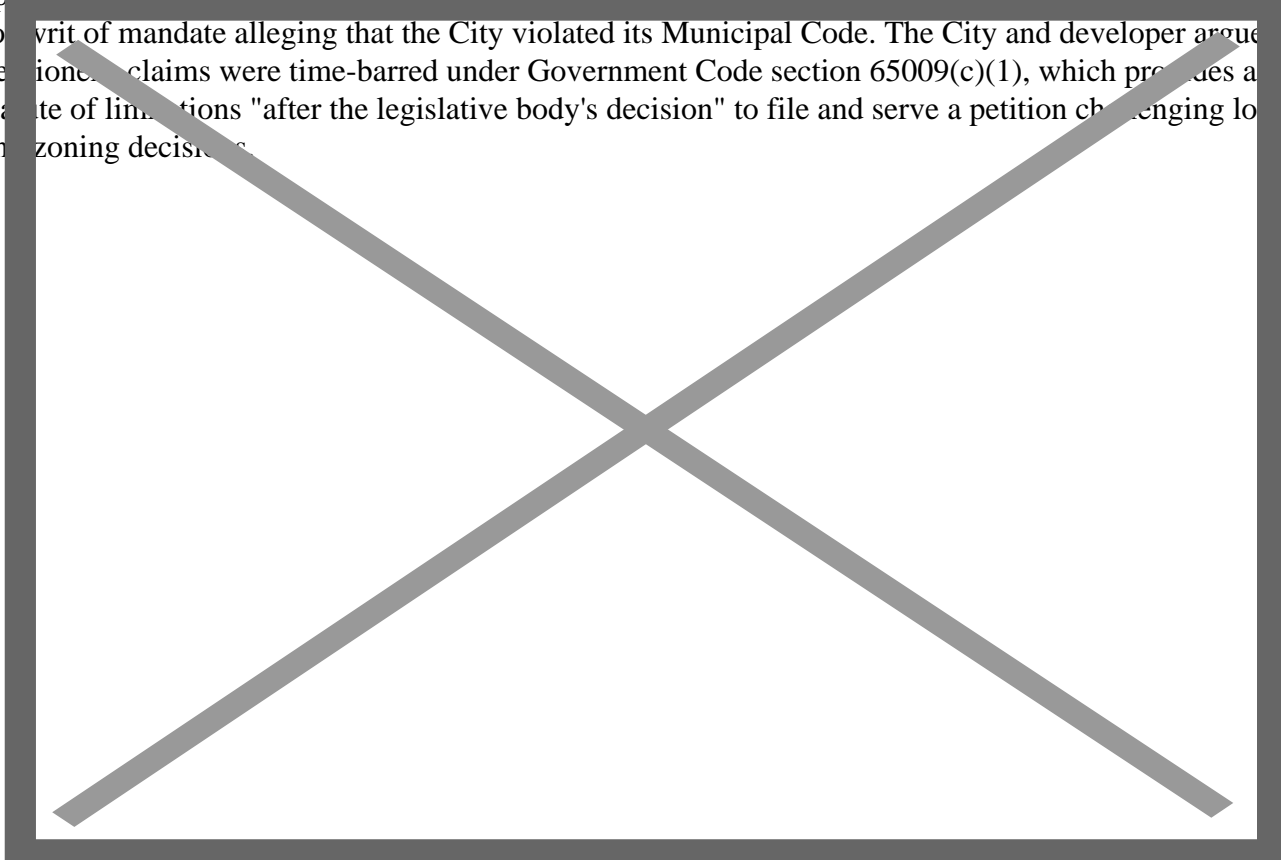


90-Day Statute of Limitations Applies to Final Planning and Zoning Decisions by Non-Legislative Bodies and Public Officials

Planning and zoning decisions by a non-legislative body or public official authorized under a municipal code are subject to the 90-day statute of limitations of Government Code section 65009(c)(1), the court of appeal ruled in [1305 Ingraham, LLC v. City of Los Angeles](#), 32 Cal. App. 5th 1253 (2019). In June 2016, the planning director of the City of Los Angeles issued a project permit compliance review determination for a mixed-use retail and affordable housing project. The determination stated that it would become final after 15 days unless an appeal was filed with the Planning Department. The petitioner, 1305 Ingraham, LLC, timely filed an appeal with the City. The City scheduled a hearing on the appeal before the Area Planning Commission but, the petition alleged, the Commission never held a hearing. Instead, in August 2016, a few days after the hearing date, the City approved the project and filed a CEQA Notice of Determination. Months later, 1305 Ingraham filed a petition for writ of mandate alleging that the City violated its Municipal Code. The City and developer argued that the petitioner's claims were time-barred under Government Code section 65009(c)(1), which provides a 90-day statute of limitations "after the legislative body's decision" to file and serve a petition challenging local planning and zoning decisions.



On

appeal, the petitioner argued that the 90-day statute of limitations period was not triggered because there had not been a "decision." It claimed that because the appeal procedures in the Los Angeles Municipal Code required a hearing before the Area Planning Commission, no decision could be made on the appeal until after a hearing was held. The court, however, noted that a different section of the Municipal Code stated that the planning director's

decision would become final if the Area Planning Commission did not render its decision in writing within 15 days after completion of the hearing. Thus, the court concluded, when the Area Planning Commission failed to render a written decision within 15 days of the hearing date, the planning director's decision become final and the statute of limitations period began to run. The court rejected the petitioner's argument that this interpretation would lead to absurd results. The court explained that "rather than condoning or authorizing inaction," it interpreted the Municipal Code as providing a "backstop" to render a determination final "in the event of a procedural lapse by the decision-making body." The court further reasoned that its reading was consistent with the purposes of the Municipal Code section, which included promoting orderly development: "These purposes are not served if the statute is interpreted to allow a project to remain in a state of perpetual limbo due to a procedural error." The court also rejected the petitioner's argument that the 90-day statute of limitations did not apply because a decision had not been made by a "legislative body." The court held that the reference to "legislative body" in Government Code section 65009(c)(1) is not limited to decisions made by the legislative body (i.e., a city council or county board of supervisors); rather, it includes decisions made by quasi-judicial bodies and individuals who exercise authority delegated to them by the legislative body under local laws. Thus, actions by the Area Planning Commission and planning director pursuant to their authority under the Municipal Code qualified as decisions by the legislative body for purposes of Government Code section 65009(c)(1).

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