

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

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April 17, 2020

Celia A. Brewer, City Attorney
Office of the City Attorney
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Dear Celia Brewer:

**RE: Housing Crisis Act of 2019, Request for Opinion Under Government Code
Section 66300 et seq.**

The purpose of this letter is to assist the City of Carlsbad (City) in the implementation of the Housing Crisis Act of 2019 (Gov. Code, § 66300) as requested in your letter dated February 27, 2020. In that letter, the City requested the California Department of Housing and Community Development's (HCD) opinion as to the enforceability of a moratorium proposed pursuant to the City's Growth Management Program (Proposition E or GMP). For the reasons explained below, HCD finds that the housing development moratorium adopted pursuant to the City's GMP would be impermissible under Government Code section 66300. Should the City decide to adopt a moratorium, notwithstanding this opinion, HCD reminds the City that it cannot legally enforce such a moratorium before obtaining HCD's approval pursuant to Government Code section 66300, subdivision (b)(1)(B)(ii).

HCD's opinion is based on the mandatory criteria established by the Legislature with the passage of SB 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 impose moratoria on housing development, including mixed-use development, "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.**" (Gov. Code, § 66300, subd. (b)(1)(B), emphasis added.)

The Housing Crisis Act of 2019 does not define “imminent threat to the health and safety of persons.” HCD does not consider, however, that general concerns about the health and welfare of the citizenry—including traffic conditions that cause minor delays—present an imminent threat to health and safety. The word imminent suggests something that will happen in the very immediate future. (Black’s Law Dictionary (11th ed. 2019) (“Imminent” means “threatening to occur immediately; dangerously impending” or “[a]bout to take place.”); Webster’s New World College Dictionary (4th ed. 2010) (“Imminent” means “likely to happen without delay; impending; threatening”).) Imminent threats to the “health and safety of persons” implies an impending or immediate threat to human life, human health, or human safety. It is a much narrower consideration than notions of “health and welfare” that motivated the adoption of the City’s GMP.

The City’s GMP appears to be designed to assure that housing development in the City and the provision of public services are closely aligned (City of Carlsbad Mun. Code, § 21.09.010.) Nothing in the City’s GMP or in its Growth Management Ordinance (City of Carlsbad Mun. Code, Chapter 21.90) indicate that they were adopted with the intent to avert imminent threat to the health and safety of the residents of Carlsbad. Neither do the GMP or the Growth Management Ordinance indicate that imminent threats to health and safety are a mandatory consideration in deciding whether to impose such a moratorium. The purposes of the ordinance are reflected in its placement in the Municipal Code. The ordinance is housed in the Zoning Code, under the chapter for Growth Management, rather than under, for instance, Health and Sanitation, which includes Emergency Services and Health and Sanitation. The overall purpose of the Zoning Code is described as “to provide the economic and social advantages resulting from an orderly planned use of land resources.” (City of Carlsbad Mun. Code, § 21.02.010.)

In this case, the City’s proposed moratorium would prohibit the issuance of any development or building permits in Local Facilities Management Zone 15 (“LFMZ 15”) until four (4) identified street facilities meet the vehicle level of service (“LOS”) performance standard of D or the necessary improvements are guaranteed. (See City of Carlsbad Mun. Code, § 21.90.080.) LOS D simply refers to the rate at which traffic flows on a roadway, and at LOS D there is no longer free flow of traffic but instead congestion that borders on unstable flow. (City of Carlsbad, Transportation Impact Analysis Guidelines (April 2018), p. 22.) While such congestion may be uncomfortable, there is no indication in the City’s GMP or in the City’s Transportation Impact Analysis Guidelines that such a standard represents an imminent threat to the health and safety of the residents of LFMZ or those in the immediate area. Accordingly, HCD is of the opinion that such a moratorium cannot permissibly be adopted or enforced consistent with Government Code section 66300.

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 its proposed moratorium. Please contact Melinda Coy of our staff, at Melinda.Coy@hcd.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping underline.

Zachary Olmstead
Deputy Director