

ATTACHMENT G

Fair Employment & Housing Council Proposed Text of Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 3. Discrimination in Housing

TEXT

[All additions to the CA Code of Regulations]

Text proposed to be added for the 15-day comment period is displayed in underline type.

Text proposed to be deleted for the 15-day comment period is displayed in ~~strike through~~ type.

Article 1. General Matters

§§ 11098.1 – 11098.2. [Reserved]

§ 11098.3. Definitions.

As used in this subchapter, the following definitions shall apply ~~unless the context otherwise requires:~~

(a) “Aggrieved person” includes any person who:

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that they will be injured by a discriminatory housing practice that is about to occur.

(b) “Building” means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

(c) “Discriminatory housing practice” means an act that is unlawful under federal or state fair housing law, including, but not limited to, housing-related violations of the Fair Employment and Housing Act, the Fair Housing Act as amended by the Fair Housing Amendments Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the Americans with Disabilities Act.

(d) “Common use areas” means rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms,

elevators, parking areas, garages, pools, clubhouses, dining areas, physical fitness areas or gyms, children’s play areas, recreational areas, and passageways among and between buildings.

(e) “Dwelling unit” means a single unit of residence for a family or one or more persons. Examples of dwelling units include a single family home; an apartment unit within an apartment building; and rooms in which people sleep within other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(b)f) “Housing accommodation” or “dwelling” includes:

(1) any building, structure, or portion thereof that is used or occupied as, or designed, arranged, or intended to be used or occupied as, a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes all public and common use areas associated with it, if any, including, but not limited to, single family homes; apartments; community associations, condominiums, planned developments, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act; rooms; single room occupancy hotel rooms; transitional housing; supported housing; residential motels or hotels; boardinghouses; shelters; homeless shelters; cabins and other structures housing migrant farmworkers; hospices; manufactured homes; mobile homes and mobile home spaces; floating homes and floating home spaces; communities and live aboard marinas; bunkhouses; sober living homes; recreational vehicles used as a home or residence; and licensed and unlicensed group living arrangements.

(2) any vacant land that is offered for sale or lease for the construction of any ~~building, structure~~ housing accommodation, dwelling, or portion thereof ~~intended to be used or occupied as a residence~~ as defined in subdivision (1); or

(3) all dwellings as defined in and covered by the federal Fair Housing Act (42 U.S.C. § 3602(b)), such as single family homes, apartments, condominiums, rooms, single room occupancy hotel rooms, transitional housing, supported housing, residential motels or hotels, boardinghouses, shelters, cabins and other structures housing migrant farmworkers, hospices, manufactured homes, mobile homes and mobile home spaces, floating homes and floating home spaces, communities and live aboard marinas, bunkhouses, and recreational vehicles used as a home or residence.

(e) “Housing provider” includes “owner” and “person” as those terms are defined in Government Code section 12927.

(d)g) “Owner” includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, trustee, receiver, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof. In common interest developments, “owner”

also includes governing bodies of the common interest developments, and their agents and employees.

(eh) “Person” includes:

(1) all individuals and entities that are described in 42 U.S.C. § 3602(d) and 24 C.F.R. 100.20, including one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the U.S.C, receivers, and fiduciaries;

(2) all individuals and entities that are described in the definition of “owner”;

~~(3) all individuals and entities that are described in the definition of “housing provider”;~~
and

(43) all institutional third parties, including the Federal Home Loan Mortgage Corporation;

(4) community associations, condominiums, planned developments, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act (Civil Code Section 4000, et seq.);

(5) any entity that has the power to make housing unavailable through its actions or inactions, including, but not limited to, government entities and agencies, insurance companies, real estate brokers and agents, and entities that provide funding for housing;
or

(6) “Person” shall be interpreted broadly.

(fi) “Practice” includes an action or actions, failure to act, rules, laws, decisions, standards, policies and procedures, whether written or unwritten, and includes “practices” as used in 24 C.F.R. Part 100.

(j) “Premises” means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(gk) “Protected bases” or “protected classes” includes race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, genetic information, citizenship, primary language, immigration status, arbitrary characteristics, and all other classes of persons protected from discrimination under federal and/or state fair housing laws, and people perceived to be a member of any of the preceding classes.

(l) “Public use areas” means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 11098.4. Liability for Discriminatory Housing Practices.

(a) Direct Liability.

(1) A person is directly liable for:

(A) The person’s own conduct that results in a discriminatory housing practice.

