



Special - Regular Meeting Agenda
City Council

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

Wednesday, July 18, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

**(5:30 P.M. Closed Session and Residential Development Control System (RDSC)
Workshop/ 7:00 P.M. Regular Meeting)**

***A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting
a closed session and a workshop.***

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

CLOSED SESSION ANNOUNCEMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

Number of Cases: One (1)

RECONVENE

RDCS WORKSHOP

The purpose of the workshop is to discuss implementation measures within the Residential Development Control System (RDCS) and their effect on the City's efforts to meet the assigned Regional Housing Needs Allocation (RHNA).

RDCS WORKSHOP

REGULAR MEETING

7:00 P.M.

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.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

SIGN ETHICS POSTER

CITY ATTORNEY'S REPORT

OTHER REPORTS

RECOGNITION

Recognition of community partners for their contributions to the 2018 Amgen Tour of California and City's acceptance of gift from Specialized Bicycle Components.

AMGEN RECOGNITIONS

PRESENTATIONS

YAC PRESENTATION- ASSET #27- EQUALITY & SOCIAL JUSTICE

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. APPROVE RULES FOR THE CONDUCT OF PLANNING COMMISSION MEETINGS

Recommendation:

Approve the Rules for the Conduct of Planning Commission Meetings.

2. TWO RESOLUTIONS AUTHORIZING ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT APPLICATIONS

Recommendation:

Adopt two resolutions approving the following actions:

1. Authorizing staff to prepare and submit an Active Transportation Program (ATP) Grant Application to both the California Transportation Commission/California Department of Transportation (CTC/Caltrans) and to the Metropolitan Transportation Commission (MTC) for implementation of the Morgan Hill Safe Routes to School Action plan and related infrastructure improvements; and
2. Authorizing the City Manager to negotiate and execute the ATP grant agreement and other documents, reports, forms, and agreements related to the performance of the identified projects.

3. SCHOOL RESOURCE OFFICER AGREEMENT 2018-2019

Recommendation:

Authorize Approval of Fiscal Year 2018-2019 School Resource Officer Memorandum of Understanding with Morgan Hill Unified School District.

4. ACQUISITION OF PROPERTY (KERR) APN 767-05-024 FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution approving the purchase of a portion of APN 767-05-024 for \$11,000 plus escrow and closing costs from Susan L. Kerr and Robert A. Kerr for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

5. ACCEPTANCE OF GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

Recommendation:

1. Accept as complete the Galvan Park Handball Court Improvements Project in the final amount of \$512,031;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file the said Notice of Completion with the County Recorder's Office.

6. ACCEPT OAK CANYON BOOSTER STATION REHABILITATION PROJECT

Recommendation:

1. Accept as complete the Oak Canyon Booster Station Rehabilitation Project in the final amount of \$1,721,585;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

7. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – CALLE SIENA - TRACT NO. 10293

Recommendation:

1. Accept the subdivision public improvements for Calle Siena – Tract No. 10293;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the Recorder of Santa Clara County.

8. FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2B - TRACT NO. 10457

Recommendation:

1. Approve the Final Map;
2. 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
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

9. APPROVE CONSTRUCTION CONTINGENCY INCREASE FOR BOYS RANCH WELL #2A & JACKSON WELL #3 PROJECT

Recommendation:

Adopt resolution approving the following actions:

1. Approve construction contingency increase of 10% (\$128,123) with Conco West, Inc. for the Boys Ranch Well #2A and Jackson Well #3 Project; and
2. Approve an amendment to the City's Fiscal Year 18-19 budget for \$128,123 from the Water Operations CIP Fund Balance (653).

10. APPROVAL OF MICROSOFT ENTERPRISE AGREEMENT EXPENDITURES

Recommendation:

Authorize the expenditure of not to exceed \$81,321.89 and \$80,000.00 for the second and third years, respectively, of the existing Microsoft Enterprise Agreement to Insight Public Sector, Inc.

11. AWARD PEST CONTROL MAINTENANCE SERVICE AGREEMENT

Recommendation:

1. Award a two-year contract to Animal Damage Management, Inc. in the amount of \$70,320; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Animal Damage Management, Inc.

12. PROFESSIONAL SERVICE AGREEMENTS WITH CSG CONSULTANTS, INC. AND HARRIS & ASSOCIATES, INC. FOR ON-CALL LAND DEVELOPMENT ENGINEERING PLAN REVIEW AND TECHNICAL SUPPORT SERVICES

Recommendation:

Authorize the City Manager to execute two agreements; one with with CSG Consultants Inc. and one with Harris & Associates, Inc. for \$161,500 each, with a \$48,450 contingency to be specifically authorized by the City Manager, for a total contract amount not to exceed \$209,950 each with a combined total for both two-year agreements not exceeding the budgeted amount of \$439,000.

13. MAY 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

14. APPROVE THE JUNE 20, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

15. APPROVE PLACING A TRANSIENT OCCUPANCY TAX (TOT) INCREASE ON THE NOVEMBER 2018 BALLOT AND PROVIDE DIRECTION REGARDING THE ESTABLISHMENT OF A TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)

Recommendation:

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a 1% increase to the transient occupancy tax for general revenue purposes and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet;
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters; and
7. Determine whether to direct staff to complete the steps to establish a TBID.

Estimated Time: 90 Minutes

16. APPROVE BALLOT MEASURE FOR APPOINTIVE CITY CLERK AND CITY TREASURER

Recommendation:

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of seeking voter approval for appointed City Clerk and City Treasurer positions and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Adopt resolution approving an amendment to the Fiscal Year 2018-19 budget to appropriate \$52,300 to the elections budget (010.2420.42231) for this ballot measure;
4. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
5. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

Estimated Time: 30 Minutes

17. APPROVE PROPOSED BALLOT MEASURE REGARDING THE TAXATION OF CANNABIS

Recommendation:

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a cannabis business tax ordinance and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

Estimated Time: 45 Minutes

OTHER BUSINESS

18. INCLUSIONARY HOUSING ORDINANCE

Recommendation:

1. Waive the First and Second Reading of the Ordinance; and
2. Introduce Ordinance.

Estimated Time: 60 Minutes

19. RESPONSE TO 2017-2018 CIVIL GRAND JURY REPORT

Recommendation:

1. Accept report and response to the Santa Clara County Civil Grand Jury Report, "Police and the Mentally Ill; Improving Outcomes"; and
2. Authorize the City Manager to send the response letter.

Estimated Time: 10 Minutes

20. VOTING DELEGATES FOR THE 2018 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

Recommendation:

1. Appoint voting delegate and up to two (2) alternate voting delegates to the League of California Cities' Annual Conference; and
2. Direct the Clerk's team to complete and forward the voting delegate form to the League of California Cities.

Estimated Time: 5 Minutes

21. COMMISSION FISCAL YEAR 18/19 WORK PLANS

Recommendation:

1. Approve the proposed Parks and Recreation Commission FY 2018/19 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2018/19 Work Plan.

Estimated Time: 10 Minutes

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 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 safe, inclusive, socially responsible, environmentally conscious, and economically sound community.

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 ·
Enhancing Diversity and Inclusiveness

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

The City of Morgan Hill will tell our story through outreach and by working closely with our community in presenting our vision, priorities, and financial needs, and by engaging citizens and business owners to find affordable and sustainable solutions. The City's communications, services, public spaces, and projects will embrace all community members as partners, encouraging public participation.



Economic Development and Telecommunications

The Economic Blueprint will continue to be implemented, with a primary goal of attracting jobs and investment into our community. 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 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 with private sector partnerships. The plan will be used to signal Morgan Hill's support for business expansion.



Financial Stewardship

We will be financial stewards of the City's assets to ensure long-term fiscal sustainability. New revenue sources, including a possible tax measure, will be considered to fund increasing costs to deliver services and complete infrastructure projects. The City will closely manage its expenditures to maintain its general fund reserve. The labor contracts will be negotiated using the City's adopted Employee Compensation Guiding Principles.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs 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 transportation projects and road maintenance. For High Speed Rail, we will strongly advocate for the route with the least impact on Morgan Hill.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. A regional approach will be employed to address many priorities, including but not limited to, homelessness, animal services, teen suicide, High Speed Rail, and land use (Catholic High School, Outdoor Sports Center, agricultural preservation, and city limits). This regional involvement will include partnering with the League of California Cities, Valley Transportation Authority, Caltrain, 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.



July 18, 2018 City Council Residential Development Control System Workshop



Communication: RDCCS Workshop (RDCCS WORKSHOP)

Multi-Year Allotments



- Section 18.78.140 Project Phasing allows the distribution of allotments awarded to a single project over multiple years
- Allows high quality projects constructed over multiple years to compete one time for allotments
- Adopted with the first year of Measure S in mid 2017 - in advance of the first Housing Package of Bills adopted by the State
- Jan 2018 - change in Regional Housing Needs Allocation (RHNA) from demonstration of capacity to required production

Multi-Year Allotments



- City determined that to meet RHNA – 193 Very Low Income units needed to be produced in two years of RDCS – final building permits issued by Dec 31, 2022
- In this cycle, findings for multi-year applications were unable to be made
- If the City was not responsible for producing the 193 VLI units, findings may have been possible

Multi-Year Allotments Required Findings



1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

Multi-Year Allotments

- As part of the implementation measure, Planning Commission responsible to ensure that a sufficient number of allotments are available to allow for a yearly competition
- Yearly competition would not have been possible if multi-year was granted along with RHNA production requirements based on allotment calculations

Multi-Year Allotments

- New RHNA cycle begins in 2023
- RHNA numbers will be obtained in 2022
- Planning for RHNA production will be done within the RDCS program via revisions to the Manual
- If RHNA number doubles, multi-year projects may still be difficult to accommodate within RDCS depending on size
- Consideration of effects on revenue without competition

Multi-Year Allotments

Future years:

(Both examples assume 1600 unit RHNA)

