



# SB 1098 - Multifamily Moratoriums

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**SB 1098** (Alarcon), (Chapter 939, Statutes of 2001), limits the ability of local governments to adopt discriminatory moratoriums on multifamily housing.

• **Abuses of Moratorium Law:** Under current state Anti-Nimby law, cities and counties are required to provide substantial reasons before turning down affordable housing development proposals. In order to circumvent Anti-Nimby law, some communities began to adopting moratoriums on all multifamily housing. For example:

A nonprofit developer was in *design review* on a farmworker housing development that conformed with the site's zoning. The city, at the urging of neighbors, imposed a moratorium on that one parcel saying it needed to update its general plan. The developer had to take the city to federal court charging civil rights violations.

Similarly, during a City Council hearing to consider *design review* for a multifamily housing development proposed for a multifamily zoned site, neighbors complained about the alleged ill effects of low-income housing. The City Council was advised by its attorney that it could not stop the development without enacting a moratorium on all

multifamily housing. The Council then voted to ban all multifamily housing. A federal civil rights complaint was filed against the city.

• **What Does SB 1098 Do?** SB 1098 requires localities to make a narrow health and safety finding before extending a multifamily moratorium. SB 1098 adopted the same narrow "health and safety" finding in Anti-Nimby law. First, SB 1098 requires that local governments make a finding that the development of multifamily housing would have a "specific, adverse impact upon the public health or safety". Second, the law defines "specific, adverse impact" as 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 ordinance is adopted by the legislative body".

• **Judicial Review:** Gov. Code 65658 permits temporary development moratoriums. A change in that law in 1997 limited judicial scrutiny of such moratoriums. Local governments took advantage of that change by adopting moratoriums based on questionable health and safety findings. In addition to

strengthening the findings required to justify an extension of a moratorium, SB 1098 restored the law in existence prior to 1997, thus permitting broader judicial scrutiny of multifamily moratoriums.

• **Prior Legislation:** Governor Davis vetoed a similar measure, SB 1621 (Alarcon), in 2000, that required a finding before adoption of a moratorium on multifamily housing. The following year, housing advocates asked the California Apartment Association to co-sponsor SB 1098. The sponsors narrowed SB 1098 to apply only to extensions of moratoriums on multifamily housing. This enables cities and counties by a 4/5ths vote to enact multifamily moratoriums for 45 days in order to address legitimate planning issues. But the law provides that localities cannot extend the moratorium beyond 45 days with making the strengthened health and safety finding in SB 1098.

• **Other Provisions:** SB 1098 defines multifamily housing as housing in which at least one-third of the project is devoted to multi-family housing.

The law also does not apply to moratoriums necessary to prevent the demolition of existing affordable housing.