THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

DATE: June 7, 2021 | **DEPARTMENT: 39**
JUDGE: Edward G. Weil | **CLERK: Denese Johnson**
UNREPORTED

OAK HILL PARK,
Petitioners(s),
vs. **Case No.: MSN21-0048**

THE CITY OF ANTIOCH,
Respondent(s).

STATEMENT OF DECISION

Petitioner and plaintiff Oak Hill Park Company ("Oak Hill") brings this motion for a writ of mandate, and for a preliminary injunction. The motion is opposed by respondent and defendant The City of Antioch ("the City") and by real party in interest Let Antioch Voters Decide ("LAVD").

After issuing a tentative ruling on June 1, 2021, the Court heard argument and took the matter under submission. The Court now issues its Statement of Decision.

Oak Hill's motion raises questions concerning what both sides refer to as "the LAVD Initiative." (See Oak Hill's Request For Judicial Notice — "RJN" — filed on 2-25-21, Exh. 1.) The Initiative was approved by voters on November 23, 2020, as certified by the City on December 8, 2020. (*Ibid.*) Oak Hill contends that the Initiative violates the Housing Crisis Act of 2019, which the Court will refer to as either "the Housing Crisis Act" or "the Act." (See Gov. Code, §§ 66300 and 66301.)

A. Summary of Ruling.

Oak Hill's motion for a writ, and for declaratory relief, is granted as to the First and Second Causes of Action — except with regard to Section 22 of the LAVD Initiative, dealing with the urban limit line. Oak Hill's motion for a preliminary injunction is denied.

The Court finds that the LAVD Initiative, with the exception of Section 22, conflicts with the Housing Crisis Act and is therefore void. The Court further finds that, with the exception of Section 22, the individual provisions of the LAVD Initiative are not volitionally severable. The Court finds that Section 22 is valid and enforceable.

Oak Hill's motion as to the remaining causes of action is moot. The parties shall meet and confer on the terms of an appropriate judgment and a corresponding writ of mandate, as further discussed in Part G of this ruling below.

B. Preliminary Matters.

B-1. RJNs and Objections to Evidence.

The parties' unopposed requests for judicial notice are granted, without a finding that all of the documents attached to the requests are relevant to the Court's analysis.

The Court rules as follows on LAVD's evidentiary objections, filed on April 8, 2021:

> No. 1: sustained. Mr. Leung's paraphrasing of the City's General Plan is not competent evidence. The point is moot, however, as the General Plan is otherwise before the Court, and there is no dispute as to what the plan provided as of January 1, 2018.
>
> No. 2: sustained, on the same ground and with the same qualification.
>
> No. 3: sustained. Mr. Leung has not established personal knowledge concerning the activities of Richland Communities, Inc. between 2015 and 2017. The point is moot, however, because the Court does not find such activities relevant to the pending motion.
>
> No. 4: sustained, except on the ground of relevance. Mr. Leung's paraphrasing of the LAVD Initiative is not competent evidence. The point is moot, however, because the LAVD Initiative is otherwise before the Court. The relevance objection is overruled. All provisions of the LAVD Initiative, which must be read as a whole, are relevant.
>
> No. 5: sustained. The actions of the City that were the subject of prior Superior Court actions are not relevant to this current action.

Nos. 6-7: overruled. The date on which the City accepted Oak Hill's pre-application submittal for processing is potentially relevant to Oak Hill's standing, and to the Sixth Cause of Action for a facial taking. The point is moot, however, because neither LAVD nor the City has challenged Oak Hill's standing, and, for the reasons discussed below, the Court finds that the Sixth Cause of Action is moot.

None of these rulings is dispositive of the Court's ruling on Oak Hill's motion.

B-2. Objections to Briefing.

LAVD filed its "Response to City's Opposition Brief" on April 15, 2021. Oak Hill's objection to that brief, filed on April 19, 2021, is overruled.

Oak Hill filed its "Supplemental Brief" on May 20, 2021. LAVD's objection to that brief, filed on May 20, 2021, is overruled. (But see Part C-2 of this ruling below, dealing with the Third through the Fifth Causes of Action.)

B-3. The HCD's Letter of March 9, 2021 Is Entitled to A Modest Degree Of Judicial Deference.

On March 9, 2021, the California Department of Housing and Community Development ("HCD") provided the City with a "Letter of Technical Assistance." (Mehretu Dec., filed on 4-8-21, ¶ 4 and Exh. 3.) The parties have raised an issue concerning what degree of judicial deference the Court should give this letter. In considering this issue, the Court has been guided by the principles articulated in the *Yamaha* decision of the California Supreme Court — a decision that has been cited as authoritative since its issuance in 1998. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 6-15. See also, *De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 988 [citing *Yamaha* with approval].)

The following factors weigh in favor of giving the letter judicial deference:

- The HCD has expertise in the area of planning and zoning law.
- The Housing Crisis Act designates the HCD as the gatekeeper for deciding whether an affected city may issue a housing moratorium despite the provisions of the Act. (Gov. Code, § 66300, subd. (b)(1)(B).)
- The HCD letter is well reasoned, is reasonably detailed, and was issued by the HCD's "Land Use and Planning Unit Chief," a title suggesting a high rank within the HCD.

The following factors weigh against giving the letter judicial deference:

- Because the Housing Crisis Act is recent legislation, the HCD letter does not reflect an interpretation of the Act that has been "consistently maintained" by the HCD. (*Yamaha*, *supra*, 19 Cal.4th at p. 13.)

- The HCD's "advisory statements are not entitled to the same judicial deference as the binding, quasi-legislative regulations formally adopted by" the HCD. (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 588. Accord *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 292-293 ["factors to consider include whether the administrative interpretation has been formally adopted by the agency or is instead in the form of an advice letter from a single staff member"].)

- The HCD letter was issued in a non-adversarial context at the City's request, with no notice to Oak Hill or other interested parties. Such advisory statements "are entitled to less deference than administrative decisions made after formal proceedings in which adversarial views are aired." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 311.)

Having considered these factors, the Court finds that the HCD letter is entitled to a modest degree of judicial deference, with the following exception. The Court finds that the letter is entitled to little deference as to the HCD's interpretation of the word "concurrently," as used in the Act, for reasons discussed later in this ruling.

