



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**  
**FAIR EMPLOYMENT & HOUSING COUNCIL**  
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DIRECTOR KEVIN KISH

## **FAIR EMPLOYMENT AND HOUSING COUNCIL**

Meeting of July 17, 2017

### **Minutes**

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

#### **Councilmembers Present**

Chaya Mandelbaum, Chairperson  
Dale Brodsky, Councilmember  
Lisa Cisneros, Councilmember  
Tim Iglesias, Councilmember  
Joseph Ortiz, Councilmember  
Dara Schur, Councilmember  
Kevin Kish, DFEH Director and Ex Officio member

#### **DFEH Staff Present**

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

#### **Others Present**

Kara Brodfuehrer, National Housing Law Project  
Susan Beaty, Legal Aid at Work  
Shauna Correia, Weintraub Tobin Chediak Coleman & Grodin  
Marisa Diaz, Legal Aid at Work  
Paul Dumont, Sober Living Network  
Alicia Marie Green, Sober Living Network  
Joan Harrington, Bay Area Employment Law Office  
Christopher Ho, Legal Aid at Work  
Eunice Kim, National Housing Law Project  
Ron Kingston, California Political Consulting Group  
Noah Lebowitz, California Employment Lawyers Association  
Ann Noel, Noel Workplace Consulting  
Whitney Prout, California Apartment Association  
Raven Sarnoff, Sarnoff & Sarnoff  
Mr. Steiner  
Henry Trinh, National Housing Law Project  
Sanjay Wagle, California Association of Realtors  
Ashley Werner, Leadership Counsel for Justice and Accountability  
Troy Williams  
Victoria Yee, Legal Aid at Work

CHAYA MANDELBAUM  
CHAIRPERSON

DALE BRODSKY  
COUNCILMEMBER

LISA CISNEROS  
COUNCILMEMBER

MARK T HARRIS  
COUNCILMEMBER

TIM IGLESIAS  
COUNCILMEMBER

JOSEPH ORTIZ  
COUNCILMEMBER

DARA L SCHUR  
COUNCILMEMBER

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

Chair Mandelbaum welcomed guests to the FEH Council's 20th meeting and called it to order. He then turned the meeting over to DFEH Legislative and Regulatory Counsel, Brian Sperber, who conducted roll call.

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

Chair Mandelbaum thanked those who were present and those who watched online. He expressed that the Council is delighted to be back in San Francisco at CPUC and extended the Council's gratitude to Chief Judge Clopton for supporting the Council and providing space for the meeting. Chair Mandelbaum also congratulated Chief Judge Clopton on her recent ABA Robert B. Yegge Award for Outstanding Contribution in the Field of Judicial Administration. He announced that the meeting was being webcast live and would also be available afterwards, on the DFEH website and YouTube channel. Chair Mandelbaum informed anyone not physically present but following along online that they can participate by emailing the Council at [fehcouncil@dfeh.ca.gov](mailto:fehcouncil@dfeh.ca.gov).

Chair Mandelbaum then welcomed two new colleagues, Joseph Ortiz and Lisa Cisneros, who were recently appointed to the Council by Governor Brown. He asked whether they would like to introduce themselves to the Council and to those that participated in the meeting.

Councilmember Cisneros expressed her excitement and honor to be a part of the Council and for the opportunity to give voice to the Central Valley and Central Coast region. Councilmember Cisneros has been practicing in that area for about six years, and has been an attorney for 10 years, focusing primarily on LGBT civil rights. She said she believed the Council has a real opportunity to substantially contribute to LGBT rights and other cutting edge civil rights matters.

Councilmember Ortiz introduced himself and discussed his background as a labor and employment practitioner in the Riverside area. He stated that he has been in practice for 15 years primarily representing management in employment matters, as well as representing public entities. Councilmember Ortiz shared that he is a first-generation immigrant and maintains a strong interest in immigration rights and rights affecting Hispanic communities.

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

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

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

Chair Mandelbaum reviewed the Agenda.

