VII. Public Hearing: Proposed Fair Housing Regulations

Attachment B: Notice of Proposed Rulemaking
Attachment C: Initial Statement of Reasons
Attachment D: Proposed Fair Housing Regulations

CORRECTED TRANSCRIPT 6-6-18
Junipero Serra Building
Carmel Room Auditorium (First Floor)
328 W. 4th Street
Los Angeles, California

Wednesday, April 4, 2018
Los Angeles, California, Wednesday, April 4, 2018
10:13 a.m. - 11:26 a.m.

CHAIRMAN MANDELBAUM: We are now ready to
start our doubleheader of public hearing, 45-day
hearing. We're going to start with the proposed Fair
Housing ones.

So thank you for attending our Fair Housing
public hearing here in Los Angeles.

It is April 4th and we've made introductions
for purposes of the meeting, but allow me to introduce
myself and my colleagues for purposes of today's hearing and
subsequent rulemaking transcript.

I'm Chaya Mandelbaum. I'm chairperson of
the Fair Employment and Housing Council. And joining me
today are colleagues of mine on the council, Council
Members Iglesias, Schur and Ortiz, along with ex-officio
member and director of the department, Kevin Kish.

The purpose of today's public comment
hearing is to receive comments related to the issuance
of amendments to the Fair Employment and Housing Act
regulations to add Fair Housing regulations for the
first time.

The rulemaking clarifies, makes specific and
supplements the existing state regulations interpreting
the FEHA and as set forth in Government Code Section
12900, et seq.

As relates to housing of 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 or genetic information.

The proposed regulations are slated to be
here in the California Code of Regulations at Title 2,
Sections 12005, 12010, 12060 through -63, 12100, 12120,
130, 155, 161, 162, 176 through 180, 185 and 265 through
271.

Copies of the proposed amendments are
available in the back of the room and are reflected in
Attachment D to the materials and the notice and Initial
Statement of Reasons are reflected in Attachments B and
C respectively.

The text of the Council's proposed
records -- regulations are also available on the
Council's web page.

We're holding this public hearing as part of
the formal rulemaking process. We noticed the hearing
more than 45 days ago in the California Regulatory
Notice Register published on February 16th, 2018, and
also via e-mail to the thousands of individuals and
stakeholders on the Council's e-mail list. It was also
placed on the Council's web page.

Pursuant to that notice, we are taking
testimony here today and we will also accept written
comments to the proposed regulations until 5 p.m. today,
April 4th.

You may e-mail written comments to Council
at DFEHCouncil@DFEH.ca.gov or if you prefer to mail them
instead, you can do so in care of Brian Sperber at the
DFEH's Los Angeles office located exactly where we are
right now, 320 West 4th Street, 10th floor, Los Angeles,
California, 90013.

If you brought a written copy of your
comments and you don't plan to separately submit them,
please make sure you get them to Brian Sperber before
our proceedings conclude.

Anyone who testifies here today or submits
written comments will receive a copy of any changes or
amendments the Council makes to the proposed regulations
as will anyone who makes such a request.

Also, anyone who testifies will have a
15-day period within which to make written comments if
there are any further changes made in response to this
round of public comments during the rulemaking process.

If you have further questions or comments,
please feel free to ask them at this time or submit them
in writing as described above.

We will now open the floor for public
comment. If you would like to testify, please raise your
dhand and a member of the staff will provide you with
information on how to proceed.

Thank you for your participation in today's
public hearing.

Los Angeles, California, Wednesday, April 4, 2018
10:13 a.m. - 11:26 a.m.

CHAIRMAN MANDELBAUM: We are now ready to
start our doubleheader of public hearing, 45-day
hearing. We're going to start with the proposed Fair
Housing ones.

So thank you for attending our Fair Housing
public hearing here in Los Angeles.

It is April 4th and we've made introductions
for purposes of the meeting, but allow me to introduce
myself and my colleagues for purposes of today's hearing and
subsequent rulemaking transcript.

I'm Chaya Mandelbaum. I'm chairperson of
the Fair Employment and Housing Council. And joining me
today are colleagues of mine on the council, Council
Members Iglesias, Schur and Ortiz, along with ex-officio
member and director of the department, Kevin Kish.

The purpose of today's public comment
hearing is to receive comments related to the issuance
of amendments to the Fair Employment and Housing Act
regulations to add Fair Housing regulations for the
first time.

The rulemaking clarifies, makes specific and
supplements the existing state regulations interpreting
the FEHA and as set forth in Government Code Section
12900, et seq.

As relates to housing of 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 or genetic information.

The proposed regulations are slated to be
here in the California Code of Regulations at Title 2,
Sections 12005, 12010, 12060 through -63, 12100, 12120,
130, 155, 161, 162, 176 through 180, 185 and 265 through
271.

Copies of the proposed amendments are
available in the back of the room and are reflected in
Attachment D to the materials and the notice and Initial
Statement of Reasons are reflected in Attachments B and
C respectively.

The text of the Council's proposed
records -- regulations are also available on the
Council's web page.

We're holding this public hearing as part of
the formal rulemaking process. We noticed the hearing
more than 45 days ago in the California Regulatory
Notice Register published on February 16th, 2018, and
also via e-mail to the thousands of individuals and
stakeholders on the Council's e-mail list. It was also
placed on the Council's web page.

Pursuant to that notice, we are taking
testimony here today and we will also accept written
comments to the proposed regulations until 5 p.m. today,
April 4th.

You may e-mail written comments to Council
at DFEHCouncil@DFEH.ca.gov or if you prefer to mail them
instead, you can do so in care of Brian Sperber at the
DFEH's Los Angeles office located exactly where we are
right now, 320 West 4th Street, 10th floor, Los Angeles,
California, 90013.

If you brought a written copy of your
comments and you don't plan to separately submit them,
please make sure you get them to Brian Sperber before
our proceedings conclude.

