State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

February 7, 2024

Submitted via E-Mail

TO: All Cities and Counties in California

RE: Updated Guidance on Crime-Free Housing Policies

Dear Colleagues:

Equal access to housing without discrimination based on race, ethnicity, ancestry, source of income, or other unlawful factors is fundamental to the achievement of equality and justice in our Nation and our State. In keeping with these fundamental principles, through the Racial Justice Bureau in the Civil Rights Enforcement Section of the California Department of Justice, and its participation in the California Department of Justice's Housing Justice Team, I write to emphasize local jurisdictions' obligations under federal and state law to ensure equal access to housing with regard to so-called "crime-free housing" ordinances or programs (collectively referred to herein as "Crime-Free Housing Policies").

I recognize that leaders at the local level are on the front lines of ensuring public safety for their residents, and, separately, that California law provides discretion to local jurisdictions to enact and enforce nuisance laws that are non-discriminatory and otherwise consistent with California law. Among other things, local jurisdictions have exercised that discretion to maintain Crime-Free Housing Policies, in some cases, for decades. Regardless of when these Policies were adopted, local jurisdictions have the responsibility to ensure that they comport with state and federal law, and not to implement or enforce them in a discriminatory manner. Given the significant risk that Crime-Free Housing Policies may violate civil rights laws on their face and/or in implementation, as discussed in detail below, I urge you to review and potentially reconsider aspects of your own policies to ensure compliance with civil rights laws and regulations, including recently enacted Assembly Bill 1418 (AB 1418) (Gov. Code, § 53165.1).

I. Background

A. Crime-Free Housing Policies

Crime-Free Housing Policies vary by jurisdiction, but generally, they encourage or require landlords to take actions to abate "nuisances"; some include civil or criminal penalties for landlords who fail to do so. Crime-Free Housing Policies define such "nuisances" as certain conduct (which may be criminal or non-criminal in nature) committed by tenants or their guests. Alternatively, if the unit or property has been the subject of a defined number of law enforcement requests for service, it could be classified as a nuisance. Some Crime-Free Housing Policies direct landlords to initiate eviction proceedings against tenants who have allegedly engaged in, or allowed guests on their property to engage in, certain activities—often in the absence of a conviction or arrest—or authorize the local jurisdiction itself to initiate eviction proceedings if the landlord fails to take the requested action. Other local jurisdictions encourage or require landlords to participate in crime-free housing programs, which consist of local law enforcement trainings on crime prevention, tenant screening, property management, and eviction procedures.

B. Crime-Free Housing Policies and Anti-Discrimination Law

The experience of communities across the country, as well as studies and reporting about the racial disparities endemic to the criminal justice system, demonstrate that even facially neutral Crime-Free Housing Policies have the potential to result in disparate impacts on protected classes covered by the federal Fair Housing Act (FHA)[1] and the California Fair Employment and Housing Act (FEHA).[2] Crime-Free Housing Policies can contribute to the segregation of our communities and the exclusion of people of color from certain areas in violation of federal and state law. In light of this, the U.S. Department of Housing and Urban Development (HUD) has stated that Crime-Free Housing Policies, even if facially neutral, can violate the FHA if they have a "discriminatory effect" on the basis of race, color, disability, familial status, or national origin and are "not supported by a legally sufficient justification."[3] Regulations promulgated under the FEHA confirm that the same analysis would apply under California law.[4]

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[1] 42 U.S.C. § 3601 et seq.

[2] Gov. Code, §§ 12955-12957; 12980, subd. (b). Note that FEHA expressly authorizes the Attorney General to enforce its protections. *Id.,* § 12989.3.

[3] HUD, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016), p. 7 <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF> (as of Feb. 5, 2024) (HUD Crime-Free Housing Guidance).

[4] See Cal. Code Regs., tit. 2, §§ 12005-12271; see also *Walker v. City of Lakewood* (9th Cir. 2001) 272 F.3d 1114, 1131 fn. 8 (stating that generally the standards for FHA claims apply to FEHA claims).

