

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ADRIAN HERNANDEZ et al.,

Plaintiffs and Appellants,

v.

CITY OF HANFORD et al.,

Defendants and Respondents.

F047536

(Super. Ct. No. 03C0296)

**OPINION**

APPEAL from a judgment of the Superior Court of Kings County. Peter M. Schultz, Judge.

Motschieder, Michaelides & Wishon and Russell K. Ryan for Plaintiffs and Appellants.

Kahn, Soares & Conway, Michael J. Noland and Rissa A. Stuart for Defendants and Respondents.

Respondents, the City of Hanford and the Hanford City Council (collectively Hanford), amended a zoning ordinance so as to allow department stores with 50,000 or

more square feet of floor space to sell furniture on a limited basis while denying that right to smaller retailers. Appellants, Adrian Hernandez and Tracy Hernandez, the owners of a 4,000 square foot mattress store, challenged the ordinance on the ground that it resulted in a denial of their equal protection rights.

The trial court ruled in favor of Hanford finding that the ordinance was a valid exercise of Hanford's police power. The court concluded that appellants' equal protection rights were not violated because appellants and the large department stores were not similarly situated. The court further determined there was a rational basis for the difference in treatment.

As discussed below, when all retailers limit the furniture display space in compliance with the ordinance to the permitted 2,500 square feet, the difference in total floor space between the retailers is largely irrelevant. Thus, the disparate treatment of these similarly situated retailers based on square footage is not rationally related to the purpose behind the ordinance and is unconstitutional as a violation of equal protection. Accordingly, the judgment will be reversed.

## **BACKGROUND**

In 2002, appellants leased building space close to the Hanford Mall for a new business called Country Hutch Home Furnishings and Mattress Gallery (Country Hutch). Appellants, who already owned a furniture store in downtown Hanford, planned to sell mattresses, bedroom furniture and accessories.

Country Hutch is located in a "Planned Commercial Zoning District" (PC zone). When appellants applied for the certificate of occupancy for Country Hutch on October 1, 2002, furniture stores were not a permitted use within this PC zone. However, "home furnishing" sales were permissible.

Hanford's City Community Development Director told appellants that they could not sell furniture at their chosen location. Nevertheless, based on the fact that furniture

was being sold in department stores located in this PC zone, appellants believed that they could open a mattress store and also sell bedroom furniture and accessories.

On February 2, 2003, the final certificate of occupancy was issued. An attached list of conditions identified the merchandise that appellants could sell. Furniture was not included.

Between October 2002 and February 2003, Hanford proposed and studied amendments intended to clarify uses within the PC zone. On November 12, 2002, the permitted use description “Home furnishing” was amended to read “Home furnishing accessories (not furniture).”

Appellants opened Country Hutch in February 2003. Shortly thereafter, Hanford cited appellants for violating the zoning ordinance and instructed appellants to remove all of the furniture from the store. In response, appellants sent a letter to Hanford requesting that they be permitted to sell the same type of furniture items at Country Hutch that were being sold by Wal-Mart, Gottschalks, and Home Depot in the PC zone.

Based on this correspondence, Hanford began a series of public study sessions on the sale of furniture in the PC zone. Participants included appellants and various downtown Hanford merchants. During these sessions it was reported that, although furniture items were not allowed in the PC zone, department stores had been selling furniture for the past 10 years.

Ultimately, the Hanford Community Development Department recommended amending the PC zone ordinance to define “home furnishings” in such a way as to clearly exclude furniture sales in the PC zone. However, it was also recommended that an exception be created for department stores to permit limited furniture sales. The development department reasoned that continuing to restrict the sale of certain retail goods in the PC zone would assist in preserving the economic viability of the downtown commercial zone. At the same time, the exception for large department stores that sell

furniture as a small part of their business would have the effect of not discouraging the attraction of such stores to the PC zone.

In July 2003, following the study sessions and two public hearings, Hanford adopted an ordinance amending Hanford Municipal Code title 17, chapter 17.04. In this ordinance, “Home Furnishing Accessories,” a permitted use, was defined as “complimentary or decorative items placed in a room to accentuate the furniture....” This new definition specified that “Home Furnishing Accessories are not furniture.”

The ordinance also added a definition of “Department Store” as “a retail store measuring 50,000 square feet or more within the inside walls of such retail store, and within which a variety of merchandise is displayed and arranged for sale in departments within the store.” As examples of types of department stores, the ordinance listed “Wal-Mart, K-Mart, Costco, Sam’s Club, Home Depot, Orchards, Target, Sears, Mervyn’s, Penny’s, Gottschalks and Kohls.” Moreover, the following exception was added:

“A department store located in the Planned Commercial District may sell furniture in only one department in the department store and the furniture for sale must be displayed in only one location in the department. The total floor space area of the one location in the department where the furniture for sale is displayed shall not be larger than 2,500 square feet and shall be limited to only one display level.”

The ordinance further specified that “[t]he sale of furniture is prohibited in the PC zone district except by Department Stores in accordance with the definition of Department Stores set forth in Section 17.04.030 of Chapter 17.04 of this Title 17.”

