



**Community Development Department**

2255 West Berry Avenue  
Littleton, Colorado 80120

August 2, 2018

TO: Interested parties  
FROM: City of Littleton  
RE: Rezoning of a property to prohibit an allowed use

The city has been asked to answer the following question: *May a city rezone a property to prohibit an allowed use: (1) Before a building permit has been issued, and (2) After a building permit has been issued?*

The short answer is no. Prior to issuance of a building permit, rezoning of a single property is considered spot zoning, which is illegal under Colorado Law. Spot zoning is defined as a change in zoning on a single or number of properties to benefit or impact a property owner.

After issuance of a building permit the city may not rezone the property for the following reasons:

1. The property owner/lessee may have a **vested right** in the property;
2. A rezoning could be considered a **regulatory taking**; and,
3. It may violate the property owner/lessee's **civil rights** under the United States and Colorado Constitutions, exposing the city to significant financial and legal liability.

To explain the above three reasons in further detail:

1. **Vested Rights:** Vested rights are based on the principle that if an owner/lessee relies in good faith upon a government representation (in this case the current zoning and building permits), it is unjust to allow the government to retract or modify that representation. Triple J Armory was issued a building permit for the part of the building where there will be a retail gun store and they have begun construction on that portion. Triple J also has filed an application for the construction of an indoor shooting range. These appear to meet the requirements of reliance, in good faith on a government representation (i.e. that they can build their intended use—the retail sale of guns and an indoor shooting range in the location). Triple J may have a “quasi” vested right because they made a reasonable reliance in good faith, on the current zoning classification when they leased the property and applied for/obtained building permits, and began construction based on the zoning.
2. **Regulatory Taking:** An owner may also claim that a rezoning would be a taking. The test that a court could use to determine if there is a taking includes two factors. First, the court must determine that the rezoning action does not meet a legitimate government interest in regulating land use. Secondly, even if the first element is not met, the rezoning action could still be considered a taking if it removes economically viable use of the land.
3. **42 USC §1983 Civil Rights:** The owner/lessee may make a §1983 claim for violation of their civil rights. If they were to prevail on this claim they could be awarded any and all attorney's fees in addition to all other damages.

In conclusion, prior to the issuance of a building permit, a rezoning would have constituted spot zoning that is illegal under Colorado law. After the issuance of a building permit, the owner and/or Triple J Armory could have a claim for violation of their vested rights and the owner may have a claim of a regulatory taking. Finally both parties may have a claim for violation of their civil right under the United States and Colorado Constitutions. Therefore, the city may not rezone the subject the property without subjecting the city to legal and financial liability.

If you have any additional questions or need any additional information, please feel free to contact Jocelyn Mills, Community Development Director at 303-795-3820 or [jmills@littletongov.org](mailto:jmills@littletongov.org).

cc: Mark Relph, City Manager  
Steve Kemp, City Attorney  
City Council members