(B) Failing to take prompt action to correct and end a discriminatory housing practice by that person’s employee or agent, where the person knew or should have known of the discriminatory conduct, including because supervisors, managers, or principles of the person had or should have had such knowledge.

(C) Failing to ~~fulfill a duty to~~ take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The ~~power~~duty to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person’s control or any legal responsibility or authority the person may have with respect to the conduct of such third party. The power, control, responsibility or authority can be derived from an obligation to the aggrieved person created by contract, or lease, common interest development governing documents, (including bylaws or other rules of a homeowners association, condominium, or cooperative), or by federal, California, or local law.

(2) For purposes of determining liability under this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person. Nothing herein is intended to cause or permit the delay of an unlawful detainer action otherwise authorized by law and unrelated to the discriminatory housing practice or opposition to the discriminatory housing practice. This also does not limit the aggrieved person’s right to raise the discriminatory housing practice as a defense to an unlawful detainer action.

(b) Vicarious Liability. A person is vicariously liable for a discriminatory housing practice by the person’s agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice; if, consistent with agency law, the discriminatory housing practice is committed within the scope of the agent or employee’s employment.

(1) Whether liability for a discriminatory housing practice occurs is consistent within the scope of agency employment law is a question of fact. However, a discriminatory housing practice can be found to occur ~~in the scope of employment~~ even if it violates an agent's or employee's official duties, does not benefit the agent or employer, is willful or malicious, or disregards the agent's or employer's express orders.

(2) An agent or employee shall be considered to be acting within the course and scope of the agency or employment relationship if his or her discriminatory housing practice occurs incidental to the agent's or employee's job-related tasks. This includes, but is not limited to, being on the premises of a dwelling for work-related reasons such as conducting repairs.

(c) An ~~person~~ employee or agent may be directly liable for a discriminatory housing practice, regardless of whether the person's employer or principal knew or should have known of the conduct or failed to take appropriate corrective action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, and 12955, Government Code.

Article 2. Harassment and Retaliation

§ 11098.5. Harassment.

(a) General. It shall be unlawful for a housing provider to harass any person in connection with the sale or rental of a dwelling on account of a person's membership in a protected class. Harassment includes conduct which deprives or interferes with the right to live in a discrimination free housing environment. Quid pro quo and hostile environment harassment because of membership in a protected class constitute discriminatory housing practices. Harassment includes both quid pro quo harassment and hostile environment harassment.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any of the following: the sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change

in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

(A) Whether hostile environment harassment exists depends upon the totality of the circumstances.

~~(B) The severity of the harassment is judged from the perspective of a reasonable person in the aggrieved person's position, considering all the circumstances.~~

~~(iC)~~ Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

~~(iiD) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevantis relevant in determining whether a hostile environment existedwas created, as well as the amount of damages to which an aggrieved person may be entitled. However, neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists.~~

~~(iii) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's position.~~

~~(E) A single incident of harassment because of a protected class may constitute a discriminatory housing practice, where the incident is severe, or evidences a quid pro quo.~~

~~(b) Title VII Affirmative Defenses Not Available. The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 is not available in housing cases.~~

~~(cb) Type of Conduct. Harassment in housing can be written, verbal, or other conduct and does not require physical contact. Harassment in housing includes, but is not limited to:~~

~~(1) Verbal harassment, including, but not limited to, e.g. epithets, derogatory comments, or slurs related to membership in a protected basisclass;~~

~~(2) Physical harassment directed at an individual, e.g. including, but not limited to, assault, impeding or blocking movement, or any physical interference with normal movement, when directed at an individual-related to membership in a protected basisclass;~~

~~(3) Visual forms of harassment, e.g., including, but not limited to, derogatory posters, cartoons, drawings, writings, or other documents related to membership in a protected basisclass;~~

