



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Larry Carr - Mayor Pro Tem

Rich Constantine - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, September 6, 2017 7:00 PM

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 P.M. unless extended by a majority of the City Council.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

(Minutes Clerk Gonzalez)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Carr

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the month of September as Emergency Preparedness Month

Proclaiming the month of September 15, 2017 to October 15, 2017 as National Hispanic Heritage Month

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. REALLOCATION OF PART-TIME HUMAN RESOURCES ASSISTANT POSITION TO FULL-TIME

Recommendation:

Approve reallocation of Part-Time Human Resources Assistant Position to Full-Time (.50 Full-Time Equivalent (FTE) to 1.0 FTE).

2. AWARD MORGAN HILL PLAYHOUSE SEATING REPLACEMENT PROJECT

Recommendation:

1. Award contract to Seating Concepts, LLC for the removal and replacement of all seats in the Community Playhouse in the amount of \$82,489.94;
2. Authorize the expenditure of construction contingency funds not to exceed \$7,510.06; and
3. Authorize the City Manager to execute and administer that certain contract with Seating Concepts, LLC.

3. REJECT BIDS FOR GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

Recommendation:

Reject bids for the Galvan Park Handball Court Improvements Project and direct staff to re-bid the project with design amendments.

4. FIRST AMENDMENT TO AGREEMENT WITH ACCELA, INC.

Recommendation:

Authorize the City Manager to execute a First Amendment to Consultant Agreement with Accela, Inc. for total compensation of \$58,560 for legislative management services for the initial two years.

5. ADOPT ORDINANCE 2258, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 1.16 OF TITLE 1, OF THE MORGAN HILL MUNICIPAL CODE REGARDING ELECTIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2258, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT ORDINANCE 2259, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.37 (ELECTRIC VEHICLE CHARGING STATION PERMITTING) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2259, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE THE AUGUST 23, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE AUGUST 24, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. DOWNTOWN PARKING STRUCTURE SAFETY ENHANCEMENT

Recommendation:

1. Adopt resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$200,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

Estimated Time: 15 Minutes

10. INTRODUCE AMENDMENT TO MUNICIPAL CODE REGULATING ACTIVITIES OCCURRING ON PUBLIC PROPERTY INCLUDING DRONE USE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance regulating activities on public property.

Estimated Time: 20 Minutes

11. REVISIONS TO CITY'S FLOOD DAMAGE PREVENTION ORDINANCE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance.

Estimated Time: 15 Minutes

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Pursuant to Government Code Section 54956.9(d)(1)
Case Name:	Morgan Hill Hotel Coalition, et al. v. City of Morgan Hill
Case Number:	Santa Clara County Superior Court Case No: 16-CV-292595 Court of Appeal, Sixth Appellate District Case No: H043426 Supreme Court Case No: S243042

RECONVENE

CLOSED SESSION ANNOUNCEMENT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Michelle Katsuyoshi, Human Resources Director

APPROVED BY: City Manager

REALLOCATION OF PART-TIME HUMAN RESOURCES ASSISTANT POSITION TO FULL-TIME

RECOMMENDATION(S)

Approve reallocation of Part-Time Human Resources Assistant Position to Full-Time (.50 Full-Time Equivalent (FTE) to 1.0 FTE).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Fostering a Positive Organizational Culture

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The Human Resources Division is part of the Administrative Services Department and the structure of the division consists of four positions: Human Resources Director, Senior Human Resources Analyst, Human Resources Technician, and a Human Resources Assistant (.50 FTE).

The Human Resources Assistant classification was created in 2013 to provide support for the City's human resources activities, including supporting recruitment and selection, benefits administration, personnel record keeping, workers' compensation, salary and classification, labor relations and negotiations, and other related activities and support for the Administrative Services Department Team.

When the incumbent was hired in 2016 in the permanent, .50 FTE Human Resources Assistant position, it was anticipated at that time that the position would also provide additional human resources support to the Community Services Department for an additional 10 hours per week in a temporary, unbenefited position. However, for the last 6 months, this position has worked approximately 40 hours per week due to the increased demand of human resources both organizationally and in the Community Services Department, including a rise in recruitment and selection activities.

Current benefits for the permanent, .50 FTE Human Resources Assistant are prorated at 50% and by reallocating this position to full-time, benefits would be provided at 100%. Moving forward, the increased hours are anticipated to be the norm, thus it is recommended that we reallocate the permanent, part-time Human Resources Assistant

to a permanent, full-time position to assist both departments with human resources functions.

If the recommended reallocation is approved by Council, the incumbent will be reclassified from a .50 FTE to a 1.0 FTE Human Resources Assistant effective September 10, 2017.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended reallocation of the Human Resources Assistant.

ALTERNATIVE ACTIONS:

Council could choose not to approve the recommended reallocation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council approved the Human Resources Assistant classification in August 2013.

FISCAL AND RESOURCE IMPACT:

The fiscal impact to amend the FY 2017-18 authorized personnel allocations to reflect the reallocation of a .50 FTE Human Resources Assistant to a 1.0 FTE Human Resources Assistant would be approximately \$25,000 in the General Fund. There are sufficient savings in salaries and benefits in the Administrative Services Department budget to cover this increase.

CEQA (California Environmental Quality Act):

Not a Project: Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD MORGAN HILL PLAYHOUSE SEATING REPLACEMENT PROJECT

RECOMMENDATION(S)

1. Award contract to Seating Concepts, LLC for the removal and replacement of all seats in the Community Playhouse in the amount of \$82,489.94;
2. Authorize the expenditure of construction contingency funds not to exceed \$7,510.06; and
3. Authorize the City Manager to execute and administer that certain contract with Seating Concepts, LLC.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The original renovation of the MH Playhouse was completed in April 2002. At that time, the City of Campbell donated the seats from the Heritage Theatre in Campbell that had also undergone renovations and was replacing all seats within the facility. The seats, which were decades old when received, have now been used for 15 years at the Playhouse and are in need of replacement.

On August 4, 2017, the City of Morgan Hill issued an Informal Bid to remove and replace all existing playhouse seats and install LED lights on aisles and cast ends for each seat at the ends of the aisles. The selected seating contractor will be responsible for coordinating the installation of the seats with a contractor installing new carpet. Bids for the carpet are scheduled to be awarded next month.

Three firms submitted bids for this project. The three bids received were from:

Contractor	Bid Amount
Seating Concepts, LLC	82,489.94
STB Stone, Inc.	83,500.00
Irwin Seating Company	90,556.00

Staff recommends awarding the MH Playhouse Seating Replacement Contract to Seating Concepts, LLC as the low bidder. Seating Concepts, LLC specializes in theatre

seating, and had been in business since 1982. They have broad experience installing theatre seating in the last three years from venues with 46 seats to 922 seats.

If approved, the seating will be installed during the first week of January when there are no performances scheduled at the theatre.

COMMUNITY ENGAGEMENT: Consult

Planning for this work was discussed with the City's major tenant at the Playhouse, South Valley Civic Theater (SVCT). City staff is currently working to develop a plan with SVCT to allow residents to select and remove the old seats for their own use. Staff will also contact the Morgan Hill Historical Society to evaluate opportunities to coordinate seat preservation.

ALTERNATIVE ACTIONS:

An alternative action would be to reject all bids, and not move forward with replacing the seats at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this project will be \$90,000.00 which is the contract price with an approximate 10% contingency. The MH Playhouse Seating Replacement Project is budgeted for \$90,000 in the adopted FY 2017-18 Building Maintenance Fund 740 budget.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. MH Playhouse Seating Replacement Contract_Seating Concepts LLC

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Seating Concepts, Inc. ("Contractor") for work on the MH Playhouse Seating Replacement Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20____, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:

Approved Shop Drawings dated _____.

3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Eighty-Two Thousand Four Hundred Eighty-Nine Dollars and Ninety-Four Cents (\$82,489.94) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 120 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Notice.** Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Phone: (409) 779-7259
Attn: City Clerk
Email: michelle.wilson@morganhill.ca.gov
Copy to: chris.ghione@morganhill.ca.gov

Contractor:

Name: Seating Concepts, LLC
Address: 4229 Ponderosa, Ste. B
City/State/Zip: San Diego, CA 92123
Phone: (619) 260-3883
Attn: Steve Williams, Director of Sales
Email: swilliams@seatingconcepts.com
Copy to: derricojr@aol.com

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Steve Rymer
 City Manager

Date: _____

Attest:

 Michelle Wilson
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____

CONTRACTOR:

 Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

 Name/Title [print]

Date: _____

1019751
 Contractor's License Number(s)

 Expiration Date(s)

Seal:

1000047507
 DIR Registration Number

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Seating Concepts, LLC ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the MH Playhouse Seating Replacement Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 6. Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
- 7. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
 Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Seating Concepts, LLC ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the MH Playhouse Seating Replacement Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than Dollars (\$_____) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.

2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the one (1) year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.

3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.

4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

4.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

- 5. Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 6. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 7. Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
- 8. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____. Three (3) identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and Seating Concepts, LLC ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the MH Playhouse Seating Replacement Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of \$ _____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

 Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's

attorneys' fees and costs in any action to enforce the provisions of this Bond.

- 7. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20_____. Five (5) identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

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Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items, any required commissioning, and has provided all required submittals, including the warranty bond, instructions and manuals, and as-built drawings to City's satisfaction.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

Including, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegee(s) when Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

RFI means a written request from Contractor for information from City or Design Professional.

Section as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications means Specifications.

Work means all of the construction and services necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the fifty percent (50%) limitation set forth in the Instructions to Bidders. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must

avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for

any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those

meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of

these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

- (1) Any reference to the "Engineer" is deemed to mean the City Engineer.
- (2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.
- (3) Any reference to the "Department" or "State" is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4 Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the

“Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance (“CGL”).**
Contractor shall maintain CGL and shall include coverage for

liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at Two Million Dollars (\$2,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include contractor's protected coverage, blanket contractual, and completed operations.

- (2) **Builder's Risk Insurance:** The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.
- (3) **Workers' Compensation Insurance and Employer's Liability:** Contractor shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- (4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least One Million Dollars (\$1,000,000.00) for property damage, or (ii) the

maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- (5) **Pollution (Environmental) Liability:** If the performance of Contractor's work or service under this Contract involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, Contractor shall procure and maintain Pollution Liability covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of:

(i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability Policy:
 - a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
 - c. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **Certificates.** Contractor must furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Contractor's Contract with City may be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to

City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
- (A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.
- (B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.
- 5.2 Schedule Requirements.** All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.

(A) **As-Planned (Baseline) Schedule.** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) **Progress Schedules.** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) **Recovery Schedule.** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) **Effect of Approval.** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) **Posting.** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or
- (5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) ***Request for Extension of Contract Time.*** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) *Required Contents.* The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs

claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is

entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

- (A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;
- (B) **Lump Sum.** A mutually agreed upon lump sum;
- (C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:
- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
 - (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
 - (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
 - (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
 - (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.
- 6.4 Unilateral Change Order.** If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.
- 6.5 Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7 General Construction Provisions

7.1 Permits and Taxes.

- (A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated

in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

(A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

7.3 Signs. No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.

7.4 Protection of Work and Property.

(A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for City.

- (B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.
- (C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.
- 7.5 Noninterference.** Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.
- 7.6 Materials and Equipment.**
- (A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.
- (B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is "equal," and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor's Obligations.** City's review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;
- (2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or
- (3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board national Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with the same without adjustment of the Contract

Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or

in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

(F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;

(G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents:

(H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;

(I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;

(J) Contractor's payroll records are delinquent or inadequate; and

(K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

- 8.8 Final Payment.** Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.
- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: MH Playhouse Seating Replacement Project

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | |
|--|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ |
| 3. REVISED CONTRACT AMOUNT: | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ |
| 5. REMAINING BALANCE: | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ |
| 8. CURRENT BALANCE DUE: | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | (5-8) \$ _____ |

Article 9 Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.
- (B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.
- (C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.
- (D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.
- (A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been

rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets (“MSDS”) at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor’s employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City’s estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements,

including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

- 11.4 Substantial Completion.** For purposes of determining “substantial completion” with respect to any statute of repose pertaining to the time for filing an action for construction defect, “substantial completion” is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

- 12.1 Claims.** This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** “Claim” means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

- 12.2 Claims Submission.** The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and

must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) ***Claim Format.*** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a "Claim" submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - (c) A chronology of relevant events;
 - (d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
 - (e) Use of a separate page for each issue.
- (4) Summary of issues and damages.
- (5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) **Submission Deadlines.**

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45)-day period is extended by mutual agreement of City and Contractor. However, the City may first request, in writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and

confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

12.9 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to

this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13

Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.
- (A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.
- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

(A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;

(B) **Demobilization.** Actual and substantiated demobilization costs; and

(C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

- 13.5 Provisions Remaining in Effect.** Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1.1 Shop Drawings. Whenever Shop Drawings are required by the Contract Documents or by the Engineer, Contractor must submit five (5) prints of each shop drawing to the Engineer.

(A) If three (3) prints of the drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the drawings will not be required. If one (1) print of the drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor must revise the drawing and resubmit five (5) copies of the revised drawing to the Engineer. City reserves the right to withhold payment due Contractor to cover additional costs of the Engineer's review beyond the second submission.

(B) Fabrication of an item may not commence before the Engineer has reviewed the pertinent shop drawings and returned copies to Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."

(C) Revisions indicated on shop drawings are deemed necessary to meet the existing requirements of the Contract Documents and may not be taken as the basis of claims for extra Work. Contractor is not entitled to claim for damages or extension of time due to any delay resulting from making the required revisions to shop drawings. The Engineer's review of the shop drawings does not relieve Contractor of responsibility for any errors or omissions contained in the shop drawings nor will such review operate to waive or modify any provision contained in the Contract Documents.

1.2 Emergency Contact. Prior to the commencement of Work on the Project, Contractor must provide contact information to the Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

1.3 Authorized Work Days and Hours.

(A) **Authorized Work Days.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City: Monday through Saturday

(B) **Authorized Work Hours.** Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project

during the following hours: Monday- Friday (7 am to 8 pm) and Saturday (9 am to 6 pm)

END OF SPECIAL CONDITIONS



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Yat Cho, Senior Project Manager
APPROVED BY: City Manager

REJECT BIDS FOR GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

RECOMMENDATION(S)

Reject bids for the Galvan Park Handball Court Improvements Project and direct staff to re-bid the project with design amendments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

The City has completed several improvements to Galvan Park through funding from the Community Development Block Grant (CDBG) program. These improvements included a new tot playground, an expansion of the playground, addition of a new picnic area, and a new walking path around the outside of the park.

Through community outreach meetings, high on the priority list of improvements to Galvan Park was the relocation and addition of new handball courts. On November 2, 2016, City Council approved the Galvan Park Handball Court Improvements Project with the understanding that the project will yield a larger handball court than the existing courts with improved lighting. At that time, the initial cost was estimated at \$440,000. As Verde Design Group proceeded with the design of the project, it became apparent that the initial cost estimate was low. Due to factors such as wall height, footing size, and the overall cost of construction, the revised budget estimate was estimated at \$655,000 for three handball courts.

On April 5, 2017, the City Council directed staff to proceed to value engineer the Galvan Park Handball Court Improvements Project by reducing the amount of handball courts from three courts to two courts. Staff worked diligently with Verde Design Group to redesign the project with a proposed budget of \$525,000, which includes \$325,000 in construction costs, in addition to design, inspection, and project management costs.

The scope of work includes mobilization, demolition of the existing handball court, and the construction of two adjacent handball courts at Galvan Park with paving, fencing, and lighting upgrades. The plans and specifications are available for review on the City's web page under the Government tab and Community Projects site found here: <http://www.morgan-hill.ca.gov/1436/Project-Plans-and-Specifications>

The bid opening was held on August 8, 2017 and the bids received are listed below.

Teichert Construction	\$406,885
Calstate Construction, Inc.	\$546,888
Alaniz Construction, Inc.	\$616,000
Galeb Paving, Inc.	\$699,500

The apparent low bidder, Teichert Construction, is approximately 25% above the engineer's estimate of \$325,000. However, staff is recommending the rejection of the bids due to recent input from the local handball playing community.

Initially, the local regular handball players felt the value engineering from three courts to two courts was an acceptable compromise to the original design. However, after the design was completed and the project nearing the bid opening date, several handball players who live near Morgan Hill approached the City about possible changes to the court that would improve the user experience and increase court usage for handball court players. These changes included altering the alignment of the court to provide participants more room to play the ball, making walls regulation height, improving lighting, and improving screening to prevent balls from leaving the court. The proposed changes were provided to staff from local regular handball players who expressed their desire for the community to have a highly functional facility that could also host tournaments.

To address funding for the revised project, staff consulted with officials from Santa Clara County on the need for additional CDBG funds. The County CDBG team, understanding the needs and benefits to the changes, has approved an additional \$120,000 in CDBG funding to be awarded to the City for this project to support the enhanced design to be spent by February 28, 2018. These additional CDBG funds will increase the overall project budget to \$645,000.

If approved, staff will work with Verde Design Group to redesign the Handball Courts and rebid the project.

COMMUNITY ENGAGEMENT: Involve

A community engagement process was initiated in 2014 with the explicit goal of involving the park's neighbors in designing park improvements. Through the engagement process, the City developed an improvement program that has already completed the neighborhood's request for updated playground equipment, expanded park paths, and additional picnic areas. The relocation of the new handball court is in response to the neighborhood's concern regarding the lack of lighting and visibility around the courts in the evening. The new handball courts will be located on the

northern side of the park with improved security lighting. Representatives from our local handball players have been involved through the design process. The group is supportive of the staff recommendation.

ALTERNATIVE ACTIONS:

1. Council could cancel the Galvan Park Handball Court Improvements Project and utilize CDBG grant funds for another Galvan Park Project Improvement (Security Lighting).
2. Council could award the project to Teichert Construction with a 25% contingency. Staff would then need to negotiate the proposed changes in design through a change order process. This is not recommended as it is uncertain if the budget would adequately cover the costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 17, 2013 – City Council approved the change in use of 2013/14 CDBG funds from the installation of security cameras at the VTA Bus Depot on Main and Hale to a multi-year project to establish and implement improvements to Galvan Park.

December 4, 2013 – City Council approved the application of 2014/15 CDBG funds for the continuation of improvements and refurbishment of Galvan Park.

March 4, 2015 – City Council approved the application of 2015/16 CDBG funds for the continuation of improvements and refurbishment of Galvan Park.

November 2, 2016 – City Council approved the Galvan Park Handball Court Improvements and adopted a resolution authorizing the City Manager to negotiate and execute the First Amendment to the County CDBG contract.

April 5, 2017 – City Council approved the project scope to proceed with value engineering the Galvan Park Handball Court Project to two adjacent handball courts.

FISCAL AND RESOURCE IMPACT:

The project is estimated to cost a total of \$645,000. The current CIP budget for the Galvan Park Handball Court is \$255,000, including CDBG Fund 215 (\$70,000) and Park Impact Fund 301 (\$185,000, including \$111,000 in grant funds). With the additional CDBG funds of \$120,000, an additional \$270,000 would need to be appropriated from the Park Impact Fund (301) to fully fund the completion of the project. The planned additional allocation of funding for the handball courts was anticipated in the planning for the Parks and Recreation CIP budget and previously discussed with the Council.

A formal budget amendment would be brought to Council after receiving updated bids received for the project.

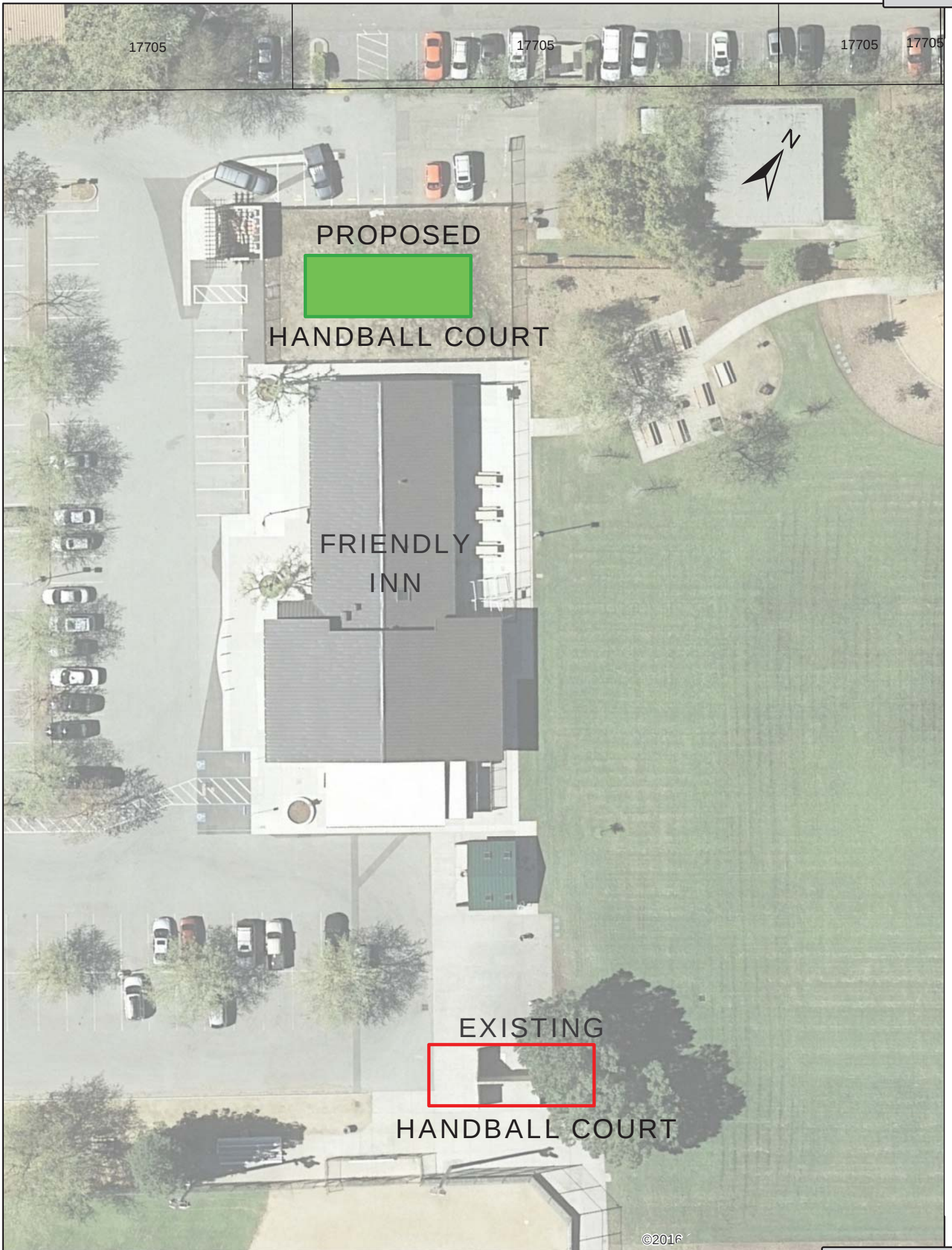
CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15303 of the CEQA Guidelines (New Construction or Conversion of Small Structures).

LINKS/ATTACHMENTS:

1. Vicinity Map Galvan Park Handball Courts





CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Michelle Wilson, Deputy City Clerk
APPROVED BY: City Manager

FIRST AMENDMENT TO AGREEMENT WITH ACCELA, INC.

RECOMMENDATION(S)

Authorize the City Manager to execute a First Amendment to Consultant Agreement with Accela, Inc. for total compensation of \$58,560 for legislative management services for the initial two years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

The City currently contracts with Accela, Inc. for an agenda management system with several features. Legislative Management provides an automated agenda workflow allowing teammates from all departments to create and route staff reports and attachments for approval completely electronically. Civic Streaming provides a user-friendly way that citizens can access City meeting videos, agendas, and minutes. The Digital Boardroom provides an electronic voting system for the City Council and commissioners with one touch voting and public display of those votes. In addition, the eSignatures feature will allow documents to be routed for signatures electronically.