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

- Public Hearing on Proposed Employment Regulations Regarding National Origin Discrimination
- Consideration of Emergency Regulations Regarding Gender-Neutral Facility Signage
- Consideration of Further Modifications to Text of Proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistance Animals
- Consideration of Modifications to Text of Proposed Housing Regulations Regarding Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Information

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

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

Chair Mandelbaum reviewed the minutes of the March 30, 2017 meeting. During that meeting, the Council held a public hearing regarding the proposed Housing Regulations Regarding Discriminatory Effect, Discriminatory Land Use Practices, and the Use of Criminal History Information; considered and proposed modifications to the text of the Proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals; considered and passed a non-substantial modification to the text of the Employment Regulations Regarding Gender Identity and Expression; and considered the draft of proposed Employment Regulations Regarding National Origin Discrimination. The Council approved the minutes unanimously, with Councilmembers Cisneros and Ortiz abstaining from the vote.

#### **V. Councilmembers' Reports**

Chair Chaya Mandelbaum and Councilmembers

Chair Mandelbaum reported that the Office of Administrative Law approved both the Regulations Regarding Transgender Identity and Expression and Consideration of Criminal History in Employment Decisions Regulations and that they became effective on July 1, 2017.

Councilmember Brodsky commented that these regulations were featured in the San Francisco Chronicle on July 1, 2017.

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

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish gave highlights from the 2016 annual report, issued in June 2017, which is posted on the DFEH website.

Director Kish noted that in 2016 more than 23,000 complaints were filed – a number that is consistent with numbers from recent years. Of those, a number were requests for an immediate right-to-sue and some were non-jurisdictional. The actual number of cases investigated was 4,799, and disability was the most commonly cited basis for discrimination across law types (employment, housing, public accommodations). In about 1,000 of the cases, the Department reached a settlement of some kind and the overall monetary value of the settlements was approximately \$11.5 million. The department also filed 31 cases in court.

In September 2016, the Department issued a strategic plan accompanied by a specific action plan for the 2016-2017 fiscal year. Of the 80 separate action items planned by the Department, it fully completed about 50 of those and made progress in all of them. The Department will be releasing a new action plan for the 2017-2018 fiscal year.

Director Kish reviewed highlights from the last fiscal year. First, he noted that the DFEH successfully launched a new website that significantly increased ADA compliance, new educational materials, and significant Spanish language content. He remarked that the materials issued in the past year include a workplace investigation guide that was developed by Chair Mandelbaum and former Councilmember Patti Perez. Secondly, he reported that the Department conducted a complete review and redesign of all outreach materials. Director Kish mentioned that although the project is complete, it is ongoing in the sense that it is constantly being updated. He also said that the Department completed a global revision of its procedural regulations, which went through the public

comment process and will go into effect, if approved by OAL, on October 1, 2017. Lastly, Director Kish said that the Department completed a global language needs assessment of the Department and developed a plan to address language needs, including putting in place a contract to provide on-demand telephonic interpretation services available to all department staff, enabling them to pick up the phone and connect with an interpreter through the language line company.

Director Kish also wanted to highlight some internal issues that are not directly visible to the public. He said the Department has created and updated numerous administrative policies including those involving training, upward mobility, attendance, and work schedule.

Director Kish's final update was on hiring. He said that within the next 1-2 weeks, the Department will be advertising for a new executive position to lead the Department's entire housing unit statewide. This person will be responsible for overseeing all housing discrimination investigations. Additionally, he announced that the Department is currently hiring a senior staff counsel. He also welcomed new Senior Staff Counsel Sheila Thomas, who is well-known in the Bay Area as a civil rights litigator. Director Kish stated that information regarding vacancies can be found on the Department's website.

## **VII. Public Hearing: Proposed Employment Regulations Regarding National Origin Discrimination**

Attachment B: Notice of Proposed Rulemaking

Attachment C: Initial Statement of Reasons

Attachment D: Proposed Regulations Regarding National Origin Discrimination

The Council heard public comment from:

### **Marisa Diaz, Legal Aid at Work:**

Marisa Diaz stated her concern that §11028(a)(3) currently only addresses customer preference as a justification for language restrictive policies and strongly encouraged the Council to slightly revise this provision to address coworker preference. She expressed that neither customer nor coworker displeasure at hearing speech other than English should be a legitimate reason to justify a language restrictive policy as it would only perpetuate and legitimize prejudice.

