



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR KEVIN KISH

**FAIR EMPLOYMENT & HOUSING COUNCIL**

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**FAIR EMPLOYMENT AND HOUSING COUNCIL**

Meeting of November 15, 2016, 10:00am

**Minutes**

California Public Utilities Commission  
505 Van Ness Avenue, Auditorium  
San Francisco, CA 94102

**Councilmembers Present**

Chaya Mandelbaum, Chairperson  
Dale Brodsky, Councilmember  
Chanée Franklin Minor, Councilmember  
Tim Iglesias, Councilmember  
Patricia Perez, Councilmember  
Andrew Schneiderman, Councilmember  
Dara Schur, Councilmember  
Kevin Kish, DFEH Director and Ex Officio member

**DFEH Staff Present**

Holly Thomas, Deputy Director of Executive Programs  
Brian Sperber, Legislative and Regulatory Counsel  
Nelson Chan, Chief of Public Policy and Education  
Beatriz Alfaro, Civil Rights Fellow  
Christopher Moores, Civil Rights Fellow  
Paul Kennedy, Associate Business Management Analyst

**Others Present**

Noah Lebowitz, California Employment Lawyers Association  
Allison Elgart, Equal Justice Society  
Noah Frigault, San Francisco Human Rights Commission  
Heidi Palutke, California Apartment Association  
Birhanu Adenew, California Department of Corrections and Rehabilitation  
Emma Regidor, California Department of Corrections and Rehabilitation  
Jennifer Barrera, California Chamber of Commerce  
Salina Vavia-Johnson, San Francisco Municipal Transportation Agency  
Anna Brunworth, Visiting Attorney from Germany  
Donna Mandel, San Francisco Office of Labor Standards Enforcement  
Craig Schechter, National Housing Law Project  
Ann Noel, California Association of Human Relations Organizations

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

Chair Mandelbaum called the meeting to order at 10:12 a.m. and Brian Sperber conducted roll call.

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

Chair Mandelbaum introduced the Council and offered the guests in attendance the opportunity to introduce themselves. Chair Mandelbaum stated that the Council meeting is livestreamed on the Council's website and reminded guests viewing remotely that they could participate in the meeting by emailing the Council and could find the Attachments on the website. Chair Mandelbaum reminded the guests in attendance that hard copies of the Attachments were available in the meeting room. Chair Mandelbaum also welcomed Holly Thomas as the new DFEH Deputy Director of Executive Programs.

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

Chair Mandelbaum highlighted and reviewed the topics for agenda sections VII (Transgender Identity and Expression Regulations), VIII (Guest Speaker Allison Elgart, Legal Director of Equal Justice Society), IX (Consideration of Criminal History in Employment Regulations), XI (Consideration of Housing Regulations Regarding Discriminatory Effect, Discriminatory Land Use Practices, and Use of Criminal History Information), and XII (Councilmember Iglesias Presenting on History of Residential Occupancy Standards).

Chair Mandelbaum invited the guests to comment on subjects addressed by the Council throughout the day.

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

Attachment A: Minutes from the August 31, 2016 Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the August 31, 2016 meeting. During that meeting, the Council considered modifications to the proposed (1) Regulations Regarding Transgender Identity and Expression, (2) modifications to the proposed Consideration of Criminal History in Employment Decisions Regulations, and (3) Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals.

Chair Mandelbaum asked for comments pertaining to the minutes. There being no comments, the Council moved, seconded, and approved the minutes unanimously.

## **V. Councilmembers' Reports**

Chair Mandelbaum invited the Council to report on any updates.

Councilmember Brodsky discussed her recent meetings with several union groups regarding the California Family Rights Act and attendance at an Equal Justice Society seminar on implicit bias.

Councilmember Franklin Minor was recently asked to join the Berkeley Comparative Anti-discrimination Law Group. Right now that group is looking for information on transgender rights. Councilmember Franklin Minor is working on publishing a paper on the topic as well. Councilmember Iglesias commented that while at

University of San Francisco, he has become sensitive to the difficulties large institutions face with regard to multi-stall bathrooms and implementing transgender-inclusive policies, even when they support the ideals underlying the policies.

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

Director Kish discussed an article in the State Bar Labor and Employment Section's newsletter titled *Clearing Up the Law on Transgender Rights*, authored by DFEH Associate Chief Counsel Nelson Chan, DFEH Staff Counsel Jeannette Hawn, and former DFEH Staff Counsel Roya Ladan. Since the meeting in August, the main issues to report from the Department are the hiring of new employees and the new case management system. The legislature approved a new training unit and the DFEH has now hired a new lead trainer.