To date, the City has implemented all the features except the eSignatures, which is planned to be introduced by the end of October. In order to utilize this product, we need to have a policy in place. The team is currently working on that policy.

The team's work with the legislative management product has been very successful. It has been a great improvement over the previous product that was used, providing additional efficiencies and time savings. A few issues have been experienced with the civic streaming features, however, we believe that we have those issues worked out. Additionally, an upgraded encoder was just received to provide better and more consistent service. Use of the digital boardroom product has not been as successful. A variety of issues have arisen with the WeGovern app and the eVoting not working properly. The team at Accela has been diligent in working with us. It took a while for Accela to be able to replicate the issues we were experiencing, and have worked to put solutions in place. Testing of the WeGovern app will occur over the next couple of

weeks to ensure that the issues have been resolved. Accela has agreed to provide the City with a credit for the features that have not been fully implementable.

In working through the issues with the WeGovern app and eVoting, new ways to improve the functionality for the Council and Commissioners have been explored. These include having iPad minis mounted at each seat at the dais for the sole use of electronic voting. This would allow the Council and commissioners to more easily focus on the agenda on their iPads without the interruption of the eVoting screen. The Council and commissioners would continue to use the iAnnotate app to access and annotate the agenda. We believe that this will provide improved ease of use and efficiency both in preparing for the meeting and during the meeting. The cost for purchasing seven iPad minis and stands would be approximately \$3,500.

Staff recommends amending the current agreement expiring on September 15, 2017, to continue utilizing the Accela products and direct the team to continue exploring the mounted iPad minis for voting.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the recommended amendment to the agenda management system agreement.

ALTERNATIVE ACTIONS:

The Council could decide to not approve the contract amendment. This alternative action is not recommended as a manual agenda management process would need to be implemented while reviewing other alternatives.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The First Amendment to Consultant Agreement with Accela, Inc. is to continue the current services through September 29, 2018 at the same pricing as the initial year (\$29,280). The total compensation for the first two years is \$58,560. The cost for this product is included in the adopted budget in the General Fund.

CEQA (California Environmental Quality Act):

The amendment of consultant agreement for legislative management services is not a project: The organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment are not a project under CEQA.

LINKS/ATTACHMENTS:

1. 1st Amendment to Agreement - Accela

FIRST AMENDMENT TO AGREEMENT ACCELA, INC.

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, ACCELA, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on _____, _____ 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" made as of September 28, 2016, for consultant services for a maximum compensation of \$29,280.00 (twenty-nine thousand two hundred eighty and no/100dollars) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from September 28, 2016, until September 29, 2018. This agreement shall automatically renew for an additional three (3) terms of one (1) year each, unless either party notifies the other in writing at least thirty (30) days prior to such automatic renewal that the party does not wish to renew the Agreement or otherwise terminates this Agreement pursuant to provisions in Section 6 herein below.

"4.1. **Amount.** Compensation under this Agreement shall not exceed \$58,560 (fifty eight thousand five hundred sixty and no/100 dollars) and shall be billed based on the rate and basis set forth in the revised Exhibit B dated August 10, 2017, and attached hereto and incorporated herein by this reference. If CONSULTANT desires an increase in the annual compensation as described in Exhibit B, CONSULTANT shall notify CITY no later than September 1 of each year. The City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that renewed term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during each annual renewed term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the immediately preceding term of this Agreement.

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

 City Clerk

Date: _____

 City Manager

Date: _____

APPROVED AS TO FORM:

Accela, Inc.

 City Attorney

Date: _____

 By:

Title: _____

Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

 By:

Title: _____

Print Name and Title of Signer.

If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: _____

Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)

126-04-16-100

CONSULTANT AGREEMENT ACCELA, INC.

THIS AGREEMENT is entered into and becomes effective on 9/28/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and ACCELA, INC., a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until September 15, 2017, at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be legislative management as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$29,280.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed TWENTY-NINE THOUSAND TWO HUNDRED EIGHTY AND NO/100 dollars and shall be billed based on the rate and basis set forth in **Exhibit B.** If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice for an annual subscription containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY'S judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Use.** All CONSULTANT'S Software is proprietary to CONSULTANT and protected by intellectual property laws and international intellectual property treaties. CITY shall not modify, adapt, translate, rent, lease or otherwise attempt to discover the Software code. CONSULTANT'S Software subscription services and accompanying files, software updates, lists and documentation are licensed, not sold, to CITY. CITY may install and use a copy of the Software on CITY compatible computer for the purpose of connecting to the hosted service provided by CONSULTANT as long as CITY is a current subscriber and maintains its monthly or annual continued services of the applicable licenses. Except as expressly set forth herein, CONSULTANT disclaims any and all express and implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose.

Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)

- 5.1. Updates and Renewals. If the Software is an Update to a previous version of the Software, CITY must possess a valid license to the previous version in order to use the Update. Corrections of substantial defects in the Software so that the Software will operate as purported will be rectified by CONSULTANT. CITY agrees to install all updates, including any enhancements, for the Software in accordance with the instructions provided by CONSULTANT.
- 5.2. Hosting. CONSULTANT agrees to maintain CITY data in a secure datacenter and is committed to providing 99.9% uptime, outside of scheduled downtime, and availability. CONSULTANT will perform nightly backups of your hosted data to an alternate physical location.
- 5.3. Ownership of Data. All hosted data belongs to the CITY. Within thirty (30) calendar days following termination of this Agreement, CONSULTANT will provide a complete copy of CITY'S data without additional charge through a downloadable backup or DVD.
- 5.4. Hardware. Hardware, if any, is provided at no additional cost. CONSULTANT does not warrant any hardware. Should CONSULTANT furnish encoder hardware as part of the Civic Streaming (fka MediaTraq) video streaming service, hardware warranty is through manufacturer repair or replacement only. Any hardware issues requiring new equipment not covered by the warranty will be billed to the CITY at cost. Any upgrades, additional encoders, etc., will be billed to CITY. Any hardware furnished to CITY as part of CONSULTANT'S services is to be returned to CONSULTANT upon termination of associated services.
6. Termination. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.
7. Performance of Work. CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth in the Statement of Work included in Exhibit A, attached hereto and incorporated herein by this reference. CITY'S City Manager is authorized on behalf of CITY to modify the timeframes set forth in the Statement of Work within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT'S equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY'S City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT'S sole risk.
8. Insurance Requirements. CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a

single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to request modification to the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY. CONSULTANT'S inability or refusal to modify their insurance as requested shall not be considered a breach of this Agreement.

8.1. Insurance Types and Amounts.

- 8.1.1. Commercial General Liability (CGL). CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.2. Automobile Liability. CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Professional Liability. If the performance of CONSULTANT'S work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT'S combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.2. Endorsements. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- 8.2.1. General Liability.

8.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

8.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

8.2.1.3. insurance shall be primary non-contributing.

8.2.2. Workers Compensation.

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

8.3. **Qualification of Insurers.** All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A-" or better and an financial size rating of "VII" or better.

8.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of certificates as outlined herein, whether new or modified, promptly upon receipt. Should any policy subject to the CONSULTANT'S Agreement be canceled before the expiration date, notice will be delivered by the insurer to the CITY in accordance with the policy provisions. Further, no policy subject to the CONSULTANT'S agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the CONSULTANT to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

9. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

10. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

11. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

12. **Confidentiality**. All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

13. **Conflict of Interest and Reporting**. CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

14. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

2633 Camino Ramon, Suite 500
San Ramon, CA 94583

Address of CITY is as follows:

Council Services and Records Manager	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

15. **Licenses, Permits and Fees**. CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

16. **Maintenance of Records**.

16.1. **Maintenance**. CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records**. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. **Ownership of Work Product**. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement. Notwithstanding, CONSULTANT shall retain ownership of all

pre-existing intellectual property and derivative works thereof, and any of its proprietary materials.

17. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY'S option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

21.1. **Defense and Indemnification.** CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the negligence or willful misconduct of the CITY.

21.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT'S failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT'S failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

21.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall

be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21.6. **Limitation of Liability.** CONSULTANT will, at all times during the Agreement, maintain appropriate insurance coverage. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will CONSULTANT'S cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by CITY or any other person or entity exceed the fees paid to CONSULTANT by CITY during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if CONSULTANT or its agents have been advised of the possibility of such damages. This limit shall not apply for: (i) liability for death or bodily injury; (ii) damage to tangible property; or (iii) gross negligence or willful misconduct of CONSULTANT.

22. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. **Binding Agreement.** Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)

27. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:


 City Clerk/Deputy City Clerk

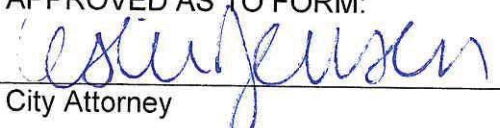
for Michelle Wilson

Print Name

Date:

9/28/16

APPROVED AS TO FORM:


 City Attorney

for Donald A. Larkin

Print Name

Date:

09/27/16

CITY OF MORGAN HILL


 City Manager

Steve Rymer

Print Name

Date:

9/28/16

ACCELA, INC.

By:

Title:


 Rob Cassetti, Sr. VP Sales & Marketing

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

13 September 2016

By:


 Colin Samuels

Title:

ASST. CORP. SECRETARY

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

13 SEPTEMBER 2016



STATEMENT OF WORK (SOW)
FOR
MORGAN HILL, CA



ACCELA, INC.
2633 CAMINO RAMON, SUITE 500
SAN RAMON, CA 94583

AUGUST 16, 2016

EXHIBIT "A"



INTRODUCTION/BACKGROUND

Legislative Management Solution Products: Agenda and Minutes, Digital Boardroom, eSignature, Civic Streaming HD. The City of Morgan Hill is implementing Agenda & Minutes, Digital Boardroom, eSignatures, and Civic Streaming HD for their City Council and other meeting bodies. Accela will deliver the Legislative Management Platform starting with Agenda and Minutes, and then Civic Streaming HD, Digital Boardroom, and eSignatures.

SCOPE OF WORK

The scope of work for the Legislative Management Project includes all planning, execution, implementation, and training for a new cloud hosted Accela Legislative Management platform. Accela will ensure it has adequate resources for designing, building, testing, and implementing the legislative management solution and is staffed for the online training of Morgan Hill personnel as well

PROJECT MANAGEMENT

Accela will be assigning a dedicated Project Manager to the Legislative Management project. This individual, along with a Morgan Hill designated Project Manager(s), will serve as the authorized representatives of their respective organizations to direct activities on this project. It is the responsibility of these Project Managers to coordinate efforts and activities on the project to meet the projected timeline, accomplish project objectives, and adjust this implementation plan as needed. Any changes to the implementation plan which affect cost, time frames, or products can only be approved by official correspondence signed by the project managers.

SUCCESS FACTORS

In order to successfully execute the services described herein, there are several critical success factors for the project that must be closely monitored and managed by the stakeholders. These factors are critical in setting expectations between Morgan Hill and Accela identifying and monitoring project risks, and promoting strong project communication.

- Knowledge Transfer – While we cannot guarantee specific expertise for Morgan Hill staff as a result of participating in the project, Accela will make all reasonable efforts to transfer knowledge to Morgan Hill. It is critical that Morgan Hill personnel work with Accela in order to schedule all work in the best manner to facilitate knowledge transfer and resource availability.
- Dedicated Morgan Hill Participation – We fully understands that Morgan Hill staff members have daily responsibilities that will compete with the amount of time that can be dedicated to the implementation project. However, it is critical that Morgan Hill acknowledges that its staff must be actively involved throughout the entire duration of Services as defined in the Project Plan. Accela will communicate insufficient participation of Morgan Hill and Accela resources to the project sponsor with real and potential impacts to the project timeline.
- Delivery of Needed Information and Documentation- In order to guarantee success and meet the timelines and costs described it will be essential that Morgan Hill provides required documentation and information as requested by the delivery staff in timely manner. The expected information required is described in detail in each of the delivery sections. Failure to provide the required information can result in an extension of the project timeline and/or an increase in the scope/cost of the proposed solution.



- Implementation Methodology – We offer a successful, proven, implementation methodology which is crucial to the project success. Accela's Legislative Management Solution and customer base is a niche market and as such our implementation methodology may differ from other consulting firms and software packages. It is imperative to project success that Morgan Hill is willing to adhere/adopt to the Methodology and tasks described in this Statement of Work.

IMPLEMENTATION PLAN

USER ROLES DEFINED

Power Users (PU)

- Agenda Clerk (AC)
- Minutes Clerk (MC)
- Project Manager (PM)

Submitters & Approvers (SA)

Board Members (BM)

Information Technology (IT)

Webmaster (WM)

Project Deliverables and Timeline

For your Accela Legislative Management solution, we have a clearly defined engagement process. Upon selection we will engage the team at Morgan Hill to review the requirements of this document and even go deeper into the "as is" process to understand how things are done today. Upon understanding the "as is" process in detail we will use our product knowledge and best practices to determine a "to be" approach. These meetings are done in conjunction with the delivery team and the customer success team during Task #1 and are a part of the implementation and training process as a whole.

After 400+ implementations and training over 50,000 daily users via a train the trainer approach Accela has amassed a great deal of experience in effective roll outs of our solutions to cities as small as 500 in population and to counties with populations in the millions. Below is a standard* approach we would take from analyzing the unique needs of the City to the first live meeting where we are there to support you from start to finish.

**Standard as in the approach and steps we take. Often times during the discovery session, we will decide along with the client, to spread out the implementation and training timeline (number of weeks) and we are happy to make an adjustment.*



Task 1: Refine Scope and Technical Specifications

Accela will conduct a scheduling call with your project manager. During this call, we will work with the City to refine the scope of the project and develop a timeline and calendar with specific dates/times to execute the tasks associated with completing this project.

Task 2: System and Service Design

The software that the City will need is the Accela smart client. This is downloaded right from our website and can be pushed out to all of the necessary users by your staff. The client also integrates with Active Directory, making it easy to assign user names and passwords and have users use single sign on if desired.

Task 3: System Installation and User Training

Accela makes system installation as simple as possible. User training is detailed and outlined in the Training Overview section below. Our web based Training is unlimited throughout the life of Accela and the City's working relationship.

Task 4: Conversion of Existing Archive

Accela will import data the City made available in a PDF or MSWORD format and that historical data will be displayed on the citizen/staff web portal. We will store your historical data for the life of Accela and the City's working relationship, at no additional charge. This is a standard practice for us. We want you to have a comprehensive and fully searchable legislative database, for your citizens and staff members to utilize.

Task 5: Support and Ongoing Service

Accela provides 24/7 support via telephone for no additional charge, for the life of Accela and the City's working relationship. We will give the City access to modify and update the citizen/staff web portal as desired or can make any updates as you request them. We release version updates a few times a year and will always give the City access to the newest version of our software at no additional cost.

Training Overview

The training program follows a basic lesson plan structure in which new users are trained using 90 minute sessions. The sessions cover all the essentials which will get the City up and running as efficiently & quickly as possible. We will use a "Train the Trainer" approach over a 4 week process (2 meeting cycles). The training is geared to work with a 1 to 5 people who become the Power Users and also *Internal Trainers*. After the essential training is complete and the City is using the software, Accela and the *Internal Trainers* train the submitters, approvers and council/board members. After going live, additional training is provided through Accela's Training Academy.

- Train the Trainer approach
- 1 to 5 Power Users become your *Internal Trainers*
- 4 Week Process (2 Meeting Cycles)
- Submitters & Approvers Trained by Accela & Power Users



- Essentials are covered to get up and running quickly
- 90 Minute Session breakdown
- Advanced Topics covered after your Live
- Free ongoing training through the Accela Training Academy

Remote Training Environment

Our training program uses remote training tools (GoToMeeting and TeamViewer) to train our users. When users are trained it is asked that they connect and dial-in from their desks – as a best practice we encourage the use a “Do Not Disturb” sign to keep others from interrupting your training session. Before training begins we ask that all users have the software installed on their desktop or laptops they will be using and confirm that GoToMeeting can be used.

- GoToMeeting (please confirm it works)
- Users are trained at their desks.
- Install Software before Training

We begin with a discovery and planning session where the entire project timeline is set and then your system is setup and configured. During the first 2 weeks of training we cover submitting, approving and building the agenda for the upcoming parallel meeting. By week 3 the parallel meeting is taking place, the minutes are being completed and training of the preparers takes place so that submitting for the live meeting can begin. In week 4, the customer is generating the agenda for the live meeting and the board members are trained, if necessary.





Planning

60 Minutes – Project Manager & Key Users

Accela's Planner shall produce a calendar of the training and events working around your meeting cycles, availability and the availability of our trainers. All key people are asked to bring their calendars to this session so vacations and other scheduling conflicts can be avoided. After approving the dates and times a full project plan and meeting invites will be sent and accepted by all individuals. **Tasks:** Project Calendar & Project Plan. Meeting invites sent and accepted.

Setup

2 Days – Accela Staff

Our staff will prepare the system with basic users, departments, file types, categories, standard templates and any other information necessary to complete the Sessions. Before the Discovery Session we will do as much setup as possible from your Agencies website or emailed documents.

Discovery Session

90 Minutes – Project Manager & Key Users

- During the setup phase, we will have a Discovery Session to ask a series of questions and provide explanations as necessary to key Power Users and decision makers. The gathering of the information will allow us to finalize the configuration of your system in preparation of the training. This is your opportunity to let us know all your concerns or "unique" process with your agency. We are experts at this.

Demo, Review & Approval of Setup

90 Minutes – Project Manager & Key Users

After configuring the setup, Accela staff will demo your personalized system and then review workflow, templates, output and setup for your approval before beginning the training. Further changes may be made as you train.

Session 1 – Overview of Concepts, User and Department Creation

90 Minutes – Power Users

Getting Started, Overview of menus and toolbars, Lists, User Manager, Permissions, Creating Meetings and importing older agendas and minutes. **Tasks:** Setup any users or departments missing with appropriate permissions. Add meetings for current year and last year, then upload agendas and minutes for previous 6 months.

Session 2 – Creating Agenda Items

90 Minutes – Power Users



Basic drafting, submitting, attachments (adding & updating), statuses, tracking changes, locking, placement, print preview, confidential, Communications, PDF printer, Edit in Word. **Tasks:** Submit all agenda items you have for upcoming parallel meeting.

Session 3 – Approving, Rejecting, Searching

90 Minutes – Power Users

Work Items, approving, rejecting, signatures, email notifications, approver permissions, delegates, workflow designer, stage groupings and Searching. **Tasks:** Continue submitting any agenda items for parallel meeting.

Session 4 - Agenda Wizard & Publishing

90 Minutes – Power Users

Agenda outline (auto fill, adding / removing items, attachments, statements, motions, sections), minutes approval, consent, generating, viewing, publishing / web portal, distribution email, tagging, Web agenda, sticky notes, split view. **Tasks:** Build your agenda for parallel meeting. Send distribution email. Get board approval of agenda.

Session 5 - Minutes Maker & Web Portal

90 Minutes – Power Users

Minutes auto-fill, roll call, votes, comments, generating, publishing, add-ons, flags, amendments, Define Vote Results, Speaker Sign-up, Public Discussion, Board member profiles, voting history, web search, item detail page, web calendar, auto-backup & restoring. **Tasks:** Finish minutes for all items and generate.

Session 6 – Open Session / Advanced Topics

90 Minutes – Power Users

Searching, Reporting, Notices, Public Hearings, Save Reasons, Input Templates, Agency Settings, Advanced Features. **Tasks:** Complete a meeting from start to finish in Parallel.

Session 7 – Preparer Training

2 Hours – Department Submitters & Approvers

Submitting agenda items, approving, dashboard and searching broken up into groups up to 5 users. **Tasks:** All users begin submitting and approving agenda items for the live meeting coming up using Agenda and Minutes.

Historical Document Import Completed

Any historical agendas, minutes and other documents are imported.

Web Portal Live

Webmaster



Customer website button or link at top-level navigation is completed. Board/Council member pictures, header refinement, template customization. Historical Agendas and Minutes are for posted for at least current year. Remove all test data.

Parallel Agenda – Build & Post

90 Minutes – Agenda Preparer

The Accela staff will follow along as you build and post your agenda for the first time.

Parallel Meeting

Presentation of the final agenda, packet and web portal to the board. Minutes are prepared in Minute Maker tool.

Parallel Minutes – Build & Finalize

90 Minutes – Minutes Preparer

Accela staff will follow along as you finish your minutes.

Press Release

Joint press release to raise positive awareness within the community.

Training Survey

We enjoy receiving feedback from our customers not just to make us feel good, but so that we can follow up with individuals who may need some extra TLC.

Live Agenda – Build & Post

90 Minutes – Agenda Preparer

The Accela staff will follow along as you build and post your agenda for the second time.

Board Member Training

90 Minutes – Power Users & Board Members

Power User group teaches Board/Council members how to download agenda, access information on web portal, make sticky notes, use split view.

Live Meeting

All preparers have submitted items for this meeting.

Live Minutes – Build & Finalize

90 Minutes – Minutes Preparer

Our staff will follow along as you finish your minutes for the live meeting

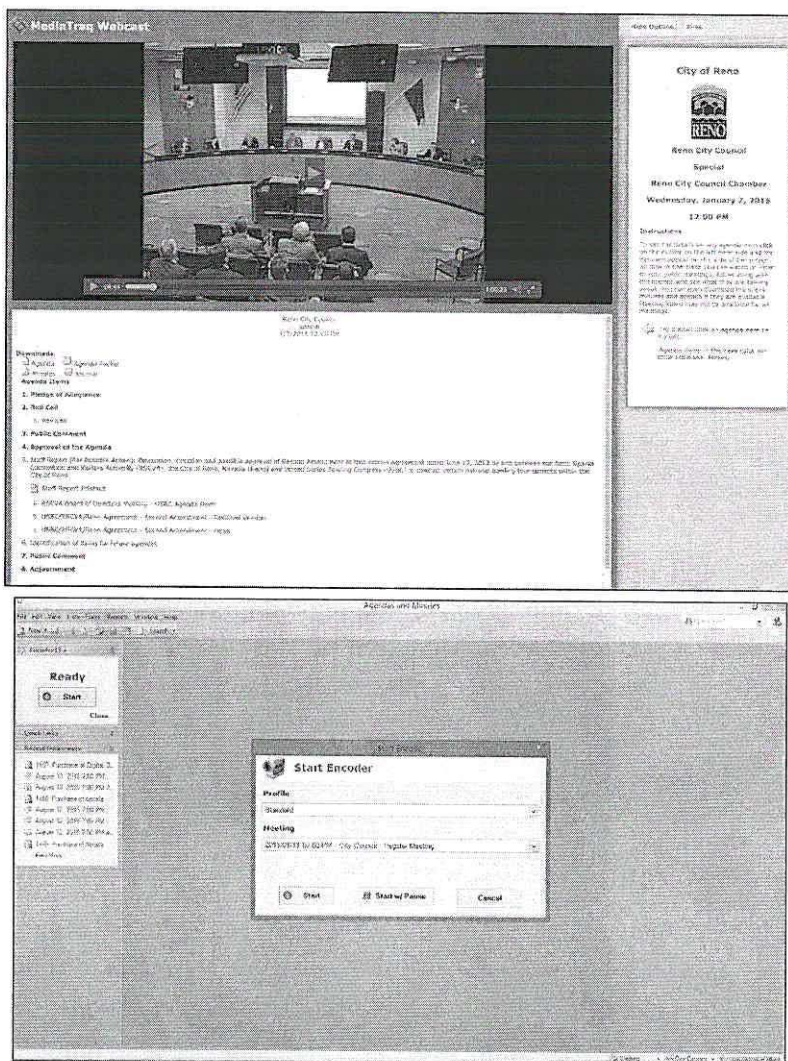


Civic Streaming Training

Encoder Setup/Testing - In this session, our encoder specialist will work with your IT/AV staff member. In this session we will run through a series of tests to make sure the encoder is hooked up appropriately, no firewall restrictions are blocking the stream and the encoder will be ready for the Clerk training. **Expected Outcome:** The encoder will be prepared for use.