- (4) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's the person's sex, gender, gender identity, gender expression, or sexual orientation;
- (5) Any coercion, intimidation, threats, or interference with an individual's exercise or enjoyment of a housing benefit related to membership in a protected ~~basis~~class;
- ~~(6) Imposing different terms, rules, conditions, privileges, facilities, or services in connection with a housing benefit or accommodation related to membership in a protected basis; or~~
- (6) Conditioning the availability of a dwelling, including the price, qualification criteria, or standards and procedures for securing the dwelling, on an individual's response to harassment related to membership in a protected class;
- (7) Subjecting an individual to harassment related to membership in a protected class that causes the person to vacate a dwelling or abandon efforts to secure the dwelling;
- (8) Conditioning the terms, conditions, privileges, rules, facilities or services related to the sale or rental of a dwelling, or denying or limiting the services or facilities in connection therewith, on an individual's response to harassment related to membership in a protected class;
- (9) Subjecting an individual to harassment related to membership in a protected class that has the effect of imposing different terms, conditions, privileges, or rules relating to the sale or rental of a dwelling or denying or limiting service or facilities in connection with the sale or rental of a dwelling;
- (10) Representing to an applicant that a dwelling is unavailable because of the applicant's response to a request for a sexual favor or other harassment related to membership in a protected class;
- (11) Conditioning access to brokerage services on an individual's response to harassment related to membership in a protected class;
- (12) Subjecting an individual to harassment related to membership in a protected class that has the effect of discouraging or denying access to brokerage services;
- (13) Conditioning the availability of a loan or other financial assistance on an individual's response to harassment related to membership in a protected class;
- (14) Subjecting an individual to harassment related to membership in a protected class that affects the availability of a loan or other financial assistance;
- (15) Conditioning the aspect of a loan or other financial assistance to be provided in respect to a dwelling, or the terms or conditions thereof, on an individual's response to harassment related to membership in a protected class;

(16) Subjecting an individual to harassment related to membership in a protected class that has the effect of imposing different terms or conditions for the availability of such loans or other financial assistance;

(17) Using an appraisal of residential real property in connection with the sale, rental or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration membership in a protected class;

(18) Conditioning the terms of an appraisal of residential real property in connection with the sale, rental or financing of a dwelling on an individual's response to harassment related to membership in a protected class; or

(19) Revealing private information related to membership in a protected class to a third party about an individual, without their consent, to a third party related to membership in a protected basis unless such disclosure is required by federal or state law or permitted by an exception set forth in section 11098.27(g).

(d) Number of Incidents. A single incident of harassment because an individual is a member of a protected class may constitute a discriminatory housing practice, where the incident is sufficiently severe, or evidences a quid pro quo.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, and 12955, Government Code.

§ 11098.6. Retaliation.

(a) It shall be unlawful for any housing provider to take adverse action against any person for engaging in a protected activity when the dominant purpose for the adverse action is retaliation for engaging in protected activity.

(b) Retaliation may be a defense to an unlawful detainer. Nothing herein is intended to cause or permit the delay of an unlawful detainer action otherwise authorized by law and unrelated to the discriminatory housing practice or opposition to the discriminatory housing practice. This also does not limit the aggrieved person's right to raise the discriminatory housing practice as a defense to an unlawful detainer action.

(bc) "Adverse action" includes, but is not limited to, harassment, termination, or threatened termination of tenancy, serving a notice to quit, filing an eviction action, increasing the rent, reducing services, a change in the terms and conditions, threatening to or actually filing false reports with tenant reporting agencies, engaging in or any other discrimination made unlawful by the FEHA discriminatory housing practice, locking an individual out of, or otherwise restricting, access to all or part of the premises, refusing to provide a reasonable accommodation or reasonable modification, refusing to rent or sell, refusing to grant a loan or financial assistance, or taking other action that has an adverse effect on an individual.

(ed) “Protected activity” includes, but is not limited to, making a complaint, testifying, assisting or participating in any manner in a proceeding under the Fair Housing Act, Fair Employment and Housing Act, the Americans with Disabilities Act, Section 504, the Unruh Act, or any other federal, state or local law protecting housing rights; opposition to housing practices believed to be unlawful, made unlawful under the FEHA, informing law enforcement or other government agencies of practices believed to be unlawful housing practices under the FEHA, testifying or assisting in a proceeding regarding unlawful activity, assertion of rights protected by the FEHA law, aiding or encouraging a person to exercise their rights under the FEHA housing rights, meeting or assembling with other individuals in order to address potential or actual violations of housing rights (including, for example, by joining or organizing a tenant union), or making a request for a reasonable accommodation or reasonable modification for an individual with a disability.

(d) “Dominant purpose” means a purpose that is a substantial motivating factor in the harassment, eviction, or other adverse actions challenged as retaliatory. A substantial factor motivating the adverse action is a factor that a reasonable person would consider to have contributed to the action. It must be more than a remote or trivial factor. It does not have to be the only cause of the adverse action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12948, and 12955, Government Code; *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

Article 3. [Reserved]

Article 4. Disability

§ 11098.23. Definitions.

As used in this article, the following definition shall apply unless the context otherwise requires:

(a) “~~Assistive~~Assistance animal” means an animal that ~~is~~may be necessary as a reasonable accommodation for a ~~person~~an individual with a disability.