C. Racial Disparities in the Criminal Legal System and Implications for Access to Housing

Data overwhelmingly reveals that racial and ethnic disparities are entrenched in the criminal justice system.[5] Because they can deny housing opportunities on the basis of a person's interaction with the criminal justice system, Crime-Free Housing Policies risk compounding the impact of these racial and ethnic disparities.[6] Among other outcomes, these Policies could cause tenants to lose their homes based on mere allegations of nuisance conduct—without a criminal conviction, charge, or arrest—sometimes with minimal notice or opportunity for the tenant to contest the nuisance determination. Although California law authorizes landlords to conduct certain "just cause" evictions for tenants who engage in criminal activity on the property (or criminal activity or criminal threats to property owners or agents on or off the property),[7] some Crime-Free Housing Policies go well beyond that by authorizing evictions for alleged criminal conduct that has no connection to the property. In addition, as explained below, some Crime-Free Housing Policies are inconsistent with the newly enacted AB 1418, and are therefore preempted by state law and void as a matter of public policy.[8]

The Crime-Free Housing Policies could also induce landlords to create screening protocols that make housing opportunities less available for those with a criminal history. HUD has advised that although "having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another."[9] As described below, FEHA's implementing regulations go further than federal law and expressly provide that certain criminal history-based

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[5] See, e.g., Racial & Identity Profiling Advisory Board, *Annual Report* (2024), pp. 7-8 <2024 - RIPA Board - Annual Report - AB 953 - Racial and Identity and Profiling Advisory Board (ca.gov) > (as of Feb. 5, 2024) (finding disparities in police stops and searches in California between individuals perceived to be White and individuals perceived to be non-White); Sawyer, *Visualizing the racial disparities in mass incarceration*, Prison Pol'y Initiative (2020) (Prison Policy Initiative Report), <https://www.prisonpolicy.org/blog/2020/07/27/disparities/> (as of Mar. 20, 2023) (finding, according to U.S. Census and Bureau of Justice Statistics data, that Black people are disproportionately stopped on the street by police and arrested, and non-White people are disproportionately incarcerated compared to White people).

[6] Tenants Together, *Snapshot of Tenants in California 2022*, <https://www.tenantstogether.org/sites/tenantstogether.org/files/TT%20Tenant%20snapshot%202022.pdf > (as of Mar. 20, 2023) (64% of Black Americans and 56% of Latino Americans are tenants as opposed to 41% of White Americans); see also *Jones v. City of Faribault* (D. Minn. Feb. 18, 2021) 2021 U.S. Dist. LEXIS 36531, at p. 55 ("[I]f the City's [Crime-Free Housing Policy] intersects with a pre-existing, known racial disparity in a way that creates a similar racial disparity in housing, then it is possible that the City's policy creates a housing disparity and violates the FHA").

[7] Civ. Code, § 1946.2, subd. (b)(1)(F).

[8] Gov. Code, § 53165.1, subd. (c)(1).

[9] HUD, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Apr. 4, 2016), p. 2 <Office of the General Counsel (hud.gov)> (as of Mar. 20, 2023) (HUD Criminal History Guidance).

restrictions violate the FEHA. Moreover, AB 1418 makes clear that local governments cannot enforce or implement any rule, policy, program, ordinance, or regulation that requires or encourages a landlord to perform a criminal background check of a tenant or prospective tenant, or impose a penalty on a landlord for failing to do so.[10] Yet at least one Crime-Free Housing training manual previously utilized in California suggests that landlords could broadly deny applicants based on criminal convictions; "immediately" consider refusing applications from prospective tenants upon disclosure of a criminal history; and adopt tenant-screening tactics that will cause applicants to "screen themselves out of the process."[11] This manual also used dehumanizing, derogatory, and racially charged language by labeling "criminal" tenants as "weeds" and "two-legged urban predators"; discouraging landlords from allowing "drug dealers and other undesirables . . . to take over the area"; and equating crime prevention to "killing a dinosaur," saying "[t]he easiest way to kill a dinosaur is while it is still in the egg."[12]

In light of these concerns, local jurisdictions should assess their ordinances, programs, and training materials, as well as their implementation and enforcement of Crime-Free Housing Policies. Local jurisdictions should review their Crime-Free Housing Policies to ensure that they comply with federal and state law and do not result in disparate impacts, and modify or repeal their Crime-Free Housing Policies if necessary. To assist local jurisdictions in conducting this assessment, this guidance summarizes local jurisdictions' obligations under the FEHA and its implementing regulations and newly-enacted AB 1418.[13] The letter also identifies specific issues for local jurisdictions to address as part of the assessment of their Crime-Free Housing Policies.

