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Landlord Discrimination against Children: Possible Solutions to a Housing Crisis

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LANDLORD DISCRIMINATION AGAINST CHILDREN: POSSIBLE SOLUTIONS TO A HOUSING CRISIS

I. INTRODUCTION

In the recent Los Angeles case of *Marina Point, Ltd. v. Wolfson*,[1] an owner of an "adults only" apartment complex successfully litigated an unlawful detainer action against a married couple after the birth of their child. The landlord based his action on a provision in the apartment lease restricting tenants to persons over seventeen years of age.[2] At the heart of this case is the question of the legality of excluding tenants or applicants with minor children from rental housing accommodations.

California presently has two statutes which prohibit discrimination in housing, the Unruh Civil Rights Act[3] and the Rumford Fair Housing Act.[4] Neither statute expressly prohibits landlords from denying rental

1. No. A 15829 (Culver City Mun. Ct., Los Angeles County, Oct. 21, 1977), *notice of appeal filed*, (Nov. 21, 1977).

2. *Id.* The filing of the unlawful detainer action followed the initiation of Wolfson v. Marina Point, Ltd., No. C 201 284 (Super. Ct., Los Angeles County, filed May 27, 1977), a case filed by Mr. and Mrs. Stephen A. Wolfson on behalf of themselves and their infant son, Adam, as both an individual and class action. The suit sought to obtain a preliminary injunction prohibiting the defendant landlord from evicting the Wolfsons after the birth of their child. It also sought a permanent injunction to prevent the landlord from refusing to rent to, or renew the lease of, the Wolfsons due solely to the presence of their child. In addition, the suit was brought as a class action to challenge the legality of discrimination against children in housing.

The motion for preliminary injunction was denied on June 10, 1977. The class action suit is presently pending in Los Angeles County Superior Court.

3. CAL. CIV. CODE §§ 51-52 (West Supp. 1977). Technically, only § 51 constitutes the "Unruh Civil Rights Act" while § 52 supplies the remedies for its violation. However, the two sections were enacted concurrently and § 52 is generally regarded as part of the Act. *See* 58 OP. CAL. ATT'Y GEN. 608, 612 & n.6 (1975).

CAL. CIV. CODE § 51 states:

> This section shall be known, and may be cited, as the Unruh Civil Rights Act.
>
> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.
>
> This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, or national origin.

4. CAL. HEALTH & SAFETY CODE §§ 35700-35745 (West 1973 & Supp. 1977). The Rumford Fair Housing Act is a comprehensive act designed to eliminate unlawful discrimination in housing. Section 35700, which states the purpose of the Act, provides:

> The practice of discrimination because of race, color, religion, sex, marital status, national origin, or ancestry in housing accommodations is declared to be against public policy.

accommodations to persons with minor children.[5] It is contended by the Wolfson family and their supporters, however, that the scope of these statutes is broad enough to include protection for renters with children.[6] They also contend that in the absence of such statutory protection, the practice of denying rental accommodations to persons with children violates their equal protection and due process rights.[7]

The Wolfsons are currently appealing the unlawful detainer action[8] and are thereby presenting to the California courts a second opportunity to examine the legality of landlord discrimination against children in rental housing. This comment will discuss the three principal areas which must be covered in such an examination: (1) the factual bases underlying the allegations of widespread discrimination in housing against people with minor children; (2) the possible protection against such discrimination provided by the Unruh Civil Rights Act and the Rumford Fair Housing Act; and (3) the constitutional issues raised by the practice of discrimination against children.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

5. CAL. CIV. CODE § 25 (West Supp. 1977) defines the term "minor" as including "all persons under eighteen years of age." The term children will be used throughout this article as incorporating that definition.

6. Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction and Temporary Restraining Order, Wolfson v. Marina Point, Ltd., No. C 201 284 at 11, 31 (Super. Ct., Los Angeles County, filed May 27, 1977) [hereinafter cited as Wolfson Memorandum].

7. *Id.* at 69-80. The Wolfson's equal protection and due process challenges are based on the fourteenth amendment of the United States Constitution and on article I, § 7 of the California Constitution. *Id.* at 49-50, 74. *See also* note 114 *infra*. The Wolfsons allege that there was sufficient state action to raise their constitutional claims since their apartment, located in Marina del Rey, California, was on county-owned property. Wolfson Memorandum, *supra* note 6, at 69-80. The county's acquisition of the land which served as a basis for the creation of Marina del Rey was enabled by legislative enactment and funded by public monies. *Id.* at 65, 72. In leasing this land to private parties, the county "retain[ed] control and rule-making authority over . . . the sub-leases of its lessees." *Id.* at 73. Since the Wolfsons were, in effect, sublessees of the County of Los Angeles, and since their lease with their landlord was subject to all rules and regulations promulgated by the county, *id.*, it may be argued that there was sufficient state involvement to bring that lease within the protection of the state and federal constitutions. *See* notes 125-29 *infra* and accompanying text.

Additionally, the Wolfsons contend that the provision in their lease prohibiting occupancy by a child is in violation of the enabling and funding legislation which created Marina del Rey since children were to be major beneficiaries of the Marina project. *See* Wolfson Memorandum, *supra* note 6, at 65-68. *See also* L.A. Times, Oct. 22, 1977, pt. 1, at 1, col. 4.

8. Marina Point, Ltd. v. Wolfson, No. A 15829 (Culver City Mun. Ct., Los Angeles County, Oct. 21, 1977), *notice of appeal filed*, (Nov. 21, 1977).

II. FACTUAL BASES

It is alleged by the proponents of "fair housing for children,"[9] that in certain portions of Los Angeles County up to 80 percent of the available rental housing accommodations is restricted to "adults only."[10] It is feared that such exclusionary patterns encourage the flight of families from the cities, decrease family oriented neighborhoods and relationships, and further contribute to the decline in the quality of housing available for California's children.[11] The resulting harm cuts across all racial, ethnic, and economic levels,[12] but falls most heavily on low income families.[13]

Although statewide statistics supporting these allegations are not available,[14] local surveys and statistical information do support the allegations that discrimination in rental housing against families with children is widespread in urban centers.[15] Already, both the cities of San Francisco and Berkeley have enacted ordinances prohibiting discrimination against families with children in the rental or leasing of housing accommoda-

9. Several groups in the Los Angeles area have directed their attention to the problem of discrimination in housing based solely on the presence of minor children. Among them are: The Fair Housing Coalition, Toni Tarlau, Founder, Dora Ashford, Director; The Fair Housing Congress of Southern California, Lois Moss, Executive Director; and the Human Relations Commission of Los Angeles, Jesse Mae Beavers, Director.

10. Surveys of rental advertisements in city newspapers, compiled by State Senator David Roberti, reveal that 80% of the advertisements for housing in Santa Monica, California, and 60% of such advertisements for the Los Angeles area specify that children will not be allowed. Surveys taken of newspapers in San Jose and Fresno show a figure closer to 50%. L.A. Times, Jan. 28, 1978, pt. 2, at 1, col. 2. *See also* notes 19-21 *infra* and accompanying text.

11. SAN FRANCISCO, CAL., MUN. CODE pt. II, ch. VIII, art. 1.2, § 100 (1975); Berkeley, Cal., Ordinance 4835-N.S., § 1 (Dec. 25, 1975). *See* State Senator D. Roberti, News Release No. 32 (Feb. 23, 1977) (alleging *inter alia* that "arbitrary age limits in rental housing are forcing children to grow up in overcrowded, dilapidated, unsafe neighborhoods."). *Id.* at 1.

12. *See* materials cited note 11 *supra*.

13. Berkeley, Cal., Ordinance 4835-N.S., § 1 (Dec. 25, 1975); State Senator D. Roberti, News Release No. 32 at 1, 2 (Feb. 23, 1977).

14. Interview with Stephen A. Wolfson and Eugene Gratz, attorneys, in Los Angeles, California (Jan. 4, 1978). Telephonic interviews with Michael Woo, Administrative Assistant to State Senator David A. Roberti, Sacramento, California (Jan. 3, 1978, Dec. 16, 1977, Nov. 30, 1977). Telephonic interview with personnel of the California Real Estate Association (Dec. 27, 1977). Telephonic interview with Lois Moss, Executive Director, Fair Housing Congress of Southern California, Los Angeles, California (Dec. 27, 1977). Telephonic interview with personnel of the Human Relations Committee of Los Angeles, California (Dec. 28, 1977). Each interviewee confirmed that no statewide statistics have yet been compiled.

15. *See* note 10 *supra* and accompanying text; notes 19-21 *infra* and accompanying text.

tions.[16] The ordinances are based on findings that "the existence of such discrimination poses a substantial threat to the health and welfare of a sizable segment of the community, namely families with minor children."[17] Those cities also found that a shortage of housing suitable for families with children and a low vacancy rate in rental housing, when combined with discrimination against families with children, created an "untenable situation for the children."[18]

The statistics for the Los Angeles area indicate a situation similar to that existing in San Francisco and Berkeley prior to their passing protective ordinances. In late 1977, the vacancy rate for rental units in the City of Los Angeles was only 2.5 to 3.5 percent.[19] Assuming, as noted above, that 60 to 80 percent of the apartments in Los Angeles County exclude minor children as tenants,[20] the vacancy rate for persons with children could have been as low as .5 percent and was no higher than 1.4 percent. Yet other surveys indicate that during this same period, 53 percent of the families with minor children who rented their housing were inadequately housed.[21] The result is that not only were a majority of such families inadequately housed, but the lack of suitable housing available to them has prohibited any amelioration of the problem.

