azcentral.

PHOENIX

Zoning fights don't end with an Arizona council vote. What do aggrieved residents do next?

Corina Vanek
Arizona Republic

Published 5:02 a.m. MT March 5, 2025 | **Updated 6:54 p.m. MT March 5, 2025**

Key Points AI-assisted summary

- Referenda efforts, once rare in Arizona, have become increasingly common in recent years, particularly in zoning disputes.
- This surge in referenda has led some developers to delay projects and incorporate contingencies in case a project is challenged.
- While some argue that referenda give residents a voice against unwanted development, others, including business leaders, worry that they create uncertainty and discourage investment in the state.

A tool that was once nearly unheard of in opposing development has become so common in Arizona that some zoning attorneys are telling their clients to delay closing on their land until the threat has passed.

A decade ago, organizing enough opposition to force a controversial zoning decision to go to the ballot was reserved for only a few of the most high-profile cases.

But referendum efforts have become so common, some zoning attorneys are telling clients to delay closings and build in referendum contingencies to avoid getting stuck with a project that might not be able to build.

Some of the highest-profile projects in recent years have seen at least an attempt at a referendum, with meaningful consequences.

The threat of one left the Tempe City Council to put the approval of the proposed Arizona Coyotes arena to a public vote, which failed. The result appeared to be the nail in the coffin for the NHL team in Arizona, and it moved to Utah shortly after failing to secure a site for a new place to play.

In Flagstaff, a 2023 referendum ended with voters rejecting a zoning change for a new hospital on the southern part of the city. About 70% of voters rejected the zoning change, which killed plans for the new hospital, medical buildings and parking garage that would have been an $800 million development on 100 acres.

A looming referendum in Scottsdale could seal the fate of Taser stun gun maker Axon. The vote must be held by November 2026, but company officials have indicated they have no plan to wait that long and have voiced the possibility of leaving Arizona.

Referenda are one of few ways citizens can challenge decisions made by their elected officials, but the increased use of them has business leaders worried they will turn companies off from coming to Arizona. Some leaders also have questioned the intent behind some of the groups circulating ballot petitions, alleging they do not represent the aggrieved citizens that the right was meant to protect. Local opposition to change and development is nothing new, but social media and technology have made organizing groups and collecting support easier than ever.

The right for a referendum on decisions made by a legislative body is part of the Arizona constitution. Citizens can collect signatures challenging the decision and force the topic to come to a vote. Most commonly recently, the decisions have been rezoning votes by city councils throughout the Valley.

Zoning attorneys say delays can kill a project and they've never seen so many ballot box efforts

In addition to Axon, another referendum attempt qualified for the ballot in Glendale. The city will hold an election in May over the rezoning of 10 acres of land that is part of the VAI Resort, which proposed using it for parking and office space.

Unlike Axon, the resort has been under construction for years and the referendum does not apply to the whole property. Still, project developers said the referendum could derail the entire thing.

“What is the practical impact? It’s delays in the project,” said Adam Baugh, partner at Withey Morris Baugh and zoning attorney for VAI. “These can push a project out a year or even longer, and there is so much economic impact in a year.”

Baugh, who has been an attorney for 17 years, said he has never seen “such a proliferation” of referenda as he has in the last few years.

“Every case now has exposure to a referendum,” he said. “Even if there isn’t neighborhood opposition.”

He cited the 10 acres at VAI as an example of a project that didn’t get any public scrutiny but was still the subject of a referendum. No neighbors spoke in opposition at any of the council meetings, and he never received any emails or other messages from any concerned residents.

“It’s always been a consideration we take,” he said. “But now we will be advising clients with projects of any scope and attention to set aside money for a referendum and write referendum contingencies into their purchase agreements.”

A zoning case can cost about half a million dollars, including the attorney, any design work, studies that need to be done and other requirements, Baugh said. If a referendum attempt succeeds in reaching the ballot and the developer runs a campaign to try to gain voter approval of a project, it could easily cost another million, he added.

Jason Morris, also a partner at Withey Morris Baugh, said he’s seen more referendum activity and more threats of referenda in the past four years than in his entire career.

‘Coalitions can be built without leaving your house’

“There are all sorts of things that you can do now that you couldn’t do 15 years ago,” Morris said. “If you look at where we are with the internet and with communication, it has made the idea of a referendum much easier. Coalitions can be built without leaving your house.”

But he has been part of some high-profile referenda, including some decades ago.

In 2004, long before he was president, Donald Trump wanted to build a high-rise hotel and condominium development near 24th Street and Camelback Road. Morris served as his zoning attorney for the case, which was approved by Phoenix City Council, but opponents gathered enough signatures to force a citywide vote on the matter. Rather than hold an election, the council rescinded its approval of the project.

