
No More Kids!

How Overcrowded Schools May Lead to Violations of Fair Housing Laws

By Barbara Kautz

©2015 All Rights Reserved.

I. INTRODUCTION

As cities and counties try to meet the mandates of the State Legislature to “use the powers vested in them to ... make adequate provision for the housing needs of all economic segments of the community,”¹ they have faced substantial opposition from a growing force: parents and school districts who want city councils and boards of supervisors to plan and zone to *exclude* families with children from the community because of overcrowded schools. Housing elements² (the required local housing plan) frequently cite school capacity and overcrowding as a major factor in community opposition to housing.³ For example, before one city council hearing on a housing element, local residents organized a rally in opposition using the motto, “SAVE OUR SCHOOLS.”⁴

Concerns about school overcrowding are especially acute when new housing is proposed. For a 365-unit project in the Town of Los Gatos, the staff reports, public meeting transcripts, and letters from the Los Gatos Union School District repeatedly expressed concern about school overcrowding and the possibility of approving only senior housing.⁵ The possibility of school overcrowding even trumped an initiative that would have limited the number of housing units in a downtown area. In arguing against the initiative, opponents asserted that it would cause significantly more *family* housing to be built, thus increasing burdens on local schools.⁶

However, the ability of local jurisdictions to consider school overcrowding in their planning and zoning decisions has been virtually eliminated by the passage of the Leroy F. Greene School Facilities Act of 1998 (“S.B. 50”).⁷ That legislation limits local authority to require developers to mitigate school impacts; now, developers can only be required to pay school impact fees equal, at most, to fifty percent of the cost of providing new facilities. S.B. 50 prohibits cities and counties from requiring additional contributions. But as enrollment increases, especially in communities with good test scores where parents pay a premium to live,⁸ districts and parents instead demand that cities plan for housing that will not attract families with children—and cities may try to accommodate them by adopting design standards intended to be suitable only for singles or childless couples, or by adopting ordinances permitting senior housing only. For instance, one community’s draft plan asked, “How does design attract Gen Y and Baby Boomers instead of families?” and went on to discuss design features that would discourage families, such as higher density and smaller units, no direct access to yards and garages, wine bars instead of tot lots, and nightlife instead of parks.⁹

These efforts to exclude and discourage families from living in communities violate prohibitions against “familial status” discrimination contained in the federal Fair Housing Act (the

“FHA”),¹⁰ the California Fair Employment and Housing Act (the “FEHA”),¹¹ the California Unruh Civil Rights Act (the “Unruh Act”),¹² and the California Planning and Zoning Law.¹³ The purpose of this article is to describe the fair housing protections that prohibit adoption of land use controls meant to keep out families with children.

II. BACKGROUND: S.B. 50, OVERCROWDED SCHOOLS, AND LOCAL FRUSTRATION

S.B. 50 provides that:

A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person’s refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.¹⁴

Payment of these fees “shall be the exclusive method[] of considering and mitigating impacts on school facilities” under the California Environmental Quality Act and is “deemed to provide full and complete school facilities mitigation.”¹⁵ “School facilities” are defined as “any school-related consideration relating to a school district’s ability to accommodate enrollment.”¹⁶ The effect of these provisions is to limit the school fees that can be charged to new development and to remove the ability of local agencies to make land use decisions based on the inadequacy of school facilities or school overcrowding.

Currently, school fees cannot exceed so-called Level II fees, which provide only half the cost of the needed facilities.¹⁷ S.B. 50 contemplated that the State of California would assume the other half of the cost, and since 1998, the State’s voters have approved approximately thirty-five million dollars in statewide general obligation bonds for schools.¹⁸ However, no school bond has been placed on the State ballot for the last ten years, no bonding authority remains, school advocates report a four to nine billion dollar need for school facilities, and Governor Brown is opposed to new statewide school bonds.¹⁹

Cities and counties in communities with overcrowded schools face a toxic mix when considering housing developments: school districts with inadequate funds to accommodate new students, angry parents, and the inability to obtain adequate mitigation for school impacts, all of which result in demands to keep out new families with children.

