



August 21, 2015

Donna Leong, Corporation Counsel
530 S. King Street, Room 110
Honolulu, Hawai'i 96813
Via e-mail: cor@honolulu.gov

Re: Hale Mauiola RFP – unlawful discrimination against domestic violence victims and persons with disabilities

Dear Ms. Leong:

In June 2015, City & County issued a Request for Proposals (“RFP”) to operate a homeless shelter on Sand Island. Troublingly, the City & County’s RFP requires bidders to discriminate against domestic violence victims and persons with disabilities in violation of federal and state law. Specifically, the RFP provides that the grantee shall serve the homeless, where “homeless” is defined so as to exclude both domestic violence victims and persons with disabilities:

“Homeless” means a person or family who resides n [sic] places not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings (on the street). For the purpose of this RFP, this definition does NOT include persons who already reside in an emergency or transitional shelter, are being discharged from an institution such as a substance abuse treatment facility, **mental health facility**, hospital, or correctional facility, **or is fleeing a domestic violence housing situation**.

Hale Mauiola RFP at 2 (emphases added).

The federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and Hawai'i Revised Statutes (“HRS”) chapter 515, prohibit discrimination in rental housing on the basis of sex. These

statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. Because most domestic violence victims are women, policies and practices that discriminate against victims of domestic violence – such as the outright ban on victims’ access as set forth in the RFP – has an unlawful disparate impact on women.

The United States Department of Housing and Urban Development (“HUD”) issued guidance to its staff in February 2011, alerting them that Fair Housing Act claims could successfully be brought by domestic violence survivors. *See* U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA) 2* (2011), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>. Moreover, courts and agencies considering the question have repeatedly found that housing practices that discriminate against victims of domestic violence unlawfully discriminate on the basis of sex. For instance, in *Bouley v. Young-Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005), a case in which the ACLU Women’s Rights Project appeared first as amicus and then as plaintiff’s counsel, the district court denied defendant’s summary judgment motion in a sex discrimination Fair Housing Act claim, based on plaintiff’s showing that her landlord issued her a notice to quit after her husband assaulted her. Shortly after this ruling, the case settled with an award of damages and attorneys’ fees. Similarly, in a federal case in Oregon litigated by the ACLU Women’s Rights Project, HUD determined that when an apartment management agency takes action against an individual based upon her status as a victim of domestic violence, it discriminates on the basis of sex, because most victims of domestic violence are women. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001). That case resulted in a consent decree, under which the federal government monitored the apartment management corporation for five years to ensure that its practices and policies in relation to victims of domestic violence complied with the Fair Housing Act.

For similar reasons, exclusion of domestic violence survivors from this (or other) City-funded shelters could result in the City’s loss of funding from HUD. The Fair Housing Act requires HUD to “administer [housing] programs ... in a manner affirmatively to further the policies of [the Fair Housing Act],” including the general policy to “provide, within constitutional limits, for fair housing throughout the United States.” 42 U.S.C. § 3608(e)(5). As a recipient of HUD funds, the City has an obligation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.*, the FHA, *see* 42 U.S.C. §§ 3601-3619, and the implementing regulations to affirmatively further fair housing, 42 U.S.C. §5304(b)(2). *See also* Executive Order 12892, § 2-202 (1994) (“[A]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the [Fair Housing] Act”); Executive Order 11063, Nov. 20, 1962, §102; Executive Order 12259, Dec. 31, 1970, §1-202.

As a recipient of Community Development Block Grant (“CDBG”) funding, the City is required to certify that it will affirmatively further fair housing by conducting an analysis to identify impediments to fair housing choice within the municipality and to take appropriate actions to overcome the effects of any identified impediments. 24. C.F.R. §§ 570.601(a)(23);

91.225(a). These regulations “unambiguously impose mandatory requirements on the [recipients] not only to *certify* their compliance with fair housing laws, but actually to *comply*.” See *Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33, 73, 75 (D. Mass. 2002).

Given these precedents, the City’s attempt to exclude domestic violence victims from City-funded housing violates federal and state law. It also exposes the selected contractor to serious legal liability.

In addition, the City should be aware that the federal Violence Against Women Act, 42 U.S.C. § 14043e-11, prohibits housing discrimination against victims of domestic violence, dating violence, stalking, and sexual assault. Many housing providers, such as operators of shelters, are covered by VAWA because they receive federal funds, including through the McKinney-Vento Homeless Assistance Act; when that is the case, they cannot deny shelter to victims of domestic violence. While the RFP is for a shelter that does not receive federal funds, the RFP specifically mandates that the contractor adopt a policy for the Sand Island shelter that is likely to be in conflict with its policies at other programs it operates. The contractor will be forced to engage in discrimination that is or should be inconsistent with its existing policies.

