

**CIVIL RIGHTS DEPARTMENT
FAIR HOUSING REGULATIONS
INITIAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 7. Discrimination in Housing

As it relates to housing, the Fair Employment and Housing Act (“FEHA” or “the Act”) prohibits harassment and discrimination because of the 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, or genetic information, or any basis prohibited by section 51 of the Civil Code.

Pursuant to Government Code section 12935(a), the Civil Rights Council (Council) has authority to adopt necessary regulations implementing the FEHA. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 12900 *et. seq.*

The specific purpose of each proposed regulation or amendment and the reason it is necessary are described below. The problem that a particular proposed regulation or amendment addresses and the intended benefits are outlined under each subsection, as applicable, when the proposed change goes beyond mere clarification.

Some changes are not explained below as they are non-substantive, including correcting grammatical and formatting errors, renumbering and re-lettering provisions, deleting unnecessary citations, and eliminating jargon.

Article 1. General Matters

§ 12005. Definitions

The purpose of this section is to give meaning to terms used throughout the “Discrimination in Housing” subchapter of the FEHA regulations.

§ 12005(b)(1)(A). In the definition of “adverse action,” the Council proposes to add the word “unlawfully” before “restricting” to clarify that unlawfully (but not lawfully) restricting access to all or part of the premises may constitute an adverse action under the FEHA. This change is necessary to clarify that lawfully restricting access to all or part of the premises would not constitute an “adverse action” under the FEHA. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§ 12005(o)(2). In the definition of “housing accommodation” and the synonymous term “dwelling,” the definition currently includes shelters for individuals surviving domestic violence. The Council proposes to add shelters for individuals surviving “sexual assault, human trafficking, dating violence, stalking, or other forms of gender-based or interpersonal violence” to clarify that such shelters are also subject to the FEHA’s anti-discrimination requirements. This change is necessary to provide greater clarity as to the types of shelters covered by the Act and is necessary to give full effect to Government Code section 12927(d), which broadly defines “housing accommodation,” in relevant part, as “any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families . . .

..” Government Code section 12927(d) contains no exceptions for shelters serving survivors of sexual assault, human trafficking, dating violence, stalking, or other forms of gender-based or interpersonal violence, and in the Council’s expertise, these shelters should be treated the same as shelters serving survivors of domestic violence with regard to application of the FEHA’s anti-discrimination requirements.

§ 12005(v)(7). In the definition of “owner,” the Council proposes to add “members of common interest developments as defined in Civil Code Section 4160 in regard to their separate interests,” in order to clarify that these individual members, who are owners of their separate interests, are subject to the FEHA’s anti-discrimination requirements. This change is necessary to harmonize the FEHA and the Davis-Stirling Common Interest Development Act, Civil Code sections 4000 *et. seq.* Members of common interest developments under the Davis-Stirling Act are the owners of the separate interests with, generally, the rights to sell or lease their separate interests. Therefore, based on the Council’s expertise, individual members of common interest developments should be included within the definition of “owner” in the Act, in addition to the governing bodies of common interest developments already referenced in this paragraph.

§ 12005(bb). In the definition of “public land practices,” the Council proposes to fix a clerical error by changing a reference to “12005(w)(67)” to “12005(w)(7).” This change is non-substantive.

Article 3. Intentional Discrimination

§12040. Definitions

The purpose of this section is to give meaning to terms used throughout the “Intentional Discrimination” article of the regulations.

§12040(c). In the definition of “facially discriminatory policy,” the Council proposes to change the word “takes” to “requires” in order to eliminate ambiguity created by the word “takes.” This change is necessary for clarity. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§12042. Burdens of Proof and Types of Evidence in Intentional Discrimination Cases.

The purpose of this section is to specify the burdens of proof that each party bears in intentional discrimination cases and to explain the different liability rules that apply when either direct evidence or indirect evidence (or circumstantial evidence) is used to prove a violation.