III. DISCRIMINATION BASED ON FAMILIAL STATUS

Federal and state fair housing laws prohibit cities and counties from enacting or enforcing land-use laws that operate to make housing “unavailable” based on “familial status.” “Familial status” is generally defined as a household containing a person under eighteen years of age residing with a parent, guardian, or person having legal custody.²⁰

In particular:

- The FHA forbids actions that make housing “unavailable” based on familial status,²¹ discriminate based on familial status,²² or interfere with an owner’s efforts to make housing available to families.²³ The FHA invalidates any local ordinance that requires a discriminatory housing practice.²⁴
- The California FEHA prohibits discrimination through land use practices, including zoning laws, use permit denials, and other planning and zoning actions that make housing opportunities “unavailable” because of familial status.²⁵
- The California Planning and Zoning Law invalidates any planning action if it denies the enjoyment of residence to any persons because of familial status or age.²⁶ The law forbids local agencies from prohibiting or discriminating against any residential development because of familial status or age,²⁷ or from imposing different requirements on residential developments because of age or familial status.²⁸

In response to public pressure, communities may seek to adopt ordinances or policies that will discourage families with children, such as limiting the number of bedrooms or unit square footage, or adopting senior zoning on undeveloped sites. Ordinances or other outwardly facially neutral actions by a city or county that are in fact motivated by an *intent* to discriminate against families with children violate fair housing laws. Under the FHA, a plaintiff “may ‘simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated’ the challenged decision.”²⁹

When plaintiffs rely on the “direct or circumstantial evidence” approach, the multi-factor *Arlington Heights* test applies, with which a court

analyzes whether the defendant’s actions were motivated by a discriminatory purpose by examining (1) statistics demonstrating a clear pattern unexplainable on grounds other than discriminatory ones, (2) [t]he historical background of the decision, (3) [t]he specific sequence of events leading up to the challenged decision, (4) the defendant’s departures from its normal procedures or substantive conclusions, and (5) relevant legislative or administrative history. These factors are non-exhaustive.³⁰

The court does not need to find that discrimination was the *sole* reason that a city council adopted an ordinance or policy. Rather, a plaintiff need only show that a discriminatory reason *more likely* motivated the local agency than not, or that the agency’s explanation for its actions is not credible.³¹ The FEHA utilizes a similar standard.³²

In examining whether a facially neutral ordinance was adopted with an intent to discriminate against the disabled, the Ninth Circuit found the following facts sufficient to support a denial of summary judgment to the City of Newport Beach: an actual reduction in group homes for the disabled; disparate enforcement practices; statements by a councilmember and assistant city manager; unequal treatment of uses with similar impacts; and procedural irregularities whereby the ordinance was drafted and enforced in consultation only with opponents to homes for the disabled.³³ Courts will also examine citizens’ comments and letters to determine whether a city’s act was the result of political pressure that “amounts to the implementation of local residents’ discriminatory impulses.”³⁴

Even if the city officials themselves have made no discriminatory comments, if the record demonstrates that the city acted on political pressure from the community that was based on discrimination, the community’s discriminatory intent may be imputed to the city. Substantial community opposition alone³⁵ can be used to show that a discriminatory reason *more likely* motivated the city than not, or that the city’s explanations for its actions are not credible.³⁶ Circumstantial evidence, such as evidence of inconsistent treatment of similar uses, as occurred in Newport Beach, can be used to bolster this conclusion.

In responding to community and school district concerns regarding school overcrowding, city councils and boards of supervisors would be best served to (1) inform the community that they cannot take actions to make housing unavailable to, or to discriminate against, families with children; and (2) avoid adopting design criteria or zoning that discourages or makes housing unavailable to families with children. Responding to school overcrowding by trying to keep children out of new developments violates fair housing laws.

IV. ZONING FOR SENIOR HOUSING

Parents and school districts desiring to keep children out of new developments often encourage communities to zone to permit only senior housing. All of the fair housing statutes contain exceptions allowing owners and managers of senior housing constructed and designed in conformance with the FHA, the FEHA, and the Unruh Act to discriminate based on “familial status.”³⁷ State and federal laws recognize that there is a need for senior housing and provide funding and incentives to encourage senior housing. For instance, State density bonus law permits all senior housing to receive a twenty percent density bonus whether or not it is affordable.³⁸ Cities may allow developers of senior housing to apply for “senior housing overlay zones”³⁹ or other incentives, such as higher density, reduced parking, and lower traffic impact fees, because of senior housing’s unique characteristics: lower automobile use, less traffic, and smaller household size. The California Court of Appeal has similarly recognized that senior housing serves a public purpose in a 2014 ruling that upheld spot zoning for a senior housing project.⁴⁰

Given the senior housing exemptions and state and federal incentives for senior housing, could communities zone undeveloped sites for senior housing, or require that senior housing be developed on certain sites, regardless of the present use or the desires of the owners?

