



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR KEVIN KISH

**FAIR EMPLOYMENT & HOUSING COUNCIL**

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**FAIR EMPLOYMENT AND HOUSING COUNCIL**

Meeting of December 11, 2017

**Minutes**

State Capitol  
Room 127  
Sacramento, CA 95814

**Councilmembers Present**

Chaya Mandelbaum, Chairperson  
Dale Brodsky, Councilmember  
Lisa Cisneros, Councilmember  
Mark T. Harris, Councilmember  
Tim Iglesias, Councilmember  
Joseph Ortiz, Councilmember  
Kevin Kish, DFEH Director and Ex Officio member

**DFEH Staff Present**

Holly Thomas, DFEH Deputy Director of Executive Programs  
Brian Sperber, DFEH Legislative and Regulatory Counsel  
Paul Kennedy, DFEH Associate Business Management Analyst

**Others Present**

Alan Reinach, Church State Council  
Serena Ortega, Cal Fire  
Melinda Lopez, Cal Fire  
Ron Kingston, California Political Consulting Group  
Lynn von Koch-Liebert, California Business, Consumer Services, and Housing Agency  
Deborah Gettleman, Disability Rights California  
Emma Regidor, California Department of Corrections and Rehabilitation  
Arthur Wylene, Rural County Representatives of California  
Sanjay Wagle, California Association of Realtors  
Tessa Nevarez, California Association of Realtors  
Dennis Seaton, Church State Council  
Kara Brodfuehrer, National Housing Law Project  
Jon Smock, Apartment Association of Orange County  
Jennifer Barrera, California Chamber of Commerce

**I. Call to Order and Roll Call**

Chair Mandelbaum welcomed guests to the FEH Council's 23rd meeting and called it to order. He then turned the meeting over to DFEH Legislative and Regulatory Counsel, Brian Sperber, who conducted roll call.

## **II. Welcome and Introduction of Guests**

Chair Mandelbaum announced that the Council meeting would be livestreamed on the Council's website and that the recording will be available later on the Council's website and YouTube channel. The public can participate in the meeting by emailing the Council and can find the Attachments to the Agenda on the website.

Chair Mandelbaum then acknowledged Department leaders and members, including: Holly Thomas, DFEH Deputy Director of Executive Programs; Brian Sperber, DFEH Legislative and Regulatory Counsel; and Paul Kennedy, DFEH Associate Business Management Analyst.

Chair Mandelbaum then invited the guests in attendance to introduce themselves, on a voluntary basis.

## **III. Review of the Agenda**

Chair Mandelbaum noted that hard copies of the agenda and associated materials were available for people in attendance and that copies are also available on the Council's webpage. He then reviewed the agenda for the meeting.

Chair Mandelbaum announced the highlights of the meeting, which included:

- Consideration of Proposed Fair Housing Regulations
- Consideration of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act
- Public Workshop and Review of Working Draft of Regulations Regarding Religious Creed and Age Discrimination
- Consideration of Nonsubstantial Modifications to Text of Proposed Employment Regulations Regarding National Origin Discrimination

## **IV. Approval of the Minutes**

### Attachment A: Minutes from October 30, 2017 Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the October 30, 2017 meeting. During that meeting, the Council considered and moved to withdraw Text of Proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals; considered and adopted Further Modifications to Text of Proposed Employment Regulations Regarding National Origin Discrimination; and moved to withdraw Text of Proposed Housing Regulations Regarding Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Information. The Council approved the minutes unanimously, with one abstention.

## **V. Councilmembers' Reports**

Chair Chaya Mandelbaum and Councilmembers

Councilmember Brodsky reported that she and Councilmember Schur are drafting regulations regarding state contractor non-discrimination provisions.

## **VI. Department of Fair Employment and Housing Report**

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish announced that DFEH has launched the new case management system, CCRS. He also noted highlights of the system, including that individuals can schedule an intake appointment with a DFEH consultant at the time of submitting an intake form online, and that accessibility for individuals with disabilities has been improved, which includes compatibility with screen readers.

## **VII. Public Workshop and Review of Working Draft of Regulations Regarding Religious Creed and Age Discrimination**

Councilmembers Lisa Cisneros and Joseph Ortiz

### Attachment B: Working Draft of Regulations Regarding Religious Creed and Age Discrimination

#### A. Discussion by Council

Councilmember Ortiz presented proposed additional language to section 11076(a) regarding age discrimination. The Council discussed what may constitute age discrimination in employment layoffs involving salary considerations.

Chair Mandelbaum discussed pre-employment questionnaires, asking the Council and presenting to the subcommittee the question of whether they would want to expand the scope of authority granted to the subcommittee to include consideration of pre-employment questionnaires in the context of age and religious creed, as well as references within the existing regulations that deal with pre-employment questionnaires. Director Kish added that the subcommittee should consider existing regulations in section 11017(e) regarding the adverse impact of a seven-day scheduling requirement.

#### B. Public Comment

### **Alan Reinach, Church State Council**

Alan Reinach expressed concern regarding religious discrimination in pre-employment inquiries and suggested modifying employment applications to prevent individuals from having to disclose religious scheduling needs. He also suggested adding a regulation regarding religious harassment, and a regulation that clarifies whether or not applicants or employees need to give employers notice regarding religious accommodation. Mr. Reinach further requested clarity on the relationship between seniority rights and religious accommodation in regards to work scheduling, and suggested that the general prohibition in section 11059 regarding “freedom to worship” be expanded to include a broader understanding of religious freedoms.

## **VIII. Consideration of Proposed Fair Housing Regulations**

Councilmembers Dara Schur and Tim Iglesias

### Attachment C: Proposed Fair Housing Regulations

#### A. Discussion by Council

Councilmember Iglesias announced that after the Council voted to withdraw both sets of housing regulations during the last FEH Council meeting, the subcommittee revised and combined the draft regulations.