While the HCD letter is touched on again in the discussion of specific issues below, one point bears emphasis here at the outset: the Court's finding as to what degree of judicial deference to give the HCD letter is not a substantial factor in the Court's decision to grant Oak Hill's motion as to the First and Second Causes of Action. The Court would have made the same decision if the HCD letter had not been offered for the Court's consideration, or if the Court had found that the HCD letter is entitled to no deference at all on any issue. The Court has ruled on the question of judicial deference in an abundance of caution, and to make a complete record.

C. Oak Hill's Causes of Action.

Oak Hill alleges the following six causes of action:

1st C/A Writ of Mandate
(Gov. Code § 66300 – SB 330)

2nd C/A	Declaratory Relief (Gov. Code § 66300 – SB 330)
3rd C/A	Writ of Mandate (Gov. Code § 65300.5 – Consistent General Plan)
4th C/A	Writ of Mandate (Gov. Code § 65580 – Housing Element Law)
5th C/A	Writ of Mandate (Improper Subject Matter)
6th C/A	Declaratory Relief (Facial Taking)

For purposes of this ruling, the Court has divided these causes of action into three groups.

C-1. The Housing Crisis Act Causes of Action.

The Court will refer to the First and Second Causes of Action as "the Housing Crisis Act" causes of action. This ruling addresses the merits only of the Housing Crisis Act causes of action. The Court finds that, with one possible exception discussed in the next paragraph, the Third through the Fifth Causes of Action are moot. This is because the Court believes that its ruling on the Housing Crisis Act causes of action is dispositive of this entire action in Oak Hill's favor.

The Court is not certain whether Oak Hill will take the position that Section 22 of the LAVD Initiative, dealing with the urban limit line, remains at issue. If LAVD does take that position, LAVD should contest the Court's tentative ruling, and should be prepared to address why the Third through the Fifth Causes of Action should not be deemed moot.

Another technical point concerning the Housing Crisis Act causes of action merits discussion at this point in the Court's analysis. While Oak Hill has raised the Housing Crisis Act challenge in the form of both a petition for a writ of mandate (the First Cause of Action) and a cause of action for declaratory relief (the Second Cause of Action), the Court is not certain whether there is a practical distinction between these two legal theories under the circumstances of this case. Any party that wishes to address this technical point at oral argument is welcome to do so.

It would appear that the Court can provide Oak Hill with full relief by either (1) issuing a writ of mandate directing the City to take the ministerial steps

necessary to ensure that the text of the General Plan is publicly restored to its state before the LAVD Initiative was certified as approved, or (2) issue a declaratory judgment that the LAVD Initiative is void (except as to Section 22) and that the General Plan was not effectively modified by the Initiative. Unless the Court is persuaded otherwise at oral argument, the Court intends to provide Oak Hill with both forms of relief, in an abundance of caution and in order to provide a more complete record should any party seek appellate review.

C-2. The Third Through The Fifth Causes of Action.

The Third through the Fifth Causes of Action allege defects in the LAVD Initiative other than the Initiative's alleged violation of the Housing Crisis Act. If for any reason the Court were to change its ruling on the Housing Crisis Act causes of action, the Court would request additional briefing on the Third through the Fifth Causes of Action. This is because Oak Hill did not offer argument on these causes of action until its first supplemental brief, filed on May 13, 2021, and the issues have not yet been adequately developed.

C-3. The Sixth Cause of Action.

The Sixth Cause of Action is for a "facial taking." The Court would address this cause of action only if (1) the Court were to change its ruling on the Housing Crisis Act causes of action, and (2) the Court were to rule against Oak Hill on the Third through the Fifth Causes of Action. As the Court indicated in its preliminary ruling of April 29, 2021, the Sixth Cause of Action raises fact-intensive issues that likely could not be resolved in an ordinary law and motion proceeding.

C-4. The One Final Judgment Rule.

Certain language in Oak Hill's papers suggests that Oak Hill seeks a final judgment on the Housing Act Crisis causes of action, while preserving its right to pursue its Sixth Cause of Action for a facial taking at some future date. The Court finds that it cannot proceed in this manner, under the one final judgment rule. (See *Nerhan v. Stinson Beach County Water Dist.* (1994) 27 Cal.App.4th 536, 540 ["absent unusual circumstances, the denial of a petition for writ of mandate is not appealable if other causes of action remain pending between the parties"].)

Because the Court finds the Housing Crisis Act causes of action dispositive, and the other causes of action moot, the Court does not anticipate any further proceedings in this action, other than the entry of an appropriate judgment and the issuance of a corresponding writ of mandate. Oak Hill has not indicated that it would prefer the issuance of an interlocutory ruling on the Housing Crisis Act causes of action, and further proceedings on the remaining causes of action.

C-5. Oak Hill's Request For A Preliminary Injunction.

A preliminary injunction is a provisional remedy that preserves the status quo pending the trial of an action. Because the Court finds the Housing Crisis Act causes of action dispositive, and because a final judgment disposing of this entire action will be entered, the Court finds that there is no need for a preliminary injunction.

D. The Housing Crisis Act Causes of Action Are Not Premature.

LAVD's first and primary argument is that "Oak Hill's challenge is not ripe because the City has not yet attempted to implement the Initiative." (Opposition, filed on 4-8-21, p. 8:11-12.) This argument is comprised of three subsidiary arguments. The Court finds that these three subsidiary arguments lack merit for the reasons stated in Part D-1, Pat D-2, and Part D-3 of this ruling below.

D-1. The City's Inaction Does Not Forestall Judicial Review.

LAVD's first subsidiary argument is that the Oak Hill's challenge to the LAVD Initiative is not ripe for judicial review because the City "has not yet begun to implement the Initiative and has affirmatively taken the position that it will not 'currently' do so." (Opposition, p. 8:16-17.) This argument lacks merit for the following reasons.

D-1(a) — "Implementation" Of The Initiative

LAVD has not persuaded the Court that there is anything left for the City to do in order to "implement" the LAVD initiative. On December 8, 2020, the City certified the results of the November 3, 2020 election and found that the LAVD Initiative was approved. (Oak Hill's RJN, Exh. 3.) Because nothing more was required of the City, LAVD's argument that "Oak Hill's challenge is not ripe" lacks merit. (See also, Oak Hill's Reply, filed on 4-19-21, Part II-A, pp. 1-3.) The following considerations bolster the Court's finding on this point.