In discussing the new case management system, Director Kish reported that the Department has contracted with the Salesforce to configure the platform. The system will replace Houdini, the current case management system. The Salesforce platform is very flexible and allows the Department to tailor it to its specific needs and to adapt to changes in the law.

Director Kish also discussed the DFEH's new strategic plan, which is posted on the website. It sets out the Department's goals and strategies going forward. It was developed using the input of the DFEH staff. Goal 1 of the strategic plan is to increase access to information about rights and responsibilities. And for the 2016-17 fiscal year, the DFEH has set out several concrete tasks to accomplish this goal. The first of those goals was recently accomplished with the launch of the new DFEH website with over 100 pages of content. The new website has improved and easier to understand language since legal jargon was removed to eliminate any barriers to access and there are plans to add Spanish language resources soon. Feedback on the new website is welcome.

Director Kish also introduced Holly Thomas as the new Deputy Director of Executive Programs. Deputy Director Thomas then introduced herself to the council. She was appointed by Governor Brown in July of 2016. She has previously served as special counsel to the Solicitor General at the New York State Attorney General's Office, as a senior attorney in the Civil Rights Division of the United States Department of Justice, and Assistant Counsel at the NAACP Legal Defense and Educational Fund. During her career, she has worked on a wide array of civil rights issues and has developed a particular expertise in transgender rights.

Since joining the DFEH about two months ago, Deputy Director Thomas has focused on increasing the Department's outreach efforts. She also plans to engage in community outreach related to hate violence and expanding knowledge about transgender rights. Additionally, the DFEH recently received authority to prosecute human trafficking and Government Code section 11135 et seq. claims, so Deputy Director Thomas wants to develop materials on these new areas.

Deputy Director Thomas is also revising legal templates used by the DFEH covering every protected characteristic that trains DFEH staff to ask relevant investigative questions in order to satisfy a prima facie case of discrimination and to ensure that investigations are uniformly conducted.

## **VII. Consideration of Further Modifications to Text of Proposed Regulations Regarding Transgender Identity and Expression**

Attachment B: Text of Proposed Amendments to the Regulations Regarding Transgender Identity and Expression

## A. Discussion

Councilmembers Brodsky and Perez discussed that many of the comments took issue with the name of “Transgender Identity and Expression” because it seems exclusive to “transgender” issues rather than “gender” identity and expression. In response, the Council noted that the name is merely a working title that refers only to the labeling of the regulation and that the title has no substantive import and will not appear in the text of the final regulations.

The Council wanted to clarify that these regulations were meant to address the idea that employers do not have the right to start a conversation with an employee on the matter of transitioning as it relates to gender identity and expression unless the employee first initiated the conversation. Under the new regulations, the Council intends that the employer can make a reasonable and confidential inquiry of an employee for the sole purpose of ensuring access to comparable, safe, and adequate facilities. The intent is not to allow intrusions into an employee’s privacy but rather to ensure access to facilities and overall safety.

Regarding job application forms, Councilmember Perez expressed concern that the Council would overstep its statutory authority by mandating the elimination of a gender box. Councilmember Schur expressed her opinion that gender should be an optional disclosure unless it is a bona fide occupational qualification (BFOQ).

In the authorities section, a link to “A Guide to Restroom Access for Transgender Workers” from the U.S. Dept. of Labor’s Occupational Safety and Health Administration was added. Councilmember Brodsky opined that the regulation should emphasize state sources over federal ones because the federal guidelines may be subject to future alteration. Therefore she suggested striking the federal authorities and leaving the state authorities.

The Council clarified that “transitioning” is a process individuals go through to begin living as the gender with which they identify rather than the sex assigned to them at birth. The Council also added some examples to make clear what type of activities the process might include.

## B. Public Comment

The Council heard public comment on the proposed amendments to the transgender identity regulations from:

**Jennifer Barrera, California Chamber of Commerce:** Ms. Barrera commented on the perception issue. She stated that employers do generally want to accommodate transgender individuals, though it is challenging for employers because grooming standards are complicated and employers are not allowed to comment or inquire about perceptions.

**Salina Vavia-Johnson, EEO for San Francisco Municipal Transit Authority:** Ms. Johnson indicated that she was not speaking on behalf of her agency. Ms. Johnson questioned the Council as to why the regulations are silent as to gender neutrality since there are many individuals who do not identify with gender binary constructs.