Civic Streaming #1 - In this session, Power Users will learn basic operations of Civic Streaming, such as uploading media, creating the media vault, media event, and media event types, transcoding, remote starting and pausing, and understanding the download settings. **Expected Outcome:** Power users will be able to record a meeting.

Civic Streaming #2 - In this session, Power Users will learn Importing and the agenda, roll call, votes, comments, new sections, dragging and dropping, motions, statements, generating, viewing, publishing, defining vote results, time-stamping and synching media points. **Expected Outcome:** Power Users will be able to import Agendas, time-stamp and complete the minutes.



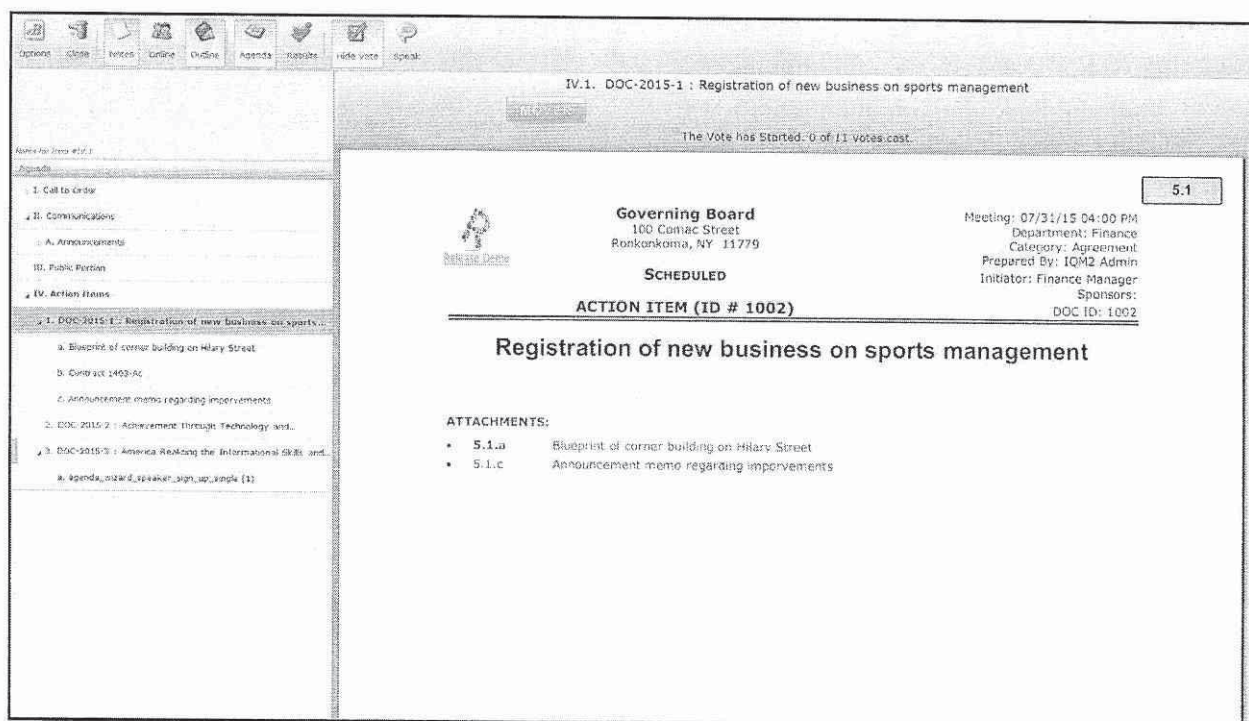


Digital Boardroom Training

Preparation Work - Power Users and IT Staff should install the Digital Boardroom shortcut on all Board/Council Members' computers, tablets or iPads that will be used for voting in the Chambers. **Expected Outcome:** Software is installed.

Digital Boardroom #1 - In this session, Power Users will learn how to sign into Digital Boardroom, start Digital Boardroom through the Agenda and Minutes, adjust timer settings, the audience display, set current item, e-Voting, signup speakers (kiosk and web signup) and moderate the speaker queue. **Expected Outcome:** Power Users will be able to run through a meeting using Digital Boardroom.

Digital Boardroom #2 - In this session, Power Users/Clerks will conduct a mock meeting with Board/Council Members. **Expected Outcome:** All users will be able to use Digital Boardroom to conduct a meeting.





City of Morgan Hill

Morgan Hill - Legislative Management

July 11, 2016

EXHIBIT "B"

Drew Baker
Business Development Executive - Legislative Management
abaker@accela.com

Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)

Products and Services

Annual Subscriptions

Product Code	Product Name	Qty	Total Price
SS6oAA&MT04Cl01	Legislative Management - Agenda & Minutes T04 P30K-40K	1	\$9,216.00
SS6oACST04Cl01	Legislative Management - Civic Streaming T04 P30K-40K	1	\$6,912.00
SS6oACSH04Cl01	Legislative Management - Civic Streaming HD T04 P30K-40K	1	\$3,456.00
SS6oADBRT04Cl01	Legislative Management - Digital Boardroom T04 P30K-40K	1	\$6,912.00
SS6oAESGT04Cl01	Legislative Management - eSignatures T04 P30K-40K	1	\$2,784.00

Grand Total: USD\$29,280.00

Accela Legislative Management Order Detail

General Information

Customer Name	City of Morgan Hill
Customer Contact	Michelle Wilson
Customer Address	17575 Peak Avenue, Morgan Hill, California 95037

Agreement Terms

Invoices will be sent out using the term start and end dates below:

Contract Term	12 Months
Term Start	07/15/2016
Term End	07/14/2017

Payment Terms

Payment Due	Net 30 days from invoice date
PO Required? (Y/N): Yes	PO# (If required) \

Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)



Quote

2633 Camino Ramon, Suite 500
San Ramon CA 94583

Bill To

Michelle Wilson
Morgan Hill, CA - City of
17575 Peak Avenue
Morgan Hill CA 95037

Ship To

Michelle Wilson
Morgan Hill, CA - City of
17575 Peak Avenue
Morgan Hill CA 95037

Date 08/10/2017
Quote # 9147
Page 1 of 1
Payment Terms Net 30
Due Date 11/08/2017
PO #
Account Manager
Project
Term Start Date 09/30/2017
Term End Date 09/29/2018
Currency USD

Item / SKU	Qty	Description	Amount
SR60AA&MT04CI01		Legislative Management - Agenda & Minutes T04 P30K-40K	\$9,216.00
SR60ACSTT04CI01		Legislative Management - Civic Streaming T04 P30K-40K	\$6,912.00
SR60ACSHT04CI01		Legislative Management - Civic Streaming HD T04 P30K-40K	\$3,456.00
SR60ADBRT04CI01		Legislative Management - Digital Boardroom T04 P30K-40K	\$6,912.00
SR60AESGT04CI01		Legislative Management - eSignatures T04 P30K-40K	\$2,784.00

Tax Total \$0.00

Total \$29,280.00

Please direct inquiries to:

Accounts Receivable Dept. at (925) 659-3275
Send an email to: accountsreceivable@accela.com

Accela TAX ID: 94-276-7676

Remit To:

Accela Inc.
774375
4375 Solutions Center
Chicago, IL 60677-4003

Wiring Instructions

Wells Fargo Bank
For credit to: Accela Inc.
Account: 412-1765507
ABA: 121000248

EXHIBIT "B" - 8/10/17

Attachment: 1st Amendment to Agreement - Accela (1373 : First Amendment to Agreement with Accela, Inc.)



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2258, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 1.16 OF TITLE 1, OF THE MORGAN HILL MUNICIPAL CODE REGARDING ELECTIONS

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2258, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2017 Strategic Priorities

Inclusiveness

REPORT NARRATIVE:

On August 23, 2017, the City Council introduced Ordinance No. 2258 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Ordinance No. 2258 creates voting districts for City Council elections and sets for the sequencing and process for district elections.

COMMUNITY ENGAGEMENT: Involve

In addition to the engagement efforts called out in the engagement plan, teammates attended the Friday Music Series on July 7th to share information with the community about the process. The team also held a community workshop on July 10th to share information on the process and how to use the various mapping tools.

As the City Council directed, we have had a focused effort on outreaching to our Spanish speaking community. All information has and will continue to be provided in both English and Spanish. Translators and translation equipment will be available at all public meetings.

We are working with NDC to support and provide expertise. They have provided and managed the www.drawmh.org website that is the repository for all information related

to the transition to district elections including an interactive tool that allows for online creation of district maps. Additionally, every version of the maps submitted has been uploaded and is available for viewing on this site. The site is directly linked to our website for ease of access.

We are utilizing all of our communication channels and providing all information in both English and Spanish: Website newsflashes, Eblasts, Nextdoor, Facebook, Twitter, and print. Additionally, we have reached out to several individuals and churches that have connections to our Spanish speaking community to have them share our communications both electronically and in print.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- May 17, 2017 City Council directed the team to bring this matter back to the City Council for consideration in open session
- June 7, 2017 City Council adopted a resolution of intent to transition to by-district elections
- June 21, 2017 City Council public hearing to receive input from the community
- June 28, 2017 City Council public hearing to receive input from the community
- July 26, 2017 City Council public hearing to receive input from the community
- August 23, 2017 City Council public hearing and introduction of Ordinance 2258

FISCAL AND RESOURCE IMPACT:

There will be significant resource impacts to teammates throughout the organization due to the amount of time needed to ensure thorough community engagement and to meet the legal requirements of transitioning to by-district elections. Additionally, the City executed a contract with NDC in the amount of \$43,000 to provide demographic and mapping expertise.

CEQA (California Environmental Quality Act):

Not a project.

The forming of electoral districts is not a project as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. 2258 District Elections Ordinance
2. 2258 Exhibit A

ORDINANCE NO. 2258, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 1.16 OF TITLE 1, OF THE
MORGAN HILL MUNICIPAL CODE REGARDING
ELECTIONS**

WHEREAS, the City of Morgan Hill supports the full participation of all residents in electing members of the City Council; and

WHEREAS, in an at-large election system, candidates for City Council may reside in any part of the City and each City Councilmember is elected by the voters of the entire City; and

WHEREAS, in a by-district election system, a candidate for City Council must reside in the district which he or she wishes to represent, and only the voters of that district are entitled to vote to decide who their representative will be; and

WHEREAS, on May 5, 2017, the City received a letter from attorney Morris J. Baller, asserting the City's at-large electoral system violated the California Voting Rights Act and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, the letter did not contain any credible evidence of a violation, but the cost of defending against a claim under the California Voting Rights Act is extremely high; and

WHEREAS, California Government Code Section 34871(c) authorizes the election of the legislative body "by districts in four, six, or eight districts, with an elective mayor . . ."; and

WHEREAS, Government Code 34886 authorizes the City Council to establish by-district elections for council members by ordinance under the process provided in California Elections Code section 10010; and

WHEREAS, at its regular meeting on June 7, 2017, the City Council adopted a resolution of intent to establish a by-district voting process pursuant to California Elections Code Section 10010; and

WHEREAS, pursuant to California Government Code Section 34886, it is declared the change in the method of electing members of the City Council of the City of Morgan Hill made by this ordinance is to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution, as set forth in Section 14031 of the California Voting Rights Act, and

WHEREAS, under the provisions of California Elections Code Section 10010, a political subdivision that changes from an at-large method of election to a by-district method of election shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts before drawing a draft map or maps of the proposed boundaries of the districts; and

WHEREAS, before any maps of the proposed boundaries of the districts were drawn, the City Council held public hearings on June 21, 2017 and June 28, 2017, at which time input from the public on the proposed district boundaries was invited and heard; and

WHEREAS, the City established a dedicated webpage containing notices and information on the district election mapping process, with information in multiple languages, and extensive outreach was made to the Morgan Hill community through e-mail and at community events regarding the change to district elections.

WHEREAS, on July 19, 2017, consistent with the provisions of California Elections Code Section 10010, the City published and made available for release, all of the draft maps under consideration along with the potential sequence of elections; and

WHEREAS, as required by California Elections Code Section 10010, the City held a public hearing on July 26, 2017, at which time input on the proposed maps and sequence was invited and heard; and

WHEREAS, on August 7, 2017, consistent with the provisions of California Elections Code Section 10010, the City published additional maps based on the testimony at the July 26, 2017 public hearing; and

WHEREAS, on August 23, 2017, as required by California Elections Code Section 10010, the City held an additional public hearing at which time input on the proposed maps and sequence was invited and heard and a final map and sequence was selected by the City Council.

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code Section 34886, an ordinance providing for the election of the members of the City Council of the City of Morgan Hill on a by-district basis in four single-member districts, retaining a separately elected office of Mayor, as reflected in Exhibit A to this Ordinance and to make other conforming and technical changes to Morgan Hill Municipal Code Chapter 1.16.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 1.16 (“ELECTIONS”) of Title 1 of the Morgan Hill Municipal Code is amended to read as follows:

1.16.010 - General municipal elections coincide with statewide general election.

The general municipal election of the city shall be held on the same day as the statewide general election on the first Tuesday after the first Monday in November of even-numbered years.

1.16.020 – Election of City Council Members.

- A. As established by Measures D and E, enacted by the voters on March 26, 1996, the Mayor shall be elected directly by the electors for a term of two-years.

- B. Beginning with the November 2018 general municipal election, a person elected as a member of the City Council other than the Mayor shall be a resident of his or her respective Council District as set forth in Section 1.16.030 (and as subsequently reapportioned as provided by applicable law.) Elections shall take place on a by-district basis as that term is defined in California Government Code Section 34871; meaning one member of the City Council shall be elected from each district, by the voters of that district alone, except for the Mayor, who shall be elected citywide. Each council member shall serve a four-year term until his or her successor has qualified, except for the Mayor, who shall serve a two-year term as authorized by Measure E, enacted by the voters on March 26, 1996.
- C. Except as provided in subsection C of Section 1.16.040, the council member elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must live in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued, pursuant to California Government Code Section 34882 and California Elections Code Section 10227. Termination of residency in a district by a Council Member shall create an immediate vacancy for that council district unless a substitute residence within the district is established within 30 days after the termination of residency.

1.16.030 – Establishment of Council Districts

Boundaries for each of the four districts and their letter designations are as shown on the attached Exhibit A entitled “City of Morgan Hill District Boundary Map,” a copy of which shall be posted on the City’s website and on file in the City Clerk’s Office.

1.16.040 - Transition

- A. Except as provided in subsection C, Council Members shall be elected in Council Districts B and D at the general municipal election in November 2018, and at the general municipal election every four years thereafter. [Sequence subject to change depending on final map selection]
- B. Council Members shall be elected in Council Districts A and C at the general municipal election in November 2020, and at the general municipal election every four years thereafter. [Sequence subject to change depending on final map selection]
- C. Any member of the City Council in office at the time this Ordinance takes effect (or any person selected by appointment or election to fill a vacancy created by a Council member elected prior to the effective date of this Ordinance) shall continue in office until the expiration of the respective term to which he or she was elected and until his or her respective successors are qualified. At the end of the term of each council member, that member’s successor shall be elected on a by-district basis in the districts established in Section 1.16.030. A vacancy in a councilmember office elected by-district shall be filled by a person qualified to hold the office, who is a resident and registered voter in the district.

1.16.050 - Electronic filing of campaign statements.

- A. Any elected officer, candidate, committee, or other person required to file statements, reports or other documents described by Chapter 4 (Campaign Disclosure) of [Title 9](#) (Political Reform)

of the California Government Code that has received contributions or made expenditures of two thousand dollars or more in a calendar year shall electronically file such statements using procedures established by the City Clerk.

B. Once an elected officer, candidate, committee, or other person files a statement, report, or other document electronically pursuant to Section A, all future statements, reports, or other documents on behalf of that filer shall be filed electronically.

C. In any instance in which an original statement, report, or other document must be filed with the California Secretary of State and a copy of that statement, report, or other document is required to be filed with the City Clerk, the filer may, but is not required to, file such copy electronically.

D. If the City Clerk's electronic filing system is not capable of accepting a particular type of statement, report, or other document, an elected officer, candidate, committee, or other person shall file that document with the City Clerk in an alternative format.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Effective Date and Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF AUGUST 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF SEPTEMBER 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DATE:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: September 7, 2017

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2258, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of September 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

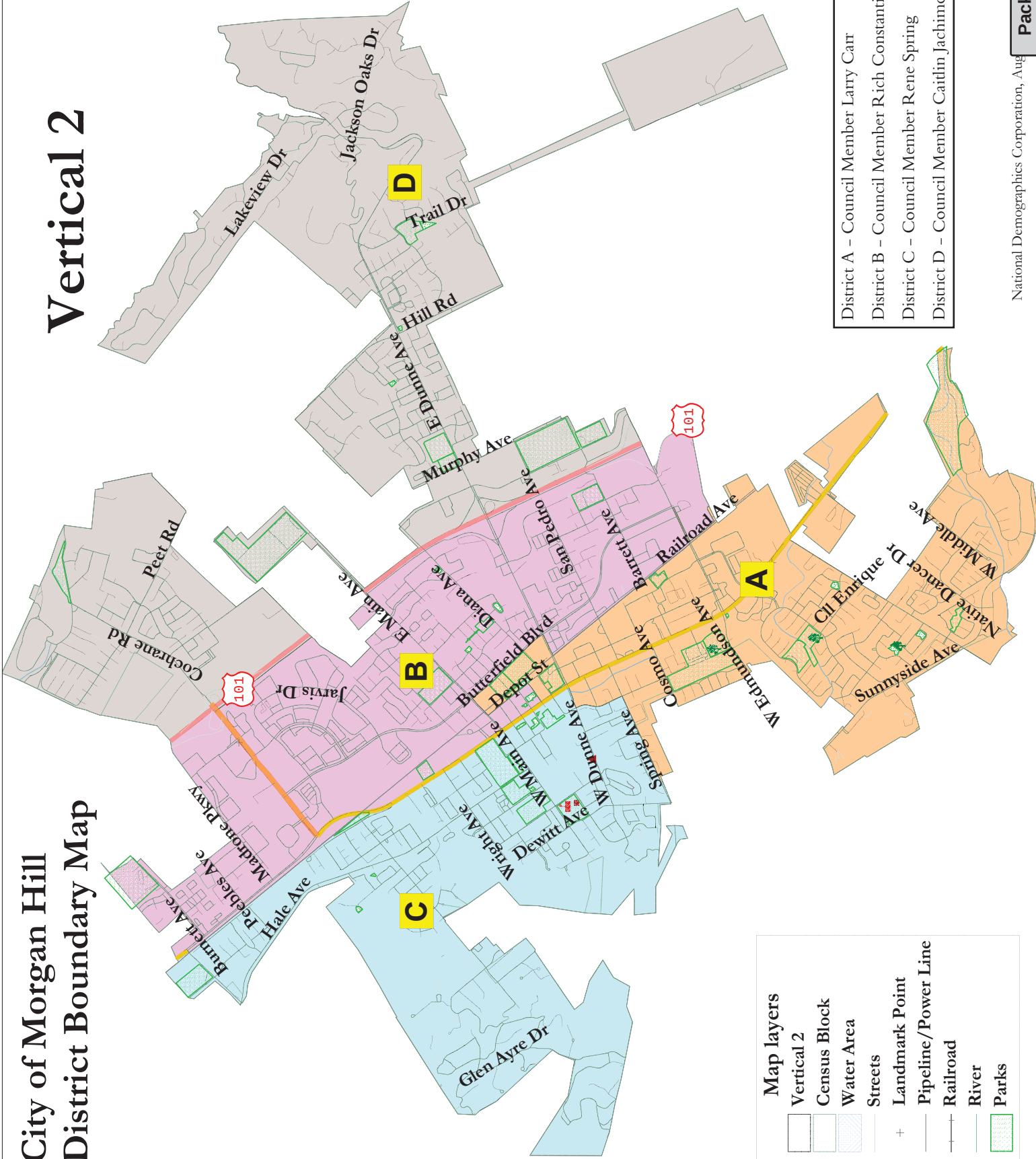
DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2258 District Elections Ordinance (1387 : Adopt Ordinance 2258)

City of Morgan Hill District Boundary Map

Vertical 2



Map layers

- Vertical 2
- Census Block
- Water Area
- Streets
- Landmark Point
- Pipeline/Power Line
- Railroad
- River
- Parks

- District A – Council Member Larry Carr
- District B – Council Member Rich Constantine
- District C – Council Member Rene Spring
- District D – Council Member Caitlin Jachimowicz



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE 2259, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.37 (ELECTRIC VEHICLE CHARGING STATION PERMITTING) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2259, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

On August 23, 2017, the City Council introduced Ordinance No. 2259 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Robinett Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The proposed ordinance is to adopt and expedited, streamlined electrical vehicle charging station permitting process as required by Assembly Bill 1236.

COMMUNITY ENGAGEMENT: Involve

This report serves to inform the community regarding the proposed electric vehicle charging station ordinance.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On August 23, 2017, the City Council held a public hearing on this item and introduced ordinance 2259. The motion passed by a 5-0-0 vote.

FISCAL AND RESOURCE IMPACT:

None.

CEQA (California Environmental Quality Act):

Statutory Exemption

Ministerial projects proposed to be carried out by public agencies. Pub. Res. Code §21080(b)(1).

LINKS/ATTACHMENTS:

1. 2259 Electronic Vehicle Charging Station Ordinance

ORDINANCE NO. 2259, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.37 (ELECTRIC VEHICLE CHARGING STATION PERMITTING) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

WHEREAS, the City Council of Morgan Hill seeks to implement AB 1236 (Chapter 598, Statutes 2015) through the creation of an expedited, streamlined permitting process for electric vehicle charging stations; and

WHEREAS, the City Council has consistently promoted and encouraged the use of fuel-efficient electric vehicles; and

WHEREAS, the City Council wishes to advance the use of electric vehicle charging stations by residents, businesses, and visitors; and

WHEREAS, it is in the interest of the health, welfare and safety of the citizens of Morgan Hill to provide an expedited permitting process to assure the effective deployment of electric vehicle charging station technology.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

SECTION 1. A new Chapter 15.37 (Electric Vehicle Charging Station Permitting) is hereby added to Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code, which new Chapter shall be numbered and entitled and shall read in its entirety as follows:

Chapter 15.37 – ELECTRIC VEHICLE CHARGING STATION PERMITTING

15.37.010 - Definitions.

15.37.020 - Purpose.

15.37.030 - Applicability.

15.37.040 – Electric vehicle charging station requirements.

15.37.050 - Duties of Building Department and Building Official.

15.37.060 - Permit review and inspection requirements.

15.37.010 - Definitions.

For the purpose of this Chapter, unless the context indicates otherwise, certain words and phrases used in this Chapter are defined as follows:

A. "City" means the City of Morgan Hill.

B. “Electric vehicle charging station” means any level of electric vehicle supply equipment station that is designed and built in compliance with California Electrical Code Article 625, or any successor regulation, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.

C. “Electronic submittal” means the utilization of one or more of the following:

1. Email;
2. The internet; or
3. Facsimile.

D. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

15.37.020 - Purpose.

The purpose of the Chapter is to adopt an expedited, streamlined electric vehicle charging station permitting process that complies with AB 1236 (Chapter 598, Statutes 2015) to achieve timely and cost-effective installations of electric vehicle charging stations. This Chapter encourages the use of fuel-efficient electric vehicles and electric vehicle charging stations by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install electric vehicle charging stations. This Chapter allows the City to achieve these goals while protecting the public health, welfare, and safety.

15.37.030 - Applicability.

A. This Chapter applies to the permitting of all electric vehicle charging stations in the City.

B. Electric vehicle charging stations legally established or permitted prior to the effective date of this Chapter are not subject to the requirements of this Chapter unless physical modifications or alterations are undertaken that materially change the size, type, or components of the electric vehicle charging station in such a way as to require new permitting. Routine operation and maintenance or like-kind replacements shall not require a permit.

15.37.040 - Electric vehicle charging station requirements.

