LAWS AFFECTING THE LOCATION & APPROVAL

OF AFFORDABLE HOUSING FOR

FAMILIES AND HOMELESS PEOPLE

How They Work
&
How To Use Them

(With Statutory Appendix)

Prepared By The California Affordable Housing Law Project
for
THE COMMUNITIES ACCEPTANCE STRATEGIES CONSORTIUM

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OVERVIEW

California, the San Francisco Bay Area in particular, remains in a protracted and systemic housing crisis of monumental proportions. Rents and home prices rise while a large percentage of the population must survive on fixed incomes or reduced public benefits. As homelessness climbs and government resources targeted for affordable housing continue to shrink, nonprofit developers scramble to address the mounting need. But increasingly, they face local opposition from both community residents and local government officials acting on misinformation and sometimes prejudice.

This manual is a tool for affordable housing developers, advocates and local officials seeking support for their efforts to increase the supply of affordable housing in these critical times. It surveys the state and federal laws that provide rights, protections and incentives for the development of transitional and permanent housing for low income households, and it explains how to use these laws without having to resort to costly and time-consuming law suits. Ultimately, the purpose of these laws is to educate— to ensure that in the efforts of communities to provide decent neighborhoods, they do not resort to unfair generalizations to exclude residents because of their income, race or disability.

Specific attention is given to the impact of the laws on the location and approval of housing for homeless persons, including housing with supportive services. In addition to these helpful laws, there are certain laws that are commonly used by opponents to halt or delay development of affordable housing. This manual also describes some of these. To increase the usefulness of the manual, we have also included an appendix that contains the text of those statutes that most often come into play when affordable housing developments are proposed.¹

Readers should use this manual in conjunction with Six Steps to Getting Local

¹ The laws are up-to-date- as of January 1, 1999, reflecting the legislative changes made in 1998.
BACKGROUND

Historically, local governments have had broad discretion in planning, zoning and approval of residential development. Under the state and federal Constitutions, local governments have "police powers" to protect public health, safety and welfare, and consequently courts have afforded communities great leeway to regulate the kinds and intensity of development.

However, local parochialism and prejudices often resulted in policies and practices that excluded the development of affordable housing, thereby exacerbating patterns of racial and economic segregation and creating a substantial imbalance of jobs and housing. Seeking to avoid perceived problems of affordable housing, many localities adopted zoning schemes that effectively precluded the development of multifamily housing. The passage of Proposition 13 only worsened the situation because it resulted in commercial development becoming more tax-lucrative than residential development. And paralleling the substantial increase in affordable housing development by nonprofit developers starting in the 1980's, organized opposition by local groups has become widespread and increasingly sophisticated.

Beginning in the 1960's, the courts, Congress and state legislatures started to recognize the disastrous effects that such unfettered local discretion can have on racial integration, the environment and the provision of affordable housing. Court decisions and new federal and state laws—especially state mandated local planning and the fair housing laws—placed significant limitations on local powers, balancing
the need for affordable housing and equal opportunity with the need for local
decision making. Generally, these laws required communities to affirmatively plan
for affordable housing and to refrain from adopting discriminatory land use policies.
The laws discussed in this manual came out of this trend.

LAWS COVERED

These materials cover both federal and state laws. As can be seen, several
laws can be used both to support and resist development. The discussion of each
law is intended to provide quick reference. When faced with an issue encompassing
one of these laws, readers should always do further research and consider consulting
an attorney.

Some of the helpful laws included are:

California's Housing Element Law (Government Code §§65580 et
seq.)
California's "Anti-NIMBY" Law (Government Code §65589.5)
California Law Prohibiting Discrimination Against Affordable
Housing (Government Code §65008)
State & Federal Fair Housing Laws (FEHA, FHA & FHAA)
The Federal Consolidated Plan and Analysis of Impediments to Fair
Housing Choice Laws.

The section on laws used by opponents includes a discussion of:

California Environmental Quality Act (CEQA)
Historic Preservation
The Conditional Use Permit Process
Moratoria

Throughout the manual there are examples of the affect many of these
statutes have had or can have in specific situations. And, at the end of each section
there are suggestions and recommendations on how to use the laws both to lay the
foundation for affordable housing development and to help gain approval of specific
projects. A general discussion of the ways developers and advocates can draw upon these laws follows below.
HOW TO USE THESE LAWS

For Early Advocacy & Education
When Anti-Affordable Housing Policies or Actions Are Proposed
When Proposing A Project
When A Project Denied or Approved With Prohibitive Conditions
When Litigation Is Necessary

Above all, learn these laws yourself. This knowledge will enable your organization to spot potential legal issues before they materialize, proceed with confidence in proposing projects, educate local officials and community members and, most importantly, avoid litigation. Asserting legal rights as early as possible and thereby preventing violations is more effective and constructive than waiting until enforcement is necessary.

Once you have learned these laws, teach them— to your staff, other community groups and local officials. Laws are adopted so that members of society will learn and strive to meet the standards set— enforcement is the exception and always a last resort. Besides, given the time and expense of law suits, litigation is simply not an option for affordable housing developers constrained by tight budgets and the time deadlines of funding sources.

Early Advocacy & Education

First, take advantage of the laws that require communities to plan for affordable housing (see section II). Although there never seems to be enough time
to do all that needs to be done to plan and construct affordable housing projects, advocates and developers should become involved in the process of formulating local policies on affordable housing before a particular project is at stake. Favorable local plans and policies and beneficial land use and development laws can save considerable time during the project application process by reducing the opportunities for local official or NIMBY opposition.

Housing element preparation is one of many community planning and economic development processes in which the local government is mandated to seek community participation. Others include the drafting of redevelopment plans and the federal Consolidated Plan. [All communities in California must prepare new housing elements between the years 1999 and 2003, depending on the area; and new ConPlans are due in the year 2000.] But anytime a locality undertakes to amend its zoning laws or other land use laws, there is an opportunity for public input through the public hearing process at planning commission, city council and board of supervisor meetings.

Besides influencing local policy, there are many other ways to educate local officials and members of the community about affordable housing laws. One is to schedule meetings with elected officials. Another is to hold community forums.

When Anti-Affordable Housing Policies or Actions are Proposed

When local staff or members of the community propose discriminatory or anti-affordable housing ordinances or policies, or when it appears that good affordable housing project may be denied because of local ignorance of the state and federal laws, contact local legislators and officials and make them aware of their obligations. The education accomplished may not only prevent the enactment of bad policy or the rejection of a good development, but could provide the foundation for approval of future projects.

When Proposing A Project

First of all, keep in mind how these laws may impact the local political situation. Often local staff or elected officials are unaware of these laws and find
it politically impossible to approve projects in the face of unyielding opposition. The laws can furnish officials with the "excuse" they need to vote in favor of affordable housing.

Prepare a legal strategy.³ Become familiar with the laws in this manual, and identify the legal rights of your organization and the prospective residents of the development. If your proposal is likely to encounter illegal discrimination or raise other legal issues, it would be wise to consult with a lawyer as early as possible. Addressing potential legal problems early will tremendously decrease the chances of litigation and also help ensure that an adequate record is made should a lawsuit become necessary. Sometimes contact with the city attorney or county counsel early on can derail possible illegal actions by local staff.

Keep records and make a good public record. These laws generally require that certain factors exist before they apply. Consequently it is critical that proponents "make a record" that establishes those factors. Therefore, the keys to using these laws effectively are:

2) Keeping track of what actions are taken and what is said and written (including newspaper articles and flyers) from the very beginning of the project application process through the approval or denial of the development; and

3) Making sure that all information provided the local government is accurate, in writing and covers the elements of the particular law you seek to invoke.

³ See “Six Steps to Getting Local Government Approvals,” hand-out available from NPH (address on page two).
Threaten Legal Action As A Last Resort. If it becomes clear that the project will be rejected, consult a lawyer and review your options. Sometimes the cost of litigation can make a local government reconsider its position. However, affordable housing developers may be reluctant to threaten a lawsuit because they will be seeking local funding or approval of other projects in the future. In those cases, they should consider asking other advocates in the community, including legal aid offices, to “play the heavy.”

When A Project Is Denied Or Approved With Prohibitive Conditions

Consult an attorney and, if you haven’t already, appeal to the council or board of supervisors, if that is an option. Once again, consider threatening litigation or getting other advocates or groups to do so. In considering litigation, besides the cost and risk of alienating the local government, a lawsuit may take too long to save the project— a source of funds may only be available for a limited time or an option to purchase land may expire. However, in some situations, relatively quick administrative (in the case of violations of the fair housing laws) or legal actions may be available. And remember that most litigation of this nature is settled well before it would come to trial or hearing because local governments also want to avoid litigation expenses.

When Litigation Is Necessary

After careful consideration, (making sure to take into account the relevant statutes of limitation on filing suit) if litigation is best recourse, your attorneys will need your help and full cooperation to act quickly and decisively. Compile and organize all relevant documents and records. Make sure the attorneys are aware of

EXAMPLE: the anti-nimby statute (Gov. Code §65589.5) prohibits a local agency from disapproving an affordable housing development unless it finds that one of six conditions exist. (see section III.) therefore, in order to come within the protection of the law, project proponents should provide documentation
all pertinent deadlines, *i.e.*, when options expire or funding may be withdrawn. And make sure they have a full understanding 1) of what the organization seeks from the litigation, *including monetary damages* and 2) of the organization’s financial constraints. In many areas it is possible to obtain free (“pro bono”) legal representation by major law firms. Ask your attorneys to look into that option.

Your attorneys should consider including a request for attorneys fees—because the provision of affordable housing significantly benefits the community at large, your attorneys may be entitled to fees if they prevail. [Moreover, they also may be entitled to fees if they prevail on a fair housing claim—*see* section IV.] The risk of having to pay fees to your attorneys often acts as a considerable incentive to local governments to settle these suits.

Ask your attorneys also to explore opportunities for filing a motion for a preliminary order. (If one of the claims in the suit challenges the housing element, for example, the court may issue a preliminary injunction preventing the locality from approving nonresidential development.) This can increase the chances of bringing the law suit to a quick and successful conclusion.

Always consider including a housing element claim in the suit if the community does not have an approved housing element or if the particular action of the local government in inconsistent with its adopted housing element. If a court finds that the housing element does not comply with the law, it may order the locality to approve an affordable housing development. And because the law requires housing element cases to be brought to hearing quickly, including a housing element claim increases the chances of the case being resolved expeditiously. (*See* section II.)

Lastly, always explore ways to settle the suit even as it is being vigorously litigated. Ask your attorneys make every effort to engage in settlement negotiations. Be creative devise ways to settle. Sometimes local officials can save face and appear magnanimous by agreeing to hold another hearing on the proposed project. And sometimes a city attorney can take your offer to make minor changes in the project and, coupled the authority of some of laws described in this manual, convince a city council that settlement would be a victory.
II

LAWS REQUIRING COMMUNITIES TO PLAN FOR AFFORDABLE HOUSING

California’s Housing Element Law
California’s “Least Cost” Zoning Law
The Federal Consolidated Plan Laws

A. CALIFORNIA HOUSING ELEMENT LAW (Cal. Government Code §§65580 et seq.) [Appendix, p. 76]

Every city and county in California must adopt a comprehensive "general plan" to govern its land use and planning decisions. (See Government Code §§65300 et seq.) All planning and development actions must be consistent with the general plan.\(^4\) Think of the general plan as a budget-- a budget for the use of a precious and increasingly scarce resource-- land. Just as a governmental entity cannot expend funds until it has adopted a budget, a community may not permit the development of land until it has adopted a valid general plan.

The general plan must contain seven elements, including a housing element. The housing element must "make adequate provision for the housing needs of all economic segments of the community." (§§65580 & 65583.) And while this law does not require local governments to provide housing to meet the need, it does require that the community plan for the needs of all their residents, including the

\(^4\) The one exception is that zoning ordinances of charter cities need not be consistent with general plans unless the local government has elected to subject zoning to the consistency requirement. However, it is unlikely that HCD would approve a housing element that does not include a program requiring consistency between the element and the zoning ordinance.
needs of homeless people. Each community must prepare a new housing element every five years and submit the element to the state Department of Housing and Community Development (HCD) for review.

Housing element law is very important to the siting of affordable housing and homeless shelters in at least three ways:

First, when the community is preparing its housing element, it must include residents and community groups in the process. This provides an opportunity for affordable housing advocates to urge the inclusion of policies and programs that promote affordable housing.

Second, an adopted housing element may identify sites appropriate for affordable housing development; or the element may include a program mandating the locality to amend its zoning ordinance to permit the development of transitional housing or homeless shelters.

Third, the law provides housing proponents with significant legal leverage in gaining approval of developments. If the locality fails to adopt a housing element or adopts one that is inadequate, a court can order the local government to halt all development until an adequate element is adopted or order approval of a specific affordable housing development.

1. Contents Related to the Siting and Approval of Housing.

The law requires the housing element to contain a detailed analysis of the community’s housing needs and resources and of the local constraints to housing development. The element must then establish goals and a five year program of actions addressing those needs, resources and constraints. The requirements related to the location and approval of affordable housing are described below.

(a) Analysis Of The Community's Housing Needs, Resources
and Constraints. (§65583(a))

Housing Needs (§65583(a)(1) & (a)(6))

A housing element must first include an assessment of the locality's existing and future housing needs. This assessment must include the community’s “fair share” of the regional needs of all income groups (very low, low, moderate and above moderate) as determined by the regional coalition of governments (the Association of Bay Area Governments [ABAG] in the Bay Area). [This is known as the "fair share" regional housing need.] And it must also assess the special needs of the disabled, the elderly, large families, farm workers, families with female heads of household and the homeless.

Inventory Of Sites. (§65583(a)(3))

The element must contain an inventory of land "suitable for residential development including vacant sites and sites having potential for redevelopment." It must also analyze how the zoning and infrastructure available to the sites will affect development potential of the sites.

Governmental Constraints. (§65583(a)(4))

The document must also include an analysis of the local governmental constraints to the development of housing for all income levels. The review must address, at minimum, land use controls, developer fees and exactions, building codes and permit processing procedures. It must also “demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need....”

(b) Five Year Program of Actions. (§65583(c))

Identification of Adequate Sites. (§65583(c)(1))

The housing element must contain an action program that identifies adequate sites with appropriate zoning and infrastructure "to facilitate and encourage a variety of types of housing for all income levels." The identification of sites must include sites zoned for multifamily rental housing, factory-built housing, mobile homes, emergency shelters and transitional housing.
Where the inventory of sites does not identify enough sites to meet the fair share regional housing need for each income group, the action program must:

provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

"Use by right" means that the use does not require a conditional use permit.

While there is no express requirement that the element must identify sites for homeless shelters or transitional housing that are developable by right, i.e. without obtaining a conditional use permit, a recent Court of Appeal case found that an adequate site for homeless shelters and transitional housing:

is one available for immediate development, which is located within reasonable access to public agencies and transportation services; will not require unusually high site development costs; has available public services and facilities; is consistent with the General Plan designation and site zoning so as to permit development of, conversion to or use of, a shelter or transitional housing without undue regulatory approval; and is consistent with applicable parking requirements, fire regulations and design standards.

Hoffmaster v. City of San Diego, 55 Cal.App.4th 1098 (1997). And the Court went on to explain that:

for identification to be meaningful, it must necessarily be specific. It must set for sites which will be available to be developed, without restrictive zoning burdens which combined with the NIMBY (Not In My Back Yard) factor... become insurmountable or produce protracted delays and deterrent cost increases.... Finally, through its action program, City bears the responsibility to ensure the regulatory process actually encourages the development of emergency shelters and transitional housing.
In addition, the state Department of Housing and Community Development (HCD) will not approve an element when the zoning approval process allows imposition of vague, over-broad or unreasonable conditions.