Councilmember Perez responded that the definitions do provide for a gender neutral identification. Councilmember Brodsky asked Ms. Johnson to clarify where she was proposing to add gender neutral identification language. The Council also raised the possibility of inviting a guest speaker on the topic. Councilmember Iglesias asked Ms. Johnson to clarify in what situations this issue comes up. Ms. Johnson responded that it arises mainly in the bathroom setting.

**Holly Thomas, DFEH Deputy Director of Executive Programs:** Referring to section 11034, subdivision (h)(1), Ms. Thomas commented that the bona fide occupational qualification defense may need to be separated from the mandatory portion of job applications along with the voluntary collection of employee information. In an instance where the employer has a bona fide occupational qualification for asking for the information, Chair Mandelbaum suggested adding the same qualifier at the end of section 11034, subdivision (h)(2).

**Noah Lebowitz, California Employment Lawyers Association:** CELA submitted some proposed wording changes in writing. With section 11034, subdivisions (h) and (h)(1), CELA urged that the law prohibits requiring applicants to check a box for gender in the mandatory portion of a job application. The box requesting gender identification must be separate and designated as optional for statistical purposes unless there is a bona fide occupational qualification. CELA encourages the Council to look at its letter from the summer. CELA's suggestion would be to move section 11034, subdivision (h)(1), to follow the title and add section 11034, subdivision (h)(1), then to follow that with section 11034, subdivision (h)(2). That way the structure would have a general rule and then enumerate steps to take if there is a bona fide occupational qualification.

### C. Action by Council

The Council proposed removing “perception” from the definitions of “gender expression” and “gender identity” so as to avoid potential confusion in the definitions. Discussion continued about the gender box category because the Council believes the issue is not settled without further analysis and public comment. In former section 11034, subdivision (h)(2), the Council proposed to add “[If,] pursuant to a permissible defense” at the beginning and “unless employer establishes a permissible defense” at the end. The Council also proposed to strike the OSHA guide in the authorities cited.

The Council moved, seconded, and unanimously approved a motion to adopt the regulations as modified and initiate an additional 15-day comment period.

**At this point the Council took a three minute break before the Guest Speaker Presentation**

### **VIII. Guest Speaker: Allison Elgart, Legal Director, Equal Justice Society**

Equal Justice Society is a national civil rights organization dedicated to transforming the nation's consciousness through law. Ms. Elgart has given numerous MCLE presentations on implicit bias in the law and has also coauthored numerous articles on implicit bias. EJS was founded in 2000 with the principal mission to tackle the intent doctrine under the 14<sup>th</sup> Amendment where everyone bringing discrimination claims had to prove that such discrimination was intentional. Much discrimination at that time was due to racial anxiety or implicit bias. EJS also tries to bring social science into law and litigation by talking about the role that implicit bias plays in the law and trying to influence jurisprudence in recognizing these social science concepts. EJS works on cases about the school-prison pipeline and how teachers and administrators might act on unconscious prejudices against students based on their appearances. Students of color and students with disabilities are disciplined at much higher levels for the same offenses. EJS seeks to show that these biases affect decision-makers and lawmakers even when they aren't aware of it.

EJS has filed amicus briefs in the Supreme Court in affirmative action cases. In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, EJS was pleased that Justice Kennedy acknowledged unconscious bias. EJS also does implicit bias trainings.

Chair Mandelbaum asked what scientific test is best for measuring implicit bias. Ms. Elgart stated that the Implicit Association Test is the most well-known. It has been validated, and is available online. The cautionary tale is that these tests are just a starting point and these tests are not necessarily a good measure of who should be involved in decision-making. They also have tests on several characteristics. It tests people's reaction times and their associations with different characteristics. But the test is limited in its ability to design interventions.

Councilmember Iglesias asked Ms. Elgart to elaborate about effective interventions. Ms. Elgart stated that interventions need to be designed on a case by case basis. EJS recommends that people participate in assessments to identify issues to be addressed, and allow interventions to be shaped by the results of the assessment.

Councilmember Brodsky asked Ms. Elgart whether there were any ways the Council could partner with EJS. Ms. Elgart said that they could hire EJS for trainings or EJS could provide the Council with social science research. Councilmember Brodsky also asked whether the Council could help EJS in any way. Ms. Elgart said that EJS' intention is that the research not be proprietary and that it be published somewhere and easily available for others to use in writing articles or during litigation.