Set-Asides	FY23/24	FY24/25	FY25/ 26	FY26/ 27	FY27/28	FY28/29	FY29/ 30	FY30/ 31
ELI/VLI (29%)	58	58	58	58	58	58	58	58
Low (17%)	34	34	34	34	34	34	34	34
Moderate (20%)	40	40	40	40	40	40	40	40
Above Moderate (34%)	68	68	68	68	68	68	68	68
Sub-total	200	200	200	200	200	200	200	200
Market	15	15	15	15	15	15	15	15
Total	215	215	215	215	215	215	215	215

Required Income Levels with Multi-Year Projects

Set-Asides	FY23/24	FY24/25	FY25/ 26	FY26/ 27	FY27/28	FY28/29	FY29/ 30	FY30/ 31
Affordable								
ELI/VLI	58	58	58	58	58	58	58	58
Low	34	34	34	34	34	34	34	34
Sub-total	92	92	92	92	92	92	92	92
200 Unit Multi- Year RDCS Project								
Moderate	15	15	0	0	0			
Above Moderate	22	22	34	34	33			
Market	5	5	5	5	5			
Sub-total	42	42	39	39	38			
200 Unit Multi-Year RDCS Project								
Moderate	15	15	0	0	0			
Above Moderate	22	22	34	34	33			
Market	5	5	5	5	5			
Sub-total	42	42	39	39	38			
Other RDCS Projects								
Moderate	10	10	40	40	40	40	40	40
Above Moderate	24	24	0	0	2	68	68	68
Market	5	5	5	5	5	15	15	15
Sub-total	39	39	45	45	47	123	123	123
Total	215	215	215	215	215	215	215	215

2018 RDCS Available Allotments



- No more than 215 allotments may be awarded
- No later than 6 months prior to RDCS application deadline, Planning Commission may recommend number of available allotments for competition

2018 RDCS Available Allotments



- 97 Affordable
- 40 On-going
 - 25 Measure C transitional
 - 15 Measure S
- 78 Unassigned

RDCS Competition Manual



Affordable Housing

- Affordable Housing Inclusionary Ordinance to be presented to City Council on July 18, 2018 (15%)
- Tables within the RDCS Competition Manual mirror proposed ordinance

RDCS Competition Manual



Affordable Housing

- Baseline established at 15% instead of 8%
- Allows combination of building and contributing to housing fund
- Allows additional points for over 15% contribution

RDCS Competition Manual



Affordable Housing

- Point availability would differ based on affordability levels within a project
- Structure allows City to create incentives for certain affordability levels using points.
- Downtown Projects would not be exempt from requirement

Next Steps

- City Council considers Inclusionary Ordinance July 18, 2018
- City Council RDCS public hearing July 25, 2018
- Future Discussion on BMR policies to create multi-income developments TBD

Questions?



Santa Clara County Income Limits

TABLE I: HCD Income Tables (Published April 26, 2018)

Source: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>.

# of Persons	1	2	3	4	5	6	7	8
Extremely Low	27,950	31,950	35,950	39,900	43,100	46,300	49,500	52,700
Very Low	46,550	53,200	59,850	66,500	71,850	77,150	82,500	87,800
Lower	66,150	75,600	85,050	94,450	102,050	109,600	117,150	124,700
Median	87,650	100,150	112,700	125,200	135,200	145,250	155,250	165,250
Moderate	105,200	120,200	135,250	150,250	162,250	174,300	186,300	198,350

	BELOW MARKET RATE (BMR) RENTAL RATES				
No. of Bedrooms	Extremely Low	Very Low	Lower	Median	Moderate
0 Bedroom (Efficiency)	\$699	\$1,164	\$1,654	\$2,191	\$2,630
1 Bedroom	\$799	\$1,330	\$1,890	\$2,504	\$3,005
2 Bedrooms	\$899	\$1,496	\$2,126	\$2,818	\$3,381
3 Bedrooms	\$998	\$1,663	\$2,361	\$3,130	\$3,756
4 Bedrooms	\$1,078	\$1,796	\$2,551	\$3,380	\$4,056

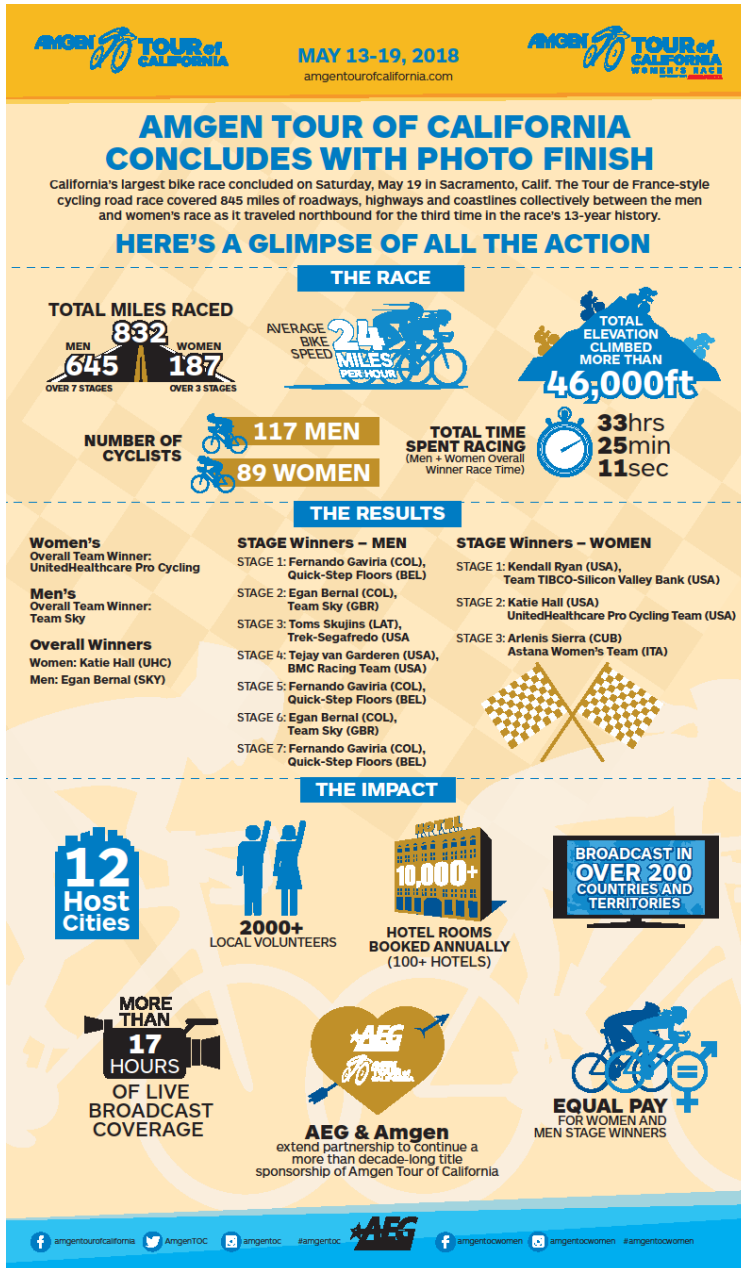


Amgen Tour of California

City Council Meeting
July 18, 2018



<https://www.nbcbayarea.com/on-air/seen-on/Amgen-Tour-of-California-Fox-Through-Morgan-Hill-Bay-Area-482868821.html>



832 Miles Raced

24 MPH Avg. Speeds

117 Men

89 Women

33:25:11 Total Time Spent Racing

12 Host Cities

2,000 Volunteers

10,000+ Hotel Rooms Booked

200 Countries & Territories Broadcast

17 Hours of Live Broadcast Coverage

Equal Pay for Men & Women Stage Winners

Stage 4 was home to one of the biggest days in Amgen TOC history!

Total impressions totaled **19.6 MM** across social and paid media.

20.6K Social Community Engagements (Likes, etc.)

102.6K LOC Page Views

824K Email Deliveries

5,242 Unique Stories

18,000 Program Guides

580K Grassroot Fans Reached



COMMUNITY PARTNERS & SPONSORS



live+love+léal



School Outreach

10 Schools

2 Bike Giveaways

3,800 Water Bottles

3 Land Art Activations



Communication: AMGEN Recognitions (RECOGNITION)

COMMUNITY EVENTS

Bike Party —**100 Riders**

Bike Rodeo & Concert—**1,000 Participants**

Mother's Day Ride & Pancake Breakfast—**54 Riders**

Specialized Bicycles Components Open House—**2,000 Guests**

AMGEN TOUR OF CALIFORNIA
CA MH

EVENTS & ACTIVITIES

AMGEN TOUR OF CALIFORNIA
MORGAN HILL MAY 2018

MAY 4 – BIKE PARTY

Morgan Hill Bike Party hosted by Bike Therapy

Friday, May 4th 7:30pm
Start and Finish at Bike Therapy,
17540 Depot St, Morgan Hill
facebook.com/events/206335884393268

MAY 9 – BIKE TO SCHOOL DAY

Wednesday, May 9th
Contact your school administrator
to see if your school is participating!

MAY 10 – BIKE TO WORK DAY

Thursday, May 10th 6:00am - 9:00am
Energizer station at Community
and Cultural Center, 17000 Monterey Road,
Morgan Hill

MAY 11 – AMGEN TOUR OF CALIFORNIA KICK OFF CONCERT

Community Concert featuring Isaiah Pickett,
Local Bike Shops, and Specialized Bicycles

Friday, May 11th 6:00pm - 9:30pm
Morgan Hill Downtown Amphitheater,
17000 Monterey Road, Morgan Hill

MAY 13 – MOTHER'S DAY RIDE & PANCAKE BREAKFAST

Mother's Day Ride with the Mayor, followed
by a Pancake Breakfast hosted
by Bike Therapy

Sunday, May 13th 9:00am
The Grange, 40 E 4th Street, Morgan Hill
Register on City of Morgan Hill website.