A. All electric vehicle charging stations shall meet applicable health and safety standards and requirements imposed by the State and the City's Building and Fire Departments.

B. Electric vehicle charging stations shall be certified by an accredited listing agency as defined by the California Electrical Code.

C. Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.37.050 - Duties of Building Department and Building Official.

A. All documents required for the submission of an expedited electric vehicle charging station permit application shall be made available on the publicly accessible City website.

B. Electronic submittal of the required permit application and documents by email, the Internet, and facsimile shall be made available to all electric vehicle charging station permit applicants. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

C. The City's Building Department shall adopt a Standard Plan Checklist of all requirements with which electric vehicle charging stations shall comply to be eligible for expedited review. All code requirements in these documents shall substantially conform to the requirements found in the "Plug-In Electric Vehicle Infrastructure Permitting Checklist" contained in the most recently adopted Zero-Emission Vehicles in California: Community Readiness Guidebook published by the Governor's Office of Planning and Research. The City's adopted checklist shall be published on the City's website.

D. The City Council, by resolution, may establish a fee for the processing of electric vehicle charging station permit applications.

15.37.60 - Permit review and inspection requirements.

A. The Building Department shall administratively approve an application to install electric vehicle charging stations through issuance of a building permit or similar nondiscretionary permit.

B. A permit application that satisfies the requirements in the City's adopted checklist shall be deemed complete and shall be promptly processed. Upon confirmation by the Building Official, or his or her designee, that the permit application and supporting documentation meet the requirements of the City's adopted checklist, and is consistent with local, state, and federal health and safety requirements, in accordance with California Government Code Section 65850.7, the application shall be approved and the necessary permit shall be issued. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

C. The Building Official, or his or her designee, may require an applicant to apply for a use permit if the Official, or his or her designee, finds, based on substantial evidence, that the electric vehicle charging station could have a specific, adverse impact upon the public health and safety. The Building Official, or his or her designee, shall issue a decision letter to the applicant.

D. If a use permit is required, the Building Official, or his or her designee, may deny an application for the use permit if the Official, or his or her designee, makes written findings, based upon substantive evidence in the record, that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid, as defined, the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. The Building Official, or his or

her designee, shall issue a decision letter to the applicant. Such decisions may be appealed to the Planning Commission utilizing the procedures set forth in Section 15.37.060(E).

E. For appeals to the Planning Commission pursuant to Sections 15.37.060(C) and (D), a written notice of appeal must be filed with the secretary of the Planning Commission within ten (10) days of receipt of the decision letter from the Building Official or his or her designee. The notice of appeal shall set forth the specific grounds of the appeal. At the time of consideration of the appeal, the appellant shall have the burden of establishing cause why the action appealed from should be altered, reversed, or modified. The Planning Commission may continue the matter from time to time and, at the conclusion of its consideration, may affirm, reverse, or modify the decision of the Building Official or his or her designee. The decision of the Planning Commission shall be final.

F. The City shall not condition approval of an application on the approval of an association, as defined in Civil Code Section 4080.

G. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance pursuant to Government Code §36933 in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF AUGUST 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF SEPTEMBER 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

DATE:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: September 7, 2017

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2259, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of September 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

DRAFT



Meeting Minutes City Council

Steve Tate - Mayor
Larry Carr - Mayor Pro Tem
Rich Constantine - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, August 23, 2017 5:30 PM

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

(5:30 P.M. Workshop/ 7:00 P.M. Regular Meeting)

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

Mayor Pro Tem Carr called the special meeting to order at 5:33 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Wilson called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Late	
Larry Carr	Mayor Pro Tem	Present	
Rich Constantine	Council Member	Present	
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

Minutes Acceptance: Minutes of Aug 23, 2017 5:30 PM (CONSENT CALENDAR)

DECLARATION OF POSTING AGENDA

Deputy City Clerk Michelle Wilson declared the posting of the agenda.

WORKSHOP

WATER, WASTEWATER AND STORM DRAINS WORKSHOP

Recommendation:

The purpose of this workshop is to review with staff the recently completed Administrative Drafts of the Utilities Master Plan Documents. The workshop will help the Council understand the future build out of the City's water and wastewater systems.

City Manager Steve Rymer introduced the item.

Engineering and Utilities Director Karl Bjarke along with Tony Akel and Kevin Tuttle with Akel Engineering and Deputy Director of Utilities Dan Repp provided the report.

The public comment was opened at 6:05 p.m. The following people were called to speak.

Doug Muirhead

John Horner

There being no further requests to speak, the public comment was closed.

CLOSED SESSION

City Attorney Donald Larkin read the closed session into the record.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 6:26 p.m.

There being no requests to speak, the public comment was closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:26 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to: Government Code Section 54956.9(d)(2)

Number of Cases: One (1)

REGULAR MEETING

The regular meeting was convened at 7:00 P.M.

Minutes Acceptance: Minutes of Aug 23, 2017 5:30 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Tate shared that he recently signed on to support the Antidefamation League and United States Conference of Mayors, Mayor's Compact to combat hate, extremism, and bigotry. There are ten key components to the compact including openly rejecting extremism, white supremacy, xenophobia and all forms of bigotry. The Compact also aims to denounce all acts of hate wherever they may occur; while balancing public safety, free speech, and acknowledging domestic terrorism. Education and dialogue are also a focus by making anti-hate and anti-bias programs in our nation's schools, bringing targeted communities and leaders together to build trust, and openly celebrating diversity. The compact promotes law enforcement training and community members' response to hate incidents and crimes as well as domestic terrorism. Lastly, it aims to maintain civil rights enforcement and strengthening civil rights laws when necessary. Supporting the Mayor's Compact to fight hate, extremism, and bigotry directly supports our Council Goal of Inclusiveness and he felt it was important to sign on and support the cause.

He also shared that this past weekend he and Council Members Jachimowicz and Spring participated in the peace walk through downtown. It was a wonderful and well organized event and it demonstrated how our community believes in civility, human rights, and inclusivity overall.

CITY MANAGER'S REPORT

City Manager Steve Rymer recognized Monica Delgado, Sydney Oam, and Dat Nguyen for living our core values of customer service and teamwork for their ongoing work on the City Budget.

He provided an update to the community on the traffic signal installation at 4th Street and Monterey Road. The project has been delayed as we are waiting for the signal poles to be delivered; all other work has been completed.

He shared that for those of you that use the Aquatics Center, we have a deck repair project going on causing the instructional pool to be closed through Friday, August 25th.

He shared that the downtown park projects are coming along. The park project on Depot Street next to the train station already has playground equipment being installed.

We have also been working on the Station Area Masterplan to make sure that our downtown is as multimodal as possible for transportation. This focuses on pedestrian and bicycle access and safety. There will be a community meeting next Thursday, August 31, 2017 from 6:30 p.m. to 8:30 p.m. at the Community and Cultural Center.

The Water District will be holding a community meeting on Wednesday, September 13, 2017 at the Community and Cultural Center from 6:00 p.m. to 8:30 p.m. to provide an update on the Anderson Dam seismic update project.

He concluded by speaking to the evening's supplements and presentations.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action on the closed session item.

OTHER REPORTS

Council Member Jachimowicz announced that this week is Women's Equality Week. Monday evening,

they held a screening of the movie Hidden Figures in which around 120 people attended. Tuesday evening was an event at the Library with the AAUW on how to get in touch and communicate with your elected officials and around 60 people attended that event. Thursday evening, we will hold the panel discussion with the women leaders in our community starting at 6:30 here in the Council Chamber. Sunday at GVA downtown we will be holding an all ages mixer from noon to 2:00 p.m. then at 2:00 p.m. we will all move to Monterey Road to hold hands and take a picture together.

Council Member Spring shared that he attended the Magical Bridge Playground kickoff event on Friday. The playground is for all members of the community including those with disabilities. He announced that the group and community are currently raising funds for the project and encouraged the community to provide strong support and donate towards the project.

He also shared that on Saturday he attended a shelter event called Clear the Shelters in support of finding homes for the animals in the shelter. The San Martin shelter was able to find families for almost 40 animals. He thanked all those people who provided homes to the animals.

PROCLAMATIONS

Proclaiming the week of August 21-27, 2017 as Women's Equality Week

Proclaiming the month of September as Childhood Cancer Awareness Month

RECOGNITIONS

Amy Whelan - Art A La Carte

Morgan Hill Pony Baseball Shetland All Start Team- Norcal World Series Winners

PUBLIC COMMENT

The public comment was opened at 7:32 p.m.

Peter Leroe-Munoz was called to speak.

There being no further requests to speak, the public comment was closed.

ADOPTION OF AGENDA

MOTION

Adopting the agenda, moving item 17 to directly follow the consent calendar.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

CONSENT CALENDAR

Approving consent calendar items 1 through 12.

RESULT: APPROVED [UNANIMOUS]
MOVER: Rene Spring, Council Member
SECONDER: Larry Carr, Mayor Pro Tem
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

1. LEADERSHIP MORGAN HILL 2017 PUPS IN NEED - MORGAN HILL POLICE DEPARTMENT KENNEL MAKEOVER DONATION

Recommendation:

Adopt resolution accepting a donation from the Leadership Morgan Hill Class of 2017 for the Pups in Need - Morgan Hill Police Department Kennel Makeover Donation.

2. ASSET SEIZURE FUNDS FOR PURCHASE OF IA PRO SOFTWARE AND STOP STICKS

Recommendation:

Adopt resolution for the approval of:

1. Appropriation of \$11,595 from Asset Seizure and Forfeiture unappropriated fund balance for the purchase of 23 Stop Stick tire deflation devices and one Stop Stick training device; and
2. Appropriation of \$15,000 from Asset Seizure and Forfeiture unappropriated fund balance for the purchase of IA Pro Professional Standards Software and Blue Team Field Support Web applications, one year software support and 5 days of training.

3. ADOPT RESOLUTION APPROVING USE OF GOVERNMENT CRIME INSURANCE POLICY FOR CITY OFFICERS AND EMPLOYEES

Recommendation:

Adopt resolution approving the use of Government Crime Insurance Policy in lieu of bonds for City officers and employees.

4. AWARD HIGHLAND AVENUE SEWER UPGRADE PROJECT

Recommendation:

1. Approve Highland Avenue Sewer Upgrade Project plans and specifications;
2. Award contract to Monterey Peninsula Engineering for the Highland Avenue Sewer Upgrade Project in the amount of \$547,900;
3. Authorize expenditure of construction contingency funds not to exceed \$54,790; and
4. Authorize the City Manager to execute and administer the construction contract with Monterey Peninsula Engineering.

5. DOWNTOWN PARKS ART APPROVAL

Recommendation:

1. Approve art proposal for bronze fox art sculpture by Evelyn Davis;
2. Authorize the City Manager to negotiate, execute, and administer an artist agreement with Evelyn Davis; and
3. Authorize the City Manager to finalize exact location of the sculpture within the Downtown Creek Park.

6. COMMUNITY PLAYHOUSE LICENSE AGREEMENT WITH SOUTH VALLEY CIVIC THEATRE

Recommendation:

Authorize the City Manager to execute and administer license agreement through December 2020 with South Valley Civic Theatre.

7. FINAL MAP APPROVAL OF LANDS OF YOUNG - TRACT NO. 10406

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvement Agreement with Presidio Van Daele Watsonville 37, LLC;
3. Authorize the City Manager to execute a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
4. Authorize the recordation of the Final Map, Subdivision Improvement Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

8. CITY SUPPORT OF THE LEAGUE OF CALIFORNIA CITIES PUBLIC SAFETY RESOLUTIONS

Recommendation:

1. Authorize the City's voting delegate(s) to vote on the two public safety resolutions to be considered at the League of California Cities (LOCC) annual conference; and
2. Direct staff to participate in advocacy efforts related to the two public safety resolutions: 1) Implement Strategies to Reduce Negative Impacts of Recent Changes to Criminal Laws and 2) Local Control for Emergency Medical Response.

9. APPROVE THE JULY 19, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE JULY 26, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE JULY 31, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

12. APPROVE THE AUGUST 16, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS**17. BOYS AND GIRLS CLUB OF SILICON VALLEY AND THE HEALTHIER KIDS FOUNDATION ANNUAL REPORTS**

Recommendation:

Receive annual reports from the Boys and Girls Club of Silicon Valley and the Healthier Kids Foundation.

Community Services Director Chris Ghione presented the report.

RESULT:	NO ACTION TAKEN
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PUBLIC HEARING**13. CITY COUNCIL TRANSITION TO BY-DISTRICT ELECTIONS**

Recommendation:

1. Review and discuss draft maps and election sequencing;
2. Open/close the public hearing;
3. Waive the first and second reading of the ordinance; and
4. Introduce ordinance selecting the preferred district map and setting the election sequencing.

Deputy City Clerk Michelle Wilson presented the report. She introduced Doug Johnson with National Demographics Corporation who continued the presentation.

The public hearing was opened at 7:51 p.m. The following people were called to speak.
Armando Benavides

Sally Casas

There being no further requests to speak, the public hearing was closed.

Mayor Tate called a recess at 8:05 p.m.

The meeting was reconvened at 8:15 p.m.

Motion:

Adopting district elections map Vertical 2.

RESULT:	ADOPTED [3 TO 2]
MOVER:	Larry Carr, Mayor Pro Tem
SECONDER:	Rich Constantine, Council Member
AYES:	Tate, Carr, Constantine
NAYS:	Jachimowicz, Spring

MOTION

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Larry Carr, Mayor Pro Tem
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

MOTION

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Larry Carr, Mayor Pro Tem
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

14. ELECTRIC VEHICLE CHARGING STATION ORDINANCE

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance.

Building Official Eric Blomquist presented the report.

The public hearing was opened at 8:44 p.m.

There being no requests to speak, the public hearing was closed.

MOTION:

Waiving the first and second reading of the ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Larry Carr, Mayor Pro Tem
SECONDER: Rich Constantine, Council Member
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

MOTION

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Larry Carr, Mayor Pro Tem
SECONDER: Rich Constantine, Council Member
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

15. CERTIFY ENVIRONMENTAL IMPACT REPORT FOR THE HALE AVENUE EXTENSION AND SANTA TERESA CORRIDOR WIDENING AND REALIGNMENT PROJECT AND ADOPT HALE AVENUE PLAN LINE

Recommendation:

1. Open/close public hearing;
2. Adopt resolution certifying that the Final Environmental Impact Report (EIR) for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project (Project) is found to be complete, correct, and in substantial compliance with the requirements of the California Environmental Quality Act (CEQA), which includes adopting the Mitigation and Monitoring Program (MMRP) for the Project; and
3. Adopt resolution approving an Official Plan Line for the Hale Avenue Extension and Santa Teresa Corridor Widening and Realignment Project.

Associate Engineer David Gittleson, Deputy Director of Engineering Scott Creer, and Demetri Loukas with David Powers Associates presented the report.

The public hearing was opened at 8:50 p.m.

Brian Faircloth was called to speak.

There being no further requests to speak, the public hearing was closed.

MOTION:

Approving the recommended actions.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Rich Constantine, Council Member
SECONDER: Larry Carr, Mayor Pro Tem
AYES: Tate, Carr, Constantine, Jachimowicz, Spring

16. PUBLIC HEARING ON AMENDED REASSESSMENTS FOR REASSESSMENT DISTRICT NO. 2015-2 (MADRONE BUSINESS PARK)

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution confirming the amended reassessments and directing actions with respect thereto Reassessment District No. 2015-2.

Supervising Civil Engineer Charlie Ha presented the report.

The public hearing was opened at 8:55 p.m.
There being no requests to speak, the public hearing was closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

OTHER BUSINESS

17. ITEM MOVED TO DIRECTLY FOLLOW THE CONSENT CALENDAR

18. ANIMAL SHELTER ASSESSMENT

Recommendation:

1. Receive report, and
2. Continue contributing \$11,000 for housing and sheltering of cats at the San Martin Animal Shelter and \$5,000 for the County's spay and neuter program as included in the FY 17/18 budget.

Police Captain Shane Palsgrove presented the report.

The public comment was opened at 9:07 p.m.
Ava Geddes was called to speak.
There being no further requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Mayor Pro Tem
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

19. REPORT ON HOMELESSNESS AND AUTHORIZATION OF AGREEMENT WITH COUNTY OF SANTA CLARA TO CONDUCT THE HOMELESS CENSUS REPORTS.

Recommendation:

1. Authorize the City Manager to enter into a three-year agreement between the City of Morgan Hill and the County of Santa Clara retroactively reimbursing Morgan Hill's share of the cost for conducting the 2017 biennial Homeless Census and Survey and prospectively funding the 2019 and 2021 survey for a maximum amount not to exceed \$8,638;
2. Accept the County's 2017 Santa Clara County Homeless Census and Survey Report; and
3. Review and discuss several strategies for addressing homelessness, related community impact issues and enforcement and provide direction.

Housing Manager Rebecca Garcia, Assistant City Manager Leslie Little, Police Chief David Swing, and Ky Le with the County of Santa Clara presented the report.

The public comment was opened at 9:53 p.m.
There being no requests to speak, the public comment was closed.

MOTION:

Approving the recommended action.

RESULT:	AUTHORIZED [UNANIMOUS]
MOVER:	Larry Carr, Mayor Pro Tem
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Carr, Constantine, Jachimowicz, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested an item be brought back with recommendations to address the skateboarders in the parking garage.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:02 p.m.

Minutes Prepared By:

Michelle Wilson, Deputy City Clerk



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.

DRAFT



Meeting Minutes City Council

Steve Tate - Mayor
Larry Carr - Mayor Pro Tem
Rich Constantine - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Thursday, August 24, 2017 4:00 PM

City Hall - Grand Conference Room
17575 Peak Avenue, Morgan Hill, CA 95037

SPECIAL MEETING

A Special Meeting of the City Council was called at 4:00 p.m. for the purpose of conducting a closed session.

CALL TO ORDER

Mayor Tate called the meeting to order at 4:00 p.m.

ROLL CALL

Deputy City Clerk Michelle Wilson called the roll.

Attendee Name	Title	Status	Arrived
Steve Tate	Mayor	Present	
Larry Carr	Mayor Pro Tem	Present	
Rich Constantine	Council Member	Absent	
Caitlin Jachimowicz	Council Member	Present	
Rene Spring	Council Member	Present	

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Michelle Wilson declared the posting of the agenda.

Minutes Acceptance: Minutes of Aug 24, 2017 4:00 PM (CONSENT CALENDAR)

CLOSED SESSION

City Attorney Donald Larkin announced the closed session.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 4:02 p.m.

Brian Sullivan was called to speak.

There being no further requests to speak, the public comment was closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 4:03 p.m.

PUBLIC EMPLOYMENT

Authority: Govt Code Section 54957

Title: City Manager

RECONVENE

The meeting was reconvened at 4:59 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Donald Larkin announced that there was no reportable action.

ADJOURNMENT

The meeting adjourned at 5:00 p.m.

Minutes Prepared By:

Michelle Wilson, Deputy City Clerk



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CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Chris Ghione, Community Services Director
APPROVED BY: City Manager

DOWNTOWN PARKING STRUCTURE SAFETY ENHANCEMENT

RECOMMENDATION(S)

1. Adopt resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$200,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2017 Strategic Priorities

Infrastructure

POLICY CONSIDERATIONS:

Should the City Council provide immediate authority to the City Manager to spend up to \$200,000 in an effort to expedite parking structure improvements?

REPORT NARRATIVE:

The City of Morgan Hill opened the Downtown Parking Structure in March 2016. As the community has come to utilize the facility, several challenges have arisen from inappropriate activities occurring in the facility. These include: youth and adults climbing on ledges, cars speeding within the structure, skateboarding and bicycling at high rates of speed, and loitering on the top floor resulting in litter and vandalism.

The team at the City has been working to address many of these issues, including proposing an update to the Municipal Code (separate agenda item) to support the Police Department's enforcement of municipal code rules in the Parking Structure. Once this update is approved by Council, the City teammates will install enhanced signage throughout the Parking Structure explaining the rules.

Due to recent and ongoing repeat instances of individuals climbing on ledges and rooftop areas, it is being recommended that immediate action be taken. While researching the issue, staff found many resources to help address these challenges. It

is important to realize these issues are not unique to Morgan Hill and are faced regularly in communities that have “open air” parking structures.

City staff are proposing an approach that other communities have utilized and that incorporates engineering, education, and enforcement with the goal of enhanced community safety. It is believed this combination will be the most appropriate to reduce the risk of accidents due to inappropriate use of the structure. Specific actions for each area include:

Enforcement	Regular Police presence at the Parking Structure Promotion of increased use of upper floors by business employees
Education	Increased signage Communications to residents
Engineering	Physical enhancements to the upper floors of the parking structure

City teammates will be immediately erecting a temporary fence that will close off approximately 50 parking spaces to deter access to the upper area of the structure. The fence will be temporarily removed during the Taste of MH or during other days of high demand.

In addition, permanent solutions relating to fencing and screening that will deter individuals from accessing the ledges and roof areas within the structure are being evaluated and some minor improvements have already been made. Staff is working with the parking garage designer and builder to determine the best option for fencing, railing, or other additions that will serve to prevent access while maintaining quality aesthetics. Solutions are not simple and will be expensive. Due to the three-week gap until the next Council meeting and the intent to move forward quickly on these improvements, staff is recommending the City Council provide the City Manager the authority to approve agreements up to \$200,000 to make these improvements. It is not certain if this is the amount that will be needed for the permanent solution, but will allow us to expedite the most urgent components of this work.

COMMUNITY ENGAGEMENT: Inform

City staff will utilize City promotional channels to communicate the planned work and closure with the community. This communication will also promote active reporting of inappropriate activity in the Parking Structure to the Morgan Hill Police Department. Informational signage about the work will be posted in the Parking Structure.

ALTERNATIVE ACTIONS:

The City Council could choose to not provide the authorization to the City Manager to make improvements at the parking structure at this time. City staff would then bring back other options for funding for specific improvements at the September 27 Council Meeting. The City Council may also choose to provide additional direction to City staff.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved construction of the Parking Structure, which opened to public use in March 2016.

FISCAL AND RESOURCE IMPACT:

Funding for improvements up to \$200,000 would be appropriated from the Public Facilities Fund (346), which has adequate funds for this enhancement.

CEQA (California Environmental Quality Act):

Categorical Exemption

The proposed improvements would be limited in scope and considered part of the planned maintenance and management of city facilities, which falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Attachment 1 - Resolution for Budget Adjustment
2. Exhibit A - Budget Scorecard - Downtown Parking Garage Fund 346

RESOLUTION NO.

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2017-18 BUDGET IN THE PUBLIC FACILITIES FUND (FUND NO. 346) TO APPROPRIATE TWO HUNDRED THOUSAND DOLLARS (\$200,000) FOR IMPROVEMENTS WITHIN THE PARKING STRUCTURE

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2017-18 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

WHEREAS, the activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

WHEREAS, the consideration by City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and has been placed upon the City Council Meeting Agenda on the date set forth in the Staff Report, or to such date that the City Council may have continued or deferred consideration of this Resolution, and on such date the City Council conducted a duly noticed public meeting at which the City Council provided members of the public an opportunity to comment and be heard and considered any and all testimony and other evidence provided in connection with the adoption of this Resolution; and

WHEREAS, the City Council determines that adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine and resolve that all of the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct as follows:

- a. That the City's previously adopted Fiscal Year 2017-18 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2017-18 Budget of City.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 6th day of September, 2017 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on September 6, 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

Irma Torrez, CITY CLERK

AGENDA BUDGET SCORECARD**FISCAL YEAR 2017-18****ADJUSTMENT #**

009

FUND:**DEPARTMENT:****OBJECT:**

346	Public Facilities (Non AB1600)
8049	Public Facility/Non AB1600
86360	CONSTRUCTION

AGENDA DATE:**AGENDA ITEM TITLE:**

09/06/17
Downtown Parking Structure Safety Enhancements

	07/01/17 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/18 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	1,121,657	617,956	1,006,373	733,240
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	200,000	(200,000)
RESULT OF RECOMMENDED ACTION	<u>1,121,657</u>	<u>617,956</u>	<u>1,206,373</u>	<u>533,240</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

INTRODUCE AMENDMENT TO MUNICIPAL CODE REGULATING ACTIVITIES OCCURRING ON PUBLIC PROPERTY INCLUDING DRONE USE

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance regulating activities on public property.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Protecting the Environment

POLICY CONSIDERATIONS:

What activities should be restricted on properties owned by the City?

