

PROMOTING EQUAL HOUSING OPPORTUNITIES

Fair Housing Programs3-101



Fair Housing Programs

State planning law (Gov Code §65583(c)(5)) requires local governments to adopt housing programs to “promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin or color.” State fair housing laws provide further protection, covering all groups regardless of sexual orientation, familial status, source of income, and disability (see discussion of civil rights laws below).

Another provision of the planning law (Gov Code §65008) prohibits local governments from discriminating against low-income persons, subsidized housing, and homeless shelters. A third provision of the planning law (Gov Code §65589.5) provides that local governments must make specific findings before they can disapprove a housing development affordable to low- and moderate-income households or condition the approval in a manner that renders the development unfeasible for low and moderate income households.

The California Department of Fair Employment and Housing administers the State’s civil rights laws, including the Fair Employment and Housing Act (Gov Code §§12900-12996). All California citizens have the right to rent, lease, or purchase housing accommodations without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familiar status, source of income, or disability. (Gov Code §12955) This prohibition against discrimination applies to every person, local government, or firm involved in the provision of housing, including lending institutions.

The Fair Employment and Housing Act also prohibits discrimination through public or private land use practices and decisions, including restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law. (Gov Code §12955(l)) For a local government to justify an action, law, or practice that has a discriminatory effect, it must demonstrate that what it has done was necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect. (Gov Code §12955.8)

The Fair Employment and Housing Commission is the policy making body for equal opportunity efforts, and the Department of Fair Employment and Housing investigates every complaint that is filed. In the Bay Area, offices of the Department of Fair Employment and Housing are located in Oakland, San Francisco, and San Jose. They can be reached at 800-884-1684. The Department does not require local governments to provide specific conciliation or referral service.

The Federal government also has adopted fair housing laws. The Fair Housing Act (42 U.S.C. §3601) prohibits local governments from making housing unavailable to persons based on race, color, religion, sex, familial status, national origin, or mental or physical disability. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) prohibits discrimination based on race, color, or national origin by any recipient of federal funds. In addition, the Americans with Disability Act of 1990 (42 U.S.C. §12210) and the Rehabilitation Act of 1973 (29 U.S.C. §1691) prohibit discrimination by local governments against disabled persons and requires reasonable accommodation.

Local governments’ role in the housing element is to identify strategies that will support and implement these laws. Local governments may not impose different requirements on government-assisted residential developments or emergency shelters than those imposed on non-assisted developments. (Gov Code §65008)

Local governments should also keep in mind that the fair housing laws prohibit laws and actions that have a discriminatory effect on the protected groups as well as those that intentionally discriminate. (Gov Code §12955.8) An outwardly neutral practice, such as a prohibition on the development of multi-family housing, could violate the fair housing laws if the exclusion of multi-family housing falls disproportionately on minority households, low-income households, renters with disabilities, or families with children.

Benefits

- Increases awareness of local governments to existing state and federal laws that prevent discrimination and expand housing opportunities.
- Reduces potential liability of local governments by causing them to examine their policies to ensure they do not lead to housing discrimination.
- Ensures that land use decisions and regulations do not have the effect of discriminating against persons or groups protected by fair housing laws, including low income and homeless persons.
- Provides a structure for the quick conciliation of discriminatory complaints.
- Promotes the integration of people who would otherwise be restricted to “special needs housing.”

During the Housing Element Process...

- **Review Previous Assessments, If Available.** For “entitlement” communities under the Federal CDBG/HOME program, the locality’s analysis of impediments to Fair Housing Choice (AI) should contain a comprehensive assessment of the land use barriers to equal housing opportunity, and consequently, should be reviewed.
- **Inventory Services.** Begin by consulting with housing advocates, counseling organizations, apartment owners, and real estate agents in the community regarding the availability of services to address discrimination. If these services are not available or are inadequate, specific local government actions can be developed with technical assistance from the Department of Fair Employment and Housing.
- **Review Ordinances.** Review zoning and other land use controls to determine whether the restrictions have a discriminatory effect on persons protected by the fair housing laws.
- **Reach Out to Other Groups.** Involve fair housing groups and organizations that represent property owners in the inventory of services, review of local ordinances and land use controls, and identification of programs and actions. These groups can also help in the implementation of programs and the dissemination of information.