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[10] Gov. Code, § 53165.1, subd. (b)(2)(D).

[11] While it is generally not unlawful to advertise screening practices, Cal. Code Regs., tit. 2, § 12268, subd. (b), it is unlawful for a local jurisdiction to encourage property owners to "[i]mplement a blanket ban or categorical exclusion practice" of persons with a criminal history, including criminal convictions. *Id.*, § 12269, subd. (a)(5). Moreover, a local jurisdiction may violate the FHA and FEHA if it encourages landlords to implement screening tactics that effectively operate as a ban on tenants with criminal history. See *Pac. Shores Props., LLC v. City of Newport Beach* (9th Cir. 2013) 730 F.3d 1142, 1163 (ordinance that was primarily designed to effectively bar group homes in the city may violate the FHA, even if the ordinance is "facially neutral").

[12] Vallejo Police Dep't, *Crime Free Vallejo Housing Project* (Oct. 2020) <https://media.nbcbayarea.com/2020/10/CrimeFreeVallejoHousingBooklet.pdf> (as of Mar. 20, 2023). Note that while Vallejo has withdrawn this publication; see City of Vallejo, *The Crime-Free Housing Program to Receive a Much-Needed Update that Puts Vallejoans and Their Safety First!* (Oct. 5, 2020) <https://myemail.constantcontact.com/The-Crime-Free-Housing-Program-to-receive-a-much-needed-update.html?soid=1107787334147&aid=lUMl2-NLaSI> (as of Mar. 20, 2023), other jurisdictions may still be providing training materials with this language, which may suggest a discriminatory intent behind the Crime-Free Housing Policy in violation of the FHA and the FEHA. See *Ave. 6E Invs., LLC v. City of Yuma, Ariz.* (9th Cir. 2016) 818 F.3d 493, 505-06 (stating that "code words" such as "drug dealer" may demonstrate discriminatory intent); *Smith v. Town of Clarkton* (4th Cir. 1982) 682 F.2d 1055, 1066 (interpreting the term "undesirables" as a racially charged code word); see also Cal. Code Regs., tit. 2, § 12161, subd. (c) (Stating that a public land use practice, which "reflects acquiescence to the [public's] bias, prejudices or stereotypes" may show intentional discrimination).

[13] Cal. Code Regs., tit. 2, §§ 12005-12271.

II. Summary of Assembly Bill 1418

In 2023, Governor Newsom signed AB 1418 into law.[14] Under the new law, which became effective on January 1, 2024, local governments are prohibited from promulgating, enforcing, or implementing any ordinance, rule, policy, program or regulation that imposes or threatens to impose a penalty[15] against a resident, owner, tenant, landlord, or other person as a consequence of contact with a law enforcement agency.[16] In particular, local governments are prohibited from adopting or enforcing Crime-Free Housing Policies which require or encourage a housing provider to engage in, or impose a penalty on a housing provider for failure to engage in, any of the following:

1. Evicting or penalizing a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction;

2. Evicting or penalizing a tenant because of the tenant's alleged unlawful conduct or arrest on or near the property;

3. Including a provision in a lease or rental agreement that provides a ground for eviction not provided by, or in conflict with the law; and

4. Performing a criminal background check of a tenant or prospective tenant.[17]

Local governments are also prohibited from defining as a nuisance any contact with a law enforcement agency or request for emergency assistance, or requiring that a tenant obtain a certificate of occupancy as a condition of tenancy.[18] Lastly, under AB 1418, local governments are prohibited from establishing, maintaining, or promoting a registry of tenants for the purposes of discouraging a landlord from renting to a tenant on the registry or excluding a tenant on the registry from rental housing within the local government's jurisdiction.[19]

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[14] Assem. Bill No. 1418 (2023-2024 Reg. Sess.).