(1) Specific examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or ~~visually impaired person~~ individual with low-vision.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or ~~hearing impaired~~hard-of-hearing individual~~person~~ to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual~~person~~ with a disability.

(D) “Support ~~animals~~dog” ~~are or other~~ animals that provides emotional, cognitive, or other similar support to a person with a disability, ~~including, but not limited to, traumatic~~

~~brain injuries or mental disabilities, such as major depression. A “support animal” may constitute a reasonable accommodation in certain circumstances. As in other contexts, whether a support animal constitutes a reasonable accommodation requires an individualized analysis reached through the interactive process. A support animal does not need to be individually trained or certified. Support animals are also known as comfort animals or emotional support animals.~~

(2) An ~~assistive~~assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of ~~a person~~an individual with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of ~~a person’s~~an individual’s disability. Assistance animals do not need to be professionally trained or certified.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, and 12955, Government Code; *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

§ 11098.24. [Reserved]

§ 11098.25. [Reserved]

§ 11098.26. Reasonable Accommodations.

(a) ~~A housing provider has an affirmative duty~~It is a discriminatory housing practice for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, or an equal opportunity to obtain, use, or enjoy housing related services and facilities, including but not limited to governmental services, brokerage services, and loans and other financial assistance.~~Such accommodations include, but are not limited to, exceptions to standard rules, policies, practices, or services because of the person’s disability.~~

(1) For example:

(A) ~~A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.~~

(B) ~~A~~ Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first-come, first-served basis. John applies for housing in Progress Gardens. John has a mobility disability and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in

Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances. The accommodation should be granted because it does not constitute an undue burden nor a fundamental alteration, as defined in Section 11093.28.

~~(C) A person with a mental health disability requests to her pay rent through a third party payee rather than pay her rent directly from her checking account.~~

(B) Miguel is an individual with cognitive impairments that limit his ability to manage his financial affairs. Miguel uses a third party representative payee. He requests that he be able to pay rent through the payee rather than pay directly from his checking account, and that any nonpayment notices be sent to his representative payee as well as himself. The accommodation should be granted because it does not constitute an undue financial and administrative burden nor is it a fundamental alteration, as defined in Section 11093.28.

(C) Abigail, an individual with a disability, earns only social security income. She requests that she be permitted to add a co-signer on her rental lease in order to meet the minimum income qualifications. The accommodation should be granted if the combined income of Abigail and the co-signer constitutes sufficient income to meet the minimum income qualifications, because it does not constitute an undue financial and administrative burden nor is it a fundamental alteration, as defined in Section 11093.28.

(D) Tuan has quadriplegia, which can make it difficult for him to travel. He requests a reasonable accommodation for additional time to deliver and submit a loan modification application to his mortgage lender. The accommodation should be granted because it does not constitute an undue financial and administrative burden nor is it a fundamental alteration, as defined in Section 11093.28.

(E) Michiko requests an exception to her property's no-pets policy as a reasonable accommodation so that her friend Yoshi, who has a disability, is able to visit with his emotional support animal. Yoshi, as a person with a disability, is entitled to reasonable accommodations. Michiko may request such an accommodation on behalf of Yoshi. Furthermore, discrimination (including a failure to grant a reasonable accommodation) is prohibited against individuals associated with an individual with a disability. Unless the animal poses a direct threat, the accommodation should be granted because it does not constitute an undue financial and administrative burden nor is it a fundamental alteration, as defined in Section 11093.28.

(F) Marita wants to install a ramp to enable her son, who uses a wheelchair, to enter and leave her house without assistance. Given the small lot, the ramp will extend slightly beyond the permitted lot coverage. Marita requests a reasonable accommodation from the city to modify the city's policy regarding lot coverage. The city should grant the accommodation, without charging Marita a fee, because it does not constitute an undue

financial and administrative burden nor is it a fundamental alteration, as defined in Section 11093.28.

(b) It is unlawful to charge a fee or require an additional deposit or financial contribution as a condition of receiving a reasonable accommodation.

(1) The fact that an accommodation may impose some cost on the person providing the accommodation is not grounds for denial of a request, so long as the cost does not constitute an undue financial or administrative burden, or constitute a fundamental alteration, under section 11098.28.

(2) A request for a reasonable accommodation need not be made in a particular manner or at a particular time. An individual makes a reasonable accommodation request at the time he or she requests orally or in writing, or through a representative, an exception, change, or adjustment to a rule, policy, practice, or service because of a disability, regardless of whether the phrase “reasonable accommodation” is used as part of the request.

