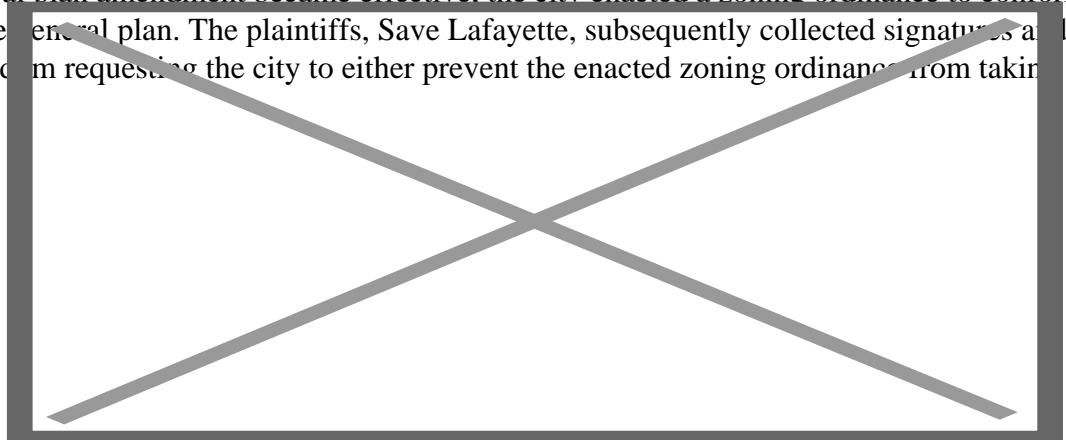


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Court Gives Green Light to Referendum of Ordinance Adopted to Conform Zoning With General Plan

A referendum requiring either the rejection of an enacted zoning ordinance or submission to the voters that would leave in place zoning inconsistent with a general plan does not violate Gov't Code Section 65860, according to the court's decision in *Save Lafayette v. City of Lafayette*, 20 Cal. App. 5th 657 (2018). The City of Lafayette amended its general plan to designate a parcel residential in anticipation of a residential development project. After the general plan amendment became effective, the city enacted a zoning ordinance to conform the parcel's zoning with the general plan. The plaintiffs, Save Lafayette, subsequently collected signatures and properly filed a referendum requesting the city to either prevent the enacted zoning ordinance from taking effect



or submit it to a vote.

The

city declined either option, asserting that preventing the ordinance from taking effect or submitting it to voters would violate Gov't Code Section 65860, resulting in zoning inconsistent with the city's general plan. The city defended its decision by relying on *deBottari v. City Council*, a key case decided in 1985 in which the court held that the City of Norco correctly refused to certify a referendum that would have rejected a zoning ordinance that was amended to be consistent with the general plan. The court disagreed with this characterization. Relying on the recently-decided *City of Morgan Hill v. Bushey*, the court held that the referendum would not violate Section 65860 because it did not seek to enact new zoning inconsistent with the general plan. At most, the referendum would preserve the existing zoning designation on the parcel, which had become inconsistent because of the recent amendment to the general plan. The court acknowledged that if instead an initiative was proposed to change the zoning to a designation inconsistent with the general plan, that this would violate Section 65860. This was not the case here; the referendum could lead to the rejection of the new zoning ordinance, but it did not propose to enact zoning inconsistent with the general plan. While the referendum amounted to a challenge to the city's choice of zoning, it did not further constrain the city's ability to enact another suitable zoning designation. The California Supreme Court recently granted review of *Bushey* to address the split in authority among the courts of appeal. The case summary on the court's web site describes the issue presented as follows: "Can the electorate use the referendum process to challenge a municipality's zoning designation for an area, which was changed to conform to the municipality's amended general plan, when the result of the referendum - if successful - would leave intact the existing zoning designation that does not conform to the amended general plan?" The court's review should settle whether a referendum that seeks to overturn a new zoning ordinance violates Section 65860 if it leaves in place zoning inconsistent with a general plan.