Councilmember Perez asked whether there is an intersection between protected characteristics and poverty. Ms. Elgart said that there is not much research on this issue and so EJS is encouraging social science researchers to do more research on intersection of socioeconomic status and income with protected characteristics, while being mindful not to conflate the factors when it is unwarranted.

**Break for lunch at 12:30pm. Reconvened at 1:18pm.**

## **IX. Consideration of Additional Modifications to Text of Proposed Regulations Concerning the Use of Criminal History in Employment Decisions**

Attachment C: Additional Modifications to Text of Proposed Consideration of Criminal History in Employment Decisions Regulations

### A. Discussion by Council

Chair Mandelbaum asked the Council if anyone had anything to say about the regulations before opening the discussion up for public comment. Hearing none, the Council heard public comments.

### B. Public Comment

The Council heard public comment from:

**Jennifer Barrera, California Chamber of Commerce:** Ms. Barrera expressed the Chamber of Commerce's concern about the legal basis for these regulations and urged the Council to wait until a federal challenge to similar EEOC guidance is resolved before promulgating regulations.

Moreover, Ms. Barrera noted that in section 11017.1, subdivision (b)(1), the regulation references Labor Code section 432.7. But she noted that this leaves out the exceptions from the healthcare industry where they can consider criminal convictions. Ms. Barrera recommended removing this section entirely or citing the Labor Code section in its entirety to avoid any confusion as to which exceptions are permitted.

In section 11701.1, subdivision (d), the Chamber of Commerce has not found a case or legal basis other than the EEOC guidance suggesting that national or state statistics can be used to justify an adverse impact case. Statistics are regularly used in disparate impact cases under Title VII, but they are limited to the specific geographic area in which the employer is located and the specific applicant pool from which they are gathering applicants. In *McDonnell Douglas Corp. v. Green*, it was limited to the Saint Louis metropolitan area. In order for the statistics to be meaningful, according to Ms. Barrera, they need to be limited to the qualified individuals in the geographic area where the potential discrimination is happening.

In section 11701.1, subdivision (e), the Chamber of Commerce noted that the 3 factors to establish job relatedness consistent with business necessity are derived from the *Green* case. Aside from the *Guerrero* case, no state case has adopted the *Green* factors. The Chamber believes that the regulations, as written, require an individualized assessment.

Chair Mandelbaum responded that he believes that the *Green* factors can be implemented through a bright line test. The third prong in the regulations says that employer has to provide an opportunity to dispute the record's accuracy, not its relevance. He does not believe that an individualized assessment is a requirement of the regulation. Employers can choose between a bright line test or an individualized assessment. Chair Mandelbaum proposed adding new language to address this confusion.

Ms. Barrera also said employers are concerned about the seven year requirement because there are jobs where a serious conviction, even older than seven years ago, might justify preclusion from that position.

Chair Mandelbaum explained that the seven year requirement comes from the state statutory provision for background checks. Since the state legislature has indicated that convictions of more than 7 years of age should come up in background checks, there should be a rebuttable presumption that those convictions should not be considered.

Ms. Barrera responded there is no regulation specific to the Labor Code regarding background checks in the employment context and that the seven year limitation only applies to the Civil Code.

**Noah Lebowitz, CELA:** Mr. Lebowitz thanked the Council for its work on these regulations. He said that these regulations are an example of what the Council can do to lead in the protection of workers in California to ensure that California maintains its sense of self and sense of mission. Mr. Lebowitz then read a statement from California Senate President pro Tempore Kevin de León and Assembly Speaker Anthony Rendon:

“By a margin in the millions, Californians overwhelmingly rejected politics fueled by resentment, bigotry, and misogyny. The largest state of the union and the strongest driver of our nation’s economy has shown it has its surest conscience as well. California is – and must always be – a refuge of justice and opportunity for people of all walks, talks, ages and aspirations – regardless of how you look, where you live, what language you speak, or who you love. California has long set an example for other states to follow. And California will defend its people and our progress. We are not going to allow one election to reverse generations of progress at the height of our historic diversity, scientific advancement, economic output, and sense of global responsibility.”

Mr. Lebowitz stated that he believes this statement helps demonstrate the Council’s mission.

Mr. Lebowitz then expressed concern that some of the EEOC guidance that these regulations are based on might be rescinded or changed by the incoming presidential administration once it installs its new leadership. The EEOC guidance is based on an understanding of authority. That authority still exists, regardless of whether the EEOC guidance still remains published on the website.