(3) Adopting a formal procedure may aid individuals with disabilities in making requests for reasonable accommodations or modifications and may make it easier to assess those requests and keep records of the considerations given the requests. However, a person may not refuse a request or refuse to engage in the interactive process because the requester did not use the preferred forms or procedures. The forms and procedures used may not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling, such as the information prohibited in section 11098.27. A person responsible for responding to accommodation requests may assist someone in completing a form, and has an obligation to provide assistance and alternative methods of communication if necessary to assist an individual with a disability seeking a reasonable accommodation.

(4) The request for a reasonable accommodation or modification may be made by the individual with a disability, a family member, or someone else acting on behalf of the individual with a disability.

~~A housing provider may only deny a requested accommodation if, after engaging in the interactive process as outlined in section 11098.29:~~

~~(1) The applicant or resident on whose behalf the accommodation was requested is not a person with a disability;~~

~~(2) There is no disability-related need for the requested accommodation; or~~

~~(3) The accommodation is not reasonable, meaning it would impose an undue hardship as defined in section 11098.28.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 11098.27. Additional Information to Establish the Need for a Requested Accommodation.

(a) If the disability of the individual seeking an accommodation is apparent or known by the person considering the request, and if the need for the requested accommodation is also readily apparent or known, then the person considering the request may not request any additional information about the requestor's disability or the disability-related need for the accommodation.

(b) If the disability of the individual seeking an accommodation is apparent or known by the person considering the request, but the need for the requested accommodation is not readily apparent or known, then the person considering the request may request only information that is necessary to evaluate the disability-related need for the accommodation.

(c) If the disability underlying the need for a requested accommodation is not readily apparent, to the person considering the request, the person may request reliable information that is:

(1) necessary to verify that the individual has a disability;

(2) describes the needed accommodation; and

(3) shows the relationship between the individual's disability and how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a dwelling.

(d) A person considering a request for an accommodation may not seek information about:

(1) The requestor's particular diagnosis or medical condition, the severity of the disability, medical records, medical history, other disability or medical issues unrelated to the request, or other disability or health related information beyond the information identified in subdivision (c) above.

(2) Information unrelated to the inquiry in subdivision (c) above.

(e) Depending on the individual's circumstance, information establishing that the individual has a disability can usually be provided directly by the individual with a disability through a variety of means, such as a credible statement or documentation of receipt of disability benefits. Information confirming that the individual has a disability, or confirming that there is a disability-related need for the accommodation, may also be provided by any reliable third party who is in a position to know about the requestor's disability or the disability-related need for the requested accommodation, including but not limited to:

(1) A medical professional;

(2) A health care provider, including the office of a medical practice or a nursing registry;

(3) A peer support group;

(4) A non-medical service agency or individual, including In-Home Supportive Services or Supported Living Services providers; or

(5) A reliable third party who is in a position to know about the individual's disability or disability-related need for the accommodation. This could include, but are not limited to, a relative caring for a child with a disability, an elderly family member with dementia, or others in a caregiving relationship with a person with a disability.

(f) The determination of whether a third-party is reliable must be determined on a case-by-case basis.

(g) All information concerning a person's disability, request for an accommodation, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation unless disclosure is required to:

(1) make or assess the decision to grant or deny the request for accommodation;

(2) effectively implement the requested accommodation; or

(3) when disclosure is required by law.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code.

§ 11098.27. Assistive Animals as a Reasonable Accommodation.

~~(a) If the requested accommodation is for an assistive animal, the request may also be denied if:~~

~~(1) The specific assistive animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or~~

~~(2) The specific assistive animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistive animal.~~

~~(3) A determination that an assistive animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct—not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. No species, breed, size, number, or other universal restrictions may be applied. The assessment of direct threat must consider:~~

~~(A) the nature, duration, and severity of the risk of injury;~~

~~(B) the probability that injury will actually occur; and~~

~~(C) whether there are any reasonable accommodations that will eliminate the direct threat.~~

~~(b) A person who is granted accommodation of an assistive animal shall not be required to pay any pet fee, rent, or other additional fee, including additional security deposit or liability insurance, to have the animal in his or her residence. However, a person who is granted accommodation of an assistive animal may be required to cover the costs of repairs for damage the animal causes to the dwelling unit or the common areas, excluding reasonable wear and tear, if it is the housing provider's practice to assess such damages.~~