The FHA and Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, likewise prohibit the type of disability-based discrimination proposed by the City’s RFP. 42 U.S.C. § 3604(f)(2) prohibits discrimination in the provision of services or facilities in connection with a dwelling because of a disability. Title II of the ADA “protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.” United States Dept. of Justice, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, http://www.ada.gov/ada_title_II.htm. HRS chapter 515 offers similar protections to persons with disabilities in real estate matters. Wholesale exclusions of individuals who have – or who are perceived to have – mental illnesses violates the FHA, ADA and Hawai‘i law.

We ask that your office take immediate steps to address these discriminatory provisions, and that the City & County ensure that any contract awarded pursuant to this RFP (and all future contracts) make clear that contractors may not discriminate against domestic violence victims and/or persons with disabilities. We ask that your office contact us no later than Friday, September 4, to discuss the remedies we have set forth herein.

Please feel free to contact me at 522-5908 or dgluck@acluhawaii.org. Thank you for your prompt attention to this matter.

Sincerely yours,



Daniel M. Gluck
Legal Director

cc: Louis Erteschik, Hawaii Disability Rights Center

From: Kelly, Kathleen
To: dgluck@acluhawaii.org
Subject: Hale Mauiiola
Date: Monday, September 28, 2015 10:26:19 AM
Attachments: [Hale Mauiiola Special Conditions.pdf](#)

Dan,

This is a preliminary response to the ACLU's letter of August 21, 2015. Attached is a draft of special conditions that will be incorporated into the operating contract for Hale Mauiiola, which we trust will address your concerns.

Please understand that it was always the City's desire to ensure that victims of domestic violence received shelter, services, and security best-suited to their needs and circumstances. It was always the City's intent to situate domestic violence victims more appropriately, not turn them away. However, upon review we have determined that we do not need to except persons fleeing a domestic violence housing situation from the definition of homeless in order to be able to screen them and refer them (or accept them at Hale Mauiiola) appropriately, on a case-by-case basis.

With respect to persons exiting an institution, the revised definition tracks the definition of Homeless adopted in regulations governing U.S. Department of Housing and Urban Development programs (see, e.g., 14 CFR §576.2 (Emergency Solutions Grant Program); 14 CFR §578.3 (Continuum of Care Program)).

Please let me know if you have any remaining concerns.

Regards,
Kathleen

Kathleen A. Kelly
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From: Daniel Gluck [mailto:Dgluck@acluhawaii.org]
Sent: Tuesday, August 25, 2015 10:14 AM
To: Kelly, Kathleen
Subject: RE: Hale Mauiiola

Thank you, Kathleen, and I look forward to hearing from you.

- Dan

From: Kelly, Kathleen [<mailto:kkelly@honolulu.gov>]
Sent: Tuesday, August 25, 2015 9:49 AM
To: Daniel Gluck
Subject: Hale Mauiiola

Dan,

The attached letter conveying the ACLU's concerns regarding the Hale Mauiiola RFP was referred to me. I will look into it and keep you apprised. In the meantime, if you have any questions or wish to discuss this matter, please feel free to contact me.

Regards,
Kathleen

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SPECIAL PROVISIONS

I. DEFINITION OF HOMELESS

The definition of "Homeless" on page 2 of the *Request for Proposals Hale Mauiola*, dated June 2015 and attached at Appendix F hereto, is amended to read as follows:

"'Homeless' means a person or family who resides in places not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings (on the street). 'Homeless' shall also include an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. For purposes of this RFP, this definition does not include persons who already reside in a transitional shelter."

II. CLIENTELE

- a. Notwithstanding anything to the contrary in the Contract Documents, persons fleeing a domestic violence housing situation shall not be deemed ineligible for shelter or services on that basis alone, and shall not be excluded from the definition of "Homeless." Statements in the Contract Documents to the effect that services or shelter shall not be provided to persons fleeing a domestic violence housing situation are hereby stricken and rendered null and void.
- b. Notwithstanding anything to the contrary in the Contract Documents, persons who are being discharged from an institution such as a hospital, mental health facility, or substance abuse treatment facility, under conditions that meet the definition of "Homeless" as amended and set forth above, shall not be deemed ineligible for services at Hale Mauiola solely on the basis that they are exiting an institution. Statements in the Contract Documents to the effect that services shall not be provided to persons being discharged from an institution are hereby superseded to the extent they are inconsistent with the definition of "Homeless" above.
- c. Notwithstanding anything to the contrary in the Contract Documents, persons with children living with them may be deemed eligible for services at Hale Mauiola if, based on consultation with the United States Federal Aviation Administration or the Hawaii State Department of Transportation, it is determined that the noise exposure from nearby airport operations would be at levels acceptable for children. Upon said determination, statements in the Contract Documents to the effect that shelter or services shall not be provided to persons with children living with them, or that an exclusionary criteria for services is that the household contains a minor person under 18 years of age, will automatically be stricken and rendered null and void.