**Removal of Government Constraints (§65583(c)(3))**

The program of action must also contain a program to “address and, where appropriate and legally possible, remove governmental constraints” to the development of housing. Therefore, although the local government has the discretion to determine what local ordinances and policies are “appropriate” to remove, if the housing element identifies a particular constraint as a problem it must include a program that addresses the harmful effect of the barrier. For example, if the housing element indicates that the zoning ordinance does not allow for sufficient densities to facilitate the development of housing affordable to very low or low-income families, if it is “appropriate and legally possible” the element must include a program to amend the zoning ordinance or otherwise address the problem of insufficient densities.

2. **The Adoption & Approval Process.** (§§ 65585, 65587, 65588, 65588.1 & 65589.3)

Generally, every five years the regional coalition of governments must, based on determinations by HCD and the state Department of Finance, determine each city and county’s share of the regional housing need for all income levels. (ABAG does this in the Bay Area.) Then each local government must prepare an updated housing element that covers the five year period. The current five year period has been extended by five years due to state budget problems. For communities within ABAG’s jurisdiction, the next housing element update is due June 30, 2001. And ABAG will assign each community its new share of the regional housing need by June 30, 2000.

Each time the community revises its housing element, it must submit the draft revision and then the adopted element to HCD for review. A court will not presume that a housing element is adequate if HCD finds that the element does not substantially comply with the law. And a local government may not adopt a housing element found out of compliance by HCD unless it makes express findings why it believes that the element does comply with the law. But even if the locality makes
such a finding, a court will probably place great weight on HCD's interpretation and could find the element invalid.

3. The Effect Of The Law On The Siting And Approval Of Affordable Housing. (§§65754 to 65760)

(a) Failure To Adopt An Updated Element.

When a local government fails to adopt an updated housing element, the general plan is invalid. Because all planning and development approval decisions must be consistent with the general plan, a local government may not proceed to make land use decisions and approve development until it has adopted a valid housing element. If challenged in court, the court may issue an order that curtails the ability of the community to approve subdivisions, or zoning changes or to issue building permits.

In addition, a court may order the approval of proposed affordable housing developments, including housing for the homeless.

(b) Adoption Of An Inadequate Element.

When the adopted element fails to comply with the law the same legal remedies are available as when the community fails to adopt a housing element. With respect to the siting of affordable housing or shelters, HCD will find an element inadequate when the element:

Fails to provide zoning for emergency shelters

Fails to identify enough sites feasible to accommodate the community's regional fair share housing and does not contain a program to rezone to provide enough multifamily sites, developable by right, to meet the need for low and very low-income housing (local growth controls notwithstanding).

(c) Failure To Comply With An Adopted Element.
When the community adopts a housing element that includes sites and programs for the development of affordable housing, it may not act contradictory to the terms of the element, and it must implement the element’s programs in accordance with the terms specified in the element.

**EXAMPLE:** If the element identifies certain sites or zoning categories as permitting the development of emergency shelters (as it must), the local government agency may not deny approval of a proposed shelter that otherwise satisfies the local planning and building code requirements. However, it would be permissible for the locality to require a CUP provided the conditions do not discourage the development of

**Another EXAMPLE:** If the element includes a program to amend its zoning ordinance to permit group homes for more than six persons in residential zones and it has not amended its ordinance, it may not refuse a zoning change requested by the developer of a group home if the change is consistent with the amendment required by the element.

§65913.1, like the Housing Element Law, requires communities to zone that makes development of housing affordable to low income families feasible. It expressly mandates that local government “designate and zone sufficient vacant land” to meet the community's fair share of the regional need assigned by the regional coalition of governments. Sites must be zoned “with appropriate standards,” meaning:

densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot which may be occupied by a structure, amenities, and other requirements imposed on residential lots pursuant to zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing for persons and families of low or moderate income....

The obligation to zone sufficient sites to meet the community's share of the regional housing needs is in addition to that contained in the Housing Element laws. This statute can be used like the Housing Element law and helps to clarify the Housing Element law's requirement to identify "adequate sites" for affordable housing. A community that fails zone sites at sufficient densities to make feasible the development of housing affordable to very low income households may be in violation of this law.

§65913.2 provides that in regulating subdivisions, a local government may not impose design criteria for the purpose of rendering an affordable housing development infeasible, and must consider the effect of its ordinances and actions on the housing needs of the region. Lastly, this statute prohibits imposing standards and criteria for public improvements (such as streets, sewers, schools or parks) which exceed those imposed on other developments in similar zones.

In order to receive federal community development funds from the Department of Housing and Urban Development (HUD), cities (“entitlement” jurisdictions), urban counties and smaller cities (“consortia”), and states (on behalf of rural communities) must prepare a consolidated plan (ConPlan) to prioritize how it will allocate these funds. (The funds include the Community Development Block Grant (CDBG), Home Investment Partnership Act (HOME) funds, and funds for the McKinney Homeless Assistance Program.) Like the housing element (after which it was patterned), the ConPlan is a five year plan that must: 1) identify housing needs, 2) identify barriers to affordable housing development, 3) prioritize the needs and establish programs addressing the needs and the barriers. And like the housing element law, the ConPlan laws mandate that the local activities funded by the HUD programs must be consistent with the ConPlan. In most communities in the Bay Area, the next five year ConPlan will be due in the year 2000.

For rural communities, the likelihood that a local government or nonprofit developer will receive HUD funds for a particular development will depend upon the determinations in the state ConPlan regarding the housing needs in that community.

1. Analysis of Needs and Barriers.

Although a ConPlan does not have to inventory or identify housing sites, the law does obligate jurisdictions to analyze and address the housing needs of low and very low income households, including the need for homeless facilities and services. And similar to the housing element requirement to analyze local government constraints on housing development, the ConPlan must contain an analysis of the housing market that addresses the “barriers to affordable housing.” The analysis must consider land use controls, growth controls, zoning, and building codes, among other things.


Based on the severity of need in different categories (income, owner or renter) and existing resources, the ConPlan must then include a five year Strategic Plan which prioritizes the needs and establishes specific objectives for addressing
the needs. The ConPlan must describe a strategy which addresses needs for emergency shelter and transitional housing and which will remove or reduce the barriers identified in the market analysis.

In addition to the five year Strategic Plan, the ConPlan laws require communities to submit an annual action plan that states with specificity what actions the jurisdiction will take to carry out its Strategic Plan.

3. Certifications.

a) Affirmatively Further Fair Housing.

Each ConPlan ( & annual action plan) must include a certification that the jurisdiction will “affirmatively further fair housing”. To make this certification, the local government (or consortia or the state) must have prepared and be implementing an Analysis of Impediments to Fair Housing Choice (“AI”). The AI must identify local barriers to equal housing opportunities being available to all of the groups protected under the federal Fair Housing Act (see Section IV of this manual) -- race, color, religion, sex, familial status, national origin, or mental or physical disability. The AI must then indicate “appropriate actions to overcome the effects of any impediments identified through the analysis.” (24 C.F.R. §§ 91.225, 91.325 & 91.425.) All jurisdictions should have completed their first AI by February 1996.

HUD’s “Fair Housing Planning Guide” contains a detailed description of what an AI should contain. The guide defines an impediment as “[a]ny actions, omissions, or decisions taken because of [the protected classifications] that restrict housing choices or the availability of housing choice, and any actions, omissions or decisions that have this effect.” The guide goes on to include restrictive zoning practices and excessive fees as examples of potential impediments.

For rural communities, the state must ensure that communities receiving HUD funding through the state meet their obligation to affirmative further fair housing in accordance with the state AI. The state may require a local government to prepare its own AI or to take specific actions to overcome local barriers to fair housing.
b) **Acting Consistent With & “Following” the ConPlan**

The local government must also certify that housing activities in the community funded by HUD are consistent with the ConPlan’s strategic plan. This means that the activities must address the needs identified in the plan. Communities receiving CDBG must also certify that they are “following” the ConPlan. This means that jurisdictions must be implementing all of the actions in the annual action plan.

4. **Citizen Participation Plan**

Each jurisdiction, consortium or state must have a written “citizen participation plan.” It must “provide for” and “encourage” public involvement of all income groups in the preparation of the ConPlan. There must be public hearings at accessible locations and at convenient times. And there governmental body must make a written response to any written comments that are submitted.
HOW TO USE THESE PLANNING LAWS

Use these laws to ensure that local governments plan for affordable housing and emergency shelters. The housing element and ConPlan adoption processes present the opportunity to change restrictive land use policies and to add concrete programs that will facilitate affordable housing development. If the housing element requires the community zones sufficient sites for multi-family housing and shelters with adequate sewer and water services, it will help avoid future disputes over the location and approval of affordable housing. The housing element can include exemptions for affordable housing from prohibitive development fees, development standards or CUP requirements. Both the housing element and the ConPlan can commit the locality to targeting its federal HOME funds or redevelopment tax increment funds for very low income households and homeless persons or to adopt an inclusionary zoning ordinance.

Early Advocacy & Education: Get involved in the housing element and ConPlan preparation processes—these laws require public participation. This is the opportunity to educate local officials and community members and to make sure that the necessary land use provisions are in place to make the development of affordable housing possible.

When Anti-Affordable Housing Policies Are Proposed: If a good housing element or ConPlan has been adopted, there may be policies or programs in these plans that would conflict with the proposed programs. Remember, local governments may not act contrary to their housing elements or their ConPlans. If the housing element is inadequate, this is the time to make the jurisdiction aware of its obligation to plan for affordable housing, not against it.

When Proposing A Project: Review the housing element and ConPlan prior to applying, and find out if the housing element has been approved by HCD and the ConPlan has be approved by HUD. If you discover programs that will increase the viability of your project, inform the local staff of this in your application. If the site you have selected is identified as a site for affordable housing in the housing element, point this out to staff as well—they may be able to use the designation to quell any early NIMBY opposition. And if HCD has found the element out of compliance, suggest to the staff that the approval of your development may increase the chances of HCD ultimately approving a revised element.
Remember also that both the housing element and the ConPlan require communities to take steps to remove barriers to affordable housing. If these documents contain programs or actions to address local laws or policies that present a constraint to the proposed development, point these out as well.

In applications, correspondence and public testimony, make reference to any helpful housing element or ConPlan provisions and to the community’s obligation to have and carry out an adequate housing element and ConPlan.

**When A Project Is Denied Or Approved With Prohibitive Restrictions:** Consult an attorney and appeal to the council or board of supervisors, if that is an option, referencing relevant provisions of the element and the ConPlan, as well as any inadequacies in those documents that affect the development. As always, consider litigation as a last resort.

**When Litigation Is Necessary:** Remember, when the housing element is attacked, a court may issue a preliminary injunction restricting the power of the local government to approve other developments, including nonresidential developments. Even the threat of such an order can increase the chances of settlement. And as explained above, if the element is out of compliance, a court may order the local government to approve the project. If the denial or conditions conflict with some provision in the element, a court may overturn the locality’s action.

When challenging a housing element or an action that is inconsistent with a housing element the *statute of limitations* is 90 days, except that a developer or interested citizen may trigger a one year statute of limitations that begins running 60 days after sending a notice to the locality demanding revisions in the housing element. Obviously, this is somewhat confusing and should be discussed with an attorney.

In some situations, it may also be possible to bring a suit challenging the local governments failure to implement or “follow” its ConPlan when the denial of a development is inconsistent with the ConPlan.
III

CALIFORNIA’S "ANTI-NIMBY" LAWS

The “Anti-NIMBY” Statute
Bonds and Attorneys Fees in Suits Attacking Housing

A. THE "ANTI-NIMBY" STATUTE (Cal. Government Code §65589.5) [Appendix, p. 91]

Even when communities have housing elements that plan for affordable housing for families and the homeless, they will often deny approval of good developments. Misinformation and prejudice can generate fierce neighborhood opposition to proposed projects. Faced with such strident local resistance, local staff and elected officials frequently find it politically impossible to approve affordable developments.

In 1984 the Legislature adopted §65589.5, recognizing that the lack of community acceptance of affordable housing resulted in discrimination against low-income and minority households, a lack of housing to support job growth and environmentally destructive urban sprawl. The law prohibits a local agency (including a planning commission) from 1) disapproving a low or moderate income housing development, or 2) imposing conditions (including reduction in density) that make the development "infeasible" unless one of the following is true:

1. The community has adopted, up to date housing element in substantial compliance with state law, and the development is not needed for the community to meet its fair share regional housing need for very low, low or moderate-income housing;

2. The development would have a specific, direct, quantifiable unavoidable adverse impact on the public health or safety, based on objective written standards as they existed on the date the application was deemed complete, and there is no feasible method to mitigate or avoid the impact without making the project unaffordable;

3. State or federal laws (e.g. environmental laws) require disapproval or
the imposition of conditions, and there is no way to comply without making the development unaffordable;

4. The development would increase the concentration of affordable housing in a neighborhood already has a disproportionately high number of lower income families, and the development can’t be approved at one of the sites identified in the housing element;

5. The development is proposed on land a) zoned for agricultural or resource preservation which is surrounded on two sides by land used for such purposes, or b) which does not have adequate sewer or water;

6. The development is inconsistent with the land use designation in the community's general plan (inconsistency with the zoning ordinance alone is not enough), and the community has adopted a valid housing element.

If a local government denies or unreasonably conditions approval of an affordable development without making one of these findings in writing or without providing substantial evidence to support one of these findings, a court must order the jurisdiction to comply with the statute within 60 days. If the locality fails to comply, the may issue any order necessary to ensure the purpose of the law is fulfilled, which could include an order to approve the development. The local government has the burden of proving that its findings are valid (see Gov’t Code §65589.6).

EXAMPLE: after nimbys opposition, a city council denies a CUP for an affordable housing project that was recommended by staff and approved by the planning commission. the only findings are those contained in the minutes which recite the neighbors asserted concerns over “traffic” and “school overcrowding” even though the staff analysis concluded that neither of these concerns was supported by the data. this decision violates the statute because the findings are not based on written standards (see factor 2); indeed in the only consideration of written
A word about school impacts: Sometimes opponents or local officials raise concerns about the impact of developments on schools. At least one trial court has held that this is not a legitimate health and safety concern (Factor 2) because California law already provides a mechanism for mitigation of school impacts—see Education Code §17620 and Government Code §65995.

Over-concentration of low income households (Factor 4). This exception should be available only when development is proposed for a census tract where the percentage of low and very low income households is disproportionately high as compared to other census tracts with a significant number of low and very low income households. And, the locality must also consider whether denying a project under this factor would violate the fair housing laws, including Government Code §65008 which prohibits discrimination against affordable housing.

The Anti-NIMBY law can provide local officials with the basis for approving otherwise unpopular projects. When they do not want to "take the blame" for approving the project, they can point to this law and say that they had no choice—far from the ideal, but sometimes necessitated by political realities.
B. BOND REQUIREMENTS & ATTORNEYS FEES IN SUITS CHALLENGING AFFORDABLE HOUSING (Cal. Code of Civil Procedure §529.2 & Government Code §65914)

Challengers filing suit to halt affordable housing developments can be required to post a bond. The court will require the plaintiffs to post a bond as security for costs and damages caused by the delay of the project if: 1) the lawsuit was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the low income nature of the project; and 2) the plaintiff will not suffer undue economic hardship by filing the bond. (Code of Civ. Proc. §529.2)

If opponents a suit against the local agency challenging the approval of an affordable housing development and lose, the court may order that challengers pay the public entity's attorneys fees and costs if it finds that: a) the action was frivolous and undertaken to delay or thwart the affordability of the development and b) the challengers were denied a preliminary injunction or the public entity prevailed on a motion for "summary judgment." (Government Code § 65914)
HOW TO USE THESE ANTI-NIMBY LAWS

Use these laws to encourage local governments to approve affordable housing and emergency shelters.