Anyone who testifies here today or submits
written comments will receive a copy of any changes or
amendments the Council makes to the proposed regulations
as will anyone who makes such a request.

Also, anyone who testifies will have a
15-day period within which to make written comments if
there are any further changes made in response to this
round of public comments during the rulemaking process.
We'll consider each comment here today as well as all written comments received and we'll respond to the comments in the Final Statement of Reason which will become part of the Council's rulemaking record.

The hearing is being transcribed by a certified court reporter and the transcript of the hearing will be available as well as part of the Council's official ruling record.

Because the hearing is being transcribed, it's critical that anyone speak, do so clearly, relatively slowly and that only one person speaks at a time.

You will not be sworn in when you testify, but we do ask that you come to the front of the room and speak into the microphone so that the court reporter can take down your comments.

Please begin by stating and spelling your name and stating any affiliation you're speaking on behalf of.

We will hear written -- hear testimony, rather, until all those wishing to do so have had an opportunity.

And without further ado, we're ready to begin.

So would someone like to kick off our public hearing?

MS. PROUT: Good morning. Whitney Prout with the California Apartment Association. P-r-o-u-t.

All right. So, first of all, I'd like to thank the Council for their continued work on this. I think we're getting close to hopefully being able to finalize these. I do have written comments which I will submit by 5 p.m. today. I just have an e-mail to make yet. I'm going to limit my comments to three different sections today.

The first one relates to the retaliation section, this is 12130, specifically subsections A and E. These are the subsections which deal with the standards that's applied to what's required to prove retaliation.

The Council has stated that essentially if a purpose for the adverse action is retaliation, then that's a sufficient showing.

As I've stated before, I'm -- I'm concerned with that. As we all know, FEHA requires a dominant purpose. I understand the Council's position that that's inconsistent with the F.H.A. and that we need to be consistent with that for the purposes of equivalents; however, I did review the cases that were cited in the Initial Statement of Reasons, and it looks like the standards that the Council's relying on is this causal link that's stated in Walker and the other cases.

As I review those, because that standard says that once that prima facie showing has been made, the burden shifts back to the respondent to show a legitimate nonretaliatory, nondiscriminatory reason.

That indicates that there's more flexibility in that standard which essentially there is a legitimate reason for taking the adverse action that it's not retaliation.

I provided extensive comments on this, but I'd encourage the Council to consider a but-for causation standard for that retaliation standard in this section and that that will be consistent with both the F.H.A. and more in line with the dominant purpose standard required by FEHA.

My second comment relates to section -- I believe it's 12185. This has to do with assistance animals. And this is subsection B, the section which relates to questions, the inquiry that can be made when the animal in question is a service animal.

My understanding is that the Council is proposing this regulation to comply with the Unruh Act and the American With Disabilities Act to the extent that it applies.
specific requirements of this section, it appears that that's actually not permitted, that you have to consider mitigating information, conducted individualized content because that's considered a less discriminatory alternative.

I provided written comments on the areas that I -- specifically are unclear and can use clarification, but DA would continue to urge the Council to keep in mind the ability to create a compliant practice based on these regulations, which at this point are still unclear.

So unless the Council has questions for me, I will end there.

CHAIRMAN MANDELBAUM: Thank you. Appreciate it. Look forward to your written comments.

MS. PROUT: Thank you.

MR. WAGLE: Good morning. Sanjay, S-a-n-j-a-y, Wagle, W-a-g-I-e. I'm with the California Association of Realtors.

Good morning. We'd like to, first of all, thank the Council for their work on these regulations, and as well as throughout the process. We stated this at one of our previous hearings. We appreciate that we believe our comments have been considered, carefully considered throughout this process and that we have been heard.

I'm going to just -- we are going to submit written comments prior to 5 o'clock today. I am going to raise just two -- two matters in my public comments today.

The first concerns burden shifting in discriminatory effect cases, that's Section 12062, A and B of the regs. Under both -- under federal law, the allocation of the burden of proof for proving a less restrictive alternative under federal law rests on the plaintiff in discriminatory effect cases.

The Council has gone ahead and placed this burden on the defendant, on the business or the nonbusiness entity.

Government Code under California law leaves this provision open. It simply says that any violation pursuant to that subdivision, which is Government Code 12955.8, shall consider the feasible alternatives, but it doesn't actually place where the burden of proof would lie.

The Council in its initial -- in its Statement of Reasons states that based on a precedential decision by the DFEH, as well as the fact that the legislative analysts and the legislative history to the enactment of that Government Code section considered the fact that burdens were sometimes put on the defendants as a basis for the Council going ahead and putting the burden -- putting this prong as on the business. We don't believe that that -- we actually think that shows the opposite, which is that means the legislature did look at that, was aware that they could have considered that and could have changed the prong, they could have gone ahead and said that yes, the business must also prove that there is a more feasible alternative that has a less discriminatory impact. But it did not.

So we think that the Council should not change what the legislature, I guess, did not decide to change either and to continue following Government Code 12955.8, subdivision B-1, and use that standard for that particular prong. It should not be placed on business.

If the Council wants to leave it open for the Government Code and not follow HUD, that's one thing, but it should not be shifting that burden to business.

The second comment I'm going to be making is regarding the service animal issue, and that's also 12185(b). We join with the California Apartment Association in disagreeing with the Council's limitation to an inquiry for service animals to simply the two question limitation.

The ADA of which the Unruh Act is co-extensive applies only to public accommodations. Most courts have held that aside from the commercial leasing office or perhaps in the properties are being shown, it does not apply to the actual residents themselves. Residential apartment complexes do not fall within the ADA definition of public accommodation. Civil Code Sections 54.1 and 54.2, the authorities cited for the proposed section is quiet on the issue of verification.

