

CML LEGAL CORNER



Disenfranchising voters with statewide zoning

By Robert Sheesley, CML general counsel

For a century, Colorado state statutes have committed to local determination of zoning. For at least the last 50 years, the Colorado Supreme Court has confirmed the substantive and procedural zoning authority of home rule municipalities. However, since the last Legal Corner, statewide residential zoning standards that interfere with that authority have been proposed in Senate Bill 23-213 (SB23-213). By mandating zoning laws, the proposed law also interferes with the rights of direct democracy reserved to the people in the Colorado Constitution.

The last Legal Corner discussed how initiative and referendum under Article 1, Section 1 of the Colorado Constitution applies to rezoning decisions affecting individual properties. This article will explore how those same powers are exercised with respect to broader zoning policy decisions, such as changes in zoning standards applying to an entire community or decisions relating to the annexation of new territory. SB23-213, notably, was proposed with a “safety clause” so that its zoning mandates would not be subject to a referendum.

Zoning and land use have traditionally been fertile ground for direct democracy at the municipal level. The fact that the law protects those powers in connection with zoning further demonstrates Colorado’s strong commitment to local control. The frequent use of these powers, whether successfully or

not, demonstrates the intense expectations of Coloradans that their voices be heard.

REFERENDA ON ZONING REFORM

Municipalities across the state have reformed their land use codes and processes in recent years to promote density and encourage affordable development in the right places, only to have their work subjected to referenda. Referenda can be frustrating, but they are just a part of the legislative process to find the right policy choice for a community.

For example, the City of Fort Collins reformed major provisions of its land use codes in 2022, after roughly two years of work and community engagement on the code, only to receive a referendum petition. The referendum petition exceeded signature requirements despite the lengthy and robust engagement used by the city. In response, the city council chose to repeal the new law and spend more time listening and incorporating community feedback.

Even a fair process and sound judgment of elected officials can leave parts of a community feeling ignored. The referendum power gives the people the right to petition their governing body to repeal the zoning action or to call an election to let everyone have a direct vote. If SB23-213 passes as introduced, that voice could be silenced and only state zoning mandates will be heard. If municipalities enact code changes to comply with state law and

voters repeal them through referendum, then the “model code” created by a state agency would apply regardless of the voters’ choice.

HOMEGROWN GROWTH LIMITS

House Bill 23-1255 (HB23-1255), also introduced by the state legislature in March, proposes to prohibit growth caps — or “anti-growth laws” that limit development applications or building permits. HB23-1255 includes a dangerous limitation on the ability to impose temporary limited moratoria on development applications when the governing body believes it is necessary.

To our knowledge, only three enforced growth cap laws exist today. Each originated through initiative petitions circulated in the communities and directly approved by voters, not city councils. We understand that HB23-1255 intends to invalidate those voter voices.

SB23-213 and HB23-1255 reflect a desire to disempower municipal voters from exercising their initiative and referendum rights. The bills would replace local voters’ choices with the policy preferences of the General Assembly. If these laws are enacted, municipalities may be placed in a position of litigating to defend their voters’ choices against state efforts to preempt local laws.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorneys.