



2005 Priority Land Use Laws

© 2006 California Housing Law Project, Marc Brown and Christine Minnehan, Co-Directors.

Anti-Nimby Law

SB 575 (Torlakson) (Chapter 601, Statutes of 2005) strengthens Anti-Nimby Law as follows:

- **Zoning Inconsistency:**

If a locality has not identified adequate sites in its housing element, it cannot use the “zoning inconsistency” excuse to deny or condition housing *on any site (or at any density)* that is designated for: 1) residential uses, or 2) commercial uses on which residential uses are permitted.

- **Limits “Health and Safety” Excuse:** A locality cannot use the “adverse impact on health and safety” excuse to deny or condition housing just because there is a zoning or general plan inconsistency.

- **Limits “No Need”**

Excuse: A locality cannot use the “no housing need” excuse to deny or condition a mixed income housing application unless there is no need for each income group being housed.

- **Court Enforcement:**

Gives applicants eligible to live in the proposed housing standing to sue. Authorizes courts to vacate a locality’s decision to deny or condition housing in violation of the law and impose fines in cases of “bad faith,” with fines to be used to build lower income housing within five years. Creates an expedited process for bringing a court action for enforcement of the law. Requires a local agency to post a bond if the local agency appeals the judgment of the trial court.

Housing Element Sites

AB 1233 (Jones), (Chapter 614, Statutes of 2005) does the following:

- Requires a locality without an HCD-approved housing element to rezone within one year of the deadline for adoption of the new housing element adequate sites to accommodate any portion of the regional housing need from the previous cycle that the community failed to accommodate in its previous housing element.

- Requires a locality that failed in the prior planning period to implement commitments to rezone land to complete these rezonings within one year of the deadline for adoption of the new housing element.

Multifamily By-Right Law

SB 326 (Dunn) (Chapter 598, Statutes of 2005) modifies multifamily by-right law as follows:

- Existing law provides that certain multifamily affordable housing that is consistent with the design, development and environmental standards of the locality, is a permitted use and is not subject to a conditional use permit process. SB 326 expands the law to cover: substantially rehabilitated housing; to cover duplexes, triplexes and fourplexes with a minimum density of 8 units per acre; limits the law to attached housing (no detached single family units).

Density Bonus Law

SB 435 (Hollingsworth) (Chapter 496, Statutes of 2005) amends density bonus law as follows:

- **Common Interest**

Developments: Common interest developments (CIDs) are eligible to use the moderate income density bonus.

- **Senior Mobilehomes:**

Senior mobilehomes/mobilehome parks qualify as senior housing.

- **Affordable Housing**

Costs: Changes the definition of affordable housing costs.

- **Recapture of Initial**

Subsidy: Localities can recover any initial subsidy for moderate income units.

- **Equity Sharing:**

Localities can use equity sharing procedures required by other funding sources or laws.

- **One Density Bonus:**

Applicants may choose only one (not multiple) density bonuses.

- **Moderate Income**

Ownership: Limits the moderate income density bonus to ownership units.

- **Land Donation:**

Applicants for a land donation density bonus do not get incentives.

- **Density Bonus Units**

are Market Rate Units: SB 435 clarifies that units awarded pursuant to density bonus law are market rate units and that localities cannot impose affordability restrictions on these market rate units. This avoids an endless loop problem in which the new affordable units would create new density bonus units, etc., etc.