Early Advocacy & Education: Meet with local officials prior to proposing any specific project, and in this non-adversarial environment, explain these anti-NIMBY statutes to them and why the Legislature thought it important to adopt them.

When Anti-Affordable Housing Policies Are Proposed: In addition to raising housing element issues with staff and elected officials point out the important policy reasons behind the adoption of these statutes and the fair housing laws (discussed in the next section).

When Proposing A Project: If you anticipate NIMBY problems, determine in advance whether your project is protected by the anti-NIMBY law. Is the locality’s housing element out of compliance? Is the project consistent with the site’s land use designation in the general plan (even if it would require a zoning change)? Is the site in one of the lowest income census tracts in the community? What health & safety concerns could be raised by neighbors of the development?

Prepare and submit extensive documentation that will demonstrate that the project fits within the terms of the anti-NIMBY law. For example, provide information documenting the affordability of the housing and the income range of the residents. If there are any traffic or parking studies establishing that your development will not overburden the adjacent streets, submit those. And be prepared to explain why any purported school impacts are addressed by existing compensation provisions in state law.

When A Project Is Denied Or Approved With Prohibitive Restrictions: As always, consult an attorney and appeal to the council or board of supervisors, if you haven’t already. In your appeal, reference any violation of the anti-NIMBY law, such as the failure to issue proper written findings or that the finds are not based on objective standards. Immediately request copies of the tapes of the public hearings.

When Litigation Is Necessary: The Statute of Limitations for filing suit is 90 days. Remember, the court may order the project approved or it may overturn
any unreasonable conditions placed on the development’s approval. Coming up with reasonable conditions which the court could substitute for unreasonable conditions or the locality’s denial of the project could provide a fruitful avenue for settlement.

Of course, if the development is approved and NIMBY’s file suit against it, make sure that your attorneys and those of the local government are aware that a court can order the challengers to post a bond protecting the project from financial losses during the litigation and could be held liable for attorneys fees.
IV

LAWS PROHIBITING DISCRIMINATION AGAINST AFFORDABLE HOUSING & ITS RESIDENTS

California Law Prohibiting Discrimination v. Affordable Housing
California & Federal Fair Housing & Other Civil Rights Laws
California Fair Employment and Housing Act
Federal Fair Housing Act ("Title VIII")
Federal Fair Housing Amendments Act of 1988
Title VI of the Civil Rights Act of 1964
The Americans With Disabilities Act of 1990
Section 504 of the Rehabilitation Act of 1973
Group Home & Other Congregate Living Arrangement Laws
California & Federal Constitutions

A. CALIFORNIA LAW PROHIBITING DISCRIMINATION AGAINST AFFORDABLE HOUSING (Government Code §65008) [Appendix, p. 94]

§ 65008 forbids discrimination against affordable housing by local government agencies exercising their planning and land use powers. Specifically, the statute prohibits actions, laws or policies that discriminate against: 1) affordable housing (including homeless shelters), 2) the residents or potential residents of affordable housing, or 3) the developers of affordable housing or shelters, if the discrimination is based on:

1) Race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age;
2) The method of financing (i.e. that the development is subsidized);
3) Occupancy by low or moderate income persons.

The kinds of things that are prohibited include:
Denying individuals or groups residence, ownership, tenancy or any other land use;

Discrimination against a housing development or shelter through the enactment or implementation of planning or zoning ordinances;

Imposing different requirements on affordable developments or shelters than those imposed on non-assisted developments.

However, the law expressly allows local agencies to give preferential treatment of assisted housing and emergency shelters.

Significantly, just as with the other state and federal fair housing laws (see discussion of the fair housing laws, below) this law applies even when the discrimination is not intentional. It applies to any local agency action that has a disproportionate impact on assisted developments or the potential minority or low income occupants. When a local action results in such a disparate impact, it violates this law unless the agency can establish that the action is justified by a legitimate or compelling governmental purpose and that there are no less discriminatory alternatives. Therefore, even when local agencies come up with other excuses for denying projects, e.g. density, traffic or parking, the denial still may violate the law.

EXAMPLE: In response to local opposition a local government bases denial of a CUP for a homeless shelter on relatively vague or unsubstantiated grounds such as "lack of services" or "neighborhood incompatibility." However, if the agency does not apply similar criteria to other housing projects or if its findings do not establish a compelling reason for the denial and demonstrate that there is no other


The federal Fair Housing Act (FHA) (42 U.S.C. §3601 et seq, or "Title VIII")
prohibits local governments and individuals from denying or “to otherwise make unavailable” housing to persons based on race, color, religion, sex, familial status, national origin, or mental or physical disability.\(^6\) The California Fair Employment and Housing Act (FEHA--Government Code §§12900-12996 [specifically §§12955 et seq]) prohibits discrimination on the same bases and adds two others—marital status and ancestry. As with state law prohibiting discrimination against affordable housing (Government Code §65008, above), these laws cover actions that have a discriminatory effect on the protected groups as well as intentional discrimination.

In addition, the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§12210 et seq. and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§1691 et seq. also prohibit discrimination by local government against disabled people. Section 504 requires communities to afford persons with disabilities equal opportunity in any activity funded by the federal government. The ADA essentially extends the protections of 504 to all activities of local agencies and private individuals regardless of the presence of federal funding.

1. **Land Use Discrimination in General; CUP Requirements.**

The California Fair Employment and Housing Act (FEHA--Government Code §§12900-12996) expressly prohibits discrimination through public or private land use practices and decisions, including "restrictive covenants, zoning laws, denials of use permits and other actions authorized under the Planning and Zoning Law... that make housing opportunities unavailable." (§12955(l)) Similarly, courts have held that the FHA prohibits public and private land use practices and decisions that expressly discriminate against or have a disparate impact on one of the protected groups.

**Intentional Discrimination & Discrimination By Effect.**

Communities may be violating these laws if they maintain zoning ordinances or conditional use permit requirements that either intentionally discriminate or have the effect of discriminating against a members of a protected class. A local zoning

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\(^6\) In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin by any recipient of federal funds, including HUD funds. (42 U.S.C. §2000d.)
ordinance that excludes or requires a CUP for a particular use or type of housing may have the effect of discriminating against the class of persons which has a disproportionate need for that kind of housing (such as racial minorities, families with children, or persons with disabilities).

Under state law, to justify an action, law or practice that has a discriminatory effect, the local government must demonstrate that it was "necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect." And in determining whether it was necessary, the locality (or a court) must "consider whether or not there are feasible alternatives that would equally well or better accomplish the purpose advanced with a less discriminatory effect." (Government Code § 12955.8.) Similarly, under federal law, the agency would have to establish at least a legitimate purpose and that there were no less restrictive alternatives.

2. Discrimination Against Housing For People with Disabilities

California's FEHA and the federal Fair Housing Amendments Act of 1988 (FHAA) prohibit housing discrimination against people with disabilities in land use practices and decisions. The FHAA defines disability or "handicap" as:

(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but does not include current, illegal use of or addiction to a controlled substance...
42 U.S.C. §3602(h). These laws apply to persons diagnosed with HIV/AIDS. As Congress indicated when it passed the FHAA:

The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. [House Report 100-711, p.24]

Therefore, any local zoning ordinance that expressly treats housing for people with disabilities differently than other housing would violate state and federal law.

EXAMPLE: a zoning ordinance that requires group homes for persons with certain disabilities to apply for a CUP but does not require a CUP for other groups

And just as with discrimination against the other groups protected by the fair housing laws, a zoning ordinance or CUP requirement that applies to all housing, but that has a disproportionate effect on housing used or designed for persons with disabilities may violate these unless the local government can demonstrate sufficient justification for them.

(a) **Reasonable Accommodations.**

In addition to prohibiting discrimination against housing for persons with disabilities, both FEHA and FHAA requires local governments, when considering a proposed housing project for the disabled, to take affirmative steps to accommodate the special needs of housing for disabled people. These laws obligate communities:

- to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [persons with disabilities] equal opportunity to use and enjoy a dwelling.

(42 U.S.C. §3604(f)(3)(B) and Cal. Government Code §12927(c)(1).) Accordingly,
not only must the local government treat housing for disabled people no differently than other housing, it also has an affirmative duty to accommodate the special requirements of the housing in the enforcement of its land use and zoning laws.

In addition to the FHAA, the ADA and Section 504 also require local agencies to make reasonable accommodations for the needs of disabled people. These laws require that local agencies make "reasonable accommodations" for the needs of disabled people just as does the FHAA. (However, federal courts have reached different conclusions on the question of whether the ADA applies to planning and zoning decisions; the Ninth Circuit Court of Appeals (covering California) has yet to address the question.)

**What is a “reasonable accommodation?”** The accommodation must be necessary, and in the zoning context that means that without the accommodation the housing would not be approved or, if approved, would not be financially feasible or accessible to the persons for which it is intended. Only "reasonable" accommodation is required, which means that an accommodation is not mandated when it will place a great financial hardship or undue burden on the agency or when it will require the agency to fundamentally alter its zoning scheme.

example of a reasonable accommodation: allowing a group home for persons with a particular disability to have fewer parking spaces. Such an accommodation would be appropriate when decreasing the number of spaces is necessary to render the housing financially feasible and reasonable because it is likely that fewer

These protections and obligations usually come into play when group homes or residential care facilities are proposed.

(b) **Group Homes, Residential Care Facilities and Other Congregate Living Arrangements.** [Appendix, p. 103]

One of the first obstacles confronted by organizations seeking to develop permanent or transitional group living environments for persons with physical or
mental disabilities is determining under what local zoning definition their proposed housing fits. However, the terms “group home” and “residential care facility” are general terms and may mean different things depending on the zoning laws of the local community and the particular population served. “Group home,” being a relatively new expression, is not found in most local zoning ordinances, and “residential care facility” is defined differently depending on the community. Further muddying the picture, neither federal nor state law provide clear definitions.

Known by many names, group homes or residential facilities are residences where the residents receive full-time or part-time care or services or live together in a supportive living environment. Generally, those facilities which provide extensive care, treatment or services require licenses, while those that provide shared living for particular populations and limited services are exempt from licensing. (Health & Safety Code §§1502 & 1505.) Health & Safety Code §1505(h) exempts, from state community care facility licensing requirements:

Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director [of the State Department of Social Services (DSS)].

But regardless of a group living facility’s denomination or licensing, because they provide permanent housing for people, they are subject to the state and federal fair housing laws. And to the extent they are reserved for occupancy by physically or mentally disabled people, local agencies may not treat these facilities differently that other housing without a compelling reason and must make reasonable accommodation for these facilities in their land use policies and decisions.

Consequently, when assessing the zoning requirements for proposed group housing for people with disabilities, developers must carefully read the definitions in the local zoning ordinance and then consider how these are affected by the state group housing laws discussed below and the fair housing laws. Local ordinances define group living arrangements under a variety of terms including “community care,” “congregate care,” “intermediate care,” “recovery,” “transitional shelter care,” or variation of those designations. State law defines group care housing according to the type of care provided and only applies of those facilities for which licenses are required.
California law defines several categories of licensed, residential community care facilities:

**Community Care Facility** (Health & Safety Code §1502):

[any facility, place or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons and abused or neglected children, and includes the following:

1. “Residential facility” means a family home, group care facility, or similar facility for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential to sustain the activities of daily living or for the protection of the individual....

7. “Social Rehabilitation facility” means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling....

11. “Transitional shelter care facility” means any group care facility that provides 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

**Residential Care Facilities for Persons With Chronic Life-Threatening Illness** (Health & Safety Code §1568.01)

These community care facilities are licensed under this separate category and are for persons with “HIV disease or AIDS” who need “ongoing assistance with daily living without which a resident’s physical health, mental health, safety, or welfare would be endangered.” Within this category, “residential care facilities” are facilities for adults, emancipated minors or family units.

**Residential Care for the Elderly** (Health & Safety Code §1569.2)
Pursuant to Health & Safety Code §1502.5, community care facilities for persons over 60, “Residential care facility for the elderly,” are exempt from the licensing requirements for community care facilities.

**Intermediate Care Facility/Developmentally Disabled (Health & Safety Code §1250(e) (g) & (h))**

These are facilities with 4 to 15 beds that provide 24-hour personal care, habilitation, developmental and/or supportive health services and nursing supervision for developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

**Congregate Living Health Facility (Health & Safety Code §1250(i)(1))**

These are residential homes with a capacity of no more than six beds (unless operated by a city and county) which provide inpatient care, including the following basic services: “24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational” and either ventilators, services for terminal illness, or services for “catastrophically and severely disabled” people.

(c) **Housing for Six or Fewer Residents**

California law requires that local governments treat many licensed group homes and residential care facilities with six or fewer residents no differently than family housing. (California Health & Safety Code §§ 1267.8 (Intermediate Care Facility & Congregate Living Health Care Facility), 1566.3 (Community Care Residential Facility) and 1568.0831 (Residential Care Facility for persons with HIV/AIDS)). “Six or fewer persons” does *not* include the operator, the operator’s family or persons employed as staff.

These facilities must be considered residential use by local agencies, and the occupants must be considered a family for purposes of any local zoning law. They may not be included in the local zoning codes’s definition of boarding house, rooming house, guest home or similar label which implies that the group home is any different that a family dwelling. Local agencies must allow these group homes
in any area zoned for residential use, and they may not place any requirements or standards on these homes in addition to or different from those placed on other family dwellings of the same type in the same zone.

This means that locality may not require group homes for six or less to obtain conditional use permits or variances that are not required of other family dwellings. “Family dwelling” includes single family dwellings, units in multifamily dwellings, mobilehomes, cooperatives, condominiums and units in planned unit developments.

In addition to these provisions, California Welfare & Institutions Code §5116 provides that:

a state-authorized, certified, or licensed family care home, foster home or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential use of property for the purpose of zoning if such homes provide care on a 24-hour-a-day basis.

These homes must be permitted in all residential zones. This law was enacted in the early 1970's—before the Health & Safety Code sections—as part of the Lanterman-Petris-Short Act which had the purpose of ending state institutionalization of mentally and developmentally disabled persons and persons impaired by chronic alcoholism. It provides an independent source of protection of group homes apart from the Health & Safety Code sections. However, the later enacted Health & Safety Code sections limit section 5116’s scope as to the particular residential facilities described by those laws.

EXAMPLE: A community may not require a group home for six or less developmentally disabled persons to have more parking spaces than are required of any other family home of the same size. It may apply the same building height and setback standards it applies to other family homes. However, the local government may also have an obligation to reasonably accommodate the home by granting a variance from the parking, height or setback standards if the variance is necessary to the feasibility of the home and will not have a significant
Although these laws are found in parts of state law that address group homes requiring licenses, they indirectly protect unlicensed homes as well. If anything, the local government would have a weaker basis for treating unlicensed facilities differently than family dwellings because the basis of the licensing requirement is the greater degree of care provided and the presumably greater neighborhood impact.

