall inform the Board of the nature of the claimed exemption and the specific facts upon which the landlord relies in support of the exemption. The landlord shall supply such further information and documentation as the Executive Director or his or her designee may require to investigate and verify the claimed exemption. The landlord and all tenants of unit shall be notified in writing of the exemption determination.

(B) If the Executive Director, or his or her designee, determines that the unit is subject to the ordinance and the landlord disagrees, the landlord may within 15 days of the determination, file a request for hearing on exemption status. The hearing shall be conducted in accordance with the rules for hearing regarding nonregistration of units.

[Effective Date: 05/23/84; renumbered 04/09/99.]

522. Procedure for Challenging Exempt Status

The tenant of a unit which has been determined to be exempt by the Executive Director, or his or her designee, may at anytime obtain review of the unit's exemption status by filing a tenant petition for rent withholding for non-registration. Such a petition shall not be granted if the property was previously held to be exempt after a landlord-initiated hearing on exemption status was held unless it can be shown that there has been a material change in the facts after the first hearing was held, or that the information supplied by the landlord in support of the exemption was false.

[Effective Date: 05/23/84; renumbered 04/09/99.]

523. When Exemption Must Be Claimed or Verified

(A) Where the claimed exemption is based upon the grounds set forth in subsections C., E., F. and G. of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050], the exemption need not be claimed or verified each year. However, if the facts that gave rise to the exemption cease to exist, the landlord shall register the unit in accordance with Section 8.i. of the Ordinance within 60 days after the unit becomes subject to the Ordinance.

(B) Where the claimed exemption is based upon subsections B. or D. of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050], the exemption must be claimed and verified on an annual basis.

(C) Where the claimed exemption is based upon subsection I of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050]., the exempt status of the unit need only be claimed and verified once.

(D) Where the claimed exemption is based upon Regulation 508, the Board will determine the exemption before July 1 of each year, by referring to the Vacancy Registrations filed with the Board, and will notify the landlord and the tenant. Either party can object to the determination by following the procedure set forth in Regulations 521 or 522.

(E) Nothing in this Chapter shall prevent the Executive Director or his or her designee from investigating and reviewing the status of any unit claimed to be exempt or previously found to be exempt if there is reason to believe that the claimed exemption is not supported by the facts or has been obtained as a result of falsely supplied information.

[Effective Date: 05/23/84; amended & renumbered 04/09/99.]



524. Tenant in Occupancy.

(A) In accordance with the purposes of the Rent Stabilization Ordinance, to address the city of Berkeley's Housing Crisis, the rent ceiling limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120 apply only to a rental unit that is occupied by a "tenant in occupancy," which is an individual who otherwise meets the definition of tenant set forth in Berkeley Municipal Code Section 13.76.040.I and who occupies the unit as his or her primary residence. Rental units that are kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or primarily for non-residential use, such as storage, commercial, or office use, are not subject to the rent ceiling limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120.

(B) Occupancy as a primary residence does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the tenant's usual place of return. Evidence that a unit is the individual's "primary residence" includes, but is not limited to, the following elements:

- (1) the individual carries on basic living activities at the subject premises for extended periods;
- (2) the individual does not maintain another dwelling or, if the individual does maintain another dwelling, the amount of time that the individual spends at each dwelling place;
- (3) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;
- (4) utilities are billed to and paid by the individual at the subject premises;
- (5) all of the individual's personal possessions have been moved into the subject premises;
- (6) a homeowner's tax exemption for the individual has not been filed for a different property;
- (7) the individual is enrolled as a student or is a member of the faculty at an institution of higher education in the San Francisco Bay Area;
- (8) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, Peace Corps service, academic sabbatical, travel necessitated by employment or education, or other reasonable temporary periods of absence.

524. Tenant in Occupancy.

(C) A tenant who is enrolled as a student or is a member of the faculty or staff at an accredited institution of higher education in the San Francisco Bay Area may qualify as a tenant in occupancy notwithstanding his or her having another residence to which he or she will ultimately return.

(D) If an individual rents two units in the same building and resides in one of the units as a primary residence, the second unit shall qualify as a tenant in occupancy unit if it is used primarily for residential storage of the personal property of the individual.

[Effective Date: 5/22/03]

525. Procedure for Challenging Tenant in Occupancy Status.

(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be by personal service or service by mail to the unit and any other address provided to the owner by the tenant in writing. Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition.

(B) Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days notice of the hearing.

(C) Except as provided in subsection (B), proceedings on petitions filed under this section shall be conducted according to all provisions of Chapter 12, Subchapter B. A determination that a tenant is not a tenant in occupancy must be supported by a preponderance of the evidence presented to the hearing examiner. If the owner makes a prima facie showing that the unit is not continuously occupied by the individual as a residence, the burden of proving that the unit is the usual place of return and not a secondary residence or used primarily for commercial, office, or storage, except as provided in Section 524(D), shall shift to the tenant. If the hearing examiner determines that the tenant is not a tenant in occupancy, any rent increase noticed by the landlord shall become effective on the date specified in the notice or the date on which rent is next due following service of the hearing examiner's decision, whichever is later.

[Effective Date: 5/22/03]

526 - 599 (RESERVED)