Morris was also the attorney representing the Ritz-Carlton Paradise Valley, which went to referendum and prevailed. It is one of a very few developments to survive one.

Most recently, in 2024, a project Morris worked on in Fountain Hills was subject to a referendum attempt. That attempt did not end up qualifying for the ballot because of an error in the materials used to collect the signatures.

Even though the possibility of a referendum exists, Morris said, it still remains the exception, not the rule.

For each of those three contested projects, he said, he has examples of 10 or more where there was the idea of a referendum floated, but through negotiation and compromise the neighbors and developer were able to come to a resolution.

“Regardless of the referendum, you never want to bring a case forward to council that has a lot of opposition,” he said.

Strict rules surround referenda, but Axon-driven bill would ban them outright

In smaller municipalities like Fountain Hills or Paradise Valley, it is much easier to get enough signatures to qualify for the ballot than a major city like Phoenix. That's because groups are required to gather signatures from 10% of qualified electors to force a vote.

In cities and towns, the number of qualified electors needed is based on how many people in that jurisdiction voted in a past mayoral election. For a small municipality like Fountain Hills, a group would need to collect about 1,800 signatures. In a major city like Phoenix, a successful petition would need more than 55,000.

Groups attempting to gather signatures for a referendum have a 30-day window after a council vote to collect and submit them.

In Surprise, a group called Voice of Surprise organized a referendum attempt opposing an affordable housing development that was narrowly approved by the City Council in August of 2022.

The original proposal for the development called for a zoning change, but when that garnered intense criticism from neighbors, the developer, Dominium, opted to use the zoning that was in place for the site. That averted the need for a rezoning, and the council instead approved a preliminary development plan for the project.

The group collected signatures opposing the approval, but the Arizona Court of Appeals ruled that unlike a zoning change, a preliminary development plan approval is an "administrative" move by the council, not a "legislative" one.

In Arizona, only "legislative" decisions, meaning those that establish policies, are subject to referendum.

Zoning changes in Arizona are "legislative" decisions, but there is an attempt in the Arizona Legislature to reclassify them as "administrative," therefore quashing the

ability of citizens to refer a zoning change to the ballot.

The legislation, which came as an attempt to secure Axon's position in Scottsdale, appears to have lost momentum, with no recent hearings scheduled on the bill. Axon leaders have said the bill is the strongest chance the state has to keep it in Arizona.

Yellow-clad Axon leaders and employees rallied at the Arizona Capitol on March 4, urging the Legislature to move the bill forward.

"This is an attack on the weaponization of the petition process," Rick Smith, Axon CEO, said at the rally. "We need to decide, are we going to have every issue go to a vote? Because that is paralysis. That stops projects."

Giving voice to the voters, 'tired of babysitting' their city councils

For citizens who did attempt a grassroots effort at referendum, the option gives a chance to undo what they call bad council decisions.

Quintus Schulzke, a Surprise resident and a Voice of Surprise organizer, said that while the group's effort to stop what he called an inappropriate project for the area was unsuccessful, he's glad to see other citizens use the process to speak out.

"My experience was people cared a lot about it, that's the reason the law has it," he said. "If you elect officials and they decide to go rogue on you, you can get enough people to show that officials went against the will of the people. It gives the voice of the people an opportunity to be heard."

The group was able to gather about 5,500 signatures, well above the total needed to reach the ballot.

"We pulled it off, which was kind of a miracle," he said.

After a legal challenge, the case ended up in the Arizona Court of Appeals, which ruled the decision was "administrative." The state Supreme Court declined to hear an appeal of that ruling.

The case hinged on the development being built with zoning entitlements that have been in place since 2008, which Schulzke said is not a fair barometer of how the city has grown and changed since.

Schulzke said it is discouraging to see legislation take aim at limiting or ending the option for a referendum, and said he is “tired of babysitting” his elected officials to make sure they are listening to their residents.

“It’s an avenue for people to express themselves,” he said. “That was our last resort, but should it be the last resort, at least it’s there.”

Even some attorneys facing referendum attempts against their clients' projects said there is a valid and valuable use of referenda.

Morris said the measure to ban zoning referenda does bring the “stripping of existing citizen rights,” and the Arizona Legislature would be “hard-pressed to take such a massive step for what amounts to one aggrieved company.”

Baugh said when they come from concerned neighbors or affected residents, the issue has its place in development.

Charles Huellmantel, a zoning attorney who is representing Axon, said he does not believe there should be a right to refer zoning cases to the ballot in Arizona.