(d) Group Homes or Residential Care Facilities for Six or More

Licensed or unlicensed group homes with more than six residents, although not expressly exempted by state law from discrimination by local government, are nevertheless covered by the fair housing laws—FEHA and FHAA. (Indeed, the FEHA provides that any state law inconsistent with the FEHA is invalid (Government Code §12955.6).) In other words, a local agency may neither treat such a home differently in its zoning ordinances nor deny or place conditions on approval of such a home based solely the fact that the home will be occupied by persons with mental or physical disabilities.

Even ordinances or conditional use permit requirements that apply uniformly to all dwellings may violate these fair housing laws if they have a disproportionate impact on housing for persons with disabilities. As explained above, a local government may maintain such laws or practices only if 1) a compelling purpose and 2) there are no less restrictive means of achieving that purpose.

And, these larger group homes for persons with disabilities are entitled to “reasonable accommodation” from local agencies in the application of planning and zoning requirements. If a proposed facility would otherwise be subject to disapproval or to CUP conditions rendering development infeasible, the planning agency must provide exceptions to accommodate the project unless the necessary steps would somehow create a significant burden on the community.

Ordinances that flatly forbid larger group housing for persons with disabilities or treat that housing differently than other group housing clearly violate both the FEHA, the FHAA and the ADA. Ordinances and CUP requirements that apply uniformly to all group living arrangements regardless of the disability of the resident could violate the FEHA and the FHAA if they have a disparate impact on housing for disabled people or fail to contain a process for obtaining a reasonable
accommodation exception for group living for the disabled people. [Indeed, some appellate courts have held that even requiring a group home for disabled people to publicly apply for reasonable accommodation exception unfairly stigmatizes the applicant.]

EXAMPLE: a home for shared living by eight single women diagnosed with hiv, where each pays rent separately to nonprofit, is classified as a boarding house by the local planning department and denied a CUP. Classifying shared living arrangements as boarding houses, besides possibly being inaccurate because meals are not offered, may have a disparate impact on housing for persons with hiv/aids because those persons disproportionate need for shared-

(e) Homeless Shelters and Single Room Occupancy Residences.

Because the people who must reside in emergency shelters or nonprofit residential hotels are often disproportionately persons with disabilities, they are protected by the fair housing laws. One court has held that the refusal to grant a waiver of a variance to convert a motel to an SRO residence was a denial of a reasonable accommodation, finding no evidence that the waiver would cause undue burden to the community or fundamentally undermine the purpose of the zoning ordinance.

3. Discrimination Against Supportive Services

The fair housing laws generally protect persons from discrimination in accessing housing. But often, opposition to affordable housing is based on the fact that certain services will be provided on site. To the extent the services are necessary to the health or safety of the residents of housing for a group protected under the fair housing laws, local government restrictions or prohibition on the provision of the services would violate those laws. Thus, because many disabled persons require counseling, physical therapy, nursing services or other care in order to sustain daily life, local government refusal to allow group homes to provide those
services in residential zones could breach the fair housing laws. Accordingly, zoning ordinances or CUP requirements that restrict the provision of services for disabled people may be illegal if they are not justified by a compelling reason or if they fail to allow for reasonable accommodation of this housing.

However, the fair housing laws do not apply to residential care facilities that provide services or health care to *nonresidents* even if the service or health care is also provided to the residents. Because the nonresident service is unrelated to the needs of the residents, one court has held that such services are not protected by the FHA.

**EXAMPLE:** A community may condition a CUP to a residential care facility for disabled persons on the facility providing health or other supportive services only to residents. The reasonable accommodation obligation does not require a local agency to permit operation of an agency providing services to

Another group protected by the fair housing laws—families with children—may also be impacted by limitations on on-site services in single family neighborhoods. As discussed in the previous section, restrictive definitions of the kinds of “families” permitted in single family residential zones sometimes limit or bar the provision of medical or counseling services to residents. Yet group homes for abused or neglected children generally provide daily services of this sort. Ordinances or CUP requirements prohibiting or limiting these services would most likely constitute unlawful discrimination based on familial status because they would have the effect of excluding homes for these children.

### 4. Discrimination Against Families With Children

The state FEHA and the federal Fair Housing Amendments Act of 1988 both prohibit discrimination based on “familial status.” A family is a household in which one or more minors live with a parent or a person having custody over the minors or a person that is the legal designee of the parent. Therefore, local zoning laws or practices that have the effect of excluding housing for families or, as is more
common, housing for abused or neglected children may violate these laws.

One example of laws or practices that might have a disproportionate impact on families with children is CUP requirements for shared living arrangements. Those households needing to share housing for financial, health or supportive services reasons may be disproportionately families with children. (Of course, such restrictions may also violate the fair housing laws if they have a disparate impact on households with disabled people.)

Restrictive occupancy standards—restrictions on the number of occupants, discussed in greater detail below—clearly would also disproportionately affect families with children. However, the federal FHA exempts reasonable restrictions on the maximum number of occupants, if the restrictions apply to all housing of a similar type.

5. Discrimination By Private Individuals—"Free Speech" Concerns

The state and federal fair housing laws also prohibit private citizens from using intimidation, threats, coercion or harassment to interfere with the housing rights of the groups protected by the law. In theory, because racial minorities, families with children or (in the case of group homes) disabled people are disproportionately in need of affordable housing, some NIMBY opposition to affordable housing may very well violate the fair housing laws. However, filing discrimination complaints against individuals or neighborhood groups can backfire. It can be seen as an attempt to suppress their First Amendment "free speech" rights. Although no one under the guise of "free speech" has the right to illegally discriminate against other individuals, every person has a right to express his or her legitimate concerns.
Because of negative publicity and ensuing litigation after it investigated the actions of neighbors opposed to the conversion of a motel to transitional housing, the Department of Housing and Urban Development (HUD), HUD now rarely "charges" such claims. Similarly, local governments are now quite reluctant to use their powers to restrict or discourage opposition to affordable housing for fear of interfering with protected speech. However, a local government may not deny approval of a project because of local opposition if the local opposition is based on illegal discrimination--e.g., discrimination based on race or disability.
C. CONSTITUTIONAL PROTECTIONS AGAINST DISCRIMINATION

The Due Process and Equal Protection clauses of the United States and California constitutions have been interpreted to prohibit intentional governmental action violating fundamental rights or discriminating against a protected class, respectively. In the context of local land use policy, these provisions are generally less protective of low income persons and affordable housing than the fair housing laws and other state statutes. Not as many groups are protected (e.g. disabled people) and proof of intentional conduct, rather than disproportionate impact, is required to prove a violation.

In one area, however, the California Supreme Court has provided a significant protection for group homes. In City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980), the Court voided an ordinance that limited to no more than five the number of unrelated people who could live in single family housing. The court held that a local ordinance can place no greater limits on the number of unrelated people living together as a functional family than it does on the number of related people. As the court stated, “zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users.”
D. PARTICULAR DISCRIMINATORY LOCAL LAWS & PRACTICES

1. Spatial Separation & “Over-concentration” Restrictions

Under California law, the state Department of Social Services (DSS) must deny licenses to certain residential care facilities and group homes that would be within a specified number of feet, as the crow flies, from other similar housing. These laws do not apply to facilities and homes for six or less, and they do not apply to unlicensed housing. Sometimes communities adopt their own spatial separation standards for unlicensed housing, and some local officials mistakenly apply the state standards for licensed housing to unlicensed housing. Depending on their application, these laws could violate fair housing and other civil rights laws.

State law prohibits DSS from granting a license to certain residential care facilities and group homes within 300 feet as the crow flies of other such facilities unless the city or county approves the location. This requirement applies to Intermediate Care Facilities for Developmentally Disabled (Health & Safety Code §1267.9) and Community Care Facilities (Health & Safety Code §1520.5), except that community care residential care facilities for the elderly and transitional shelter care facilities are exempt. And state law also bars DSS from granting a license to a community care congregate living facilities for persons who are “terminally ill, diagnosed with a life-threatening illness, or catastrophically and severely disabled” within 1000 feet of other similar facilities unless the local government agrees. (Health & Safety Code §1267.9.)

But regardless of whether or not the housing is licensed, spacing requirements, including the state standards, could violate the fair housing laws. Requirements that apply to housing for disabled people or to group homes for children would be illegal unless the local governments could demonstrate an important reason for the restriction. Federal courts have held that spatial requirements for group homes of two miles, 2500 feet or 1000 feet have a disparate persons with disabilities and were either not sufficiently justified by the localities or failed to provide reasonable accommodations when challenged under the federal FHAA or the ADA.

Spatial separation requirements have yet to be challenged in California. Any requirement that would subject subsidized or nonprofit housing to spacing standards would arguably violate Government Code §65008's prohibition against
discrimination against low income housing. And one California court has already indicated that a 1500 foot separation restriction for homeless shelters renders a community’s housing element invalid because it prevents the community from identifying sufficient sites for homeless shelters. See the discussion of the Hoffmaster v. San Diego case in section IIA.

In determining over-concentration, DSS may not consider the presence of residential care facilities for the elderly or transitional shelter care facilities. Similarly, local governments are prohibited from considering the presence of licensed group homes or residential care facilities for six or less people in establishment of any local spatial separation requirements— state law provides that for the purpose of any local ordinance, local governments may not treat that housing differently than other single family homes. (Health & Safety Code §§1267.8, 1566.3 and 1568.0831.)

2. Restrictions On The Definition of “Family”

Most local zoning codes and group home ordinances contain a definition of some variation of “family” or “single family residence” when specifying the use of housing in single family residential zones. These definitions are often relied upon as the basis for distinguishing group home uses from other single family home uses. Typically, the definition will specify that a household occupying a single family home must be “the functional equivalent of a traditional family” or “living as a single, natural family.” Local officials will sometimes decide that shared-living group homes do not conform to these definitions and, therefore, are prohibited or subject to a CUP.

However, treating these so-called “non-traditional” households differently may violate both the fair housing laws and the state Constitution. First, as discussed in greater detail in section IV.C, above, the California Supreme Court has held that local zoning ordinances may not limit occupancy of single family homes to persons who are related by blood or marriage. Second, requiring occupants of all single family homes to “function” as a traditional (presumably nuclear) family could violate the fair housing laws by denying housing opportunities to disabled people, battered women or abused children who need a different kind of shared living arrangement in order to sustain daily life. Even restrictive family definitions applying to all group living situations (e.g. fraternities) could violate these laws if they disproportionately exclude group homes for women or children or for people
with disabilities or fail to provide a reasonable accommodations for housing for disabled people.

**EXAMPLE:** a local zoning ordinance defines “single family” as including unrelated individuals who live as a traditional family. If local staff interpret this to exclude both fraternities and group homes for disabled persons because neither function as a “traditional” family, the ordinance as applied to housing for disabled people could violate the fair housing laws. It fails to provide a means of making a

Definition’s of “family” which forbid temporary occupancy in single family homes also breach the fair housing laws because in barring transitional housing, they have a discriminatory impact on disabled persons. Disabled people in general are more likely to need to live in housing with specialized living environments related to their disability for a limited period.

Finally, some “single family dwelling” definitions prohibit the provision of regular therapeutic or health care services. These local proscriptions are similarly illegal. Unfairly permitting domestic servants while prohibiting medical, psychological and other supportive services (see section IV.B.3, above), they have a disparate effect on housing for disabled people.

3. **Restrictive Occupancy and Health & Safety Standards.**

a) **Numerical Occupancy Standards.**

Most communities have zoning codes or building occupancy standards that limit the number of persons that may occupy a dwelling. The federal FHAA expressly exempts these local laws from the federal fair housing laws, provided that they apply equally to all housing, regardless of the characteristics of the individuals occupying the housing. (See 42 USC §3607(b)(1).) The Supreme Court clarified this exemption in City of Edmonds v. Oxford House, 514 U.S. 725 (1995) holding that exempt restrictions are those that “apply uniformly to all residents of all
dwellings units” and which have the purpose of protecting health and safety. In California, the state Constitution prohibits these laws from distinguishing between related and unrelated individuals (see section IV.C). And, state law prohibits local governments from adopting housing occupancy restrictions any more limiting than those mandated by the state. (See Briseno v. Santa Ana, 6 Cal.App. 4th 1378 (1992))

The state law requires each local government to adopt as its housing occupancy standards those standards prescribed by the most recent edition of the Uniform Housing Code as adopted by the state Department of Housing and Community Development (HCD). (Health & Safety Code §17922) These standards are based on the square footage of the “habitable” rooms of the unit, rather than the number of bedrooms. They are quite reasonable, and allow more than two persons per room if the room is big enough. And in particular cases, the state FEHA (and possibly the federal ADA—see section IV.B.2) may require that even these state standards be broadened where a greater occupancy is necessary to reasonably accommodate a group home or residential care facility for persons with disabilities.

EXAMPLE: an ordinance limiting the number of adult occupants of rented one-family dwellings is unlawful because in applying only to adults it discriminates against households comprised primarily of adults. It also would violate Gov't Code 65008 and possibly the California Constitution by excluding households based

b) Other Health & Safety Standards.

Other so-called life-safety codes and standards are sometimes invoked as grounds for excluding or placing prohibitory conditions on the development of housing for persons with disabilities or other groups protected by the fair housing and anti-discrimination laws. Examples of these burdensome requirements include installation of sprinkler systems and fire walls or mandating the hiring of additional staff. To the extent these health and safety standards apply only to housing for disabled people or other protected groups, such as homes for children, they violate the fair housing laws unless the particular standards are warranted by the unique and specific needs and abilities of the intended residents. And, of course, even standards
that apply to all group residences will violate the fair housing laws if they have a disparate impact on those groups or if the local government refuses to provide reasonable accommodations to waive or reduce the requirement.

**EXAMPLE:** A city’s refusal to waive a sprinkler requirement to the provider of a group home for persons with developmental disabilities may be a necessary reasonable accommodation mandated by the fair housing laws unless such a waiver would somehow harm the city or materially increase the


Some cities require that developers proposing affordable housing, group homes or residential care facilities first notify and meet with neighbors and certain city officials (e.g. city council members) before they may submit receive city land use approvals such as a conditional use permit. However, if these apply only to developers of housing for low income people, they violate Government Code §65008. And federal courts have held that notification requirements that expressly apply to housing for persons with disabilities or that have a disproportionate effect on such housing violate the fair housing laws.

In addition to notification requirements, some communities also compel developers of certain types of housing to appear before local boards or commissions as condition of the locality acting on an application for planning and zoning approvals. Sometimes communities require public hearings as part of the procedure for developers of housing for disabled people to obtain a reasonable accommodation. As with notification requirements, local hearing requirements could violate §65008 if they only apply to developers of low income housing. And these requirements could violate fair housing laws if they apply to housing for groups protected by those laws (e.g. disabled people or group homes for women and children) unless there is a compelling governmental purpose and no less discriminatory alternative to achieving that purpose.
In the case of housing for persons with disabilities, courts have held these notice and hearing requirements to unfairly focus community and neighborhood scrutiny on a population already unfairly and arbitrarily stigmatized.

Finally, some communities also require that operators of affordable housing and housing persons with disabilities establish a neighborhood oversight committee or a procedure for receiving regular input from other residents on the operation and management of the housing. These provisions too may violate §65008 or the fair housing laws if they apply only to affordable housing or housing for disabled persons or families or if they have a disparate impact on the approval or location of such housing.