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider changes in the Municipal Code (Code) related to activities on City-owned property.

Two changes in the community have generated the need to consider the proposed ordinance. The first is the development of the Downtown Parking Structure (Structure) and the public's behavior while in the Structure. The Morgan Hill Police Department has been called to respond to undesirable activities in the Structure and has been challenged with inadequate language in the current Code to address some of the behavior problems. The second change is the growing interest in the hobby of flying unmanned aircraft (drones) in the community.

Streets, Public Facilities, and Parking Lots

The Code's section that currently addresses activities on public property is Section 12.20.060 which specifically addresses activities in parks. It prohibits a variety of activities that are deemed inappropriate in City parks including activities such as removing vegetation, hunting, drinking alcoholic beverages, and possessing firearms. There are currently no parallel sections in the Code addressing streets, public buildings/facilities, and parking lots.

As staff began considering changes to the Code that would address the current challenges the City is experiencing, it was determined that simply editing Section

12.20.060 to address the multitude of different circumstances would result in a Code that was difficult to read and understand. Instead, staff is proposing to allow Section 12.20.060 to remain focused on parks and to add additional parallel sections that specifically address streets, public facilities, and parking lots. This approach allows the language in each section to remain straightforward and easy to understand.

With regard to the parking section, 12.20.064, the Police Department has specifically recommended the inclusion of these restrictions in order to address some of the problems they have witnessed in the Structure including loitering, smoking, climbing, and riding skateboards and bicycles. While these changes are recommended to be instituted now in order to address current concerns, it is anticipated that additional changes may be recommended in the future as the Downtown Parking Strategy continues to develop.

Drones

The Code currently is somewhat ambiguous when it comes to drone use. While using model aircraft is prohibited in parks, most drone users wouldn't consider their drone to be a model aircraft and wouldn't necessarily believe that drone use is prohibited in parks. Furthermore, use on streets, facilities, and parking is currently not addressed. Since most drone "use" occurs in airspace above both private and public lands and is generally outside of the City's jurisdiction, City regulations should focus on the launching and landing of drones. To balance the interests of local hobbyists with public safety, staff is proposing that drone take offs and landings be allowed in certain parks, and prohibited on streets, public buildings and facilities, and parking lots unless the use in these areas was allowed as a component of a special use permit or facility rental. Initially, staff recommends that the City's largest parks, Community and Galvan, be designated as the only parks where drone use is allowed.

COMMUNITY ENGAGEMENT: Consult

Staff convened a broadly publicized community meeting to focus on drone use on public properties. Nine community members attended and the attendees included seven recreational drone operators and two drone-curious residents. No individuals opposed to drone use attended. The major takeaways from this meeting were:

- Most operators prefer flying in wide-open spaces
- Take-offs and landings can occur in relatively small areas
- The City should consider exempting commercial operators from the proposed ordinance

The meeting attendees recommended several refinements to the City's draft regulations which have been incorporated into the recommended ordinance.

ALTERNATIVE ACTIONS:

The Council could choose to change provisions in the ordinance before introducing it or could decline to introduce the ordinance tonight and provide direction to staff on changes desired in the ordinance or in the overall area of drone regulation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has not recently revised the Code in this area. The Parks and Recreation Commission (PRC) considered the use of drones in public parks at its meeting on August 15th. The majority of the PRC was not supportive of drone use in public parks and voted to recommend that staff conduct further study on options the City has available to limit drone use in private airspace and to require the permitting or registration of drones in Morgan Hill. This type of regulation and permitting goes beyond the purview of the Community Services Department and would need to be led by the Police Department. At this time, the Police Department believes that drone use is not a high public safety concern and recommends that the City's public safety resources should not be dedicated to this activity. Instead, the Police Department will continue to monitor resident concerns in this area and respond when appropriate. State law already provides the Police Department with the legal tools to charge drone users who are inappropriately invading the privacy of others.

The ordinance supports the PRC recommendations in most areas by not allowing the launching and landing of drones in facilities, parking lots, streets, and sidewalks. The ordinance would allow drones in these areas with a permit, which is designed to provide controlled use at the Outdoor Sports Center and as a carefully-considered component of special events or facility rentals. The proposed ordinance would, however, allow the limited use at specific parks. Should the use of drones at Galvan and Community Park lead to any public safety issues, the Code would allow for the use of drones in the parks to be eliminated quickly.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts from the recommended action and no budget adjustment is requested. Addressing activities on public property is an activity included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the permitting, leasing, licensing, or minor alteration of existing City facilities.

LINKS/ATTACHMENTS:

1. 2017 Public Activities Ordinance Final Draft

ORDINANCE NO. XXX, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL RENAMING CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) AND SECTION 12.20.020 (PARK USE – GENERAL PROVISIONS) AND AMENDING SECTIONS 12.20.010 (DEFINITIONS) AND 12.20.060 (CONDUCT IN PARKS – GENERALLY) AND 12.20.80 (ACTIVITIES OR ACTIONS REQUIRING PRIOR APPROVAL FROM THE CITY) AND ADDING SECTIONS 12.20.062 (CONDUCT IN PUBLIC BUILDINGS AND FACILITIES), 12.20.064 (CONDUCT IN CITY PUBLIC PARKING LOTS AND FACILITIES), AND 12.20.067 (CONDUCT ON PUBLIC STREETS AND SIDEWALKS)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

- a. The City of Morgan Hill currently does not have provisions pertaining to conduct in Public Buildings and Facilities, conduct in Public Parking Lots and Facilities, and conduct in Public Streets and Sidewalks.
- b. The City of Morgan Hill is continuing to grow and develop and the need to promote and enforce safe behavior is of the utmost importance.
- c. To ensure individuals can safely enjoy City of Morgan Hill public facilities, additional provisions are desired.

Section 2. Declaration of Purpose and Intent.

- a. The purpose of this Ordinance is to amend the City of Morgan Hill’s Chapter 12.20 to include more public spaces and public facilities. The ordinance’s purpose is to improve and promote safe behaviors in City locations, including parks, facilities, streets and parking lots. The provisions listed shall provide opportunities for individuals to pursue and enjoy leisure activities and to assure the general welfare of the community.
- b. This Ordinance amends current Ordinance with the intent to monitor and enforce positive conduct in Public Spaces.

Section 3. Chapter 12.20 is hereby renamed “ACTIVITIES ON CITY PARKS, STREETS, PARKING FACILITIES, AND PUBLIC FACILITIES”

Section 4. Section 12.20.010 (Definitions) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.010 - Definitions

Whenever the following words and phrases are used in this chapter they shall have the meanings ascribed to them in this section:

- A. "City" refers to the city of Morgan Hill, California.
- B. "Park" means a park, playground, open space area, trail, or any other area, or grounds in the city, owned or used by the city and devoted to active or passive recreation including parking lots constructed directly in and around the park to serve the customers of the park.
- C. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- D. "Vehicle" means any wheeled conveyance, whether motor-powered or drawn except for wheelchairs and vehicles in the service of the city.
- E. “Unmanned Aircraft” means an aircraft weighing less than 55 pounds, including everything that is onboard or otherwise attached to the aircraft, that can be flown without the possibility of direct human intervention from within or on the aircraft.
- F. “FAA” refers to Federal Aviation Administration.
- G. “Public Building and Facility” means City-owned buildings including general governmental buildings, recreation centers, public service centers and any other building used by the city for public purposes including parking lots constructed directly around the City-owned building to serve the customers of the building.
- H. “Recreation Center” means a public building primarily dedicated for recreation purposes.
- I. “Public Parking Lots and Parking Facilities” means a City-owned parking lot or parking facility constructed to provide parking to a general area of the City that isn’t primarily a “Park” or “Public Building” as defined. “

Section 5. Section 12.20.020 (Park use-General provisions) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby renamed and amended in its entirety to read as follows

“12.20.020 – General provisions

The provisions of this chapter shall apply to all parks, public facilities, and public places in the city to provide opportunities for individuals to pursue and enjoy leisure activities and to assume the general welfare of the community.”

Section 6. Section 12.20.060 (Conduct in Parks - Generally) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.060 - Conduct in parks—Generally.

No person in a park shall do any of following:

A. Damage to Park Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Use of Restrooms. If over the age of six years, use restrooms and washrooms designated for the opposite sex, unless disabled or handicapped and in need of assistance;

C. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

D. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

E. Climbing, Standing Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vases, fountains, railing, fence or upon any other property not designated or customarily used for such purposes;

F. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

G. Drinking of Alcoholic Beverages. Drink alcoholic beverages in parks except where a special permit for this activity has been issued by the City;

H. Glass Bottles. Bring and/or dispose of glass bottles into the park unless specifically authorized in a permit issued pursuant to the provisions of Chapter 12.16 of this code;

I. Under the Influence of Alcohol or Drugs. Enter or remain in a park while under the influence of an intoxicating liquor or any drug;

J. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

K. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety. Shooting into park areas from beyond park boundaries is prohibited;

L. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

M. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere;

N. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, pond, lake or stream not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere in a park. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

O. Overnight Camping. Camp or park overnight except under conditions provided for under Section 12.20.080 of this chapter;

P. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

Q. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

R. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind on any park facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

S. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

T. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any

way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

U. Unmanned Aircraft. Use unmanned aircraft in a manner that is inconsistent with the state or federal law, including FAA regulations, or at a park not designated for unmanned aircraft use by the City Manager. Takeoff and/or land unmanned aircraft before 8 am or after sunset. Operate unmanned aircraft within the City to capture, record, or transmit any visual image or audio recording of any persons or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, inside a hotel room, and inside of an enclosed yard);

V. Golf or Archery. Play or practice or use golf clubs or practice archery;

W. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death;

X. Use of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;

Y. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code."

Section 7. Section 12.20.062 (Conduct in Public Buildings and Facilities) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

"12.20.062 - Conduct in Public Buildings and Facilities.

No person at a Public Building or Facility shall do any of following:

A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, furniture, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

C. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

D. Climbing, Standing, Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vase, fountain, railing, fence or upon any other property not designated or customarily used for such purposes;

E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

F. Drinking of Alcoholic Beverages. Drink alcoholic beverages in facilities except when the consumption is approved as part of a facility rental or permit;

G. Use of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;

H. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code;

I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety.

K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the facility by the person responsible for its presence, and properly disposed of elsewhere;

M. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere in the facility. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

N. Overnight Camping. Camp or park overnight except under conditions provided for under Section 12.20.080 of this chapter;

O. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of

flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

P. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

Q. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind at any facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

R. Animals at Recreation Centers. Possess animals within the indoor areas of any recreation center, within the fenced areas of the Aquatics Center, or within the fenced areas of the Outdoor Sports Center except for service animals or when the possession of the animal is approved as part of a facility rental or permit;

S. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

T. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

U. Unmanned Aircraft. Use of unmanned aircraft except when approved as part of a facility rental or permit;

V. Golf or Archery. Play or practice or use golf clubs or practice archery;

W. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death.

X. Ride-on Wheeled Vehicles. Ride or use bicycles, skateboards, roller skates, in-line skates, or scooters;"

Section 8. Section 12.20.064 (Conduct in City Public Parking Lots and Parking Facilities) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

"12.20.064 - Conduct in City Public Parking Lots and Parking Facilities.

No person at a City Public Parking Lot or Parking Facility shall do any of following:

- A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;
- B. Loitering. Remain present in a City parking lot for any other purpose than to travel to and from a vehicle parked within the parking lot;
- C. Climbing, Standing, Sitting. Climbing, standing or sitting on walls, ledges, railings, rooftops, parapets, fences or upon any other property not designated for such purposes;
- D. Ride-on Wheeled Vehicles. Ride or use bicycles, skateboards, roller skates, in-line skates, or scooters;
- E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;
- F. Drinking of Alcoholic Beverages. Drink alcoholic beverages except when the consumption is approved as part of a facility rental or permit;
- G. Use or Consumption of Illegal Drugs. Use any controlled substance in a manner that is prohibited under state or federal law;
- H. Smoking. Engage in smoking activities as defined by Section 8.44.020 (11) of the Morgan Hill Municipal Code;
- I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;
- J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety.
- K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any parking lot or facility or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;
- L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away from the facility by the person responsible for its presence, and properly disposed of elsewhere;

M. Overnight Camping. Camp overnight except under conditions provided for under Section 12.20.080 of this chapter;

N. Possession of Fireworks. Bring, possess, or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

O. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

P. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind at any facility unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

Q. Powered Model Airplanes or Rockets. Use powered model airplanes or rockets at any time;

R. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

S. Unmanned Aircraft. Use unmanned aircraft except when approved as part of a facility rental or permit;

T. Golf or Archery. Play or practice or use golf clubs or practice archery;

U. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

V. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas."

Section 9. Section 12.20.067 (Conduct on Public Streets and Sidewalks) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby added as follows:

“12.20.067 - Conduct on City Public Streets and Sidewalks.

No person on a public street or sidewalk shall do any of following:

A. Damage to Property. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, railings, signs, markers, monuments, trash receptacles, paving or paving materials, water lines, or other public utilities or part or appurtenances whatsoever, either real or personal;

B. Removal of Vegetation. Dig or remove any soil, rock, stones, trees, shrubs or plants, down timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency;

C. Damage to Vegetation. Damage, cut, carve, transplant or remove any tree or plant, or injure the bark, or pick the flowers or seeds of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. No person shall dig in, or otherwise disturb any grass area, or in any way injure or impair the natural beauty or usefulness of any areas;

D. Climbing, Standing Sitting. Climbing, standing or sitting on trees, monuments, buildings or walls, vase, fountain, railing, fence or upon any other property not designated or customarily used for such purposes;

E. Hunting Animals, Reptiles or Birds. Hunt, molest, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile or bird; nor shall any person remove or have in his/her possession the young of any animal, or the eggs or nest or young of any reptile or bird;

F. Drinking of Alcoholic Beverages. Drink alcoholic beverages except where a special permit for this activity has been issued by the city manager;

G. Glass Bottles. Bring and/or dispose of glass bottles unless specifically authorized in a permit issued pursuant to the provisions of Chapter 12.16 of this code;

H. Under the Influence of Alcohol or Drugs. Enter or remain while under the influence of an intoxicating liquor or any drug;

I. Unauthorized Gambling. Play, bet at or against, or wager on for money, chips, shell, credit or any other representative of value any game that is prohibited by the Penal Code of the state of California;

J. Possession of Firearms, Weapons. Use, carry or possess firearms of any description, or air rifles, spring guns, bows and arrows, slings, or any other forms of weapons potentially dangerous to wildlife or human safety. Shooting onto street or sidewalk areas from other areas is prohibited;

K. Pollution of Waters. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to a public street or sidewalk or any tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of such waters;

L. Disposal of Waste, Rubbish. Dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, refuse or trash on the grounds thereof. Such items shall be placed in the proper receptacles where these are provided; and where such receptacles are not provided, all such rubbish or waste shall be carried away by the person responsible for its presence, and properly disposed of elsewhere;

M. Public Bathing, Swimming. Swim, bathe, wade in or pollute the water of any fountain, pond, lake or stream not specifically provided for that purpose and so posted. Swimming in the nude or nude sunbathing is prohibited anywhere on public streets and sidewalks. For the purposes of this section, "nude" means exposure of any part of the genitals or full exposure of the breast in the case of women;

N. Overnight Camping. Camp overnight except under conditions provided for under Section 12.20.080 of this chapter;

O. Possession of Fireworks. Bring, possess or set off, or otherwise cause to explode or discharge or burn, any firecrackers, torpedoes, rockets or other fireworks or explosives of flammable material or discharge them or throw them into any such area from land or any roadway adjacent thereto. This prohibition includes any substance, compound, mixture or articles that, in conjunction with any other substance or compound, would be dangerous from any of the foregoing standpoints. This prohibition also includes fireworks that may otherwise be legal to possess within this state;

P. Fires. Make or kindle a fire for any purpose except at places provided for such purpose;

Q. Animals. Except as otherwise regulated by law, lead, ride, drive, keep or let loose any animal, reptile or fowl of any kind unless under proper control by the animal's owner or attendant. The owner shall be responsible for any damage or injury that may be caused by the animal;

R. Powered Model Airplanes, Watercraft, or Rockets. Use powered model airplanes, watercraft, or rockets at any time;

S. Powered Aircraft, Cars, or Trucks. Use powered aircraft (that are not airplanes), cars, or trucks in a manner that is dangerous, negligent, careless, reckless or that otherwise poses a risk of harm, danger or injury to life or property or in a manner which may interfere, in any way, with another person or entity's right to privacy, right to quiet enjoyment of his/her property, business operations or recreational activities;

T. Unmanned Aircraft. Use unmanned aircraft except when approved as part of a facility rental or permit;

U. Golf or Archery. Play or practice or use golf clubs or practice archery;

V. Feed Nondomestic Animals. Feeding nondomestic animals any food, including breads, seeds, nuts or other foods as many cause unintentional harm, illness, or death.”

Section 10. Section 12.20.070 (Use of bicycles and vehicles in parks) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby renamed and amended in its entirety to read as follows:

“12.20.070 - Use of bicycles and vehicles in parks, City Parking Lots and City Facilities.

No person shall do any of the following in a park, City parking lot, or City facility:

A. Compliance With Vehicle Code. Fail to comply with all applicable provisions of the Vehicle Code of the state in regard to equipment and operation of vehicles, together with such regulations as are contained in this chapter and any other ordinances of the city regulating traffic;

B. Obedience to Traffic Officers, Peace Officers and their designees authorized to enforce the Vehicle Code, or Park Employees. Fail to obey all traffic officers, peace officers and their designees, and park employees who are hereafter authorized and instructed to direct traffic in the parks, City parking lot and City facilities, in accordance with the provisions of this chapter and such supplementary regulations as may be issued by the city;

C. Observance of Traffic Regulations. Fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking, and all other signs posted for proper control and to safeguard life and property;

D. Excessive Speed. Ride or drive a vehicle at a rate of speed exceeding fifteen miles per hour;

E. Parking Areas. Park a vehicle in other than an established or designated parking area, and such use shall be in accordance with the posted directions there, and with the instructions of any attendant who may be present;

F. Vehicle Driveways and Access Drive. Drive any vehicle on any area except paved roads or parking areas, or such other areas as may be designated as temporary parking areas by the city;

G. Bicycle Pathway. Leave a bicycle lying on the pathway or paving, or in any place or position where other persons may cause injury.”

Section 11. Section 12.20.080 (Activities or Actions Requiring Prior Approval From The City) of Chapter 12.20 (Activities on City Parks, Streets, Parking Facilities, and Buildings) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended in its entirety to read as follows:

“12.20.080 – Activities or actions requiring prior approval from the city.

The following activities require prior approval and/or a special permit:

A. Picnic Area Reservations. Reservations for any portion of the picnic areas, or any of the park buildings or structures for the purpose of holding an activity to the exclusion of other persons, or for public admission;

B. Sale of Articles. Expose or offer for sale any article, service, or thing; nor shall she/he station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing;

C. Announcements, Advertisements of Articles for Sale. Announce, advertise or call to the public attention in any way to any article or service for sale or hire;

D. Post Signs. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription;

E. Construct Temporary Building, Structure. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such lands;

F. Conduct, Advertise Professional Pyrotechnic Displays. Conduct, advertise, or plan for any professional pyrotechnic display;

G. Plan Activities After Operational Hours. Plan or conduct any activity that exceeds the operational hours of the park, parking lot, or public building;

H. Chemical Toilets. Temporary use of chemical toilets.”

Section 12. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6th DAY OF SEPTEMBER 2017, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 27th DAY OF SEPTEMBER 2017, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:

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ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective xxx

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. xxxx, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 27th day of September 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

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DATE: _____

IRMA TORREZ, City Clerk

Attachment: 2017 Public Activities Ordinance Final Draft [Revision 2] (1379 : Municipal Code Update for Activities Occurring on Public Property



CITY COUNCIL STAFF REPORT

MEETING DATE: September 6, 2017

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

REVISIONS TO CITY'S FLOOD DAMAGE PREVENTION ORDINANCE

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

The purpose of this report is to present a draft ordinance that revises the city's Flood Damage Prevention Ordinance for City Council consideration.

The City has been a participating community in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) since June 18, 1980. As a condition of participation, the City must adopt and enforce a floodplain management ordinance that regulates development within the City's 100-year flood hazard areas and that meets State and Federal minimum standards. In return, FEMA makes flood insurance coverage available on buildings and their contents throughout the community.

The existing and proposed Flood Damage Prevention Ordinance applies to floodplains within the City that are subject to a one-percent (1%) or greater chance of flooding in any given year. The 100-year flood hazard areas or floodplains are shown on the Flood Insurance Rate Maps prepared by FEMA as flood zones A, AO, A1-A30, AE, A99, or AH. There are approximately 1,600 structures currently located in the City's 100-year floodplains.

On November 13, 2014, FEMA conducted a Community Assistance Visit with the City flood management team. The purpose of the FEMA visit was to evaluate the effectiveness of the City's floodplain management practices and for FEMA to offer any needed assistance.

On February 1, 2016, FEMA issued the City a Community Assistance Visit Report which included a determination that the City's Flood Damage Prevention Ordinance, Chapter 18.42 of the Municipal Code, needed to be updated to meet the minimum NFIP requirements pursuant to Title 44 of the Code of Federal Regulations, Sections 59, 60.3 to 60.6 and 65.3. FEMA also provided the City with a copy of the current California

Model Floodplain Management Ordinance which is a tool developed to help California communities meet the minimum requirements of the NFIP.

The attached proposed revisions to the Flood Damage Prevention Ordinance (Attachment 1) illustrates the added sections in double underlined text and deleted text as ~~strikethrough~~ text. The existing ordinance was used as the underlying template.

The attached new Flood Damage Prevention Ordinance (Attachment 2) incorporates the proposed revisions and the required re-numbering with the creation of a new chapter under Title 15 (Buildings and Construction), Chapter 15.80 entitled "Flood Damage Prevention". Staff is proposing the inclusion of the new chapter under Title 15 as most of the flood damage prevention regulations apply to buildings and construction.

The following table summarizes the proposed revisions shown in Attachment 1:

No.	Description of Proposed Revision	Existing Ordinance	
		Section No.	Page No.
1	<i>The following changes were made to comply with the updates required in the FEMA Community Assistance Visit Report.</i>		
	a. Inserted the date of the first adopted floodplain management ordinance (June 18, 1980) to the following definitions: 1. Existing manufactured home park or subdivision 2. New Construction 3. New Manufactured home park or subdivision	18.42.050	3 thru 7
	b. Added references to FEMA's Technical Bulletins (TB) 1-93, 3-93, and 7-93 at the end of the "Floodproofing" definition.	18.42.050	4
	c. Updated the City's street address.	18.42.070	9
	d. Added Severability Section.	New Section 18.42.115	10
	e. Added a note referencing FEMA publication 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations" to duties of Floodplain Administrator section.	18.42.140.C	12
	f. Added requirement to submit new technical data and notify FEMA within 6 months of changes to the effective Base Flood Elevation.	18.42.140.D.2	13
	g. Added "for areas below base flood elevation" to the	18.42.160.B.1	14

	Standards of Construction section.		
	h. Listed all other Special Flood Hazard Zones in the Standards of Construction section.	18.42.160.C.1.c	15
	i. Added cumulative effective note to Floodways section.	18.42.200	20
2	<i>The following requirement was added to allow the City to obtain additional credits through the Community Rating System (CRS) Program of the NFIP. The credits translate to flood insurance premium discounts for policy holders in the City.</i> <i>No changes were made to the City's higher standard of requiring elevation of structures one foot higher than the base flood elevation.</i>		
	a. Requirement for cumulative tracking of improvements or repairs to structures/buildings to ensure that phased improvements that add up to a major or substantial improvement are tracked.	18.42.050 (Included in "Substantial Improvement" definition)	9
3	<i>The following additional standards of construction were added for other construction types not listed.</i>		
	a. Standards for Garages and Low-Cost Accessory Structures	18.42.160	16
	b. Crawlspace construction standards	18.42.160	17
	c. Requirements for Engineered Fill	18.42.205	20
4	<i>The following procedures and documentation requirements were added to assist staff with Ordinance implementation.</i>		
	1. Determination of market value of existing structures	18.42.050 (Included in "Market Value" definition)	7 & 8
	2. Requirements for proposed developments in areas without a specified base flood elevation	18.42.140.C	12
	3. Appeals Process	18.42.150	14
	4. Variance Process	18.42.240, 18.42.245 & 18.42.250	21 thru 25
5	Added and modified definitions and other sections for clarity and to conform to the California Model Floodplain Management Ordinance.	Various sections	All

Staff recommends that the Council introduce the ordinance repealing Ordinance No. 1398 in its entirety and creating a new Chapter 15.80 entitled "Flood Damage

Prevention” under Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed revisions to the Flood Damage Prevention Ordinance.