[15] See Gov. Code, § 53165.1, subd. (a)(3): " 'Penalty' means the following: "(A) An actual or threatened assessment of fees, fines, or penalties. (B) An actual or threatened eviction, termination of a tenancy, or the actual or threatened failure to renew a tenancy. (C) An actual or threatened denial of a housing subsidy. (D) An actual or threatened revocation, suspension, or nonrenewal of a certificate of occupancy or a rental certificate, license, or permit. (E) A designation or threatened closure of a property or designation as a nuisance property or as a perpetrator of criminal activity under local law, or imposition or threatened imposition of a similar designation. (F) An actual or threatened nuisance action."

[16] Gov. Code, § 53165.1, subd. (b).

[17] *Id*.

[18] *Id*.

[19] *Id*.

III. Summary of FEHA and Its Implementing Regulations

Among other requirements, the FEHA prohibits any person, including local jurisdictions,[20] from making discriminatory notices, statements, or advertisements related to housing, making unavailable or denying housing, or engaging in discriminatory land use practices[21] on the basis of a person's membership in a protected class.[22] The FEHA also prohibits any person from "aid[ing], abet[ting], incit[ing], compel[ling], or coerc[ing] the doing of any of the acts or practices declared unlawful" by the FEHA.[23] As with the FHA, a local jurisdiction violates the FEHA if its policy or practice intentionally discriminates or causes a disparate impact on the basis of a protected class in the absence of a legally sufficient justification, even if the policy or practice is facially neutral.[24] Generally, the same standards apply for analyzing FHA and FEHA claims, except to the extent that a California law or regulation provides greater rights for aggrieved individuals.[25]

A. Intentional Discrimination

Intentional discrimination, *i.e.*, disparate treatment, may be proven based on evidence that race, sex, national origin, disability, or another protected category was a motivating factor for a local jurisdiction's action or decision, even though other factors may have also motivated the jurisdiction.[26]

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[20] Cal. Code Regs., tit. 2, § 12005, subd. (w)(6).

[21] "Public land use practices" include "all practices by governmental entities . . . in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities." *Id.*, § 12005, subd. (bb).

[22] Gov. Code, § 12955, subds. (c), (k), (l). FEHA's protected classes are: 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, and genetic information. See *ibid.*

[23] *Id.,* subd. (g). For that reason, a local jurisdiction may separately violate the FEHA by "aid[ing], abet[ting], incit[ing], compel[ling], or coerc[ing]" landlords into violating the Unruh Civil Rights Act, which prohibits the denial of "full and equal accommodations, advantages, facilities, privileges or services in all business establishments" on the basis of a person's membership in a protected class, defined under Unruh as sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. *Id.*, § 12955, subd. (d); see also Civ. Code, § 51, subd. (b).

[24] *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S.Ct. 2507, 2525 (recognizing disparate impact claims under the FHA); *Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1420 (same as applied to the FEHA); Cal. Code Regs., tit. 2, § 12161, subd. (d).

[25] *Lakewood*, *supra*, 272 F.3d at p. 1131 fn. 8; see also Gov. Code, § 12955.6 (FEHA "may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law"); Cal. Code Regs., tit. 2, § 11001, subd. (b) (federal law not necessarily "determinative of the construction" of FEHA and implementing regulations).