5. Denying or Conditioning Funding For Affordable Housing.

When faced with opposition to low income housing or housing for disabled people for which a developer has sought some local funding (e.g. redevelopment or HOME funds), local officials may sometimes try to circumvent the anti-NIMBY statutes or Government Code §65008 by denying the funding rather than denying a request for a land use approval such as a CUP. But while local governments are given great latitude in exercising their spending powers, they may not do so in violation of the fair housing laws. Therefore if a local government denies funding in response to NIMBY opposition which is clearly based on discriminatory motives—e.g. the race or disability of the anticipated residents—the refusal to grant the funds could be illegal. The discriminatory motive would have to be fairly clear. If there are genuine, non-frivolous financial concerns raised, a court could find that the denial was based on those legitimate concerns.

Another mechanism some localities use for skirting the anti-housing discrimination laws is conditioning local funding on compliance with neighborhood notification requirements. But just as outright denial of funding could violate the fair housing laws, so could such a funding condition. If the condition applies only to local funding for affordable housing and not to provision of funds for other

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7 The Ninth Circuit of the U.S. Court of Appeals recently held that owners of a hotel who planned to sell it to a nonprofit organization for housing for persons with mental disabilities could sue Los Angeles under the federal Fair Housing Act for discriminatory delay in approving federal acquisition and rehabilitation loans. San Pedro Hotel Co., Inc. v. City of Los Angeles 1998 WL 770678 (9th Cir. (Cal)) 11/6/98.
development projects (such as commercial redevelopment) it could very well have a disparate impact on the groups protected by the fair housing laws.

6. Unreasonable CUP Conditions.

Requiring conditional use permits or requiring CUP’s with unreasonable conditions can violate the anti-housing discrimination and anti-NIMBY laws. A local zoning ordinances that mandates developers or operators of low income housing to obtain a CUP but places no similar requirement on market rate housing developers would violate Government Code §65008. Application of a condition making an affordable housing project infeasible may violate Government Code §65589.5 unless the locality can demonstrate that the condition is authorized by of the exceptions listed in that statute. (See section III.)

Likewise, one court has held that conditioning a CUP for a group home for men with mental retardation upon the operator providing 24 hour supervision and a neighborhood outreach committee, would violate the federal Fair Housing Act if such conditions were not applied to other group living situations and were not justified by an important or legitimate governmental purpose. Another court has found that burdensome parking requirements, which are unnecessary given that few homeless people own cars, violate fair housing laws when applied to a proposed homeless shelter that would be occupied primarily by persons with disabilities and women with children.

Lastly, as explained previously, CUP requirements or conditions that apply to all dwellings of the same type (e.g., all group homes) may still violate the fair housing laws if they disproportionately impact a protected group.
HOW TO USE THE FAIR HOUSING AND OTHER CIVIL RIGHTS LAWS

Use these laws to ensure that local governments refrain from discrimination against affordable housing, emergency shelters and the potential residents of that housing. As with the anti-NIMBY statutes, they can be used to educate staff and elected officials and members of the community. And, because of the possibility of litigation, they can provide the “encouragement,” “backbone” or excuse that local officials sometimes need to stand up to NIMBY opposition.

Early Advocacy & Education: Despite the concerted efforts of local fair housing agencies, there is still much community education needed on the effects of the fair housing laws. Many local staff members and elected officials are unaware of Government Code §65008's prohibition of discrimination against affordable housing and the developers and residents of that housing. And many are still unaware that the fair housing laws apply to the decisions of local government, including land use decisions.

Local officials are surprisingly unfamiliar with the extent to which the protections of persons with disabilities and families with children cover group homes and residential care facilities. Indeed many are under the impression that these laws do not apply to group homes for more than six persons. The concept of discrimination through disproportionate effect on protected groups is also an area about which there is little knowledge and much misunderstanding.

When Anti-Affordable Housing Policies Are Proposed: Analyze the proposals for violation of the fair housing laws, and inform local government staff. Be sure to consider whether the policies will have a disparate impact on affordable housing or any of the classes of people protected by the fair housing laws. §65008, especially, can deter agencies from imposing infeasible fees, development standards or zoning requirements. And it can be used to prevent local governments from placing different neighborhood notification requirements on nonprofit developers than are placed on other developers.

When Proposing A Project: First consider the people your development will house and consider whether they are covered by any of the fair housing laws. Review the housing element, the Consolidated Plan and other sources of local demographic data to help determine if those households in need of affordable housing in your area are disproportionately persons protected by these laws, e.g.,
racial minorities or families with children.

If your project or the people it will serve are protected by the fair housing laws (and most will be, given that §65008 covers most affordable housing), make sure any application submitted contains enough information to establish that the development is covered by these laws. This may be important later, if it becomes necessary for your organization to assert its rights under these laws. And if it becomes apparent that the locality intends to reject your project or saddle it with an unreasonable CUP condition in violation of the fair housing laws, it is probably a good idea to raise that issue in written correspondence with local officials and at public hearings.

When A Project Is Denied Or Approved With Prohibitive Restrictions:
Consult an attorney and consider appealing to the council or board of supervisors, if that is an option. Raise the fair housing issues in your appeal, clearly explaining why the laws apply to your project. Consider having an attorney write the legislative body or appear at the public hearing.

When Litigation Or An Administrative Action Is Necessary: The state FEHA and federal FHA, FHAA and Title VI may be enforced through administrative procedures. There is no similar administrative procedure for §65008 claims. There is no requirement to exhaust these administrative remedies before going to court. The Statute of Limitations for suing under the federal FHA and FHAA is two years, but for §65008 the period is only 90 days. If a administrative action is brought under the FHA or FHAA the statute of limitations for filing an action in court under those statutes is tolled during the administrative proceeding.

Discuss with your attorneys whether filing an administrative complaint is preferable to going to court. If time is critical, as it almost always will be, it probably does not make sense to file an administrative complaint instead of proceeding right to court. Land use discrimination complaints are filed with HUD which generally forwards them to the Department of Justice after investigation. DOJ rarely prosecutes these cases, however HUD may retain and pursue the case itself if the claim is based on Title VI (i.e. the discrimination involves use of HUD funds). But even though neither HUD nor DOJ might elect to pursue the matter in court, filing an administrative complaint is less expensive than proceeding directly to court and may result in a favorable settlement. Having an attorney is not essential and HUD conducts an investigation at no cost to the complainant. It may be worth trying.
V

PREFERENCES, INCENTIVES & EXEMPTIONS

Preference For Water & Sewer Hook-ups
The “Density Bonus” Law
CEQA Exemptions
Exemptions for Rural, Employee & Farm Worker Housing

A. PREFERENCE FOR WATER & SEWER SERVICE (Cal. Government Code §65989.7) [Appendix, p. 110]

Local water and sewer districts must grant a priority for service hook-ups to developments that help meet the community's share of the regional need for housing for lower income families. (The statute requires every local government to deliver a copy of its adopted housing element to its local water and sewer district.) This law is useful in areas where limited availability of sewer or water hook-ups is used as an excuse for denying affordable housing projects. Districts should have written policies in place for allocating preferences, and local governments must notify districts of need for affordable housing identified in their housing elements.
B. THE "DENSITY BONUS" & DEVELOPER INCENTIVE LAW (Cal. Government Code §§65915-17) [Appendix, p.111]

Government Code §65915 provides that if a developer proposes to build a project in which a prescribed minimum number of units will be affordable for at least 30 years, the local government must grant the developer a 25% increase in density and at least one additional incentive unless the locality makes a written finding that the bonus or the incentive is not required to render the units affordable. The developer must agree to construct a required percentage of affordable units, either: 1) 20% reserved for lower income households, 2) 10% reserved for very low income households or 50% reserved for seniors. If a developer agrees to provide 20% for lower income households and 10% for very low income households, the community must provide an additional incentive.

An incentive can include a reduction development, parking or design standards, a modification of zoning requirements, waiver of fees or provision direct financial assistance. A local agency must notify a developer within 90 days after receiving a written proposal of how it will comply with the requirement. All communities are required to have adopted ordinances implementing this law.
C. **AFFORDABLE HOUSING EXEMPTIONS FROM CEQA** (Cal. Public Resources Code §§21080 *et seq.*) [Appendix, p. 114]

A project is exempt from the California Environmental Quality Act (CEQA) review process (see discussion on CEQA in VII) if it has no possible significant effect or qualifies for a statutory or categorical exemption. Public Resources § 21080.14 provides that in an urbanized area housing developments of not more than 100 units which will remain affordable for at least 30 years are exempt from the Act provided the site, among other things, is less than five acres, has been previously developed or is contiguous to a previously developed site, is not a wildlife habitat and is assessed for environmental contaminants. Similarly, §21080.10 exempts farm worker housing of not more than 20 units or beds in non-urbanized areas and 45 units or beds in urbanized areas, provided the site is less than five acres, not a wildlife habitat, etc.

These exemptions remove a powerful weapon in the arsenal of opponents. Depending on the likelihood of opposition, it is sometimes better to slightly reduce the number of units in a proposed development to help ward-off potential CEQA challenges. Proponents should also make sure the site does not include a wildlife habitat.
D. EXEMPTIONS FOR RURAL, EMPLOYEE, & FARM WORKER HOUSING (Health & Safety Code §17922.9, §§17021.5-.7, and §§18214-17)

1. Exemption for USDA Assisted Housing from Local Garage & House Size Requirements.

Under §17922.9, local governments may not impose any requirement on the issuance of a building permit that the size or capacity of any garage or carport or house size exceed that required by the federal Farmers Home Administration of the U. S. Department of Agriculture (USDA). This statute does not prohibit the locality from requiring one uncovered, paved parking space located outside the required setback and outside the driveway approach plus a garage or covered space that does not exceed that allowed by USDA. However, these setback requirements may not exceed those applicable to other single family dwellings in the same zone that have two-car garages.

2. Exemptions for Employee Housing and Farm Worker Housing, Including Mobilehomes.

Employee housing for six or fewer employees is deemed a single family dwelling and may not be designated in a local zoning ordinance as anything different than a single family dwelling. A local government may not subject these units to any fees, including use permit fees, that are not also assessed to other single family dwellings. (See §17021.5.)

In rural areas, employee housing for 12 or fewer employees is deemed an agricultural use and may not be designated as anything different than an agricultural use in a local zoning ordinance. No conditional use permit, variance or other “zoning clearance” may be required that is not also required of any other agricultural activity. And, the locality may not subject these units to any fees not also assessed to other agricultural uses. (See §17021.6.)

Finally, §§18214(b), 18215(b) and 18217(b) exempt from the requirements of the Mobilehome Parks Act land zoned for agricultural use where two or more lots or spaces are rented to owners or users of mobilehomes, recreational vehicles or tents for housing 12 or fewer farm workers.
HOW TO USE THE PREFERENCES, INCENTIVES & EXEMPTIONS

Besides requesting consideration with respect to specific projects, under these laws, non-project related advocacy should focus on making local officials and community groups aware of these requirements. Local water and sewer districts should have written preference policies, and all cities and counties should have density bonus ordinances that meet or exceed the statutory minimums. Many communities have density bonus policies in their housing elements or land use elements, but have not enacted ordinances. Similarly, many local officials are not aware of the CEQA exemptions for affordable housing and incorrectly assume that proposed developments are subject to full CEQA review.
VI

OTHER HELPFUL LAWS

The Permit Streamlining Act
The "Shelter Crisis" Statute

A. THE PERMIT STREAMLINING ACT (Cal. Government Code §§65920 et seq.)

This law requires cities and counties to publish a description of the information project applicants must file, and it mandates a time-line for making a decision on the application. If the local government fails to act within the prescribed time limits, a development project is "deemed" approved.

First, the Act provides that within 30 days of submission of an application for permit, a local agency must inform the applicant in writing whether or not the application is complete--otherwise, the application is deemed complete. Second, the decision maker must act on the application within specified time lines which run from the date the application is complete, provided that the public is given notice of the existence of the project. Note that at the time the application is filed the developer may include a written request to be notified if the agency initiates action to amend its zoning ordinance or general plan in a way that would affect the proposed development.

1. Time Limits. (§§ 65950, 65950.1, 65951, 65952 & 65957)

The public agency must approve or disapprove the application within the time lines below. The time may be extended for 90 days if both the applicant and the agency agree.

180 days from the date of certification of an environmental impact
report EIR unless there has been an extension of time to complete the EIR, in which case the time limit is 90 days; 60 days from the date of adoption of a negative declaration; 60 days from the date the agency determines the project is exempt from the California Environmental Quality Act (CEQA).

The time limits are not extended by a moratorium on development.

2. Public Notice. (§65956)

If any law requires the public agency to notify the public or hold a hearing on the development project, it must give the notice and hold the hearing at least 60 days prior to the expiration of the time limits. There are two ways to ensure that any required notice is given. First, upon seven days notice to the agency and no earlier than 60 days prior to the expiration of the time limits, the applicant may itself provide the public notice in a manner similar to that which the agency uses. Second, the applicant is authorized to bring a civil mandamus law suit to compel the agency to issue the notice.

3. Applicability.

The courts have held that the Act applies to conditional use permits, building permits, Planned Unit Developments and to the Coastal Commission (provided the Commission has notice of the permit application). However, the courts have also held that the Act does not apply 1) to legislative decisions of the local government, i.e. requests for general plan amendments or rezoning, and 2) to require automatic certification of an EIR.
B. THE "SHELTER CRISIS" STATUTE (Government Code §8698 et seq.)

This statute permits a local government to declare a "shelter crisis" upon finding that a significant number of persons within its jurisdiction cannot obtain shelter and the situation has resulted in a threat to the health and safety of those homeless persons. During the crisis, regulations prescribing housing or health and safety standards are suspended to the extent that strict compliance would prevent, hinder or delay the mitigation of the crisis. In addition, the governing body's liability for ordinary negligence (as opposed to grossly negligent, reckless or intentional conduct) is also suspended.
VII

SOME LAWS USED IN OPPOSITION TO HOUSING

CEQA and NEPA
Endangered Species Laws
Historic Preservation Laws
Conditional Use Permits
Developer Fees and Exactions
Development Standards & Design Review
Moratoria
General Plan Consistency Requirement
The Brown Act

A. CALIFORNIA AND FEDERAL ENVIRONMENTAL PROTECTION LAWS


Sometimes opponents of affordable housing will raise alleged noncompliance with the California Environmental Quality Act (CEQA—Pub. Res. C. §21000 et seq.) or the federal National Environmental Protection Act (NEPA—42 U.S.C. §4332) in their efforts to stop a project. CEQA requires local governments to consider the potential environmental consequences of proposed development. NEPA requires federal agencies, including HUD, to perform a similar review before releasing federal funds for a project.

Unless the proposed development is exempt (see V.C), projects which have a significant effect (defined as "substantial adverse impact") on the environment require preparation of an Environmental Impact Report (EIR). In attempting to delay or stop a project, opponents may claim that a local government must mandate
preparation of an EIR or that the locality failed to follow the proper steps in assessing the effect of a development. The potential delay caused by these threats is frequently sufficient to kill a project. Developers, especially developers of nonprofit housing, usually cannot afford to tie up their land or their financing commitments for the extended time it takes to prepare and obtain approval of an EIR.

The CEQA Process

Except where a development is exempt (see V.C) or is covered by an existing EIR, a local government must conduct an initial study of proposed projects that may possibly have a significant effect on the environment. If the study concludes that a project will not have a significant effect, then the locality may adopt a "negative declaration" and approve the development. But if the study concludes that a project may have a significant effect, a draft and final EIR must be prepared and approved before the development may be approved.

The preparation and approval of an EIR can take many months. Even when a local government finds that an EIR is not required, it may adopt a "mitigated" negative declaration imposing conditions on a development that may cause further delay or render the project infeasible. And sometimes, even though the locality ultimately adopts a negative declaration, the process can be drawn out for weeks when opponents appear at public hearings and challenge staff recommendations.