§12042(c)(1). The Council proposes to add “either” and “and” to clarify that any of the attributes of oral or written express conditions listed in this paragraph, whether on their own or in combination, are included in the definition of direct evidence. The Council proposes to replace the word “takes” with the word “requires” to eliminate ambiguity created by the word “takes.” The Council proposes non-substantive grammatical changes to add the word “an” before “adverse action.” These changes are necessary for clarity. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§12042(f). The Council proposes to add non-substantive language to clarify that, in order to avoid liability for a facially discriminatory policy, a respondent must show that the policy fulfills both standards set forth in subsections 12042(f)(1) and 12042(f)(2). Likewise, the Council proposes to add non-substantive language in subsection 12042(f)(1) to clarify that the fulfillment of subsection 12042(f)(1) could be met by a showing of either subsection 12042(f)(1)(A) or 12042(f)(1)(B). These non-substantive changes are necessary to provide further clarity as to respondents’ obligations to avoid liability for a

facially discriminatory policy. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

Article 6. Discriminatory Notices, Statements, and Advertisements

§12050 Discriminatory Practices Regarding Notices, Statements, and Advertisements.

The purpose of this section is to set out the general rule regarding notices, statements, and advertisements that are unlawful because they are discriminatory under section 12955(c) of the Act.

§ 12050(b)(2). The Council proposes to change the word “homeowner” to “owner.” “Homeowner” is not a defined term in the regulations, but “owner” is defined and is appropriately used here. This change is necessary to ensure consistency of terminology within the regulations. Further clarity will benefit the public by facilitating compliance with the law and reduce the potential for confusion.

§ 12051. Exceptions.

The purpose of this section is to articulate specific exceptions to the general rule in section 12050(a) providing for liability for discriminatory notices, statements, and advertisements.

§ 12051(d). The Council proposes to specify that subleases are not included in the definition of “noncommercial personal roommate arrangement” and to change the cross-reference for the definition of short-term rentals from section 12927(d) of the Act to Business and Professions Code section 22590, to ensure clarity and consistency within the regulations. These changes are necessary to conform the regulations to Government Code sections 12927(d) and (e). Government Code section 12927(d) cross-references Business and Professions Code section 22590. Government Code sections 12927(d) and (e) state that subleases and short-term rentals within the definition of Business and Professions Code section 22590 are both subject to the FEHA’s anti-discrimination protections.

Article 13. Consideration of Income

§ 12140. Definitions.

The purpose of this section is to give meaning to terms used throughout the regulations and which concern the Act’s protections related to “source of income”.

§ 12140(b)(3). Under the definition of “lawful verifiable income,” the Council proposes to make non-substantive changes to punctuation by changing commas to semicolons. In addition, the Council proposes to add the term “rental assistance” to the list of federal, state, and local government assistance benefits that are available for the payment of rent, as well as clarify the terms “General Assistance and General Relief” by reference to the programs enumerated in Welfare and Institutions Code sections 17000-17000.5 et seq., as well to expand to include similar programs. These changes are necessary for clarity. Since the onset of the global Covid-19 pandemic, the number of federal, state, and local government assistance programs have expanded, and the allowable uses of these forms of assistance have been altered. The proposed changes are necessary to clarify that the above programs are included in the definition of “lawful, verifiable income.”

§ 12140(b)(5). Under the definition of “lawful, verifiable income,” the Council proposes to clarify that this subsection covers federal, state, and local government housing subsidies that provide rental assistance “to tenants and other” individuals for rent and includes “the federal Emergency Rental Assistance Program (ERAP) and similar programs; COVID-19 rent relief programs, state and local rental assistance programs, including programs identified in Health & Safety Code 50897.1, the California Rental Assistance Program, and similar programs.” These changes are necessary for clarity. Since the onset of

the global Covid-19 pandemic, the number of federal, state, and local government assistance programs have expanded, and the allowable uses of these forms of assistance have been altered. The proposed changes are necessary to clarify that the above programs are included in the definition of “lawful, verifiable income.”

§ 12140(c). Under the definition of “source of income,” the Council proposes to change “means” to “includes,” to clarify that subsections 12140(c)(1), (2), and (3) comprise a non-exhaustive list of possible sources of income. This change gives effect to the California appellate court decision, *Sisemore v. Master Fin., Inc.*, (2007) 151 Cal.App.4th 1386, which held that the Act’s ban on source of income discrimination is not limited to landlords and tenants.

