



PLUS (PROPERTY & LAND USE STABILITY) ACT

Summary: When changes are made to zoning regulations that reduce, restrict, or condition the previously allowable use of private property, they infringe upon the fundamental rights of property owners. Often called downzoning, these actions violate the Constitutional promise of security and productivity in use of your own property. This policy prevents enforcement of any downzoning action unless the downzoning protects the public from legitimate threats to health or safety, complies with federal or state law, or prevents or abates a nuisance. This policy also prevents governments from requiring indemnification as a condition of permitting. If the enforcement of downzoning results in a reduction in the fair market value of property, the owner is entitled to compensation from the governmental entity responsible for enforcing the downzoning.

The PLUS (Property & Land Use Stability) Act

Section 1: Downzoning not enforceable

- (a) No amendment to zoning regulations or a zoning map that downzones property shall be enforced [except in compliance with the provision of this Act].
- (b) For purposes of this Act, "downzoning" means any zoning action, land use regulation, ballot initiative, or administrative policy that results in:
 - (1) A reduction in permitted density, floor area ratio (FAR), building height, lot coverage, build requirements, or other form-based entitlement;
 - (2) A regulation that introduces or increases procedural barriers, including new discretionary reviews, conditional use permits, public hearings, or other non-ministerial processes, for projects that previously qualified for by-right or administrative approval;
 - (3) A regulation that reduces or restricts the lawful use, division, sale, or possession of property;
 - (4) The imposition of design standards, objective development standards, specific plans, neighborhood plans, or overlay zones that reduce a parcel's feasible yield or buildable area relative to prior entitlements.

Section 2: Applicability

- (a) This Act shall apply to all government entities in the state with zoning or permitting authority.



- (b) The provisions of this Act shall apply to any downzoning adopted after the effective date of this Act.

Section 3: Exceptions

- (a) This Act shall not apply to downzoning necessary to:
 - (1) Protect the public from legitimate threats to health or safety, which includes regulations necessary to prevent or mitigate conditions that pose an imminent threat to human life or property, such as geologic hazards, unstable soil, earthquake fault zones, fire hazard severity zones, or known flood-prone areas, as defined by local emergency management authorities or applicable building and fire codes.
 - (2) Comply with federal or state law, including the Endangered Species Act, the Fair Housing Act, the Americans with Disabilities Act, or applicable building accessibility standards.
 - (3) Prevent or abate a nuisance, meaning persistent activity that objectively injures the physical condition of adjacent land or interferes with its use.
- (b) This Act shall not prevent the addition of compatible commercial, light industrial, or mixed- use zoning overlays, provided that residential capacity is not reduced and the modifications are consistent with the jurisdiction's adopted land use or comprehensive plans.

Section 4: Enforcement and remedies

- (a) A property owner, housing developer, or nonprofit organization may bring an action in state court for any of the following forms of relief:
 - (1) Enjoin enforcement of downzoning;
 - (2) Declaratory relief;
 - (3) Recover damages for the loss of fair market value caused by downzoning.
- (b) The burden shall be on the government to prove by clear and convincing evidence that an exception under section 3 applies.
- (c) A prevailing property owner, housing developer, or nonprofit organization in a court action shall be awarded reasonable attorney's fees and costs.
- (d) The government shall not require an application for a project to indemnify, defend, or hold harmless government in any manner with respect to an action brought by the applicant, or another person, alleging that the government violated the applicant's rights or deprived the applicant of benefits or protections provided by law.



Section 5: Compensation

- (a) A jurisdiction covered by Section 2(a) of this Act shall compensate a property owner if the enforcement of downzoning results in a demonstrable reduction in the fair market value of the property attributable to limitations on the property's lawful use.
- (b) The amount of compensation shall be calculated as the difference between the fair market value of the property immediately before the adoption of a downzoning and the fair market value after its enforcement. This valuation must be established through an independent, certified appraisal submitted by the claimant.
- (c) A jurisdiction may avoid liability for compensation by electing to waive the application of downzoning as it pertains to the subject property within 60 days of receiving written notice from a property owner or within the time to answer an action filed pursuant to Section 4, whichever comes first. If waived, the regulation shall be treated as void with respect to that property.

Want to learn more about this model policy in your state?

Contact Pacific Legal Foundation.
LegalPolicy@PacificLegal.org | PacificLegal.org/legislation