D-1(b) — Section 19 of the Initiative

The Court will quote Section 19 of the LAVD Initiative in full because it is relevant to the issue of whether any further steps are required to "implement" the Initiative. Section 19 provides as follows:

Section 19: Implementation and Enforcement

> (a) The Council, City agencies and officials shall ***enforce*** the provisions of this Measure diligently and effectually. [Emphasis added.] They shall review uses and the location, nature, amount, visibility, and environmental effects of proposed developments and parcels to ensure compliance with the Measure. They shall use the most effective means at their disposal, subject to official discretion mandated by State law, to avoid, prevent, abate and remedy violations. Violations are public nuisances and, as provided by statute, misdemeanors.
>
> (b) Residents, organizations with members in the City, and others with standing may ***enforce*** this Measure, and the covenants required under Section 15, by judicial proceedings against any government agency, person, group, or entity that is in violation of the Measure or a covenant, or to prevent violations. [Emphasis added.]
>
> (c) The City may, in its discretion, particularize and implement this Measure by appropriate legislation and actions, in all cases in full consistency with the substantive content and purposes of the Measure.

While Section 19 is captioned "Implementation ***and*** Enforcement," the text of subdivisions (a) and (b) refer only to enforcement. Subdivision (c) states that the City has discretion to take complementary actions, so long as they are consistent with the purposes of the LAVD Initiative, but the subdivision does not suggest that further action of any kind is necessary in order for the Initiative to be deemed fully implemented.

D-1(c) — The Purpose of the Act

Assuming for purposes of argument that some ministerial task (beyond certification) is still required before the City can be deemed to have fully implemented the LAVD Initiative, the question becomes whether the City can indefinitely evade the Housing Crisis Act by delaying the performance of that ministerial task. The Court finds that the Act cannot be so construed in light of the overarching purpose of the Act, which is to expedite the development of new housing in the face of what the California Legislature refers to, over and over again in the Act's findings, as a "crisis." (See Part E-3(b) below ["The Purpose of the Housing Crisis Act"].) Indeed, under the City's strained construction of the Act, the City could hold proposed developments of new housing in limbo until 2025, when the Act by its current terms is scheduled to expire. (See Gov. Code, § 66301 ["[t]his chapter shall remain in effect only until January 1, 2025, and as of that date is repealed"].)

D-1(d) — The Act's Prohibition Against Moratoria

The Housing Crisis Act restricts moratoria on new housing development, providing in pertinent part as follows:

> (b)(1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:
>
> [...]
>
> (B)
>
> (i) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction of the affected county or city, other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium or for projects specifically identified as existing restricted affordable housing.
>
> (ii) The affected county or affected city, as applicable, shall not enforce a zoning ordinance imposing a moratorium or other similar restriction on or limitation of housing development until it has submitted the ordinance to, and received approval from, the department. The department shall approve a zoning ordinance submitted to it pursuant to this subparagraph only if it determines that the zoning ordinance satisfies the requirements of this subparagraph. If the department denies approval of a zoning ordinance imposing a moratorium or similar restriction or limitation on housing development as inconsistent with this subparagraph, that ordinance shall be deemed void.

(Gov. Code, § 66300, subd. (b)(1)(B).) Allowing the City to delay implementing the LAVD Initiative would have the same effect as a more explicit moratorium. Accordingly, if the Initiative were construed so as to allow indefinite delay in implementation, the Initiative would have to satisfy the above-quoted statutory requirements.

The LAVD Initiative does not comply, for two reasons. First, the Initiative does not identify any "imminent threat" to health and safety that would justify a *de facto* moratorium. Second, the City has not sought and received approval for any moratorium from the California Department of Housing and Community Development.

D-1(e) — Declaratory Relief

Insofar as LAVD's ripeness argument is based on the City's inaction, the argument seems to boil down to the following proposition: the LAVD Initiative can be deemed implemented, for purposes of judicial review, only when the City starts invoking the Initiative as a ground for denying development applications. If so, this argument lacks merit for yet another reason: it would frustrate the purpose of Oak Hill's statutorily recognized cause of action for declaratory relief. (Code Civ. Proc., § 1060. See *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 884 ["[t]he purpose of declaratory relief is 'to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs'"].)

D-2. The City Does Not Have Discretion To "Implement" The LAVD Initiative In A Manner Consistent With The Housing Crisis Act.

LAVD's second subsidiary argument on the issue of ripeness is that "Oak Hill cannot assume the Initiative will violate State law without first giving the City an opportunity to lawfully implement the Initiative." (Opposition, p. 8:20-21.) This argument lacks merit for the following reasons.

D-2(a) — The Initiative Limits the City's Discretion

LAVD argues that there are two ways in which the City might implement the LAVD Initiative in a manner that would be consistent with the Housing Crisis Act, assuming that there is a conflict between the two. This argument is phrased as follows:

> Moreover, Oak Hill cannot assume the Initiative will violate State law without first giving the City an opportunity to lawfully implement the Initiative. ... While SB330 did not exist when the Initiative was drafted, circulated, and qualified for the ballot, the Initiative's proponents were aware that the State has been legislating to address the housing crisis. Accordingly, they proposed — and the voters adopted — provisions to address the possibility that the City might ***[1]*** need to make exceptions to the Initiative or ***[2]*** adopt implementation measures in order to comply with new state housing requirements. [Bracketed numbers added.] ... [B]ecause the Initiative expressly instructs the City to implement the Initiative

> consistent with existing law, the City must be afforded an opportunity to exercise its discretion before a writ may issue.

(Opposition, filed on 4-8-21, p. 8:20-21; p. 9:3-7.)

The Court finds that this argument lacks merit. There is no language in the LAVD Initiative authorizing the City to "make exceptions to the Initiative," or to adopt measures beyond the scope of the Initiative that would "comply with new state housing requirements." In fact, Section 19 of the Initiative strictly limits the City's discretion in this regard.

Thus Section 19(a), quoted in full above, does not authorize the City "to make exceptions." Rather, it requires the City to "diligently and effectually" enforce the LAVD Initiative. In fact, if the City were to try to make an exception to enforcement, Section 19(b) would authorize anyone with standing to bring an action against the City, or against any developer who asked for such an exception. Section 19(b) again provides as follows:

> (b) Residents, organizations with members in the City, and ***others with standing may enforce this Measure***, and the covenants required under Section 15, by judicial proceedings ***against any government agency***, person, group, or entity that is in violation of the Measure or a covenant, or to prevent violations. [Emphasis added.]