Councilmember Iglesias noted additional modifications, including: moving definitions within the document;

modification to the definitions of “adverse action” and “residential real-estate related transaction”; modifying language regarding disability; adding a new subsection regarding the a prohibition on the waiver of the right to make a reasonable accommodation request; and clarifying regulations regarding directly related convictions and criminal history.

Chair Mandelbaum suggested additional modifications, including: creating a broader definition of the term “arrest” in section 12005(c); numbering the pages and marking reserved sections within articles; consistently capitalizing headings; removing the “s” from the end of “unlawful detainer actions”; clarifying the rationale in examples of criminal history that may and may not be considered by housing providers; and providing examples of when discriminatory statements regarding criminal history information would violate Government Code 12955.

## B. Public Comment

The Council heard public comment from:

### **Kara Brodfuehrer, National Housing Law Project**

Ms. Brodfuehrer concurred with the Council’s decision to combine and re-release the draft regulations. She also clarified that California law does not allow for a verification process that establishes whether or not an animal is a service animal, and urged the Council to reference California Civil Code sections 54.2 and 54.1(b)(6)(A). Ms. Brodfuehrer also requested clarification on the purpose of section 12265(b)(3).

### **Arthur Wylene, Rural County Representatives of California**

Mr. Wylene requested additional time to submit detailed comments on the draft regulations before it moves into the formal rulemaking process. The Council decided not to delay the rulemaking process.

### **Ron Kingston, California Political Consulting Group**

Mr. Kingston suggested additional modifications relating to three topics: land use and financial aspects; reasonable accommodation on assistive animals; and criminal history information. He also requested the Council use underlined and strike-out text for future modifications.

## C. Action by Council

The Council moved, seconded, and unanimously voted to approve a motion to adopt and direct the Department to prepare the notice package and notice the regulations.

## **IX. Consideration of Nonsubstantial Modifications to Text of Proposed Employment Regulations Regarding National Origin Discrimination**

Chair Chaya Mandelbaum and Councilmember Dale Brodsky

### Attachment D: Nonsubstantial Modifications to Text of Proposed Employment Regulations Regarding National Origin Discrimination

#### A. Discussion by Council

Chair Mandelbaum highlighted additional modifications, including: modifying the definition of “undocumented applicant or employee”; replacing the term “policy” with “language restriction”; and adding references to “non-verbal conduct” and “mockery of an accent.”

B. Public Comment

The Council heard public comment from:

**Jennifer Barrera, California Chamber of Commerce**

Ms. Barrera expressed concern regarding the absolute ban on language restrictions in the workplace during non-working hours, and suggested that the restriction of non-English languages during non-working hours may help prevent harassment in certain situations.

C. Action by Council

The Council moved, seconded, and unanimously approved a motion to adopt Attachment D and initiate an additional 15-day comment period.

**X. Consideration of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act**

Chair Chaya Mandelbaum and Councilmember Mark Harris

Attachment E: Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act

A. Discussion by Council

Chair Mandelbaum discussed the new legislation that prompted the proposed regulations and summarized the initial draft of the proposed regulations.

Councilmember Brodsky suggested the phrase “there is no requirement that the 20 or 50 employees work at the same location or work full-time” be modified.

Director Kish asked Chair Mandelbaum if the computation of time would be interpreted the same following new the NPLA act, and commented on the key employee defense.

B. Public Comment

None.

C. Action by Council

The Council moved, seconded, and unanimously voted to approve a motion to adopt and direct the Department to prepare the notice package and notice the regulations.

**XI. Report from Subcommittee Regarding Potential Public Civil Rights Hearings**

Councilmembers Tim Iglesias and Mark Harris

Councilmember Harris reported that he and Councilmember Iglesias are considering holding the civil rights hearing in April of 2018. He also discussed the need to determine who would be invited to participate in the hearing. Councilmember Iglesias reported that he and Councilmember Harris have begun outreach to individuals who could testify during the hearing.

Director Kish suggested the subcommittee determine topics for the hearing, then determine who will participate based on the topics. Councilmember Brodsky recommended including topics on the Ralph and Unruh Acts.

The Council discussed whether this would be a combined meeting that included the Council's regular business and the public hearing or whether it would exclusively be a public hearing. Councilmember Brodsky suggested scheduling the FEH Council's meeting to address its regular business from 9 – 10 AM, then schedule the public hearing to begin at 10 AM.

## **XII. Report on Emergency Regulations Regarding Gender-Neutral Facility Signage**

Councilmember Dale Brodsky and Lisa Cisneros

Councilmember Brodsky reported that the subcommittee had a productive discussion with the Department of Industrial Relations regarding the regulations, and the subcommittee is hopeful they will reach a resolution.

Deputy Director Holly Thomas reported that the Council's emergency regulations are in effect until February 13, 2018, however the Council can apply for a 90-day extension. The Council voted to grant the Department authority to apply for that extension if a solution has not been reached with the Department of Industrial Relations.

Director Kish discussed the updated sexual harassment training requirements that now include harassment based on gender identity, gender expression, and sexual orientation, and require the training to be given by someone with experience regarding these topics, and inquired as to whether the updates should be included in the existing sexual harassment regulations.

Councilmember Iglesias asked Director Kish for an update on the status of the survey regarding sexual harassment training effectiveness. Director Kish reported that the survey is currently being reviewed by a group of academics before being distributed.

## **XIII. Further Public Comment**

None.

## **XIV. Adjournment**

Chair Mandelbaum adjourned the meeting at approximately 2:30.

Date: January 8, 2018

CHAYA MANDELBAUM

Chair

RENEE RONDINONE

DFEH Outreach and Education Specialist