However, in Auburn Woods, the case which actually established in California the -- a lot of the reasonable accommodation analysis for support animals, does reference service animals and suggest that verification is appropriate.

In that case, it stated -- and this is a quote from the case -- "that it is not disputed that Auburn Woods may have been entitled to further factual information, including medical documentation supporting information."

And then the Court also stated, however, "and because a service animal was not at issue here, there was no requirement that the" -- "that the" -- let's say "plaintiffs present evidence that their dog was specifically trained to alleviate their disability."
So in that case, the Court alluded to that you could require a showing of some verification for a service animal.

As far as the standard, we don't believe it would necessarily have to be the full reasonable accommodation analysis, but it would be basically to be allowed to verify those two questions. So to verify for a nonobvious disability that is, in fact, a disability and to verify for a nonobvious nexus between the service animal and a disability, a verification that that animal is, in fact, a service animal.

So we believe verification should be permitted for those two sections.

And bottom line, our -- we believe that this is persuasive under the law that there should be allowed to ask for verification in the context of service animals. And just a -- just as a general matter, we also believe that as a matter of policy this would be a disaster. I think we can just look around us, even in where it is allowed for it in public accommodations, that people are clearly taking advantage. We live in an era where right now there are people who abuse the law when it comes to support -- support animals.

But their verification actually has to happen. A service animal standard without any verification would just open the door to basically all sorts of problems going forward.

I think we all know what would follow from that because everybody would just know this is the way I get my animal in.

But regardless of the consequences, we believe the law does support verification for the -- for the service animals to come and we also will be submitting written comments.

COUNCIL MEMBER SCHUR: I have a question, Mr. Wagle.

My mic on? Yes.

Given that the government -- I'm going back to your first point about shifting -- the burden shifting.

Given that the Government Code does not allocate the burden, in the absence of direction from the Council, how would you propose that the courts would determine the appropriate burden?

MR. WAGLE: Well, I think the legislature, for whatever reason, went ahead and left that open. Presumably that leaves it open to the courts based on the facts and circumstances of the given case to maybe make that determination, but I just don't think that that provides sufficient direction for the Council to make that determination.

COUNCIL MEMBER SCHUR: Thank you.

MR. WAGLE: Okay? All right. Thank you very much. And again, thank you for the opportunity to speak to council.

CHAIRMAN MANDELBAUM: Thank you. We appreciate your comments, as always.

Any other people wishing to provide -- I have a feeling we're going to hear the word "community."

MS. POWERS: Janet Powers, P-o-w-e-r-s. I'm with Fiore, Racobs & Powers and I'm also here today on behalf of the California Legislature Action Committee of Community Associations Institute. There's a mouthful.

Again, I want to echo some of the sentiments that have already been expressed about how much hard work the Council has committed to these. I feel you're close to the end of a very long road here, but this is such a historic event that I think it's really been worth all the time and effort that you've all put into it and, congratulations, close to the top of Mount Everest here. And thanks also for the opportunity that you've given me to come and harass you and torture you and speak to you over the past year and a half on these various regulations.

I did submit some written comments, but while I was taking the train up today from Orange County and had a moment of peace, I actually went through them again, and I have some further thoughts that I'll go back and put in writing and send them to Mr. Sperber.

I think first anecdotally with regard to Section 12005, I'm here to just let you know that since the infamous peacock incident occurred on the plane, requests for reasonable accommodations in community associations that we represent have been up about ten percent. But no requests for peacocks.

Other types of poultry are -- are definitely on the rise, but, apparently, since you can't bring one on the plane, peacocks are now in disfavor.

Under person in section -- we're still on 12005(v), as in Victor. The definition of persons references community associations, condominiums, planned developments and other common interest developments, but earlier under the general prefatory language you do colloquially define these as HOAs. So I'm not sure if you're just defining them early on so everybody knows what the heck we're talking about as an HOA or if you want to keep that consistent, you could also add in HOA language under (v), as in Victor, 5.

I remain concerned about the direct liability and vicarious liability of language in 12010,
and I think the reason for that is, as you know, I come
and I talk about community associations. Most of the
people who serve on the board of directors of these
associations are volunteer homeowners who are foolish
ever to run for the board of directors and spend their
spare time working on behalf of the community. They
don't get a salary.

Most of them have little to no training in
any kind of anything having to do with the governance of
the association real property or Fair Housing matters.

Just by numerous bills that have been
introduced over the years in Sacramento, there is no
mandatory education for directors of community
associations, and perhaps some day there will be and we
can include a lot more information that we think
directors should have.

But I am a little bit concerned about
holding volunteer directors to the same standard of care
as, perhaps, others that you're considering here in the
definition of person. It's very hard for me to
understand how I'm going to explain to a board of
directors as their legal counsel that they're going to
have liability regardless of whether they knew or should
have known about the conduct that resulted in the
discriminatory housing practice.

They do their best to watch out for managers
or other vendors of services, independent contractors,
but I think this one is really going to take some doing
for me to explain how a volunteer who meets once a month
is going to have the ability to oversee or somehow
control the activities to the degree that I think the
Council is -- is anticipating here.

So I would love to see a carveout of some
sort, or at least a reference to the fact that there may
be differences in the standard of care here.

We've kind of talked about this previously,
but I think this would be an opportunity for the Council
to acknowledge that not all businesses are created
equal.

The next section that I wanted to just talk
quickly is something that I did make a comment on at
Section 12120, harassment. I certainly understand and I
appreciate and applaud the Council's concerns with
regard to trying to eliminate or at least reduce hostile
environment harassment.

