

CHAPTER 4. DEFINITIONS

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401. Housing Services in Group Living Arrangements; definition

The purpose of this regulation is to clarify the definition of "housing services" as that term is used in Berkeley Municipal Code 13.76.040.C when such housing services exist in a rental unit occupied by a group living arrangement as defined in Regulation 405. In such a rental unit, housing services shall include all such services provided by the owner or landlord to the unit or residents of the unit. Housing services do not include services provided by residents to other residents if there is no landlord-tenant relationship between any of the residents. Housing services also do not include services provided by someone other than the owner or landlord if the residents have mutually agreed to share the expenses of such services and no landlord-tenant relationship exists between any of the residents.

[Effective Date: 12/28/83]

402. Rental Unit Occupied by a Group Living Arrangement; definition

For the purposes of Regulations 401, 405 and 1003, a "rental unit" is a dwelling unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Each dwelling unit which contains such independent living facilities is a separate unit notwithstanding the fact that the same group living arrangement may occupy more than one unit.

[Effective Date: 12/28/83]

403. **Rental Unit; definition**

The Board intends for the Rent Stabilization Ordinance (Berkeley Municipal Code Chapter 13.76) to apply to all residential living situations that are not otherwise expressly exempted by the Ordinance or accompanying Rent Board Regulations. The Board shall have the authority to determine if a unit is subject to the terms of the Ordinance. It has been longstanding Board practice to take into consideration the physical layout and facilities of the property along with the intent of the parties at the inception of the tenancy in determining whether a unit is subject to the Ordinance. For purposes of these regulations, "rental unit" is defined as either of the following:

- (A) a dwelling unit providing complete, independent living facilities for one or more persons, with provisions for residential use/occupancy, including but not limited to: living, sleeping, eating, and sanitation; or
- (B) a room or suite of rooms in a hotel, motel, rooming house, boarding house or other group living accommodations building that is intended for human habitation and is not a Transient Unit, as defined in Regulation 504, or otherwise exempted from the Rent Ordinance.
- (C) As used in this section, the following definitions shall apply:
 - (1) "hotel" means any building or portion thereof containing six (6) or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six or more transient individuals for compensation, whether direct or indirect.
 - (2) "motel" means an establishment which provides overnight lodging and parking in which the rooms are usually accessible from an outdoor parking lot.
 - (3) "rooming house" means a property other than a hotel where lodging for five (5) or more persons is provided for compensation, whether direct or indirect, and as further defined in Regulation 403.5.
 - (4) "boarding house" means a building other than a hotel where lodging and meals for five (5) or more persons are provided for compensation, whether direct or indirect.
 - (5) "group living accommodations" means residential accommodations provided in dormitories, fraternity houses, sorority houses, rooming houses, boarding houses, homes for aged persons, family boarding homes for aged persons, and similar uses, but not including hospitals, nursing homes, hotels, motels or automobile courts.

(D) The term “rental unit” shall not be construed to include an aggregation of two (2) or more dwelling units, as defined in subsection (A), or rooms or suites of rooms, as defined in subsection (B).

(E) Whether the landlord and tenant intended to establish a rental agreement wherein the tenant would occupy the rental unit for residential purposes shall also be considered in determining whether a unit is subject to the Ordinance.

[Effective Date: 08/21/98; amended Section (C)(3) on 11/21/11 to further clarify definition of a rooming house; Amended introductory paragraph, Section (A), and added Section (E) to remove the term “cooking” and make clear that the Board shall have the authority to determine whether the parties’ subjective intent was to create a residential tenancy at the inception of the agreement (amended on 1/22/18).]

403.5 Rooming House; definition

(A) Background and Purpose. Since the Board passed Regulation 403 in 1998 a number of questions have arisen regarding the definition of “rooming house.” The Board has always defined a rooming house to mean a building with at least five rooms that are rented to at least five individuals with at least five separate leases. This Regulation is meant to clarify the specific requirements to be considered a rooming house. Since 1998, the Board has intended to make this definition consistent with the definition of “rooming house” in the City’s Zoning Ordinance (Berkeley Municipal Code Section 23F.04.010) and this continues to be the Board’s intention.