“I think it’s bad policy,” he said.

Hidden agendas and dark money? One group behind many referenda

However, Baugh took issue with some of the groups that commonly show up in referendum cases.

In the case of VAI, Axon and the Coyotes, along with other high-profile attempts, one driving force has been a group called Worker Power Institute. It acts as the political arm of the Unite Here Local 11 labor union.

For a project like VAI, which didn't generate in-person opposition at the hearings, Baugh said he feels like the process is being exploited.

He doesn't support banning the zoning referendum altogether, but said he would support a higher threshold or some other way to ensure aggrieved residents are the ones using it.

"This is not being used the way it was intended," Baugh said. "I'd like to limit the abuse but not take away from real citizen concerns."

David Leibowitz, a public relations and crisis communications consultant who represents Axon and several other developments that have faced referenda, pointed directly at Worker Power for the measurable uptick in ballot measure attempts.

"If you take them out, there aren't other groups holding projects hostage," he said.

Leibowitz said signature gatherers can say whatever they like to get people to sign petitions.

"They are not hamstrung by being honest," Leibowitz said of the process to gather petition signatures. "Once you get on the ballot, you're a force to be reckoned with."

He cited Texas and Florida, which do not allow referenda over zoning cases, and said that can make doing business and building more attractive there than in Arizona.

With a lot of discussion around the price of housing in the Valley, Leibowitz said, the possibility of a referendum can prolong the development process, making it more expensive. That could discourage developers from building more housing.

“If every single affordable housing project can be referred to the ballot, developers might think, 'What’s the point?'” he said. “It’s already a slow process; when you make it more slow, you make it more expensive, more risky.”

Attorneys and activists: Projects should be compelling; stopping referenda is 'anti-democratic'

Representatives from Worker Power, however, said their involvement helps residents to have their voices heard.

“Over the last few years, Worker Power has spoken with voters in several Valley cities who are very concerned with the impact major developments would have on their lives,” said Brendan Walsh, executive director of Worker Power and Worker Power Institute, in a statement. “Based on these conversations, we have helped tens of thousands of residents of these cities make their voices heard regarding these developments.”

Walsh said Arizona voters have the right to bring forward referenda, and said attempts to discredit them are in opposition to direct democracy.

“To Worker Power, to the residents who sign referenda petitions, and to the voters who participate in the resulting referenda, these actions are neither novel nor controversial,” he said. “Calling them so seems to us to be an anti-democratic political stance taken by those who would prefer voters not have a say on the issues in question.”

Tim La Sota, an attorney who has represented several groups behind referenda, said developers often do not provide a compelling reason why they need a rezoning, beyond the fact that they stand to make more money.

“You’re not legally entitled to a rezoning,” he said.

La Sota represented Voice of Surprise and is working with Taxpayers Against Awful Apartment Zoning Exemptions or TAAAZE, the group opposing Axon. According to

campaign finance reports filed with Scottsdale in January, TAAAZE raised nearly $408,000 from the Mesa-based Public Integrity Alliance and nearly $22,000 from Worker Power.

He said referenda have become more common, but said developers go to great lengths to avoid them, including abandoning a proposal before it can go to a public vote.

“They do very poorly for the most part when they’re on the ballot,” he said, but added that it is still rare to see one get that far. “There are hundreds of rezonings every year, and only a very small percentage of that goes to referendum.”

It’s unlikely, even as they become more common, that every high-profile project will face a referendum, because it is a high bar to meet, he said, but said the process is “an extraordinarily powerful tool” when it is used.

La Sota said a lot of anti-referendum discussion focuses on the groups that collect the signatures, oftentimes labeled as out-of-state interests or special interest groups, like Worker Power, which has a presence in both Arizona and California. But he called that a “red herring” because residents of a city must be the ones to sign the petitions and vote on the issue.

“It’s very easy to attack an out-of-state interest or a union interest,” he said. “But a lot of these developers are the ultimate special interest.”

Projects that do survive the intense scrutiny of the process and the vote, like the Ritz-Carlton, are exceptional projects that clearly have residents’ support, he said.

It isn’t surprising, he said, for residents to take issue with someone wanting to change the zoning rules in a city, when others have made financial and life decisions based on those rules.

In some situations, like areas with significantly different conditions than when the code was adopted, or for projects that are especially compelling, a rezoning makes

sense. But, he said, developers should be able to prove that.

“The perfect reason is the zoning no longer makes sense; the area has changed, so the zoning should change and reflect that,” he said. “Really compelling projects can get the neighbors on board.”

Reach Corina Vanek at cvanek@arizonarepublic.com. Follow her on X, formerly Twitter: @CorinaVanek.