MAY 15 – SPECIALIZED BICYCLES OPEN HOUSE

Specialized Open House
Food trucks, tours of the Wintunnel,
Bike Museum

Tuesday, May 15th 5:30pm - 8:00pm
Specialized HQ, 15130 Concord Circle,
Morgan Hill

MAY 16 – AMGEN TOUR OF CALIFORNIA TIME TRIAL

Stage 4 Amgen Tour of California Time Trial

Wednesday, May 16th 12:45pm
Start and finish in Downtown Morgan Hill

For more information and registration
links, please visit www.morganhill.ca.gov/1679/Events-and-Activities



COMMUNITY OUTREACH

- 500 Posters
- 6,500 Flyers
- 10,032 Households—Water Bills
- 3,015 Views—Project Website
- 15k Subscribers—411 Emails
- Hot Line
- 2 Billboards
(561,888 Impressions)
- 12 Street Pole Banners
(15,600 Estimated Viewership)



Amgen Tour of California
is coming to Morgan Hill
Wednesday, May 16, 2018

Note: Some streets will be closed.
Plan Ahead to avoid delays—or
take the day off and **join the party!**

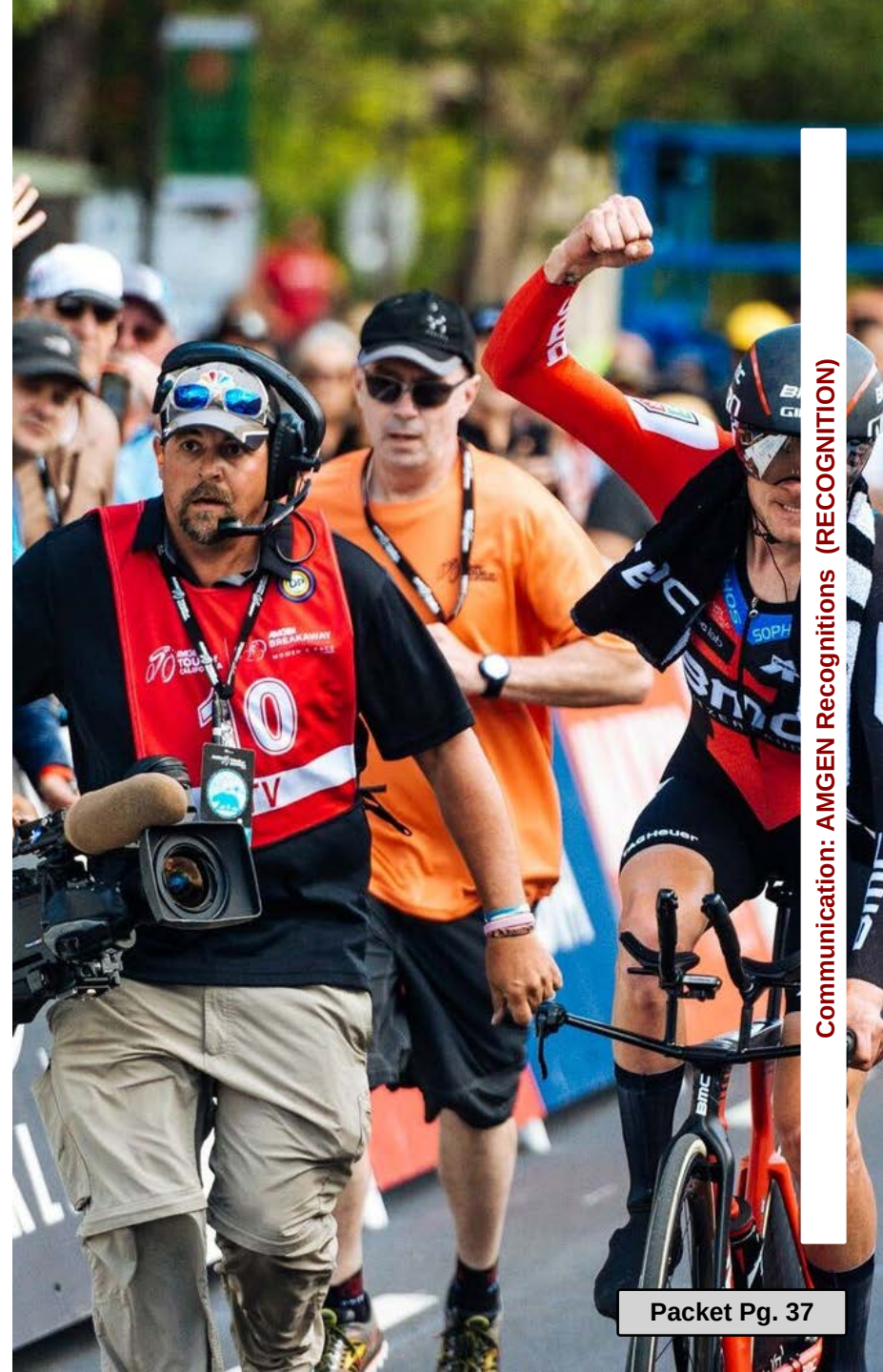


See back for route map
For more information about upcoming
event festivities and street closures, visit
www.morganhill.ca.gov/ATOC

Packet Pg. 36

Thank you!

https://www.youtube.com/watch?v=_KJDSwhQ5KU&feature=youtu.be



Communication: AMGEN Recognitions (RECOGNITION)



July Developmental Asset Asset #27 Equality & Social Justice

Young person places high value on promoting equality and reducing hunger and poverty.

Activities related to this asset

- Women's March
 - o Fight for gender equality
- School Walkout
 - o Against gun violence
 - o For safety of students
- LGBTQ community center
 - o Safe place for LGBTQ youth



Tips on this asset

- Be educated on social justice issues
- Participate in non-violent protests
- Actively volunteer and support others





July Complementary Asset

Asset #29

Honesty

Young person “tells the truth even when it is not easy.”

Connection to main asset

- Acknowledging that there is inequality
- Take responsibility for your actions
- Speak up when there is injustice



Have you participated in any social justice movements?





CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Cynthia Hasson, Assistant City Attorney
APPROVED BY: City Manager

APPROVE RULES FOR THE CONDUCT OF PLANNING COMMISSION MEETINGS

RECOMMENDATION(S)

Approve the Rules for the Conduct of Planning Commission Meetings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

REPORT NARRATIVE:

Most legislative bodies have rules or by-laws to guide the conduct of their meetings. City Council adopted a set of rules for the conduct of City Council meetings (CP-97-01), but the Planning Commission does not have a similar set of rules for its meetings.

Proposed “Rules for the Conduct of Planning Commission Meetings” is attached. These proposed rules are based on the City Council adopted rules for the conduct of City Council Meetings. One change made is to allow for one additional year term as chair due to special circumstances. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all Commissioners, and contribute to the orderly conduct of City business. The rules will provide a framework for conduct during the meetings to support the decision-making process.

ALTERNATIVE ACTIONS:

The City Council could choose to not approve the recommended rules or propose changes to the draft rules.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 12, 2018, the Planning Commission discussed the proposed policy, and recommended approval of the policy as revised. City Council adopted a similar set of rules for the conduct of City Council meetings in 1997 (CP-97-01), with subsequent amendments.

FISCAL AND RESOURCE IMPACT:

No fiscal impacts are anticipated by approving this policy.

CEQA (California Environmental Quality Act):

This action is not a Project because it is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Rules for the Conduct of Planning Commission meetings
2. 1 Supplement 1

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-18-XX

SUBJECT: Rules for the Conduct of Planning Commission Meetings
EFFECTIVE DATE: July 18, 2018
ORIGINATING DEPARTMENT: Community Development Department

SECTION 1. SCOPE

- 1.1 These rules shall establish the procedures for the conduct of all meetings of the Planning Commission of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all Commissioners and contribute to the orderly conduct of City business.

SECTION 2. MEETINGS

- 2.1 Open to Public. All meetings of the Planning Commission, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2 Regular Meetings. The Planning Commission shall conduct its regular meetings at the time and place established by ordinance or resolution if specified in the ordinance. Regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority vote of the Planning Commission pursuant to Section 5.2 of this policy.
- 2.3 Special Meetings. A special meeting may be called at any time by the Community Development Director or by four Commissioners. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.4 Quorum. Four (4) Commissioners shall constitute a quorum and shall be sufficient to transact business. If less than four Commissioners appear at a regular meeting, the Chair, Vice Chair in the absence of the Chair, any Commissioner, or in the absence of all Commissioners, the Minutes Clerk, shall adjourn the meeting to a stated day and hour.
- 2.5 Adjourned Meetings. The Planning Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.
- 2.6 Attendance. Any commissioner who will be absent from a meeting shall communicate to the Chair and to the Community Development Director in advance of the meeting the date(s) of the meeting(s) that will be missed.

SECTION 3. POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda. For every regular or special meeting, the Minutes Clerk or other authorized person, shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all items of business to be discussed at the meeting. This notice and agenda may be combined in a single document.
- 3.2 Location of Posting. The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Posting for Regular Meetings. For any regular meeting of the Planning Commission, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting.
- 3.4 Posting for Special Meetings. For any special meeting of the Planning Commission, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting.

SECTION 4. AGENDA CONTENTS

- 4.1 Description of Matters. All items of business to be discussed at a meeting of the Planning Commission shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Availability of the Agenda to the Public. The agenda for any regular or special meeting shall be made available to the general public as soon as is practical after delivery to the Commissioners.
- 4.3 Limitation to Act on Only Items on the Agenda. No action shall be taken by the Planning Commission on any item not on the posted agenda.

SECTION 5. ORDER OF BUSINESS

- 5.1 The order of business at meetings of the Planning Commission shall be as follows:
 - A. CALL TO ORDER
 - B. ROLL CALL ATTENDANCE
 - C. DECLARATION OF POSTING AGENDA
 - D. WORKSHOP (as deemed appropriate)
 - E. PLEDGE OF ALLEGIANCE

F. PUBLIC COMMENT

This item refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the Planning Commission. Since the matter is not one on the agenda, no action by Commission can be taken. If a Commissioner so desires, the matter may be placed on the agenda of a future Commission meeting for review and consideration pursuant to Section 9.