Potential Programs and Actions

- **Conduct Staff Training.** Ensure that all staff, especially city and county attorneys, and decision makers are familiar with fair housing laws. Take advantage of existing training programs if more familiarity is needed.
- **Establish an Assistance Program.** Adequately fund a local Fair Housing Counseling and Enforcement Agency, using CDBG or other local funds.
- **Distribute Information.** Distribute fair housing information to developers, realtors, building owners, and renters.
- **Adopt an Ordinance on Discrimination.** Adopt a local ordinance prohibiting discrimination against the recipients of Section 8 vouchers and other rental housing programs.
- **Revise Occupancy Standards.** Conform local occupancy standards to the State Housing Code standards so that large families and group homes are not unreasonably denied housing opportunities.
- **Amend the Definition of Family.** Amend the zoning ordinance to remove any restrictive definitions of “family.” Some old ordinances still allow exclusion from single-family zones of households larger than five or six unrelated persons, or households of unrelated persons.
- **Eliminate Barriers for People with Disabilities.** Amend the zoning ordinance to require barrier-free design in new multi-family housing and in housing that requires extensive renovation, as indicated by state and federal fair housing laws. Also, ensure that group homes and residential care facilities for persons with disabilities are afforded “reasonable accommodation” when applying for land use approvals.

Contacts and Resources

See Appendix D for phone numbers and addresses, where relevant.

-  HCD, *Fair Housing*, Sacramento, 1986.
-  HUD, *Fair Housing: It's Your Right*, Washington, DC, 1993.
-  HUD, *Fair Housing Planning Guide*, Washington, DC, 1996.
-  Palamountain, Chris, et al, *Discrimination Against Children: A Manual on Fair Housing Law for Families with Children*, National Center for Youth Law, San Francisco, 1998.
-  California Affordable Housing Law Project
-  California Department of Fair Employment and Housing
-  California Office of Protection and Advocacy
-  Legal Services of Northern California

Success Stories

- **Non-profit Agency Leverages Local Funds to Provide Fair Housing Services.** Sentinel Fair Housing is a private non-profit organization that operates in the cities of **Oakland** and **Alameda** to end discrimination in housing and promote decent housing for all. The organization is jointly financed by the two cities through CDBG funds, which are then used to leverage funds from HUD's Fair Housing Initiatives Program, as well as private grants and donations. Sentinel provides services to more than 5000 tenants and landlords annually, including the investigation and filing of discrimination complaints; mediation and counseling services; education workshops and multi-lingual information materials; and a wide range of related services to owners, lenders, and public agencies. In 1999-2000, Sentinel led an effort to investigate the displacement effects of increased "just cause" evictions in Oakland, leading to modifications in city policies and ordinances.

PRESERVING ASSISTED HOUSING

Preservation of Assisted Units3-105



Preservation of Assisted Units

The loss of affordability restrictions on a substantial portion of government-assisted rental housing stock will be one of the largest housing-related problems for California cities and counties. The housing most at risk of being converted to market-rate housing currently shelters very low-income seniors and families with children.

The nature of conversion risk and the prospective displacement of low-income tenants differs significantly depending on the government program that was used to finance the property. Units most affected have Section 8 contracts that expire prior to 2005 and owners who may choose to opt out of the contracts. There are also many units with HUD-assisted mortgages containing rental restrictions (Section 236, Section 221(d)13 BMIR) that can be prepaid and converted to market-rate. In addition, most properties assisted by Mortgage Revenue Bonds (MRBs) are expected to convert to market-rate housing upon expiration of their rent targeting requirements. Unlike federally assisted housing, there are no agencies or programs to provide rental assistance vouchers or other transition assistance for MRB-subsidized housing.