[26] Gov. Code, § 12955.8, subd. (a). An intent to discriminate may be established by direct or circumstantial evidence. *Ibid.*

In the context of Crime-Free Housing Policies, a local jurisdiction may be liable for intentional discrimination under the FHA and FEHA if the jurisdiction either: (1) adopts a policy or practice for discriminatory reasons; or (2) selectively enforces a policy or practice in a discriminatory manner.[27] Under the first scenario, if no direct "smoking gun" evidence of discriminatory intent exists, a plaintiff may prove that a facially neutral policy or practice was adopted for discriminatory reasons based on circumstantial evidence.[28] Similarly, under the second scenario, if no direct evidence of discriminatory intent exists, a plaintiff may rely on circumstantial evidence to prove that a local government is selectively enforcing a facially neutral policy or practice in a discriminatory manner.[29] For example, evidence that a female resident was evicted as a result of a Crime-Free Housing Policy shortly after a domestic violence incident may support an inference of intentional discrimination.[30] In addition, a plaintiff may, but is not required to, establish intentional discrimination by demonstrating that similarly-situated individuals who are not members of a protected class are treated more favorably under a local jurisdiction's policy or practice than members of a protected class.[31]

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[27] See HUD Crime-Free Housing Guidance at pp. 10-11.

[28] In such cases, courts examine several non-exhaustive factors to determine whether discriminatory intent was a motivating factor, including: (1) whether the policy or practice creates a disparate impact on a protected class; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) the defendant's departure from normal procedures or substantive conclusions; and (5) the relevant legislative or administrative history. *Arlington Heights v. Metropolitan Hous. Corp.* (1977) 429 U.S. 252, 266-68; *Ave. 6E Invs., supra*, 818 F.3d at p. 504; HUD Crime-Free Housing Guidance at p. 10.

[29] Gov. Code, § 12955.8, subd. (a); HUD Crime-Free Housing Guidance at pp. 10-11.

[30] See, e.g., *Bouley v. Young-Sabourin* (D. Vt. 2005) 394 F.Supp.2d 675, 678 (landlord's attempt to evict victim 72 hours after domestic violence incident could give rise to inference of discrimination on the basis of gender); HUD, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence against Women Act (VAWA)* (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> (as of Mar. 20, 2023). Local jurisdictions are further prohibited under California law from promulgating, enforcing, or implementing any ordinance that penalizes residents, tenants, owners, or landlords for seeking law enforcement or emergency assistance on behalf of victims of abuse, victims of crime, or individuals in emergency circumstances. Gov. Code, § 53165, subd. (b); see also Code Civ. Proc., § 1161.3 (prohibiting landlords from terminating the tenancy of a household member who was the victim of domestic violence, stalking, human trafficking, or elder abuse); Civ. Code, § 1946.8 (voiding lease provisions purporting to limit good-faith summoning of law enforcement and emergency assistance); see also Violence Against Women Act of 2022, 34 U.S.C. § 12495 (protecting tenants' right to report crimes and emergencies; prohibiting entities receiving federal grants from imposing penalties based on requests for assistance or based on criminal activity of which they are a victim or not at fault); U.S. Dept. of J., Nov. 7, 2023 letter to Anoka, Minnesota <https://www.justice.gov/d9/2023-11/final_anoka_letter_of_findings_for_11.07.23.pdf> (finding that city's Crime Free ordinance penalizing landlords for emergency assistance calls discriminated against individuals with mental health disabilities in violation of FHA).

[31] See *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802-03 (setting three-step burden method of proving disparate treatment in the employment context); *Pac. Shores Props.*, *supra*, 730 F.3d at p. 1158 (recognizing that satisfying *McDonnell Douglas* test is one way to prove intentional

B. Discriminatory Effect

A local jurisdiction may also violate the FEHA where the policy or practice "actually or predictably results in a disparate impact" on a protected class, regardless of the jurisdiction's intent, absent a legally sufficient justification.[32] If a plaintiff satisfies the burden of showing that a policy or practice causes or will cause a discriminatory effect, it is the local jurisdiction's burden to demonstrate that the "practice is justified despite the discriminatory effect."[33] To support a permissible justification, jurisdictions must establish, with evidence, that: (1) "[t]he practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory purposes"; (2) the practice is effective in carrying out its intended purpose; (3) that purpose is "sufficiently compelling to override the discriminatory effect"; and (4) "[t]here is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect."[34]

C. Unlawful Housing-Related Practices

Article 15 of FEHA's implementing regulations expressly identifies certain housing-related practices that are unlawful under the FEHA, many of which are also unlawful under AB 1418, including the following:[35]