This regulation will lower the number of rooms required for a rental unit to qualify as a rooming house in multi-unit properties. Units in multi-unit properties with four or more rooms will qualify as rooming houses (assuming the other conditions are satisfied). This does not stray from the definition of rooming houses in B.M.C. 23F.04.010 as there will still be five or more rooms on the entire property.

Unlike other group living arrangements where the remaining tenants choose tenants to replace those who vacate the unit, rooming houses allow the landlord or his agent to maintain control over who rents each room/unit within the rooming house. A landlord may not, however, rent an entire property under a single lease as a means to avoid registering the unit as a rooming house. The Board will examine whether the landlord is renting to a household or group living arrangement conceived and brought together by the occupants when determining whether a unit qualifies for any claimed exemption.

(B) Rooming House. For purposes of this subchapter, a rooming house shall consist of a rental unit on a property which property contains at least five rooms rented individually to at least five tenants under separate rental agreements. Each room in a rooming house must be individually registered with the Board as a separate rental unit. Each time a tenant permanently surrenders possession of a rental unit in the rooming house, the landlord is entitled to a vacancy rent adjustment subject to the restrictions of Chapter 10 of these regulations. The landlord or his agent shall maintain control over who occupies the various rental units within the rooming house as they become vacant. Use of a single lease will not convert a rooming house into a group living arrangement if the landlord or his agent maintains control over tenant replacement.

(1) Single Family Homes A single family home must contain at least five separately rented rooms to be considered a rooming house.

(2) Multi-Unit Properties A unit within a multi-unit property may be rented as a rooming house provided the rental unit to be rented as a rooming house contains at least four separately rented rooms.

(3) A landlord may not compel the tenants or sub-tenants to sign separate agreements in order to qualify as a rooming house if a single lease agreement remains in effect, or the tenants are living under a group living arrangement as defined by Chapter 10 of these regulations. If the tenants and landlords agree, however, the parties may voluntarily choose to convert their tenancy from a group living arrangement with one lease agreement to a rooming house with multiple agreements if the unit otherwise qualifies.

(C) Exemption under B.M.C. 13.76.050F. (Owner-occupied duplex). If a property owner otherwise qualifies for an exemption under B.M.C. Section 13.76.050F., the property owner is entitled to claim that exemption if the other unit on the property contains four or fewer separately rented rooms.

(D) Disputes regarding rooming house designation. A tenant who claims that a rental unit must be registered as a rooming house under this regulation may obtain review of the unit's status by filing a tenant petition for rent withholding for non-registration as outlined in Regulation 522. A landlord or tenant who disputes the landlord's eligibility to establish the rental unit's initial rental rate as allowed by the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et seq.) under this regulation may file a petition under Regulation 1018.

[Effective Date: Nov. 21, 2011.]

404. Resident Managers

Where a person is employed as an on-site manager pursuant to B.M.C. section 12.48.100 (also known as a resident manager), and said person was a tenant at the same property prior to becoming a resident manager, and said person is lawfully terminated from the position, his or her status reverts to that of a tenant. The rent for the unit, in such a case, shall be set as no more than the rent ceiling in effect for that unit, provided however, that if the resident manager signed a waiver under Regulation 1274(B) during the period he or she was resident manager, that waiver shall be null and void. In addition to his or her rights as a tenant, said person shall be afforded all rights to which he or she is entitled to under State law, including all rights under Labor Code section 201.

[Effective Date: 06/06/97]

405. Group Living Arrangement; definition

For the purposes of Regulations 401, 402, and 1003, a "group living arrangement," other than a group living arrangement of an institution of higher education, is a situation in which a covered rental unit is rented or available for rent by two or more persons who share a common household including the use of common kitchen and bath facilities and, where rights of access to the various portions of the rental unit are determined by mutual agreement among the residents. An establishment such as a hotel, motel, inn, tourist home, rooming house, boarding house or dormitory, other than a dormitory of an institution of higher education, is not a group living arrangement notwithstanding the fact that the residents of the establishment may share common eating, cooking or sanitation facilities.