Section 19(c) also limits the City's discretion. Subdivision (c) does not authorize the City to "adopt implementation measures in order to comply with new state housing requirements." Again, it provides as follows:

> (c) The City may, in its discretion, ***particularize and implement this Measure*** by appropriate legislation and actions, in all cases ***in full consistency with the substantive content and purposes of the Measure***.

This subdivision says nothing about state housing law; it authorizes further steps to "particularize and implement" the LAVD Initiative itself, not some identified requirement of state housing law. And even that limited authority is further limited in scope to steps that are fully consistent with the purpose of the measure.

D-2(b) — The Shea Homes Decision

LAVD cites the *Shea Homes* decision in support of its argument that the City has discretion to enforce the LAVD Initiative in a manner consistent with the Housing Crisis Act. (See *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246.) That decision is distinguishable, however,

because the initiative in that case provided two concrete "mechanisms" for complying with state housing requirements if strict enforcement of the initiative would prevent such compliance. (*Id.*, at 1265-66.) The LAVD Initiative, in contrast, provides for no such mechanisms.

Indeed, a later Court of Appeal decision distinguishes *Shea Homes* on this ground:

> The county relies on *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1265–1266 [2 Cal. Rptr. 3d 739]. In that case, the court rejected a claim that a local agriculture and open space measure adopted by popular vote conflicted with the state density bonus law. The court reasoned that while the challenged measure required the county to meet its state-imposed housing obligations in a particular portion of the county, it also "specifically states that none of its provisions shall be applied so as to preclude the County's compliance with state law housing obligations" and the measure included two mechanisms to ensure compliance with those housing obligations if the restrictions adopted by the measure should prevent it. (*Id.* at pp. 1265–1266.) ***The "savings" provision included in the county's ordinance in the present case, however, does no more than state the truism that state law prevails over conflicting local law.*** [Emphasis added.] Napa County Municipal Code section 18.107.190 does not modify any particular provision of the local ordinance nor does it identify any provision of state law that controls under any particular circumstances. Persons reading the ordinance without the benefit of a legal opinion as to the extent of its validity would understand that units satisfying the inclusionary requirement do not count towards the number of units necessary to qualify for the density bonus. Since that requirement does violate the statute, a writ of mandate should be issued to require its removal from the ordinance.

(*Latinos Unidos Del Valle De Napa Y Solano v. County of Napa* (2013) 217 Cal.App.4th 1160, 1169.) The Court finds this later decision to be on point.

LAVD points out, correctly, that the initiative in this case contains savings language virtually identical to that referenced in *Shea Homes*. That does not solve the problem. First, in *Shea Homes*, the ballot measure authorized actions (moving the urban growth limit line and authorizing new development in it), that clearly could allow the County to harmonize the ballot measure with state law requirements. In this case, there is nothing in the initiative that gives the City enough leeway to do so. Second, as will be discussed later, the Housing Crisis Act requires compensatory upzoning to be done *concurrently* with the local enactment. Thus, even if the City eventually were to find a compensatory

measure that might otherwise harmonize the competing obligations, it would be too late to satisfy the state statute.

D-2(c) — The Denham Decision

LAVD also cites the *Denham* decision in support of its argument that the City has discretion to enforce the LAVD Initiative in a manner consistent with the Housing Crisis Act. (See *Denham, LLC v. City of Richmond* (2019) 41 Cal.App.5th 340.) That decision is also distinguishable, because it concerned inconsistencies within a general plan, and not the preemption of a local ordinance by state law. (*Id.*, at 352-356.)

The *Denham* decision concerned a conflict between an initiative and Government Code section 65300.5 of the Government Code, which provides as follows:

> In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.

This statute is found in a different chapter of the Government Code from the Housing Crisis Act. (Compare: Title 7, Division 1, Chapter 3 [general plans]; Title 7, Division 1, Chapter 12 [the Housing Crisis Act].) Further, the chapter dealing with general plan inconsistencies has its own remedies statute, which provides for HCD review and a 120-day time limit. (Gov. Code, § 65754.) There is no such remedy statute in the Housing Crisis Act.

An even more fundamental distinction is that the general plan inconsistency at issue in *Denham* is a type of planning law defect that can be cured. In the case at bar, LAVD does not suggest any such cure for the inconsistency between the Housing Crisis Act and the LAVD Initiative. It appears to the Court that the only cure would be not to enforce the Initiative, and remanding this case with a direction that the City not enforce the Initiative is problematic for the reasons discussed above.

D-3. It Is Too Late For "Concurrent" Upzoning.

LAVD's third and final subsidiary argument on the ripeness issue is that the LAVD Initiative qualifies — or may qualify in the future — for a statutory exception based on concurrent upzoning. The Housing Crisis Act provides in pertinent part as follows:

> (i)(1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county ***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. [Emphasis added.]

(Gov. Code, § 66300, subd. (i)(1).) LAVD argues that the LAVD Initiative qualifies under this exception to the Act, because the City might eventually upzone land outside the land covered by the Initiative in a manner that would result in "no net loss in residential capacity." Despite the opportunity to file supplemental briefing, however, LAVD has not persuaded the Court that the word "concurrently" can be construed as meaning "at some indefinite time in the future." The following considerations bolster the Court's finding on this point.

D-3(a) — Indefinitely Delayed "Concurrent" Action

The Court's analysis of the City's inaction, set forth in Part D-1 of this ruling above, applies with equal force to LAVD's argument that indefinitely delayed "concurrent" action prevents judicial review. The Housing Crisis Act seeks to promote prompt action to authorize the development of new housing, and not indefinite delay.

D-3(b) — The "Transferable Development Credit Program"

LAVD argues that Section 16 of the LAVD Initiative "concurrently" upzones other property within the City of Antioch. Section 16 provides in full as follows:

> Section 16: Transferable Development Credits
> The City shall study and evaluate a transferable development credits program as a means of transferring permissible development from the Initiative Area to other locations.

The Court finds that this argument lacks merit.

First, the phrase "permissible development" must be construed as referring back to Section 10 of the LAVD initiative, which defines "permissible uses." Such uses include, for example, the "sale or rental of ruminants, pigs, poultry and bees," but do not include the development of new housing.