A. The Senior Housing Exemption

The FHA, the FEHA, and the Unruh Act all contain standards specifying whether a housing development qualifies as “housing for older persons” and whether its owner may discriminate based on age and familial status in selecting residents. Reading the statutes together, they permit the following types of senior housing:

- Housing provided under a state or federal program that the Department of Housing and Urban Development (“HUD”) determines is specifically designed and operated to assist elderly persons;⁴¹
- Housing with fewer than thirty-five units occupied *solely* by persons sixty-two years of age or older;⁴²
- Housing with thirty-five units or more either occupied (1) *solely* by persons sixty-two years of age or older, or (2) by households where at least one occupant is fifty-five years or older, is a “qualified permanent resident,”⁴³ or is a “permitted health care resident;”⁴⁴ and
- Mobilehome parks that meet the standards in the FHA for housing for older persons, i.e., that are occupied *solely* by persons sixty-two years of age or older; or with eighty percent of the units occupied by at least one person who is fifty-five years of age or older.⁴⁵ Neither the FEHA nor the Unruh Act prescribe additional requirements for mobilehome parks to qualify as senior housing.

New senior housing, except for mobilehome parks, must include certain design features such as doors and hallways accessible by wheelchairs, grab bars and railings for those who have difficulty walking, access provided without the use of stairs, at least one common room, and common open space.⁴⁶ All senior housing must have rules and covenants clearly restricting occupancy consistent with the federal and state occupancy requirements and verifying occupancy by reliable surveys and affidavits.⁴⁷ The policies, procedures, and marketing must demonstrate that the project *as a whole* is intended for seniors.⁴⁸

B. Zoning for Senior Housing

Local zoning *requiring* housing to be built or even maintained for seniors has usually been overturned in federal court and has only been upheld when the existing housing *already* qualifies as “housing for older people” under state and federal law. For example:

- Despite an exemption in state law to allow Riverside County to maintain long-standing senior housing zones,⁴⁹ the federal district court found these zones to violate the FHA because the county did not ensure that the housing within these zones actually complied with the statutory requirements.⁵⁰
- An ordinance adopted by the Town of American Canyon that required a mobilehome park approved as a senior park to maintain its senior status, rather than convert to an all-age park, was found to violate the FHA because the park had never, in fact, actually been

operated as a senior park in compliance with state and federal law.⁵¹

- A mobilehome park owner who alleged that the City of Fillmore adopted invalid subdivision conditions for the purpose of preventing the park from converting from a senior park to an all-age park was found to have standing to sue the City under the FHA.⁵²

One senior housing ordinance has been upheld. In *Putnam Family Partnership v. Town of Yucaipa*,⁵³ the Ninth Circuit found the Town of Yucaipa to be in compliance with the FHA when it adopted zoning prohibiting *existing* senior mobilehome parks, which in fact were being operated as senior parks in conformance with state and federal law, from converting to all-age parks, contrary to the desires of the owner.⁵⁴

The court in *Putnam* relied on language contained only in the FHA. To be eligible for the senior exemption under the FHA, housing must be “intended and operated for occupancy by persons [fifty-five] years of age or older,” and, in addition to other requirements, “the housing facility *or community*” must: (1) publish and adhere to “policies and procedures that demonstrate the intent required” to operate for persons fifty-five years and older and (2) comply with HUD rules for verification of occupancy.⁵⁵ HUD later adopted regulations stating that a “community” could include a “municipally zoned area,”⁵⁶ and the Ninth Circuit held that HUD’s regulations were reasonable and consistent with Congress’s efforts to “preserve housing for older persons.”⁵⁷ However, the Town was then required to ensure that the development within the zoning district met the “fairly rigorous statutory requirements of maintaining an [eighty] percent senior population, publishing and adhering to policies, and complying with occupancy verification rules.”⁵⁸