In reaction to these surveys and the possible detrimental effects of discrimination against children, legislation was introduced in the 1977-1978 session of the California Legislature to amend the Unruh Civil Rights Act.[22] Had it been adopted, the proposed amendment would have

16. SAN FRANCISCO, CAL., MUN. CODE pt. II, ch. VIII, art. 1.2 (1975); Berkeley, Cal., Ordinance 4835-N.S. (Dec. 25, 1975). With minor exceptions, the two ordinances contain identical provisions.

17. SAN FRANCISCO, CAL., MUN. CODE pt. II, ch. VIII, art. 1.2, § 100 (1975); Berkeley, Cal., Ordinance 4835-N.S., § 1 (Dec. 25, 1975) (relevant language identical).

18. *See* authorities cited note 17 *supra*.

19. Los Angeles Dep't of Water & Power, Power Serv. Div. Individually Metered Apartment Vacancy Survey (Oct. 8, 1977). *See* Appendix A, Tables I-II.

20. *See* note 10 *supra* and accompanying text.

21. Southern California Association of Governments, Regional Housing Allocation Model, Supplemental Staff Report on Inadequately Housed Families with Children at 2 (Sept. 1977). The Supplemental Staff Report defines "inadequately housed" as: (1) paying more than 25% of gross income for gross housing payments; or (2) "overcrowding"—having more than 1.01 persons per room; or (3) living in a substandard or dilapidated housing unit. *Id.* at 1.

22. S.B. 359, Cal. Legis., 1977-78 Reg. Sess. (introduced Feb. 23, 1977). Introduced by Senators David A. Roberti and Peter H. Behr, the bill was defeated in the Senate Local Government Committee on May 9, 1977, by a vote of five to two. Cal. S. Weekly Hist. 211 (Feb. 2, 1978). The bill was reconsidered in 1978 and was passed by the committee and sent to the senate floor. *Id.* On January 27, 1978, it was defeated on the senate floor by a vote of 17 to 17, four votes short of the number needed for passage. L.A. Times, Jan. 28, 1978, pt. 2, at 1, col. 1.

specifically prohibited discrimination against persons with minor children with respect to the rental or leasing of any housing accommodation as well as prohibiting the advertisement or notice of any preference based on the potential tenancy of a minor child.[23]

Although presenting a remedy to the problem, the introduction of such legislation is not necessary if the present scope of the Unruh Civil Rights Act is interpreted as affording protection to such persons. An examination of California Supreme Court case law regarding the Unruh Act indicates a broad scope to the Act's protection which provides the courts with an immediate solution to the problem of discrimination against children in housing.

III. THE SCOPE AND APPLICABILITY OF THE UNRUH CIVIL RIGHTS ACT

The Unruh Act,[24] which was an amendment to the earlier California Civil Rights Act, provides that it shall be unlawful for any "business establishment" to discriminate on the basis of "sex, race, color, religion, ancestry, or national origin."[25] Since its inception, the Unruh Act

23. S.B. 359, Cal. Legis., 1977-78 Reg. Sess. (as amended in Senate, Jan. 17, 1978). In light of the defeat of S.B. 359, *see* note 22 *supra*, Senator Roberti has introduced a new bill which prohibits landlord discrimination against tenants or prospective tenants on the basis of age. S.B. 1688, Cal. Legis., 1977-78 Reg. Sess. (introduced Mar. 9, 1978). Rather than amending the Unruh Civil Rights Act, S.B. 1688 would add §§ 37200-37208 to the California Health and Safety Code. Like S.B. 359, S.B. 1688 would not apply to housing accommodations designed and operated solely for senior citizens, retirees or their spouses, "senior citizen" being defined as a person 60 years of age or older. Also specifically exempted are (1) mobile home parks, as defined by § 18214 of the Health and Safety Code, and (2) dormitories owned and operated by public or private colleges or universities which are designed exclusively for use by single or unmarried students. S.B. 1688, Cal. Legis., 1977-78 Reg. Sess. (introduced Mar. 9, 1978).

Unlike S.B. 359, S.B. 1688 allows a landlord, as an affirmative defense, "to establish that the housing accommodation is unsafe for a person of the plaintiff's age." *Id.* It would therefore be possible for a landlord to exclude children if he could prove that the facilities provided were unsafe for minors. *Cf.*, 58 OP. CAL. ATT'Y GEN. 608, 613 (1975) (impliedly recognizing that while the Unruh Act prohibits arbitrary discrimination by landlords against children, refusal to rent to a family with children would be proper where motivated by interests of health and safety).

If S.B. 1688 were passed, California would join six other states which prohibit, in some form, discrimination in rental policies and procedures against families with children. ARIZ. REV. STAT. § 33-1317 A (Supp. 1977-1978); DEL. CODE tit. 25, § 6503 (1974); ILL. ANN. STAT. ch. 80, §§ 37-38 (Smith-Hurd 1966 & Supp. 1977); MASS. GEN. LAWS ANN. ch. 151B, § 4 (11) (West Supp. 1977); N.J. STAT. ANN. § 2A:170-92 (West 1971); N.Y. REAL PROP. LAW §§ 236-237 (McKinney 1968). For a comparison of the provisions of each state, see O'Brien & Fitzgerald, *Apartment for Rent—Children Not Allowed: The Illinois Children In Housing Statute—Its Viability and a Proposal for Its Comprehensive Amendment*, 25 DE PAUL L. REV. 64 (1975) [hereinafter cited as O'Brien].

24. CAL. CIV. CODE §§ 51-52 (West Supp. 1977).

25. *Id.* § 51. For text of the Unruh Act, see note 3 *supra*.

has been liberally construed. In the early case of *Burks v. Poppy Construction Co.*,[26] the California Supreme Court held that the Act used the term "business establishments" in "the broadest sense reasonably possible,"[27] and subsequent cases have held that a landlord renting residential units operates a "business establishment" within the meaning of the Act.[28]

The Unruh Act has also been interpreted as applying to forms of discrimination other than those it specifically enumerates. In *In re Cox*,[29] the supreme court was faced with the exclusion of an individual from a shopping center solely on the ground of his association with a person of "unconventional" appearance.[30] Based upon the statutory predecessors to the Unruh Act,[31] the court determined that although that Act had been

26. 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962) (developer of housing tract was operating a "business establishment" within the meaning of the Unruh Act).

27. *Id.* at 468, 370 P.2d at 316, 20 Cal. Rptr. at 612. *See* Vargas v. Hampson, 57 Cal. 2d 479, 370 P.2d 322, 20 Cal. Rptr. 618 (1962) (Unruh Act applies to real estate transactions); Lee v. O'Hara, 57 Cal. 2d 476, 370 P.2d 321, 20 Cal. Rptr. 617 (1962) (Unruh Act applies to real estate brokers).

28. Newby v. Alto Riviera Apartments, 60 Cal. App. 3d 288, 300, 131 Cal. Rptr. 547, 555 (1976) (landlord renting residential units is operating a "business establishment" within the meaning of the Unruh Act); Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 703, 98 Cal. Rptr. 644, 645 (1971) ("An apartment complex is a business enterprise within the meaning of sections 51 and 52 [of CAL. CIV. CODE]."); Swann v. Burkett, 209 Cal. App. 2d 685, 694-95, 26 Cal. Rptr. 286, 292 (1962) (person renting the units of a "triplex" operated a "business establishment"). *Cf.* Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962) (developer of housing tract was operating a "business establishment" within the meaning of the Unruh Act).

The California Attorney General has opined that the "scope of coverage of [the Unruh Act] would include an owner of a triplex, an owner of a duplex, or even an owner of a non-owner occupied single family dwelling who sells, rents, or leases it for income or gain." 56 OP. CAL. ATT'Y GEN. 546, 551 (1973). *But see* Hill v. Miller, 64 Cal. 2d 757, 759, 415 P.2d 33, 34, 51 Cal. Rptr. 689, 690 (1966) (nonapplicability of Unruh Act to eviction from single family dwelling on account of race); Abstract Inv. Co. v. Hutchinson, 204 Cal. App. 2d 242, 255, 22 Cal. Rptr. 309, 317 (1962) ("[N]ot all persons who rent their property to others can be held to operate business establishments."). *See generally* Note, *Sex Discrimination in Housing*, 10 LOY. L.A.L. REV. 820, 841-43 (1977).

29. 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970).

30. *Id.* at 210, 474 P.2d at 994, 90 Cal. Rptr. at 26. Cox had petitioned for a writ of habeas corpus after being arrested in a shopping center for violation of the San Rafael Municipal Code. He had arrived at the shopping center on his father's motorcycle and was talking to a young man who wore long hair and dressed in what the court termed an "unconventional manner" when a security officer approached and ordered both youths to leave the premises. Petitioner informed the guard that he intended to make a purchase and as he and his friend were about to do so, the guard again ordered them to leave. A discussion ensued as to the guard's legal authority to eject them without giving a reason. The police were eventually called and petitioner and his companion were arrested.

