

## **Public Officials Responsibilities Under the Fair Housing Act (City of Berkeley)**

The City of Berkeley is committed to affirmatively furthering fair housing and working to ensure that all residents have equal housing opportunities. The following laws direct the City's housing activities.

**The Fair Housing Act** (passed in 1968 and amended in 1988) prohibits discrimination in essentially all housing related activities because of race, color, religions, sex, familial status, national origin or disability.

**Section 504 of the Rehabilitation Act of 1973** prohibits discrimination against people with disabilities, in all federally funded activities including housing that is funded with money passed through state, county or city government.

**The Americans with Disabilities Act (ADA)** (passed in 1990) prohibits discrimination against people with disabilities in all government (city, county, state and federal) activities.

**The California Fair Employment and Housing Act (FEHA)** (amended in 1993) states that:

It is the Legislature's intent to make the following findings and declarations regarding unlawful housing practices prohibited by this act:

- (a) That public and private land use practices, decision, and authorizations have restricted, in residentially zoned areas, the establishment and operation of group housing...
- (b) That persons with disabilities...are significantly more likely than other persons to live with unrelated persons in group housing.
- (c) That this act covers unlawful discriminatory restrictions against group housing for these persons.

It also states that "...Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law...that make housing opportunities unavailable.

Under the FEHA "personal characteristics" include: marital status and ancestry.

**The California Unruh Act** (Civil Code §57 ct. seq.) prohibits arbitrary discrimination in all 'business' activities (even those carried out by a government entity). Protected groups include sexual orientation, age, and 'other personal characteristics'.

**Berkeley Municipal Codes** (13.24, 13.28.040, 13.30.050) prohibit discrimination against families with children, students, based upon sexual orientation or on the fact of having AIDS or associated conditions.

**The First Amendment of the Constitution** protects 'free speech'. So while the residents of Berkeley have a basic right to express their concerns about who may be moving in next door to them or who might benefit from City funds, the City of Berkeley, its staff and representatives, (Planning Commission, etc.) cannot take the personal characteristics of proposed housing residents into consideration in making decisions related to that housing.

For example, when making land use or other housing related decisions, it is not proper for the City Council, City Staff or other City Officials to consider whether residents in a proposed housing project would:

- ❖ Cause lower property values in the area;
- ❖ Increase the crime rate in the neighborhood;
- ❖ Increase the demand for City Services;
- ❖ Result in a concentration of a certain type of people in that area;
- ❖ Be people whom neighbors believe are "incompatible" with the neighborhood.

However, the City Council, City staff and other City officials may consider appropriate land use issues, such as parking, open space, traffic and other government regulated factors which are not based upon the nature of who is going to live in the housing but rather the type of housing that is being proposed and its fiscal viability.