



Implementing Health & Safety Code Section 17021.5 (Employee Housing)

May 1, 2017

Note: This memo does not contain legal advice. Please consult your city attorney as you draft your ordinance.

Purpose

During their review of local housing elements, HCD requested that some jurisdictions include a program to ensure compliance with State Health & Safety Code Section 17021.5, which concerns employee housing that serves six or fewer employees. This fact sheet is intended to provide assistance to those jurisdictions undertaking implementation of this program.

Background

Section 17021.5 of the State Health & Safety Code is within the part of the code known as the Employee Housing Act. The act sets standards for the construction, maintenance, use, and occupancy of living quarters called “employee housing” as defined in section 17008 of the Health & Safety Code.

Employee housing is defined as accommodations that are, “maintained in connection with any work or place where work is being performed.” (Section 17008 of the State Health & Safety Code.) The law does not provide guidance about how close the “connection” must be. Some potential examples could be a restaurant that supplies housing for its staff, an airline that rents rooms for employees, or a co-op where programmers live. Farmworker housing is also included in employee housing.

Section 17021.5 requires that jurisdictions treat employee housing located in single-family homes and occupied by six or fewer employees as a single-family use. In this way, it is similar to the rules for registered group homes of six or fewer residents. There are several provisions that apply to employee housing for six or fewer employees:

- It cannot be included within the definition of a boarding house, hotel, dormitory, etc.
- No conditional use permit, zoning variance, or other zoning clearance can be required that is not required of a family dwelling of the same type in the same zone.

- Use of a single-family dwelling for purposes of employee housing does not constitute a change of occupancy
- Generally, the housing shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Fire inspection fees cannot be charged.
- Rules regarding deeds, transfer of real property, etc. must treat the employee housing the same as a property used by a single household.

There are additional requirements regarding farm worker housing that are briefly summarized below. The statute states (Section 17021.6) that farmworker housing with up to 12 units or 36 beds is considered an agricultural use of land and cannot be required to obtain any permit that an agricultural use is not required to obtain. Some communities permit agricultural uses in single-family zones. Therefore, to be compliant, they would need to also permit farmworker housing with up to 12 units or 36 beds in those zones. Some cities have either amended their ordinances to make agricultural uses conditional uses in the zone, and permitted farmworker housing on the same terms, or have simply amended their ordinances to make farmworker housing a permitted use in the zone. Communities need to review whether agricultural uses are allowed anywhere in their communities and then decide how to deal with this requirement (Kautz).

Many cities wait until they are making changes to their zoning code and then include the rules regarding employee housing at the same time. Often, cities comply by passing local ordinances that mimic the state law language, which is relatively short. Alternatively, cities could potentially amend their definition of family to include employee housing.

Sample Ordinance

Below is an excerpt from the City of Napa zoning code:

“Employee housing for six or fewer employees in a single-family dwelling shall be deemed a single-family use and shall be treated the same as any single-family dwelling in districts where single-family dwellings are allowed. Employee housing shall not be included within the definition of a boarding house, rooming house, hotel, dormitory or other similar term that implies the employee housing differs in any way from a family dwelling and shall not constitute a change in occupancy for purposes of local building codes. It shall not be subject to any fees to which other family dwellings of the same type in the same zone are not likewise subject.

Thanks to Barbara Kautz at Goldfarb and Lipman, LLP for a review and comments.

Health and Safety Code Sections

Section 17021.5.

(a) Any employee housing which has qualified, or is intended to qualify, for a permit to operate pursuant to this part may invoke the provisions of this section.

(b) Any employee housing providing accommodations for six or fewer employees shall be deemed a single-family structure with a residential land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be included within the definition of a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling. No conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that serves six or fewer employees that is not required of a family dwelling of the same type in the same zone. Use of a family dwelling for purposes of employee housing serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) or local building codes.

(c) Except as otherwise provided in this part, employee housing that serves six or fewer employees shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator or any resident for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to employee housing which serves six or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing which serves six or fewer employees shall be considered a residential use of property and a use of property by a single household, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local needs. This section shall apply equally to any charter city, general law city, county, city and county, district and any other local public entity.

(Amended by Stats. 1993, Ch. 952, Sec. 1. Effective January 1, 1994.)

Section 17008.