Second, the study and evaluation of a possible — but not obligatory — program to be established at some undefined future time cannot be interpreted as "concurrently" compensating for the LAVD Initiative's restrictions on the development of new housing. Concurrently means at the same time, not some future time.

Finally, the single sentence comprising Section 16 is too vague to be a substantial factor in the Court's analysis. The LAVD Initiative does not elsewhere give any indication of what "a transferable development credits program" might

entail, and how it might allow for the development of new housing — i.e., housing development that is not already permitted under the General Plan.

D-3(c) — The Agency's Letter

As noted in Part B-3 of this ruling above, the California Department of Housing and Community Development ("HCD") provided the City with a "Letter of Technical Assistance" on March 9, 2021. (Mehretu Dec., filed on 4-8-21, ¶ 4 and Exh. 3.) The Court notes, however, that the HCD letter's discussion of the word "concurrently" is based not on the HCD's expertise but on a dictionary definition:

> 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 [sic] dictionary, "concurrent" means occurring at the same time.*** [Emphasis added.] 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, those provisions of Measure T cannot be permissibly adopted, implemented, or enforced consistent with Government Code section 66300.

(*Id.*, Exh. 3 [internal page 2.].)

The Court agrees with the author of the HCD letter concerning the meaning of the word "concurrently," as used in the Housing Crisis Act. Because, however, the HCD's analysis was not based on the HCD's expertise, and for the other reasons discussed in Part B-3 of this ruling above, the Court has given the HCD letter little judicial deference on this point of law.

D-4. Previous Litigation Conduct Is Not Relevant.

One theme of LAVD's papers is that Oak Hill's conduct in previous litigation should be a factor in the Court's decision of the present motion. LAVD argues, for example, as follows:

> [D]espite the Initiative qualifying for the ballot in 2018, the voters have not yet enjoyed its benefits — largely due to Petitioner Oak Hill Park Company's relentless efforts to undermine the voters' will. In late 2018, Oak Hill sued to compel the City Council to vacate its adoption of the Initiative and instead submit the Initiative to the

> voters. Now, having apparently determined it does not want the fruits of its own labor, Oak Hill has returned to this Court in its third attempt to block the Initiative.
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> [...]
>
> [I]t is only because of Oak Hill's litigation tactics in first challenging the Council's adoption of the Initiative as impermissible based on the Richland Initiative — and then successfully moving to invalidate the Richland Initiative — that Oak Hill is even able to argue that SB 330 applies here.

(Opposition, filed on 4-18-21, p. 5:6-11; pp. 8:25—9:2.) While the Court understands both sides' frustration with the inefficiencies sometimes occasioned by the initiative process, the Court does not find comments on either side's litigation tactics to be a helpful consideration in the Court's decision of the present motion.

E. The LAVD Initiative Conflicts With The Housing Crisis Act.

E-1. Summary of the Act and the LAVD Initiative.

E-1(a) — The Housing Crisis Act of 2019

In October 2019, California passed Senate Bill 330, the Housing Crisis Act of 2019. The Act contains two statutes. The substantive provisions of the Act are set forth in Government Code section 66300. Section 66301 provides a 'sunset' date of January 1, 2025.

The Act provides that "affected cities," which include respondent City of Antioch, may not enact certain restrictions on new housing development on land where housing is an allowable use. The Act's four primary provisions are found in subdivision (b)(1), which prohibits local ordinances containing any of the following restrictions:

- A reduction in the intensity of land use below what was allowed by the governing general plan as of January 1, 2018. (Gov. Code § 66300, subd. (b)(1)(A).)
- A moratorium on housing development, with an exception for threats to health and safety. (Gov. Code § 66300, subd. (b)(1)(B).)
- Non-objective design standards established on or after January 1, 2020. (Gov. Code § 66300, subd. (b)(1)(C).)
- Numerical limits on new housing. (Gov. Code § 66300, subd. (b)(1)(D).)

Subdivision (b)(2) provides that "[a]ny development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void."

E-1(b) — The LAVD Initiative

Voters enacted the LAVD Initiative on November 3, 2020. The Initiative affects a newly defined area of land within the western portion of a larger area already defined by the Antioch General Plan. The larger area is called the "Sand Creek Focus Area" or "Focus Area." The newly defined area is called the "Initiative Area."

The Initiative amends the Antioch General Plan in various ways. Real party in interest LAVD summarizes the purpose of these amendments as follows: "to adopt and extend various policies to protect the sensitive natural, open-space, and historic qualities of the western portion of the Focus Area ..." (Opposition, filed on 4-8-21, p. 6:16-19.) The purpose of the Initiative is discussed further in Part E-3(c) of this ruling below.

LAVD summarizes the five key features of the Initiative as follows:

> The Initiative achieves these goals by, among other things, (1) creating a new Rural Residential, Agriculture, and Open Space land use designation and establishing specific development standards for the Initiative Area; (2) identifying areas of special environmental concern; (3) establishing visual and other safeguards to guide development; and (4) directing the City to evaluate a transferrable development credit program as a means of transferring permissible development from the Initiative Area to other areas. ... **[5]** The Initiative's other key substantive provision is to maintain the City's existing Urban Limit Line. [Bracketed number added.] ...

Oak Hill identifies what it characterizes as numerical "caps" on housing as another key feature, although LAVD disagrees with this characterization.

E-2. Undisputed Matters.

E-2(a) — The Record

The parties concur that the Court has before it a record sufficient to allow the Court to decide the Housing Crisis Act causes of action. Of primary concern are the following: (1) the text of the City's General Plan, as of January 1, 2018; (2) the text of the Housing Crisis Act; (3) the text of the LAVD Initiative; and (4) the HCD letter.

E-2(b) — The Act Preempts Conflicting Initiatives

LAVD does not dispute the following threshold matters:

- State legislation addressing a matter of statewide concern preempts local ordinances, including those adopted by initiative, to the extent that the two are in conflict.

- The Housing Crisis Act addresses a matter of statewide concern. (See, Oak Hill RJN, Exh. 4, SB 330, § 14 ["the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern and is not a municipal affair"].)

- The City is an "affected city" under the terms of the Act.