Both the federal Endangered Species Act of 1966 (ESA) and the California Endangered Species Act (CESA) restrict or prohibit developments that would “take” a species that is listed as an endangered species. The United States Fish and Wildlife Service administers the federal list and the California Fish and Game Commission administers the state list. Under ESA, if a development financed by a federal agency, including HUD, “may affect” an endangered species or its habitat, a permit must be obtained from the Fish and Wildlife service before the development may proceed. Similarly, under CESA, a permit must be obtained from the state Fish and Game Commission.

Given the number of species at risk today, it is more likely than not that a development in a suburban or rural community “may affect” a protected species.
Therefore, proponents of an affordable housing development should check with local, state and federal officials to determine what wildlife might be impacted on a prospective site. ESA provides a procedure for proposing a Habitat Conservation Plan, and CESA now grants the Fish and Game Commission the discretion to allow “incidental take” permits.

3. How to Address Possible Environmental Challenges

The best way to deal with the possibility of attacks raising environmental concerns is to choose a site on which development will have the fewest possible physical impacts on the environment. Ideally, the site will already be covered by an EIR for a master development plan. Obviously, most sites won’t fall into this category. Consequently, when considering sites, check with local and state officials charged with protecting species and with local environmental groups. This should coincide with the toxics analysis that is generally performed as a matter of course.

If opponents raise concerns, meet with them as soon as possible to determine whether their expressed concerns are genuine or merely a subterfuge for stopping the project. Genuine concerns sometimes be easily met by making changes in the development that are not too costly.

If litigation is filed, the challenger must schedule a meeting of all parties to attempt to resolve the issues expeditiously. Developers or local government should consider asking the court, pursuant to Civil Procedure §529.2 (see III.B) to require the challenger to post a bond to cover possible losses from the delay caused by the litigation.

Under these laws a local government may, by ordinance, adopt special conditions or regulations for the use or development of places, sites or buildings "having a special character or special historical or aesthetic interest or value." Therefore, a city council or board of supervisors may, on its own initiative or at the suggestion of others, adopt special zoning regulations that effectively preclude the development of affordable housing or shelters where the general zoning would not otherwise exclude such development. The regulations or conditions could include reduced densities, increased development fees, requiring a conditional use permit or imposing restrictive design standards. [State law also expressly exempts sites listed on the National Register of Historic Places from the law prohibiting local governments from enacting regulations that have the effect of precluding the installation of manufactured homes (Gov. Code §65852.3)]

These statutes give broad discretion to local governments to decide what constitutes "special" characteristics or historical or aesthetic interest. However, if a locality added a site to its historic preservation list for the purpose of precluding development of affordable housing or housing for disabled people, the adoption would probably violate state and federal fair housing laws, including California's law prohibiting discrimination against subsidized housing and homeless shelters (Gov. Code §65008).

The federal law – the National Historic Preservation Act (NHPA (42 U.S.C. §470(f)))-- also requires that, prior to releasing federal funds, federal agencies, including HUD, must consider the impact of a development on buildings listed on the National Register. If HUD determines that a proposed development that would be assisted under a HUD program may have an impact on historic property, it must give the Advisory Council on Historic Preservation the opportunity to comment. Opponents of affordable housing will sometimes attempt to delay or halt HUD funded developments by alleging that the agency failed to comply with NHPA. Consequently, developers and local government should make sure that the required NHPA review has been performed when a HUD funded housing development is proposed.

Proponents confronted with these laws may address them in the same manner as the environmental laws discussed above.
C. **CONDITIONAL USE PERMITS** *(Cal. Government Code §65901)*

In exercising their zoning powers, local governments may require that certain uses in a particular zoning category are permitted only after meeting certain conditions as opposed to being permitted "by right." Developments falling into these categories must receive a conditional use permit (CUP) from the locality. For example, local zoning ordinances often provide that homeless shelters are permitted only in certain zones and only upon approval of a conditional use permit. The granting of a conditional use permit requires a public hearing, and as discussed previously, the public hearing process presents a perfect opportunity for project opponents to marshal resistance.

Planning commissions, city councils and boards of supervisors are given great leeway in determining 1) what kinds of developments are subject to a CUP and 2) what conditions will be required. However, the local government must establish written criteria for granting a CUP so that applicants have some idea of what sorts of conditions might be ordered. And the decision making body must apply the criteria in a uniform and non-discriminatory manner.

In practice, most local CUP criteria are very general, yielding substantial latitude to the decision making body. (Typically, the CUP criteria will specify that the planning body may deny a project if it finds the project is "not compatible with the surrounding neighborhood.")

*However,* as explained in section III, under the anti-NIMBY law *(Gov’t C. §65589.5)* a local government may not condition an affordable housing development in a manner that would render it unaffordable unless it can justify the condition based on one of the six narrow findings listed in the statute. In addition, as discussed in section IV, a community may not discriminate against affordable housing or homeless shelters in exercising its planning and zoning powers, including its power to establish CUP conditions. *If conditions apply only to affordable housing or to housing for disabled people, or if generally applicable conditions have a disproportionate effect on subsidized developments, low income persons, disabled persons or minorities, they may violate the fair housing and anti-discrimination laws.*
Use of the CUP process by opponents can sometimes result in substantial delay if hearings are repeatedly continued or postponed. Developers facing this situation should consider invoking the time limits of the Permit Streamlining Act—see section VI.A.

Finally, a local CUP process that effectively precludes the development of affordable must be addressed and mitigated in the jurisdiction's housing element. A recent California Court of Appeal case held that housing elements must include a program to identify sites for homeless shelters that "permit the development of, conversion to or use of, a shelter or transitional housing without undue regulatory approval...." (See Hoffmaster v. City of San Diego, 55 Cal.App.4th 1098 (1997), discussed section II.) In that case, the Court held that a "blanket" CUP process, which required that residential care facilities of more than six residents obtain a CUP regardless of their proposed location, acted as a deterrent to the development of low-cost housing and that the housing element must provide for the mitigation of the CUP restrictions.
D. DEVELOPER FEES & OTHER EXACTIONS

Anytime a developer seeks to develop a project that is not allowed “by right,” i.e. it requires the issuance of a CUP, variance, zoning change or general plan amendment, a community may seek to impose fees or require improvements or dedication of land as a condition of approval. Generally, local government may access these exactions if the burdens imposed are significantly related to the impacts of the development on the surrounding area or infrastructure. However, there are important statutory and constitutional limitations.

School Fees. Government Code §65995.1 provides an exception from the statutorily authorized school facilities fees for seniors’ housing and migrant farm worker housing.

Subdivision Performance Bonds. Government Code §§66499-66499.10 require community’s all nonprofit developers of affordable housing to utilize alternative mechanisms for providing security for improvements when the improvements are required as a condition of approval of a subdivision map.

Public Improvement Fees. Government Code §65913.8 prevents a local government from levying a fee as a condition of approving a development for a “public capital facility improvement” that includes an amount for the maintenance or operation of the improvement. There are two exceptions. One allows the levy of maintenance fees on projects of 19 or fewer units or lots when the improvement is designed to serve only the specific development, and the locality finds that it is infeasible or impractical to form a new maintenance district or to annex to a current district. The other exception allows assessment of maintenance fees for 24 months when the development is within a water, sewer, street lighting or drainage district and subsequent to the construction of the improvement either the locality forms an assessment district to finance the improvement or the area is annexed to an existing district. The 24 month period may be extended once if the locality finds that more time is needed to complete the district creation or annexation.

Constitutional Limitations. The “takings clause” of the U.S. Constitution is violated unless there is a sufficient “nexus” between the impacts of the particular development and the proposed exaction. There are several factors which affect whether a mandated fee, improvement or dedication meets this test.
First, any exaction must “substantially advance a legitimate government interest” and may not deprive the developer of “all economically viable use” of the property. Both the California Supreme Court and United States Supreme Court along with California’s Mitigation Fee Act (Gov’t Code §§66000 et seq.) provide that for an exaction to serve a legitimate government interest there must be a sufficient nexus between the exaction and the need or burden created by the project. In addition to showing a nexus, federal court cases have established that when a locality wants to require a dedication, it must demonstrate a “rough proportionality” between the requested dedication to the impact created by the development. (This has been termed the “Nollan/Dolan test” after the two U.S. Supreme Court cases that established the nexus/rough proportionality standard.)

In California, the California Supreme Court in Erhlich v. City of Culver City, 12 Cal.4th 854 (1996) held that the nexus/rough proportionality standard also applies when a local government seeks to levy an ad hoc impact fee on a particular development, but not when it levies a fee based on an ordinance or policy that applies generally to all developers. However, the Mitigation Fee Act requires even developer fee ordinances and other mitigation fees of general applicability to meet the nexus requirements of the statute.

As with any development condition, a local government may not impose more burdensome exactions on affordable housing than it would on other projects. Project specific exactions may also violate the fair housing laws or the anti-NIMBY law if they have the effect of rendering the project infeasible. And the locality may also have an obligation to reasonably accommodate a development for disabled people by reducing or waiving the exaction. (See sections III & IV.)
E. OTHER LAWS SOMETIMES USED IN OPPOSITION

1. Development Standards & Design Review

Most cities and counties subject development projects to a local design review process. The courts have upheld local design review as reasonably related to the general welfare of the community. It presents potential obstacles to development of affordable housing, but usually these barriers are surmountable, although they can result costly delays. Invoking the Permit Streamlining Act may help in this regard—see section VI.A, above.

The design review process may legitimately be used to address community or neighborhood concerns to preserve neighborhood aesthetics. A proposed structure that is incompatible in architecture or scale with the surrounding neighborhood may be disapproved. Proposed projects should blend in visually.

But opponents sometimes attempt to use design review as a subterfuge for attacking the proposed use of the development. Raising issues related to the use of a building by low income or disabled residents is probably outside the permissible purview of design review. For example, some may argue that the occupants of a proposed group home will increase traffic or parking problems, impacting the neighborhood "character." Although “neighborhood compatibility” of a building is within the permissible scope of design review, traffic and parking are not affected by the building itself. And remember if design conditions are imposed as a pretext for excluding low income or disabled persons, they may violate the fair housing laws discussed in section IV. And if the project otherwise complies with the zoning ordinance, the local agency may be compelled to approve under the provisions of the anti-NIMBY statute (Government Code §65589.5) also addressed section III.

For developments subject to the subdivision map laws (usually single family or condominium projects), Government Code § 65913.2 mandates that local jurisdictions refrain from imposing criteria "for the purpose of rendering infeasible the development of housing for any and all economic segments of the community."

Sometimes a community may adopt or propose adoption of an interim ordinance prohibiting certain residential uses as a means of avoiding approval of affordable housing or homeless shelters. While local governments have the authority to impose such a development moratorium, they can only do so when the proposed project is in conflict with a proposed general plan amendment or rezoning which the locality intends to study or consider within a reasonable period of time. With four-fifths vote, the moratorium may be adopted as an "urgency" measure without notice or hearing. When passed in this manner, the measure is effective for 45 days. However, it may be extended after notice and hearing with four-fifths vote for ten months, 15 days (totaling one year) and then again for another year. If first adopted with notice and hearing (& four-fifths vote), it remains in effect for 45 days, but may be extended by four fifths vote for 22 months, 15 days (totaling two years).

A moratorium on development is not valid unless the decision making body makes express findings that the measure is necessitated by an immediate threat to the public health, safety or welfare. And the local government must issue a report at least ten days before the moratorium expires delineating what steps it took to remedy the threat to health and safety that was the justification for the measure.

Even a facially valid moratorium may actually violate the fair housing laws (section IV) unless the local government can establish that there was no less restrictive means of accomplishing the purpose behind the moratorium. One court has held that a moratorium enacted hastily while an application is pending may constitute a violation of the federal fair housing laws.

3. General Plan Consistency Requirement.

As explained in section II.A., a local government may not act inconsistently with its general plan (which includes the housing element). Consequently, if a proposed development is arguably inconsistent with the land use designation for the site contained in the land use element, opponents may argue that the decision maker lacks the authority to approve the project.

Another scenario is a situation in which the locality has not adopted an adequate or up-to-date housing element. In such a case, opponents of a proposed
housing development or shelter could challenge the approval of the project on the basis that the general plan (lacking a valid housing element) is invalid and that therefore any approval is invalid per se. However, in such a suit, the court would have the power to approve a development containing affordable housing if it found that the approval would not impair the locality’s ability to enact a valid housing element. (See section II and Gov’t C. §§65754 et seq.)

The potential of adversaries raising the general plan consistency question is yet another reason why affordable housing advocates must become aware of the status of the housing elements of the communities in which they work. Making sure a city or county approves an adequate housing element not only helps ensure that there will be developable sites available for housing or shelters, but also removes one weapon from the opponent's arsenal.


The Ralph M. Brown Open Meetings Act prohibits members of state and local legislative bodies (including planning commissions) from meeting without first giving notice and an opportunity to attend to the general public. "Meeting" is defined as any time a majority of the members get together and discuss any subject matter within the jurisdiction of the legislative body. The Act provides very specific procedures which local government must follow. If the legislative body fails to comply with any of the requirements when taking any action, a member of the community may bring a law suit requesting that the court declare the action null and void.

Those opposing affordable housing or homeless shelters may seize upon an irregularity in a legislative proceeding as a means of overturning an approval of a project. They could file a suit asking the court to declare the approval void and at the very least cause costly delay for the developer. However, a suit may not be filed until written demand for correction of the violation has been made and the legislative body has failed to correct it. Moreover, a violation of the Act does not automatically invalidate the decision of the legislative body-- the challengers must also prove that the particular violation caused them "prejudice," i.e. that the violation resulted in the decision maker acting without important information or in a clandestine manner.

To avoid running afoul of the Brown Act, project applicants should become
familiar with the local government's meeting and hearing procedures.

5. **Growth Controls**

Some communities have adopted by ordinance or initiative laws that limit to varying degrees residential and nonresidential growth. While these sorts of limitations are best addressed before a developer proposes a specific project, *i.e.*, when the legislation is first proposed or during the drafting of the housing element (*see* section II.A), an affordable housing developer should not automatically foreclose consideration of proposing a project in such locality. Some controls contain exceptions for affordable housing; sometimes the laws are inconsistent with the housing element; sometimes they violate the “least cost” zoning law (Gov’t Code §65913.1; *see* section II.B).

If a community amends its general plan or zoning ordinance to effectively limit the number of residential units that may be built annually, the legislative body must make findings that warrant the reduction of the region’s housing opportunities. (Government Code §65302.8 (general plan) & §65863.6 (zoning).) If these kind of limitations are enacted by initiative, however, the finding mandates do not apply.

All growth control laws are presumed to impact the region’s supply of affordable housing and therefore are vulnerable to legal attack if they a) limit the number of housing units or buildable lots, or b) violate the “least cost” zoning law (Gov’t Code §65913.1), *i.e.*, do not provide sufficient vacant land at appropriate densities to meet the locality’s share of the regional housing need are presumed to impact the region’s housing supply. If challenged in court, the local government bears the burden of proving that the restrictions are necessary to protect the community’s health and safety. *See* Evidence Code §669.5. These legal presumptions apply to initiatives except those adopted before January 1, 1981 which 1) establish a growth limit equivalent to the community’s “fair share” of each year’s statewide growth, or 2) set a growth rate of no more than the average rate experienced by the state. In addition, the presumption does not apply to initiatives that violate the “least cost” zoning law if they exempt low and moderate income housing or provide sites for low and moderate income housing.
If a growth control general plan amendment, ordinance or initiative measure precludes development of sufficient housing at appropriate densities to meet the community’s share of the regional housing need for lower and moderate income housing, the Department of Housing and Community Development (HCD) may find the locality’s housing element out of compliance with state law. Alternatively, a court may find that the growth restriction is inconsistent with a valid housing element containing a goal or objective to provide adequate sites for affordable housing. Remember, if a court finds a housing element invalid, it may order the local government to approve a proposed affordable housing development (see section II.A.3).

