



Department of Fair Employment & Housing Fair Employment and Housing Council

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
www.dfeh.ca.gov | email fehcouncil@dfeh.ca.gov

FAIR EMPLOYMENT AND HOUSING COUNCIL

Meeting of September 25, 2020

Minutes

Remote Meeting

Councilmembers Present

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

DFEH Staff Present

Adam Romero, DFEH Deputy Director of Executive Programs
Kara Brodfuehrer, DFEH Legislative and Regulatory Counsel
Brian Sperber, DFEH Legislative and Regulatory Counsel

Others Present

About 40 members of the public

I. Call to Order and Roll Call

Chair Mandelbaum welcomed guests to the FEH Council's 38th meeting and called it to order. He then turned the meeting over to DFEH Legislative and Regulatory Counsel, Brian Sperber, who conducted roll call.

II. Welcome and Introduction of Guests

Chair Mandelbaum announced that the Council meeting would be livestreamed on the Council's website via Zoom and that the recording will be available later on the Council's website and YouTube channel. The public can participate in the meeting by emailing the Council or using Zoom chat or using the "Raise Hand" function and can find the Attachments to the Agenda on the website.

Chair Mandelbaum then acknowledged Department leaders and members, including: Adam Romero, DFEH Deputy Director of Executive Programs; Kara Brodfuehrer, DFEH Legislative and Regulatory Counsel; and Brian Sperber, DFEH Legislative and Regulatory Counsel. Ms. Brodfuehrer then introduced herself to the Council and the public.

III. Review of the Agenda

Chair Mandelbaum reviewed the agenda for the meeting.

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

- Public Hearing: Proposed Housing Regulations Regarding Definitions; Intentional Discrimination; Discriminatory Notices, Statements, and Advertisements; Consideration of Income; Residential Real Estate-Related Practices; and Disability
- Guest Speaker Memo and PowerPoint on the Unruh Act
- Consideration of Modifications to Employment Regulations Regarding Harassment Prevention Training
- Update from Government Code Section 11135 Regulations Subcommittee
- Update from Criminal History & Employment Hearing Subcommittee
- Update from Criminal History & Work Opportunity Tax Credit Subcommittee
- Consideration of Changes Without Regulatory Effect to the California Family Rights Act Regulations

IV. Approval of the Minutes

Attachment A: Minutes from July 27, 2020 Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the July 27, 2020 meeting. During that meeting, the Council held a public hearing on proposed Employment Regulations Regarding Harassment Prevention Training; and heard updates from the Council's other subcommittees. Chair Mandelbaum asked for public comments on the minutes, and receiving none, the Council voted to approve the minutes unanimously.

V. Councilmembers' Reports

Chair Chaya Mandelbaum and Councilmembers

Councilmember Iglesias reported that feedback from the Hate Violence Hearing suggested the Ralph Act and the Bane Act is being underutilized by many, and the Council could provide additional resources and tools to help individuals better utilize these statutes.

Councilmember Sandoval further noted that issues of data tracking were raised during the Hate Violence Hearing that he'd like to discuss further.

VI. Department of Fair Employment and Housing Report

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish highlighted that in September, Governor Newsom signed SB 1383 into law, which modifies the provisions of the California Family Rights Act and replaces the New Parent Leave Act.

VII. Public Hearing: Proposed Housing Regulations Regarding Definitions; Intentional Discrimination; Discriminatory Notices, Statements, and Advertisements; Consideration of Income; Residential Real Estate-Related Practices; and Disability

Attachment B: Notice of Proposed Rulemaking

Attachment C: Initial Statement of Reasons

Attachment D: Proposed Housing Regulations Regarding Definitions; Intentional Discrimination;

Discriminatory Notices, Statements, and Advertisements; Consideration of Income; Residential Real Estate-Related Practices; and Disability

Chair Mandelbaum introduced the proposed regulations and stated that the purpose of the hearing is to hear 45-day comments on the Proposed Housing Regulations Regarding Definitions; Intentional Discrimination; Discriminatory Notices, Statements, and Advertisements; Consideration of Income; Residential Real Estate-Related Practices; and Disability.

The Council heard public comment from:

Janet Powers, Fiore, Racobs, and Powers: Ms. Powers thanked the Council for the work on the regulations and expressed concern regarding the section laying out a respondent’s burden when denying a reasonable accommodation. Additionally, she requested clarification on the definition of “single-family home,” and noted that she submitted written comment for consideration.

Whitney Prout, California Apartment Association: Ms. Prout suggested revising the motivating standard applied to intentional discrimination cases to match that of the disparate treatment standard under FEHA and revising the definition of “source of income.” She also noted that she submitted written comment for consideration.

Matthew Warren, Western Center on Law & Poverty: Mr. Warren congratulated Kara Brodfuehrer on her new role at DFEH and thanked the Council for the work on the regulations. Additionally, he suggested the Council modify the definition of “source of income,” and proposed additional line edit modifications.

VIII. Consideration of Modifications to Employment Regulations Regarding Harassment Prevention Training

Chair Chaya Mandelbaum and Councilmember Gabriel Sandoval

Attachment E: Modified Text of Proposed Employment Regulations Regarding Harassment Prevention Training

A. Discussion by Council

Chair Mandelbaum and Councilmember Sandoval noted that the subcommittee made additional modifications to the regulations since the last Council meeting after reviewing public comment.

Councilmembers discussed a small modification to the provision on duplicate training.

B. Public Comment

Kim Stone, on behalf Emtrain: Ms. Stone thanked the Council for the work on the regulations and urged the Council to adopt the regulations as drafted. She commented that allowing training in smaller segments will help employers to comply with California’s legal training requirements.