G. CHANGE IN ORDER OF BUSINESS.

The Chair may entertain a motion by a majority request of Commissioners present to take matters listed on the agenda out of the prescribed order.

H. CONSENT CALENDAR

These are items of a routine or generally uncontested nature. Any Commissioner or member of the public may request to have an item pulled from the Consent Calendar and acted on individually by the Commission. Items pulled will be discussed after action is taken on the balance of the Consent Calendar and before moving on to public hearings.

I. PUBLIC HEARINGS

These matters are ones that are duly noticed and published in a newspaper of general circulation and, where required by Law, written notice is given to the affected residents who have the opportunity to speak in favor or against a matter or ask questions about the matter. Public hearings shall be conducted pursuant to City Council Policy CP-03-01.

J. OTHER BUSINESS

These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Commission action and direction.

K. DIRECTOR'S REPORT/ANNOUNCEMENTS

These are communication items from the Director, including future agenda items. Director will take input from Commissioners on items of interest. Examples of a Director's report or announcement include notice of cancellation of meetings, reminders of scheduled workshops, report back to the Commission, and pending agenda items.

L. ADJOURNMENT

- 5.2 Review Status of Agenda at 11:00 p.m. If, at 11:00 p.m., the Planning Commission has not concluded its business, it shall review the status of the agenda and determine by majority vote whether to extend the meeting beyond 11:00 p.m., continue any remaining items, or adjourn the meeting to another date and time.

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment. Persons present at meetings of the Planning Commission may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda.
- 6.2 Limitations. The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City council Policy 03-01. The Chair or Presiding Officer may allow more time and/or allow speakers to concede their time to a designated speaker of a group unless a majority of the Planning Commission objects.
- 6.3 Procedure. To address the Planning Commission, each speaker is requested to fill out a Speaker Card and turn it in to the Minutes Clerk before discussion on the agenda item begins. The speaker is requested to provide their name and contact information and the subject or subjects upon which the speaker wishes to address the Planning Commission. Speakers who do not wish to provide their name should provide an alternative designation so that they can be recognized by the Minutes Clerk._

SECTION 7. APPOINTMENT OF OFFICERS

- 7.1 In June of each year, the selection of chair and vice chair shall be pursuant to City Council Policy CP 96-02, except that if a majority of the Commissioners see the need to extend the term due to special circumstances, the term of the Chair and Vice Chair may be extended for one year. The term of service for these offices shall be one year, beginning at the first meeting in July of each year. No commissioner shall serve more than two consecutive full terms as chairperson. The Chair may resign at any time during his or her role as chair, at which time the Vice Chair may serve the remaining term.

SECTION 8. PROCEDURES FOR THE CONDUCT OF MEETINGS

8.1 Role of the Chair/Presiding Officer

- A. The Presiding Officer of the Planning Commission, who shall be the Chair or in the Chair's absence shall be the Vice Chair, or in their absence any other designated Commissioner, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Commissioners and between the Commission, staff, and public.
- B. Communication with Commissioners
 1. Commissioners should request the floor from the Presiding Officer before speaking.
 2. When one Commissioner has the floor and is speaking, other Commissioners shall not interrupt or otherwise disturb the speaker.

3. With the concurrence of the Chair, a Commissioner holding the floor may address a question to another Commissioner. The Commissioner being questioned may or may not respond while the floor is still held by the Commissioner asking the question. The reply shall be limited to the question asked.
- C. The Chair/Presiding Officer may declare that the meeting will be conducted in “workshop” format, which means that the procedures described in section 8.1B do not strictly apply. This is to allow for a more open discussion without strict formalities.
- D. Communication with Members of the Public Addressing the Commission
 1. The Chair shall open the floor for public testimony (typically referred to as public comment) as appropriate.
 2. Commissioners may question a person addressing the Commission at the conclusion of the person's comments or upon expiration of the person's time to speak. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Commissioner permission to directly question the person.
 3. Staff shall be a resource to the Planning Commission to answer questions arising during discussions between Commissioners and between Commissioners and members of the public. Communications in this regard shall be through the Presiding Officer.
 4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 8.2 Rules of Order. The Planning Commission adopts no specific rules of order except those listed herein. The Planning Commission shall refer to *The Standard Code of Parliamentary Procedure* by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Chair has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the Commissioners present.
- 8.3 Motions. The Chair or any Commissioner may bring a matter of business on the agenda before the Commission by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Commissioner recognized by the Chair or Presiding Officer. Debate shall be closed upon consent of a majority of the Commission.
- 8.4 Reconsideration. Immediately after a vote on a matter, any Commissioner may request to have his/her vote changed on a matter before the Commission moves on to the next item.

Such a request will be granted by the Chair unless a majority of the Commission objects.

A matter may be reconsidered by the Planning Commission if a Commissioner on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Commission, however, nothing in this policy precludes the majority of Commissioners from requesting reconsideration of any item.

8.5 Debate.

- A. The discussions and deliberations at meetings of the Planning Commission are to secure the mature judgement of Commissioners on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every Commissioner a reasonable and equal opportunity to be heard.

- B. Obtaining the Floor for Debate.

As soon as a debatable motion has been stated to the Commission by the Chair, any Commissioner has a right to discuss it after obtaining the floor. The Commissioner obtains the floor by seeking recognition from the Chair. A Commissioner who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

- C. Speaking More Than Once.

To encourage the full participation of all of the Commissioners, no Commissioner or Commissioners shall be permitted to monopolize the discussion of the question. If a Commissioner has already spoken and other Commissioners wish to speak, the latter Commissioners should be recognized in preference to the Commissioner who has already spoken. However, if no other Commissioners seek recognition, the Chair may recognize the Commissioner who has already spoken.

- D. Relevancy of Debate.

All discussion must be relevant to the motion before the Planning Commission. A Commissioner is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Chair should then direct the speaker to limit discussion to the question before the Planning Commission.

A motion-its nature or consequences-may be attacked vigorously. But, it is never permissible to attack the motives, character, or personality of a Commissioner, City staff, or any member of the public either directly or by innuendo or implication. It is the duty of the Chair instantly to stop any Commissioner who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Chair and must never be directed to any individual.

E. Chair's Duties During Debate.

The Chair has the responsibility of controlling and expediting debate. A Commissioner who has been recognized to speak on a question has a right to the undivided attention of the Commission.

It is the duty of the Chair to keep the subject clearly before the Commissioners, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 9. ITEMS TO BE PLACED ON THE AGENDA

- 9.1 Any Commissioner may at any time request to have any matter that can be legally agendized to be placed on the agenda of the Planning Commission by submitting a memo to the Community Development Director. The memo should be succinct, describe the issue, and the proposed referral, and include any background materials or information relating to the matter. The Community Development Director will transmit all of the documentation to the Deputy City Clerk for distribution to the Planning Commission and public as part of the agenda packets for the meeting.
- 9.2 The Community Development Director will place the item on the next available Planning Commission meeting agenda.
- 9.3 At the meeting at which the referral is agendized, the Planning Commission will consider the proposal and vote on its disposition. A majority of those present are necessary to formally refer an item to the City Staff. Staff will indicate if the referral is inappropriate or otherwise unattainable which shall be considered by the Planning Commission during its deliberation.

SECTION 10. DECORUM

- 10.1 Commissioners. Commissioners value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Commissioners shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the Planning Commission.
- 10.2 City Employees. City staff and consultants shall observe the same rules of order and decorum applicable to the Planning Commission. City staff shall act at all times in a business and professional manner towards Commissioners and members of the public.
- 10.3 Public. Members of the public attending Planning Commission meetings shall observe the same rules of order and decorum applicable to the Planning Commission.
- 10.4 Noise in the Chambers. Noise emanating from the audience within the Commission Chambers or lobby area, which disrupts Planning Commission meetings, shall not be permitted.

- 10.5 Sergeant-at-Arms. The Chief of Police shall be ex-officio Sergeant-at-Arms of the Planning Commission.

SECTION 11. VIOLATIONS OF PROCEDURES

- 11.1 Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the Planning Commission in accordance with State Law.

This Policy Shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR



CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Christina Turner, City Manager

APPROVED BY: City Manager

UPDATES TO THE CITY COUNCIL POLICY, RULES FOR THE CONDUCT OF PLANNING COMMISSION MEETINGS

RECOMMENDATION(S)

Approve the Rules for the Conduct of Planning Commission Meetings.

The City Council held a Mid-Year Goal Review Workshop on July 13, 2018 at which the Council reviewed Council Policy 97-01, Rules for the Conduct of City Council Meetings. The Council directed staff to make certain edits to this policy. The applicable edits to the City Council Policy, Rules for the Conduct of Planning Commission Meetings, have been incorporated into the attached redlined draft policy for Council's consideration. The policy references Council Policy 03-01, Public Hearing Procedures, which is also attached for reference.

LINKS/ATTACHMENTS:

1. Updated City Council Policy, Rules for the Conduct of Planning Commission meetings
2. CP-03-01

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-18-XX

SUBJECT: Rules for the Conduct of Planning Commission Meetings
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- 10.3 Public. Members of the public attending Planning Commission meetings shall observe the same rules of order and decorum applicable to the Planning Commission.

- 10.4 Noise in the Chambers. Noise emanating from the audience within the Commission Chambers or lobby area, which disrupts Planning Commission meetings, shall not be permitted.
- 10.5 Sergeant-at-Arms. The Chief of Police, or his/her designated representative, shall be ex-officio Sergeant-at-Arms of the Planning Commission.

SECTION 11. VIOLATIONS OF PROCEDURES

- 11.1 Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the Planning Commission in accordance with State Law.