Ms. Diaz then referred to §11028(a)(4), requesting that it be revised to more specifically convey that under California law, employers have a burden to show not only business necessity but that they notified an employee and explained the consequences of violating their policy. Ms. Diaz also suggested an additional subdivision, §11028(a)(5). She asserted that the significance of this additional subsection would be to establish that an employer cannot sufficiently fulfill the legal burden by relying on subjective belief or unsupported assumptions about the need for a language restrictive policy. She further asked that this language be added to §11028(b), regarding accent discrimination, or §11028(c), which discusses English proficiency requirements.

The next topic Ms. Diaz discussed was discovery into immigration status. Ms. Diaz said that actual discovery or even potential discovery into immigration status can have an extreme chilling effect on claimants and the broader worker communities. She communicated that it was necessary to first clarify that in the liability phase there is no discovery allowed into immigration status. Secondly, that during the remedies phase, there is a certain standard set out by California law by which the employer would have to prove by clear and convincing evidence that the inquiry was necessary. And lastly, that this discovery can only be used for the purpose of determining the remedies.

Ms. Diaz also discussed the driver's license provision. She requested that the Council clarify that possession of

a license issued under California Vehicle Code §12801 would not constitute the clear and convincing evidence required to allow discovery into immigration status at the remedies phase of a proceeding.

Ms. Diaz requested that detailed language be added to the harassment provision (11028(j)) addressing harassment involving English only rules, threats of deportation, derogatory comments regarding immigration or immigration status, and mockery of a language or its speakers.

**Noah Lebowitz, California Employment Lawyers Association:**

Mr. Lebowitz noted that most of what he would discuss at the meeting was either similar or identical to the written correspondence he submitted several months ago. He suggested two additional subsections within the language restrictions section, §11028(a). The first additional subdivision would state that language restriction policies, including English only rules, may create a hostile work environment for non-English speaking and bilingual employees. Mr. Lebowitz suggested that the second added subdivision should state that a language restrictive policy may also constitute a violation of an employee benefit by prohibiting employees whose primary language is not English from communicating in their most effective language. He also asserted that this is supported by federal law and California case law.

**Joan Harrington, Bay Area Employment Law Office:**

Ms. Harrington requested that the Council make clear that these regulations are to be considered retroactive.

**Raven Sarnoff, Sarnoff & Sarnoff:**

Ms. Sarnoff wanted to bring attention to the definition of “employer,” which is not part of the rulemaking action at issue.

Chair Mandelbaum indicated that the reference in the definition being identified by Ms. Sarnoff either comes directly from the FEHA or Title VII. He stated his appreciation for bringing the matter to the Council’s attention and affirmed that this matter would be on the Council’s radar.

Councilmember Schur called attention to a recent Ninth Circuit case - Arias v. Raimondo (9th Cir. 2017) 860 F.3d 1185 - involving harassment of employees by reporting the employees to immigration and arranging to have immigration officials appear at a deposition to have the employees deported.

Councilmember Iglesias then mentioned that a public comment had been submitted asking whether reasonable accommodations applied to the matter previously discussed. He also informed the Council of a possible typo in §11028(f)(4) which references retaliation and refers back to subsection (f). He suggested that instead it should probably refer back to subsection (e). Lastly, he indicated that the height and weight restrictions discussed in the regulation ought to specifically refer to national origin in some way.

Councilmember Cisneros also brought up her concern about §11028(f)(4)(A), which includes threatening to report the immigration status of employees, former employees, applicants, or their family members as a form of retaliation. She noted that the list of family members named in the regulation may be too narrow.

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

Councilmember Tim Iglesias

A. Discussion by Council

Chair Mandelbaum turned the meeting over to Councilmember Iglesias to discuss the proposed plan to have a hearing in the Central Valley. He identified two primary goals for the hearing: 1) solicit input and concerns of the Central Valley residents relevant to discrimination in housing and employment, as well as public accommodations and the other civil rights statutes over which the Council has jurisdiction; and 2) to structure the meeting in way that yields information on which the Council can act.

Councilmember Brodsky asked if the general idea was to have a regular meeting with an additional opportunity for the public to respond. Councilmember Iglesias responded that instead of holding a traditional meeting, this would be more of a public forum where residents could communicate openly and voice their opinions and concerns. Chair Mandelbaum then commented that the Council should discuss having another meeting either a day before or after the meeting in question because they should reconvene to discuss regular matters sometime in the fall and that having meetings on consecutive days would be especially convenient.