ALTERNATIVE ACTIONS:

1. The Council could choose to not approve the proposed revisions and leave the current ordinance in place. However, this would cause the city to be placed on probation or be suspended from the National Flood Insurance Program. Probation status will result in a surcharge being added to the flood insurance premium for each policy sold or renewed within the City. Suspension will result in the City becoming a non-participant and new flood insurance coverage cannot be purchased and policies cannot be renewed.
2. The Council may modify the draft Ordinance language presented.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has considered and adopted changes to the City’s Flood Damage Prevention Ordinance on February 17, 1988 and June 17, 1998.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested. The time spent to prepare this report and revised ordinance is a function of existing land development engineering personnel resources.

CEQA (California Environmental Quality Act):

Not a Project.

This ordinance and actions taken hereafter pursuant to this ordinance are considered as organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Proposed Revisions to the Flood Damage Prevention Ordinance (Line in/Line out)
2. Proposed Flood Damage Prevention Ordinance (without edits)

Chapter 18.42 - FLOOD DAMAGE PREVENTION

Sections:

18.42.010 - Statutory Authorization.

The Legislature of the State of California has in Governmental Code Sections 65302, 65560, and 65800 conferred upon local government ~~units~~ the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Morgan Hill adopts the following floodplain management regulations.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.020 - Findings of Fact.

- A. The flood hazard areas of the ~~city~~ City of Morgan Hill are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. When floodplains are developed without taking appropriate precautions, flood heights, frequencies, and velocities increase, causing a greater threat to humans, damage to property, destruction of natural floodplain functions and adverse impacts to water quality.
- C. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to the flood loss.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.030 - Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations provisions designed to: applied uniformly throughout the City of Morgan Hill to all publicly and privately owned land within flood prone, mudslide, or flood-related erosion areas. These regulations are designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and

- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.040 - Methods of Reducing Flood Losses.

In order to accomplish its purposes, this chapter includes methods and provisions to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.050 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure” means a structure that is either:

1. Solely for the parking of no more than 2 cars; or
2. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

“Accessory Use” means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

“Adversely Affects” means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter. ~~The appeal shall be considered by the City Council at a public hearing to be held, noticed and conducted in accordance with the provisions in California Government Code Sections 65905(b), and 65091. The decision of the City Council on the appeal shall be final.~~

“Area of Shallow Flooding” means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard”: See **“Special Flood Hazard Area (SEHA).”**

~~“Area of special mudslide(i.e., mudflow) hazard” is the area subject to severe mudslides (i.e., mud flows). The area is designated as Zone M on the Flood Insurance Rate Map. (FIRM)~~

“Base Flood” means a flood which has a one percent (1%) chance of being equaled or exceeded in any given year (also called the **“One-Hundred-Year Flood”**). Base flood is the term used throughout this chapter.

“Base Flood Elevation (BFE)” means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year.

“Basement” means any area of the building having its lowest floor more than two feet subgrade, i.e., below ground level on all sides.

“Biennial Report” means the report completed by communities participating in the National Flood Insurance Program that describes the community’s progress in the previous two years in implementing floodplain management measures and on its needs for remapping and technical assistance. This report is submitted annually or biennially as determined by the administrator of the National Flood Insurance Program.

“Building”: See **“Structure.”**

“Conditional Letter of Map Revision (CLOMR)” means the comment from the Federal Emergency Management Agency (FEMA) on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective Flood Insurance Rate Map (FIRM), it indicates whether the project, if built as proposed, would be recognized by FEMA.

“Crawlspace” means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspaces having the lowest floor two feet or less below grade level on all sides shall not be considered a basement.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before June 18, 1980 ~~the effective date of the floodplain management regulations adopted by a community.~~

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood, Flooding, or Flood Water” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
2. The condition resulting from flood-related erosion.

“Flood Boundary and Floodway Map (FBFM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

~~**“Flood Hazard Boundary Map”** means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazards.~~

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

“Floodplain or Flood-prone Area” means any land area susceptible to being inundated by water from any source. See **“Flooding.”**

“Floodplain Administrator” is the ~~individual city official~~ appointed by title to administer and enforce the floodplain management regulations.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008), Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993), and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993), and subsequent amendments and/or revisions thereto.

1. “Dry floodproofing” means floodproofing measures that are designed to prevent floodwaters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.
2. “Wet floodproofing” means floodproofing measures that minimize damage to a structure and its contents from floodwater that is allowed into the structure.

“Flood-related erosion” means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical level or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusually and unforeseeable event which results in flooding.

“Flood-related erosion area” or “Flood-related erosion prone area” means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

“Flood-related erosion area management” means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as **“Regulatory Floodway.”**

“Floodway Encroachment Lines” means the lines marking the limits of floodways on federal, state and local floodplain maps.

“Floodway Fringe” is that area of the floodplain on either side of the “Regulatory Floodway” where encroachment may be permitted.

“Fraud and Victimization” as related to Sections 18.42.240, 18.42.245, and 18.42.250, Variances, of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

“Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

“Governing Body” is the local governing unit, i.e., City Council that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

“Hardship” as related to Sections 18.42.240, 18.42.245, and 18.42.250, Variances, of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

“Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure,” for floodplain management purposes, means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on the city's master list of historic structures, provided this a-local inventory is consistent with state-approved or certified of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs; ~~or~~
5. ~~Adopted by the city council as a structure of importance to history, architecture or culture of the area pursuant to Chapter 15.36.~~

"Letter of Map Revision (LOMR)" means FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

"Letter of Map Revision Based on Fill (LOMR-F)" means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

"Levee System" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

"Lowest Floor" means the lowest floor of the lowest enclosed area, including basement. See **"Basement" definition**. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, (see "Basement") is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of it conforms to the applicable non-elevation design requirements, of this ordinance. (Note: This definition allows attached garages to be built at grade. Below grade garages are not allowed as they are considered to be basements.) including, but not limited to:

1. The flood openings standard in Section 18.42.160.C.3;
2. The anchoring standards in Section 18.42.160.A;
3. The construction materials and methods standards in Section 18.42.160.B; and
4. The standards for utilities in Section 18.42.170.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale; also see **"Existing Manufactured Home Park or Subdivision."**

"Market Value" means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax

assessed value of the structure as provided by the County Tax Assessor's office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty five percent (45%). In the event the cost of the improvement to the structure exceeds forty five percent (45%) of the current tax assessed value of the structure, the market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the Floodplain Administrator.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"Mixed-use Structure" means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation with access to residential uses dry floodproofed.

"Mudslide" means a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

"New Construction," for floodplain management purposes, means structures for which the "start of construction" commenced on or after ~~the effective date of floodplain management regulations adopted by this community~~ June 18, 1980, and includes any subsequent improvements to such structures.

"New manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after ~~the effective date of floodplain management regulations adopted by this community~~ June 18, 1980; also see **"Existing Manufactured Home Park or Subdivision."**

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

"One-Hundred-Year Flood, or "100-year Flood": See **"Base Flood."**

"Principal Structure" means a structure used for the principal use of the property as distinguished from an accessory use.

"Public Safety and Nuisance" as related to Sections 18.42.240, 18.42.245, 18.42.250, Variances, of this chapter means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational Vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory Floodway”: ~~See “Floodway.” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.~~

“Remedy a Violation” means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

“Repetitive Loss” means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Sheet Flow Area”: See **“Area of Shallow Flooding.”**

“Special Flood Hazard Area (SFHA)” means an area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year having special flood hazards and It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, and/or AH.

“Start of Construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

“Substantial Damage” means:

1. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred; or
2. Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”

“Substantial Improvement or Substantially Improved” means any combination of repairs, reconstruction, rehabilitation, addition, or other proposed new development of a structure taking place during a five-year period, the cumulative cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. For each structure, the five-year period begins on the date of the first improvement or repair of that structure subsequent to the effective date of the ordinance codified in this chapter. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of any structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, where specified of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.060 - ~~Lands to which this chapter applies~~ Applicability.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Morgan Hill.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.070 - Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the ~~Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA)~~ in the Flood Insurance Study (FIS) for the City of Morgan Hill dated December 1979 and accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) dated June 18, 1980, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain Administrator. The study, FIRMs, and FBFMs are on file at ~~100 Edes Court at the department of public works~~ the City of Morgan Hill's Development Services Center located at 17575 Peak Avenue, Morgan Hill, CA 95037.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.080 - Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.090 - Abrogation and Greater Restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.100 - Interpretation.

In the interpretation and application of this chapter, all provisions shall be

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.110 - Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the ~~city~~ City of Morgan Hill, the city council, any officer or employee thereof, the State of California, or the ~~Federal Insurance Administration~~, Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.115 – Severability.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.120 - Establishment of Development Permit.

A development permit shall be obtained before any construction or other development, including manufactured homes, begins within any area of special flood hazard established in Section 18.42.070. Application for a development permit shall be made on forms furnished by the Floodplain Administrator. ~~and may require, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, The applicant shall provide the following minimum information is required:~~

- A. Plans in duplicate, drawn to scale, as required showing:
 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 4. Location of the regulatory floodway when applicable;
 5. Base flood elevation information as specified in Section 18.42.070 or Section 18.42.140.C;
 6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures - in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures; and
 7. Proposed elevation in relation to mean sea level to which any nonresidential or mixed-use structure will be floodproofed, if as required in Section 18.42.160.C.2(3) and detailed in FEMA Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993) and subsequent amendments and/or revisions thereto.
- B. Certification from a registered civil engineer or architect that the nonresidential or mixed-use, floodproofed building meets the floodproofing criteria in Section 18.42.160.C.2.
- C. For a crawlspace foundation, location and total net area of foundation openings as required in 18.42.160.C.3 and detailed in FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008) and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993) and subsequent amendments and/or revisions thereto.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- E. All appropriate certifications listed in Section 18.42.140.~~E(D)~~ of this chapter; and.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.130 - Designation of the Floodplain Administrator.

The ~~public works director~~ City Engineer or his or her designee is appointed to administer, implement, and enforce this chapter ~~and by granting or denying~~ development permits in accord with its provisions.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.140 - Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review.

Review all development permit applications to determine ~~that~~ whether:

1. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding; ~~and~~
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill; and
5. All Letters of Map Revision (LOMRs) for flood control projects are approved prior to the issuance of building permits.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "Market Value."
2. Assure procedures are coordinated with other departments/divisions and implemented by city staff.

C. Review, ~~and~~ Use and Development of Any Other Base Flood Data.

When base flood elevation data has not been provided in accordance with Section 18.42.070, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer any section in this chapter. Any such information shall be submitted to the City Council for adoption.

All new developments located in an area without a base flood elevation specified on the FIRM shall provide the Floodplain Administrator with a proposed base flood elevation. A base flood elevation shall be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations" dated July 1995, and subsequent amendments and/or revisions thereto.

At the discretion of the Floodplain Administrator, the applicant may be required to provide a hydrologic and hydraulic engineering analysis that generates base flood elevations and floodway boundaries for the development proposal. The applicant shall be responsible for the peer review costs associated with the Floodplain Administrator's review of the flood analysis.

D. Notification of Other Agencies.

1. In alteration or relocation of a watercourse within the City of Morgan Hill:

- a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
 - b. Submit evidence of such notification to the ~~Federal Insurance Administration~~, Federal Emergency Management Agency (FEMA); and
 - c. Assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
2. Base Flood Elevation changes due to physical alterations:
- a. Within six months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
 - b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.
Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.
3. Changes in corporate boundaries:
Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.
- E. Documentation of Floodplain Development.
- Obtain and maintain for public inspection and make available as needed the following:
1. Certification required by Section 18.42.160.C.1 and Section 18.42.190 (lowest floor elevations);
 2. Certification required by Section 18.42.160.C.2 (elevation or floodproofing of nonresidential and mixed-use structures);
 3. Certification required by Sections 18.42.160.C.3 (wet floodproofing standard);
 4. Certification of elevation required by Section 18.42.180.~~A(B)~~ (subdivisions and other proposed development standards);
 5. Certification required by Section 18.42.200.~~B(A)~~ (floodway encroachments ~~lines~~);
 6. Reports required by Section 18.42.210(~~D~~) (mudflow standards);
 7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.
- F. Map Determinations.
- Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, ~~for example,~~ where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections ~~18.42.240, 18.42.245, 18.42.250~~18.42.150.

G. Remedial Action.

Take action to remedy violations of this chapter as specified in Section 18.42.080.

H. Biennial Report.

Complete and submit Biennial Report to FEMA.

I. Planning.

Assure city's General Plan is consistent with floodplain management objectives herein.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.150 - Appeals.

The City Council shall hear and decide appeals pursuant to ~~Chapter 18.64~~ Section 18.42.250, when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

Appeals shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by a fee, as established by resolution of the City Council, within ten (10) calendar days of the determination which is the cause for the appeal. The appeal application shall contain all grounds for the appeal and shall include a statement of the specific facts and all documentation regarding the appeal.

When an appeal has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the appeal.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.160 - Standards of Construction.

In all areas of special flood hazards, City permits will not be issued unless plans comply with the following standards:

A. Anchoring.

1. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All manufactured homes shall meet the anchoring standards of Section 18.42.190.

B. Construction Materials and Methods.

All new construction and substantial improvement of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;
2. Using methods and practices that minimize flood damage; ~~and~~
3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

4. If the new construction or substantial improvement is located within Zones AH or AO, it shall be constructed so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.
- C. Elevation and Floodproofing. (See Section 18.42.050, Definitions, for "new construction," "substantial damage" and "substantial improvement.")

1. Residential construction.

All new construction or substantial improvements of residential structures shall have the lowest floor, including basement as follows:

- a. In an AO zone, elevated above the highest adjacent grade to a height at least one foot above the depth number specified in feet on the FIRM ~~by at least one foot~~, or elevated at least three feet above the highest adjacent grade if no depth number is specified.
- b. In an A zone, without base flood elevations specified on the FIRM (unnumbered A zone), ~~the lowest floor shall be~~ elevated at least one foot above the base flood elevation, as determined under Section 18.42.140.C.
- c. In AE, AH and A1-30 zones, ~~the lowest floor shall be~~ elevated at least one foot above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered ~~professional~~ civil engineer or licensed surveyor, ~~or and~~ verified by the ~~community~~ Floodplain Administrator or city building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

2. Nonresidential and Mixed-use construction.

All new construction or substantial improvements of nonresidential or mixed-use structures shall either be elevated to conform with Section 18.42.160.C.1 or together with attendant utility and sanitary facilities:

- a. Be floodproofed below the elevation recommended under Section 18.42.160.C.1 so that the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- c. Be certified by a registered ~~professional~~ civil engineer or architect that the standards of ~~this Section~~ 18.42.160.C.2.a and b are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. Flood openings.

All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following minimum criteria:

~~Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration, Federal Emergency Management Agency, or~~

- a. Be certified by a registered ~~professional~~ civil engineer or architect; or

- b. For non-engineered openings:
 - 1) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2) The bottom of all openings shall be no higher than one foot above grade;
 - 3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and
 - 4) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater to directly enter.
- 4. Manufactured homes.
 - a. ~~shall also meet the standards in~~ See Section 18.42.190.
- 5. Garages and low-cost accessory structures.
 - a. Attached garages.
 - 1) A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, must be designed to allow for the automatic entry of floodwaters. See Section 18.42.160.C.3. Areas of the garage below the base flood elevation must be constructed with flood resistant materials. See Section 18.42.160.B.
 - 2) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below-grade parking areas, see FEMA Technical Bulletin 6 (Below-Grade Parking Requirements, 1993), and subsequent amendments and/or revisions thereto.
 - b. Detached garages and accessory structures.
 - 1) “Accessory structures” used solely for parking (two-car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 18.42.050, may be constructed such that its floor is below the base flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - i. Use of the accessory structure must be limited to parking or limited storage;
 - ii. The portions of the accessory structure located below the base flood elevation must be built using flood-resistant materials;
 - iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed a minimum of one foot above the base flood elevation;
 - v. The accessory structure must comply with the floodway encroachment provisions in Section 18.42.200; and
 - vi. The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with Section 18.42.160.C.3.
 - 2) Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 18.42.160.

6. Crawlspace construction.

This sub-section applies to buildings with crawlspaces up to two feet below grade. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered basements.

- a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered engineer;
- b. The crawlspace is an enclosed area below the base flood elevation and, as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. For guidance on flood openings, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008) and subsequent amendments and/or revisions thereto;
- c. Crawlspace construction is not permitted in V zones. Open pile or column foundations that withstand storm surge and wave forces are required in V zones;
- d. Portions of the building below the base flood elevation must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the base flood elevation; and
- e. Any building utility systems within the crawlspace must be elevated a minimum of one foot above base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. Requirements for all below-grade crawlspace construction, in addition to the above requirements, to include the following:
 - 1) The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG), shown as D in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);
 - 2) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point, shown as L in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);
 - 3) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace within a reasonable period of time after a flood event, not to exceed seventy two hours; and
 - 4) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.170 - Standards for Utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:

1. Infiltration of floodwaters into the systems; and
 2. Discharge from the systems into floodwaters.
- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.180 - Standards for Subdivisions and Other Proposed Development.

- A. ~~All preliminary new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is the lesser, shall:~~
1. Identify the Special Flood Hazard Areas (SFHA) and the elevation of the Base Flood Elevations (BFEs).
 2. ~~B. All subdivision plans will provide~~ Identify the elevations of lowest floors of all proposed structures and pads on the final plans.
 3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.
- B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.190 - Standards for Manufactured Homes.

- A. All manufactured homes that are placed or substantially improved, ~~within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map,~~ on sites located: (1) Outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:
1. ~~Outside of a manufactured home park or subdivision;~~
 2. ~~In a new manufactured home park or subdivision;~~

- ~~3. In an expansion to an existing manufactured home park or subdivision; or~~
- ~~4. In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood shall~~

1. Within a Special Flood Hazard Area (SFHA) on the city's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot ~~to or~~ above the base flood elevation and be securely ~~anchored~~ fastened to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within ~~Zones A1-30, AH, AE~~ a Special Flood Hazard Area (SFHA) on the community's Flood Insurance Rate Map that are not subject to the provisions of ~~paragraph 5.4 A Section 18.42.190.A~~ will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

1. Lowest floor of the manufactured home is at least one foot ~~or~~ above the base flood elevation; or
2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade ~~and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.~~

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the city building inspector and/or the Floodplain Administrator to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.195 - Standards for Recreational Vehicles.

- A. All recreational vehicles placed on sites within Zones ~~AE, AH and A1-30~~ AE, AH, and A1-30 ~~A1-30, AH, and AE~~ on the ~~community's~~ city's Flood Insurance Rate Map will either:
1. Be on the site for fewer than one hundred eighty consecutive days; or
 2. Be fully licensed and ready for highway use. ~~—a~~ a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 3. Meet the permit requirements of Sections 18.42.120, ~~18.42.130, 18.42.140 and 18.42.150~~ of this chapter and the elevation and anchoring requirements for manufactured homes in Section 18.42.190.A.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.200 - Floodways.

~~Located within areas of special flood hazard established in Section 18.42.070 are areas designated as floodways. Since the floodways is are an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:~~

- A. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones AE and A1-30, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill.
- B. Within an adopted regulatory floodway, prohibit encroachments, including fill, new construction, substantial improvement, and other new development unless certification by a registered professional civil engineer or architect is provided demonstrating that the proposed encroachments shall not result in any increase in the base flood elevation levels during the occurrence of the base flood discharge.
- C. If subsections A and B of this section are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Sections 18.42.160, 18.42.170, 18.42.180, 18.42.190, 18.42.195, 18.42.200, 18.42.210, and 18.42.220.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.205 - Engineered Fill.

All proposed developments with engineered fill within a Special Flood Hazard Area (SFHA) shall follow the guidelines for ensuring that structures built on fill are reasonably safe from flooding. See FEMA Technical Bulletin 10 (Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas are Reasonably Safe From Flooding, 2001), and subsequent amendments and/or revisions thereto.

18.42.210 - Mudslide (i.e., Mudflow) Prone Areas.

- A. The Floodplain Administrator shall review permits for proposed construction of other development to determine if it is proposed within a mudslide area.
- B. Permits shall be reviewed to determine that the proposed site and improvement will be reasonably safe from mudslide hazards. Factors to be considered in making this determination include but are not limited to the:
 - 1. Type and quality of soils;
 - 2. Evidence of groundwater or surface water problems;
 - 3. Depth and quality of any fill;
 - 4. Overall slope of the site; and
 - 5. Weight that any proposed development will impose on the slope.
- C. Within areas which may have mudslide hazards, the Floodplain Administrator ~~shall~~ shall require that:
 - 1. A site investigation and further review be made by persons qualified in geology and soils engineering;
 - 2. The proposed grading, excavations, new construction, and substantial improvement be adequately designed and protected against mudslide damages;
 - 3. The proposed grading, excavations, new construction, and substantial improvement not aggravate the existing hazard by creating either on-site or off-site disturbances; and
 - 4. Drainage, planting, watering, and maintenance not endanger slope stability.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.220 - Flood-related Erosion-prone Areas.

- A. The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
- D. Within ~~flood-related erosion-prone areas~~ Zone E on the Flood Insurance Rate Map, a setback is required for all new development from the ocean, lake, bay, riverfront, or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designed according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.240 - ~~Nature of variances.~~ Variances.

The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

~~The planning commission shall initially hear all requests for variances as outlined in Chapter 18.60 and Chapter 18.64 of the Morgan Hill Municipal Code.~~

A. Variances Requiring City Council Approval.

Requests for a variance shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by all required documentation and a fee, as established by resolution of the City Council.

When a variance request has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the variance request.

B. Administrative Variances.

The Floodplain Administrator shall approve or deny an application requesting an administrative variance after receipt of a complete application. Administrative variances may only be granted to existing structures with substantial improvements to allow the structure to deviate from certain higher standards in this chapter that exceed the minimum National Flood Insurance Program standards. Requests for an administrative variance must demonstrate that complying to the higher standards will pose a financial burden and/or will conflict with the city's architectural or aesthetic requirements.

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.245 – Appeal board 18.42.250 – Conditions for Variances.

The city council shall act as the appeal board and shall hear and decide the appeals and requests for variances from the requirements in this chapter. The appeal shall be considered by the city council at a public hearing to be held, noticed and conducted in accordance with the provisions in California Government Code Sections 65905(b), 65091, and Morgan Hill Municipal Code Chapter 18.64.