But I think one difficulty that we continue
to have with the associations is that often the type of
harassment that we see is resident-on-resident
harassment. One resident lives next door to another
resident that they can't stand.
Stirling Common Interest Development Act and certainly something where we're looking at a protected activity. We want people to be able to file DFEH. We want them to be able to implement whatever recourse they may think is appropriate. And certainly an association has no obvious intent to retaliate, but when I see the language in I think it's -- I think it's C, that if we disclose the fact that someone has filed a Fair Housing Complaint, we may be in violation of the retaliation section while we're looking at having to disclose certain information to our members.

So, for example, many times when a person files a Fair Housing Complaint, it's not covered by insurance. They may tender the claim to their insurance carrier, but sometimes the insurance carrier determines that the association is guilty until proven innocent of that wrongdoing.

So by -- by tendering the Complaint to the insurance carrier, they are already making the assumption that the association might have engaged in intentional, willful type of discriminatory activity and must be excluded from policy coverage.

So where we're going with this is that often we have to disclose to our membership, if there is a financial situation that has been created, that the members at some point may have a special assessment or other financial implications against them.

So I just want to put in there that while we -- we have a duty under Davis-Stirling to disclose when a special assessment may be levied, we don't want to be appearing retaliatory by publishing a disclosure statement to the members, say, hey, we've got a Fair Housing Complaint against us, but we will have a duty to at least notify our members that there may be a financial ramification to the filing of -- of that Complaint.

So I'm concerned about that raising -- raising a red flag in terms of retaliation.

On 12162, the specific practices related to land use. In terms of that section, it also is covered by the criminal history and background sections.

I previously discussed and I put it in my written comments, too, that in California, under the Corporations Code, associations have the ability to remove a director who has been convicted of a felony.

And the difficulty that we have here is that it will be helpful if you could add the same language that you have in 12270, it would be great if you could put it in 12162 that if the activity regarding criminal background history is permitted by state or federal law -- you already put that in 12270 based on previous remarks that I made, I would really appreciate if you could put it in here also so that we have to follow both the Corporations Code and -- and the regulation.

So in acknowledgment that if the area is already addressed by a federal or state law with regard to criminal background history, that would be terrific.

Just a couple more comments and I will let you move on.

Section 12178 regarding establishing that a reasonable accommodation is necessary. I remain troubled by self-verification. I -- I have to say this is -- this is a little bit problematic. And I'm concerned with Section T, as in -- maybe it's -- unfortunately, I scanned these in so that I could provide my comments in Word and as a result I think it might not have -- anyway, the section that combines that depending on the individual circumstances information establishing that the individual has a disability can usually be provided directly by the individual with the disability through a variety of means, such as a credible statement or documentation of receipt of disability benefits.

A credible statement is one that a reasonable person would believe is true based on the available information.

I find that the language can usually be provided is a little bit difficult to parse here because I think what you're trying to say is that the individual can or may be able to provide information themselves, in other words, self-verify, as opposed to the information coming from a third party.

But that's a little bit vague. So I'm not sure if you're indicating that factually they can provide it versus is it part of the reliable verification process?

And while I understand the idea that a credible statement is something that a reasonable person would believe is true, are we talking about a written statement that says the person is disabled and what the nexus is?

What is the credible statement that you're -- you're talking about here?

And, again, I remained concerned about self-verification, because in my experience, many people are able to produce a piece of paper that says I am disabled and I require this particular disability (sic). But it's not something that I think the association would feel that it was reliable necessarily.

So that may continue to prove a little bit
of a stalemate.

With regard to assistance animals in 12185, I am also concerned with the two questions regarding the service animal.

To put this in a practicable context for how associations would deal with these matters, frankly, we're really not concerned when we see the animals that are clearly trained by Canine Companions For Independence, Guide Dogs for the Blind. I mean, that's a very obvious situation.

But what we're encountering is a person with an obvious disability, a readily apparent disability is proposing to have a service animal that doesn't bear any resemblance to what the person with the disability is requesting.

Here's an example from my desk.

A woman who had -- clearly was able to provide very reliable self-verification that she was disabled. She advised us she had diabetes; she advised us that she met the definition of being disabled because she was at least 150 to 200 pounds overweight. She was obese. And she required an animal to accompany her not only to the pool area, but to possibly jump into the pool at the association and save her.

Now, the animal that she had identified as her service animal to accomplish this task of a woman who had to weigh at least 380 to 90 pounds out of a pool was a 25-pound dog.

So if we are limited to asking these two questions regarding an animal that has been identified as a service animal, we have absolutely no reason to believe that the 25-pound animal can accomplish that task.

So we don't want to -- we are not looking to ask for a demonstration. We do not want a demonstration. We are not looking for that. But without the ability to ask a few more questions concerning the animal's ability to perform the task that has been identified as the reason it is a service animal, we fear that there will be bad consequences to that.

And I don't think that we're looking for obvious situations. I think we just need a few more questions that would put this under a reasonableness category of if it is readily apparent that the animal that's been identified with a task is not going to be able to accomplish it, I -- I think there has to be a -- an amount of common sense and an approach to this that is not going to put either the disabled person in a position of -- of, frankly, potentially drowning if they

are having an unrealistic expectation of the animal themselves, and many people do, or the association will have liability when the person drowns in the association's common area swimming pool because the animal is unable to accomplish that task.

COUNCIL MEMBER SCHUR: Ms. Powers, did you propose language on this in your --

MS. POWERS: No. But I will get on my train and do that. Yes. I will come up with some proposed language.

Lastly, I -- I want to just comment quickly that I am extremely thankful that the common interest development community is now going to have some really fine regulations to work with. I know how much hard work you've put in and we're really excited about the ability to have something that we could point to board members and managers of associations to give them some guidance and I think this is a wonderful tool, and thank you all very much for your time.

CHAIRMAN MANDELBAUM: Thank you.

Further comments on the Fair Housing regulations?