Also, Chair Mandelbaum indicated that historically there has been an issue with garnering a high participation rate among residents in the area. Councilmember Iglesias suggested numerous ways that the Council could reach out to organizations and residents in the area, for example by seeking assistance from nonprofit organizations.

#### B. Public Comment

The Council heard public comment from:

##### **Ashley Werner, Leadership Counsel for Justice and Accountability**

Ms. Werner is based in Fresno and works with residents of disadvantaged communities in the San Joaquin and Coachella Valley. She expressed support and appreciation for the proposed meeting.

##### **Ann Noel, Noel Workplace Consulting**

Ms. Noel expressed enthusiasm about the proposed meeting and described a meeting she had in the Central Valley around 2010.

#### C. Action by Council

The Council moved, seconded, and unanimously approved the concept of having a fall meeting in the Central Valley.

### **IX. Report from Government Code Section 11135 Subcommittee**

Councilmembers Dale Brodsky and Dara Schur

Councilmember Brodsky indicated that it will take a while to create a functional first draft of Government Code § 11135 regulations. Although there is an existing body of regulations, it is outdated. Councilmembers Brodsky and Schur tentatively plan to have a draft ready by the end of the calendar year.

### **X. Consideration of Emergency Regulations Regarding Gender-Neutral Facility Signage**

Councilmember Dale Brodsky

#### Attachment E: Emergency Regulations Regarding Gender-Neutral Facility Signage

#### A. Discussion by Council

Councilmember Brodsky discussed a conflict between OSHA regulations and §11034(e)(2)(B). Specifically, she communicated OSHA’s concern that by not having separate bathroom facilities at construction sites, or in the fields, there could be health and safety issues. Deputy Director of Executive Programs Holly Thomas pointed out that because employers covered by Cal OSHA regulations have been placed in a conflict between those regulations and regulations under the DFEH, an emergency rule is necessary. Ms. Thomas further noted that such an emergency rule would have to be finalized through the regular rulemaking process to be made permanent after the emergency regulation goes into effect.

Director Kish and Councilmember Brodsky helped clarify the distinction between portable toilets (“porta potties”) and water-closets. They confirmed that this emergency regulation did not affect signage on water-closets. (Where a water-closet refers to a toilet that flushes waste using water.)

Councilmember Schur said that she was unsure that the language reflected the intent of the Council. She suggested that the language be adjusted to say that all subsections apply other than subsection (e)(2)(B).

B. Public Comment

None.

C. Action by Council

The Council moved, seconded, and approved the emergency regulation with Councilmember Schur’s amendment.

**XI. Discussion Regarding Additional Subcommittee Assignments**

Chair Chaya Mandelbaum and Councilmembers

A. Discussion by Council

Chair Mandelbaum suggested that a new subcommittee explore areas for further regulation. Director Kish indicated that over the past year there have been some communications regarding confusion over various regulations. He recommended consolidating those communications and delivering them to a subcommittee to review and decide on a set of priorities which would then be presented to the Council before divvying up the actual assignment of drafting.

B. Public Comment

The Council heard public comment from:

**Joan Harrington, Bay Area Employment Law Office:**

Ms. Harrington referred to California Government Code § 12970, which enabled the now-disbanded Fair Employment and Housing Commission to award injunctive relief upon a finding of liability, but was repealed as part of SB 1038 (2012). She requested that the Council examine this issue.

**Noah Lebowitz, California Employment Lawyers Association:**

Mr. Lebowitz reminded the Council that he previously submitted two letters. The first concerns age discrimination. The other involves religious creed discrimination and he was joined by the Church-State Council.

C. Action by Council

The Council moved, seconded, and approved the new subcommittee composed of Councilmembers Cisneros and Ortiz.

**XII. Consideration of Further Modifications to Text of Proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals**

Councilmembers Dara Schur and Tim Iglesias

Attachment F: Further Modified Text of Proposed Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals

A. Discussion by Council

Chair Mandelbaum turned the meeting over to Councilmembers Schur and Iglesias. Councilmember Schur said that there were many comments submitted regarding these regulations. She explained that the subcommittee had clarified and modified many terms and phrases, including: “adverse action,” “financial assistance,” “owner,” “person,” “practice,” and “residential real estate.”