Further, the *Putnam* court confined its ruling to the situation where the mobilehome parks were already operating as senior housing. The court specifically declined to determine if its decision would be the same if the mobilehome parks were not already serving seniors.⁵⁹ The court also noted that the federal statute included a policy of “preserving” senior housing and that the Town of Yucaipa’s intent appeared to be to preserve existing senior housing “rather than animus against families with children.”⁶⁰ Ordinances that are motivated by an *intent* to prevent school overcrowding by keeping out families with children violate fair housing laws.⁶¹

Neither the Unruh Act nor the FEHA, which apply to senior housing other than mobilehome parks, contain similar language allowing the “community” to establish the intent to operate senior housing, and define the “community” to include a “municipally zoned area.” The Unruh Act allows only a “business establishment” to operate senior housing that may discriminate based on age and familial status.⁶² A city or county adopting zoning or planning legislation is not a business establishment operating as the “functional equivalent of a commercial enterprise.”⁶³ The FEHA forbids actions authorized under the Planning and Zoning Law from making housing opportunities unavailable based on familial status.⁶⁴ While these provisions do not apply to “housing for older persons,” that housing must meet the standards contained in the Unruh Act, and the burden of proof is on the “owner” to prove that the housing qualifies as senior housing.⁶⁵

Under these state statutes, an owner may propose, and a community may approve, a development proposed by the owner for senior housing, but the community cannot *require* senior housing to be constructed or designate a site for senior housing when there is no proposal or intent by a “business establishment” or the owner to construct such housing. If the owner has no intent to develop property as senior housing, the property cannot qualify as “housing for older persons,” and zoning to require such senior housing discriminates based on familial status.

V. CONCLUSION

By failing to fund the expansion of school facilities to prevent overcrowding, the State of California has created parent and school district opposition to housing developed for families. Nonetheless, communities violate fair housing laws when they respond to this opposition by adopting plans and policies that discourage or exclude new families with children from moving into the community. The appropriate response must be focused on the actual problem: the lack of adequate state and local funding for school expansion.



Barbara Kautz is a partner with Goldfarb & Lipman LLP. Her practice focuses on land use, community development, fair housing, and affordable housing transactions. She is a member of the Real Property Law Section of the State Bar of California, serves as Chapter Editor for the Land Use chapter in the Municipal Law Handbook, and has thirty years of experience as a local government planner.

ENDNOTES

- 1 Cal. Gov't Code § 65580(d).
- 2 *Id.* §§ 65583–83.2.
- 3 *See, e.g.*, SAN LEANDRO HOUSING ELEMENT 1-5, 5-42 to 5-44 (2010) (joint meeting with School District Board “focused on the combined issues of affordable housing, school overcrowding, and mitigation of enrollment impacts”); CITY OF SAN JOSE 2014–2023 HOUSING ELEMENT I-21 (2015) (“[S]chool overcrowding is a growing concern in areas of population growth.”).
- 4 *See* BETTER CUPERTINO, <http://www.bettercupertino.org> (last visited Apr. 12, 2015).
- 5 *See, e.g.*, Letter from Los Gatos Union School District to Town of Los Gatos (Aug. 29, 2014); Council Agenda Report (Sept. 10, 2014); Verbatim Transcript of Los Gatos Town Council Meeting held February 3, 2015 (Attachment 52 to the Staff Report for March 2, 2015 City Council Meeting at pp. 33–38; *available at* http://losgatos.granicus.com/Viewer.php?view_id=5&clip_id=1349&meta_id=140131 (last accessed April 14, 2015)).
- 6 *See* Menlo Park City Council, Ballot Argument in Opposition to Measure M (Nov. 2014). The measure failed to pass.
- 7 1998 Cal. Stat. ch. 407.
- 8 The National Association of Realtors maintains an entire web page devoted to the effects of schools on housing prices.