31. The Unruh Act was enacted in 1959 as an amendment to California's earlier civil rights statute which had been first codified in 1897. The 1897 legislation provided that "all citizens within the jurisdiction of this State shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels . . . and all other places of public accommodation or amusement." Law of Mar. 13, 1897, ch. 108, § 1,

passed primarily to prohibit racial discrimination, its history and language disclosed a "clear and large design to interdict *all* arbitrary discrimination by a business enterprise."[32]

In reaching this conclusion, the court examined two cases decided under the prior Civil Rights Act, *Orloff v. Los Angeles Turf Club, Inc.*,[33] and *Stoumen v. Reilly*.[34] In *Orloff*, the supreme court held that a race track manager could not exclude a patron alleged to be a "known" bookmaker based upon his reputation as a man of immoral character.[35] Absent evidence that the patron had engaged in some form of unlawful conduct while at the race track, the Civil Rights Act prohibited his exclusion.[36] *Stoumen* was interpreted by *Cox* as supporting a similar proposition: that under the Civil Rights Act, homosexuals are entitled to equal access to bars and restaurants and cannot be excluded as long as they do not conduct themselves in an immoral or illegal manner.[37]

[1897] Cal. Stats. 137. In 1919, the statute was broadened to include public conveyances within its protection, Law of May 5, 1919, ch. 210, § 1, [1919] Cal. Stats. 309, and in 1923 it was extended to "places where ice cream or soft drinks of any kind are sold for consumption on the premises." Law of May 28, 1923, ch. 235, § 1, [1923] Cal. Stats. 485. The Unruh amendment broadened the statute's scope by replacing the term "places of public accommodation or amusement" with the phrase "all business establishments of every kind whatsoever." Law of Jul. 16, 1959, ch. 1866, § 1, [1959] Cal. Stats. 4424. As noted by the court in *In re* Cox, the legislature in 1961 substituted "all persons" for "all citizens" to further broaden the applicability of the Act. 3 Cal. 3d at 216, 474 P.2d at 999, 20 Cal. Rptr. at 31, *citing* Law of Jul. 6, 1961, ch. 1187, § 1, [1961] Cal. Stats. 2920. For a complete review of the statutory history of the civil rights statutes in California, see Klein, *The California Equal Rights Statutes in Practice*, 10 STAN. L. REV. 253 (1958).

32. 3 Cal. 3d at 212, 474 P.2d at 995, 90 Cal. Rptr. at 27 (emphasis added).

33. 36 Cal. 2d 734, 227 P.2d 449 (1951).

34. 37 Cal. 2d 713, 234 P.2d 969 (1951).

35. 36 Cal. 2d at 741, 227 P.2d at 454.

36. *Id.*

37. *In re* Cox, 3 Cal. 3d at 213, 474 P.2d at 997, 90 Cal. Rptr. at 29. Actually, the primary question involved in *Stoumen* was whether the State Board of Equalization could suspend a liquor license on the basis that the licensed premises was frequented by homosexuals. Stoumen v. Reilly, 37 Cal. 2d 713, 715, 234 P.2d 969, 970 (1951). The case has, however, been repeatedly cited for the proposition that proprietors of bars cannot categorically exclude homosexuals. *In re* Cox, 3 Cal. 3d at 213, 474 P.2d at 997, 90 Cal. Rptr. at 29; Newby v. Alto Riviera Apartments, 60 Cal. App. 3d 288, 300, 131 Cal. Rptr. 547, 555 (1976); 59 OP. CAL. ATT'Y GEN. 223, 224 (1976); 59 OP. CAL. ATT'Y GEN. 70, 71 (1976); 58 OP. CAL. ATT'Y GEN. 608, 611 (1975).

While the *Stoumen* holding was based on § 58 of the Alcoholic Beverage Control Act, Law of Jun. 13, 1935, ch. 330, § 58, [1935] Cal. Stats. 1150, the court was aided in its interpretation of that section by the Civil Rights Act. In this respect, its analysis is particularly relevant to the present discussion of the scope of the Unruh Act.

In *Stoumen*, the State Board of Equalization alleged that the presence of homosexuals made the defendant's bar a "disorderly house . . . to which people resort for purposes which are injurious to the public morals . . .," Law of Jun. 13, 1935, ch. 330, § 58, [1935] Cal. Stats. 1150, thus requiring indefinite suspension of the bar's liquor license. 37 Cal. 2d at 715, 234 P.2d at 970. It was in rejecting this premise that the supreme court stated:

Cox then held that the enactment of the Unruh Act, which amended the Civil Rights Act and for the first time enumerated particular types of discrimination, was not intended to limit the scope of discrimination previously found arbitrary by these earlier decisions.[38] The court could find no legislative intent "to deprive citizens in general of the rights declared by the statute and sanctioned by public policy."[39] The court therefore held that the specified kinds of discrimination are "illustrative, rather than restrictive, indicia of the type of conduct condemned."[40]

Since the grounds for discrimination specified in the Unruh Act are illustrative rather than restrictive and since the intent of the Unruh Act is, as the *Cox* court indicates, to prevent all arbitrary discrimination, it is within the courts' power to determine that additional forms of discrimination are prohibited by the Act. If discrimination against children is found to be arbitrary, such discrimination can properly be proscribed by the courts as a violation of the Unruh Act.[41]

Determination of whether a particular exclusionary practice constitutes an arbitrary form of discrimination depends upon whether the practice can be termed a "reasonable deportment regulation."[42] According to the court in *Cox*, a businessman is not required to tolerate the conduct of customers which injures others, damages property or otherwise disrupts

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Members of the public of lawful age have a right to patronize a public restaurant and bar so long as they are acting properly and are not committing illegal or immoral acts; the proprietor has no right to exclude or eject a patron "except for good cause," and if he does so without good cause he is liable in damages. (See [the Civil Rights Act] Civ. Code §§ 51, 52.)

37 Cal. 2d at 716, 234 P.2d at 971. The court also emphasized that § 58 of the Alcoholic Beverage Control Act referred to conduct and that "it would be necessary to read something into that section before it could be construed as an attempt to regulate mere patronage by any particular class of persons without regard to their conduct on the premises. (*Cf. Orloff v. Los Angeles Turf Club, Inc.*)." 37 Cal. 2d at 716, 234 P.2d at 971 (citation deleted). The clear implication of *Stoumen*'s citations to the Civil Rights Act and *Orloff* in its interpretation of § 58 is that discrimination on the basis of membership in a class, as opposed to conduct of the individual, is violative of the Civil Rights Act. Such an interpretation is consistent with later court decisions interpreting the Unruh Act. *See* notes 69-71 *infra* and accompanying text.

38. 3 Cal. 3d at 215, 474 P.2d at 998, 90 Cal. Rptr. at 30. The *Cox* court stated: "Without the most cogent and convincing evidence, a court will never attribute to the Legislature the intent to disregard or overturn a sound rule of public policy." *Id.* (quoting Interinsurance Exch. of Auto. Club v. Ohio Cas. Ins. Co., 58 Cal. 2d 142, 152, 373 P.2d 640, 645, 23 Cal. Rptr. 592, 597 (1962)).

39. 3 Cal. 3d at 215, 474 P.2d at 998, 90 Cal. Rptr. at 30.

40. *Id.* at 212, 474 P.2d at 995, 90 Cal. Rptr. at 27.

41. *See* 58 OP. CAL. ATT'Y GEN. 608, 611 (1975) (Unruh Act could properly prohibit discrimination in the sale or rental of real property where such discrimination was based solely on the number of children of an applicant and resulted in an arbitrary denial of housing accommodations).

42. *In re* Cox, 3 Cal. 3d 205, 217, 474 P.2d 992, 999, 90 Cal. Rptr. 24, 31 (1970).

business.[43] He may therefore establish reasonable regulations to prohibit such conduct. As long as the regulations are "rationally related to the services performed and the facilities provided,"[44] they will not be a type of arbitrary discrimination prohibited by the Unruh Act.[45]

As in the earlier cases of *Orloff*[46] and *Stoumen*,[47] the court in *Cox* recognized individual misconduct as a grounds for expulsion from a business establishment but condemned exclusions based solely on group characteristics or associations.[48] The exclusion of children, based upon the assumed characteristics of *all* children, would therefore seem to be a type of discrimination prohibited by the Act.

To date, only one California appellate decision has directly addressed the applicability of the Unruh Act to discrimination against children in rental housing. In *Flowers v. John Burnham & Co.*,[49] the Fourth District Court of Appeal upheld a landlord's right to exclude, by termination of a rental agreement, tenants with male children over five years of age.[50] While the court appears to analyze the restriction in terms of the Unruh Act, its precise reasoning for sustaining the restriction is unclear. The opinion suggests two possible bases for its holding, neither of which is consistent with the supreme court's rationale in *Cox*.

The first possible basis is that the Unruh Act prohibits only those forms of discrimination enumerated in the Act. This interpretation follows from the *Flowers* court's discussion of whether a landlord's right to terminate a lease under California Civil Code section 1946[51] is limited by the Unruh

43. *Id.*

44. *Id.*

45. In *Cox*, the court found that in the absence of findings of fact from the trial court, it could not determine whether there had been such a reasonable basis for excluding the petitioner (Cox). *Id.* at 217, 474 P.2d at 1000, 90 Cal. Rptr. at 32.

46. 36 Cal. 2d 734, 227 P.2d 449 (1951).

47. 37 Cal. 2d 713, 234 P.2d 969 (1951).

48. 3 Cal. 3d at 217-18, 474 P.2d at 1000, 90 Cal. Rptr. at 32.

49. 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971).

50. The Flowers had four children, two girls, ages one and three, and two boys, ages eight and ten. Shortly after they moved into the 100-unit apartment complex owned by defendant, they were given a 30-day notice to quit which gave no reason for terminating their month-to-month tenancy. The Flowers alleged that they were given notice only because they had male children over five years. They alleged in their complaint for damages a violation of their civil rights under the Unruh Act, "denial of the equal protection of the laws, deprivation of Fifth and Fourteenth Amendment rights, deprivation of California Constitution, Article I, Section 13 rights and deprivation of other rights, including the exercise of parental and marital rights conferred by California laws." *Id.* at 701-02, 98 Cal. Rptr. at 644. On appeal, the court affirmed the lower court's order sustaining defendant's general demurrer without leave to amend as to the causes of action alleging such discrimination. *Id.* at 703, 98 Cal. Rptr. at 645.

51. CAL. CIV. CODE § 1946 (West Supp. 1977) provides that, "as to tenancies from

Act. The court noted that since section 1946 "applies equally to 'persons of every color, race, religion, ancestry, or national origin' "[52] and that since "[n]one of these factors is the discrimination of which plaintiffs complain . . . ,"[53] the Unruh Act was not violated. The implication of this discussion—that the Unruh Act is limited in its application to those forms of discrimination enumerated in the Act—is in direct conflict with the supreme court's holding in *Cox* and is therefore not a valid justification for upholding the landlord's restriction.[54]

The second possible basis suggested by the *Flowers* decision is that discrimination against tenants with male children is not arbitrary since the "independence, mischievousness, boisterousness and rowdyism" of children vary by age and sex.[55] This interpretation of the *Flowers* opinion is difficult to reconcile with the holding in *Cox* for two reasons. First, in *Cox* the supreme court stated that a deportment regulation by a business establishment will be arbitrary unless "rationally related to the services performed and the facilities provided."[56] Yet the *Flowers* court conspicuously fails to analyze how the exclusion of male children was rationally related to the services performed or facilities provided by the defendant landlord.[57]

Second, and more importantly, the court in *Flowers* upheld as reasonable the prohibition of an entire class of persons based upon the *presumed* characteristics of the members of that class. This is not the

month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof . . . ."

52. 21 Cal. App. 3d at 702, 98 Cal. Rptr. at 645.

53. *Id.*

54. The confusion as to whether *Flowers* intended to base its holding on a narrow construction of the scope of the Unruh Act is shared by the California Attorney General. In response to a request as to whether the Unruh Act prohibits forms of discrimination other than those specifically enumerated, the Attorney General stated:

> In referring to Civil Code section 1946, the court in *Flowers* stated that this section "applies equally to 'persons of every color, race, religion, ancestry, or national origin.' " This analysis of the court would seem to indicate a limiting application of the Act to the enumerated kinds of discrimination. If this is what the court did, it would be inconsistent with *In re Cox*.

58 OP. CAL. ATT'Y GEN. 608, 612 (1975).

55. 21 Cal. App. 3d at 703, 98 Cal. Rptr. at 645. The Unruh Act was amended in 1974 to include sex as a specifically prohibited form of discrimination. Law of Sept. 23, 1974, ch. 1193, § 1, [1974] Cal. Stats. 2568. However, at the time of the *Flowers* decision sex was not enumerated in the Unruh Act. Both the First District Court of Appeal in Newby v. Alto Riviera Apartments, 60 Cal. App. 3d 288, 301, 131 Cal. Rptr. 547, 556 (1976), and the California Attorney General have stated that the reasonableness of the limitation upheld in *Flowers* might be questioned today in light of this amendment. 58 OP. CAL. ATT'Y GEN. 608, 612 (1975).

56. 3 Cal. 3d at 217, 474 P.2d at 999, 90 Cal. Rptr. at 31.

57. *But see* note 67 *infra*.

type of regulation considered reasonable by *Cox*. *Cox* allows regulations of *conduct*; a business establishment may restrict the kinds of conduct engaged in by its patrons. But *Cox* does not provide for the exclusion of patrons merely because such patrons *may* act in a certain manner while on the business premises.

Flowers' approval of class prohibition is also contrary to the supreme court's reasoning in *Stoumen v. Reilly*.[58] As noted above, *Stoumen* held that a business establishment could not bar homosexuals simply because of their status as homosexuals. Absent some unlawful or immoral conduct by the person to be excluded, his exclusion based upon membership in a class was arbitrary.[59] The same rationale should be applied to children. A general prohibition against children, based upon the presumption that they have certain characteristics which are undesirable in apartment house tenants, excludes those children who do not have those characteristics. Such a restriction is not a reasonable deportment regulation; it is, rather, an arbitrary form of discrimination prohibited by the Unruh Act.

The *Flowers* court's failure to properly examine the validity of the alleged discrimination becomes more apparent when that decision is contrasted with the First District Court of Appeal's opinion in *Newby v. Alto Riviera Apartments*.[60] In that case, the court was again faced with a landlord-tenant situation but, unlike *Flowers*, closely examined whether the landlord's eviction of a tenant was "reasonable" under the Act.[61] *Newby* involved a plaintiff tenant who sought statutory damages under the Unruh Act alleging that she had been arbitrarily discriminated against by her landlord. The plaintiff contended that she had been served with a notice to quit solely because of her organizing activities as a tenants' rights activist.[62] After noting that the landlord operated a business establishment within the meaning of the Unruh Act,[63] *Newby* reiterated the supreme court's holding that the Act's enumeration of specific bases of discrimination is illustrative rather than restrictive, and reaffirmed that

58. 37 Cal. 2d 713, 234 P.2d 969 (1951).

59. *See* notes 34-37 *supra* and accompanying text.

60. 60 Cal. App. 3d 288, 131 Cal. Rptr. 547 (1976).

61. *Id.* at 299-302, 131 Cal. Rptr. at 554-57.

62. *Id.* at 300, 131 Cal. Rptr. at 555.

63. *Id., citing as authority* Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971); Swann v. Burkett, 209 Cal. App. 2d 685, 26 Cal. Rptr. 286 (1962). *But see* Hill v. Miller, 64 Cal. 2d 757, 759, 415 P.2d 33, 34, 51 Cal. Rptr. 689, 690 (1966) (holding that the rental of a landlord's single family dwelling did not involve a "business establishment" under the Unruh Act).

the legislative intent behind the Act was "to prohibit *all* arbitrary discrimination by business establishments."[64]

Following the lead of *In re Cox*,[65] the court recognized that a landlord can impose restrictions as to the acceptable conduct of his tenants as long as the restrictions are "rationally related to the facilities provided."[66] The court found that the landlord of the Alto Riviera Apartments had an economic interest in promoting a "quiet and peaceful environment free from the threat of rent strikes and . . . [in preventing] tenants from organizing to protest rent increases."[67] When the plaintiff began to take

64. 60 Cal. App. 3d at 300, 131 Cal. Rptr. at 555 (emphasis in original). In noting that the Unruh Act applied to "arbitrary" forms of discrimination in addition to race, the *Newby* court relied upon *In re* Cox, 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970); Stoumen v. Reilly, 37 Cal. 2d 713, 234 P.2d 969 (1951); Orloff v. Los Angeles Turf Club, Inc., 36 Cal. 2d 734, 227 P.2d 449 (1951); and Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971). 60 Cal. App. 3d at 299-300, 131 Cal. Rptr. at 555.

65. 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970).

66. 60 Cal. App. 3d at 301, 131 Cal. Rptr. at 556. The *Newby* court stated that in exercising those controls a landlord "might reasonably impose more stringent standards than an owner of a business establishment more open to the public." *Id.* at 300-01, 131 Cal. Rptr. at 556. Although the court in *Newby* did not clearly articulate the underlying rationale of this premise, it appears to be based on the existence of an on-going relationship between a landlord and his individual tenants—a relationship which is not as prevalent in the more public setting of a shopping center. Because of this, a landlord may be more selective as to the individual tenants with whom he chooses to deal. However, it would not be consistent with the *Cox* opinion to extend this to include the right to categorically exclude members of an entire class.

67. *Id.* at 301, 131 Cal. Rptr. at 556. In reaching this conclusion, the court cites with approval Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971). While, as noted, the basis for the *Flowers* holding is unclear, *see* notes 51-55 *supra* and accompanying text, the *Newby* court presumed that the court in *Flowers* had similarly upheld that landlord's restrictions on the grounds that a landlord could take measures rationally related to the prevention of property damage as well as the promotion of a quiet and peaceful environment for the other tenants. 60 Cal. App. 3d at 301, 131 Cal. Rptr. at 556. However, to the extent that *Newby* suggests that prohibition of a class based upon the presumed characteristics of the members of that class, does not violate the Unruh Act, it must be disregarded. *See* notes 32-49, 58-60 *supra* and accompanying text; notes 69-71 *infra* and accompanying text.

The California Attorney General has also interpreted *Flowers* as suggesting that a landlord may discriminate on the basis of sex and age in order to protect his property interests and the right of other tenants to a peaceful environment. 59 OP. CAL. ATT'Y GEN. 70, 72 (1976). However, the Attorney General did not apply the *Flowers* rationale in addressing whether businesses plagued with shoplifting and vandalism could, consistent with the Unruh Act, exclude students from their premises. Instead, he applied the holdings of *Cox*, *Orloff*, and *Stoumen* when he stated:

> Specific problems of shoplifting, loitering, vandalism and harassment of other customers of which these business establishments complain, do not necessarily relate to the characteristics of young people or students.
>
> To the extent that acts of shoplifting, loitering, vandalism and harassment occur they are generally subject to and should be dealt with under applicable criminal statutes and local ordinances. In cases where a particular store is repeatedly burdened with acts of this type, a store may lawfully impose deportment regulations and other

action to organize other tenants for a possible rent strike she interfered with that interest. The landlord's subsequent service of notice to quit on the plaintiff was therefore not unreasonable.[68]

As a result of its analysis, the court did not find arbitrary discrimination on the facts before it. It found instead that the eviction of the tenant had a rational basis unrelated to any discrimination against all tenants' rights activists as a group or class. By isolating a legitimate business interest which was "rationally related to the facilities provided," (maintaining a quiet environment free from the threat of rent strikes) and by determining that the evicted tenant had directly interfered with that interest, the court could properly conclude that the landlord's action did not constitute arbitrary discrimination.

