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Sent: Saturday, January 7, 2023 3:01:21 PM

To: Jocelyn Shoopman <jshoopman@losgatosca.gov>; Jennifer Armer <JArmer@losgatosca.gov>

Subject: Proposed Revisions to the 2023-2031 Housing Element - Policy HE-6.1, Page 10-38

EXTERNAL SENDER

Dear Jocelyn and Jennifer.

Would you kindly include the attachment as a Desk Item for Agenda Item 5 on Wednesday?

Thanks in advance.

Jeffrey

Proposed Changes to the Los Gatos Draft Housing Element 6th Cycle 2023-2031
Policy HE-6.1 Fair Housing Page 10.38.

Current Language:

Support and publicize housing programs that protect individuals' rights and enforce fair housing laws prohibiting arbitrary discrimination in the building, financing, selling or renting of housing on the basis of race, color, ancestry, religion, national origin, sex, sexual orientation, age, disability/medical condition, familial status, marital status, source of income or other such factors.

Proposed revisions:

1. After "sexual orientation" add "gender identification or expression". It may be covered under the term "sex", but that is not clear. In CC 51(e)(5), sex is expressly defined to include gender identification and expression, but this policy does not completely track Section 51.
2. Add "genetic information".
3. Add "primary language".
4. Add "citizenship".
5. Change "disability/medical condition" to "disability, medical condition".
6. Add "immigration status".
7. Consider adding "military or veteran status".
8. Change "other factors" to "other arbitrary factors". *Marina Point, Ltd. V. Wolfson* (1982) 30 Cal3d 721, 736.

These recommendations are based on the following:

A. California Civil Code Section 51:

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and

equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, or immigration status, or to persons regardless of their genetic information.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) (A) “Genetic information” means, with respect to any individual, information about any of the following:

(i) The individual’s genetic tests.

(ii) The genetic tests of family members of the individual.

(iii) The manifestation of a disease or disorder in family members of the individual.

(B) “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(C) “Genetic information” does not include information about the sex or age of any individual.

(3) “Medical condition” has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.

(4) “Religion” includes all aspects of religious belief, observance, and practice.

(5) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(6) “Sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status” includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(7) “Sexual orientation” has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

(g) Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section.

B. Government Code Section 1139.8(a)(2): “California’s robust nondiscrimination laws include protections on the basis of sexual orientation, gender identity and gender expression, among other characteristics”.

C. Government Code 12920:

“Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in housing accommodations is declared to be against public policy.

D. AFFH Report, Appendix A at Page 65

A.6 Fair Housing Enforcement and Outreach Capacity

“This section discusses fair housing legal cases and inquiries, fair housing protections and enforcement, and outreach capacity. Fair housing legal cases and inquiries. California fair housing law extends beyond the protections in the Federal Fair Housing Act (FHA). [In addition to FHA protected classes—race, color, ancestry/national origin, religion, disability, sex, and familial status—California law offers protections for age, sexual orientation, gender identity or expression, genetic information, marital status, military or veteran status, and source of income \(including Federal housing assistance vouchers\).](#)

E. <https://calcivilrights.ca.gov/housing/#whoBody>:

California law protects individuals from illegal discrimination by housing providers based on the following:

Race, color

Ancestry, national origin

[Citizenship, immigration status](#)

[Primary language*](#)

Age

Religion

Disability, mental or physical

Sex, gender

Sexual orientation

[Gender identity, gender expression](#)

[Genetic information](#)

Marital status

Familial status

Source of income

Military or veteran status

F. Protection against discrimination on the basis of gender identification or expression is also present in laws found in the Education Code, Insurance Code, Welfare and Institutions Code and the Health and Safety Code.

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