Accordingly, LAVD and the City do not dispute that the Housing Crisis Act preempts the LAVD Initiative, to the extent that the two are in conflict. (Cf. *Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 762-763 and 767-771 [initiative preempted by the Planning and Zoning Law].)

E-3. The Purposes of The Housing Crisis Act and the LAVD Initiative Are In Conflict.

The Court, in performing its analysis of the Housing Crisis Act causes of action, has taken into consideration what the Court views as a direct conflict between the fundamental purpose of the Housing Crisis Act and the fundamental purpose of the LAVD Initiative. This conflict may be described as follows.

E-3(a) — Introduction

The environmental and other considerations mentioned in the LAVD Initiative are perfectly legitimate, and ordinarily it would be up to the City to decide the appropriate balancing of those considerations with the need for new housing. But the Housing Crisis Act of 2019 changed the scope of the City's authority substantially, at least with respect to housing development that had been permitted before the January 1, 2018 trigger date. Thus, the Court's ruling on the Housing Crisis Act causes of action is based on a somewhat technical statutory preemption analysis, and not on a value judgment as to which party's concerns should be given preference.

E-3(b) — The Purpose of the Housing Crisis Act

Section 1 of the Housing Crisis Act provides as follows: "This act shall be known, and may be cited, as the Housing Crisis Act of 2019." Section 2(a) sets

forth a series of legislative findings concerning California's housing crisis. Sections 2(b) and 2(c) provide as follows:

> (b) In light of the foregoing, the Legislature hereby declares a statewide housing emergency, to be in effect until January 1, 2025.
>
> (c) It is the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following:
>
> (1) ***Suspend certain restrictions on the development of new housing during the period of the statewide emergency described in subdivisions (a) and (b).*** [Emphasis added.]
>
> (2) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement.

These purposes are an elaboration of the broader purposes articulated in the earlier-enacted Housing Accountability Act. The Housing Crisis Act of 2019 included amendments to Government Code section 65589.5, part of the Housing Accountability Act. Section 65589.5 sets forth many findings that emphasize (1) the problems caused by a lack of adequate housing in California, and (2) the urgency of the need for new housing. (Gov. Code, § 65589.5, subs. (a) and (b).)

E-3(c) — The Purpose of the LAVD Initiative

Section 1 of the LAVD Initiative provides as follows:

> Section 1: Purposes
>
> The principle [sic] purposes of this Ordinance are to protect public security and wellbeing, and to preserve agriculture, nature, and open space in Antioch.
>
> The Ordinance [below emphasis added]:
>
> - ***restricts*** the extent and amount of development in Antioch;
> - ***maintains*** the existing urban limit line;
> - ***preserves*** nature, open spaces, and historic qualities;
> - ***maintains*** agriculture;
> - ***protects*** the Sand Creek Stream corridor;
> - ***limits*** traffic congestion in Antioch;
> - requires voter approval to change these safeguards.

The Court finds that this list of purposes is significant not only for what it contains but for what it lacks: there is no mention of California's need for new housing, or even of the listed zoning restrictions being consistent with the development of new housing. To the contrary, the "Findings" section of the initiative strongly indicates that the development of new housing would be at cross-purposes with the LAVD Initiative.

Thus, Section 2(a) provides as follows:

> Section 2: Findings
>
> The people of Antioch do find and declare:
>
> (a) Protection of Agriculture and the Natural Environment: The area protected by this Initiative is undeveloped land in the Sand Creek area of south Antioch. It includes agricultural lands, hills, streams, and wildlife habitat. Historically, the area has been used for mining and ranching. It is a beautiful, natural contrast to urban development in Antioch and neighboring cities.

This section indicates the LAVD Initiative's intention to preserve only the existing land uses — mining, agriculture, and ranching — as "a beautiful, natural contrast to" other land uses, such as the development of new housing.

Section 2(b) provides as follows:

> Section 2: Findings
>
> The people of Antioch do find and declare:
> [...]
>
> (b) Development in Antioch: There has been a large amount of ***residential development*** in Antioch in the last thirty years. ***This has created a serious housing/jobs imbalance, with many more houses than jobs.*** [Emphasis added.] Antioch's population has more than doubled to 115,000. As a consequence, many of the desirable natural, open space and historic qualities of the city have been lost; much of what remains is in near-term jeopardy.

This section singles out the development of new housing as a threat to the goals of the LAVD Initiative; while California as a whole may need new housing, the Initiative finds, Antioch has a surfeit of housing.

Section 2(c) provides as follows:

> Section 2: Findings
>
> The people of Antioch do find and declare:
>
> (c) Development in the Initiative Area: Large-scale subdivisions have been proposed in the area covered by the Initiative. Substantial additional development would destroy agriculture, stream qualities, grasslands and scenic views. Habitat for wildlife would be lost. Development would make traffic congestion worse on city streets and Highway 4, and would increase air pollution and greenhouse gas emissions in Antioch. ***Sprawl would be costly, to extend public facilities and services to new residential areas.*** [Emphasis added.] Now is the time to protect these lands before they are permanently developed.

This section again singles out the development of "new residential areas" as a threat to the goals of the LAVD Initiative.

Section 2(i) does mention the possible need for new housing, but it does so obliquely, as follows:

> Section 2: Findings
>
> The people of Antioch do find and declare:
>
> (i) Housing: The Initiative does not affect the City's ability to provide for housing required by State law. It maintains all sites that have been designated to meet Antioch's Regional Housing Needs Allocations.

This section is neutral on new housing; the LAVD Initiative would "maintain" and "not affect" the status quo, despite the perceived need for new housing that prompted enactment of the Housing Accountability Act and the Housing Crisis Act.

E-3(d) — Conclusion

The Court finds that the conflict between the stated purpose of the Housing Crisis Act and the stated purpose of the LAVD Initiative is readily apparent. The overriding purpose of the Act is to expedite new housing by precluding local governments from reducing permitted density below that already allowed under existing zoning and planning provisions. The overriding purpose of the Initiative is to preserve open space and agricultural land by protecting land

from development — and specifically, from the development of new housing -- even where the area in question previously had been slated for housing.

Of course, this conflict would not be dispositive if the text of the Act and the Initiative were otherwise reconcilable. But the conflict does have implications for the Court's analysis. The Court cannot give the Initiative a strained construction that would defeat the Initiative's stated purpose. And, as addressed below, the Court must construe the Act broadly, so as to further the Act's stated purpose.