The *Newby* holding that a landlord may take reasonable steps to protect his property and maintain a peaceful environment for his tenants is clearly consistent with earlier supreme court decisions. As the court said in *Cox*, the Unruh Act's prohibition against arbitrary discrimination does "not imply that the [business] establishment may never insist that a patron leave the premises."[69] A landlord may properly "promulgate reasonable deportment regulations,"[70] and terminate the tenancy of any individual whose conduct violates those regulations. But what the supreme court has yet to uphold is the exclusion of an entire class on the basis that its members have characteristics deemed undesirable by the business enterprise.[71]

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reasonable restrictions on store use, *applicable to all patrons* and may eject or refuse admittance to those individuals who fail to comply with them.

Id. at 73 (emphasis in original).

68. 60 Cal. App. 3d at 301-02, 131 Cal. Rptr. at 556. The court also held that the landlord's eviction of the plaintiff, because she was a "ringleader" in a threatened rent strike, was not unlawful as a retaliatory eviction because it was not in response to her objection to the "habitability" of the landlord's housing. *Id.* at 293, 131 Cal. Rptr. at 550. *See* CAL. CIV. CODE § 1942.5 (West 1970).

69. 3 Cal. 3d at 217, 474 P.2d at 999, 90 Cal. Rptr. at 31.

70. *Id.*

71. *See In re* Cox, 3 Cal. 3d 205, 474 P.2d 992, 90 Cal. Rptr. 24 (1970); Stoumen v. Reilly, 37 Cal. 2d 713, 234 P.2d 969 (1951). In *Cox*, the supreme court emphasized that a "shopping center may . . . [not] exclude individuals who wear long hair or unconventional dress, who are black, who are members of the John Birch Society, or who belong to the American Civil Liberties Union, *merely because of these characteristics or associations* . . . ." 3 Cal. 3d at 217-18, 474 P.2d at 1000, 90 Cal. Rptr. at 32 (footnotes omitted) (emphasis added). In a similar vein, the California Attorney General has stated that arbitrary discrimination based on age and/or student status is prohibited by the Unruh Act. Although "a business establishment is permitted to establish regulations for the use of its premises by patrons . . .," 59 OP. CAL. ATT'Y GEN. 70, 71-72 (1976), the Attorney General has opined that "a blanket exclusion of or other restriction upon students and persons of certain ages by convenience stores and fast food outlets would [not] be permitted under the Act." *Id.*

The exclusion of children from rental housing seems to violate the very essence of the Unruh Act. The purpose of the Unruh Act is to protect the civil rights of all persons in California by discouraging class discrimination.[72] Such discrimination has particularly harsh results when practiced by the rental housing industry. In *Burks v. Poppy Construction Co.*,[73] the California Supreme Court described the effects of class discrimination in housing as leading "to lack of adequate housing for minority groups . . . and inadequate housing conditions contribute to disease, crime, and immorality."[74] As described above, the practice of landlord discrimination against renters with children is widespread and there is presently evidence that many families with children are inadequately housed.[75]

It has been argued, however, that landlords have a right to choose their own tenants and that this includes the right to restrict rental housing to "adults only."[76] While a landlord may have a greater interest in choosing his tenants than a store owner in choosing his patrons,[77] that interest must be balanced against the public's interest in insuring adequate housing for its children. Under the power to promote the health and welfare of its citizens, the state may place restrictions on business enterprises.[78] In holding that the Unruh Act applies to developers of

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72. *See generally* Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962).

73. 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962).

74. *Id.* at 471, 370 P.2d at 317, 20 Cal. Rptr. at 613.

75. *See* notes 10, 21 *supra* and accompanying text.

76. O'Brien, *supra* note 23, at 79. The authors of this article conducted an extensive survey of landlords and tenants in Chicago and nearby suburbs along with an analysis of newspaper information regarding rental housing, to determine the effectiveness of Illinois' children in housing statute. The statute prohibits refusal to rent to persons or families with young children and eviction of tenants because of the existence of a child under 14 years of age. One of four reasons found for landlords discriminating against children in the advertising of available apartments was that a landlord has a right to select his tenants. *See* note 66 *supra*. The other three reasons were: (1) the apartments were too small to adequately accommodate children; (2) the conditions in the building or apartment posed a threat to a child's safety; and (3) landlords did not wish to risk possible destruction of property. O'Brien, *supra* note 23, at 79. *See also* 58 OP. CAL. ATT'Y GEN. 608, 613 (1975) (impliedly recognizing that while the Unruh Act prohibits arbitrary discrimination by landlords against children, refusal to rent to a family with children would be proper where motivated by interests of health and safety).

77. *See* note 66 *supra*.

78. Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 471, 370 P.2d 313, 317, 20 Cal. Rptr. 609, 613 (1962). *See also* Abstract Inv. Co. v. Hutchinson, 204 Cal. App. 2d 242, 22 Cal. Rptr. 309 (1962) (in which the court stated that, "neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm"). *Id.* at 250, 22 Cal. Rptr. at 314 (citing Nebbia v. New York, 291 U.S. 502, 523 (1934)).

housing tracts,[79] the supreme court stated that "[u]nder the police power reasonable restrictions may be placed upon the conduct of *any* business and the use of *any* property . . . ."[80] If, in furthering the public welfare, the Unruh Act can prohibit a landlord from discriminating against women, racial minorities, and religious and ethnic groups,[81] it certainly can be extended to protect children.

This position is not weakened by the argument that allowing children as tenants would interfere with the other tenants' right to quiet enjoyment[82] or would cause increased property damage.[83] While noisy and destructive tenants are certainly undesirable, these characteristics are not universally found in all children; they are applicable to both children and adults on an individual basis. The fact that it may be more likely for a member of a particular group to act in an undesirable manner does not warrant excluding every member of that group. This is particularly true where such exclusion has adverse effects on the group as a whole. There is no statistical information documenting that the presence of children results in any significant increase in maintenance costs.[84] Further, undue noise or disregard for property is a reasonable ground for the eviction of any tenant, adult or child. It is therefore difficult to accept the argument that a landlord's right to choose his tenants should prevail over the need for adequate housing for children.[85] Consistent with the California Supreme Court's interpretation, the protection of the Unruh Act should be extended to insure such adequate housing by prohibiting landlord discrimination against children.

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79. Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 468-69, 370 P.2d 313, 315-16, 20 Cal. Rptr. 609, 611-12 (1962).

80. *Id.* at 471, 370 P.2d at 317, 20 Cal. Rptr. at 613 (emphasis added).

81. CAL. CIV. CODE § 51 (West Supp. 1977). *See* authorities cited note 28 *supra* (applying the Unruh Act to landlords).

82. O'Brien, *supra* note 23, at 79. *See* discussion in note 76 *supra*.

83. O'Brien, *supra* note 23, at 79.

84. Interview with Stephen A. Wolfson and Eugene Gratz, attorneys, in Los Angeles, California (Jan. 4, 1978). Telephonic interviews with Michael Woo, Administrative Assistant to State Senator David A. Roberti, Sacramento, California (Jan. 3, 1978, Dec. 16, 1977, Nov. 30, 1977). Telephonic interview with Lois Moss, Executive Director, Fair Housing Congress of Southern California, Los Angeles, California (Dec. 27, 1977). Each interviewee confirmed that no statistics on increased maintenance costs resulting from the presence of children have yet been compiled.

85. On similar reasoning, the Attorney General has held that

> [a] blanket termination of tenancy and refusal to rent housing merely because the tenant/applicant is eligible for and receiving public assistance benefits would not be permitted under the Act . . . . To the extent that any tenant fails to pay rent or becomes a nuisance to the landlord, owner or other tenants, termination remedies are available.

59 OP. CAL. ATT'Y GEN. 223, 225 (1976).

IV. THE SCOPE AND APPLICABILITY OF THE RUMFORD FAIR HOUSING ACT

A second statute available to the California courts as a means of preventing discrimination against children in housing is the Rumford Fair Housing Act.[86] The Rumford Act was passed in 1963 as an exercise of the state's police power to protect the "health, welfare and peace" of the people of California.[87] It specifically prohibits discrimination in housing on the grounds of "race, color,. religion, sex, marital status, national origin, or ancestry."[88] The Act has been interpreted broadly as applying to almost all publicly-assisted, as well as privately-owned, rental housing.[89]

By its terms, the Rumford Act is to be liberally construed for the purpose of effectuating a public policy against discrimination in housing.[90] Yet even with this provision, the Rumford Act is not as susceptible to judicial expansion as the Unruh Act. The primary obstacle to such expansion is section 35742, which provides that "nothing contained in [the Rumford Act] shall be construed to prohibit selection based upon factors other than race, color, religion, sex, marital status, national origin, or ancestry."[91]

While this latter provision prohibits the courts from creating new categories, as is possible under the Unruh Act, the liberal construction provision implies that a court may interpret the existing categories to meet changing needs and conditions. By incorporating children as an aspect of one of the existing categories, the prohibitions of the Rumford Act could be applied to discrimination against children.

