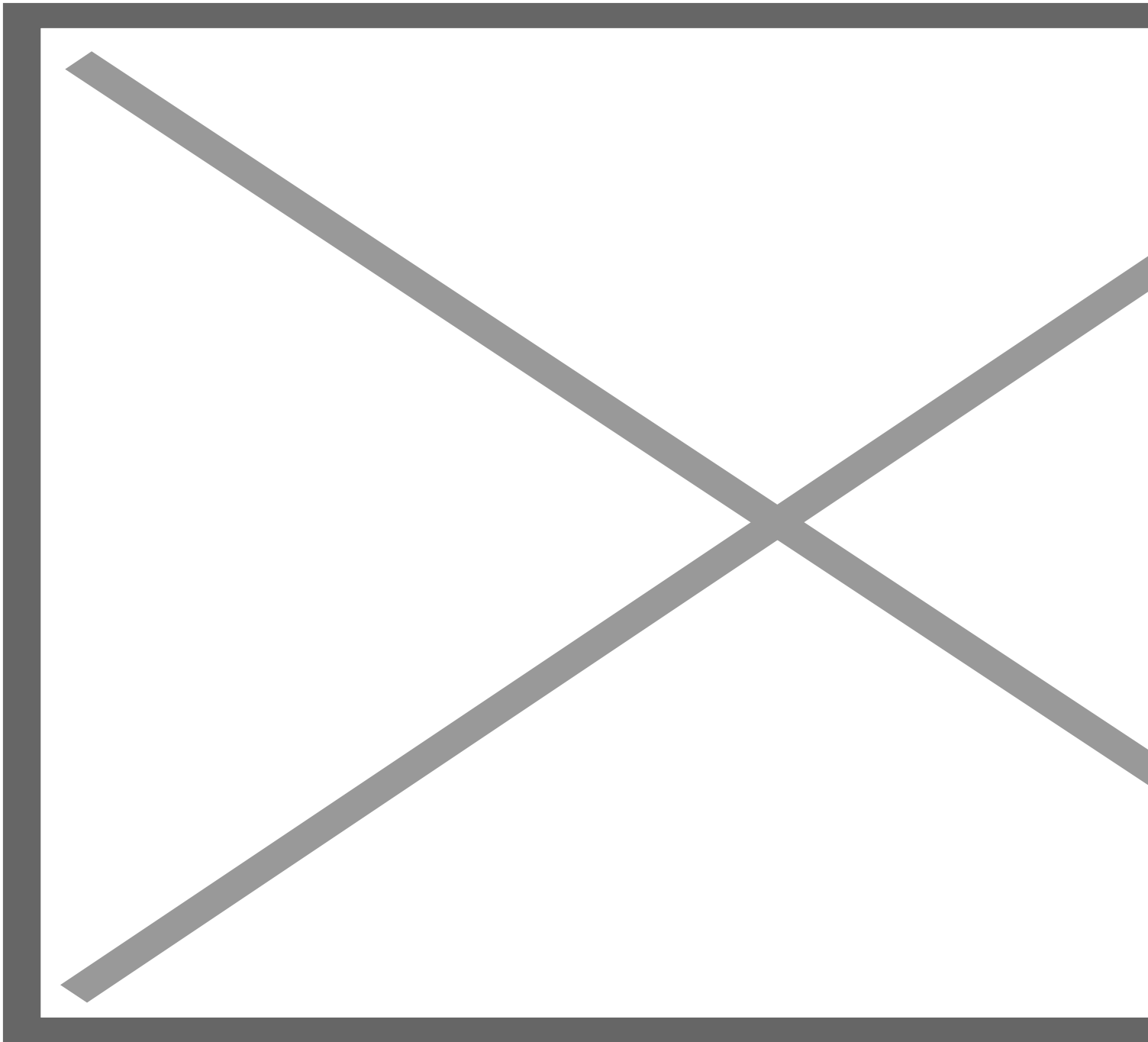


## **Referendum that Leaves in Place Zoning That is Inconsistent With General Plan Upheld**

Rejecting prior case law, the Sixth District Court of Appeal held that citizens may referend a zoning ordinance even when the result of doing so is to leave in place pre-existing zoning that is inconsistent with the general plan. [\*City of Morgan Hill v. Bushey\*](#) (6th Dist., No. H043426, May 30, 2017) In the prior case, the city council of Norco adopted an ordinance to bring zoning for certain property into consistency with the city's recently-amended general plan. Norco voters opposed the zoning ordinance by presenting a referendum petition, but the city council refused to place the referendum on the ballot. The council contended that the repealing the ordinance would result in reinstatement of the prior zoning, which was inconsistent with the general plan, resulting in an invalid zoning scheme. In a 1985 decision, the Fourth District Court of Appeal upheld the council's decision. It stated that zoning that is inconsistent with the general plan is invalid when passed, and repeal of the targeted zoning ordinance would have resulted in such inconsistency. *DeBottari v. City Council*, 171 Cal. App. 3d 1204 (1985).



In *City of Morgan Hill v. Bushey*, a similar situation came before the Sixth District, which reached a different conclusion. The Morgan Hill council enacted a zoning ordinance to bring zoning into consistency with a recently-amended general plan, and voters processed a referendum petition. The trial court ordered the referendum removed from the ballot based upon *DeBottari*. The *Morgan Hill* court reversed. It acknowledged the principles relied on in *DeBottari*: that state law prohibits a city from enacting zoning inconsistent with a general plan, and requires a city to amend a zoning ordinance within a reasonable time after it becomes inconsistent to bring it into consistency with the general plan. Thus, an initiative that attempted to enact zoning inconsistent with the general plan would be invalid. On the other hand, a referendum, the court stated, does not enact inconsistent zoning; it simply maintains the status quo by preventing a council-enacted zoning ordinance from ever taking effect. Further, the referendum in this case targeted a zoning ordinance that represented just one of a number of available consistent zonings. Because the council would have been free to comply with consistency requirements by adopting different zoning if the referendum had succeeded, the referendum did not

prevent the city from complying with its duty to bring inconsistent zoning into consistency with the general plan within a reasonable time. Accordingly, the referendum should have remained on the ballot.

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