E-4. The Act Must Be Broadly Construed.

The Housing Crisis Act provides in pertinent part as follows:

(f)

> (1) Except as provided in paragraphs (3) and (4) and subdivisions (h) and (i), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2).
>
> (2) ***It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state.*** [Emphasis added.] Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.
>
> [...]

(Gov. Code, § 66300, subd. (f).) The Court has considered and applied this statutory rule of construction in the Court's analysis of Oak Hill's claims.

E-5. Reduction In Intensity.

E-5(a) — Oak Hill's Argument

As was noted above, the Housing Crisis Act prohibits local ordinances containing four categories of land use restrictions. Oak Hill argues that several of the LAVD Initiative's provisions fall within the first of these four categories: restrictions that have the effect of reducing land use intensity below what was allowed by the Antioch General Plan as of January 1, 2018. (Gov. Code, § 66300, subd. (b)(1)(A).)

E-5(b) — The Pertinent Text

The pertinent text from the Housing Crisis Act is as follows:

> (b)(1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:
>
> (A) Changing 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 or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

(Gov. Code, § 66300, subd. (b)(1)(A).) The pertinent text from the LAVD Ordinance is as follows:

> Section 8: Minimum Parcel Size
>
> The minimum parcel size is 80 acres, except for parcels that are legal under Section 17 ["Applicability"]. [...]
>
> Section 10: Permissible Uses
>
> The following uses only, and their normal and appropriate accessory uses and developments, may be permitted by the City in the Initiative Area, provided however that all use and development must comply with the provisions of this Plan and with other City plans and ordinances:
>
> (a) One single family dwelling unit on a parcel, secondary units required by State law, and housing occupied only by bona fide farm workers employed on the parcel or on a farm or ranch which includes the parcel; [...]
>
> Section 26: Changes in the General Plan for Consistency

[...]

Rural Residential, Agriculture, Open Space. This designation allows single-family rural residential development as provided by the Sand Creek Area Protection Initiative. This designation, typically involving large parcels, protects agriculture, grasslands, and open space as well as permitting housing in rural areas. Maximum house size with accessory buildings is 6,000 square feet. Dwelling unit densities are less than one per acre. Population densities typically will be less than one person per acre.

[...]

PP. 4-38 through 4-44; **4.4.6.7 Sand Creek, b. Policy Direction** ~~The Sand Creek Focus Area is intended to function as a large scale planned community providing needed housing and employment opportunities. This Focus Area is also intended to provide substantial employment opportunities.~~ West of Deer Valley Road, the Sand Creek Focus Area, under the Sand Creed Initiative, provides rural residential housing and preserves agriculture, grasslands, and open space. East of Deer Valley Road, it provides primarily housing and employment opportunities. Up to approximately 280 acres are to be devoted to retail and employment generating uses east of Deer Valley Road, which will result in the creation of up to 6,500 jobs at build out. Residential development ~~within the Sand Creek Focus Area~~ east of Deer Valley Road will provide for a range of housing types, including upper income estate housing, ~~golf course oriented age restricted housing for seniors~~; suburban single-family detached housing for families or for seniors, and multifamily development. Residential development west of Deer Valley Road will be low-density, rural single-family detached houses. The Sand Creek stream corridor hilltops ridgelines hillsides and sensitive biological resources will be protected throughout the Focus Area.

(Oak Hill's RJN, filed on 2-25-21, Exh. 1.)

E-5(c) — LAVD's Argument

LAVD's opposition argument asserts that Oak Hill has not accurately characterized the pertinent provisions of the Antioch General Plan as of January 1, 2018. LAVD summarizes its argument on this point as follows:

> Because no designation presently applies to parcels in the Initiative Area, the Initiative neither "change[s] the general plan land use designation" of any parcel nor "reduce[s] the intensity of use

> within an existing general plan designation." Instead the Initiative adds a ***new*** residential land use designation where none existed and applies it to the parcels within the defined Initiative Area. Initiative at 3 (§ 5). Given the language, structure, and operation of the City's existing General Plan, the Initiative does not meet the threshold requirement for triggering application of section 66300(b)(1)(A). That some of the standards the Initiative creates establish intensity of uses (*see infra* part IV.A) is thus irrelevant.

(Opposition, filed on 4-8-21, p. 12:17-24.)

E-5(d) — Analysis

The Court concurs with Oak Hill's argument concerning intensity of use. The LAVD Initiative reduces the intensity of use by setting a minimum parcel size of 80 acres, and limiting each such parcel to one residence. There were no such restrictions in the Antioch General Plan as of January 1, 2018.

Subdivision (b)(2) provides that "[a]ny development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void." Because the above-quoted provisions of the LAVD Initiative do not comply with the Housing Crisis Act, the Court hereby declares those provisions void, and will issue corresponding relief in the form of an appropriately limited writ of mandate.

E-6. Numerical Limits.

E-6(a) — Oak Hill's Argument

As was noted above, the Housing Crisis Act prohibits local ordinances containing four categories of land use restrictions. Oak Hill argues that a set of changes to the Table 4.B of the Antioch General Plan falls within the last of these four categories: numerical limits on new housing. (Gov. Code, § 66300, subd. (b)(1)(D).)

E-6(b) — The Pertinent Text

The pertinent text from the Housing Crisis Act is as follows:

> (b)(1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects: [...]
>
> (D) Except as provided in subparagraph (E), establishing or implementing any provision that:

(i) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city, as applicable.

(ii) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.

(iii) Limits the population of the affected county or affected city, as applicable.

(Gov. Code, § 66300, subd. (b)(1)(D).) The pertinent text from the LAVD Ordinance is as follows:

Section 26:Changes in the General Plan for Consistency

[...]

P.4-15: Table 4.B -- **Anticipated Maximum General Plan Build Out in the City of Antioch**

	Single Family (Dwelling Units)		Multi-Family (Dwelling Units)	
Focus Area				
Sand Creek Focus Area	~~3,537~~	1,938	~~433~~	162
Subtotal	**~~6,439~~**	**4,839**	**~~5,570~~**	**4,941**
TOTAL	**~~35,462~~**	**33,862**	**~~11,912~~**	**11,284**

(Oak Hill's RJN, filed on 2-25-21, Exh. 1.)