It would be consistent with the fundamental purpose of the Rumford Act—to prohibit discrimination in housing which is detrimental to the health and welfare of California residents—for a court to construe the category of "marital status" as including children. On its face the term "marital status" protects married and unmarried individuals from discrimination based on that status alone.[92] However, under a liberal

86. CAL. HEALTH & SAFETY CODE §§ 35700-35745 (West 1973 & Supp. 1977).

87. *Id.* § 35700 (West Supp. 1977).

88. *Id.* § 35720. The terms "sex" and "marital status" were added to the Act by amendment in 1975. Law of Sept. 30, 1975, ch. 1189, § 1, [1975] Cal. Stats. 2942.

89. *See* 57 OP. CAL. ATT'Y GEN. 546 (1973) (permitting application of Rumford Act to all housing included within the scope of the Unruh Act). *See* notes 26-28 *supra*.

90. CAL. HEALTH & SAFETY CODE § 35744 (West 1973).

91. *Id.* § 35742 (West Supp. 1977).

92. On its face, "marital status" encompasses protection for divorced or separated persons, unmarried cotenants, single persons and married persons. Such discrimination

construction, it could further protect children as being inherent in the marriage relationship.

Such an interpretation seems reasonable in light of United States Supreme Court cases recognizing the integrity of the family unit and emphasizing the importance of children in the marriage relationship. Most of these cases emphasize the rights of marital privacy and the right to control the upbringing of one's children.

In the landmark case of *Griswold v. Connecticut*[93] the Supreme Court held that the right of marital privacy is a fundamental right deserving of constitutional protection from state interference.[94] Within the marital privacy is the right to make intimate decisions such as those involving family planning and the use of contraceptives.[95]

While marital privacy has only been articulated as a consitutional right since 1965,[96] the Court has long recognized that certain aspects of the marriage relationship require constitutional protection. In 1923, the Court in *Meyer v. Nebraska*[97] stated that the liberty guaranteed by the fourteenth amendment includes "the right . . . to marry, establish a home and bring up children . . . ."[98] Shortly thereafter, the court held that parents have a right to "direct the upbringing and education of children under their control," free from the restrictions of a state compulsory education act.[99]

More recently, in *Stanley v. Illinois*[100] the Court found that the

can also be a subtle form of sex discrimination where a single parent was the applicant or tenant. *See* Note, *Sex Discrimination in Housing*, 10 LOY. L.A.L. REV. 820 (1977).

93. 381 U.S. 479 (1965) (declaring a criminal penalty for the use and distribution of contraceptives to married persons to be unconstitutional).

94. *Id.* at 485-86. The scope of the right of privacy was extended in Eisenstadt v. Baird, 405 U.S. 438 (1972) (right of access to contraceptives applies to individuals, independent of marriage). *See* Comment, *Neither Seen Nor Heard: Keeping Children Out of Arizona's Adult Communities Under Arizona Revised Statutes Section 33-1317(B)*, 1975 ARIZ. ST. L.J. 813 (discussing the constitutionality of an Arizona statute which imposes criminal penalties for the sale of a home to a family in violation of a valid restrictive covenant) [hereinafter cited as Comment]; Note, *A Taxonomy of Privacy: Repose, Sanctuary, and Intimate Decision*, 64 CALIF. L. REV. 1447 (1976).

95. *See* Eisenstadt v. Baird, 405 U.S. 435, 453 (1972). *Cf.* Roe v. Wade, 410 U.S. 113 (1973) (right of privacy encompasses a woman's decision whether or not to terminate her pregnancy); *accord*, Doe v. Bolton, 410 U.S. 179 (1973).

96. Griswold v. Connecticut, 381 U.S. 479 (1965).

97. 262 U.S. 390 (1923).

98. *Id.* at 399. The Court in *Meyer* found that a statute prohibiting elementary school instruction in languages other than English was a violation of the fourteenth amendment and infringed upon the right of parental control. *Cf.* Wisconsin v. Yoder, 406 U.S. 205 (1972) (compulsory school-attendance law invalid under free exercise clause).

99. Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (invalidating a state compulsory education act that required virtually all children to attend public schools).

100. 405 U.S. 645 (1972).

Constitution protects the right of an unwed father to have custody of his illegitimate children. In doing so, the Court made reference to earlier cases and stated that it has "frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential' . . . and [are] '[r]ights far more precious . . . than property rights' . . . ."[101]

In *Atkisson v. Kern County Housing Authority*,[102] the California Court of Appeal recently utilized the above Supreme Court decisions to overturn a county regulation banning unmarried cohabiting adults from its low income housing projects. Citing *Griswold v. Connecticut*[103] and *Eisenstadt v. Baird*,[104] the court reaffirmed that the Constitution protects the individual "from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[105] Observing that the housing authority's ban would also apply to an unmarried couple who had children of their own, the court stated that the ban would "effectively prevent one of the parents from living with and raising in a close and intimate relationship his or her own children."[106] The court thus concluded that any ban against unmarried cohabiting adults—with or without children—violates the principles enunciated in *Griswold* and *Eisenstadt*.[107]

Given the essential nature of the rights to conceive and raise one's children, and the importance of the family unit,[108] it would be reasonable

101. *Id.* at 651 (citations omitted).

102. 59 Cal. App. 3d 89, 130 Cal. Rptr. 375 (1976).

103. 381 U.S. 479 (1965).

104. 405 U.S. 438 (1972).

105. 59 Cal. App. 3d at 98, 130 Cal. Rptr. at 381 (quoting Eisenstadt v. Baird, 405 U.S. 438, 453 (1972)). In addressing other constitutional issues raised by the appellant, the court found that the regulation violated the due process clause in that it contained an irrebuttable presumption that unmarried cohabitation results in immorality, irresponsibility and the demoralization of tenant relations. Additionally, the regulation was found to infringe upon the right of privacy, and, since the classification involved lacked a rational basis, to be a denial of equal protection. 59 Cal. App. 3d at 96-98, 130 Cal. Rptr. at 379-80.

106. 59 Cal. App. 3d at 98, 130 Cal. Rptr. at 381.

107. *Id.* After closely examining the constitutional issues, the *Atkisson* court concluded that the invalidation of the county regulation was also dictated by the Rumford Act's prohibition of discrimination on the basis of marital status. The amendment adding sex and marital status to the Rumford Act had not been passed by the filing of the *Atkisson* suit. It was, however, in effect at the time of the appellate court's decision. *Id.* at 99, 130 Cal. Rptr. at 381. The court recognized that the amendment may have rendered the appellant's constitutional arguments moot, *id.* at 99-100, 130 Cal. Rptr. at 381-82; nevertheless, the court took the opportunity to emphasize the importance of the family relationship and the right to raise one's children.

108. *See also* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (school system's maternity regulations held unconstitutional as unduly penalizing a female teacher for deciding to bear a child); Loving v. Virginia, 388 U.S. 1, 12 (1967) (invalidating a state

for the courts to construe the Rumford Act's use of the term "marital status" as including these rights. If the right to have, or not have, children and the right to raise those children are constitutionally protected, persons seeking housing should not be discriminated against because they exercise those rights.[109]

Extending "marital status" to include protection of children is not without support from the Rumford Act itself. The categories of "sex" and "marital status" were added to the Act by amendment in 1975.[110] Apparently concerned with this amendment's ramifications regarding student housing facilities, the legislature simultaneously passed the following amendment:

> Nothing contained in [the Rumford Act] shall be construed to prohibit any post-secondary educational institution, whether private or public, from providing housing accommodations reserved for either male or female students so long as no individual person is denied equal access to housing accommodations, or from providing separate housing accommodations reserved primarily for married students *or for students with minor dependents who reside with them*.[111]

Only if the addition of marital status to the Rumford Act might be construed as also prohibiting landlord discrimination against persons with minor children, would there be a need for passing a specific exception allowing post-secondary schools to engage in such discrimination. While it would perhaps be going too far to suggest that, in passing this amendment the legislature intended to eliminate landlord discrimination against minors, the amendment does evidence the legislature's sensitivity to judicial expansion of existing categories.

The inclusion of children within the Rumford Fair Housing Act would promote the health and welfare of a large segment of the California citizenry. As such, it would not only be consistent with the public policy underlying both the Rumford and Unruh Acts, but would also further the

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statutory scheme prohibiting racially mixed marriages, stating, "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival.") (quoting Skinner v. Oklahoma, 316 U.S. 535, 541 (1942)).

109. As pointed out in Comment, *supra* note 94, at 824 n.88, the invasions of privacy which might result in the case of landlords trying to discover the presence of an illegal child occupant would be as abhorrent as those condemned by Mr. Justice Douglas in Griswold v. Connecticut, 381 U.S. 479, 485-86 (1965) (expressing repulsion at the idea of police searching bedrooms for telltale signs of contraceptive use).

110. Law of Sept. 30, 1975, ch. 1189, § 3, [1975] Cal. Stats. 2943.

111. *Id.* § 6, [1975] Cal. Stats. 2947 (codified at CAL. HEALTH & SAFETY CODE § 35741.5 (West Supp. 1977) (emphasis added).

constitutional protections afforded the family unit and the marriage relationship.[112]

V. POSSIBLE CONSTITUTIONAL PROTECTIONS

Although California statutory and decisional law provide the best means of eliminating discrimination against children in rental housing, a brief examination of the possible constitutional challenges to such discrimination is nevertheless appropriate.[113]

The primary constitutional challenge is that the practice of excluding children from rental housing violates the fourteenth amendment[114] by creating a class of people—persons with minor children—who are thus denied equal protection of the laws.[115] Under fourteenth amendment

112. "The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment . . . the Equal Protection Clause . . . and the Ninth Amendment . . . ." Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted).