~~(c) Any state and local requirements regarding animals apply equally to assistive animals including, but not limited to, requirements that an animal be licensed, vaccinated, and/or sterilized. A housing provider is permitted to request verification that an assistive animal is in compliance with any applicable requirements.~~

~~(d) A housing provider may impose other reasonable conditions on an assistive animal to ensure it is under the control of the applicant or resident. These conditions may not be more restrictive than those imposed upon other animals on the property.~~

~~(e) Invitees to the property shall be granted accommodation for assistive animals, in accordance with the restrictions above.~~

~~(f) If someone requests an accommodation, including, but not limited to, use of an assistive animal, then the housing provider may require verification of disability pursuant to section 11098.30 of these regulations.~~

~~(1) Similarly, if the disability is known but the disability related need for the assistive animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistive animal.~~

~~(g) A qualified health care provider, as defined in section 11098.30, must have specific knowledge of the patient's medical condition based on an individualized examination and not operate primarily to provide certifications for assistive animals.~~

~~(1) If medical information is provided by a qualified health care provider who does not have specific knowledge based on an individualized examination and operates primarily to provide certifications for assistive animals, then the housing provider may request information verifying the need for an accommodation from a qualified health care provider and continue to engage in the interactive process.~~

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 11098.28. Undue Hardship and Fundamental Alteration Denial of Reasonable Accommodation.

~~(a) A housing provider may deny a requested accommodation as not reasonable if the accommodation would impose an undue hardship on the housing provider. An undue hardship would impose significant difficulty or expense or would constitute a fundamental alteration in the program or service. A fundamental alteration changes the essential nature of a provider's operations, such as shopping or cleaning for a resident. The determination of whether an accommodation poses undue hardship must be made on a case-by-case basis involving various factors including, but not limited to:~~

- ~~(1) the nature and cost of the requested accommodation;~~
- ~~(2) the financial resources of the housing provider;~~
- ~~(3) the benefits that the accommodation or modification would provide to the applicant or resident with a disability;~~
- ~~(4) the availability of alternative accommodations or modifications that would effectively meet the applicant's or resident's disability-related needs; and~~
- ~~(5) the existence of conflicting good faith requests for accommodations that cannot be reconciled through the interactive process.~~

~~(b) A housing provider cannot claim undue hardship based on the housing provider's or another resident's fears or prejudices toward the individual's disability, nor can undue hardship be based on the fact that provision of a reasonable accommodation or modification might be considered unfair by other individuals.~~

~~(a) A requested accommodation may be denied if:~~

- (1) The individual on whose behalf the accommodation was requested is not an individual with a disability;
- (2) There is no disability-related need for the requested accommodation (in other words, there is no nexus between the disability and the requested accommodation);
- (3) The requested accommodation would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation; or
- (4) The requested accommodation would impose an undue financial or administrative burden on the person who is asked to provide the accommodation.

(b) The determination of whether an accommodation poses an undue financial or administrative burden must be made on a case-by-case basis and should consider various factors including, but not limited to:

(1) the nature and cost of the requested accommodation;

(2) the financial resources of the person who has been asked to grant the accommodation;

(3) the benefits that the accommodation would provide to the individual with a disability;

(4) the availability of alternative accommodations or modifications that would effectively meet the disability-related needs of the individual with a disability; and

(5) where the entity being asked to make the accommodation is part of a larger entity, the structure and overall resources of the larger organization should be considered, as well as the financial and administrative relationship of the entity to the larger organization. In general, a larger entity with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller entity with fewer resources.

(c) A fundamental alteration is a modification that changes the essential nature of the services or operations of the person being asked to provide the accommodation. For example, if a landlord does not normally provide shopping for residents, a request to shop for a person with a disability could constitute a fundamental alteration.

(d) A person cannot deny a request for a reasonable accommodation based on the person's or another individual's fears or prejudices about the individual's disability, nor can a denial be based on the fact that provision of a reasonable accommodation or modification might be considered unfair by other individuals or might be an undue burden if extended to multiple other individuals who might request accommodations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code, *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 11098.29. The Interactive Process.

