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## Definition of Family (21 Elements)

Best Practices, Sample Definitions and Sample Staff Report May 2010

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### Introduction

A number of jurisdictions have Housing Element programs to update their definition of *family*. This paper summarizes some of the relevant issues and offers sample definitions.

*Since these are legal/zoning issues, the involvement of legal staff is recommended.*

### Background

Around 1995, HCD provided funding for the California Land Use and Zoning Campaign, which audited the zoning code of various jurisdictions to see if they were complying with Fair Housing and other laws. The audits found that many jurisdictions were using outdated definitions that were not in accordance with relevant laws.

There are a number of State and Federal rules that govern the definition of family, including the Federal Fair Housing Amendments Act of 1988, the California Fair Housing and Employment Act, the California Supreme Court case *City of Santa Barbara v. Adamson* (1980), and the California Constitution privacy clauses. The laws for families have a few primary purposes: to protect people with disabilities, to protect non-traditional families and to protect privacy.

Safe guarding families has been a common use of zoning code since its inception. Cities were worried about multiple issues, including protecting the residential character of neighborhoods, preventing overcrowding and ensuring families were not outbid by groups of unrelated individuals, like students, who could collectively pay more for a house.

However, some traditional definitions of family discriminated against people with disabilities. Many individuals with disabilities must share housing so they can have the support they need to live in a community. However, these individuals are often unrelated, so some traditional definitions of family prohibited them from living together, even though related individuals with similar households sizes were allowed to live together.

Secondarily, some extended families found themselves in violation of the law. For instance, the traditional definition of family is a “housekeeping unit composed of people related by blood, marriage or adoption.” This excludes gay and lesbian couples, long term partners who have been living together for decades but are not legally married, and also excludes single parents raising a step-child.

Affordable housing advocates raise a separate point when discussing regulations about the definition of family. In many parts of the Bay Area, low income workers can not afford to live in a community unless they have roommates. On a policy level, planners and decision makers should balance the needs of low income residents with the goals of preventing overcrowding or protecting families.

## Resources

A great local resource is Lauren Zorfas, Executive Director of the Legal Aid Society of San Mateo County, 650.558.0915, LZorfas@legalaidsmc.org. Additionally, Mental Health Advocacy Services, a nonprofit advocacy group, wrote a [seven page memo](#) titled Fair Housing Issues in Land Use and Zoning (1998), which contains helpful information.

## Key Points for Definitions

Rather than focusing on blood or marriage ties, definitions of families should focus on the individual household relationship. For example, the Santa Barbara v. Adamson case found that members of a group home should be treated as a family because they shared household chores and expenses, ate meals together, participated in recreational activities together, and formed close bonds.

According to HCD and Mental Housing Advocacy Services there are three major points to consider when writing a definition of family:

- Jurisdictions may not distinguish between related and unrelated individuals.
- The definition may not impose a numerical limit on the number of persons in a family.
- Land use restrictions for licensed group homes for six or fewer individuals must be the same as those for single families.

However, jurisdictions may exclude boarding houses, dormitories, etc, from the definition of family. There is some disagreement in regards to how far cities may go in regulating boarding homes. A [2003 Attorney General published opinion](#) appears to endorse the idea of using separates leases with each occupant as a way of distinguishing boarding homes from single family units. Fair Housing Organizations may have concerns with this definition. See appendix below.

## Sample Ordinances

The first three examples are taken from the above referenced publication by Mental Health Advocacy Services with edits by Legal Aid Society of San Mateo County.

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**Example 1:** One or more persons living together as a single housekeeping unit in a dwelling unit.

*Note: Your zoning ordinance must also define “single housekeeping unit” and “dwelling unit.”*

**Single housekeeping unit:** One person or two or more individuals living together sharing household responsibilities and activities, which may include, sharing expenses, chores, eating evening meals together and participating in recreational activities and having close social, economic and psychological commitments to each other.

**Dwelling unit:** Any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more persons living together as a single housekeeping unit, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

*Notes:* Legal Aid Society of San Mateo County recommends this definition.

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**Example 2:** Any group of individuals living together as the functional equivalent of a family where the residents may share living expenses, chores, eat meals together and are a close group with social, economic and psychological commitments to each other. A family includes, for example, the residents of residential care facilities and group homes for people with disabilities. A family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries or nunneries.

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**Example 3:** One or more persons, related or unrelated, living together as a single integrated household in a dwelling unit.

