

# ATTACHMENT B

## TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING HOUSING REGULATIONS REGARDING DEFINITIONS; INTENTIONAL DISCRIMINATION; DISCRIMINATORY ADVERTISEMENTS, STATEMENTS, AND NOTICES; CONSIDERATION OF INCOME; RESIDENTIAL REAL ESTATE- RELATED PRACTICES; AND DISABILITY

[Notice published August 7, 2020]

### NOTICE OF PROPOSED RULEMAKING

The Fair Employment and Housing Council (Council) of the Department of Fair Employment and Housing (DFEH) proposes to amend sections 12005, 12120, 12155, and 12176-12180 of and add sections 12040-12042, 12050-12052, 12140-12143, and 12181 to Title 2 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

### PUBLIC HEARING

The Council will hold a public hearing at **10:00 a.m. on September 25, 2020**, at the following location:

<https://us02web.zoom.us/j/83317417335>

and/or

1-669-900-6833 – Meeting ID: 833 1741 7335

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The meeting facilities are accessible to individuals with physical disabilities. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the meeting, should contact Brenda Valle-Balderrama, DFEH ADA Coordinator, at (844) 541-2877 (voice or via relay operator 711) or TTY (800) 700-2320 or via email: [brenda.valle-balderrama@dfeh.ca.gov](mailto:brenda.valle-balderrama@dfeh.ca.gov) or [accommodations@dfeh.ca.gov](mailto:accommodations@dfeh.ca.gov) as soon as possible or at least 72 hours before the meeting.

### WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Council. The written comment period closes at **5:00 p.m. on September 25, 2020**. The Council will consider only comments received by that time. Written Comments can be mailed to:

Fair Employment and Housing Council  
c/o Brian Sperber, Legislative & Regulatory Counsel  
Department of Fair Employment and Housing

320 West 4th Street, 10th Floor  
Los Angeles, CA 90013

Comments may also be submitted by e-mail to [FEHCouncil@dfeh.ca.gov](mailto:FEHCouncil@dfeh.ca.gov).

## **AUTHORITY AND REFERENCE**

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12900 et seq. of the Government Code.

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

This rulemaking action clarifies, makes specific, and supplements existing state statutes and case law interpreting the Fair Employment and Housing Act (FEHA) set forth in Government Code section 12900 et seq. As it relates to housing, the FEHA prohibits harassment and discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, or any basis prohibited by section 51 of the Civil Code.

In compliance with the Administrative Procedure Act, the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. This action has the specific benefit of creating a more comprehensive set of rules to ensure that persons covered by FEHA, including housing providers, owners, tenants, and others, better understand their rights and duties, in turn reducing litigation costs and the burden on courts. Ultimately, the proposed action furthers the mission of the DFEH by protecting Californians from discrimination, harassment, and retaliation in the housing context.

The proposed amendments most notably clarify and/or articulate the following: (1) definitions to be used throughout subchapter 7; (2) “military or veteran status” as a protected class; (3) definitions regarding intentional discrimination; (4) how to establish liability based on intentional discrimination; (5) burdens of proof and types of evidence in intentional discrimination cases; (6) the relationship of legally sufficient justifications in a discriminatory effects case to allegations of intentional discrimination; (7) how to establish liability based on discriminatory notices, statements, and advertisements; (8) identifying specific practices that are not covered by the prohibitions on discriminatory notices, statements, or advertisements; (9) how to qualify for an exemption from liability for discriminatory conduct; (10) definitions of “lawful, verifiable income” and “source of income”; (11) the prohibition on practices constituting discrimination on source of income and examples; (12) the prohibition on discrimination based on aggregate income; (13) the prohibition on practices constituting discrimination on the basis of a government rent subsidy; (14) the prohibition on residential real estate-related practices used in evaluating creditworthiness in connection with provision of financial assistance when such practices have a discriminatory effect; (15) discriminatory housing practices based on the failure to make reasonable modifications for individuals with disabilities, including the interactive process, establishing that a reasonable modification is necessary, denials of requests for reasonable

modifications, and other requirements or limitations in the provision of reasonable modifications, and examples.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern fair housing and the Fair Employment and Housing Act.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Council has made the following initial determinations:*

**Mandate on local agencies and school districts:** None.

**Cost or savings to any state agency:** No additional costs or savings beyond those imposed by existing law.

**Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

**Other non-discretionary cost or savings imposed on local agencies:** No additional costs or savings beyond those imposed by existing law.

**Cost or savings in federal funding to the state:** None.

**Cost impacts on a representative private person or businesses:** No additional costs or savings beyond those imposed by existing law. Therefore, the Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Results of the economic impact assessment/analysis:** The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs or housing within the state; the creation of new businesses or housing or the elimination of existing businesses or housing within the state; or the expansion of businesses or housing currently doing business within the state. To the contrary, adoption of the proposed amendments is anticipated to benefit California businesses, workers, housing providers, owners, tenants, and the state's judiciary by clarifying and streamlining the operation of the law, making it easier for housing providers, owners, and tenants to understand their rights and obligations, and reducing litigation costs. These regulations would not affect the environment.

**Statewide adverse economic impact directly affecting businesses and individuals:** The Council has made an initial determination that the proposed action *will not* have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Significant effect on housing costs:** None.

**Small Business Determination:** The Council anticipates that the regulations will not create additional costs or savings beyond those imposed by existing law. Similarly, the Council has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

**Business Report:** The Council has determined that the proposed regulations do not require a report to be made.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Council must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the Council's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Brian Sperber, Legislative & Regulatory Counsel  
Department of Fair Employment and Housing  
320 West 4th Street, 10th Floor  
Los Angeles, CA 90013  
Telephone: (213) 337-4495  
E-mail: [brian.sperber@dfeh.ca.gov](mailto:brian.sperber@dfeh.ca.gov)

The backup contact person for these inquiries is:

Adam Romero, Deputy Director of Executive Programs  
Department of Fair Employment and Housing  
320 West 4th Street, 10th Floor  
Los Angeles, CA 90013  
Telephone: (213) 439-6799  
E-mail: [adam.romero@dfeh.ca.gov](mailto:adam.romero@dfeh.ca.gov)

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, should other sources be used in the future, to Brian Sperber at the above address.

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, and the three documents relied upon listed in the Initial Statement of Reasons (“Reasonable Modifications Under the Fair Housing Act,” “Implementation of the Fair Housing Amendments Act of 1988,” and “Reasonable Accommodations Under the Fair Housing Act”). Copies may be obtained by contacting Brian Sperber at the address or phone number listed above.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Brian Sperber at the address indicated above. The Council will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons will be available on the Council’s Web page: <http://www.dfeh.ca.gov/fehccouncil/>.

Copies also may be obtained by contacting Brian Sperber at the above address.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations, and any modified texts and the Final Statement of Reasons can be accessed through the Council’s Web page at <http://www.dfeh.ca.gov/fehccouncil/>.

\*\*\*\*\* END \*\*\*\*\*