§ 12140(c)(3). Under the definition of “source of income,” the Council proposes to add “rental assistance” to clarify that rental assistance paid to a housing owner or landlord on behalf of a tenant is included under the definition of “source of income.” This change is necessary to enumerate another common type of “source of income” covered by the rule, which will provide clarity, promote compliance with the law, and reduce the potential for confusion.

§ 12140.1 Source of Income Discrimination in Housing Other Than Rental Housing Covered by Section § 12141.

The Council proposes to add this section to the regulations in order to more fully implement the Act’s prohibition of source of income discrimination in Government Code section 12955 and to provide examples of its application in housing other than rental housing covered by section 12141. This section is necessary to give effect to *Sisemore v. Master Fin., Inc.*, (2007) 151 Cal.App.4th 1386, which held that the Act’s ban on source of income discrimination is not limited to landlords and tenants. In addition, this section groups together the list of prohibited practices that constitute source of income discrimination in housing contexts other than rental housing covered by section 12141, for greater clarity and ease of interpretation.

§ 12140.1(a).

The Council proposes to add this subsection to provide the general liability rule for source of income discrimination in housing contexts other than rental housing covered by section 12141 of these regulations. The proposed rule provides that it is an unlawful practice: “For the owner of any housing accommodation to discriminate against or harass any person because of source of income.” “Owner” is broadly defined in the Act and regulations to include housing providers, real estate brokers, governing bodies of common interest developments, and other persons beyond landlords. This subsection is necessary to state the basic rule in order to fully implement the Act and provide context for the subsequent provisions that contain examples, exemptions, and explanations of how to analyze the existence of source of income discrimination.

§ 12140.1(b).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale of a housing accommodation that indicates any preference, limitation, or discrimination because of source of income.” This subsection is necessary to give effect to Government Code section 12955(c) and is consistent with the language of Government Code section 12955(c).

§ 12140.1(c).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person because of source of income.” This subsection is necessary to give effect to Government Code section 12955(d) and mirrors the language of Government Code section 12955(d).

§ 12140.1(d).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person, bank, mortgage company, or other financial institution that provides financial assistance for the purchase, refinance, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of source of income.” This subsection is necessary to give effect to Government Code section 12955(e) and mirrors the language of Government Code section 12955(e).

§ 12140.1(e).

The Council proposes to add this subsection to clarify that it is unlawful: “For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale of housing accommodations when the owner's dominant purpose is retaliation against a person because of source of income.” This subsection is necessary to give effect to Government Code section 12955(f) and mirrors the language of Government Code section 12955(f).

§ 12140.1(f).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so because of source of income.” This subsection is necessary to give effect to Government Code section 12955(g) and mirrors the language of Government Code §12955(g).

§ 12140.1(g).

The Council proposes to add this subdivision to clarify that it is unlawful: “For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons because of source of income.” This subsection is necessary to give effect to Government Code section 12955(h) and mirrors the language of Government Code section 12955(h).

§ 12140.1(h).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of source of income.” This subsection is necessary to give effect to Government Code section 12955(i)(1) and mirrors the language of Government Code section 12955(i)(1).

§ 12140.1(i).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person or other entity whose business includes performing appraisals, as defined in subdivision (b) of Section 11302 of the Business and Professions Code, of residential real property to discriminate against any person in making available those services, or in the performance of those services, because of source of income.” This subsection is necessary to give effect to Government Code section 12955(i)(2) and mirrors the language of Government Code section 12955(i)(2).

§ 12140.1(j).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person to deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of source of income.” This subdivision is necessary to give effect to Government Code section 12955(j) and mirrors the language of Government Code section 12955(j).

§ 12140.1(k).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person to discriminate through public or private land use practices, decisions, and authorizations because of source of income. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.” This subsection is necessary to give effect to Government Code section 12955(l) and mirrors the language of Government Code section 12955(l).

§ 12140.1(l).

