

Zoning Ordinance Adopted To Make Zoning Consistent With General Plan May Be Rejected By Referendum

The California Supreme Court has resolved a split among the courts of appeal, concluding that citizens may bring a referendum to challenge a zoning ordinance even if the referendum would temporarily leave in place zoning inconsistent with the general plan. *City of Morgan Hill v. Bushey*, 5 Cal.5th 1068 (2018) Government Code Section 65860 requires a city's zoning ordinance to be consistent with the general plan. When a zoning ordinance becomes inconsistent due to a general plan amendment, the city must enact a consistent zoning ordinance within a "reasonable time." Gov't Code Section 65860(c). Here, voters in the City of Morgan Hill rejected by referendum a zoning ordinance the city council enacted to bring zoning into consistency with its recently amended general plan. The city claimed that by rejecting the zoning ordinance, the voters essentially enacted inconsistent zoning in violation of Section 65860. The court disagreed. It held that unlike an initiative or ordinance that enacts inconsistent zoning, a referendum that leaves inconsistent zoning in place simply does so for a limited period of time -- "until the local government can make the zoning ordinance and general plan consistent in a manner acceptable to a majority of voters." So long as there are other consistent zoning designations available, or the local government has other ways to make the zoning consistent and general plan consistent, then such a referendum is valid. Furthermore, the court interpreted the "reasonable time" provision of Section 65860(c) as providing localities some undefined time to act, and determined that the time taken for a single referendum rejecting a zoning ordinance did not violate this limitation. Because the trial court had not addressed whether there were other viable zoning designations or other options for the city to resolve the inconsistency between the existing zoning ordinance and the general plan, the court remanded the case for further consideration of these issues.

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