MS. DUMAS: Good morning. My name is Diane Dumas and I am one of those volunteer homeowners on the board of directors in my association. So I -- I did want to comment on a couple of these regulations. And if you look at it from the perspective of the volunteer board member trying to enforce these rules, it if comes different. We have a number of people -- well, our homeowner association currently allows a limitation of one pet per unit. We also have people applying for reasonable accommodation based on stress or PTSD.

The ones that require service animals, those are easy, and we can approve those right away. It's the ones where you can't quite tell how disabled they are and what exactly they need these animals to do.

And I would like a little bit more latitude to be able to ask questions without running afoul of the regulations that limit us to -- for example, if a podiatrist certifies this person with a psychiatric or psychological disability. I'd like to be able to question them a little bit while understanding that, yeah, they have a right to privacy.

But I'm particularly concerned on Section 12185, the No. 4 on page 33 that says an individual may have more than one assistance animal. And I'm looking at it from the standpoint of a number of our homeowners. And in a one-bedroom apartment with two people occupying the one bedroom, they're looking at it possibly -- each person gets to have two assistance

Page 26

Page 27

Page 28

Page 29

Meeting Notice and Agenda VII
April 4, 2018
animals and -- plus the pet that's allowed. That means five animals could be -- five dogs can be in a one-bedroom unit.

So you have to kind of look at it from the standpoint, oh, boy, what can we get away with?

And we're trying to be fair, but some of these people are really pushing it. We want -- we want to allow people to have their accommodations, but then there are the people who just push the limits.

So that's what I'm really troubled by that more -- more than one assistance animal.

I'm also curious. I don't understand why there's the additional -- I guess, in Section 12005, the additional term of assistance animal, because it's already been enough to try to have people think in terms of a service versus a support animal. But now that we've got this additional term of assistance animal, it's -- it's confusing.

On the one hand, it seems as though it -- if you're lumping everything for the sake of complying with the rules, I can understand you'd rather not say "support" and "service" and it's easier to say "assistance," that's the reason. I don't know.

But on the other hand, it kind of seems like it bundles the people with the greatest need with the people with the least need all in the one lump-sum column, assistance animal. And really would like to go back to having the two terms so that we can pass these terms down because they will -- they will try to push it.

Let's see. What else?

Again, in Section 12179, it provides the reason for denial of reasonable accommodation. There's no disability-related need for the requested accommodation.

Is there a visit to a health practitioner sufficient to warrant a professional diagnosis of disability for the purposes of getting a reasonable accommodation for a stress condition? And the reason why I ask that is because they are going online and getting these things online. There is an additional fee, I guess you pay to have an actual letter from a psychologist or somebody on this online program that they may -- I don't know if they do or not -- talk to that person one time just to get a certification so they can have their two large Poodles or St. Bernards and whatever it is that exceeds our 30-pound limit on animals.

So I guess what I'm saying is if there could be a way that we could question -- go back and question

is this person actually treating? I mean, is the doctor actually treating this patient who is asking for an accommodation or was this a one-time thing just to go in and get my pet Dachshund.

I have written my comments and submitted them, but I do hope that while it's not as professional as Ms. Powers or some of the others, that from a homeowner standpoint and volunteer, we take these seriously and we're trying to do the right thing.

Thank you.

COUNCIL MEMBER SCHUR: Ms. Dumas. Thank you very much for your service both to the homeowner association and to take the time to come talk to us.

I want to clarify one thing for you. The reason we use the term "assistant animal" is that there are some things that apply to both service animals and support animals such as the fact that the homeowner's association and the owner can set reasonable rules.

Think of it as a Lab dog, they can't create a disturbance, they have to be well trained, they can't create problems in the complex.

But there are other provisions where we still do retain the differences in terms of the amount of verification.

So for emotional support animals, you can get additional information. So I just want to make sure you understood that there are some things that apply to both kinds of dogs and other things that are separate for animals. And that's why we use three different terms. Assistance animals for the rules that homeowners can set for all the animals and then different rules that apply to service animals because of the various laws and support animals. I just thought that would be helpful for you to know that.

THE WITNESS: So you're keeping three, you're not having that one replace the other two?

COUNCIL MEMBER SCHUR: Correct. The regulations distinguish the different points.

THE WITNESS: Okay. Thank you. Thanks for your work, too.

CHAIRMAN MANDELBAUM: Other Fair Housing regulation comments?

MS. PANCHALAM: Good morning, how are you?

My name is Sri and I will totally spell that for you. First name Sri, S-r-i. Last name Panchalam, P-a-n as in pan, c-h-a as in cha-cha, and i-a-m, as in lamb without a B.

CHAIRMAN MANDELBAUM: As you can imagine, with the last name Mandelbaum I've come up with similar descriptions.
MS. PANCHALAM: And I always introduce myself as Ms. So good morning.

So my comments focus, as many have today, on the assistance animal provisions of the Council proposed regulation. And I just wanted to start out by saying thank you. I know that this has been such a long process and you have processed so many comments thus far from the entire community on many sides of the aisle and via legal services providers and as individual residents of California, we really appreciate the work and thought that has gone into it to create the regulation in the forms that they are today.

Regarding assistance animals, we appreciate very much the Council's recognition of a person's unique right in housing to use the service animal. This is greatly needed especially because of a lot of the confusion with housing providers and tenants alike that we've experienced in the course of -- some of which we actually heard today.

And we feel that the Council's regulations are reasonable and entirely consistent with federal and state law in allowing service animals by right and emotional support animals as a reasonable accommodation.

And I believe there was a comment earlier about it being an incorrect extension of the law to include the two inquiry analysis, and this is something that we addressed in our comment and I just wanted to highlight this here.

As the Council's aware, the service animals are permitted as a right in all businesses, including housing, such as rental properties, and do not require going through the reasonable accommodations process. And to highlight the Unruh Act, also prohibits the restriction or denial of a tenant and their guest access to facilities and services in an apartment complex.