On the use of statistics, CELA fully endorses the new language of the proposed regulations. The concept comes from *Dothard v. Robinson*, which specifically talks about national statistics. The Supreme Court rejected the notion that regional statistics should have been used. The Supreme Court said that there is no reason to suppose that the specific height and weight characteristics of regional men and women differed markedly from the national population. So Mr. Lebowitz believes there is ample authority for everything the Council has done in these regulations, regardless of whether the EEOC guidance continues to exist.

Chair Mandelbaum requested further comment and heard none. With that, Chair Mandelbaum proposed to add “or consideration” to section 11017.1, subdivision (e)(2)(A), for the sake of clarification.

### C. Action by Council

The Council moved, seconded, and unanimously approved a motion to adopt the regulations as modified and initiate a 15-day comment period.

## X. Report from Subcommittee to Liaise with Human and Civil Rights Groups

### A. Discussion

Councilmembers Brodsky and Franklin Minor discussed that EJS coming to speak, as they did today, was an example of what the Council hoped to accomplish by getting local organizations to come give presentations and to give trainings to the Council and to various agencies around the state.

The subcommittee is also communicating with the American Civil Liberties Union (ACLU). The Chair of the Board of the Northern California ACLU chapter, Beverly Tucker, sent a note to the Council reminding the Council that ACLU affiliates in California have a long history of advancing the rights of many minority groups. She urged the Council to ensure that current statutes are vigorously enforced and to propose new regulations when appropriate. She also encouraged the Council to promulgate regulations to interpret Government Code section 11135 et seq., a contract compliance law that prohibits discrimination by state contractors.

The subcommittee is currently reaching out to organizations to partner with.

### B. Public Comment

The Council heard public comment from:

**Ann Noel, California Association of Human Relations Organizations:** Ms. Noel sent an email to Chair Mandelbaum and Director Kish before the presidential election. She had proposed that the Council partner with CAHRO to hold meetings in areas of the state where the Council has not met. Many meetings are in San Francisco or Los Angeles. But if the Council wants to hear from other areas, and talk about civil rights issues in underserved areas, Ms. Noel suggested Fresno as a good place to start.

In 2000, CAHRO went to the Central Valley and heard accounts of sexual harassment, housing discrimination, hate crimes, wage theft among immigrants, and more. Ms. Noel suggested holding a hearing on a day that the Council is not considering proposed regulations, and to budget at least four hours to hear public comments.

There is no human relations organization in the Central Valley. They have long since been abolished. Ms. Noel said that the Council should let the people know what the Council can do. This also strengthens the Council's ability to write regulations because it will reveal people's harsh realities and the issues they face on a daily basis. CAHRO can help organize these community meetings.

Ms. Noel also stated that California State University has a statewide center for community engagement that has professors and students available to partner with to do research. CAHRO has used this resource and they have done good work.

Ms. Noel also introduced Anna Brunworth, a visiting German attorney on their equality body, which is similar to the EEOC and HUD. Ms. Noel also thanked the Council for all their work on the regulations. Ms. Noel also likes the new DFEH website and recommended posting the transgender article.

## **XI. Consideration of Proposed Text of Housing Regulations Regarding Discriminatory Effect, Discriminatory, Land Use Practices, and Use of Criminal History Information**

Attachment D: Proposed Text of Housing Regulations Regarding Discriminatory Effect, Discriminatory Land Use Practices, and Use of Criminal History Information

### A. Discussion by Council

Councilmember Schur proposed a structure for the housing regulations. This proposal tracks Government Code section 12955. The councilmembers widely voiced approval of the proposal.

Councilmembers Schur and Iglesias discussed the proposed text of the housing regulations. Councilmember Schur started with the discriminatory effect sections. The Subcommittee's interpretation of the statute is that the burden to show that the legitimate nondiscriminatory business practice could not be served by another less discriminatory alternative should be on the defendant because of California law, despite HUD's guidance stating otherwise. The regulation references *DFEH v. Merribrook Apartments* from the Commission, the Council's predecessor, placing the burden on the defendant.

Councilmember Schneiderman expressed concern about how an employer would prove there are no less discriminatory alternatives. Councilmember Schur said that the burden is on the defendant because the employer has all the evidence. The employee does not have the same access to information or the depth of knowledge of the employer's business structure. So that is why many federal courts originally placed the burden on the defendant. The leading Supreme Court case, *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project*, also noted that local state governments could adopt different definitions of the burden. Therefore, that is why the Subcommittee placed the burden where it did.

