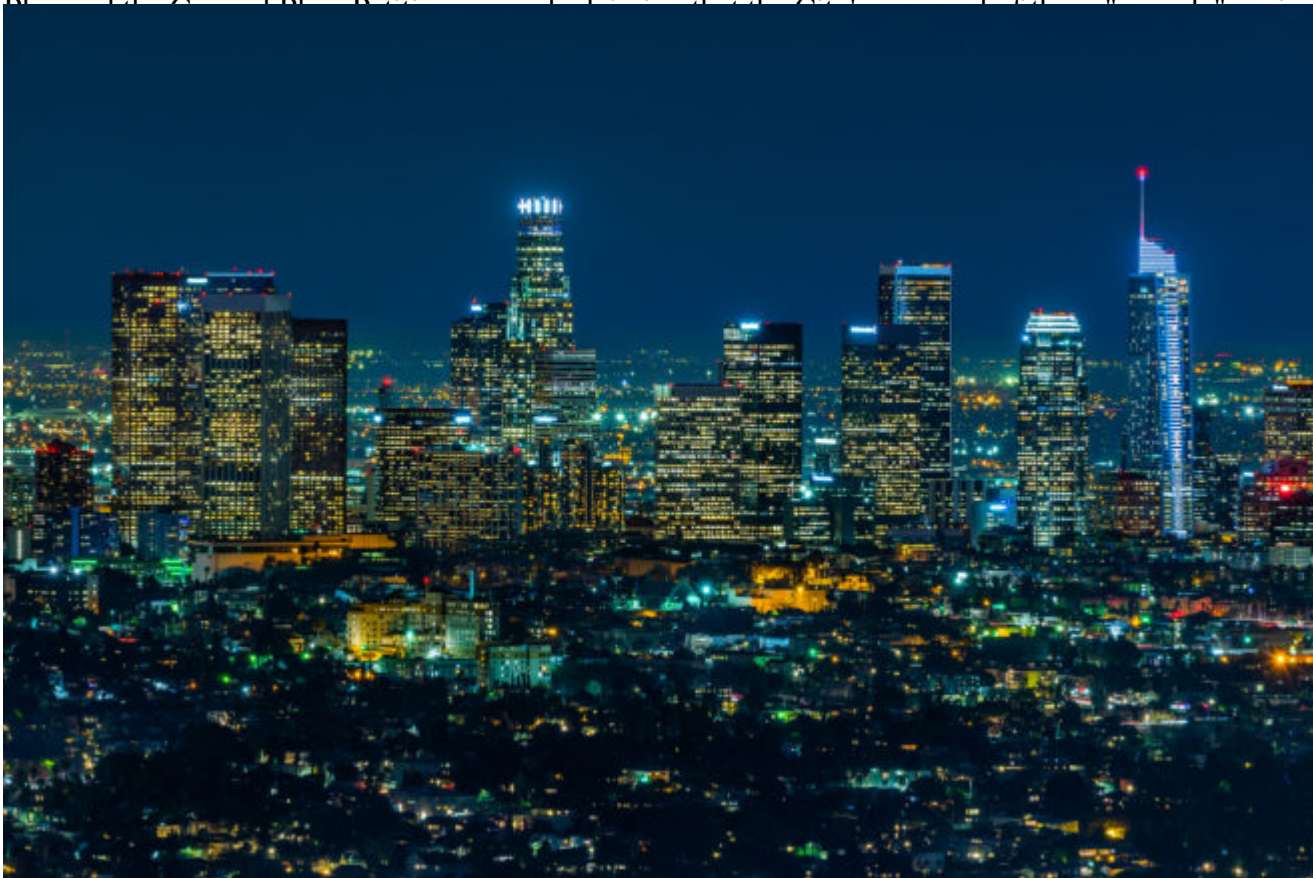


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Disparate-Impact Claims Under FHA and FEHA Must Demonstrate Causal Connection Between a City's Approval of Development Projects and Racial Disparity in Housing

The court of appeal held that the City's approval of mixed-used development projects was not an "artificial, arbitrary, or unnecessary barrier[]" to fair housing necessary to support disparate-impact claims under the FHA and FEHA. *AIDS Healthcare Foundation v. City of Los Angeles*, No. B303308 (2nd Dist., June 15, 2020). The City of Los Angeles approved entitlements for four large, unrelated projects in an area of Hollywood known as the "Hollywood Center," finding that each project was consistent with the City Council's Hollywood Community



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The court

of appeal first acknowledged that, under Supreme Court precedent, disparate-impact claims are cognizable under the FHA and FEHA. However, the FHA does not force housing authorities to "reorder their priorities" by requiring, for example, affordable housing to be built near development projects. In order to state a prima facie case of disparate impact, a plaintiff must satisfy a "robust causality requirement" and sufficiently allege that a defendant's policy was responsible for creating racial disparities. The court found that the City's approval of the projects was not an "artificial, arbitrary, or unnecessary barrier[]" to fair housing because the approvals themselves did not cause racial disparities. Even if revitalization of the area might result in landlords raising rents and displacement in the community, this could not form the basis of a disparate-impact claim against the City for its project approvals for two reasons. First, the approvals did not affirmatively prevent affordable housing. Unlike zoning policies or redevelopment plans that prohibit the construction of multifamily and rent-controlled housing, the City's approvals did not restrict the building of affordable housing in the area, impose higher rents, or preclude the development of affordable units. Second, the approvals did not eliminate housing

because each project would be built on vacant lots or result in a net increase in affordable housing. The court concluded that the FHA and FEHA were designed not to *impose* land use policies but rather to *eliminate* policies that are barriers to fair housing. In the absence of an offending policy, these laws do not require a municipality to implement measures to mitigate a project's potentially adverse effects on housing.

Authors