E-6(c) — LAVD's Argument

LAVD's opposition argument asserts that the anticipated build-out figures in "Table 4.B" do not constitute numerical limits within the meaning of the Housing Crisis Act. LAVD summarizes its argument on this point as follows:

> This conforming amendment to Table 4.B was not intended to establish a "cap" or any other substantive policy, as LAVD and others explained during the City's consideration of the Initiative. ... Regardless, under the existing General Plan, the anticipated build-out figures in Table 4.B do not establish limits on the number of permits that may be issued, but are merely anticipated development estimates based on current policies. The City Council

> is free to change this language at any time pursuant to Section 26, and is required by Sections 6 and 7 to apply it consistent with SB 330. This is quite different than the type of language courts and the Legislature have found to constitute caps on development. ...

(Opposition, filed on 4-8-21, p. 13:26–14:10.)

E-6(d) — Analysis

The Court concurs with Oak Hill's argument concerning numerical limits.

First, the substantive provisions of the LAVD Initiative have the functional effect of imposing numerical limits on housing, as reflected in the Antioch General Plan's revised "Table 4.B". The fact that these numerical limits are estimates, rather than precise caps, is not dispositive in light of the statutory mandate that the Housing Crisis Act be construed broadly. The numerical limits are substantially lower than those in the Antioch General Plan as of January 1, 2018.

LAVD also argues that the specified numbers of permitted housing units are only maximum amounts, not matters of right, and therefore do not run afoul of the Housing Crisis Act. But a reduction in the ceiling is still a "standard" that both "limits the number of land use approvals or permits necessary for the approval and construction of housing" and "acts as a cap on the number of housing units that can be approved" as set forth in the Act.

Second, the argument that the LAVD Initiative could be revised so as to eliminate the numerical limits on housing lacks merit for the reasons stated in Part D of this ruling above. The LAVD Initiative could be reconciled with the Housing Crisis Act only by declining to enforce the Initiative's key provisions, and the City lacks discretion to act in that manner.

Subdivision (b)(2) provides that "[a]ny development policy, standard, or condition enacted on or after the effective date of this section that does not comply with this section shall be deemed void." Because the above-quoted provisions of the LAVD Initiative do not comply with the Housing Crisis Act, the Court hereby declares those provisions void, and will issue corresponding relief in the form of an appropriately limited writ of mandate.

E-7. The Urban Limit Line.

Section 22 of the LAVD Initiative provides as follows:

Section 22: Urban Limit Line

> The location of the Urban Limit Line enacted in Antioch Measure K on November 8, 2005, may be changed only by the voters.

Section 22 does not conflict with the Housing Crisis Act in any way. Section 22 does not make changes to the urban limit line; rather, it preserves the status quo concerning who decides (the voters or the City) when and in what manner such changes are made.

The question of whether, in addition to being valid, Section 22 is also volitionally severable from the balance of the LAVD Initiative, is discussed next.

F. Volitional Severability.

LAVD and the City argue that at least one section of the LAVD Initiative is volitionally severable. Oak Hill does not engage this argument on the issues of syntactic or functional severability, but does on the issue of volitional severability.

The Court rules as follows.

F-1. The Urban Limit Line.

LAVD and the City identify Section 22, dealing with the Urban Limit Line, as volitionally severable. The Court finds that Section 22 is volitionally severable, based on the following considerations:

- The title of the LAVD Initiative, as shown on the ballot given to voters, is as follows: "Initiative To **[1]** Change General Plan Designation Within The Sand Creek Focus Area and **[2]** Permanently Require Voter Approval of Amendments to Urban Limit Line." (Oak Hill's RJN, Exs. 1 and 9 [bracketed numbers added].) Thus, the change made by Section 22 is identified in the very title (right next to the boxes where voters check "Yes" or "No") as one of the two main features of the Initiative.

- The title of the LAVD Initiative, as shown at the top of the first page of the Initiative, is as follows: "Let Antioch Voters Decide: The Sand Creek Area Protection Initiative." (Oak Hill's RJN, Exh. 1.) Voter autonomy is again identified as one of the two main features of the Initiative.

- Section 1 of the LAVD Initiative identifies the following as two of the seven primary purposes of the Initiative: "maintains the existing urban limit line," and "requires voter approval to change these safeguards." (*Ibid.*)

- Section 2 of the LAVD Initiative identifies the following as one of twelve findings that support enactment of the Initiative:

> (l) Preservation of the Urban Limit Line: In 2005, Antioch voters adopted Measure K establishing an Urban Limit Line. Under that measure, through December 31, 2020, only the voters may change the location of the Line. After that date, voter approval is not required. Maintaining voter approval beyond 2020 is in the best interests of Antioch residents. (*Ibid.*)

In sum, the prominence that the LAVD Initiative gives to voter autonomy in general, and to voter autonomy concerning the urban limit line in particular, supports a substantial inference of volitional severability.

F-2. The LAVD Initiative's Other Provisions.

The Court is not persuaded that any of the LAVD Initiative's other provisions is volitionally severable.

G. The Form Of The Writ And Judgment.

As was provided at the beginning of this ruling, the parties shall meet and confer on the terms of an appropriate judgment and a corresponding writ of mandate. The Court contemplates that the judgment and the writ will be set forth in a single document. For clarity, this document shall attach the Court's full ruling on Oak Hill's motion as a tabbed exhibit.

The judgment and writ need not be elaborate, and the writ need only prohibit the City from implementing or enforcing the Initiative. The City has already stated that it does not contemplate taking any further steps to "implement" the LAVD Initiative, and has also stated that it is amenable to — and will abide by — any declaratory judgment the Court may enter concerning the validity of the Initiative. Nonetheless, it is worthwhile to assure that the City is obligated not to implement or enforce the Initiative (except as to Section 22).

DATED: June 7, 2021

Hon. Edward G. Weil
Judge of the Superior Court

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553
(925) 608-1000

CLERK'S CERTIFICATE OF MAILING

CASE TITLE: OAKHILL PARK CO VS THE CITY OF ANTIOCH

CASE NUMBER: MSN21-0048 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

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I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at MARTINEZ, California addressed as above indicated.

TITLE OF DOCUMENT SERVED: STATEMENT OF DECISION

DATE MAILED: 06/07/21

CLERK OF THE COURT

BY: _____
DENESE JOHNSON
Deputy Clerk of the Court