

Court May Order City to Remedy Inconsistencies in its General Plan Created by Initiative

A court could properly direct a city council to correct internal inconsistencies in its general plan resulting from adoption of an initiative. *Denham, LLC v. City of Richmond*, 41 Cal. App. 5th 340 (2019). The Richmond City Council adopted an initiative, approved by 10 % of the City's voters, without alteration in accordance with Elections Code section 9215. The initiative amended the City's general plan to preclude development of approximately 400 acres in Richmond's El Sobrante Valley. While the initiative amended several elements of the



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appellate court agreed with the trial court that the initiative on its face caused the general plan to be internally inconsistent because, among other things, the open-space element expressly prohibited what the land-use element continued to permit. The issue on appeal was the appropriate remedy. The appellate court noted that Government Code section 65754 provided that if a court found that the general plan or any mandatory element of the general plan did not substantially comply with state law, the remedy was a directive to the agency to "bring its general plan or relevant mandatory element or elements thereof into compliance with the requirements of Article 5 ... within 120 days." The court noted that there was no authority on the question of whether a court

could direct a city to correct inconsistencies in its general plan when the inconsistency was created by an initiative amendment to an existing plan. However, with the statutory remedy under section 65754 available and no precedent to the contrary, the court held that the City should be ordered to cure the general plan's inconsistency. The court reasoned that the requirement of a vote of the people necessary to amend a general plan is not a bar to this remedy. So long as there are legal alternatives to achieve the remedy (e.g. the City's right to amend an element of the general plan, put to the vote of the people a general plan amendment to cure the inconsistency, or put a vote to the people to rescind the initiative), a court may order a City to cure a general plan inconsistency as a result of an initiative under section 65754.

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