Conversion risk is also much greater for properties that are in good physical condition and in high-cost, tight rental housing markets like most of the Bay Area. Properties managed by non-profit developers and properties in areas where the local government makes affordable housing preservation a priority by dedicating funds are in less danger of being converted to market-rate housing.

Benefits

- Responds to one of the most pressing housing issues in many California cities.
- Preserves the affordability of previously subsidized units.
- Reduces the potential for displacement of low- and very low-income seniors and families, many who might otherwise be forced into homelessness or substandard housing conditions.

During the Housing Element Process...

- **Conduct an Assessment of At-Risk Units.** An effective program for the preservation of assisted units requires a thorough inventory of all assisted units at risk of conversion and an assessment of conversion risk, based on condition of housing, the local rental market, and the availability of funds to support preservation.
- **Ensure the Participation of All Stakeholders.** Involve residents of the units, individuals, and organizations that manage the units, program officials, and other social service providers to develop effective responses on a case-by-case basis, preserving affordable units whenever possible and providing residents with assistance through short- and long-term displacement.
- **Develop Workable Preservation Strategies.** The Housing Element must identify a workable strategy for responding to the potential loss of at-risk units. See page 3-105.

Potential Programs and Actions

- **Make Use of State Funding Resources.** Several State programs provide specific funds for affordable housing at risk of conversion. These include California Housing Finance Agency's **Preservation Financing Program**, which provides tax-exempt financing for the acquisition or refinancing of a project with expiring Section 8 contracts, and the new **Multi-family Housing Program** (MHP), which will also provide low interest, deferred long-term loans. Additionally, the California Tax Credit Allocation Committee (CTCAC) and the California Debt Limit Allocation Committee (CDLAC) both provide preferences for federally assisted at-risk projects.
- **Collaborate with Other Agencies.** Local jurisdictions should work closely with the county housing authority, local non-profits, state agencies, and others who are affected by or interested in the potential loss of assisted units. These agencies can play a key role in designing and carrying out effective preservation strategies.

Contacts and Resources

See Appendix D for phone numbers and addresses, where relevant.



California Housing Partnership

See Also...

- Conversion Controls (*Page 3-70*)
- Rent Control (*Page 3-77*)
- Rental Assistance (*Page 3-79*)

Success Stories

- **Program to Acquire and Rehabilitate Assisted Housing Stock.** The **San Francisco Redevelopment Agency** is pioneering an effort to preserve assisted units with expiring Section 8 contracts through an innovative program. Agency staff started by compiling a detailed list of all at-risk units with dates of contract expiration. They then embarked on a tenant education and outreach program, organizing tenants into residential owners associations and later, into single asset corporations (along with a 501c(3) non-profit organization). Preservation grants (funded from tax increment financing) were given to the associations to help them hire professionals to help in the process of non-profit acquisition and rehabilitation of the property. An aggressive program to acquire properties was also launched, resulting in acquisition of eight properties with over 1,100 units in a two-year period. Funds to acquire properties were raised through tax-exempt bonds and 4-percent Tax Credits. The success of the program relies on meticulous research, a commitment of funds from the City, and a comprehensive education and outreach program that included tenants, owners, and their representatives.
- **Preservation of Assisted Development for Seniors.** On expiration of contracts for a 90 unit rental apartment complex built for seniors with Section 221(d)3 funds in the mid 1970s, the City of **Petaluma** worked with non-profit developer **Burbank Housing Development Corporation** to acquire and rehabilitate the property. Using Federal LIHPRA funds, tax-exempt bonds issued by the City of Petaluma, and additional funds from the City, the developers assisted the tenants to form a community-based organization that now owns the complex. The nine member Board consists of four low-income tenants, three members from Burbank Housing, and two from the City. Burbank Housing also manages the development.