Chair Mandelbaum suggested adding "unjustified" to some of the instances where the words "discriminatory effect" appear. Councilmember Schur suggested removing "prohibited" instead.

Section 12955 has a specific land use section, so the Subcommittee defined both public and private land use practices based on the statute. This section is not intended to be limited to disparate impact. It includes intentional discrimination as well as discriminatory effect.

Councilmember Iglesias stated that in Article 7, consideration of criminal history information in housing, the Subcommittee is trying to incorporate this as a specific violation under each of the general ways that the statute

can be violated. The first section, discriminatory effect, is intended to incorporate by reference the discriminatory effect standard. On discriminatory statements, the corresponding section has not been written yet. For the next section on establishing a legally sufficient justification for requesting criminal history, the Subcommittee tried to provide guidance on what legally sufficient justifications would entail and those that are prohibited.

Councilmember Brodsky clarified that general sex offender laws are still applicable, so a convicted sex offender still would not be permitted to reside near a school, and Councilmember Iglesias confirmed that sex offender laws would override these proposed regulations. The Council then suggested adding it as a permissible defense.

The Council then discussed whether landlords have an affirmative obligation to ensure the safety of their tenants and that when individuals with recent violent criminal histories apply for housing, whether that is a permissible grounds to deny the applicant housing. Councilmember Schur stated her belief that she does believe landlords have this affirmative obligation. Councilmember Franklin Minor stated that she did not believe that landlords have this duty unless there is a direct complaint. Director Kish then stated that landlords do owe a duty of care to tenants on their property because they can be sued under negligence theories. Director Kish clarified that the issue being considered is whether the Council can address this issue. Councilmember Iglesias stated that individuals who have been formerly incarcerated are not a protected class, and so they only obtain protection if they fall under the protection of the FEHA through another provision.

Councilmember Brodsky expressed concern over the examples provided in the proposed regulation that illustrate legally sufficient justifications relating to criminal history information pursuant to section 11098.70.4, subdivision (b)(3).

Councilmember Iglesias suggested leaving the language as is in the proposed version of the regulation and waiting for public comments on it. Director Kish referenced the HUD guidance the Subcommittee originally relied upon and noted that the original source listed the offenses of arson and possession of illegal weapons are legally sufficient justifications. On the other hand, traffic offenses and illegal gambling areas unrelated convictions. The Council agreed that HUD's examples were more useful.

## B. Public Comment

The Council heard public comment from:

**Heidi Palutke California Apartment Association:** In the discriminatory effect section on legally sufficient justifications, Ms. Palutke believed the language on substantial legitimate nondiscriminatory business justification and necessity seem like different inquiries. With respect to Section 11098.70.4 on establishing a legally sufficient justification, Ms. Palutke believed it is helpful to provide examples, because that shows landlords that blanket exclusions of all criminal convictions will be overreaching and exclude people for convictions that are substantially unrelated to tenancy. Ms. Palutke also suggested providing some criteria for determining whether a conviction is related to tenancy. Ms. Palutke also expressed concern regarding judging whether an individual has been rehabilitated, stating that even criminal justice experts have difficulties determining whether an individual has been rehabilitated, and therefore it is unrealistic to expect landlords without that experience to make this type of assessment.

Councilmember Iglesias stated that he believes landlords already make these types of considerations when considering unfavorable aspects of an individual's application such as a negative reference from a prior landlord. A landlord might take into account other evidence to suggest that the problems between the

prospective tenant and a prior landlord would no longer be problems. Ms. Palutke stated that in a competitive market like California, landlords never reach that assessment because the market is so inundated with tenants seeking apartments that landlords can only consider candidates with “perfect” applications.

C. Action by Council

The Council will renumber the regulations, per Councilmember Schur’s suggestion, and remove references to the HUD guidance. The Council moved, seconded, and unanimously approved a motion to initiate a rulemaking action for the regulations as modified.

**XII. Presentation Regarding the Background and History of Residential Occupancy Standards**

Attachment E: PowerPoint re: Background and History of Residential Occupancy Standards

Due to time constraints, this presentation was postponed until the next meeting.

**XIII. Further Public Comment**

There was no further public comment.

**XIV. Adjournment**

Chair Mandelbaum adjourned the meeting at 4:16 p.m.

Date: December 2, 2016

CHAYA MANDELBAUM  
Chair

CHRISTOPHER MOORES  
DFEH Civil Rights Fellow

BEATRIZ ALFARO  
DFEH Civil Rights Fellow