And so for the purposes of the analysis, the two-question analysis is entirely appropriate here for the service animals and the reasonable accommodation analysis for what we think of as emotional support animals.

And also to point out that the two inquiry -- the two-question analysis for service animals is consistent with Unruh issue, the FEH issue and the service.

With the two inquiry analysis, I was saying it's consistent with the guidance in that it asks the two questions, is the dog a service animal required because of a disability, and what work or task has the dog been trained to perform?

Now, what the Council has presented here is entirely -- is entirely consistent with that. And with some of the concerns that housing providers have presented today, I just wanted to point out that there are already distinct provisions in the law that requires for a number of limitations, you know, on animals that already protect some of the concerns that have been presented, such as that you have to have control over the animal, that you have to be able to take care of the animal and related items like that.

And then there was also a comment about service animals being a greater need than an emotional support animal. And I wanted to highlight for that that, you know, in our experience, an emotional support animal can be just as valuable as how people or service animals would be. And for us, there are many clients, for example, they cannot even leave their homes or access the community without the support that an emotional support animal provides, which can be incredibly meaningful.

And I also want to address some issues related -- we understand, for example, the Council's been asked to address in these regulations issues related to fraud and, you know, online verification processes and things like that.

And that we adjust as we have in our comments the requirement for the person verifying the need for a support animal, track the options already outlined in 12178. And -- and we appreciate the provision require that whoever is conducting an assessment of the person have a personal knowledge of the person's disability and for questions -- and if there is additional information that is required, it is in the circumstance that the person doesn't have personal knowledge of the disability and that the person with the disability is allowed the opportunity to provide additional information in that circumstance.

Those kinds of things I think do protect and are consistent with federal and state law in how the Council can shape these regulations in making sure that people with disabilities have access but are not faced with unreasonable barriers in trying to be able to be supported in the community and in their housing.

That's all I have.

Thanks.

CHAIRMAN MANDELBAUM: Thank you.

MR. CHANG: Good morning. I'm Scott Chang, director of litigation for the Housing Rights Center in Los Angeles where Fair Housing organization here in Los Angeles.

I'm here on behalf of a number of legal.
services and Fair Housing organizations, including Western Center on Law and Poverty, National Housing Law Project that have been providing comments to the Council on Council’s proposed regulations, which the Council first proposed them in 2015. We submitted written comments yesterday. I would just note that the Fair Housing regulations are particularly timely this year. Today we observed the 50th anniversary of the death of Martin Luther King whose assassination led to the passage of the Fair Housing Act, federal Fair Housing Act a few years ago.
The housing provisions of the Fair Employment and Housing Act is one of our state’s most important and vital civil rights law. Housing, as you know, is a linchpin for quality schools, safe neighborhoods, good jobs and accessible transportation. Like the Fair Housing Act, the Fair Employment and Housing Act plays a continuing and central role in moving our state towards a more integrated and fair society. We appreciate the Council’s dedicated work on that particular provision.

1. We generally expressed our strong support for the draft regulations. Given the relative lack of case law interpreting FEHA, the housing regulation will provide critical and meaningful guidance to define the rights and obligations for the term “FEHA.” I just wanted to address one comment that was made previously regarding the burden of proof on less discriminatory alternatives under discriminatory effects standard. We believe that the Council appropriately assigned that burden of proof to the defendant. As a practical matter, much of the information that determines whether or not there is a less discriminatory alternative is in exclusive knowledge of the defendants, particularly in land use cases. And there is also a federal case law that supports this burden of proof to the defendants. We’d be happy to submit additional comments on that particular provision.

COUNCIL MEMBER SCHUR: I think it would be helpful.

MR. CHANG: Thank you very much.

CHAIRMAN MANDELBAUM: Thank you.

MS. McGranahan: Good morning. My name is Denise McGranahan, M-c-G-r-a-n-a-h-a-n.

THE REPORTER: Thank you.

MS. McGranahan: I’m from the Legal Aid Foundation of Los Angeles. LAFLA is one of the largest law firms that represent indigent persons in the country and many of our clients -- many, many of our clients are disabled and facing homelessness, which is a ballooning problem in the state and country.

Every day our -- our advocates go to court and they face unlawful detainer judges who do not understand Fair Housing law, do not understand why reasonable accommodations can be used as defenses in unlawful detainer cases. This is why we especially commend the Council for adopting -- for considering the adoption of 12176(c)(7) and other regulations relating to unlawful detainer cases, specifically, the timing of making a unlawful detainer request and the use of it in defense are issues that judges are just unfamiliar with. So I’ll give you an example of a recent case.

I assisted one of the younger advocates with an unlawful detainer where a man with -- he suffered schizophrenia, lived with his mother for his entire life. She had been providing him with medication. He went into the hospital and he didn’t take his medication. So he acted inappropriately according to the landlord and was being evicted for nuisance. He had been there for his entire life. The advocate in my office was unable to convince the judge that he can ask for reasonable accommodation after the service of the three-day notice and that the fact -- the fact that he allegedly committed a nuisance wouldn’t trump the fact that he could be entitled to an accommodation.

He ended up proposing a motion in limine. A lot of work went into this motion to convince the judge, No. 1, that it was a defense; No. 2, that the timing could be to the proverbial last minute. Ultimately, the judge did allow the defense. But there were a lot -- this would have been way easier -- way, way easier if the person -- our advocate had been able to cite to these regulations or regulations had said you can make the accommodation request at any time.

The fact that they didn’t respond to the reasonable accommodation letter, which often occurs, could be considered a denial. That would be discrimination.
MS. McGRANAHAN: So let me reference it in our letter -- so one second. So in our letter, we say that -- okay. In the case law, Giebeler, referenced in our letter, the 9th Circuit held that -- that a reasonable accommodation -- reasonable accommodations are not limited to the immediate manifestations of a disability but may also address practical needs caused by disability which can be financial. In that case, it had to do with -- with allowing a co-signer.