In sum, proponents of affordable housing in community’s with growth restrictions should examine the restrictions for exceptions and in the context of the legal limitations described above and the housing element laws. There may very well be ways to avoid or obtain an exception to the controls.
APPENDIX OF SELECTED STATUTES

HOUSING ELEMENT STATUTES

“LEAST COST” ZONING LAW

CALIFORNIA ANTI-NIMBY LAWS

CALIFORNIA & FEDERAL FAIR HOUSING LAWS

CALIFORNIA GROUP HOME/RESIDENTIAL CARE STATUTES

PREFERENCES FOR WATER & SEWER HOOK-UPS

DENSITY BONUS LAW

CEQA AFFORDABLE HOUSING EXEMPTION STATUTES
SELECTED HOUSING ELEMENT STATUTES

Government Code §§ 66583, 65583.1, 65585, 65587, 65588, 65588.1, 65589.3, 65754, 65754.5, 65755, 65759, 65760

§65583.

The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

1. An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

2. An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

3. An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

4. An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584.

5. An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

6. An analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.
(7) An analysis of opportunities for energy conservation with respect to residential
development.

(8) An analysis of existing assisted housing developments that are eligible to change from
low-income housing uses during the next 10 years due to termination of subsidy contracts,
mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for
the purpose of this section, shall mean multifamily rental housing that receives governmental
assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local
multifamily revenue bond programs, local redevelopment programs, the federal Community
Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall
also include multifamily rental units that were developed pursuant to a local inclusionary housing
program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address,
the type of governmental assistance received, the earliest possible date of change from
low-income use and the total number of elderly and nonelderly units that could be lost from the
locality's low-income housing stock in each year during the 10-year period. For purposes of state
and federally funded projects, the analysis required by this subparagraph need only contain
information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is
comparable in size and rent levels, to replace the units that could change from low-income use,
and an estimated cost of preserving the assisted housing developments. This cost analysis for
replacement housing may be done aggregately for each five-year period and does not have to
contain a project by project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the
local government which have legal and managerial capacity to acquire and manage these housing
developments.

(D) The analysis shall identify and consider the use of all federal, state, and local
financing and subsidy programs which can be used to preserve, for lower income households, the
assisted housing developments, identified in this paragraph, including, but not limited to, federal
Community Development Block Grant Program funds, tax increment funds received by a
redevelopment agency of the community, and administrative fees received by a housing authority
operating within the community. In considering the use of these financing and subsidy programs,
the analysis shall identify the amounts of funds under each available program which have not
been legally obligated for other purposes and which could be available for use in preserving
assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative
to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may
exceed available resources and the community's ability to satisfy this need within the content of
the general plan requirements outlined in Article 5 (commencing with Section 65300). Under
these circumstances, the quantified objectives need not be identical to the total housing needs.
The quantified objectives shall establish the maximum number of housing units by income
category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is
undertaking or intends to undertake to implement the policies and achieve the goals and
objectives of the housing element through the administration of land use and development
controls, provision of regulatory concessions and incentives, and the utilization of appropriate
federal and state financing and subsidy programs when available and the utilization of moneys in a Low and Moderate Income Housing Fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b). Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households. For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required
by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

[Amended by Stats. 1991, Ch. 889, Sec. 2, 1992 ch. 1030.]

§ 65583.1.

(a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for consistency with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site. Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or
county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the
Laws Affecting the Location & Approval Of Affordable Housing

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this
subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

[Amended 1998– AB 438]

§65585

(a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to each city or county in the preparation of its housing element.

(b) At least 90 days prior to adoption of its housing element, or at least 45 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department. The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 45 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with the requirements of this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with the requirements of this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with the requirements of this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of this article despite the findings of the department.
(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 120 days, review adopted housing elements or amendments and report its findings to the planning agency.

(Amended by Stats. 1990, Ch. 1441, Sec. 5.)

§65587

(a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(Amended by Stats. 1990, Ch. 1441, Sec. 6.)

§65588

(a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

1. The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

2. The effectiveness of the housing element in attainment of the community's housing goals and objectives.

3. The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review. In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on the effective date of the act which amended this section during the 1983-84 Session of the Legislature.

1. Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.
(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:
   (1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.
   (2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.
   (3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.
   (4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.
   (e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:
      (1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2000, for the third revision, and June 30, 2005, for the fourth revision.
      (2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.
      (3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.
      (4) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.
      (5) All other local governments: June 30, 2003, for the third revision, and June 30, 2008, for the fourth revision.
      (6) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.
§65588.1

(a) The planning period of existing housing elements prepared pursuant to subdivision (b) of Section 65588 shall be extended through June 30 of the year of the housing element due date prescribed in subdivision (e) of Section 65588. Local governments shall continue to implement the housing program of existing housing elements and the annual review pursuant to Section 65400.

(b) The extension provided in this section shall not limit the existing responsibility under subdivision (b) of Section 65588 of any jurisdiction to adopt a housing element in conformance with this article.

(c) It is the intent of the Legislature that nothing in this section shall be construed to reinstate any mandates pursuant to Chapter 1143 of the Statutes of 1980 suspended by the Budget Act of 1993-94.

[1993 ch. 695.]

§65754.

In any action brought to challenge the validity of the general plan of any city, county, or city and county, or any mandatory element thereof, if the court, in a final judgment in favor of the plaintiff or petitioner, finds that the general plan or any mandatory element of the general plan does not substantially comply with the requirements of Article 5 (commencing with Section 65300):

(a) The city, county, or city and county shall bring its general plan or relevant mandatory element or elements thereof into compliance with the requirements of Article 5 (commencing with Section 65300) within 120 days.

Notwithstanding the provisions of subdivision (b) of Section 65585, the planning agency of the city, county, or city and county shall submit a draft of its revised housing element or housing element amendment at least 45 days prior to its adoption to the Department of Housing and Community Development for its review, notifying the department that the element is subject to the review procedure set forth in this section.

The department shall review the draft element or amendment and report its findings to the planning agency within 45 days of receipt of the draft. The legislative body shall consider the department's findings prior to final adoption of the housing element or amendment if the department's findings are reported to the planning agency within 45 days after the department receives that draft element or amendment.

(b) The city or county, including the chartered cities specified in subdivision (d) of Section 65860, shall, in accordance with Section 65860, bring its zoning ordinance into consistency with its general plan or relevant mandatory element or elements thereof within 120 days after the general plan has been amended in accordance with subdivision (a). (Amended by Stats. 1984, Ch. 1039, Sec. 5.)

§65754.5.
(a) During the pendency of any action described in Section 65754, or when issuing a final judgment in favor of the plaintiff or petitioner finding that the general plan or any element thereof does not conform to the requirements of Article 5 (commencing with Section 65300), the court shall not enjoin the development of any housing development with respect to which all of the following conditions are met:

1. The legislative body of the city, county, or city and county has approved a development project, as defined by Section 65928, for housing or a specific plan for the housing development and determined the development project for housing or the specific plan to be consistent with the general plan of the city, county, or city and county.

2. The legislative body of the city, county, or city and county has certified an environmental impact report or a negative declaration for the development project for housing or for the specific plan for housing pursuant to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, and no legal action was brought within the applicable statute of limitations period relating to that environmental impact report or negative declaration.

3. The owner of the land upon which the housing is proposed to be developed, in satisfaction of any requirements imposed and in reliance upon any action taken by the city, county, or city and county pursuant to paragraphs (1) and (2), has irrevocably committed one million dollars ($1,000,000), or more, for public infrastructure, including, but not limited to, roads, and water and sewer facilities.

4. The proposed housing development may be developed without having an impact upon the city, county, or city and county's ability to implement an adequate housing element or to properly adopt an adequate housing element if the court determines, in the pending action, that the general plan or plan element is inadequate. The court shall apply the provisions of Section 65760 to determine whether a housing development will have an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(b) The provisions of this section shall be applicable to any legal action pending on January 1, 1984, and to every action commenced on or after that date.

(c) This section shall not be construed to preclude a public agency from exercising discretion, in a manner authorized by any other provision of law, to alter plans, zoning, or subsequent development approvals applicable to those lands, or from enacting and enforcing further regulations upon their use.

(Added by Stats. 1983, Ch. 911, Sec. 2.)

§65755.

(a) The court shall include, in the order or judgment rendered pursuant to Section 65754, one or more of the following provisions for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of Article 5 (commencing with Section 65300):

1. Suspend the authority of the city, county, or city and county pursuant to Division 13 (commencing with Section 17910) of the Health and Safety Code, to issue building permits, or any category of building permits, and all other related permits, except that the city, county, or city and county shall continue to function as an enforcement agency for review of permit applications
for appropriate codes and standards compliance, prior to the issuance of building permits and other related permits for residential housing for that city, county, or city and county.

(2) Suspend the authority of the city, county, or city and county, pursuant to Chapter 4 (commencing with Section 65800) to grant any and all categories of zoning changes, variances, or both.

(3) Suspend the authority of the city, county, or city and county, pursuant to Division 2 (commencing with Section 66410), to grant subdivision map approvals for any and all categories of subdivision map approvals.

(4) Mandate the approval of all applications for building permits, or other related construction permits, for residential housing where a final subdivision map, parcel map, or plot plan has been approved for the project, where the approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, and where the permit application conforms to all code requirements and other applicable provisions of law except those zoning laws held to be invalid by the final court order, and changes to the zoning ordinances adopted after such final court order which were enacted for the purpose of preventing the construction of a specific residential development.

(5) Mandate the approval of any or all final subdivision maps for residential housing projects which have previously received a tentative map approval from the city, county, or city and county pursuant to Division 2 (commencing with Section 66410) when the final map conforms to the approved tentative map, the tentative map has not expired, and where approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(6) Mandate that notwithstanding the provisions of Sections 66473.5 and 66474, any tentative subdivision map for a residential housing project shall be approved if all of the following requirements are met:

(A) The approval of the map will not significantly impair the ability of the city, county, or city and county to adopt and implement those elements or portions thereof of the general plan which have been held to be inadequate.

(B) The map complies with all of the provisions of Division 2 (commencing with Section 66410), except those parts which would require disapproval of the project due to the inadequacy of the general plan.

(C) The approval of the map will not affect the ability of the city, county, or city and county to adopt and implement an adequate housing element.

(D) The map is consistent with the portions of the general plan not found inadequate and the proposed revisions, if applicable, to the part of the plan held inadequate.

(b) Any order or judgment of a court which includes the remedies described in paragraphs (1), (2), or (3) of subdivision (a) shall exclude from the operation of that order or judgment any action, program, or project required by law to be consistent with a general or specific plan if the court finds that the approval or undertaking of the action, program, or project complies with both of the following requirements:

(1) That it will not significantly impair the ability of the city, county, or city and county to adopt or amend all or part of the applicable plan as may be necessary to make the plan substantially comply with the requirements of Article 5 (commencing with Section 65300) in the case of a general plan, or Article 8 (commencing with Section 65450) in the case of a specific plan.

(2) That it is consistent with those portions of the plan challenged in the action or
proceeding and found by the court to substantially comply with applicable provisions of law. The party seeking exclusion from any order or judgment of a court pursuant to this subdivision shall have the burden of showing that the action, program, or project complies with paragraphs (1) and (2).
(Amended by Stats. 1984, Ch. 1039, Sec. 6.)

§65759.

In any action brought under this section:
(a) The California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, does not apply to any action necessary to bring its general plan or relevant mandatory elements of the plan into compliance with any court order or judgment under this article.

(1) The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California Code of Regulations.

(2) If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California Code of Regulations. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.

(3) The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.

(4) The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or the plan’s relevant mandatory elements into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.

(b) The court for good cause shown may grant not more than two extensions of time, not to exceed a total of 240 days, in order to meet the requirements imposed by Section 65754.
(Amended by Stats. 1991, Ch. 1183, Sec. 3.)

§65760.

In determining whether a housing development will have an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, the court shall consider all relevant factors. There is a conclusive presumption that any housing development, 25 percent of which units are affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, can be developed without having an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, except where the approval of a housing development
may prevent the city, county, or city and county from complying with the final judgment of the court.
(Amended by Stats. 1984, Ch. 1039, Sec. 9.5.)
THE "LEAST COST" ZONING STATUTE

§ 65913.1

In exercising its authority to zone for land uses, a city, county, or city and county shall designate and zone sufficient vacant land for residential use with appropriate standards, in relation to zoning for nonresidential use, and in relation to growth projections of the general plan to meet housing needs as identified in the general plan. For the purposes of this section, "appropriate standards" shall mean densities and requirements with respect to minimum floor areas, building setbacks, rear and side yards, parking, the percentage of a lot which may be occupied by a structure, amenities, and other requirements imposed on residential lots pursuant to the zoning authority which contribute significantly to the economic feasibility of producing housing at the lowest possible cost given economic and environmental factors, the public health and safety, and the need to facilitate the development of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. However, nothing in this section shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to construct such housing.

Nothing in this section shall be construed to require a city, county, or city and county in which less than 5 percent of the total land area is undeveloped to zone a site within an urbanized area of such city, county, or city and county for residential uses at densities which exceed those on adjoining residential parcels by 100 percent. For the purposes of this section, "vacant land" shall not include agricultural preserves pursuant to Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5. For the purposes of this section, "urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203, and as periodically updated.

(Added by Stats. 1980, Ch. 1152.)
CALIFORNIA’S ANTI-NIMBY STATUTES

Government Code §§65589.5 and 65589.6

§65589.5.

(a) The Legislature finds all of the following:
(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.
(2) California housing has become the most expensive in the nation. The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.
(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.
(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to very low, low- or moderate-income households or condition approval in a manner which renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:
(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the
development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized
by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:
(1) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.
(2) “Affordable to very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.
(3) “Area median income” shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.
(4) “Neighborhood” means a planning area commonly identified as such in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.
(5) “Disapprove the development project” includes any instance in which a local agency does either of the following:
(A) Votes on a proposed housing development project application and the application is disapproved.
(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be
occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

1. The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of very low, low-, or moderate-income households without properly making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(l) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil
Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner’s points and authorities, (2) by the respondent with respondent’s points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.
(Amended by Stats. 1999, c. 968, §6)

§65589.6.

In any action taken to challenge the validity of a decision by a city, county, or city and county to disapprove a project or approve a project upon the condition that it be developed at a lower density pursuant to Section 65589.5, the city, county, or city and county shall bear the burden of proof that its decision has conformed to all of the conditions specified in Section 65589.5.
(Added by Stats. 1984, Ch. 1104, Sec. 1.)
(a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:
   (1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age of the individuals or group of individuals.
   (2) The method of financing of any residential development of the individual or group of individuals.
   (3) The intended occupancy of any residential development by persons or families of low, moderate, or middle income.

(b) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against any residential development or emergency shelter because of the method of financing or the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age of the owners or intended occupants of the residential development or emergency shelter.