B. Public Comment

The Council heard public comment from:

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

Mr. Kingston cited §11098.26 in conjunction with his request that the Council provide clarification as to whether reasonable accommodations are available to tenants in unlawful detainer proceedings post-trial.

Mr. Kingston commented next about §11098.28, asking for clarification regarding what information may be requested if the information available is incomplete, unsatisfactory, or unclear. He then discussed the language in §11098.28(f)(5), which he asserted does not name any required license, qualifications, or training, and he said that “some qualifications” should be stipulated regarding who can appropriately establish that an assistance animal is a reasonable accommodation.

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

Ms. Brodfuehrer requested that the language removed from §11098.3 – which stated that “persons shall be broadly defined” – be added back as it would be “more consistent with the regulatory scheme.”

Ms. Brodfuehrer also mentioned §11098.6 reads more like a section about discrimination than retaliation. She reiterated that – in contrast to discrimination – one does not have to be a member of a protected class to be subjected to retaliation.

**Henry Trinh, National Housing Law Project:**

Mr. Trinh reaffirmed the position of Ms. Brodfuehrer and thanked the Council for its work.

**Whitney Prout, California Apartment Association:**

Ms. Prout expressed concern about the unlawful detainer provisions that were added. She first commented on §§11098.4(c), 11098.6(e) and 11098.26(c)(7)(A), stating concern over how these subsections are phrased. She claimed that they appeared to create a new, independent right that allows for accommodation defenses that do not have any nexus to the basis for the unlawful detainer.

Next, she commented that §11098.5(c) was difficult to understand and circular because the term “harassment” was used to define harassment and suggested that the examples provided in the subsection did not appropriately illustrate the meaning of harassment.

Additionally, she worried that §11098.6(c) was so broad it would effectively make any retaliation claim a de facto FEHA claim for which, she asserted, existing law does not provide.

Ms. Prout was concerned that while §11098.31 recognized a “direct threat” as a basis to deny a request for an assistance animal, §§11098.26(a) and 11098.29 did not recognize that, under the FHA, a “direct threat” applies to all reasonable accommodations – not just assistance animals.

Next, Ms. Prout referred to §11098.26(c)(6), commenting that although a landlord can provide assistance and alternative methods of communication to tenants with disabilities, she is unaware of any underlying authority that providing assistance is always a landlord’s obligation.

Ms. Prout then referred to §11098.26(c)(7). She conveyed that the indication that accommodations requests must be “timely” seems to create a new standard which does not exist under current law. Ms. Prout added that that the use of the word “timely” implies that a request becomes untimely at some point, which contradicts the provision that a request may be made at any time.

**Joan Harrington, Bay Area Employment Law Office:**

Ms. Harrington commented that as with the broadened employment provisions – which recognize that the interactive process is triggered when an employer becomes aware of an employee’s need or potential need for accommodations – housing provisions should recognize that the interactive process is triggered when a landlord becomes aware of a tenant’s need or potential need for accommodations.

**Sanjay Wagle, California Association of Realtors:**

Mr. Wagle first requested an additional statement be added to the regulatory text, indicating that although a person with a disability is not required to submit a request for reasonable accommodations using specific forms and procedures, a housing provider may ask the tenant to use specific forms and procedures after the tenant initially requests accommodations. He also said he did not like the examples for unlawful detainer as provided in the regulations.

Mr. Wagle further asserted that the aggregate number of assistance animals should be considered, particularly as it relates to undue burdens.

**Paul Dumont, Sober Living Network:**

Mr. Dumont expressed his gratitude for the work facilitated by the DFEH.

C. Action by Council

The Council moved, seconded, and unanimously voted to initiate another 15-day comment period.