And there have been cases that have extended that and addressed that. And we proposed language and the language is "an individual with a disability may request a reasonable accommodation in financial policies when a modification or change of such policies is necessary to accommodate a disability." Such economic accommodations may include waiving guest fees, making an exception to a policy of not accepting Section 8 vouchers, waiving a rule requiring that rent be paid on the 1st of the month, allowing it to then to relocate to a different unit without an otherwise applicable rent increase and allowing a prospective tenant to use a co-signer when the limited income -- when their limited income -- when their income is limited because of a disability and it would not otherwise qualify for the

COUNCIL MEMBER ORTIZ: Would you provide a little more information on the financial accommodations you were discussing?

MS. McGRANAHAN: So let me reference it in our letter -- so one second. So in our letter, we say that -- okay. In the case law, Giebeler, referenced in our letter, the 9th Circuit held that -- that a reasonable accommodation -- reasonable accommodations are not limited to the immediate manifestations of a disability but may also address practical needs caused by disability which can be financial. In that case, it had to do with -- with allowing a co-signer.

And there have been cases that have extended that and addressed that. And we proposed language and the language is "an individual with a disability may request a reasonable accommodation in financial policies when a modification or change of such policies is necessary to accommodate a disability." Such economic accommodations may include waiving guest fees, making an exception to a policy of not accepting Section 8 vouchers, waiving a rule requiring that rent be paid on the 1st of the month, allowing it to then to relocate to a different unit without an otherwise applicable rent increase and allowing a prospective tenant to use a co-signer when the limited income -- when their limited income -- when their income is limited because of a disability and it would not otherwise qualify for the

COUNCIL MEMBER ORTIZ: Would you provide a little more information on the financial accommodations you were discussing?

MS. McGRANAHAN: So let me reference it in our letter -- so one second. So in our letter, we say that -- okay. In the case law, Giebeler, referenced in our letter, the 9th Circuit held that -- that a reasonable accommodation -- reasonable accommodations are not limited to the immediate manifestations of a disability but may also address practical needs caused by disability which can be financial. In that case, it had to do with -- with allowing a co-signer.

And there have been cases that have extended that and addressed that. And we proposed language and the language is "an individual with a disability may request a reasonable accommodation in financial policies when a modification or change of such policies is necessary to accommodate a disability." Such economic accommodations may include waiving guest fees, making an exception to a policy of not accepting Section 8 vouchers, waiving a rule requiring that rent be paid on the 1st of the month, allowing it to then to relocate to a different unit without an otherwise applicable rent increase and allowing a prospective tenant to use a co-signer when the limited income -- when their limited income -- when their income is limited because of a disability and it would not otherwise qualify for the
it to the disability, of course, are really, really helpful to maintaining how they -- in keeping people with disabilities from becoming homeless.

I think we explained this pretty well. If you need additional legal authority, I'm happy to provide it.

COUNCIL MEMBER ORTIZ: Thank you.

COUNCIL MEMBER SCHUR: I didn't see the cite to Keebler. If you have additional citations on this, that will be hopeful. You mentioned other cases.

MS. McGRANAHAN: I will. Thank you very much.

MS. PRADO: Good morning. My name is Diana Prado, P-r-a-d-o. I'm a housing rights attorney with the Eviction Defense Network.

And just picking up on my colleague's comments, I want to first thank the Council for the time to draft these regulations. I'm a housing rights attorney and particularly for the first part of my career, an eviction defense attorney, these are very crucial in order to be able to help the judges and the courts understand the need for reasonable accommodation, particularly in an unlawful detainer context.

I know that our comments have provided examples and I know that those are actually very key to draft these regulations. I'm a housing rights attorney and particularly for the first part of my career, an eviction defense attorney, these are very crucial in order to be able to help the judges and the courts understand the need for reasonable accommodation, particularly in an unlawful detainer context.

I know that our comments have provided examples and I know that those are actually very key.

CHAIRMAN MANDELBAUM: Thank you. Any other public comments on the Fair Housing regulations?

MS. WONG: Good morning. Adrienna Wong, A-d-r-i-e-n-n-a, W-o-n-g, for ACLU of Southern California.

I'm here today to express my organization's strong support for the draft regulation. The ACLU Southern California position is that housing is foundational to the exercise of other civil rights and civil liberties. And we think that the regulations are a great step towards ensuring fair and equal access to housing.

And then lastly, just to bring up the point of more than one animal.

Again, we appreciate the Council understanding that there could be a need for more than one animal. That one animal could provide help with guidance to the door and another animal can just very much provide emotional support. The analysis that's required is case based and so we -- I will just applaud that there could be a need for more than one animal and that the Council has recognized that and provided an analysis as such that we'd be able to go through.

Thank you.

CHAIRMAN MANDELBAUM: Thank you. Any other public comments on the Fair Housing regulations?

...
I also want to express our support for the written comments that were submitted to the Council by Legal Service Providers, on housing rights organizations by Western Center. We have the opportunity to review those comments after they were submitted to the Council and we'd like to endorse them in full.

In particular, I want to emphasize our support for the portion of the draft regulations that address specifically, we think, the kind of overwrought nuisance enforcement actions that are typified by the crime-free housing program.

In our experience those programs are generally somewhat uniform and not only violate Fair Housing law but also due process, right to privacy, equality protection, the First Amendment. So we have successfully brought legal challenges in court against the crime-free housing program, both here in Southern California and across the country.

I think it's fair to say that the guidance that the regulations give regarding those programs will help localities avoid litigation rather than generating more. So we support the inclusion of -- I think it's 12162(b) if I'm not wrong. The section of the regulation that addresses those programs.

And we also support the additions recommended in the written comments by the Legal Service Providers and housing rights organizations to that section, we think will clarify and further strengthen those.

