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Substantive and Procedural Due Process and Equal Protection Claims

§19.44 b. Rational Basis

"Absent the allegation of the invasion of fundamental rights [see §19.45] or the existence of a suspect classification [see §19.46], there is no violation of equal protection unless the classification bears no rational relationship to a legitimate state interest." *Del Oro Hills v City of Oceanside* (1995) 31 CA4th 1060, 1082 (quoting *Long Beach Equities, Inc. v County of Ventura* (1991) 231 CA3d 1016, 1041); see also *Chandis Sec. Co. v City of Dana Point* (1996) 52 CA4th 475, 483 (rejecting equal protection claim that voter referendums that invalidated general plan amendment and specific plan were solely intended to preserve plaintiffs' property as open space, because ballot arguments had attacked these approvals on several grounds and general plan continued to contemplate development of plaintiff's property). "This is true even if some discrimination is alleged." *Del Oro Hills*, 31 CA4th at 1082 (quoting *Long Beach Equities*, 231 CA3d at 1041). "Under this test, a statute will be upheld if it bears a rational relation to a legitimate government objective." *Stubblefield Constr. Co. v City of San Bernardino* (1995) 32 CA4th 687, 713.

In *Coalition Advocating Legal Hous. Options v City of Santa Monica* (2001) 88 CA4th 451, 462, a zoning ordinance that allowed second units in single-family residential zones only if the person occupying the second unit was the property owner or the owner's dependent, or a caregiver for the owner or dependent, violated the equal protection clause of the California Constitution. The court explained that the status of the second unit's occupant—as an unrelated renter versus an owner, dependent, or caregiver—did not bear a rational relationship to the city's objectives of preserving the character of single-family neighborhoods and avoiding undue concentrations of population and traffic. 88 CA4th at 462. The court explained that the city's housing element defined "neighborhood character" in a manner having nothing to do with the identity of persons living in second units, and that if the city wished to avoid undue concentrations of population and traffic, it should do so with an ordinance that applied evenly to all households. 88 CA4th at 462.

In *College Area Renters & Landlord Ass'n v City of San Diego* (1996) 43 CA4th 677, the court invalidated, on equal protection grounds, an ordinance that restricted the number of persons over 18 who could live in a non-owner-occupied residence, but no such occupancy restrictions applied to owner-residents. Unable to perceive a rationale for this distinction, the court stated that if the city wished to

address problems associated with overcrowded homes, it should do so with a law that applied equally to all residences. 43 CA4th at 687.

Similarly, in *Elysium Inst., Inc. v County of Los Angeles* (1991) 232 CA3d 408, 427, 432, the court held that a distinction between nudist camps and "recreational clubs," restricting the former to a particular zoning, did not bear a rational relationship to a conceivable legitimate purpose and, therefore, constituted a denial of equal protection.

In contrast, in *Hernandez v City of Hanford* (2007) 41 C4th 279, the supreme court upheld a local ordinance barring stores under 50,000 square feet from selling furniture against a challenge that the ordinance was not rationally related to a legitimate governmental purpose. The ordinance created two classes of retailers:

- Those with stores containing more than 50,000 square feet, which were permitted to devote up to 2500 feet of space to furniture sales; and
- Those with stores smaller than 50,000 square feet, which were prohibited from selling furniture in the commercial zone.

Owners of a 4000-square-foot mattress store who wanted to sell furniture challenged the ordinance as a violation of their right to equal protection. The trial court upheld the ordinance, accepting the city's contention that the size differential showed that the smaller retailer was not similarly situated with the larger retailer and thus could be treated differently in pursuit of the city's goal of attracting department stores to its commercial zone and protecting furniture stores in its downtown. The court of appeal reversed, holding that the size classification did not bear a rational relationship to the stated goals of attracting department stores and preserving existing downtown commercial vitality. The supreme court reversed the court of appeal.

In addressing the validity of the prohibition on furniture sales, the supreme court clarified language in a line of cases beginning with *Van Sicklen v Browne* (1971) 15 CA3d 122, which addressed the impacts of local zoning regulation on economic competition. The supreme court noted that statements from that case, such as "cities may not use zoning powers to regulate economic competition," were "quite clearly overbroad." *Hernandez,* 41 C4th at 292. Quoting from a land use treatise, the court noted that "all zoning has some impact on competition" and that "[a]ccordingly, competitive impact alone cannot invalidate a zoning ordinance." 41 C4th at 292. The court also disavowed interpretations of *Van Sicklen* that suggested that a zoning ordinance was valid only when the ordinance has an indirect impact on economic competition, and is never valid when the impact is a direct and intended consequence of the ordinance. Rather, the court stated that zoning actions are to be upheld "even when regulation of economic competition reasonably could be viewed as a direct and intended effect of a challenged zoning action, so long as the primary purpose of the zoning action … is to achieve a valid public purpose." 41 C4th at 293. See also *Wal-Mart Stores, Inc. v City of Turlock* (ED Cal 2006) 483 F Supp 2d 987 (upholding city ordinance barring "big box" discount stores with at least 5 percent of store area devoted to nontaxable items such as groceries), discussed in §19.34.

Similarly, in *County of Los Angeles v Hill* (2011) 192 CA4th 861, 871, the court held that a distinction between medical marijuana dispensaries and pharmacies was rationally related to a legitimate government purpose because medical marijuana dispensaries and pharmacies have different public health and safety risks associated with those uses, including (for dispensaries) the increased risk of illegal drug sales nearby and robberies.

By contrast, in *Walgreen Co. v City & County of San Francisco* (2010) 185 CA4th 424, the court rejected the city's rationale for barring pharmacies—but not larger stores containing pharmacies—from selling cigarettes. The city's findings asserted that "through the sale of tobacco products, pharmacies convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services." 185 CA4th at 429.

Mobilehome rent control ordinances typically withstand equal protection claims even when the result is that some properties within the same community may be limited to lower rents, so long as the rental rate allows a fair return and the reason for the difference in rents bears a rational relationship to a legitimate public purpose. *Besaro Mobile Home Park, LLC v City of Fremont* (2012) 204 CA4th 345, 360.