*The zoning ordinance must also define “integrated household” and “dwelling unit.”*

**Integrated household:** One or more persons living together who function as a united group.

**Dwelling unit:** See definition above

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#### **Example 4: From Los Angeles**

Original: One or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit. (Recommended by HCD)

Legal Aid Society of San Mateo County expressed concern with this definition because it prioritizes access to living space. Legal Aid explained that the Santa Barbara v. Adamson case recognized that a household should be considered a family if the members share chores, recreation activities, a psychological commitment to each other, etc, even if they do not have access to all living space.

Definition as amended by Legal Aid:

An individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit as evidenced by any combination of the following: each resident has access to all parts of the dwelling; where the adult residents share expenses for food or rent; the residents household responsibilities and activities, which may include, sharing expenses, chores, eating evening meals together; the residents participate in recreational activities; the residents have close social, economic and psychological commitments to each other

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#### **Example 5: Paso Robles**

An individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.

Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, residential care facilities or military barracks, nor does it include such commercial group living arrangements as boardinghouses, lodging houses, and the like.

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*Notes:* Legal Aid Society of San Mateo County expressed concern with this definition for the reasons described in example four.

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### **Additional Points**

Many cities also allow three or fewer unrelated people to be counted as a family. For example, “Family is defined any of the following: a) three or fewer unrelated persons, or b) [insert one of the above definitions here].”

Some definitions of families specifically recognize group homes with six or fewer individuals. For example:

Family means any of the following:

1. An individual or group of two or more persons occupying a dwelling and living together as a single housekeeping unit in which each resident has access to all parts of the dwelling and where the adult residents share expenses for food or rent.
  2. The occupants of a residential facility serving six or fewer persons. For purposes of this definition, “six or fewer persons” does not include people employed as facility staff.
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## **Sample Staff Report**

*Adapted from City of Hawthorn Staff report, 2008.*

**To:**

**From:**

**Date:**

**Subject**

Ordinance No. \_\_\_\_, Zoning Code Amendment No. \_\_ amending Section \_\_\_\_, definition of family

**Recommendation**

**Summary Report**

Zoning Code Amendment No. \_\_\_\_ is a city-initiated amendment to Title \_\_\_\_ (Zoning) of the \_\_\_\_ Municipal Code amending Section \_\_\_\_, the definition of Family

This is a change that the City committed to do in its \_\_\_\_ Housing Element Update.

This proposed amendment will align the City’s definition of “family” with the definitions found in the State’s Health and Safety Code and in the Welfare and Institutions Code. Court cases have expanded the application of a broad definition of family to other aspects of law, including zoning and housing laws. In particular, the California Supreme Court, in *City of Santa Barbara v. Adamson* (1980), struck down the definition of family in the Santa Barbara Municipal Code which made a distinction between related and unrelated persons in setting occupancy limits for single family homes. The Santa Barbara Municipal Code defined family as: *Either 1) an individual*

*or two or more persons related by blood, marriage, or adoption living together as a single housekeeping unit, or 2) a group of not to exceed five persons, excluding servants.*

The Court ruled that this definition violated an individual's constitutionally guaranteed right to privacy by infringing on the right to choose with whom one lives. The current definition of family in the \_\_\_ Municipal Code is: \_\_\_

The proposed change in the definition of family is consistent with the Health and Safety Code, the Welfare and Institutions Code, and the California Supreme Court decision. The new definition is designed to expand the definition to avoid conflict with State law. The proposed change to the Zoning Ordinance should not conflict with the provisions of the City's adopted General Plan. The proposed ordinance advances Goal \_\_\_ of the Housing Element of the General Plan, which are as follows:

Goal \_\_\_: \_\_\_\_.

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15305, Minor Alterations in Land Use Limitations.

The Planning Commission approved Resolution No. \_\_\_, recommending City Council approval of the zone text amendment amending Section \_\_\_. Advertising and notification of the public hearing for the applications was conducted in compliance with Chapter \_\_\_, Title \_\_\_ of the \_\_\_ Municipal Code.

## **Appendix – Regulating Boarding Homes**

The following is excerpted from a 2003 Attorney General Opinion on the regulation of Boarding Homes. See full [Attorney General Opinion](#) for more information.

### **Opinion**

The honorable Sharon D. Stuart, City Prosecuting Attorney, City of Lompoc, has requested an opinion on the following question:

May a city prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent, or rental manager is in residence?

### **Conclusion**

A city may prohibit, limit or regulate the operation of a boarding house or rooming house business in a single family home located in a low density residential (R-1) zone, where boarding house or rooming house is defined as a residence or dwelling, other than a hotel, wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, [\*2] agent or rental manager is in residence, in order to preserve the residential character of the neighborhood.