Appellants filed a petition for administrative mandamus, denial of equal protection, and declaratory and injunctive relief. The trial court first heard the petition for administrative mandamus. The court denied the petition finding that the subject ordinance was neither arbitrary nor discriminatory.

Thereafter, a court trial was conducted on the constitutionality of the amended ordinance. The trial court concluded that the purpose of the ordinance was not to restrict

competition but rather, was to preserve the vitality of downtown Hanford while not discouraging department stores from locating in the PC zone. The court further found that the ordinance did not constitute an equal protection violation because there was a rational basis for the disparate treatment of appellants and the department stores. The court reasoned that the different sizes of the stores, i.e., over 50,000 square feet versus approximately 4,000 square feet, justified the disparate treatment. Accordingly, the trial court ruled that the ordinance was constitutional.

### **DISCUSSION**

Zoning ordinances, when reasonable in object and not arbitrary in operation, constitute a justifiable exercise of a city's police power. (*Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal.App.3d 467, 473-474.) However, for a particular ordinance to be valid, it must be expressly or impliedly based on the governing body's finding that such ordinance is necessary for the general welfare of the community. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1012.) Every intendment favors the constitutionality of a local land use regulation. Nevertheless, it will be found unconstitutional if it is discriminatory. (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 959-960.)

As noted above, Hanford determined that it was in the best interest of the community to continue to preserve the character and vitality of downtown and that in order to achieve this goal, it was necessary to prohibit furniture stores in the PC zone. As a legislative function, this prohibition is presumptively valid. (*Ensign Bickford Realty Corp. v. City Council, supra*, 68 Cal.App.3d at p. 474.) Moreover, it appears to reasonably relate to a legitimate governmental purpose, i.e., keeping large furniture stores downtown in order to preserve the economic viability of that commercial district. However, the ordinance, as amended, also carves out an exception for furniture sales by department stores in the PC zone. Therein lies the constitutional infirmity.

The equal protection clause compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment. (*Elysium Institute, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 408, 426-427.) If a statute is found to discriminate between similarly situated persons, the classification must bear a rational relationship to a legitimate state purpose. (*College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 686.) A “‘class of one,’” such as appellants, can bring a successful equal protection claim where the plaintiff “has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564.)

Under the traditional, rational relationship equal protection standard, the court conducts a serious and genuine inquiry into the correlation between the classification and the legislative goals. (*Elysium Institute, Inc. v. County of Los Angeles, supra*, 232 Cal.App.3d at p. 427.) In its zoning ordinance, the governing body “may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” (*Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 446.)

As discussed above, one of Hanford’s zoning goals was to preserve the economic viability of downtown. To assist in achieving this goal, Hanford restricted certain business activities, including furniture sales, in the PC zone. However, Hanford also wanted to attract department stores to the PC zone. This created a conflict in that the department stores, particularly Gottschalks, insisted on being allowed to sell furniture in violation of the furniture sales restriction. Accordingly, Hanford excepted department stores of 50,000 square feet or more from this restriction so long as the furniture display was limited to 2,500 square feet. As noted by the trial court, allowing limited furniture sales by retailers in the PC zone did not appear to affect furniture sales in downtown Hanford.

Thus, Hanford has created two classes of retailers in the PC zone who devote a portion of their display to furniture. A retailer with over 50,000 square feet of store space can sell furniture but a retailer with less than 50,000 square feet cannot, even though neither retailer would use more than 2,500 square feet for the furniture display.

The trial court concluded that the ordinance did not violate equal protection because Country Hutch and the department stores were not similarly situated. The court based its decision solely on the size differential. However, this is not a valid distinction.

Country Hutch sells mattresses and home furnishings, both permitted in the PC zone. Country Hutch also wanted to include a limited furniture department. The department stores are in the same position. They want to devote a portion of their floor space to furniture. Under these circumstances, the difference in total floor space is largely irrelevant. Thus, these retailers are in similar situations. Accordingly, in order for the ordinance to comply with equal protection principles, this classification based on size must bear a rational relationship to the legislative goal, i.e., the preservation of downtown Hanford.

Here, with the blanket 2,500 square foot restriction on furniture in the PC zone, the small retailer poses the same potential threat, if any, to the downtown merchants as the larger store. Thus, limiting the furniture sales exception to stores with more than 50,000 square feet is arbitrary. A rational relationship between the size classification and the goal of protecting downtown simply does not exist.

Hanford attempts to justify this disparate treatment on the ground that the department store exception benefits the community by making the PC zone attractive to large retailers. However, it is not a detriment to have smaller retailers, such as Country Hutch, in the PC zone. Thus, the goal of promoting the PC zone does not validate the ordinance.

In sum, the small mattress store and the large department store are similarly situated with respect to limited sales of furniture in the PC zone. Moreover, the disparate

treatment of these two retailers does not bear a rational relationship to the goal of preserving downtown Hanford. Thus, the part of the ordinance that bases permission to sell furniture on a store having 50,000 or more square feet is unconstitutional as a denial of equal protection.

**DISPOSITION**

The judgment is reversed. Costs on appeal are awarded to appellants.

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Levy, J.

WE CONCUR:

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Vartabedian, Acting P.J.

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Wiseman, J.