A. ~~In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:~~

- ~~1. Danger that materials may be swept onto other lands to the injury of others;~~
- ~~2. Danger of life and property due to flooding or erosion damage;~~
- ~~3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;~~
- ~~4. Importance of the services provided by the proposed facility to the community;~~
- ~~5. Necessity to the facility of a waterfront location, where applicable;~~
- ~~6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;~~
- ~~7. Compatibility of the proposed use with existing and anticipated development;~~
- ~~8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;~~
- ~~9. Safety of access to the property in time of flood for ordinary and emergency vehicles;~~
- ~~10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and~~
- ~~11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.~~

- A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 18.42.120, ~~18.42.130~~, ~~18.42.140~~, ~~18.42.150~~, ~~18.42.160~~, 18.42.170,

18.42.180, 18.42.190, 18.42.195, 18.42.200, 18.42.205, 18.42.210, and 18.42.220 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

- B. Variances do not need to be issued for any "accessory structures" (as defined in Section 18.42.050) within a special flood hazard area. All accessory structures shall meet the standards in Section 18.42.160.C.5.
- ~~C. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 18.42.050 of this chapter) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.~~
- C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means that the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.
- ~~E. Variances shall only be issued upon a:~~
 - ~~1. 1. Showing of good and sufficient cause;~~
 - ~~2. 2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 18.42.050 of this chapter) to the applicant; and~~
 - ~~3. 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 18.42.050 — see "Public safety or nuisance"), cause fraud or victimization (as defined in Section 18.42.050) of the public, or conflict with existing local laws or ordinances.~~
- E. Any applicant to whom a variance is granted by the City Council shall be given written notice over the signature of a city official that:
 - 1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage; and
 - 2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Santa Clara County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The applicant will be required to indemnify and hold harmless the City for any incident which may result from the issuance of the variance.
- F. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.
- ~~F. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of~~

~~subsections A through E of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.~~

~~G. Upon consideration of the factors of Section 18.42.240(.C) and the purposes of this chapter, the city council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter, and as permitted by California Government Code Section 65909.~~

(Ord. 1398 N.S. § 1 (part), 1998)

18.42.250 – ~~Conditions for variances.~~ 18.42.245 – Appeal Board.

The City Council shall act as the appeal board and shall hear and decide the appeals and non-administrative requests for variances from the requirements in this chapter. The appeal or non-administrative variance request shall be considered by the City Council at a public hearing to be held, noticed and conducted in accordance with the provisions in California Government Code Sections 65905(b), and 65091, and Chapter 18.64. Consideration shall be limited to the evidence and matters presented in the first instance to the Floodplain Administrator and to the specific grounds of the appeal or variance; provided, however, that the City Council may, by motion duly passed, elect in its discretion to grant a hearing de novo. The applicant shall have the burden of establishing cause why the action appealed from should be altered, reversed or modified, or why the variance should be granted. The decision of the City Council on the appeal or variance request shall be final and shall be effective on the date the decision is rendered.

- A. In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:
 1. Danger that materials may be swept onto other lands to the injury of others;
 2. Danger of life and property due to flooding or erosion damage;
 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 4. Importance of the services provided by the proposed facility to the community;
 5. Necessity to the facility of a waterfront location, where applicable;
 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. Compatibility of the proposed use with existing and anticipated development;
 8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- B. Variances shall only be issued upon a:
 1. Showing of good and sufficient cause;

2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 18.42.050 of this chapter) to the applicant; and
 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 18.42.050 - see "Public safety and nuisance"), cause fraud or victimization (as defined in Section 18.42.050) of the public, or conflict with existing local laws or ordinances.
- C. Variances may be issued for new construction, substantial improvements, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections A through ~~ED~~ of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.
- D. Upon consideration of the factors of Section 18.42.~~245.A-240(C)~~ and the purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter, and as permitted by California Government Code Section 65909.

(Ord. 1398 N.S. § 1 (part), 1998)

ORDINANCE NO. XXXX, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
REPEALING ORDINANCE NO. 1398 ENTITLED “FLOOD
DAMAGE PREVENTION ORDINANCE” IN ITS ENTIRETY
AND CREATING A NEW CHAPTER 15.80 UNDER TITLE 15
(BUILDINGS AND CONSTRUCTION) OF THE MORGAN
HILL MUNICIPAL CODE ENTITLED “FLOOD DAMAGE
PREVENTION”**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1: The existing Ordinance No. 1398, adopted June 17, 1998, entitled “Flood Damage Prevention Ordinance” is hereby repealed in its entirety; and,

SECTION 2: The Morgan Hill Municipal Code Chapter 15.80 entitled “Flood Damage Prevention” is hereby adopted to read as follows:

CHAPTER 15.80

FLOOD DAMAGE PREVENTION

Sections:

15.80.010 - Statutory Authorization.

The Legislature of the State of California has in Governmental Code Sections 65302, 65560, and 65800 conferred upon local government the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Morgan Hill adopts the following floodplain management regulations.

15.80.020 - Findings of Fact.

- A. The flood hazard areas of the City of Morgan Hill are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. When floodplains are developed without taking appropriate precautions, flood heights, frequencies, and velocities increase, causing a greater threat to humans, damage to property, destruction of natural floodplain functions and adverse impacts to water quality.
- C. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to the flood loss.

15.80.030 - Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the City of Morgan Hill to all publicly and privately owned land within flood prone, mudslide, or flood-related erosion areas. These regulations are designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

15.80.040 - Methods of Reducing Flood Losses.

In order to accomplish its purposes, this chapter includes methods and provisions to:

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

15.80.050 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure” means a structure that is either:

1. Solely for the parking of no more than 2 cars; or
2. A small, low cost shed for limited storage, less than 150 square feet and \$1,500 in value.

“Accessory Use” means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

“Adversely Affects” means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

“Area of Shallow Flooding” means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard”: See **“Special Flood Hazard Area (SFHA).”**

“Base Flood” means a flood which has a one percent (1%) chance of being equaled or exceeded in any given year (also called the **“One-Hundred-Year Flood”**). Base flood is the term used throughout this chapter.

“Base Flood Elevation (BFE)” means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year.

“Basement” means any area of the building having its lowest floor more than two feet subgrade, i.e., below ground level on all sides.

“Biennial Report” means the report completed by communities participating in the National Flood Insurance Program that describes the community’s progress in the previous two years in implementing floodplain management measures and on its needs for remapping and technical assistance. This report is submitted annually or biennially as determined by the administrator of the National Flood Insurance Program.

“Building”: See **“Structure.”**

“Conditional Letter of Map Revision (CLOMR)” means the comment from the Federal Emergency Management Agency (FEMA) on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective Flood Insurance Rate Map (FIRM), it indicates whether the project, if built as proposed, would be recognized by FEMA.

“Crawlspace” means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspaces having the lowest floor two feet or less below grade level on all sides shall not be considered a basement.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Encroachment” means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before June 18, 1980.

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood, Flooding, or Flood Water” means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and
2. The condition resulting from flood-related erosion.

“Flood Boundary and Floodway Map (FBFM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

“Floodplain or Flood-prone Area” means any land area susceptible to being inundated by water from any source. See **“Flooding.”**

“Floodplain Administrator” is the city official appointed by title to administer and enforce the floodplain management regulations.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008), Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993), and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993), and subsequent amendments and/or revisions thereto.

1. “Dry floodproofing” means floodproofing measures that are designed to prevent floodwaters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.
2. “Wet floodproofing” means floodproofing measures that minimize damage to a structure and its contents from floodwater that is allowed into the structure.

“Flood-related erosion” means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical level or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash

flood or an abnormal tidal surge, or by some similarly unusually and unforeseeable event which results in flooding.

“Flood-related erosion area” or “Flood-related erosion prone area” means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

“Flood-related erosion area management” means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as **“Regulatory Floodway.”**

“Floodway Encroachment Lines” means the lines marking the limits of floodways on federal, state and local floodplain maps.

“Floodway Fringe” is that area of the floodplain on either side of the “Regulatory Floodway” where encroachment may be permitted.

“Fraud and Victimization” as related to Sections 15.80.240, 15.80.245, and 15.80.250, Variances, of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

“Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

“Governing Body” is the local governing unit, i.e., City Council that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

“Hardship” as related to Sections 15.80.240, 15.80.245, and 15.80.250, Variances, of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance be exceptional, unusual, and peculiar to the

property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

“Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Historic Structure,” for floodplain management purposes, means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on the city’s master list of historic structures, provided this local inventory is consistent with state-approved or certified historic preservation programs as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

“Letter of Map Revision (LOMR)” means FEMA's modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

“Letter of Map Revision Based on Fill (LOMR-F)” means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

“Levee” means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

“Levee System” means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

“Lowest Floor” means the lowest floor of the lowest enclosed area, including basement. See **“Basement”** definition. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to the applicable non-elevation design requirements, including, but not limited to:

1. The flood openings standard in Section 15.80.160.C.3;
2. The anchoring standards in Section 15.80.160.A;
3. The construction materials and methods standards in Section 15.80.160.B; and
4. The standards for utilities in Section 15.80.170.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale; also see **“Existing Manufactured Home Park or Subdivision.”**

“Market Value” means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax assessed value of the structure as provided by the County Tax Assessor's office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty five percent (45%). In the event the cost of the improvement to the structure exceeds forty five percent (45%) of the current tax assessed value of the structure, the market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the Floodplain Administrator.

“Mean Sea Level” means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

“Mixed-use Structure” means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation with access to residential uses dry floodproofed.

“Mudslide” means a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain.

“Mudslide (i.e., mudflow) prone area” means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

“New Construction,” for floodplain management purposes, means structures for which the “start of construction” commenced on or after June 18, 1980, and includes any subsequent improvements to such structures.

“New manufactured Home Park or Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after June 18, 1980; also see **“Existing Manufactured Home Park or Subdivision.”**

“Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

“One-Hundred-Year Flood, or “100-year Flood”: See **“Base Flood.”**

“Principal Structure” means a structure used for the principal use of the property as distinguished from an accessory use.

“Public Safety and Nuisance” as related to Sections 15.80.240, 15.80.245, 15.80.250, Variances, of this chapter means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle” means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Regulatory Floodway”: See **“Floodway.”**

“Remedy a Violation” means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

“Repetitive Loss” means flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Sheet Flow Area”: See **“Area of Shallow Flooding.”**

“Special Flood Hazard Area (SFHA)” means an area in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, or AH.

“Start of Construction” includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

“Substantial Damage” means:

1. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred; or
2. Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”

“Substantial Improvement or Substantially Improved” means any combination of repairs, reconstruction, rehabilitation, addition, or other proposed new development of a structure taking place during a five-year period, the cumulative cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. For each structure, the five-year period begins on the date of the first improvement or repair of that structure subsequent to the effective date of the ordinance codified in this chapter. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

“Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

“Violation” means the failure of any structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

15.80.060 - Applicability.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Morgan Hill.

15.80.070 - Basis for Establishing the Areas of Special Flood Hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for the City of Morgan Hill dated December 1979 and accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) dated June 18, 1980, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain Administrator. The study, FIRMs, and FBFMs are on file at the City of Morgan Hill's Development Services Center located at 17575 Peak Avenue, Morgan Hill, CA 95037.

15.80.080 - Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

15.80.090 - Abrogation and Greater Restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

15.80.100 - Interpretation.

In the interpretation and application of this chapter, all provisions shall be

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.80.110 - Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will

occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Morgan Hill, the city council, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

15.80.115 – Severability.

This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

15.80.120 - Establishment of Development Permit.

A development permit shall be obtained before any construction or other development, including manufactured homes, begins within any area of special flood hazard established in Section 15.80.070. Application for a development permit shall be made on forms furnished by the Floodplain Administrator. The applicant shall provide the following minimum information:

- A. Plans in duplicate, drawn to scale, as required showing:
 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 4. Location of the regulatory floodway when applicable;
 5. Base flood elevation information as specified in Section 15.80.070 or Section 15.80.140.C;
 6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures - in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures; and
 7. Proposed elevation in relation to mean sea level to which any nonresidential or mixed-use structure will be floodproofed, as required in Section 15.80.160.C.2 and detailed in FEMA Technical Bulletin 3 (Non-Residential Floodproofing - Requirements and Certification, 1993) and subsequent amendments and/or revisions thereto.

- B. Certification from a registered civil engineer or architect that the nonresidential or mixed-use, floodproofed building meets the floodproofing criteria in Section 15.80.160.C.2.
- C. For a crawlspace foundation, location and total net area of foundation openings as required in 15.80.160.C.3 and detailed in FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of Enclosures, 2008) and Technical Bulletin 7 (Wet Floodproofing Requirements, 1993) and subsequent amendments and/or revisions thereto.
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- E. All appropriate certifications listed in Section 15.80.140.E.

15.80.130 - Designation of the Floodplain Administrator.

The City Engineer or his or her designee is appointed to administer, implement, and enforce this chapter by granting or denying development permits in accord with its provisions.

15.80.140 - Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review.

Review all development permit applications to determine whether:

1. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill; and
5. All Letters of Map Revision (LOMRs) for flood control projects are approved prior to the issuance of building permits.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering

requirements for substantial improvement and substantial damage, to include defining “Market Value.”

2. Assure procedures are coordinated with other departments/divisions and implemented by city staff.

C. Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided in accordance with Section 15.80.070, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer any section in this chapter. Any such information shall be submitted to the City Council for adoption.

All new developments located in an area without a base flood elevation specified on the FIRM shall provide the Floodplain Administrator with a proposed base flood elevation. A base flood elevation shall be obtained using one of two methods from the FEMA publication, FEMA 265, “Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations” dated July 1995, and subsequent amendments and/or revisions thereto.

At the discretion of the Floodplain Administrator, the applicant may be required to provide a hydrologic and hydraulic engineering analysis that generates base flood elevations and floodway boundaries for the development proposal. The applicant shall be responsible for the peer review costs associated with the Floodplain Administrator’s review of the flood analysis.

D. Notification of Other Agencies.

1. In alteration or relocation of a watercourse within the City of Morgan Hill:
 - a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
 - b. Submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and
 - c. Assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.
2. Base Flood Elevation changes due to physical alterations:
 - a. Within six months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

- b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the “start of construction” definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

3. Changes in corporate boundaries:

Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

E. Documentation of Floodplain Development.

Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 15.80.160.C.1 and Section 15.80.190 (lowest floor elevations);
2. Certification required by Section 15.80.160.C.2 (elevation or floodproofing of nonresidential and mixed-use structures);
3. Certification required by Sections 15.80.160.C.3 (wet floodproofing standard);
4. Certification of elevation required by Section 15.80.180.A (subdivisions and other proposed development standards);
5. Certification required by Section 15.80.200.B (floodway encroachments);
6. Reports required by Section 15.80.210 (mudflow standards);
7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.

F. Map Determinations.

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.80.150.

G. Remedial Action.

Take action to remedy violations of this chapter as specified in Section 15.80.080.

H. Biennial Report.

Complete and submit Biennial Report to FEMA.

I. Planning.

Assure city's General Plan is consistent with floodplain management objectives herein.

15.80.150 - Appeals.

The City Council shall hear and decide appeals pursuant to Section 15.80.250 when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

Appeals shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by a fee, as established by resolution of the City Council, within ten (10) calendar days of the determination which is the cause for the appeal. The appeal application shall contain all grounds for the appeal and shall include a statement of the specific facts and all documentation regarding the appeal.

When an appeal has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the appeal.

15.80.160 - Standards of Construction.

In all areas of special flood hazards, City permits will not be issued unless plans comply with the following standards:

A. Anchoring.

1. All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All manufactured homes shall meet the anchoring standards of Section 15.80.190.

B. Construction Materials and Methods.

All new construction and substantial improvement of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;

2. Using methods and practices that minimize flood damage;
 3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
 4. If the new construction or substantial improvement is located within Zones AH or AO, it shall be constructed so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.
- C. Elevation and Floodproofing. (See Section 15.80.050, Definitions, for "new construction," "substantial damage" and "substantial improvement.")

1. Residential construction.

All new construction or substantial improvements of residential structures shall have the lowest floor, including basement as follows:

- a. In an AO zone, elevated above the highest adjacent grade to a height at least one foot above the depth number specified in feet on the FIRM, or elevated at least three feet above the highest adjacent grade if no depth number is specified.
- b. In an A zone, without base flood elevations specified on the FIRM (unnumbered A zone), elevated at least one foot above the base flood elevation, as determined under Section 15.80.140.C.
- c. In AE, AH and A1-30 zones, elevated at least one foot above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed surveyor, and verified by the Floodplain Administrator or city building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

2. Nonresidential and Mixed-use construction.

All new construction or substantial improvements of nonresidential or mixed-use structures shall either be elevated to conform with Section 15.80.160.C.1 or together with attendant utility and sanitary facilities:

- a. Be floodproofed below the elevation recommended under Section 15.80.160.C.1 so that the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

- c. Be certified by a registered civil engineer or architect that the standards of Section 15.80.160.C.2.a and b are satisfied. Such certification shall be provided to the Floodplain Administrator.

3. Flood openings.

All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet or exceed the following minimum criteria:

- a. Be certified by a registered civil engineer or architect; or
- b. For non-engineered openings:
 - 1) Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2) The bottom of all openings shall be no higher than one foot above grade;
 - 3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and
 - 4) Buildings with more than one enclosed area must have openings on exterior walls for each area to allow floodwater to directly enter.

4. Manufactured homes.

- a. See Section 15.80.190.

5. Garages and low-cost accessory structures.

- a. Attached garages.
 - 1) A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, must be designed to allow for the automatic entry of floodwaters. See Section 15.80.160.C.3. Areas of the garage below the base flood elevation must be constructed with flood resistant materials. See Section 15.80.160.B.
 - 2) A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below-grade parking areas, see FEMA Technical Bulletin 6 (Below-Grade Parking Requirements, 1993), and subsequent amendments and/or revisions thereto.

b. Detached garages and accessory structures.

- 1) “Accessory structures” used solely for parking (two-car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 15.80.050, may be constructed such that its floor is below the base flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - i. Use of the accessory structure must be limited to parking or limited storage;
 - ii. The portions of the accessory structure located below the base flood elevation must be built using flood-resistant materials;
 - iii. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - iv. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed a minimum of one foot above the base flood elevation;
 - v. The accessory structure must comply with the floodway encroachment provisions in Section 15.80.200; and
 - vi. The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with Section 15.80.160.C.3.
- 2) Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 15.80.160.

6. Crawlspace construction.

This sub-section applies to buildings with crawlspaces up to two feet below grade. Below-grade crawlspace construction in accordance with the requirements listed below will not be considered basements.

- a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered engineer;
- b. The crawlspace is an enclosed area below the base flood elevation and, as such, must have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. For guidance on flood openings, see FEMA Technical Bulletin 1 (Openings in Foundation Walls and Walls of

Enclosures, 2008) and subsequent amendments and/or revisions thereto;

- c. Crawlspace construction is not permitted in V zones. Open pile or column foundations that withstand storm surge and wave forces are required in V zones;
- d. Portions of the building below the base flood elevation must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the base flood elevation; and
- e. Any building utility systems within the crawlspace must be elevated a minimum of one foot above base flood elevation or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions.
- f. Requirements for all below-grade crawlspace construction, in addition to the above requirements, to include the following:
 - 1) The interior grade of a crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade (LAG), shown as D in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);
 - 2) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point, shown as L in figure 3 of FEMA Technical Bulletin 11 (Crawlspace Construction for Buildings Located in Special Flood Hazard Areas, 2001);
 - 3) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace within a reasonable period of time after a flood event, not to exceed seventy two hours; and
 - 4) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

15.80.170 - Standards for Utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 1. Infiltration of floodwaters into the systems; and
 2. Discharge from the systems into floodwaters.

- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

15.80.180 - Standards for Subdivisions and Other Proposed Development.

- A. All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is the lesser, shall:
1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFEs).
 2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans.
 3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.
- B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

15.80.190 - Standards for Manufactured Homes.

- A. All manufactured homes that are placed or substantially improved, on sites located: (1) Outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:
1. Within a Special Flood Hazard Area (SFHA) on the city's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- B. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within a Special Flood Hazard Area (SFHA) on the city's Flood Insurance Rate Map that are not subject to the provisions of Section 15.80.190.A will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:
1. Lowest floor of the manufactured home is at least one foot above the base flood elevation; or
 2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the city building inspector and/or the Floodplain Administrator to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

15.80.195 - Standards for Recreational Vehicles.

- A. All recreational vehicles placed on sites within Zones AE, AH and A1-30 on the city's Flood Insurance Rate Map will either:
1. Be on the site for fewer than one hundred eighty consecutive days; or
 2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 3. Meet the permit requirements of Sections 15.80.120 of this chapter and the elevation and anchoring requirements for manufactured homes in Section 15.80.190.A.

15.80.200 - Floodways.

Since floodways are an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones AE and A1-30, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the City of Morgan Hill.
- B. Within an adopted regulatory floodway, prohibit encroachments, including fill, new construction, substantial improvement, and other development unless certification by a

registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in the base flood levels during the occurrence of the base flood discharge.

- C. If subsections A and B of this section are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Sections 15.80.160, 15.80.170, 15.80.180, 15.80.190, 15.80.195, 15.80.200, 15.80.210, and 15.80.220.

15.80.205 - Engineered Fill.

All proposed developments with engineered fill within a Special Flood Hazard Area (SFHA) shall follow the guidelines for ensuring that structures built on fill are reasonably safe from flooding. See FEMA Technical Bulletin 10 (Ensuring that Structures Built on Fill In or Near Special Flood Hazard Areas are Reasonably Safe From Flooding, 2001), and subsequent amendments and/or revisions thereto.

15.80.210 - Mudslide (i.e., Mudflow) Prone Areas.

- A. The Floodplain Administrator shall review permits for proposed construction of other development to determine if it is proposed within a mudslide area.
- B. Permits shall be reviewed to determine that the proposed site and improvement will be reasonably safe from mudslide hazards. Factors to be considered in making this determination include but are not limited to the:
 1. Type and quality of soils;
 2. Evidence of groundwater or surface water problems;
 3. Depth and quality of any fill;
 4. Overall slope of the site; and
 5. Weight that any proposed development will impose on the slope.
- C. Within areas which may have mudslide hazards, the Floodplain Administrator shall require that:
 1. A site investigation and further review be made by persons qualified in geology and soils engineering;
 2. The proposed grading, excavations, new construction, and substantial improvement be adequately designed and protected against mudslide damages;
 3. The proposed grading, excavations, new construction, and substantial improvement not aggravate the existing hazard by creating either on-site or off-site disturbances; and

4. Drainage, planting, watering, and maintenance not endanger slope stability.

15.80.220 - Flood-related Erosion-prone Areas.

- A. The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
- D. Within flood-related erosion-prone areas, a setback is required for all new development from the ocean, lake, bay, riverfront, or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designed according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

15.80.240 - Variances.

The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

A. Variances Requiring City Council Approval.

Requests for a variance shall be submitted in writing to the Floodplain Administrator by an applicant on an official City application form accompanied by all required documentation and a fee, as established by resolution of the City Council.

When a variance request has been filed, the Floodplain Administrator shall prepare a report on the matter, including all of the application materials submitted, and schedule the matter for City Council hearing within 90 days of receiving the variance request.

B. Administrative Variances.

The Floodplain Administrator shall approve or deny an application requesting an administrative variance after receipt of a complete application. Administrative variances may only be granted to existing structures with substantial improvements to allow the structure to deviate from certain higher standards in this chapter that exceed the minimum National Flood Insurance Program standards. Requests for an administrative variance must demonstrate that complying to the higher standards will pose a financial burden and/or will conflict with the city's architectural or aesthetic requirements.

15.80.245 - Conditions for Variances.

- A. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing that the procedures of Sections 15.80.120, 15.80.140, 15.80.160, 15.80.170, 15.80.180, 15.80.190, 15.80.195, 15.80.200, 15.80.205, 15.80.210, and 15.80.220 of this chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- B. Variances do not need to be issued for any "accessory structures" (as defined in Section 15.80.050) within a special flood hazard area. All accessory structures shall meet the standards in Section 15.80.160.C.5.
- C. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means that the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.
- E. Any applicant to whom a variance is granted by the City Council shall be given written notice over the signature of a city official that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars for one hundred dollars of insurance coverage; and
2. Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Santa Clara County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The applicant will be required to indemnify and hold harmless the City for any incident which may result from the issuance of the variance.