I also want to emphasize our support for the portion of the regulations that address consideration of criminal history information, although I also want to echo the request made by other provisions that the Council consider a criminal look back period that is shorter than seven years. We understand that in -- in the consumer context seven years has been recognized, but based on our experiences, we have serious fairness and accuracy concerns about consideration of stale criminal records and so we have -- in the interest and well-being of our community versus alongside our community partners to pressure local public housing authorities for shorter look back periods successfully.

So we know that it's doable, it's practicable, that it's legally supportable, and for the reasons stated in the written comments and is the relevant HUD guide, and we'd encourage the Council to also consider a shorter look back period.

Thank you.

COUNCIL MEMBER IGLESIAS: If you have additional legal authority with regard to the overbroad nuisance that's not included in the memo, I'd appreciate it.

MS. WONG: Yes. I'll take another look at the memo and if there's anything to add, we will submit that separately.

CHAIRMAN MANDELBAUM: Any other Fair Housing public regulations comments people wish to provide? Any via e-mail?

Okay. Well, I want to thank everyone for taking the time to provide public comments at today's hearing regarding issuance of the proposed Fair Housing regulations.

Again, we will accept written comments until 5 p.m. today. So if you haven't already done so, please make sure to submit comments.

And with that, the first of our hearings is concluded.

But I think this would be a good time for a break for our court reporter.

And this part is off the record.

(Off record at 11:26 a.m.)
April 4, 2018

Meeting Notice and Agenda VII

www.depo.com

D 1:9 4:16
DA 9:19 10:8
Dachshund 32:4
DARAD 2:2
Davis-Stirling 23:4
day 18:14 14:40 42:3
53:16
days 4:24
deal 7:13 21:1 26:6
deg 38:9

disability 16:1 21:10
disability-related 31:9
disabled 25:15 22:26
19:27 24:29 29:10
40:7 42:3 45:16
disagreeing 12:23
disaster 21:24
discussion 4:4 20:8
41:25 43:1
discriminatory 10:4 11:7
11:11 12:10 18:25
20:19 21:6,11 22:1
39:9,15
discussed 23:17
discussing 43:24
disfavor 17:13
disputed 13:17
distinct 36:4
distinguishing 33:13
disturbance 32:20
debatable 51:18
doctor 32:1 47:20
documentation 13:19
24:22
documents 20:11
dog 13:24 27:3 32:19
35:22,24
dogs 26:9 30:2 33:3
doing 19:3
dominant 7:20 8:15
door 15:1 19:24 49:6
doubleheader 3:5
draft 38:23 39:2 46:18
49:20 50:3
drowning 27:25
drows 28:3
due 50:14

DFEH's 5:11
DFEH Council 5:12
DFEH Council

difficulties 19:10 32:23
different 7:9 29:4 33:4
33:13 44:21
difficult 25:3
difficulty 19:21 23:21
direct 17:24
direction 15:17,25 53:11
directly 24:20
director 2:5 3:18 23:20
37:22
directors 18:3,5,13,16
18:18,22 21:4 28:25
disabilities 8:24 37:15
46:3
disability 4:8 9:13,14
13:25 14:8,10 8:29
24:19 23:21 25:22
26:12
31:13
35:23 37:5 10:44:7
44:13,16,25 45:13,24
46:1 47:21,21
disability-related 31:9
disabled 25:15,22:26
19:27 24:29 29:10
40:7 42:3 45:16
disagreeing 12:23
disaster 14,19
discuss 22:7,10 23:4
disclosure 21:23,24
23:6
discovery 21:10
discrimination 4:4 20:8
41:25 43:1
discriminatory 10:4 11:7
11:11 12:10 18:25
20:19 21:6,11 22:1
39:9,15
discussed 23:17
discussing 43:24
disfavor 17:13
disputed 13:17
distinct 36:4
distinguishing 33:13
disturbance 32:20
debatable 51:18
doctor 32:1 47:20
documentation 13:19
24:22
documents 20:11
dog 13:24 27:3 32:19
35:22,24
dogs 26:9 30:2 33:3
doing 19:3
dominant 7:20 8:15
door 15:1 19:24 49:6
doubleheader 3:5
draft 38:23 39:2 46:18
49:20 50:3
drowning 27:25
drows 28:3
due 50:14

Dumas 2:11 28:23,24
32:11
duties 21:25
duty 23:4,8

E
E 7:13
e-mail 5:1,2,8 7:8 52:8
earlier 17:18 34:24
early 17:20
easier 21:18 30:22 41:18
41:18
easy 29:9 42:16
echo 16:14 21:14,15
51:8
economic 44:16 45:11
economy 48:9
education 18:13 42:7
effect 11:7,11
effects 39:10
effort 16:19
either 12:13 27:24
eliminate 19:19
effective 32:25 34:23
35:14 36:11,13,18
47:16,22 49:7
emphasize 50.7 51:5
Employment 1:3 3:15,21
38:14,19,25
enactment 11:25
encountering 26:11
encourage 8:12 9:6
20:13 51:21
ended 41:12
endorse 50:6
enforce 29:9
enforcement 50:10
engage 20:2
engaged 22:20
ensuring 49:24
entire 34:8 40:25 41:5
47:24
tire 34:21 35:12 36:1
36:1
titles 21:18
titled 13:18 41:11
title 9:9 11:4
environment 19:20
equal 19:14 49:24
equality 50:15
equivalents 7:23
era 14:22
especially 34:16 40:15
essentially 7:16 8:8
estate 13:12
establishing 24:10,19
et 4:2
event 16:18
Everest 16:21
everybody 15:4 17:20
evict 20:16,17,18
evicted 41:4 42:4
evicting 21:12
eviction 43:7 46:15,20
evidence 13:24
ex-officio 3:17
example 8:11 29:11
example 22:12 26:16