

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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March 9, 2021

Thomas Lloyd Smith, City Attorney
Office of the City Attorney
City of Antioch
200 H Street
Antioch, CA 94509

**RE: Enforceability of Measure T's Reduction in Land Use Intensity pursuant to
Housing Crisis Act of 2019 – Letter of Technical Assistance**

Dear Thomas Lloyd Smith:

The purpose of this letter is to assist the City of Antioch (City) in the implementation of the Housing Crisis Act of 2019 (Gov. Code, § 66300) as requested in the City's correspondence dated January 8, 2021. In that correspondence, the City requested the California Department of Housing and Community Development's (HCD) opinion as to the enforceability of a reduction in the intensity of land use included in the City's voter-approved initiative Measure T. For the reasons explained below, HCD finds that the less intensive use provisions of Measure T are impermissible under Government Code section 66300. However, the City could enforce the reduction in intensity contemplated in Measure T, notwithstanding this opinion, if and when it concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity. (Gov. Code, § 66300, subd. (i).)

HCD's opinion is based on the mandatory criteria established by the Legislature with the passage of Senate Bill 330 in 2019, known as the Housing Crisis Act of 2019, which added section 66300 to the Government Code. The State of California is experiencing a housing supply shortage of crisis proportions. To address this crisis, the Legislature declared a statewide housing emergency until 2025 and suspended certain restrictions on development of new housing during the emergency period. (Housing Crisis Act of 2019, Chapter 654, Statutes of 2019, section 2(b).) Among other things, the Legislature suspended the ability of cities and counties to change the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use (Gov. Code, § 66300, subd. (b)(1)(A).) Measure T conflicts with this provision. Specifically, Measure T reduces the intensity of use by limiting the issuance of development or building permits in the Sand Creek Initiative

Area1 (Initiative Area) unless a parcel meets the minimum parcel size requirement of 80 acres, includes a maximum aggregate residential floor area of 6,000 square feet, and implements visual safeguard standards. This combination of land use standards would have a severe impact on the potential for residential development and reduces the capacity from 4,000 housing units to 2,100.

As noted above, the reduction in the intensity of land use proposed in Measure T could be permissibly implemented only if the City were to concurrently change the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in overall residential capacity in the City. (Gov. Code, § 66300, subd. (i)(1).) According to the Meriam-Webster dictionary, “concurrent” means occurring at the same time. For purposes of complying with Subdivision (i)(1), the City should interpret concurrent to mean taking action prior to or at the same time as implementing Measure T. However, nothing in Measure T provides for an equal increase in intensity of land use elsewhere in the jurisdiction, therefore, these provisions of Measure T cannot be permissibly adopted, implemented, or enforced consistent with Government Code section 66300.

Measure T changes the general plan land-use designation in the Initiative Area to “Rural Residential, Agriculture, Open Space,” which permits low-density residences on large lots and has a “not to exceed” development yield in the Initiative Area to 2,100 housing units, including any density bonuses. Therefore, Measure T effectively acts as a “...cap on the number of housing units that can be approved...”, a violation of Government Code section 66300, subdivision (b)(1)(D)(ii) in addition to violating Government Code section 66300, subdivision (b)(1)(A), noted above.

Measure T appears to have been drafted to assure that housing development in the City is restricted in a manner that preserves agriculture and open spaces (Measure T, section 1). However, there is minimal analysis in Measure T to support this outcome. Measure T language more readily suggests it was passed primarily with the intent to restrict future housing development as opposed to accommodating future residential growth as intended in the City’s general plan. In sum, the provisions of the voter-approved Measure T result in a lesser intensity of land use and create a development cap, resulting in a reduction in the total number of housing units that can be built within the Initiative Area than what is currently allowed in the City’s General Plan. Accordingly, HCD is of the opinion that such a reduction in the intensity of land use created by Measure T cannot permissibly be adopted, implemented, or enforced consistent with Government Code section 66300.

¹ Defined as the area bounded by Black Diamond Mines Regional Preserve on the west, East Bay Regional Park District lands and the city border on the south, Deer Valley Road, and existing residential development on the north.

Thomas Lloyd Smith, City Attorney
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Thank you for reaching out to HCD for this guidance. We look forward to hearing from the City as to the action it takes on Measure T. Please contact Jose Ayala of our staff, at Jose.Ayala@hcd.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use and Planning Unit Chief