This Policy Shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 03-01

SUBJECT: Public Hearing Procedures

EFFECTIVE DATE: August 20, 2003, Amended October 22, 2003
REVIEWED JULY 18, 2007

ORIGINATING DEPARTMENTS: City Manager/City Attorney

POLICY:

The City Council of the City of Morgan Hill is charged with conducting public hearings on various matters, including zoning appeals.

Various interests must be considered in establishing rules for conducting public hearings. Such hearings often draw a large number of people, many of whom wish to address the Council on the matter being heard. However, the time devoted to any one public hearing is subject to constraint because the Council also has other pressing matters it must consider on any particular agenda, as well as other duties and responsibilities outside of Council meetings.

The City Council therefore believes that the following interests should be taken into consideration in establishing rules for the conduct of public hearings:

1. promotion of courteous civic discourse;
2. presentation of relevant information and opinions;
3. the due process rights of applicants; and
4. the limited time available to the Council to hear and consider any one particular matter.

In order to assure that such hearings are conducted in a manner which balances these interests, the Council hereby adopts the following rules of procedure for such hearings.

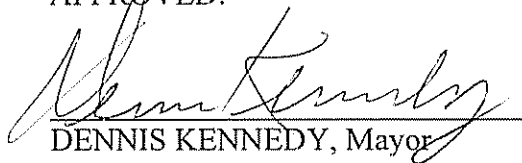
PROCEDURE:

1. Preliminary Announcements. Mayor announces procedures to be followed, including limitations on presentations, as further addressed below.
2. Presentation of Staff Report.
 - A. Explanation of applicant's proposal and action to be taken by the Council.

- B. Review of Planning Commission's analysis and recommendation, if any. Depending on the project, other committees or commissions may have recommendations.
 - C. Staff's analysis of, and recommendation, if any, regarding applicant's proposal.
 - D. Council questions of staff, if any.
3. Public Hearing:
- A. Mayor formally opens public hearing.
 - B. Presentation by applicant. (May be limited to ten minutes, or other time as the Mayor deems appropriate as dictated by the complexity of the proposal).
 - C. Council questions, if any, of applicant.
 - D. Public comment. Mayor may limit time for total public comment, and/or for individual presentations, but will assure that all arguments are given an opportunity to be presented. Mayor may encourage speakers to avoid duplication by combining speaker presentations, and/or by a show of hands in support of or opposition to a particular viewpoint. If there is organized opposition to a project, the Mayor may allow a designated chief opposition spokesperson to make an extended presentation. The Council may ask questions, if any, of speakers.
 - F. Project applicant rebuttal. The time allowed for rebuttal may be extended beyond three (3) minutes in the discretion of the Mayor.
 - G. Public hearing closed.
4. Council Deliberation. Council may make inquiries of staff. However, inquiries to the applicant or others will require re-opening the public hearing.

This policy shall remain in effect until modified. However, the Council may depart from this process in any particular matter upon a majority vote of the Council members present and participating in that matter.

APPROVED:



DENNIS KENNEDY, Mayor



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

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

TWO RESOLUTIONS AUTHORIZING ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT APPLICATIONS

RECOMMENDATION(S)

Adopt two resolutions approving the following actions:

1. Authorizing staff to prepare and submit an Active Transportation Program (ATP) Grant Application to both the California Transportation Commission/California Department of Transportation (CTC/Caltrans) and to the Metropolitan Transportation Commission (MTC) for implementation of the Morgan Hill Safe Routes to School Action plan and related infrastructure improvements; and
2. Authorizing the City Manager to negotiate and execute the ATP grant agreement and other documents, reports, forms, and agreements related to the performance of the identified projects.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

REPORT NARRATIVE:

The purpose of this report is to request the City Council's adoption of two grant resolutions relating to education and physical improvements supporting safer routes to schools.

In May 2018, the California Transportation Commission (CTC) and the Metropolitan Transportation Commission (MTC) released a Request for Proposal (RFP) for the Active Transportation Program (ATP) Grant Program. The ATP Grant Program was created by California Senate Bill 99 and California Assembly Bill 101 to encourage increased use of active modes of transportation, such as biking and walking. The program allows public agencies to compete for grants to implement programs such as Safe Routes to School (SRTS) that make walking or biking easier, safer, and more convenient; and to build infrastructure to improve bicycle and/or pedestrian paths.

There are two opportunities to be funded by the ATP Grant Program. There is a Statewide ATP Grant Application that is administered by the California Department of Transportation (Caltrans), with funding recommendations made to the California Transportation Commission by December 2018. The San Francisco Bay Area Regional

ATP Grant Program is administered by the MTC staff. All ATP grant applications submitted by applicants in the San Francisco Bay Area (nine counties) that did not receive funding in the statewide competition are then reviewed for funding by MTC staff. Funding recommendations to the MTC are made in February 2019. Approximately \$217 million will be available in the statewide component and about \$38 million will be available in MTC's regional component. The CTC and MTC ATP grant applications are both due on July 31st. There are two resolutions attached to this staff report, one for CTC and one for MTC.

The ATP Cycle IV funding covers fiscal years 2019/20 through 2022/23. If funded, the grant will be used to implement the Morgan Hill SRTS Action Plan through specific infrastructure improvements and programs (like sidewalk construction, flashing beacon installations, and bike lane demarcations) at and around various Morgan Hill school sites. These schools include: PA Walsh STEAM Academy, Britton Middle School, El Toro Elementary School, Nordstrom Elementary School, Jackson Academy of Music and Math, Barrett Elementary School, and Paradise Valley Engineering Academy.

The ATP grant would fund a part-time SRTS Project Coordinator for four fiscal years from FY 19/20 through FY 22/23. The Coordinator would work directly with community members and schools to educate administrators, parents, and students about pedestrian and bicycle safety, and help alleviate traffic concerns by promoting comprehensive, proactive behavior that focuses on alternative transportation choices to school. The anticipated grant application amount is not to exceed \$1.5 million.

COMMUNITY ENGAGEMENT: Involve

On June 14, 2017, a Safe Routes to School Launch Workshop was held in Morgan Hill. Workshop participants included school and school district staff, city staff, public health department staff, parents, and other community members. If the SRTS Project Coordinator position is funded by the ATP grant, one of their first tasks will be to create a SRTS Task Force to meet regularly and discuss the active transportation programs to be planned for Morgan Hill schools.

ALTERNATIVE ACTIONS:

An alternative action is to not authorize the application for Active Transportation Program grant funds.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted a resolution affirming the City's support of the Safe Routes to School Program on November 2, 2016.

FISCAL AND RESOURCE IMPACT:

The City is applying for a grant not to exceed \$1,500,000 to fund the part-time Safe Routes to School Coordinator position for four fiscal year through FY 22/23, and to fund related school infrastructure improvements. Staff is currently proposing a match of approximately \$210,000 from the Pedestrian School Safety Fund (355) for the infrastructure component of the grant.

CEQA (California Environmental Quality Act):

Not a project

Applying for the grants is solely an administrative action and does not constitute a project under CEQA guidelines. If the grant application is successful, the City will be the Lead Agency, and the CEQA review will be completed to the State's satisfaction before approval of or commitment to a project, and prior to the disbursement of any construction funds.

LINKS/ATTACHMENTS:

1. CTC_Caltrans ATP Resolution
2. MTC ATP Resolution

RESOLUTION NO:**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE SUBMITTAL OF AN ACTIVE TRANSPORTATION PROGRAM (ATP) CYCLE IV GRANT APPLICATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH**

WHEREAS, the City of Morgan Hill, is a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California (“City”); and

WHEREAS, the Active Transportation Program (ATP) was created by California Senate Bill 99 (Chapter 359, Statutes of 2013) and California Assembly Bill 101 (Chapter 354, Statutes of 2013) to encourage increased use of active modes of transportation, such as biking and walking; and

WHEREAS, on May 16, 2018 the California Transportation Committee (CTC) adopted guidelines for the development and submittal of applications for the fourth cycle of ATP funding in 2018 (Cycle IV).

WHEREAS, ATP Cycle IV funding provides competitive grant funding, which can be used for the implementation of the Morgan Hill Safe Routes to School Action Plan through specific infrastructure and non-infrastructure improvements at and around various school sites according to the ATP Cycle IV guidelines.

WHEREAS, the City desires to apply for the grant funds through the State of California, Department of Transportation (Caltrans); and

WHEREAS, the State of California, Department of Transportation (Caltrans) is responsible for the administration of this grant program, establishing necessary procedures; and

WHEREAS, said procedures established by the State of California, Department of Transportation (Caltrans) require a resolution certifying the approval of application(s) by the Applicant’s governing board before submission of said application(s) to the State; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California, Department of Transportation (Caltrans) to carry out the Project.

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

NOW, THEREFORE, BE IT RESOLVED, 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. Approves the filing of an application for the Morgan Hill Safe Routes to School Action Plan Infrastructure and Non-Infrastructure Improvements Project to the Active Transportation Program (ATP) Grant Program.
- b. Appoints the City Manager, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project(s).

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of July, 2018.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ 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. XX-XXX, adopted by the City Council at a regular meeting held on July 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE SUBMITTAL OF AN ACTIVE TRANSPORTATION PROGRAM (ATP) CYCLE IV GRANT APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, The City of Morgan Hill (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for an amount not to exceed \$1,500,000 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the Morgan Hill SRTS Action plan Implementation and Related Infrastructure (herein referred to as PROJECT) for the Active Transportation Program (ATP) (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149) and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and

WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and
- that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and be it further

RESOLVED that APPLICANT will provide any required matching funds; and be it further

RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and be it further

RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective Congestion Management Agency (CMA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and be it further

RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and be it further

RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and be it further

RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and be it further

RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and be it further

RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and be it further

RESOLVED that, in the case of an RTIP project, PROJECT is included in a local

congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the countywide transportation agency; and be it further

RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and be it further

RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and be it further

RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and be it further

RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and be it further

RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and be it further

RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and be it further

RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution, and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of July, 2018.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

Attachment: MTC ATP Resolution (1841 : ATP Grant Application)

∞ 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. XX-XXX, adopted by the City Council at a regular meeting held on July 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: MTC ATP Resolution (1841 : ATP Grant Application)



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Lisa Cardenas, Executive Assistant

APPROVED BY: City Manager

SCHOOL RESOURCE OFFICER AGREEMENT 2018-2019

RECOMMENDATION(S)

Authorize Approval of Fiscal Year 2018-2019 School Resource Officer Memorandum of Understanding with Morgan Hill Unified School District.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

Our School Resource Officer (SRO) Program consists of one police officer dedicated to the school resource function serving the students, staff and families primarily at Central, Live Oak and Sobrato High Schools. The goal of this program is to continue the successful working relationship between the City of Morgan Hill and the Morgan Hill Unified School District (District) by supporting youth in strengthening the police/youth relationship.