The Council proposes to add this subsection to clarify that it is unlawful: “For any person to otherwise make unavailable or deny a dwelling based on discrimination because of source of income.” This subsection is necessary to give effect to Government Code section 12955(k) and mirrors the language of Government Code section 12955(k).

§ 12141. Source of Income Discrimination in Rental Housing.

The purpose of this section is to implement the Act’s prohibition of source of income discrimination in the rental housing context and to provide examples of its application.

§ 12141(a).

The Council proposes to add language to clarify that applicants for tenancy, in addition to tenants, are covered by FEHA’s source of income protections. Government Code section 12955 prohibits owners of any housing accommodations from discriminating or harassing any person, including applicants for tenancy, because of their source of income. This change is necessary for clarity and to give effect to Government Code section 12955. In addition, the Council proposes to add the word “additional” before “examples of ‘adverse action’”. This non-substantive change is necessary to clarify that the listed examples of adverse actions in this subsection are in addition to the adverse actions listed in section 12005 of these regulations as well as other adverse actions prohibited by law. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§ 12141(a)(7).

The Council proposes to add language to clarify that threatening to terminate, or terminating, participation in a rental assistance program on the basis of source of income is an example of an “adverse action.” This change is necessary to provide an additional example of a prohibited “adverse action” under the Act’s source of income discrimination protections, give meaning to terms used throughout the regulations, and enable the Council to state rules succinctly rather than provide a definition mid-sentence.

§ 12141 (a)(7)-(9).

The Council proposes to make non-substantive changes to re-number these subsections.

Article 18. Disability

§ 12179. Denial of Reasonable Accommodation or Reasonable Modifications.

The purpose of this section is to describe the permissible circumstances under which a request for a reasonable accommodation or reasonable modification may be denied in order to concisely describe and consolidate a complex body of law into one regulation that provides adequate guidance to the public on a subject that is often misunderstood.

§ 12179(c)(4)(i).

The Council proposes to make non-substantive changes for grammar and clarity.

§ 12179(c)(4)(ii).

The Council proposes to make a non-substantive change for grammar and clarity. In addition, the Council proposes to add a cross-reference to section 12179(d)(6) of these regulations (repairs required by codes or legal obligations), to clarify that restoration requirements do not apply to modifications covered by section 12179(d)(6). This is not a change in the coverage of the regulations but is necessary to ensure consistency within the regulations. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§ 12179(d)(6)(ii).

In the example of circumstance where modification involves accessible features required at time of construction or alteration, the Council proposes to replace the clause “[a]ssuming the request is reasonable” with “[b]ecause the codes required these features at the time of construction.” This change is necessary for clarity, as it emphasizes that the key fact in the example that gives rise to the owner’s responsibility to pay for the cost of the modification is that the code required the feature at the time of construction. Further clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

§ 12181. Other Requirements or Limitations in the Provisions of Reasonable Modifications; and Examples.

The purpose this section is to provide further guidance on issues that arise specifically in the context of reasonable modifications that are not addressed in the existing regulations on reasonable accommodations.

§ 12181(n)(3).

The Council proposes to add language to the example to provide more legal specificity by clarifying that Aki has “an interest in” her condominium unit, rather than saying that Aki “owns” her unit. This is consistent with the proposed change to the definition of “owner” in subsection 12005(v)(7) of these regulations. It is technically inaccurate to say that person who owns an interest in a condominium unit “owns” the condominium unit. This change is necessary for clarity, clarity will benefit the public by facilitating compliance with the law and reducing the potential for confusion.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Council did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The Council has determined that no reasonable alternative it considered, or that was otherwise brought to its attention, 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 invites comments from the public regarding suggested alternatives, where greater clarity or guidance is needed.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed amendments, which clarify existing law without imposing any new burdens, will not adversely affect small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments clarify existing law without imposing any new burdens. Their adoption is anticipated to benefit California businesses, workers, tenants, owners, housing providers, 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.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

Because the proposed regulations provide detail about compliance with existing obligations but do not create any new liabilities or obligations, 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; the expansion of businesses or housing currently doing business within the state; or worker safety and the environment. 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.