[Effective Date: 12/28/83; amended 05/09/84, amended & renumbered 04/09/99.]

406. Group Living Arrangement of an Institution of Higher Education; definition

For the purposes of Regulations 401 and 1003, a dormitory of an institution of higher education shall constitute a group living arrangement.

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

407. Institution of Higher Education; definition

For the purposes of Regulations 405, 406, and 408, an institution of higher education" is a post-secondary educational institution which is not operated for profit and is accredited by a national accrediting agency recognized by the United States Department of Education.

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

408. Dormitory of an Institution of Higher Education; definition

For the purposes of Regulations 406 and 407, a "dormitory of an institution of higher education" is a rental unit owned and operated by an institution of higher education for occupancy by students, faculty, administrators, or others affiliated with the institution, and which is rented or available for rent by two or more persons who share a common household including the use of common living and bath facilities.

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

409. Original Occupant; definition

For the purposes of Regulation 1013, an “original occupant” includes any tenant or subtenant who, with the landlord’s knowledge, was residing in the unit on or before December 31, 1995 or when the landlord last established an initial rent for the unit. This includes situations in which a landlord, having received written notice of the departure of the last original occupant, leaves the existing rent ceiling in place rather than raising the rent.

[Effective Date 9/19/19.]

410. Government-subsidized Rental Units

(A) Background and Purpose. Berkeley Municipal Code section 13.76.050.A provides that all provisions of the Rent Stabilization Ordinance apply to any residential rental unit that is rented or available for rent. It is the intent of the Board that all provisions of the Rent Stabilization Ordinance apply to any government-owned or government-subsidized rental unit to the fullest extent possible allowed under federal and state law. To the extent that federal and state law purport to exempt any rental unit from any provision of the Rent Stabilization Ordinance, it is the intent of the Board that such exemption be applied as narrowly as possible.

(B) Fully-Covered Units. Tenancies in rental units subject to the following government subsidies are subject to all provisions of the Rent Stabilization Ordinance, unless another independent grounds for full or partial exemption applies:

- (1) Housing Choice Voucher Program, including Project-based vouchers;
- (2) Veterans Affairs Supportive Housing Program;
- (3) Low-income Housing Tax Credits;
- (4) HOME Investment Partnership Act;
- (5) Shelter Plus Care Program;
- (6) City of Berkeley Housing Trust Fund; or
- (7) any subsidy not explicitly exempted from local price control by federal or state law.

Additionally, rental units owned by government agencies or entities shall be Fully-Covered Units, including entities organized under California Government Code section 6500 et. seq., unless another independent grounds for full or partial exemption applies.

(C) Partial Exemption by Federal Regulation. Title 24, Part 246 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that certain government-subsidized projects are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects under the coverage of Title 24, Part 246 of the Federal Code of Regulations shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

Accordingly, rental units subject to the following government subsidies and in properties with mortgages insured by or held by the Department of Housing and Urban Development are Partially Covered Units, unless another independent grounds for a full exemption applies:

- (1) Rent Supplement Program;
- (2) Section 8 Loan Management Set Aside converted from a prior Rent Supplement Contract; or
- (3) Project-based Section 8.

Separately, Title 24, Section 891.185 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

It is the intent of the Board that no provision of the Rent Stabilization Ordinance shall apply in a manner that either improperly regulates the rents of rental units in such projects identified in this section or that in any way delays, prevents or interferes with the implementation of any increase in rental charges approved by the Department of Housing and Urban Development.

(D) Multiple Subsidies Applied to a Rental Unit. In the instance where a tenancy in a rental unit is subject to more than one government subsidy, the rental unit will be a Partially-Covered Unit if any subsidy applied to the unit is set forth in subsection (C).

[Effective Date January 16, 2025]

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:

- (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.

[Effective Date January 16, 2025; Amended September 18, 2025, to clarify a corporation's role as a property management company]

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.

[Effective Date: September 18, 2025]

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