

# **Bond Case Briefs**

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## **ZONING & PLANNING - CALIFORNIA**

### **Aids Healthcare Foundation v. Bonta**

**Court of Appeal, Second District, Division 2, California - March 28, 2024 - Cal.Rptr.3d - 2024 WL 1336414**

Objectors petitioned for writ of mandate against State, alleging that statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis facially violated the state constitutional power of voter initiative.

The Superior Court, Los Angeles County, denied petition. Objectors appealed.

The Court of Appeal held that:

- Statute satisfied requirements to displace local laws affecting municipal affairs of charter cities;
- Statute displaced local housing density caps under law governing preemption of local laws by state law;
- Statute satisfied the more exacting standard for preemption of local voter initiatives;
- Legislature's delegation of parcel-by-parcel discretion did not violate the power of initiative; and
- Already-existing initiative-based caps were not excepted from local discretion to supersede.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis addressed a statewide concern of housing shortage and was reasonably related to addressing that concern, as required for statute to displace local laws affecting municipal affairs of charter cities, where sub-issue of ensuring affordable housing had been a matter of statewide concern as well as statutes directed at localities for many years, rise in housing prices at every income level in state was logically linked to insufficient supply of housing at all income levels, and task of ensuring a great supply of housing was one that was logically handled at state level to avoid local government susceptibility to "not in my backyard" (NIMBY) pressure.

Local housing density caps, including caps adopted by voter initiative, conflicted with and were inimical to statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps on a parcel-by-parcel basis under certain circumstances, and therefore statute effected a limited preemption of local housing density caps; local caps prohibited what the statute permitted or authorized.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis preempted local housing density caps, where statute sought to promote higher density housing projects and allow for more stringent local regulation of housing projects, but local housing density caps were being used to frustrate the statute's purpose.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-

-parcel basis preempted local housing density caps based on conflict preemption, despite argument that the statute would not always alter the outcome of individual zoning decisions because a local legislative body might elect not to supersede a local cap; there was a conflict regardless of whether the outcomes might have been different for any given zoning decision, since the local caps prohibited what the statute authorized, that being the discretion to supersede.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis preempted local housing density caps based on conflict preemption, despite argument that it was possible to ask the local electorate whether to supersede an initiative-based housing density cap, thereby sidestepping any conflict, where main reason the Legislature enacted statute was because local electorates were blocking attempts to increase housing density, and the suggestion that the statute's mechanism could be swapped out for "letting the voters decide" on a parcel-by-parcel basis would have perpetuated the existing paralysis and completely frustrated a main reason for the statute's enactment.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis satisfied the more exacting standard for preemption of local voter initiatives, where express statutory language, including a separate and higher procedural requirement for superseding an initiative-based housing density cap than for superseding a legislatively-enacted cap, left no doubt that the Legislature explicitly contemplated that the statute would be used to supersede local voter initiatives.

Legislature's delegation of its preemptive power to local legislative bodies, including charter cities, via statute granting local legislative bodies the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis did not facially violate the state constitutional power of voter initiative; Legislature could have passed a state law that preempted all local housing density caps instead of granting parcel-by-parcel discretion to local legislative bodies, and imbuing local legislative bodies with the discretion on whether to supersede local caps was ostensibly more solicitous of the initiative power than a wholesale invalidation of all local caps in the state.

Statute granting local legislative bodies, including those of charter cities, the discretion to supersede local housing density caps, including caps adopted by voter initiative, on a parcel-by-parcel basis applied to existing local caps adopted by initiative, despite argument that existing initiatives operated as a preemptive decision by local jurisdictions not to supersede local caps, where statute did not have an exception for already-existing initiatives, denying local legislative bodies the discretion to supersede existing caps would have substantially narrowed local legislative bodies' discretion, and treating previously made substantive decisions enacted through voter initiative as forever binding would have frustrated statute's purpose in addressing severe shortage of housing in state.