- 9 *See* <http://www.realtor.org/field-guides/field-guide-to-schools-and-the-home-buying-decision> (last accessed April 14, 2015). One article asserts that premiums of fifty dollars per square foot can be obtained in better districts. *See* Nat'l Ass'n of Realtors, *Study: \$50 More Per Square Foot for Homes Near Good Schools*, REALTORMAG (Sept. 26, 2013), <http://realtormag.realtor.org/daily-news/2013/09/26/study-50-more-square-foot-for-homes-near-good-schools>.
- 10 Town of Los Gatos, Draft North 40 Specific Plan, app'x C (on file with author).
- 11 42 U.S.C. §§ 3601–19.
- 12 Cal. Gov't Code §§ 12900–96.
- 13 Cal. Civ. Code §§ 51–53.7.
- 14 Gov't Code § 65008.
- 15 *Id.* § 65995(i).
- 16 *Id.* §§ 65996(a)–(b).
- 17 *Id.* § 65996(c).
- 18 *See id.* § 65995.
- 19 *See* EDMUND G. BROWN JR., 2015–16 GOVERNOR'S BUDGET SUMMARY 21–23 (2015), *available at* <http://www.ebudget.ca.gov/FullBudgetSummary.pdf>.
- 20 *See id.* (no proposal for state bonds); *see also* John Fensterwald, *Brown, Districts at Odds over School Construction Bonds*, EDSOURCE (Jan. 21, 2015), <http://edsources.org/2015/brown-districts-at-odds-over-school-construction-bonds/73082#.VSV7Fvd0yUk>.
- 21 *See* 42 U.S.C. § 3602(k); Gov't Code § 12955.2.
- 22 42 U.S.C. § 3604(a).
- 23 *See id.* § 3604(b).
- 24 *See id.* § 3617.
- 25 *See id.* § 3615.
- 26 Gov't Code § 12955(l).
- 27 *See id.* § 65008(a)(1).
- 28 *See id.* § 65008(b)(1)(B).
- 29 *See id.* § 65008(d)(2).
- 30 *Budnick v. Town of Carefree*, 518 F.3d 1109, 1114 (9th Cir. 2008) (citing *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1122–23 (9th Cir. 2004)). In the context of a permit denial, the *McDonnell-Douglas* burden-shifting test may also apply:

The plaintiff must establish that: (1) the plaintiff is a member of a protected class; (2) the plaintiff applied for a [special] use permit and was qualified to receive it; (3) the permit was denied despite plaintiff's qualification; and (4) defendant approved a [special] use permit for a similarly situated party during a period relatively near the time it denied plaintiff's request. The burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its action. The plaintiff must then prove by a preponderance of the evidence that the defendant's asserted reason is a pretext for discrimination.

Id. at 1114 (alterations in original) (citations omitted) (internal quotation marks omitted). However, evidence of discriminatory intent alone is sufficient to demonstrate a violation of fair housing laws. *See Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1159 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 436 (2014) (“*McDonnell-Douglas* simply permits a plaintiff to raise an inference of

discrimination by identifying a similarly situated entity who was treated more favorably. It is not a straightjacket *requiring* the plaintiff to demonstrate that such similarly situated entities exist.”).

30 *Pac. Shores*, 730 F.3d at 1158–59 (citing *Arlington Heights v. Metro. Hous. Corp.*, 429 U.S. 252, 266 (1977)) (alterations in original) (citations omitted) (internal quotation marks omitted).

31 See *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999).

32 See Gov’t Code § 12955.8(a) (“Proof of an intentional violation of this article includes ... an act or failure to act ... that demonstrates an intent to discriminate in any manner.”).

33 See *Pac. Shores*, 730 F.3d at 1162–64. In other contexts, the California Supreme Court has similarly used statements by city staff and elected officials to divine a city’s intent behind its actions. See, e.g., *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116, 141 (2008) (staff and council statements supported conclusion that city had made a commitment to a project before completing required environmental review).

34 *Bryant Woods Inn v. Howard Cnty.*, 911 F. Supp. 918, 930 (D. Md. 1996) (citing *Dailey v. Lawton*, 425 F.2d 1037, 1039 (10th Cir. 1970)).

35 See, e.g., *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819, 846 (N.D. Ill. 2001).

36 See *Harris*, 183 F.3d at 1051.

37 See 42 U.S.C. § 3607(b)(1); Gov’t Code § 12955.9; see also *Putnam Family P’ship v. City of Yucaipa*, 673 F.3d 920, 925 (9th Cir. 2012). The California Planning and Zoning Law exempts from its prohibitions on discrimination “housing for older persons” as defined in Gov’t Code § 12955.9. See Gov’t Code §§ 65008(a)(1)(B), (b)(1)(B)(ii), (d)(2)(B).