- F. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

15.80.250 - Appeal Board.

The City Council shall act as the appeal board and shall hear and decide the appeals and non-administrative requests for variances from the requirements in this chapter. The appeal or non-administrative variance request shall be considered by the City Council at a public hearing to be held, noticed and conducted in accordance with the provisions in California Government Code Sections 65905(b), and 65091. Consideration shall be limited to the evidence and matters presented in the first instance to the Floodplain Administrator and to the specific grounds of the appeal or variance; provided, however, that the City Council may, by motion duly passed, elect in its discretion to grant a hearing de novo. The applicant shall have the burden of establishing cause why the action appealed from should be altered, reversed or modified, or why the variance should be granted. The decision of the City Council on the appeal or variance request shall be final and shall be effective on the date the decision is rendered.

- A. In passing upon requests for variances, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the:
 1. Danger that materials may be swept onto other lands to the injury of others;
 2. Danger of life and property due to flooding or erosion damage;
 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 4. Importance of the services provided by the proposed facility to the community;
 5. Necessity to the facility of a waterfront location, where applicable;
 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

7. Compatibility of the proposed use with existing and anticipated development;
 8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- B. Variances shall only be issued upon a:
1. Showing of good and sufficient cause;
 2. Determination that failure to grant the variance would result in exceptional "hardship" (as defined in Section 15.80.050 of this chapter) to the applicant; and
 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (as defined in Section 15.80.050 - see "Public safety and nuisance"), cause fraud or victimization (as defined in Section 15.80.050) of the public, or conflict with existing local laws or ordinances.
- C. Variances may be issued for new construction, substantial improvements, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of subsections A through D of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.
- D. Upon consideration of the factors of Section 15.80.245.A and the purposes of this chapter, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter, and as permitted by California Government Code Section 65909.

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Morgan Hill hereby declares that it would have passed and adopted this Ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4: This Ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this Ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

The foregoing ordinance was introduced and the title thereof read at a regular meeting of the City Council of the City of Morgan Hill held on the ____ day of _____ 2017, and was finally adopted at a regular meeting of said Council on the ____ day of _____ 2017, and said ordinance was duly passed and adopted in accordance with law.

PASSED AND ADOPTED by the City Council of Morgan Hill at the regular meeting held on the __th day of _____, 2017 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

Effective Date: [date]

⌘ **CERTIFICATE OF THE CITY CLERK** ⌘

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____ 2017.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



Morgan Hill City Council Meeting – September 6, 2017
***INTRODUCE AMENDMENT TO MUNICIPAL CODE REGULATING
ACTIVITIES OCCURRING ON PUBLIC PROPERTY INCLUDING
DRONE USE***
Agenda Item: 10

Purpose of Update

- Add regulations for use of public property not previously addressed in the Municipal Code
- Allow enforcement of rules in the Parking Structure
- Establish and restrict locations for drone takeoff on public property

Policy Question

What activities should be restricted on properties owned by the City?

Code Updates

- Code for park rules already exists – 12.20.60
- New sections establish rules for:
 - Parking facilities (including the parking structure) - 12.20.064
 - Streets and sidewalks -12.20.067
 - Buildings and facilities – 12.20.62

Existing Code Relating to Drone Use

- Current code restricts drones from taking off in parks
- Current code does not address drones taking off from streets, sidewalks or parking facilities

Proposed Code Update Relating to Drone Use

- Would allow drones to take off from parks designated by the City Manager
 - Staff initially propose:
Community Park and Galvan Park
- Prohibits drones from taking off in all other public areas without a permit
(Permits would be issued in conjunction with events)

Parks and Recreation Commission

- Not supportive of drone use in public parks
- Formal motion to study a City-wide registration process for all drone use on both public and private property

Recommendation

- That the Council move forward with the proposed ordinance
- Staff closely monitor any issues that arise from drone use at the two parks and could quickly disallow use if the problems should arise

REVISIONS TO FLOOD DAMAGE PREVENTION ORDINANCE

City Council Meeting
September 6, 2017
Agenda Item #11



RECOMMENDATION

Introduce a New Ordinance

- Repealing Ordinance 1398 (Flood Damage Prevention Ordinance); and
- Creating a new Chapter 15.80 (Flood Damage Prevention) under Title 15 (Buildings & Construction)

PRIOR FLOOD ORDINANCE CHANGES

6/17/98

Ordinance No.
1398

2/17/88

Ordinance
No. 858

6/18/80

Ordinance
No. 522
(Original
Ordinance)

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)



FEMA



- City of Morgan Hill has been NFIP participant since June 18, 1980
- The NFIP:
 - enables property owners to purchase flood insurance
 - requires enforcement of floodplain management regulations

NFIP PARTICIPATING COMMUNITIES

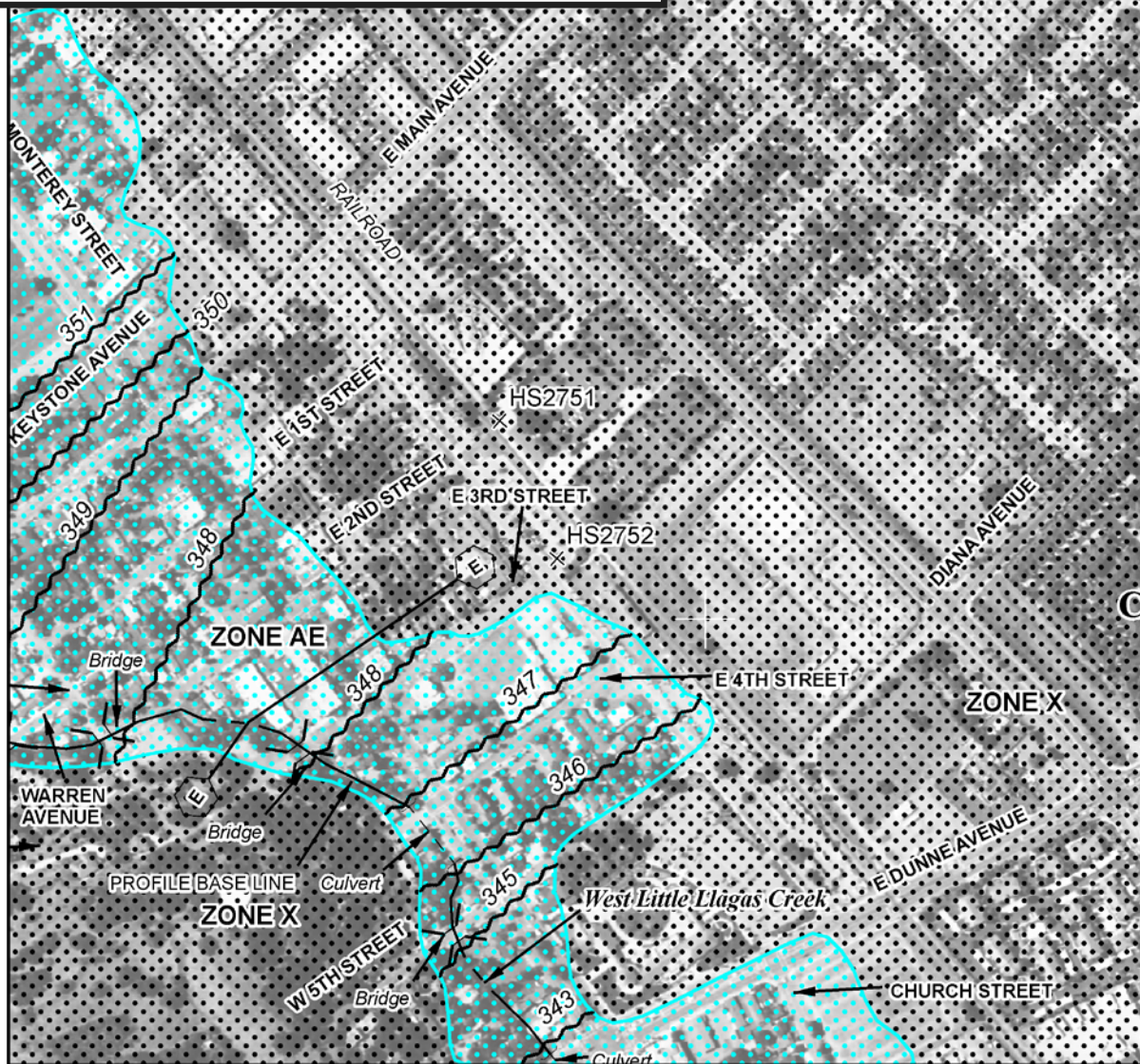


527 in CA



22,000+
nationwide

FEMA FLOOD INSURANCE RATE MAP (FIRM)



MAP SCALE 1" = 500'



NFIP

PANEL 0444H

FIRM

FLOOD INSURANCE RATE MAP

SANTA CLARA COUNTY,
CALIFORNIA
AND INCORPORATED AREAS

PANEL 444 OF 830

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
MORGAN HILL, CITY OF	060346	0444	H
SANTA CLARA COUNTY	060337	0444	H

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
06085C0444H

EFFECTIVE DATE
MAY 18, 2009

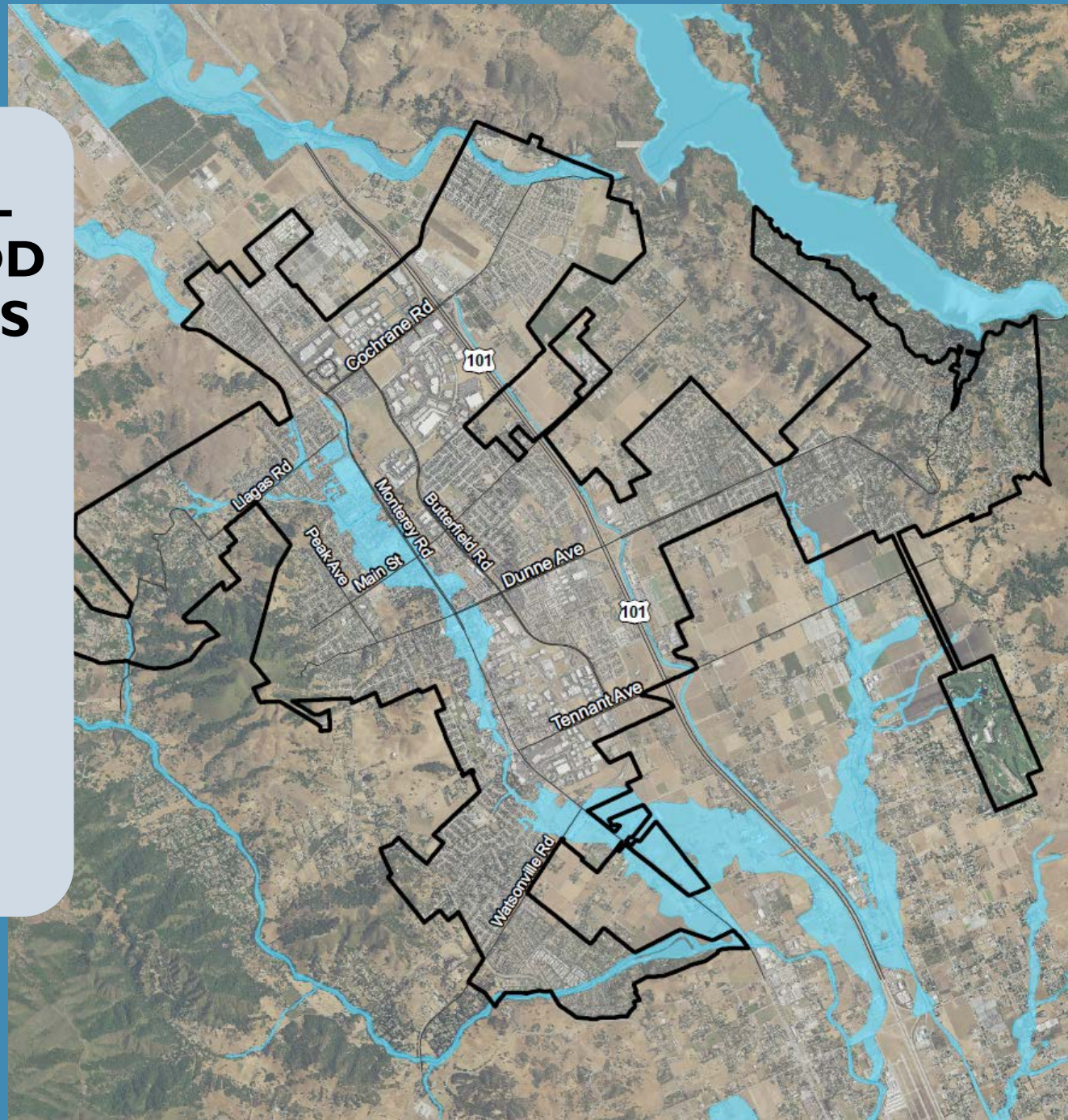
Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

CITY OF MORGAN HILL 100-YEAR FLOOD HAZARD AREAS

Approximately
1,600
structures

595 acres in
100-year
floodplain



PROPOSED ORDINANCE REVISIONS

- I. Reflects changes identified in FEMA Community Assistance Visit
- II. Provides modifications to gain additional Community Rating System (CRS) credits
- III. Includes standards for other construction types
- IV. Contains procedures to assist staff with implementation & enforcement
- V. Conforms to California Model Floodplain Management Ordinance

COMMUNITY RATING SYSTEM (CRS) PROGRAM

5/1/03

Date the
City
joined the
CRS
Program

15%

Premium
discount
for
Morgan
Hill policy
holders in
100-year
floodplain

\$133

Average
savings
per policy

\$71,967

Total annual
savings



RECOMMENDATION

Introduce a New Ordinance

- Repealing Ordinance 1398 (Flood Damage Prevention Ordinance); and
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Subject: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PUBLIC WORKSHOP, AND/OR PRIVATE RETREAT---Fw: County Board of Supervisors - Review of HSR Alignments - Next Tuesday - August 29th

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: john.lang@morganhill.ca.gov; steve.tate@morganhill.ca.gov; allcouncilmembers@ci.gilroy.ca.us; president@gilroyedc.org; shawna.freels@ci.gilroy.ca.us; askmike@garlic.com; ehoward1965@gmail.com; gary@custom-1.com; sbcsuper@supervisor.co.san-benito.ca.us; info@sanbenitocog.org; senator.cannella@senate.ca.gov; mmoore@morganhilltimes.com; ignaciovelazquez@hotmail.com; casey@caseylucius.com; bkava@newsmedia.com; rhernandezcattani@newsmedia.com; jon@hjta.org; eddie.mendoza@mail.house.gov; mcclintock@tommcclintock.com; areli.rios@mail.house.gov;

Date: Monday, August 28, 2017 9:39 AM

Dear Sir/Madam,

Please add this for public comment. Thank you.

Joseph P. Thompson, Esq.

Past-Chair, Legislation Committee, Transportation Lawyers Assn.

Gilroy

(408) 848-5506

e-Mail: TransLaw@PacBell.Net

PUBLIC COMMENT

AGENDA DATE: 09/06/17

SUPPLEMENTAL # 1

On Monday, August 28, 2017 9:35 AM, Joseph Patrick Thompson <translaw@pacbell.net> wrote:

Ah Mon Ami,

If we insist on doing this to ourselves, why don't we plan to put enough UPS, Fedex and Postal Service tonnage aboard, or into the consist mix daily, to break even? Think about the bellies of those jumbo jets, with all that freight revenue. Probably reminds you of the bullion and mail boxes on the Wells Fargo Stage. Even Amtrak moved some revenue freight loads. Does Railway Express Agency ring any faint bells? Does anyone remember what Lincoln said to Gen. Granville Dodge at the White House in 1864, which Dodge recites in his "How We Built the Transcontinental Railroad." It was those Section 22 rates for government freight, in the old Interstate Commerce Act, which made the land grant railroads profitable from the taxpayers point of view. It used to be unconstitutional in California, according to our Court of Appeals, to require a carrier to operate at a loss, but today that rule of law is no longer followed, and so we witness hemorrhaging fiascoes kept running by taxpayers.

Instead of taxpayers' subsidies, why not learn from history? Caveat viator.

Joseph P. Thompson

Gilroy, California

PS,

For background, I traced USA transport policy from the Northwest Ordinance to federal ISTEA reauthorization legislation in my paper published by Transportation Law Journal, vol. 25, pp. 87-etseq. (1997). Since then, the hemorrhaging has worsened, as the tax subsidies have increased.

Joe

On Monday, August 28, 2017 7:36 AM, John Lang <John.Lang@morganhill.ca.gov> wrote:

Hi Folks

Passing along some information from the Santa Clara County Board of Supervisors related to High Speed Rail. They will be hearing an item on High Speed Rail as it relates to South County.

The County Board of Supervisors will review the High Speed Rail project next Tuesday (August 29th) and provide feedback to HSR regarding alignments with respect to the County's interests. Below is a link to the Board of Supervisors Agenda and the Report

BOS Agenda (Item #12) - http://sccgov.ig2.com/Citizens/Detail_Meeting.aspx?ID=8501
Staff Report - [http://sccgov.ig2.com/Citizens/Detail_Legifile.aspx?
Frame=SplitView&MeetingID=8501&MediaPosition=&ID=86818&CssClass=](http://sccgov.ig2.com/Citizens/Detail_Legifile.aspx?Frame=SplitView&MeetingID=8501&MediaPosition=&ID=86818&CssClass=)

The Board meeting is broadcast online if you'd like to follow, you are also welcome to attend.

You have expressed interest in receiving information on High Speed Rail and this information is being shared with you for that purpose.

Sincerely,

John Lang

John Lang

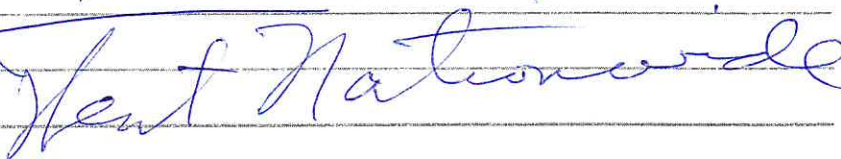
Economic Development Coordinator
17575 Peak Avenue
Morgan Hill, CA 95037
408.310.4652
john.lang@morganhill.ca.gov
@CityofMorganHil @408jlang

Subject: Fw: County Board of Supervisors - Review of HSR Alignments - Next Tuesday - August 29th

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: transport-policy@yahoogroups.com;

Date: Monday, August 28, 2017 9:35 AM



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[Frame=SplitView&MeetingID=8501&MediaPosition=&ID=86818&CssClass=](http://sccgov.igm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=8501&MediaPosition=&ID=86818&CssClass=)

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John Lang

John Lang

Economic Development Coordinator

17575 Peak Avenue
Morgan Hill, CA 95037
408.310.4652
john.lang@morganhill.ca.gov
@CityofMorganHil @408jlang



CITY OF MORGAN HILL

Regular Meeting Agenda

City Council

Steve Tate - Mayor

Larry Carr - Mayor Pro Tem

Rich Constantine - Council Member

Caitlin Jachimowicz - Council Member

Rene Spring - Council Member

Wednesday, September 6, 2017 7:00 PM

Council Chamber

17555 Peak Avenue, Morgan Hill, CA 95037

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 P.M. unless extended by a majority of the City Council.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

(Minutes Clerk Gonzalez)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Carr

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming the month of September as Emergency Preparedness Month

Proclaiming the month of September 15, 2017 to October 15, 2017 as National Hispanic Heritage Month

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. REALLOCATION OF PART-TIME HUMAN RESOURCES ASSISTANT POSITION TO FULL-TIME

Recommendation:

Approve reallocation of Part-Time Human Resources Assistant Position to Full-Time (.50 Full-Time Equivalent (FTE) to 1.0 FTE).

2. AWARD MORGAN HILL PLAYHOUSE SEATING REPLACEMENT PROJECT

Recommendation:

1. Award contract to Seating Concepts, LLC for the removal and replacement of all seats in the Community Playhouse in the amount of \$82,489.94;
2. Authorize the expenditure of construction contingency funds not to exceed \$7,510.06; and
3. Authorize the City Manager to execute and administer that certain contract with Seating Concepts, LLC.

3. REJECT BIDS FOR GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

Recommendation:

Reject bids for the Galvan Park Handball Court Improvements Project and direct staff to re-bid the project with design amendments.

4. FIRST AMENDMENT TO AGREEMENT WITH ACCELA, INC.

Recommendation:

Authorize the City Manager to execute a First Amendment to Consultant Agreement with Accela, Inc. for total compensation of \$58,560 for legislative management services for the initial two years.

5. ADOPT ORDINANCE 2258, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTER 1.16 OF TITLE 1, OF THE MORGAN HILL MUNICIPAL CODE REGARDING ELECTIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2258, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT ORDINANCE 2259, NEW SERIES, AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 15.37 (ELECTRIC VEHICLE CHARGING STATION PERMITTING) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

Recommendation:

Waive the reading, adopt Ordinance No. 2259, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE THE AUGUST 23, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE AUGUST 24, 2017 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. DOWNTOWN PARKING STRUCTURE SAFETY ENHANCEMENT

Recommendation:

1. Adopt resolution appropriating \$200,000 from the Public Facilities Fund (346) for improvements within the Parking Structure;
2. Authorize the City Manager to negotiate, execute, and administer agreements up to \$200,000 for parking structure improvements; and
3. Direct the City Manager to provide a full report to the City Council on actions implemented and the associated agreements for services and materials.

Estimated Time: 15 Minutes

10. INTRODUCE AMENDMENT TO MUNICIPAL CODE REGULATING ACTIVITIES OCCURRING ON PUBLIC PROPERTY INCLUDING DRONE USE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance regulating activities on public property.

Estimated Time: 20 Minutes

11. REVISIONS TO CITY'S FLOOD DAMAGE PREVENTION ORDINANCE

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce ordinance.

Estimated Time: 15 Minutes

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority:	Pursuant to Government Code Section 54956.9(d)(1)
Case Name:	Morgan Hill Hotel Coalition, et al. v. City of Morgan Hill
Case Number:	Santa Clara County Superior Court Case No: 16-CV-292595 Court of Appeal, Sixth Appellate District Case No: H043426 Supreme Court Case No: S243042

RECONVENE

CLOSED SESSION ANNOUNCEMENT

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting



Sustainable Morgan Hill Vision

Morgan Hill is a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage

2017 STRATEGIC PRIORITIES

High Speed Rail

Inclusiveness

Infrastructure

Regional Initiatives

Telecommunications

2017 STRATEGIC PRIORITIES:



High Speed Rail

The City of Morgan Hill will directly advocate for our community's needs through our communications, discussions, and decisions. We will continue to engage the community, the High Speed Rail Authority, our state and federal legislators, and other regional agencies to mitigate negative impacts and convey our position that the High Speed Rail Authority should only use the existing Highway 101 right-of-way to avoid all impacts to residents, schools, and businesses. Should the Authority decide the 101 right-of-way is not feasible, we will strongly advocate for the route with the least impact on Morgan Hill.



Inclusiveness

We will celebrate the diversity, history, and culture of our community. Through City Council workshops, community meetings, and researching successes in other communities, the City will listen to and collaborate with the community to define how inclusiveness will be further woven into our community's fabric and to increase public participation. The City's communications, services, public spaces, and projects will embrace all community members as partners, advancing our vision of being a socially responsible community.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs initially by updating its 2014 infrastructure study to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for the Santa Teresa extension and road maintenance. We will continue to work closely with our community to inform them of the needs and engage them to find an affordable and sustainable solution.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. This regional involvement will include, but not be limited to, partnering with the League of California Cities, Valley Transportation Authority, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



Telecommunications

The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Development Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure. The plan will be used to signal Morgan Hill's support for business expansion.