113. Due to the availability of California law as a means of remedying the problem of discrimination against children and the preference of state courts to utilize state law over federal constitutional law, this comment will delineate but not emphasize the constitutional issues presented. For a comprehensive examination of the constitutional aspects of excluding children from "adult communities," see Comment, *supra* note 94, at 817-32.

114. U.S. CONST. amend. XIV. The California Supreme Court has construed the equal protection clause of art. I, § 7 of the California Constitution to be "substantially the equivalent" of the equal protection clause of the federal constitution. Serrano v. Priest, 18 Cal. 3d 728, 764, 557 P.2d 929, 950, 135 Cal. Rptr. 345, 366 (1976) (citing Department of Mental Hygiene v. Kirchner, 62 Cal. 2d 586, 588, 400 P.2d 321, 322, 43 Cal. Rptr. 329, 330 (1965)). While for the purpose of this discussion the state constitutional protections will be treated as being identical to, and subject to the same analysis as, federal constitutional protections, it is important to note that they "are possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable." Serrano v. Priest, 18 Cal. 3d at 746, 557 P.2d at 950, 135 Cal. Rptr. at 366. *See, e.g.*, note 122 *infra* and accompanying text.

115. In the unpublished opinion of Franklin v. White Egret Condominium, Inc., No. 76-1535 (4th Dist. Ct. of App., Fla., Aug. 9, 1977), a Florida court of appeal held that a condominium's restriction against children under the age of twelve was unconstitutional as a violation of equal protection and the rights to marry and procreate. *Contra*, Riley v. Stoves, 22 Ariz. App. 223, 526 P.2d 747 (1974) (upholding the constitutionality of a restrictive covenant prohibiting persons under 21 from living in a mobile home subdivision, as it was reasonably related to the legitimate purpose of providing a place for older people free from the noises and disturbances of children; *cf.* Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971) (constitutional issues raised but not discussed).

The discrimination could also be challenged on fourteenth amendment due process grounds as containing an irrebuttable presumption that all children have character traits which make them undesirable as tenants. *See* Vlandis v. Kline, 412 U.S. 441 (1972) (statute providing that students with out-of-state addresses at time of application to state colleges remain nonresidents for entire period of enrollment created an unconstitutional irrebuttable presumption of nonresidence); Atkisson v. Kern County Hous. Auth., 59 Cal. App. 3d 89, 130 Cal. Rptr. 375 (1976) (regulation prohibiting unmarried adults in low income housing projects from cohabiting created an unconstitutional irrebuttable pre-

equal protection analysis, states may further their legitimate interests by creating and treating differently certain classes or groups of people without violating those persons' equal protection rights, provided there is a rational basis for the distinction or classification.[116] Both the nature of the class affected and the nature of the interest with which the state is interfering must be examined by the courts in determining whether such a rational basis exists. If the classification involves what the Supreme Court has termed a "suspect class"[117] or a "fundamental interest,"[118] it will be subject to a more rigorous form of judicial scrutiny than other classifications.[119] Under this "strict scutiny" approach, a classification will be upheld only if necessary to achieve a compelling state interest.[120]

The number and nature of "suspect classes" has been clearly defined by the Supreme Court and does not yet include the class of persons with minor children.[121] However, the discriminatory practices of landlords may interfere with at least two "fundamental" rights: the right of travel and the right of marital privacy.[122] The discrimination may infringe upon

sumption that such cohabitation resulted in immorality and irresponsibility). *Cf.* United States Dep't of Agriculture v. Murry, 413 U.S. 508 (1973) (act denying food stamps to certain households held unconstitutional as containing an irrebuttable presumption). While still a viable argument, the irrebuttable presumption doctrine has come under attack as being nothing more than a disguised version of equal protection analysis. *See* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 652 (1973) (Powell, J., concurring).

116. For a comprehensive examination of equal protection analysis, see Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1 (1972); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

117. To date, the United States Supreme Court has found three suspect classes deserving strict scrutiny. Graham v. Richardson, 403 U.S. 365 (1971) (alienage); Loving v. Virginia, 388 U.S. 1 (1967) (race); Hernandez v. Texas, 347 U.S. 475 (1953) (national origin); Korematsu v. United States, 323 U.S. 214 (1944) (race).

118. Only four interests have been termed fundamental by the Supreme Court. Shapiro v. Thompson, 394 U.S. 618 (1969) (travel); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (voting rights); Griswold v. Connecticut, 381 U.S. 479 (1965) (marital privacy); Skinner v. Oklahoma, 316 U.S. 535 (1942) (procreation).

119. *See generally* authorities cited notes 117-18 *supra*.

120. *See, e.g.*, Roe v. Wade, 410 U.S. 113 (1973) (state has compelling interest in preserving fetal life at the point of viability); Korematsu v. United States, 323 U.S. 214 (1944) (military imperative of World War II permitted exclusion of all persons of Japanese ancestry from designated West Coast areas). *Cf.* Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (California public school financing system not shown by state to be necessary to achieve a compelling state interest).

121. *See* note 117 *supra*.

122. It can also be argued that housing is a fundamental interest under California law, thereby invoking strict scrutiny under California's equal protection clause. CAL. CONST. art. I, § 7. Such an argument is supported by the fact that the California Constitution presently recognizes more suspect classes and fundamental interests than does the United States Constitution. *Compare* Serrano v. Priest, 18 Cal. 3d 728, 765-66, 557 P.2d 929, 951, 135 Cal. Rptr. 345, 367 (1976) (finding wealth to be a suspect class and education a fundamental interest requiring strict scrutiny under the California equal protection clause)

the right of travel by reducing the number of housing units available to persons with minor children, thereby deterring them from exercising their right to move into or travel within the state.[123] It may also invade the realm of marital privacy by interfering with the exercise of the right to procreate and to make family planning decisions such as where to raise one's children.[124]

It must be emphasized, though, that the fourteenth amendment does not interdict purely private discrimination.[125] It only reaches discrimination in which there is state participation. This state action requirement presents the major obstacle to the success of any equal protection challenge to discrimination against children in rental housing. In the vast majority of cases where persons are refused housing due solely to the potential tenancy of a minor child, the discrimination is private conduct which does not violate the fourteenth amendment.[126]

and Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 20, 485 P.2d 529, 541, 95 Cal. Rptr. 329, 341 (1971) (holding that sex is a suspect classification and employment a fundamental interest, both requiring strict scrutiny) *with* San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 17-18, 33-39 (1973) (declining to declare wealth a suspect class and finding education not to be a fundamental interest requiring strict scrutiny) *and* Schlesinger v. Ballard, 419 U.S. 498, 508 (1975) (strict scrutiny not applied in upholding validity of a sex-based congressional statute); Kahn v. Shevin, 416 U.S. 351, 355 (1974) (strict scrutiny not applied in upholding validity of Florida statute allowing widows a property tax exemption, but denying the same to widowers). *See also* Frontiero v. Richardson, 411 U.S. 677 (1973) (opinion that sex is a suspect class requiring strict scrutiny not adopted by a majority of the Court). The United States Supreme Court has also held that housing is not a fundamental interest under the United States Constitution. Lindsey v. Normet, 405 U.S. 56 (1972).

123. *See generally* Memorial Hosp. v. Maricopa County, 415 U.S. 250 (1974) (one-year residency requirement for free nonemergency medical care invalidated as unconstitutional infringement of right to travel); Dunn v. Blumstein, 405 U.S. 330 (1972) (one-year residency requirement for voting in local elections invalidated as unconstitutionally interfering with right to travel); Shapiro v. Thompson, 394 U.S. 618 (1969) (one-year residency requirement for welfare assistance invalidated). The Court has, however, found certain zoning regulations, when rationally related to a legitimate state interest, to be constitutional. In Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974), the Court upheld a local ordinance restricting occupancy in single family residences to a maximum of two unrelated persons. In so holding, the Court emphasized the state interest in protecting "family values, youth values, and the blessings of quiet seclusion and clean air . . . ." *Id.* In Construction Indus. Ass'n v. City of Petaluma, 522 F.2d 897, 908-09 (9th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976), the court found that a city's desire "to preserve its small town character, its open spaces and low density of population" was a reasonable state objective. *Id.* at 909. *Cf.* Ybarra v. City of Los Altos Hills, 503 F.2d 250, 254 (9th Cir. 1974) (zoning ordinance found rationally related to legitimate government interest of preserving the town's rural environment). In light of the Court's reasoning in *Village of Belle Terre*, it is difficult to imagine a compelling state interest for excluding children from rental housing where such exclusion interferes with privacy or travel rights and results in children being inadequately housed.

124. *See* notes 93-101 *supra* and accompanying text.

125. Civil Rights Cases, 109 U.S. 3 (1883).

126. In Shelley v. Kraemer, 334 U.S. 1 (1948), the Court, in addressing whether a

In some situations, however, a state may be involved in private conduct in a manner which is not immediately apparent. Such a situation may arise where the state owns the property on which the apartment is located, and the landlord is a lessee of the state.[127] In such instances, a court would need to determine on a case by case basis whether the relationship between the state as lessor and the landlord was sufficient to find that the state was involved in the landlord's acts of discrimination.[128] Only if a court were to so find could a fourteenth amendment challenge be applicable.

The situation which offers the greatest possibility of finding state action is that in which a landlord seeks by judicial action to evict tenants due to the presence of a child. In this case, the use of the state's judicial system to enforce private discrimination could constitute state participation and could invoke fourteenth amendment protections.[129]

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restrictive covenant forbidding occupancy of residential property by noncaucasians was constitutional, stated:

> [T]he restrictive agreements standing alone cannot be regarded as violative of any rights guaranteed to petitioners by the Fourteenth Amendment. So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State . . . .