Janine Yancey, Emtrain: Ms. Yatzi thanked the Council for the work on the regulations and proposed a modification relating to the Council’s previous discussion.

JT: JT submitted a Zoom comment thanking the Council for the work on the regulations.

Brenda Lebsack: Ms. Lebsack emailed the Council and expressed that she does not agree with instruction on

gender identity in schools and urged the Council to issue a press release informing Californians of how the definition of gender identity affects them.

C. Action by Council

The Council moved, seconded, and unanimously approved a motion to adopt Attachment E as amended during the meeting and initiate an additional 15-day comment period.

IX. Update from Government Code Section 11135 Regulations Subcommittee

Councilmembers Dale Brodsky and Dara Schur

A. Discussion by Council

Councilmember Brodsky and Director Kish reported that the subcommittee has prepared the initial statement of reasons for the regulations and that the notice package is currently under review by the California Business, Consumer Services and Housing Agency.

B. Public Comment

None.

X. Update from Criminal History & Employment Hearing Subcommittee

Chair Chaya Mandelbaum and Councilmember Gabriel Sandoval

A. Discussion by Council

Councilmember Sandoval noted that the subcommittee has been reaching out to various stakeholders and identified several interested in participating in the hearing on criminal history and employment, including: Legal Aid at Work, National Employment Law Project, Homeboy Industries, Microsoft, University of California, Irvine, and Pennsylvania State University. Additionally, the public hearing is scheduled to be held virtually on November 17.

B. Public Comment

None.

XI. Update from Criminal History & Work Opportunity Tax Credit Subcommittee

Councilmembers Joseph Ortiz and Gabriel Sandoval

A. Discussion by Council

Councilmember Sandoval reported that the subcommittee is making progress on a draft of the regulations and expects it will be completed by the next Council meeting.

B. Public Comment

None.

XII. Guest Speakers

Aditi Fruitwala, ACLU of Southern California; Elizabeth Kristen and Nora Cassidy, Legal Aid at Work;

Ting Su, Eagle Rock Brewery; Ashley Louise and Claire Wasserman, Ladies Get Paid

Attachment F: “Unruh Act – Compelling Societal Interest” Memo and PowerPoint

Chair Mandelbaum introduced the guest speakers.

The Council heard presentations from:

Aditi Fruitwala, ACLU of Southern California: Ms. Fruitwala thanked the Council for the opportunity to present. She expressed concern that the Unruh act is being misused by men’s-rights activists to sue organizations meant to empower women, and reviewed case law examples of violations and non-violations of the Unruh act.

Claire Wasserman, Ladies Get Paid: Ms. Wasserman thanked the Council for the opportunity to present and described her organization’s experience with being sued by men’s-rights activists under the Unruh act.

Ting Su, Eagle Rock Brewery: Ms. Su thanked the Council for the opportunity to present and described Eagle Rock Brewery’s experience with having a DFEH complaint filed against them under the Unruh act.

Nora Cassidy, Legal Aid at Work: Ms. Cassidy explained the importance of empowering women and increasing diversity in the workforce.

Elizabeth Kristen, Legal Aid at Work: Ms. Kristen proposed regulations to provide guidance to businesses experiencing misuse of the Unruh act.

XIII. Consideration of Changes Without Regulatory Effect to the California Family Rights Act Regulations

Chair Chaya Mandelbaum and Councilmember Dale Brodsky

Attachment G: Changes Without Regulatory Effect to the California Family Rights Act Regulations

A. Discussion by Council

Councilmember Brodsky noted that the subcommittee made non-substantive modifications to the regulations to include SB 1383.

Councilmember Iglesias and Councilmember Schur thanked the subcommittee for the work on the regulations.

B. Public Comment

None.

C. Action by Council

The Council unanimously approved the text, authorized DFEH staff to submit it to the Office of Administrative Law as a change without regulatory effect, and authorized DFEH staff to make non-substantial changes if required by the Office of Administrative Law.

XIV. Discussion Regarding Additional Subcommittee Assignments

Chair Chaya Mandelbaum and Councilmembers

A. Discussion by Council

Chair Mandelbaum turned the meeting over to the Councilmembers to offer suggestions for additional subcommittee formations.

Councilmember Brodsky suggested the Council form a subcommittee to study and consider the possibility of amending the regulations on disability to include accommodation based on association with a disabled individual. Councilmember Brodsky and Chair Mandelbaum volunteered to form this new subcommittee.

Councilmember Iglesias asked if Councilmember Ortiz and Councilmember Brodsky are interested in coordinating follow-up to the recent hearing on hate violence in California. Councilmember Brodsky expressed a willingness to participate in this follow-up.

Director Kish noted that new DFEH Legislative and Regulatory Counsel, Kara Brodfuehrer, is working on an in-depth literature review of discriminatory algorithms and they hope to hold a public hearing on the topic in early 2021.

B. Public Comment

None.

C. Action by Council

The Council moved, seconded, and unanimously voted to approve a motion to adopt the subcommittee assignments.

XV. Further Public Comment

Brenda Lebsack: Ms. Lebsack expressed her disagreement with the research and instruction on gender identity in schools and urged the Council to issue a press release informing Californians of the definition of gender identity and how it affects them and their families, and make it readily accessible to all immigrant populations. Further, she expressed concern with the prospect of spiritual abuse and its potential derogatory effects on families and the workforce.

XVI. Adjournment

Chair Mandelbaum adjourned the meeting at approximately 12:25 PM.

Date: October 15, 2020

CHAYA MANDELBAUM

Chair

RENEE RONDINONE

DFEH Outreach and Education Specialist