(c) (1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to this title, prohibit or discriminate against a residential development or emergency shelter because the development or shelter is intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income. (2) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d) (1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter which is subsidized, financed, insured, or otherwise assisted by the federal or state governments or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e).

   (2) No city, county, city and county, or other local governmental agency may, because of the race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, or age of the intended occupants, or because the development is intended for occupancy by persons and families of low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision
(e) Notwithstanding the above, nothing in this section or this title shall be construed to prohibit
either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older
persons, in accordance with state or federal law, if that zoning was enacted prior to January 1,
1995.

(2) Any city, county, or city and county from extending preferential treatment to residential
developments or emergency shelters assisted by the federal or state governments or by a local
public entity, as defined in Section 50079 of the Health and Safety Code, or other residential
developments or emergency shelters intended for occupancy by persons and families of low and
moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and
families of middle income, or agricultural employees, as defined in subdivision (b) of Section
1140.4 of the Labor Code, and their families. This preferential treatment may include, but need
not be limited to, reduction or waiver of fees or changes in architectural requirements, site
development and property line requirements, building setback requirements, or vehicle parking
requirements which reduce development costs of these developments.

(f) "Residential development," as used in this section, means a single-family residence or a
multifamily residence, including manufactured homes, as defined in Section 18007 of the Health
and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices which inhibit the
development of housing for persons and families of low, moderate, and middle income, or
emergency shelters for the homeless, are a matter of statewide concern.

896, 1996 ch. 295. ]

Government Code §12955.

It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against any person
because of the race, color, religion, sex, marital status, national origin, ancestry, familial status,
or disability of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any
written or oral inquiry concerning the race, color, religion, sex, marital status, national origin,
ancestry, familial status, or disability of any person seeking to purchase, rent or lease any housing
accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published
any notice, statement, or advertisement, with respect to the sale or rental of a housing
accommodation that indicates any preference, limitation, or discrimination based on race, color,
religion, sex, marital status, national origin, ancestry, familial status, or disability or an intention
to make any such preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that
section applies to housing accommodations, to discriminate against any person on the basis of
sex, color, race, religion, ancestry, national origin, familial status, marital status, disability, or on
any other basis prohibited by that section.

(e) For any person, bank, mortgage company or other financial institution that provides
financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, familial status, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Government Code §12955.2.

For purposes of this part, "familial status" means one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this part against discrimination on the basis of familial status also apply to any individual who is pregnant, who is in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children.

1992 ch. 182.
Government Code §12955.3.

For purposes of this part, "disability" includes, but is not limited to, the following:
(a) A physical or mental impairment that substantially limits one or more of a person's major life activities.
(b) A record of having, or being perceived as having, a physical or mental impairment, but not including current illegal use of, or addiction to, a controlled substance (as defined by Section 102 of the federal Controlled Substance Act, 21 U.S.C. Sec. 802). [1992 ch. 182.]


Nothing in this part shall be construed to afford to the classes protected under this part, fewer rights or remedies than the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.), or state law relating to fair employment and housing as it existed prior to the effective date of this section. Any state law that purports to require or permit any action that would be an unlawful practice under this part shall to that extent be invalid. This part may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws. [1992 ch. 182, 1993 ch. 1277.]

Government Code §12955.7.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 12955 or 12955.1. [1993 ch. 1277.]


For purposes of this article, in connection with unlawful practices:
(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need
it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

(1) Any determination of a violation pursuant to this subdivision shall consider whether or not there are feasible alternatives that would equally well or better accomplish the purpose advanced with a less discriminatory effect.

(2) For purposes of this subdivision, the term "business establishment" shall have the same meaning as in Section 51 of the Civil Code.

[1993 ch. 1277.]

**Federal Law**

42 U.S.C § 3602.

**Definitions**

As used in this title--

(a) "Secretary" means the Secretary of Housing and Urban Development

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code [11 USCS §§ 101 et seq.], receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, 806, or 818 [42 USC §§3604, 3605, 3606, or 3617].

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(i) "Aggrieved person" includes any person who--

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about
to occur. (j) "Complainant" means the person (including the Secretary) who files a complaint under section 810 [42 USC § 3610].

(k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

(m) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(n) "Respondent" means--

(1) the person or other entity accused in a complaint of an unfair housing practice; and

(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a) [42 USC § 3610(a)].

(o) "Prevailing party" has the same meaning as such term has in section 722 of the Revised Statutes of the United States.

42 USC § 3604. Discrimination in the sale or rental of housing and other prohibited practices.

As made applicable by section 803 [42 USC § 3603] and except as exempted by sections 803(b) and 807 [42 USC §§ 3603(b), 3607], it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or
made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.[;]

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted Sept. 13, 1988], a failure to design and construct those dwellings in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design: (I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5) (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such
dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6) (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act [42 USC §3610(f)(3)] to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(a) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled–nursing or a congregate living health facility shall meet the same fire safety standards adopted by the State Fire Marshal pursuant to Sections 13113, 13113.5, 13143, and 13143.6 that apply to community care facilities, as defined in Section 1502, of similar size and with residents of similar age and ambulatory status. No other state or local regulations relating to fire safety shall apply to these facilities and the requirements specified in this section shall be uniformly enforced by state and local fire authorities.

(b) An intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled–nursing or a congregate living health facility shall meet the same seismic safety requirements applied to community care facilities of similar size with residents of similar age and ambulatory status. No additional requirements relating to seismic safety shall apply to such facilities.

(c) Whether or not unrelated persons are living together, an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which is related to the residential use of property pursuant to this article.

For the purposes of all local ordinances, an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled–nursing or a congregate living health facility is a business run for profit or differs in any other way from a single-family residence.

This section does not forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility as long as such restrictions are identical to those applied to other single-family residences.

This section does not forbid the application to an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled–nursing or a congregate living health facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within...
the jurisdiction of a local public entity, as long as that ordinance does not distinguish intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled–nursing or a congregate living health facility from other single-family dwellings and that the ordinance does not distinguish residents of the intermediate care facility/developmentally disabled habilitative or intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility from persons who reside in other single-family dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an intermediate care facility/developmentally disabled habilitative which serves six or fewer persons or an intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility which is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an intermediate care facility/developmentally disabled habilitative serving six or fewer persons or an intermediate care facility/developmentally disabled–nursing which serves six or fewer persons or a congregate living health facility shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section supersedes Section 13143 to the extent these provisions are applicable to intermediate care facility/developmentally disabled habilitative providing care for six or fewer residents or an intermediate care facility/developmentally disabled–nursing serving six or fewer persons or a congregate living health facility.

(Amended by Stats. 1986, Ch. 1459, Sec. 4.)

Health & Safety Code §1267.9.

(a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled–nursing, congregate living health facilities, or pediatric day health and respite care facilities, as defined in Section 1760.2, which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new intermediate care facility/developmentally disabled habilitative license, a new intermediate care facility/developmentally disabled–nursing license, a congregate living health facility, or a pediatric day health and respite care facility license if the director determines that the location is in such proximity to an existing intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled–nursing, a congregate living health facility, or a pediatric day health and respite care facility as would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, either of the following will occur:

1. There will be intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled–nursing, residential care facilities, as defined in Section 1502, or pediatric day health and respite care facilities which are separated by a distance of less than 300 feet, as measured from any point upon the outside walls of the structures housing the facilities.

2. There will be congregate living health facilities serving persons who are terminally ill, diagnosed with a life-threatening illness, or catastrophically and severely disabled, as defined in Section 1250, which are separated by a distance of less than 1,000 feet, as measured from any
point upon the outside walls of the structures housing the facilities.

Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet or 1,000 feet, whichever is applicable, with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new intermediate care facility/developmentally disabled-habilitative, a new intermediate care facility/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility, the director shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to renew an intermediate care facility/developmentally disabled-habilitative license, an intermediate care facility/developmentally disabled-nursing license, a congregate living health facility license, or a pediatric day health and respite care facility license, or to refuse to grant a license upon a change of ownership of an existing intermediate care facility/developmentally disabled-habilitative, intermediate care facility/developmentally disabled-nursing, a congregate living health facility, or a pediatric day health and respite care facility where there is no change in the location of the facility.  (f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, residential care facilities, as defined in Section 1502, congregate living health facilities, or pediatric day health and respite care facilities.

(Adopted by Stats. 1990, Ch. 1227, Sec. 5. Effective September 24, 1990.)

Health & Safety Code §1520.5.

(a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of residential care facilities which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new residential care facility license if the director determines that the location is in a proximity to an existing residential care facility that would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, there will be residential care facilities which are separated by a distance of 300 feet or less, as measured from any point upon the outside walls of the structures housing those facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new residential care facility, the director, or county licensing agency, shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of residential care facilities.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to grant a license upon a change of ownership of an existing residential care facility where
there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.

(g) Any transitional shelter care facility as defined in paragraph (11) of subdivision (a) of Section 1502 shall not be considered in determining overconcentration of residential care facilities, and license applications for those facilities shall not be denied upon the basis of overconcentration.


Health & Safety Code §1566.3.

Whether or not unrelated persons are living together, a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential facility is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential facility which serves six or fewer persons as long as such restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

Use of a family dwelling for purposes of a residential facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent such sections are applicable to residential facilities providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.
Health & Safety Code §1566.2.

A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons.

For the purposes of this section, "family dwellings," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobile homes, including mobile homes located in mobile home parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

Health & Safety Code §1566.4.

No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential facility because of a failure to comply with local ordinances from which such facilities are exempt under Section 1566.3, provided that the applicant otherwise qualifies for such fire clearance, license, permit, or similar authorization. Leg.H.

(Amended by Stats. 1978, Ch. 891.)

Health & Safety Code §1568.03.

(a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:
1. Any health facility, as defined in Section 1250.
2. Any clinic, as defined in Section 1200.
3. Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined
by regulations of the department.

(4) (A) Any house, institution, hotel, foster home, shared housing project, or other similar facility that is limited to providing any of the following: housing, meals, transportation, housekeeping, recreational and social activities, the enforcement of house rules, counseling on activities of daily living, and service referrals, as long as both of the following conditions are met:
   (i) After any referral, all residents thereof independently obtain care and supervision and medical services without the assistance of the facility or of any person or entity with an organizational or financial connection with that facility.
   (ii) No resident thereof has an unmet need for care and supervision or protective supervision. A memorandum of understanding between the facility and any service agency to which it refers residents does not necessarily itself constitute an agreement for care and supervision of the resident.

   (B) In determining the applicability of this paragraph, the department shall determine the residents' need for care and supervision, if any, and shall identify the persons or entities providing or assisting in the provision of care and supervision. This paragraph shall apply only if the department determines that the care and supervision needs of all residents are being independently met.

(5) Any similar facility determined by the director.

(d) A holder of a residential care facility license may hold or obtain an additional license or a child day care facility license, as long as the services required by each license are provided at separate locations or distinctly separate sections of the building.

(e) The director may bring an action to enjoin the violation or threatened violation of this section in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The court shall, if it finds the allegations to be true, issue its order enjoining continuance of the violation.

[Amended by Stats. 1991, Ch. 832, Sec. 4, 1993 ch. 1215, 1995 ch. 648, effective October 6, 1995.]

Health & Safety Code §1568.0831.

(a) (1) Whether or not unrelated persons are living together, a residential care facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this chapter. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this chapter.

(2) For the purpose of all local ordinances, a residential care facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility is a business run for profit or differs in any other way from a family dwelling.

(3) This section shall not be construed to prohibit any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility which serves six or fewer persons as long as the restrictions are identical
to those applied to other family dwellings of the same type in the same zone.

(4) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

(5) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

(6) Use of a family dwelling for purposes of a residential care facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities serving six or fewer persons.

(b) No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential care facility because of a failure to comply with local ordinances from which the facilities are exempt under subdivision (a), provided that the applicant otherwise qualifies for the fire clearance, license, permit, or similar authorization. (c) For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential care facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

(d) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed residential care facilities.

(e) Licensed residential care facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity. LegH.

(Amended by Stats. 1991, Ch. 832, Sec. 15.)
PREFERENCES FOR WATER & SEWER HOOK-UPS

Government Code §65589.7.

(a) The housing element adopted by the legislative body and any amendments made to that element shall be delivered to all public agencies or private entities that provide water services at retail or sewer services within the territory of the legislative body. When allocating or making plans for the allocation of available and future resources or services designated for residential use, each public agency or private entity providing water services at retail or sewer services, shall grant a priority for the provision of these available and future resources or services to proposed housing developments which help meet the city's, county's, or city and county's share of the regional housing need for lower income households as identified in the housing element adopted by the legislative body and any amendments made to that element.

(b) This section is intended to neither enlarge nor diminish the existing authority of a city, county or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water services at retail or sewer services shall not invalidate any action or approval of a development project. The special districts which provide water services at retail or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

(c) As used in this section, "water services at retail" means supplying water directly to the end user or consumer of that water, and does not include sale by a water supplier to another water supplier for resale.

[1991 ch. 889, 1992 ch. 1356.]
DENSITY BONUS STATUTES

Government Code §§65915 & 65916

Government Code §65915

(a) When a developer of housing proposes a housing development within the jurisdiction of the local government, the city, county, or city and county shall provide the developer incentives for the production of lower income housing units within the development if the developer meets the requirements set forth in subdivisions (b) and (c). The city, county, or city and county shall adopt an ordinance which shall specify the method of providing developer incentives.

(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.2 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in subdivision (h) unless the city, county, or city and county makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code or for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

(c) A developer shall agree to and the city, county, or city and county shall ensure continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one additional concession or incentive pursuant to paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

(d) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the procedures under which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall
include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) The housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(f) For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city, county, or city and county. The density bonus shall not be included when determining the number of housing units which is equal to 10 or 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(g) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions. This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

(Amended by Stats. 1991, Ch. 1091, Sec. 64.)

Government Code §65916
Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.
(Added by Stats. 1979, Ch. 1207.)
Public Resources Code §§21080.10 & 21080.14

This division does not apply to any of the following:
(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.
(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project which is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.
(c) (1) Any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2), that is affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, if there is no public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower-income households for a period of at least 15 years, or any development project that consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2) that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if there is public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years, if either type of development project meets all of the following requirements:
(A) (i) If the development project is proposed for an urbanized area, it is located on a project site which is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.
(ii) If the development project is proposed for a nonurbanized area, it is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural workers if the housing consists of dormitories, barracks, or other group living facilities.
(B) The development project is consistent with the jurisdiction's general plan as it existed on the date that the application was deemed complete.
(C) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the

CEQA EXEMPTION STATUTES
zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(D) The development project site is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(E) The development project site can be adequately served by utilities.

(F) The development project site has no value as a wildlife habitat.

(G) The development project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(H) The development project will not involve the demolition of, or any substantial adverse change, in any structure that is listed, or is determined to be eligible for listing, in the California Register of Historic Resources.

(2) As used in paragraph (1), "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(3) As used paragraph (1), "urbanized area" means either of the following:

(A) An area with a population density of at least 1,000 persons per square mile.

(B) An area with a population density of less than 1,000 persons per square mile that is identified as an urban area in a general plan adopted by a local government, and was not designated, on the date that the application was deemed complete, as an area reserved for future urban growth.

(4) This division shall apply to any development project described in this subdivision if a public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances, or that the cumulative impact of successive projects of the same type in the same area over time would be significant.


(a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer provides sufficient legal commitments to ensure continued availability of units for the lower income households for 30 years as provided in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan or any applicable
specific plan or local coastal programs it existed on the date that the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site is an infill site that has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than five acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.