38 See Gov’t Code §§ 65915(b)(1)(C), 65915(f)(3). However, additional “incentives and concessions” are provided only for affordable housing. See *id.* § 65915(d)(2).

39 See, e.g., Senior Citizen Overlay District, San Mateo, Cal., Mun. Code ch. 27.61 (providing special use, parking, lot area, and other standards for senior housing in compliance with fair housing laws).

40 See *Foothill Cmty. Coal. v. Cnty. of Orange*, 222 Cal. App. 4th 1302, 1314–19 (2014).

41 See 42 U.S.C. § 3607(b)(2)(A); Cal. Civ. Code § 51.2(e); Gov’t Code § 12955.9(b)(1).

42 See 42 U.S.C. § 3607(b)(2)(B); Civ. Code § 51.2; Gov’t Code § 12955.9(b)(2).

43 A “qualified permanent resident” is a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen; and

(B) Was [forty-five] years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

Civ. Code § 51.3(b)(2).

“Qualified permanent resident” also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior

citizen or a qualified permanent resident who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury.

Id. § 51.3(b)(3).

44 See 42 U.S.C. § 3607(b)(2)(C); Civ. Code §§ 51.2–51.3; Gov’t Code § 12955.9(b)(2). A “permitted health care resident” is a person hired to provide health care to a qualifying resident. Civ. Code § 51.3(b)(4).

45 See 42 U.S.C. § 3607(b)(2); Gov’t Code § 12955.9(b)(3).

46 See Civ. Code § 51.2(d). The Legislature made some of the requirements for senior housing in California more stringent than those imposed by the FHA “in recognition of the acute shortage of housing for families with children in California.” *Id.* § 51.4(a).

47 See 42 U.S.C. § 3607(b)(2); Civ. Code § 51.3(c).

48 See 54 Fed. Reg. 3255 (Jan. 23, 1989).

49 See Civ. Code § 51.3(j); Gov’t Code § 65008(e)(1). The specific exemption in state law for Riverside County’s zoning suggests that similar zoning by other cities and counties would violate state fair housing laws.

50 See *Gibson v. Cnty. of Riverside*, 181 F. Supp. 2d 1057 (C.D. Cal. 2002).

51 See *Waterhouse v. Town of Am. Canyon*, 2011 U.S. Dist. Lexis 60065 (N.D. Cal. June 6, 2011).

52 See *El Dorado Estates v. City of Fillmore*, 765 F.3d 1118 (9th Cir. 2014).

53 673 F. 3d 920 (9th Cir. 2012).

54 See *id.* at 933.

55 42 U.S.C. §§ 3607(b)(2)(C), 3607(b)(2)(C)(ii)–(iii) (emphasis added).

56 24 C.F.R. § 100.304(b) (2014).

57 *Putnam*, 673 F.3d at 931.

58 *Id.*; see also *Waterhouse v. City of Lancaster*, 2013 U.S. Dist. Lexis 188026 (C.D. Cal. Mar. 13, 2013) (finding a triable issue of fact whether the mobilehome park at issue satisfied the age verification requirement at the time the City of Lancaster zoned the park for senior housing).

59 See *Putnam*, 673 F.3d at 927 n.3.

60 *Id.* at 931.

61 The cases to date that are related to the fair housing issues discussed in this article have all arisen in federal court, although plaintiffs may choose to file in either state or federal court, where the state law claims are heard under the federal court’s supplemental jurisdiction. California’s FEHA and Planning and Zoning Law are interpreted similarly to the FHA. See *Keith v. Volpe*, 858 F.2d 467, 485 (9th Cir. 1988) (holding that a “disparate impact” violating the FHA also violates Cal. Gov’t Code § 65008); *Sisemore v. Master Fin. Inc.*, 151 Cal. App. 4th 1386, 1420 (2007) (noting State Legislature’s intent that the FEHA and the FHA operate similarly).

62 Cal. Civ. Code § 51.2.

63 *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 825 (2014); see also *Qualified Patients Ass’n v. City of Anaheim*, 187 Cal. App. 4th 734, 763–65 (2010) (“[A] city enacting legislation is not functioning as a ‘business establishment’”).

64 See Gov’t Code § 12955(l).

65 See *id.* § 12955.9(c).