Our commitment to being the Department of Choice is supported by our SRO's role in working to maintain school campuses as a safe place while continuing to build positive relationships with students, staff and families. The SRO also supports our youth by maintaining the well being of students as one of our highest priorities.

The attached Memorandum of Understanding (MOU) was recently revised to codify current best practices already in place – addressing the “school to prison pipeline” by not involving SROs in enforcement of administrative matters. The SRO's duties consist of many different components including the following primary purposes: maintaining a safe and secure campus; preserving life and property in a manner which promotes community; developing positive relationships with students, staff, and the community; and supporting District staff by enforcing violations of California State law.

To help offset the cost of one SRO, the Morgan Hill Unified School District agrees to pay the City of Morgan Hill an annual contribution of \$101,497 for FY2018-19. The payment will be made in four equal quarterly payments for the term of the MOU.

This MOU promotes the City Council priorities of *Enhancing Public Safety* and *Supporting Our Youth, Seniors, and Entire Community* as the SRO is involved in multiple aspects of each campuses' activities, including assisting school officials and the City in maintaining a safe and supportive environment that is needed for the youth of our community to succeed and develop to their full potential.

The Morgan Hill Unified School District Board of Trustees have reviewed and approved the MOU at their June 19, 2018 Board Meeting.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the new Memorandum of Understanding between the City of Morgan Hill and the Morgan Hill Unified School District for School Resource Officer services for the year of 2018-2019.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council approved a similar SRO Memorandum of Understanding with the School District on July 18, 2016 for the Fiscal Years 2016-2017 and 2017-2018.

FISCAL AND RESOURCE IMPACT:

The \$101,497 contribution will be deposited into the General Fund (010.37512 School Resource Officer Program) in four equal quarterly payments during the Fiscal Year 2018-2019.

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 do not constitute a project.

LINKS/ATTACHMENTS:

1. Partially Signed 2018-2019 SRO Agreement



**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
THE CITY OF MORGAN HILL**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into on this 8th day of June 2018 by and between the City of Morgan Hill (CITY) and the Morgan Hill Unified School District (DISTRICT).

RECITALS

WHEREAS, CITY and DISTRICT desire to enter into an agreement for the purpose of defining the terms and conditions governing the use of police officers of the Morgan Hill Police Department (MHPD) on DISTRICT campuses;

NOW, THEREFORE, the parties hereby agree as follows:

1. BACKGROUND

- a. To provide School Resource Officer (SRO) services to Morgan Hill Unified School District for Fiscal Year 2018 - 2019.
- b. It is the goal of both organizations to create a successful working relationship with the hope of reducing criminal activity on the school campuses. Furthermore, we aim to provide mutual benefit to the DISTRICT and the community by maintaining school campuses as a safe place for students to learn and grow. Both parties agree that the safety and wellbeing of children are the highest priorities.

2. PURPOSE

The purpose of this MOU is to establish principles and guidelines governing the relationship between the DISTRICT and the CITY regarding the provision of MHPD law enforcement on DISTRICT campuses.

The parties agree that there are four primary purposes for having police services on school campuses. They are to:

1. Maintain a safe and secure campus from intruders;
2. Preserve life and property in a manner which promotes community;
3. Develop positive relationships with students, staff, and the community;
4. Support DISTRICT staff in securing and transporting of prohibited confiscated items that are illegal to have on campus under California State law.

3. **ROLES AND DUTIES**

CITY'S Law Enforcement Roles and Responsibilities:

- a. The SRO shall be an employee of MHPD and shall be subject to the administration, supervision, and control of the MHPD.
- b. The SRO shall be subject to all personnel policies and practices of MHPD except as such policies or practices may be modified by the terms of this agreement.
- c. The MHPD, in its sole discretion, shall have the power and authority to assign, discharge, and discipline the SRO.
- d. To be an extension of the principal's office for assignments consistent with this MOU.
- e. To be a visible, active law enforcement figure on campus addressing law enforcement matters originating on or related to the campus.
- f. To act as the designee of the campus administrator in maintaining the physical plant of the campus to provide a safe learning environment as to law enforcement matters and school policy violations. This includes buildings, grounds, parking lots, lockers, and other public-school property. As to school policy violations, the SRO will refer the student to the principal's office.
- g. To provide a classroom resource for education using approved materials.
- h. To be a resource for students, which will enable them to be associated with a law enforcement figure and role model in the students' environment.
- i. To be a resource for teachers, parents, and students for conferences on an individual basis dealing with individual problems or questions.
- j. To make appearances before site councils, parent groups, and other groups associated with the campus and as a speaker on a variety of requested topics, particularly drug and alcohol abuse.
- k. The SRO will be involved in school discipline, when it pertains to preventing a disruption that would, if ignored, place students, faculty and staff at risk of harm, the SRO will resolve the problem to preserve the school climate. As to school policy violations, the SRO will refer the student to the principal's office.
- l. IN ALL OTHER CASES, disciplining students is a DISTRICT responsibility, and the SRO will refer students who violate the code of conduct to the principal.
- m. The SRO will perform selected enforcement. This may include enforcing violations of the Education Code, Penal Code, Vehicle Code, Etc. Enforcement methods may include counseling and problem solving with the violators, parents and School Administration on a case-by-case basis. Whenever possible, services such as counseling shall be offered in lieu of issuing a criminal citation to a minor.
- n. The SRO may be used for the disposal of contraband associated with infractions such as having cigarettes or marijuana on campus.

- o. The SRO will share information with the administrator about persons and conditions that pertain to campus safety concerns.
- p. The SRO will be familiar with helpful community agencies, such as mental health services, drug treatment centers, etc., that offer assistance to dependency- and delinquency-prone youth and their families. Referrals will be made when necessary.
- q. The SRO will maintain a liaison with other organizations, such as Juvenile Probation, the School Attendance Review Board, diversion programs, and various local counseling services.
- r. The SRO and the principal(s) will develop plans and strategies to prevent and/or minimize dangerous situations, which might result in student unrest.
- s. The SRO will coordinate all of his/her activities with the principal and staff members concerned and will seek permission, guidance, and advice prior to enacting any programs within the school.
- t. The SRO will be available an average of 40 hours per week, normally between the hours of 7:30am through 4:30pm on the days school is in session or on other days and times as may be required by prior arrangement between the DISTRICT and MHPD.
- u. The MHPD will provide SRO services to Live Oak High School, Ann Sobrato High School, and additional sites as needed by scheduling one SRO on a 9/80 schedule, which will include every other Monday or Friday off.
- v. The schedule should be flexible enough to allow the SRO, by mutual agreement, to participate in School or District activities, such as meetings and presentations. If the SRO has a necessary duty assignment related to employment with MHPD, the officer should give as much advance notice as possible to the School Administrators.
- w. The SRO shall be available to be called away from SRO duties in emergency situations as well as for department staffing shortages as directed by the MHPD with notifications to the School Administrator as soon as practical.
- x. The SRO will normally wear the Police Department approved uniform, however, the SRO may wear other appropriate clothing depending upon the activity in which the SRO is engaged.
- y. The SRO will concentrate on the activities occurring on DISTRICT campuses within the City of Morgan Hill or as requested by School District Administration.

DISTRICT Roles and Responsibilities:

- a. School officials will ensure that student disciplinary matters remain the responsibility of school staff and not the SRO. Enforcement of the code of conduct is the responsibility of teachers, school staff, and school administrators. The SRO will refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of criminal law, or are criminal violations eligible for diversion.
- b. The DISTRICT will maintain full, final, and plenary authority over curriculum and instruction in the DISTRICT, including the instruction of individual students.

- c. DISTRICT may, at its own initiative, and at its own cost, provide training to the SRO on topics that it considers to be beneficial to the relationship the SRO will have with students and staff.
- d. The DISTRICT, pursuant to the authority set forth in the California Education Code, has the primary duty to address student discipline, issue appropriate consequences, provide appropriate student support, and/or provide referrals to law enforcement/probation on criminal matters as required by law.
- e. The DISTRICT shall confer with police officers who respond to and investigate student behaviors that constitute criminal violations that are not eligible for diversion.

4. Investigations/Search and Seizure

- a. School officials conduct their own searches of individual students, their individual property, and school property under civil authority.
- b. Police officers conduct searches of same under the criminal standard of probable cause.
- c. School officials, under certain circumstances, may request the SRO (or other officer) to act as their physical safety agent to perform or complete a school search for said official solely for the purpose of eliminating or reducing danger during the search. These circumstances include but are not limited to:
 - i. Possible presence of a weapon
 - ii. Possible presence of an explosive device
 - iii. Possible presence of a dangerous instrument, i.e., drug needle
 - iv. A student who may resist a search
 - v. A student who may flee a search and, by doing so, be a danger to themselves and/or others.
- d. School officials shall share any information with police officers that is obtained during a student investigation or search if school officials feel that said information may be evidence of a crime.
- e. School officials may consult with the SRO at any time to determine whether said information/ evidence should be shared.

The parties shall ensure that the respective individuals assigned to the school campuses and responsible for the implementation of this MOU are provided with a copy of the MOU and are informed of the contents of this MOU and their duty to implement it.