1. Requiring housing providers to take adverse actions (including initiating eviction proceedings) against individuals based on broad definitions of nuisance activities, unlawful conduct, or criminal activities (such as classifying phone calls to law enforcement or emergency services as a nuisance);

2. Mandating housing providers to consider criminal history in assessing housing opportunities;

3. Prohibiting housing providers from renting to tenants with specified criminal convictions; and

4. Requiring the initiation of eviction proceedings against tenants or occupants arrested, suspected, or convicted of crimes.[36]

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discrimination under the FHA); *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354 (applying *McDonnell Douglas* test to employment discrimination claims under the FEHA).

[32] Gov. Code, § 12955.8, subd. (b). A local jurisdiction's policy can also have a discriminatory effect if it "creates, increases, reinforces, or perpetuates segregated housing patterns, based on membership in a protected class." Cal. Code Regs., tit. 2, § 12060, subd. (b).

[33] Cal. Code Regs., tit. 2, § 12061, subd. (b).

[34] *Id*., § 12062, subd. (b).

[35] *Id.*, §§ 12161-12162.

[36] *Id.*, § 12162, subds. (a)-(b); see also Gov. Code, § 53165.1, subd. (b). Further, a Policy that requires the initiation of eviction proceedings with minimal notice or opportunity for a tenant to contest the local jurisdiction's nuisance determination raises "serious" due process concerns, see, e.g., *Cook v.*

Under Article 24 of FEHA's implementing regulations, certain criminal history practices are unlawful. Specifically, it is unlawful for a person to seek, consider, or use information about the following when making housing-related decisions: (1) an arrest or other law enforcement contact that did not result in conviction; (2) referral to or participation in a pre-trial or post-trial diversion program or a deferred entry of judgment program; (3) an infraction or conviction that is no longer operative by a judicial action or statute; or (4) an adjudication in the juvenile system.[37] It is also unlawful to take an adverse housing action based on such information,[38] and it is generally unlawful to "[i]mplement a blanket ban or categorical exclusion practice" from housing of persons with a criminal history.[39]

Article 24 also provides that practices that consider or use criminal history information for housing transactions violate the FEHA if they cause a discriminatory effect without a legally sufficient justification, constitute intentional discrimination, constitute a discriminatory statement, or relate to specific prohibited practices.[40] As with all disparate impact cases, local jurisdictions must show, among other things, that there is "no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect."[41] Determination of whether there is a feasible alternative to a local jurisdiction's criminal history practice includes consideration of whether the practice provides individuals an opportunity to present mitigating information and requires consideration of such mitigating information prior to taking adverse actions.[42]

IV. Issues for Local Jurisdictions to Review

In summary, as part of its assessment of its Crime-Free Housing Policy, a local jurisdiction should repeal any provisions that would constitute a prohibited practice related to

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City of Buena Park (2005) 126 Cal.App.4th 1, 9 (ordinance that required landlord to initiate eviction or appeal within 10 days of receipt of a notice of violation from the city was in violation of the Due Process Clause), and suggests that the local jurisdiction may not be using a feasible alternative that has a less discriminatory effect, in violation of the FEHA. See Cal. Code Regs., tit. 2, § 12266, subd. (d)(1).

[37] *Id.*, § 12269, subd. (a)(1)-(4).

[38] *Ibid.*

[39] *Id.*, § 12269, subd. (a)(5). The implementing regulations, however, permit compliance with those federal or state laws that require public housing providers to consider an individual's criminal history information for certain offenses. *Id.*, § 12270, subd. (a) (identifying as examples consideration of sex offender status for admission to public housing (42 U.S.C., § 13663, subd. (g)), and methamphetamine offenses for federally assisted housing (24 C.F.R. § 982.553)).

[40] *Id.*, §§ 12265-12269.

[41] *Id.*, § 12266, subd. (c)(4).

