



Anti-Nimby Tools

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Historically, local governments have had broad discretion in the approval of residential development. However, local parochialism and prejudices often result in policies and practices that exclude the development of affordable housing, thereby exacerbating patterns of racial and economic segregation and creating a substantial imbalance of jobs and housing. In recent years, several laws have been adopted that place important limitations and obligations on local decision-makers in the area of affordable housing.

Housing Element Law (Gov. Code Sec. 65580 et seq.) Every city and county must adopt a housing element as part of its general plan. Most importantly, a housing element must identify sites appropriate for affordable housing and address governmental constraints to development. If the locality fails to adopt a housing element or adopts one that is inadequate, a court can order the locality to halt development until an adequate element is adopted or order approval of specific affordable housing developments.

In most cases, the identification of sites must include sites zoned for multi-family development by right.

Section 65583.2 (AB 2348) requires the element to specifically identify sites and demonstrate their availability without restrictive zoning burdens. See our Housing Element Fact Sheet for additional detail.

“Anti-Nimby” Law (Gov. Code Sec. 65589.5). Even in communities with valid housing elements, local governments often deny approval of good developments. Misinformation and prejudice can generate fierce opposition to proposed projects. Recognizing this, state law prohibits a local agency from disapproving a low income housing development, or imposing conditions that make the development infeasible, unless it finds that one of five narrow conditions exist. Of the five, three are of most import: 1) the project would have an unavoidable impact on health and safety which cannot be mitigated; 2) there is no need for the project; or 3) the project is inconsistent with the general plan and the housing element is in compliance with state law. SB 948 (Alarcon) (Chapter 968, Statutes of 1999): (1) narrowed the definition of what constitutes an impact on health and safety; (2) applied the law to middle income housing; and (3) clarified the authority of courts to order localities to approve illegally denied projects. AB 369 (Dutra) (Chapter 237, Statutes of 2001) provided

attorneys fees and costs against localities that violate the law. SB 619 (Ducheny) (Chapter 793, Statutes of 2003) expanded the law to mixed use developments. SB 575 (Torlakson) (Chapter 601, Statutes of 2005) narrowed the “no need” and “zoning inconsistency” conditions for turning down affordable housing.

Prohibition of Discrimination Against Affordable Housing (Gov. Code Sec. 65008). This statute forbids discrimination against affordable housing developments, developers or potential residents by local agencies when carrying out their planning and zoning powers. Agencies are prohibited not only from exercising bias based on race, sex, age or religion, but from discriminating against developments because the development is subsidized or occupancy will include low or moderate income persons. Local governments may not impose different requirements on affordable developments than those imposed on non-assisted projects. Just as with the other state and federal fair housing laws (see below), this law applies even if the discrimination is not intentional. It applies to any land use action that has a disproportionate impact on assisted developments or the potential minority or low income occupants. SB 619 (Ducheny) (Chapter 793, Statutes of 2003) prohibited