CHAYA MANDELBAUM  
CHAIRPERSON

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COUNCILMEMBER

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COUNCILMEMBER

### **XIII. Consideration of Modifications to Text of Proposed Housing Regulations Regarding Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Information**

Councilmembers Dara Schur and Tim Iglesias

#### Attachment G: Modified Text of Proposed Housing Regulations Regarding Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Information

##### A. Discussion by Council

Chair Mandelbaum asked Councilmembers Schur and Iglesias whether there were any “big-picture” issues they wished to discuss before moving into the public comment period. Councilmember Schur indicated that many of the changes were clarifications and responses to comments, and that given the time constraints, no discussion was necessary.

##### B. Public Comment

The Council heard public comment from:

#### **Whitney Prout, California Apartment Association:**

Ms. Prout expressed her appreciation for the regulatory provision legitimizing the use of “bright-line” conviction disqualification policies. Ms. Prout was concerned, however, about the rule which provides that when a bright-line policy creates an adverse impact against an employee or applicant, an employer must demonstrate either that the policy can appropriately establish an individual’s level of risk and ability to perform job duties or conduct individualized assessments of the individuals rejected through the screening process. She commented that if individualized factors must be considered, it would undermine the use of such policies, suggesting that a narrowly tailored bright-line rule should be sufficient.

#### **Ashley Werner, Leadership Counsel for Justice and Accountability**

Ms. Werner complimented the Council for the revisions made in response to past public comments. She also encouraged the Council to make additional modifications to the land use practices section of the draft regulations, including a more expansive definition of public land use practices.

#### **Eunice Kim, National Housing Law Project:**

Ms. Kim discussed the use of criminal history in attaining housing. She suggested changing the lookback period from seven years to three years. She indicated this would be in line with federal guidelines suggesting a shorter lookback period.

#### **Sanjay Wagle, California Association of Realtors:**

Mr. Wagle first referred to §11098.04.6. He stated his concern that the preclusion of a person’s FICO score could freeze up the housing market. Next, he said that while seven years might be appropriate for crimes that are not considered crimes of moral turpitude, seven years is inappropriate for those considered crimes of moral turpitude

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

Ms. Brodfuehrer first referred to §11098.04.1 and suggested that a business establishment be defined as an entity involved in the sale, rental or financing of real property. Regarding the consideration of criminal history, Ms. Brodfuehrer conveyed appreciation of the Council’s attention to the matter. Referring to §11098.14.2(b), Ms. Brodfuehrer believed it to be redundant and encouraged individualized assessments and the consideration of mitigating circumstances.

**Paul Dumont, Sober Living Network:**

Mr. Dumont’s primary concern was regarding the seven year “lookback” period imposed on individuals with a criminal history. He believed such period was unfair and encouraged more protection for those with a criminal history.

**Troy Williams:**

Mr. Williams is a former inmate and current newspaper editor who advocated for enhanced rights among persons with criminal histories. Mr. Williams maintained that being required to disclose one’s criminal history prevents one from obtaining employment and housing. He further remarked that while persons with a criminal history are purported to have a 70 percent recidivism rate, that rate is only applicable among individuals who are incarcerated short-term. He argued that a seven-year lookback period was too long to wait for housing and employment, and asserted that those persons with a criminal history do not have the same mindset as they did when the crimes were committed.

Chair Mandelbaum clarified that the regulations do not indicate that seven years is always an appropriate lookback period. He agreed that in many instances, a shorter lookback period would be warranted. The reference to seven years in the housing and employment regulations refers only to the automatic rebuttable presumption that a criminal history policy is not sufficiently narrowly tailored.

**Mr. Steiner:**

Mr. Steiner said that age should be a consideration factor for determining whether disqualification on the basis of conviction history is appropriate. He stated that after spending numerous years in prison, the elderly should have the opportunity to make a beneficial contribution to society.

**Alicia Marie Green, Sober Living Network:**

Ms. Green thanked the Council for its work.

C. Action by Council

Chair Mandelbaum proposed adoption of the modified text contained in Attachment G with a modification on page 1 to § 11098.04.1(c) to add the word “pretextual.” The Council moved, seconded, and unanimously voted to initiate a 15-day comment period

**XIV. Further Public Comment**

None.

**XV. Adjournment**

Chair Mandelbaum adjourned the meeting at approximately 4:30 p.m.

CHAYA MANDELBAUM  
CHAIRPERSON

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Date: August 17, 2017

CHAYA MANDELBAUM  
Chair

ANA IKE  
DFEH Summer Intern