(a) "Employee housing," as used in this part, means any portion of any housing accommodation, or property upon which a housing accommodation is located, if all of the following factors exist:

(1) The accommodations consist of any living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobilehome, manufactured home, recreational vehicle, travel trailer, or other housing accommodations, maintained in one or more buildings or one or more sites, and the premises upon which they are situated or the area set aside and provided for parking of mobilehomes or camping of five or more employees by the employer.

(2) The accommodations are maintained in connection with any work or place where work is being performed, whether or not rent is involved.

(b) (1) "Employee housing," as used in this part, also includes any portion of any housing accommodation or property upon which housing accommodations are located, if all of the following factors exist:

(A) The housing accommodations or property are located in any rural area, as defined by Section 50101.

(B) The housing accommodations or property are not maintained in connection with any work or workplace.

(C) The housing accommodations or property are provided by someone other than an agricultural employer, as defined in Section 1140.4 of the Labor Code.

(D) The housing accommodations or property are used by five or more agricultural employees of any agricultural employer or employers for any of the following:

(i) Temporary or seasonal residency.

(ii) Permanent residency, if the housing accommodation is a mobilehome, manufactured home, travel trailer, or recreational vehicle.

(iii) Permanent residency, if the housing accommodation is subject to the State Housing Law and is more than 30 years old and at least 51 percent of the structures in the housing accommodation, or 51 percent of the accommodation if not separated into units, are occupied by agricultural employees.

(E) "Employee housing" does not include a hotel, motel, inn, tourist hotel, multifamily dwelling, or single-family house if all of the following factors exist:

(i) The housing is offered and rented to nonagricultural employees on the same terms that it is offered and rented to agricultural employees.

(ii) None of the occupants of the housing are employed by the owner or property manager of the housing or any party with an interest in the housing.

(iii) None of the occupants of the housing have rent deducted from their wages.

(iv) The owner or property manager of the housing is not an agricultural employer as defined in Section 1140.4 of the Labor Code, or an agent, as it relates to the housing in question, of an agricultural employer.

(v) Negotiation of the terms of occupancy of the housing is conducted between each occupant and the owner of the housing or between each occupant and a manager of the property who is employed by the owner of the housing.

(vi) The occupants are not required to live in the housing as a condition of employment or of securing employment and the occupants are not referred to live in the housing by the employer of the occupants, the agent of the employer of the occupants, or an agricultural employer as defined in Section 1140.4 of the Labor Code.

(vii) The housing accommodation was not at any time prior to January 1, 1984, employee housing as defined in subdivision (a).

(2) "Employee housing," as defined by this subdivision, does not include a hotel, motel, inn, tourist hotel, or permanent housing as defined by subdivision (d) of Section 17010, which has not been maintained, prior to January 1, 1984, or is not maintained on or after that date, as employee housing, as defined in subdivision (a).

(3) If at any time prior to January 1, 1984, a housing accommodation was employee housing, as defined in subdivision (a), and on or after January 1, 1984, was employee housing, as defined in this subdivision, the owner and operator shall comply with all requirements of this part. The owner and operator of any other housing accommodation which is employee housing pursuant to this subdivision shall be subject to the licensing and inspection provisions of this part and shall comply with all other provisions of this part, except that if any portion of the housing accommodation is held out for rent or lease to the general public, the construction and physical maintenance standards of the housing accommodation shall be consistent with the applicable provisions of the State Housing Law, Part 1.5 (commencing with Section 17910), the Mobilehome-Manufactured Homes Act, Part 2 (commencing with Section 18000); or the Mobilehome Parks Act, Part 2.1 (commencing with Section 18200). The owner or operator of the employee housing shall designate all units or spaces which are employee housing, as defined in this subdivision, for the purpose of inspection and licensing by the enforcement agency, subject to confirmation by the enforcement agency, based on all relevant evidence.

(c) "Employee housing" does not include employee community housing, as defined by Section 17005.5, which has been granted an exemption pursuant to Section 17031.3; housing, and the premises upon which it is situated, owned by a public entity; or privately owned housing, including ownership by a nonprofit entity, and the premises upon which it is situated, financed with public funds equaling 50 percent or more of the original development or purchase cost.

(d) "Employee housing" means the same as "labor camp," as that term may be used in this or other codes and, notwithstanding any local ordinance to the contrary in a general law or charter city, county, or city and county, shall be deemed a residential use if it exists in structures that are single-family houses or apartment houses as those terms are used in the State Housing Law (Part 1.5 (commencing with Section 17910)).

(Amended by Stats. 1995, Ch. 561, Sec. 1. Effective January 1, 1996.)