[42] *Id.*, § 12266, subd. (d)(1), (3). "[M]itigating information" is information "that suggests that the individual is not likely to pose a demonstrable risk to the achievement of the identified interest," which includes consideration of whether the person was a minor or young adult at the time of a conviction; the amount of time that has elapsed since the conviction; the person's history of being a good tenant; rehabilitation efforts; whether the conduct arose as a result of the person's status as a survivor of domestic violence, sexual assault, dating violence, stalking, or comparable offenses; or whether the conduct arose from the individual's disability. *Id.*, § 12266, subd. (e).

criminal history under Article 24, and consider whether its Policy requires or prohibits conduct by landlords that is unlawful under Article 15. In addition, the local jurisdiction should assess whether any of policies, ordinances, rules, programs, or regulations are inconsistent with AB 1418, and if they are, cease enforcing them immediately. The local jurisdiction should then assess whether its Crime-Free Housing Policy results in a discriminatory effect, and, if so, whether such a policy is warranted. If the jurisdiction decides to pursue such a policy despite its discriminatory impact, the jurisdiction would need to meet the demanding standard set forth above; in short, that the Crime-Free Housing Policy is the only means of furthering a purpose that is so compelling that it overrides the discriminatory impact.

Local jurisdictions should be particularly mindful of the following ways in which Crime-Free Housing Policies may run afoul of state and federal law:

- Using dehumanizing, derogatory, or racially charged or coded language in any local policies and ordinances, including but not limited to any training materials, manuals, and workbooks on Crime-Free Housing Policies;

- Requiring or encouraging housing providers to perform a criminal background check of a tenant or prospective tenant, or imposing a penalty on a housing provider for failure to do so;

- Instructing or encouraging housing providers to adopt screening practices or rental policies under which landlords broadly deny tenancy to applicants with a criminal history or encourage tenants to "screen themselves";

- Requiring, encouraging, or imposing a penalty on a housing provider for failing to evict or penalize a tenant because of the tenant's unlawful conduct or arrest, or contact with a law enforcement agency;

- Initiating evictions, or directing or inducing housing providers to evict tenants based solely on arrests or other interactions with law enforcement;

- Defining as a nuisance, contact with a law enforcement agency or request for emergency assistance;

- Establishing, maintaining, or promising a registry of tenants for the purposes of discouraging a housing provider from renting to a tenant on the registry or excluding a tenant on the registry from rental housing with the local government's jurisdiction;

- Requiring a tenant to obtain a certificate of occupancy as a condition of tenancy;

- Taking adverse actions against tenants who seek law enforcement assistance, or discouraging tenants from seeking such assistance; and

- Limiting the number of parolees in single-room-occupancy facilities.[43]

I am prepared to exercise my authority under the FEHA and California law generally to protect the rights of the State's residents to obtain housing free of discrimination. I urge jurisdictions with Crime-Free Housing Policies to promptly review their Policies in consultation with their attorneys and consistent with the guidance provided in this letter. In addition, and in line with their duty to affirmatively further fair housing,[44] local jurisdictions are encouraged to make this review process inclusive by ensuring the participation of a broad cross-section of their local communities. Local jurisdictions also may choose to adopt policies that are more protective of tenants' rights than provided under California law.[45]

I hope this guidance will support you in ensuring that your local ordinances comply with federal and state fair housing laws and that all people feel welcome to live in your city or county free of discrimination.

Sincerely,

ROB BONTA
Attorney General

[43] Such limits may violate the FEHA by effectively denying housing opportunities on the basis of an adjudication in the juvenile justice system or a prior criminal conviction, as discussed above. There are also "serious questions" as to whether such ordinances serve a "legitimate purpose" as required under the Equal Protection Clauses of the U.S. and California Constitutions. See *Victor Valley Family Res. Ctr. v. City of Hesperia* (C.D. Cal. July 1, 2016) 2016 U.S. Dist. LEXIS 92609, at pp. 14-15.

[44] Gov. Code, § 8899.50, subd. (b); see also 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437c-1(d)(16) (all requiring grant recipients to affirmatively further fair housing as a condition for receiving HUD funding); 86 Fed. Reg. 30,779-93 (June 10, 2021) (HUD restoring affirmatively furthering fair housing requirements).

[45] Cal. Code Regs., tit. 2, § 12271.