5. Access to Education Records

- a. School officials shall allow the SRO to inspect and copy any public records maintained by the school to the extent allowed by law.
- b. All parties to this MOU recognize and utilize Title 34 §99:31 of the Code of Federal Regulations, which allows the oral exchange of information between school and police officials regarding any student when said information is directly related to a potential threat to safety of the school, its staff, or students.
- c. School officials may also share information with police officers that falls within any of the exceptions to the Family Educational Rights and Privacy Act (FERPA) that are covered under state law (W&I §827.1, EdC §48902, EdC §49706), which may include but are not limited to:
 - i. Directory information
 - ii. Information within the scope of a police officer's investigation
 - iii. Information requested in response to a subpoena
 - iv. Investigative statements taken of the student- oral or in writing
- d. The Police Department agrees to share with school officials any information that is relevant to school safety, and/or the school investigation so long as said release of information does not compromise the integrity of the police investigation or place students, witnesses, or victims at further risk.

6. RESPONSE TO EMERGENCIES

- a. In response to a non-violent criminal incident, the DISTRICT shall consult with the SRO to develop a contingency plan and response.
- b. Unless the incident involves criminal activity or an emergency where police resources in addition to the SRO are desirable, the DISTRICT shall make an initial decision regarding the need for a police response based upon knowledge of the incident, the DISTRICT's policies and resources, and consultation with the SRO Supervisor, if necessary. If the incident is outside the scope of the DISTRICT's resources, or there is a significant threat to human life or property, or the MHPD is made aware of the incident and makes a determination the incident is critical in nature, the DISTRICT shall relinquish the overall decision-making process to MHPD, who shall then assume the role of the incident commander.
- c. The SRO, investigating officer, or Incident Commander responding to the scene will strive to keep the DISTRICT informed of decisions and status.
- d. Incidents that originate at a school site that extend into the community will be handled by MHPD.

7. COMPLAINTS

DISTRICT and MHPD shall each provide notification to the community of the available complaint processes in the event that a parent, student, member of the public or an employee of the DISTRICT wishes to file a formal complaint against an SRO or other officer working on a DISTRICT campus.

8. Payment to the City

- a. The DISTRICT agrees to pay the CITY an annual contribution of \$101,497 to help offset the cost of one School Resource Officer during Fiscal Year 2018 - 2019.
- b. Payment will be made to the City of Morgan Hill in four (4) equal quarterly payments each year for the term of the contract.

9. Insurance and Indemnification Requirements

- a. The CITY and the DISTRICT agree to be individually responsible for providing their own insurance coverage for any and all claims or suits as a result of bodily injury, property damage, errors and omissions or personal injury arising out of the performance of this MOU.
- b. The CITY and DISTRICT agree to waive any and all rights that they may have under Government Code Sections 895.4 and 895.6 for contribution or indemnification of any liability arising out of the performance of this MOU.
- c. The CITY and DISTRICT agree to protect and hold harmless each other for injury or death of any person, or damage to equipment of either entity caused solely by the action of either party, individually under this MOU. The CITY will assume all the liability for City equipment and personnel used within the scope of this MOU and the DISTRICT will assume all liability for the School District equipment and personnel used within the scope of this MOU.

10. Termination

- a. The CITY and DISTRICT shall have the right to terminate this MOU, without cause, by giving fifteen (15) days' written notice.

11. Entire Agreement

- a. This MOU represents the entire agreement between the City of Morgan Hill and the Morgan Hill Unified School District. All prior or contemporaneous oral or written agreements by and between the parties and their agents and representatives with respect to the matters contained in this Agreement are revoked and extinguished by this Agreement.

CITY OF MORGAN HILL

By: _____

Printed name:
Christina Turner, City Manager

Date: _____

MORGAN HILL UNIFIED SCHOOL DISTRICTBy: K. PerezPrinted name:
Kirsten Perez
Assistant Superintendent Business ServicesDate: 7/3/2018**APPROVED AS TO FORM:**

By: _____

Printed name:
Donald Larken, City Attorney

Date: _____

ATTEST:

By: _____

Printed name:

Date: _____



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

ACQUISITION OF PROPERTY (KERR) APN 767-05-024 FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

1. Adopt resolution approving the purchase of a portion of APN 767-05-024 for \$11,000 plus escrow and closing costs from Susan L. Kerr and Robert A. Kerr for the Hale Avenue Extension Project; and
2. Authorize the City Manager to execute all documents and make minor modifications as necessary in order to consummate the transaction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Economic Development and
Telecommunications
Financial Stewardship

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

With the assistance of Associated Right of Way Services, the City continues to actively pursue the right-of-way needed for the Hale Avenue Extension project in an effort to get the project "shovel ready" for when Measure B funds become available. The required right-of-way must be obtained prior to commencement of construction on the project.

On January 23, 2017, the City notified Susan L. Kerr and Robert A. Kerr that a portion of their property was required for the Hale Avenue Extension Project. On August 23, 2017, the City made an offer to the Kerr family for the appraised value of \$9,450, which consists of 212 square feet of Fee property (see attached appraisal summary statement). In late September, the Kerr's provided the City with a counter offer based on increased property values and the loss of storage space behind their garage due to the acquisition. In November, the City reached an administrative settlement with the Kerr's in the amount of \$11,000. In addition to the settlement amount, the City has agreed to reconstruct the Kerr's fence at the new property line. This work will be completed in conjunction with the Hale Avenue Extension Project.

Subsequently, a Property Purchase Agreement was prepared and signed by the property owner (see attached). Staff, therefore, recommends that City Council approve the property purchase as: 1) the property is required for the project, 2) the owner is a

willing seller, 3) the settlement increase is relatively small, and 4) the cost to litigate would be substantially greater. The escrow and closing costs are estimated at \$1,500, bringing the total purchase price to \$12,500.

Seven properties remain to be acquired for the project. Two of the needed properties are owned by Santa Clara County. The County has agreed to transfer the needed right of way at “no cost” to the City. The County is in the process of preparing the necessary documents to complete the transaction. Once the documents have been finalized by both parties, staff will bring them to City Council for approval. The remaining properties are owned by three separate parties, all of which staff are continuing to negotiate with.

COMMUNITY ENGAGEMENT: Involve

The Hale Avenue Extension Project has been in the City's General Plan since the 1960's and continues to be an important north/south arterial gap fill project. Numerous community engagement and design meetings were held throughout the early planning and design phases. The City hired David J. Powers and Associates to prepare a Final Environmental Impact Report (FEIR) for the project. This process solicited input from the community regarding environmental impacts from the project as required by the California Environmental Quality Act (CEQA) process. Additional community notifications will be necessary when the project nears construction.

ALTERNATIVE ACTIONS:

City Council could decide to not move forward with the property purchase at this time and direct staff to acquire the property when the project becomes fully funded. However, delaying the right-of-way acquisition would increase costs, delay the project, and possibly jeopardize the City's chances of receiving Measure B funds due to not being “shovel ready”.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- July 20, 2016, City Council approved the purchase of property (Hosseinpour) APN 767-06-001 for \$183,000 plus escrow fees for the Hale Avenue Extension Project.
- December 6, 2017, City Council adopted a Resolution to purchase property from the Tran/Do and Giancola families for the Hale Avenue Extension project.
- January 7, 2018, City Council adopted a Resolution to purchase property from John P. Howard.

FISCAL AND RESOURCE IMPACT:

Sufficient funds for the \$11,000 property acquisition and \$1,500 in escrow and closing costs totaling \$12,500 have been budgeted for the project. The project is budgeted in the approved Fiscal Year 2018-19 Capital Improvement Program under CIP #546007 with \$19,650,000 from the Traffic Impact Fund (309).

CEQA (California Environmental Quality Act): Project

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council

certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

LINKS/ATTACHMENTS:

1. Resolution-Kerr
2. Agreement & deed -Kerr
3. Updated Appraisal Summary-Kerr
4. Project Location Map-Kerr

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PROPERTY PURCHASE AGREEMENT FOR A PORTION OF PROPERTY (APN 767-05-024) FROM KERR, FOR THE HALE AVENUE EXTENSION PROJECT

WHEREAS, the Hale Avenue Extension Project is included in the Fiscal Years 2018-19 & 2019-20 Capital Improvement Program under CIP#546007. The subject property from Susan L. Kerr and Robert A. Kerr, is required in order to construct the project, and therefore in the public's interest to acquire a portion of the real property for the public Project (Hale Avenue Extension Project); and

WHEREAS, on January 23, 2017, the City of Morgan Hill notified Susan L. Kerr and Robert A. Kerr, that the City was interested in purchasing a portion of their property for the Hale Avenue Extension Project from willing sellers; and

WHEREAS, on March 8, 2017, the City of Morgan Hill sent Susan L. Kerr and Robert A. Kerr a letter of Notice of Decision to Appraise the subject property; and

WHEREAS, on August 23, 2017, the City of Morgan Hill made an offer to purchase a portion of property from Susan L. Kerr and Robert A. Kerr for the appraised value of \$9,450 from a state certified MAI appraiser; and

WHEREAS, on December 01, 2017, the property owner, Susan L. Kerr and Robert A. Kerr signed the Property Purchase Agreement for an administrative settlement amount of \$11,000; and

NOW, THEREFORE, City Council of the City of Morgan Hill, based upon the foregoing and all documents, statements and facts known to City Council, does hereby resolve:

SECTION 1. Approval of Property Purchase Agreement. City Council approves the Property Purchase Agreement to acquire a portion of real property for a total amount of \$11,000 from Susan L. Kerr and Robert A. Kerr, see Attachment A. The Settlement amount of \$11,000 plus the estimated \$1,500 escrow and closing costs are hereby approved.

SECTION 2. Authority to City Manager. City Council authorizes the City Manager to execute the Agreement and all documents necessary to consummate the transactions contemplated therein, including without limitation, accepting the Grant Deed. City Council further authorizes the City Manager to make minor modifications to the foregoing described documents which may be necessary to consummate the transactions.