~~(a) When needed to identify or implement an effective, reasonable accommodation for a person with a disability, the law requires a timely, good faith, interactive process between a housing provider and the person with a disability, or the individual's representative, who is requesting the accommodation.~~

~~(b) A housing provider may not require that the request for accommodation be made in a particular manner or at a particular time. A person makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of a disability, regardless of whether the~~

phrase “reasonable accommodation” is used as part of the request. Adopting a formal procedure may aid persons with disabilities in making requests for reasonable accommodations or modifications and may make it easier to assess those requests and keep records of the considerations given the requests. However, a housing provider may not refuse a request or refuse to engage in the interactive process because the requester did not use the housing provider’s preferred forms or procedures or because the requester did not present sufficient proof of disability. A person responsible for responding to accommodation requests may assist someone in completing a form.

(c) The request for a reasonable accommodation or modification may be made by the applicant or resident with a disability, a family member, or someone else acting on behalf of the person with a disability.

(d) All parties to the interactive process must make reasonable efforts to participate in the interactive process in good faith. Direct communication between the housing provider and person with a disability requesting the accommodation is not required, but any indirect communication must alert the resident or applicant that the housing provider is considering various accommodations or modifications and that the resident or person requesting the accommodation has the right to participate in the discussion or interaction.

(e) The housing provider must engage in the interactive process upon receipt of a request for accommodation or modification. The time necessary to complete the interactive process depends on many factors, including, but not necessarily limited to, the nature of the accommodations or modifications under consideration and whether it is necessary to obtain supporting information if the need for the accommodation or modification is not obvious or known to the housing provider. Notwithstanding such variables, the duration of the process should not exceed thirty calendar days from the date of the start of the interactive process. Any delay by the housing provider beyond the thirty calendar day timeline in completing the interactive process establishes a rebuttable presumption that the housing provider failed to engage in a good faith, interactive process. In some cases, thirty calendar days may be unreasonable.

(f) When, after engaging in the interactive process, a housing provider refuses a requested accommodation because it is not reasonable, the housing provider must consider all alternative accommodations of which it is aware or that are brought to its attention by the applicant or resident. If an alternative accommodation would effectively meet the requester’s disability-related needs and is reasonable, the housing provider must grant it. In cases where a housing provider believes that, while the accommodation requested by the applicant or resident is reasonable, there is an alternative accommodation that would be equally effective, the housing provider should discuss with the individual if she is willing to accept the alternative accommodation. However, a person with a disability is not obligated to accept an alternative accommodation if she believes the alternative accommodation will not meet her needs and her preferred accommodation is reasonable.

(a) In order to identify, evaluate, or implement an effective, reasonable accommodation for an individual with a disability, the person considering the accommodation must engage in a timely, good faith, interactive process with the individual with a disability, or the individual’s representative.

(b) If the nexus between the disability and the requested accommodation is not clear to the person considering the accommodation, or if the person considering the accommodation believes the information received is insufficient to establish either that a disability exists or the nature of the disability-related need for the accommodation, the person considering the accommodation must seek clarification or additional information from the individual with a disability or the individual's representative.

(c) If the person considering the requested accommodation believes the particular requested accommodation would be an undue financial or administrative burden, or a fundamental alteration, after considering all appropriate factors, the person being asked to make the accommodation must try to identify another accommodation that will not pose such an undue burden or fundamental alteration.

(d) If the person considering the request believes an alternative accommodation is warranted under subparagraph (c) above, the person considering the request should discuss with the requestor whether the proposed alternative accommodations would be equally effective in meeting the requestor's needs. In many cases, the individual with the disability has the most accurate knowledge about the functional limitations posed by their disability, and the individual is not obligated to accept an alternative accommodation if it will not meet the individual's needs and the request is not an undue financial or administrative burden or a fundamental alteration.

(e) Requests for reasonable accommodations must be promptly considered. The time necessary to respond to a request depends on many factors, including, but not necessarily limited to:

(1) the nature of the accommodations under consideration;

(2) whether it is necessary to obtain supporting information because the disability or the need for the accommodation is not obvious or known to the housing provider;

(3) whether the accommodation is needed on an urgent basis; and

(4) whether it is necessary to engage in the interactive process to resolve the request.

(f) An undue delay by the person considering the request may constitute a denial of a reasonable accommodations. Whether a request has been promptly considered is a case-by-case factual determination.

(g) A failure to reach an agreement on an accommodation request after a reasonable attempt to do so is in effect a decision not to grant the requested accommodation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 11098.30. Proof of Disability.