Id. at 13. *But see* note 129 *infra*.

127. This argument would be based on the analysis of Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961), in which the Court found state action in the discriminatory conduct of a lessee of state-owned property due to what it termed "joint participation" between the lessee and the lessor. *Id.* at 725. It is argued by the Wolfsons, *see* notes 1-2 *supra* and accompanying text, that since Marina del Rey is owned in fee by the County of Los Angeles and leased to private entrepreneurs, who in turn sublease the property for various business purposes, this arrangement is very close to that in *Burton* and would allow the finding of state action in discrimination by a lessee landlord. *See* note 7 *supra*.

128. Burton v. Wilmington Parking Auth., 365 U.S. 715, 722-26 (1961). It is important to note however, that many courts are more likely to find state action when the alleged discrimination is based on race rather than when other forms of discrimination are involved. Taylor v. Consolidated Edison Co., 552 F.2d 39, 42 (2d Cir.), *cert. denied*, 98 S. Ct. 147 (1977) (holding that "a lesser degree of state involvement is needed to meet the state action requirement in cases alleging [racial] discrimination . . . than in those claiming a denial" of other constitutional rights); *accord*, Jackson v. Statler Foundation, 496 F.2d 623, 635 (2d Cir. 1974), *cert. denied*, 420 U.S. 927 (1975); Adams v. Southern Cal. First Nat'l Bank, 492 F.2d 324, 333 n.24 (9th Cir. 1973), *cert. denied*, 491 U.S. 1006 (1974) ("[L]imited [state] involvement that may be sufficient for racial cases, does not command a finding of 'state action' in an economic due process case."). *But see* Parks v. "Mr. Ford", 556 F.2d 132, 154 (3d Cir. 1977) (Gibbons, J., concurring) (determination of state action should be based upon the relationship between the state and the actor and not on a judicially determined hierarchy of constitutional values).

129. The finding of state action in this situation would be based upon an analogy to Shelley v. Kraemer, 334 U.S. 1, 20 (1948). In that case, the United States Supreme Court found that the use of the state court system to enforce a racially restrictive covenant constituted state action for purposes of a fourteenth amendment challenge. *Accord*, Barrows v. Jackson, 346 U.S. 249, 254 (1953). This rationale was applied to eviction proceedings on the basis of race in the California case of Abstract Inv. Co. v. Hutchinson,

VI. CONCLUSION

Since state action will only be found in very limited instances, the protections of the Federal Constitution will not be available in the great majority of cases involving discrimination against children. Consequently, reliance upon the Constitution will do little to alleviate the present housing crisis facing families with minor children. If the practice of landlord discrimination against children is to be eliminated, it will be necessary for California courts to look to state statutory and decisional law for the solution. Both the Unruh Civil Rights Act and the Rumford Fair Housing Act provide the means for solving this crisis and should therefore be closely examined by courts facing the issue of discrimination against children.

Leslie Ann Marine

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204 Cal. App. 2d 242, 255, 22 Cal. Rptr. 309, 317 (1962), and would seem equally applicable to eviction proceedings brought to enforce a landlord's discrimination against children. *Cf.* Riley v. Stoves, 22 Ariz. App. 223, 229, 526 P.2d 747, 753 (1974) (enforcement of restrictive age covenant constituted state action but no fourteenth amendment violation found).

APPENDIX A

TABLE I

CITY OF LOS ANGELES—INDIVIDUALLY METERED APARTMENT VACANCY SURVEY DEPARTMENT OF WATER & POWER— POWER SERVICES DIVISION

	Total Number of Units	Total Number Idle	Total Number Owner-Occupied	Total Vacant	Percent Vacant
DATE: February 8, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley[1]	103,247	1,489	835	2,324	2.3
West Los Angeles[2]	63,263	767	603	1,370	2.2
Central Los Angeles[3]	156,622	4,998	568	5,566	3.6
Harbor[4]	12,201	379	74	453	3.7
Total City of Los Angeles	335,333	7,633	2,080	9,713	2.9
DATE: March 11, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	103,705	1,474	784	2,258	2.2
West Los Angeles	63,317	750	636	1,366	2.2
Central Los Angeles	156,723	4,772	571	5,343	3.4
Harbor	12,262	350	62	412	3.4
Total City of Los Angeles	336,007	7,326*	2,053	9,379	2.8
DATE: May 6, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	103,563	1,368	823	2,191	2.1
West Los Angeles	63,378	822	652	1,474	2.3
Central Los Angeles	156,175	4,141	551	4,692	3.0
Harbor	12,219	318	53	371	3.0
Total City of Los Angeles	335,335	6,649	2,078*	8,728	2.6

*[*sic*]

1. The cities and areas included in the San Fernando Valley survey are: Canoga; Winnetka; Woodland Hills; Chatsworth; Porter Ranch; Encino; Tarzana; Granada Hills; Knollwood; Mission Hills; Panorama; Sepulveda; North Hollywood; Northridge; Pacoima; Sun Valley; Reseda; West Van Nuys; Sherman Oaks; Studio City; Sunland; Tujunga; Shadow; Lakeview; Sylmar; Van Nuys; and Verdugo Mountains.

2. The cities and areas included in the West Los Angeles area survey are: BelAir; Beverly Crest; Brentwood; Pacific Palisades; Palms; Mar Vista; Marina del Rey; Venice; Westchester; Playa del Rey; Westwood; West Los Angeles; Century City; and Rancho Park.

3. The cities and areas included in the Central Los Angeles area survey are: Boyle Heights; Central City; Hollywood; North and East Central City; Northeast Los Angeles; South Central Los Angeles; Silver Lake; Echo Park; Southeast Los Angeles; West Adams; Leimert; Baldwin Hills; Westlake; and Wilshire.

4. The cities included in the Harbor area survey are: San Pedro; Torrance; Gardena; Wilmington; and Harbor City.

	Total Number of Units	Total Number Idle	Total Number Owner-Occupied	Total Vacant	Percent Vacant
DATE: June 9, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	104,494	1,440	925	2,365	2.3
West Los Angeles	63,474	600	696	1,296	2.0
Central Los Angeles	155,740	4,036	643	4,679	3.0
Harbor	12,276	336	73	409	3.3
Total City of Los Angeles	335,984	6,412	2,337	8,749	2.6
DATE: July 9, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	105,167	1,518	956	2,476*	2.4
West Los Angeles	63,413	843	894	1,737	2.7
Central Los Angeles	156,118	4,305	740	5,045	3.2
Harbor	12,656	357	77	434	3.4
Total City of Los Angeles	337,354	7,023	2,669*	9,692*	2.9
DATE: October 8, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	106,845	1,393	1,050	2,443	2.3
West Los Angeles	63,901	795	698	1,493	2.3
Central Los Angeles	156,442	3,781	829	4,610	2.9
Harbor	12,792	361	74	435	3.4
Total City of Los Angeles	339,980	6,330	2,651	8,981	2.6
*[*sic*]					
DATE: November 5, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	107,359	1,409	1,124	2,533	2.4
West Los Angeles	64,056	797	684	1,481	2.3
Central Los Angeles	156,488	3,439	798	4,237	2.7
Harbor	12,830	359	71	430	3.4
Total City of Los Angeles	340,733	6,004	2,677	8,681	2.5
DATE: December 10, 1977 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	108,815	1,550	1,173	2,723	2.5
West Los Angeles	64,274	740	690	1,430	2.2
Central Los Angeles	157,185	3,482	814	4,296	2.7
Harbor	12,899	363	82	445	3.4
Total City of Los Angeles	343,173	6,135	2,759	8,894	2.6
DATE: January 14, 1978 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	109,025	1,445	1,157	2,602	2.4
West Los Angeles	64,445	694	729	1,423	2.2
Central Los Angeles	156,976	3,437	881	4,318	2.8
Harbor	12,910	379	71	450	3.5
Total City of Los Angeles	343,356	5,955	2,838	8,793	2.6

	Total Number of Units	Total Number Idle	Total Number Owner-Occupied	Total Vacant	Percent Vacant
DATE: February 5, 1978 GEOGRAPHIC/PLANNING AREAS					
San Fernando Valley	109,440	1,300	1,098	2,398	2.2
West Los Angeles	64,588	570	827	1,397	2.2
Central Los Angeles	156,878	3,264	845	4,109	2.6
Harbor	12,858	299	74	373	2.9
Total City of Los Angeles	343,764	5,433	2,844	8,277	2.4

APPENDIX A

TABLE II

TOTAL APARTMENT VACANCY PERCENTAGES*

Date	2/8/77	3/11/77	5/6/77	6/9/77	7/9/77	10/8/77	11/5/77	12/10/77	1/14/78	2/5/78
San Fernando Valley	2.3	2.2	2.2	2.3	2.4	2.3	2.4	2.5	2.4	2.2
West Los Angeles	2.2	2.2	2.3	2.0	2.7	2.3	2.3	2.2	2.2	2.2
Central Los Angeles	3.6	3.4	3.0	3.0	3.2	2.9	2.7	2.7	2.8	2.6
Harbor Area	3.7	3.4	3.0	3.3	3.4	3.4	3.4	3.4	3.5	2.9
Total City of Los Angeles	2.9	2.8	2.6	2.6	2.9	2.6	2.5	2.6	2.6	2.4

* This table illustrates the decreasing availability of apartment housing in the Los Angeles area.