~~(a) A housing provider may not ask a person to provide documentation showing the disability or disability related need for an accommodation if the disability or disability related need is readily apparent or already known to the provider.~~

~~(b) If the need for the requested accommodation or modification is not readily apparent, the housing provider may request that the applicant or resident provide documentation from a qualified health care provider, as defined in subdivision (e) below, verifying that an accommodation or modification is necessary because the person has a disability and because the request for accommodation or modification would afford the person with a disability equal opportunity to use and enjoy a dwelling.~~

~~(1) The person with the disability is not required to reveal a particular diagnosis. The person with a disability should provide only information about how the disability restricts or limits the resident in one or more major life activities, as compared to most people in the general population, and how the requested accommodation will enable the resident to have an equal opportunity to use or enjoy the housing.~~

~~(c) All information concerning a person's disability, request for an accommodation, or medical verification or information must be kept confidential and must not be shared with other persons unless disclosure is required to either make or assess the decision to grant or deny the request for accommodation or modification, or disclosure is required by law.~~

~~(d) If the requested accommodation is for an assistive animal, the proof of disability must identify the specific species of animal needed for the reasonable accommodation.~~

~~(e) A qualified health care provider, who can provide information verifying disability or the necessity of an accommodation or modification, includes, but is not limited to:~~

~~(1) a medical or osteopathic doctor, physician, or surgeon, licensed in California or in another state or country, who directly treats or supervises the treatment of the applicant or resident; or~~

~~(2) a marriage and family therapist or acupuncturist, licensed in California or in another state or country, or any other persons who meet the definition of "others capable of providing health care services" under FMLA and its implementing regulations that became effective March 8, 2013 (29 C.F.R. § 825.125), including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, physician assistants; or~~

~~(3) a peer support group, a non-medical service agency, social worker, or a reliable third party who is in a position to know about the individual's disability.~~

~~Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code.~~

§ 11098.30. Assistance Animals

(a) Assistance animals include guide dogs, signal dogs, service dogs, and support animals as defined in section 11098.23.

(b) Assistance animals may be trained professionally or may be trained by the individual with a disability or other individual.

(c) Individuals with disabilities who utilize guide dogs, signal dogs, or service dogs are entitled to use them in dwellings, including Common Use and Public Use areas, and in other public areas related to accessing housing, subject only to an inquiry as to what disability-related task the dog has been trained to perform.

(d) Many persons covered by the Fair Employment and Housing Act or the federal Fair Housing Act may also be covered by other legal obligations relating to assistance animals, such as the American with Disabilities Act, Section 504 of the Rehabilitation Act, or California Government Code 11135, which further restricts the nature and type of inquiry that may be made concerning assistance animals.

(e) Individuals with disabilities who have a support animal may request a reasonable accommodation related to the support animal.

(f) Direct Threat to the Health and Safety of Others and Substantial Physical Damage.

(1) In addition to the reasons set out in section 11098.28, a request for an assistance animal as a reasonable accommodation may be denied if:

(A) The specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or

(B) The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

(2) Breed, size, and weight limitations may not be applied to an assistance animal.

(g) A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct, not on mere speculation or fear about the types of harm or damage an animal may cause or on evidence about harm or damage that other animals have caused. The assessment of whether the assistance animal poses a direct threat must consider:

(1) the nature, duration, and severity of the risk of injury;

(2) the probability that injury will actually occur; and

(3) whether there are any reasonable accommodations that will eliminate the direct threat.

(h) An individual who is granted a reasonable accommodation for an assistance animal shall not be required to pay any pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance, in connection with the reasonable accommodation.

(i) A person who is granted a reasonable accommodation for an assistance animal may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear.

(j) Reasonable conditions may be imposed on the use of an assistance animal to ensure it is under the control of the individual with a disability or a person who may be assisting the individuals with a disability, such as restrictions on waste disposal, so long as the conditions do not interfere with the normal performance of the animal's duties. For example, a leash requirement may interfere with the ability of a guide dog, signal dog, or service dog to assist an individual using certain assistive devices, or a no noise requirement may interfere with a dog's job of barking to alert a blind person to a danger or someone at the door. These conditions may not be more restrictive than those imposed upon other animals on the property.

(k) Invitees to the property shall be allowed to have guide dogs, signal dogs, or service dogs, and shall be granted reasonable accommodations for support animals, in accordance with the requirements and restrictions set forth in this section.

(l) In the context of support animals, information confirming that an individual has a disability or has a disability-related need for a support animal may be requested and provided in accordance with section 11098.27(e). Support animal certifications from an online service that do not include an individualized assessment from a medical professional are presumptively considered not to be information from a reliable third party. A person provided with such a certification must provide an opportunity to the individual requesting the accommodation to provide additional information that meets the requirements of section 11098.27 before denying a request for reasonable accommodation.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.