SECTION 3. CEQA. The City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070 adopted on August 23, 2017.

The Final Environmental Impact Report concluded that implementation of the Project could result in a number of significant effects on the environment and identified mitigation measures that would mitigate all of those significant effects to a less than significant level.

The City Council finds and determines that the project that is the subject of this Resolution is within the scope of the FEIR, as further modified and approved pursuant to the Mitigation and Monitoring Report.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of July, 2018.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

⌘ 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. XX-XXX, adopted by the City Council at a regular meeting held on July 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Resolution-Kerr [Revision 1] (1621 : Acquisition of Kerr Property)

City of Morgan Hill PROPERTY PURCHASE AGREEMENT

In consideration of the terms and conditions set forth in this Property Purchase Agreement (the "Agreement") Susan L. Kerr and Robert A. Kerr, wife and husband as joint tenants, ("GRANTOR") shall deposit in an escrow designated by the City of Morgan Hill ("City"), a Grant Deed suitable for recordation and conveying from GRANTOR to CITY a *fee simple* title as indicated in Exhibit(s) "A," and "B" incorporated herein by this reference, covering the property particularly described therein (collectively "Subject Property").

CITY and GRANTOR acknowledge and agree that the property being acquired by CITY is for public use and is necessary for the construction, operation and maintenance of the Hale Avenue Extension Project, a public project.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. Entire Agreement

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Grant Deed and shall relieve CITY of all further obligations or claims on this account or on account of the location, grade, construction or operation of the proposed public improvement.

2. CITY shall

- A. Pay the sum of **ELEVEN THOUSAND DOLLARS (\$11,000.00)** for the Subject Property identified in Exhibit(s) "A" and "B" attached hereto and made a part hereof, to the following title company: Old Republic Title Company "ORTC", for the account of the GRANTOR, Escrow No.0625008293-BP conditioned upon the Subject Property vesting in CITY free and clear of all liens, leases, encumbrances, (*recorded or unrecorded*), assessments and taxes except any exceptions to title which are acceptable to CITY as said exceptions are identified in the title report relating to the Subject Property issued by the above Title Company bearing the escrow number shown in Clause 2A and dated *April 21, 2017*, and updates thereof. Clearing of any title exceptions not acceptable to CITY is the responsibility of GRANTOR.
- B. Pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
- C. Prior to the close of escrow, have the authority to deduct and pay from the amount shown in Clause 2A herein any amount necessary to satisfy any liens, bond demands and delinquent taxes due, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent taxes and assessments, which may have become a lien at the close of escrow. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code if unpaid at the close of escrow. Close of escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.

Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)

D. The consideration set forth in Clause 2A herein shall include payment in full for the following improvements: All buildings, structures and other improvements affixed to the land which are owned by GRANTOR as owner or tenant of the real property proposed to be acquired will also be conveyed unless other disposition of these improvements has been made. The real property interest(s) proposed to be acquired is: *fee simple*, as described in Exhibit(s) "A" and "B."

3. Miscellaneous Realty Items Acquired

It is understood and agreed by and between the parties hereto that payment in Clause 2 above includes, but is not limited to, payment for wood fencing, wire fencing, three medium trees, and the wooden shed with an attached and covered storage area which are considered to be part of the realty and are being acquired by the CITY in this transaction.

- a. Grantor must clear all personal items from the wooden shed and covered area within twenty (20) days upon receipt of notification from the City.

4. Construct Fence to Match Existing Fence

At no expense to the Grantor(s), the Project will construct a new 30.1 lineal foot fence to match existing block/wood fence.

5. Permission to Enter Grantor's Property

Permission is hereby granted to City or its authorized agent to enter on my/our land, where necessary, to remove and replace the Grantor's side fence and rear fence as shown on the map(s) and as described in Clause(s) 4 of this Agreement.

6. Fence is Sole Property of the Grantor

Grantor(s) understands and agrees that after completion of the work described in Clause 4 of this Agreement, the side and rear fencing will remain the sole property of the Grantor(s) and the Grantor(s) will be responsible for its maintenance and repair. Grantor(s) further understands that the new sound wall will remain the property of the City.

7. CITY Performed Work

All work done under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by CITY, shall be left in as good condition as found.

8. Payment of Deed of Trust

If this property is secured by a mortgage(s) or deed(s) of trust, GRANTOR is responsible for payment of any demand under authority of said mortgage or deed of trust out of GRANTOR'S proceeds. Such amounts may include, but not be limited to, payments of unpaid principal and interest.

9. Escrow Instructions

GRANTOR hereby authorizes CITY to prepare and file escrow instructions in accordance with this Agreement on behalf of both parties.

10. Hazardous Wastes

The acquisition price of the Subject Property being acquired in this transaction reflects the fair market value of the Subject Property without the presence of contamination. If the Subject Property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the CITY may elect to recover its clean-up costs from those who caused or contributed to the contamination. GRANTOR shall further indemnify, defend, save and hold harmless the CITY from any and all claims, costs and liability, including reasonable attorney's fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of toxic or hazardous material on the Subject Property, save and except claims, costs or litigation arising through the sole willful misconduct of the CITY, its agents or employees.

11. Right of Possession and Use

It is agreed and confirmed by the parties hereto that, notwithstanding the other provisions in this Agreement, the right of possession and use of the Subject Property by CITY, and/or its designees or assignees including the right to remove and dispose of improvements, and install and connect utilities shall commence on close of escrow and that the amount shown in Clause 2A herein includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

12. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the parties to this Agreement.

13. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the Subject Property exceeding a period of one month, and GRANTOR further agrees to hold CITY harmless and reimburse CITY for any and all of its losses and expenses occasioned by reason of any lease of said Subject Property held by any tenant of GRANTOR for a period exceeding one month.

14. Release of Claims

GRANTOR, for itself, its agents, assigns, successors in interest, and any related or affiliated entities, hereby fully releases and discharges CITY, its agents, employees, officers, directors, divisions, attorneys, accountants, insurers, successors, and other representatives, and any and all related or affiliated private or public agencies or entities, from any and all causes of action, actions, judgments, liens, indebtedness, obligations, losses, claims, damages, liabilities and demands, including without limitation any claim arising out of or pertaining, directly or indirectly, to the acquisition of the Subject Property described in this Agreement and the construction of any improvements thereon, including without limitation, inverse condemnation, nuisance, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, attorneys' fees and costs, loss of goodwill, construction-related dust, noise, traffic and other related construction activity, and lost rentals or business associated with construction of any improvements, and any other types of related losses or damages.

GRANTOR acknowledges that it may hereafter discover facts or law different from, or in addition to that which it now believes to be true with respect to his/her release of claims as set forth in this Agreement, and understands that by executing this Agreement it is waiving any rights of claims for any other or future benefits or damages to which it might be entitled which are not specifically exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

15. Approval of CITY

GRANTOR understands that this Agreement is subject to the approval of CITY. Further, that this Agreement shall have no force or effect unless and until said CITY approval has been obtained.

16. Authority to Sign

GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.

17. Integrity of Property

Except as otherwise provided herein or by express written permission granted by CITY, GRANTOR shall not, after the date of execution of this Agreement and the close of escrow, alienate, lien, encumber or other transfer of the Subject Property or any portion thereof or allow the same to occur, cause or allow any physical changes on the Subject Property, or enter into any lease or contract with respect to the Subject Property or any portion thereof which would survive the close of escrow and impair CITY's use of the Subject Property. GRANTOR shall maintain the Subject Property in its current condition and shall make, at GRANTOR's expense, all repairs necessary to maintain the Subject Property in such condition.

18. Casualty or Loss

If, prior to the close of escrow, GRANTOR becomes aware that all or any material portion of the Subject Property has been destroyed, or substantially damaged, GRANTOR shall promptly give CITY written notice of the event, and CITY, at its option, may, on or before the close of escrow, elect to terminate this Agreement by giving GRANTOR written notice of termination, in which event the parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities hereunder. If CITY elects to complete the transactions contemplated in this Agreement, the Agreement shall remain in full force and effect and the purchase contemplated herein shall be consummated with no further adjustment or modification, and at the close of escrow, GRANTOR shall assign, transfer, and set over to CITY all of the right, title, and interest of GRANTOR in and to any insurance proceeds resulting from any casualty or any awards that have been or may thereafter be made. Such set over may be made at close of escrow by crediting the amounts of any such proceeds and/or awards against the amounts by CITY for the property acquisition under this Agreement.

19. Counterparts Signature

This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

GRANTOR: SUSAN L. KERR & ROBERT A. KERR
PROJECT NAME: HALE AVENUE EXTENSION PROJECT

APN: 767-05-024

20. Specific Performance and Other Remedies

The parties understand that the interests and rights being conveyed by this Agreement are unique and for that reason, among others, the parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any controversy concerning the obligations under this Agreement, such obligation shall be enforceable by a decree of specific performance or by injunction. Such remedies and all other rights and remedies set forth herein shall be cumulative and not exclusive, and shall be in addition to any and all other remedies which the parties may have hereunder at law or in equity.

(As used above, the term, "GRANTOR" shall include the plural as well as the singular number.)

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written herein below.

CITY:

City of Morgan Hill
A Municipal Corporation

BY: _____
Christina Turner

Title: City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Donald Larkin

Title: City Attorney

Date: _____

GRANTOR:

Susan L. Kerr and Robert A. Kerr, wife and
husband as joint tenants

By: 
Susan L. Kerr

Date: 12/01/17

By: 
Robert A. Kerr

Date: 12/01/17

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)

EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Section 28, Township 9 South, Range 3 East, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of land described in GRANT DEED from Robert A. Kerr and Susan L. Kerr to Susan L. Kerr and Robert A. Kerr, recorded August 15, 2016 Doc. 23399988, Official Records of Santa Clara County, more particularly described as:

Beginning at a point on the northwest corner of said GRANT DEED; thence along the northwesterly line of said GRANT DEED, North 55°06'29" East, a distance of 17.11 feet; thence leaving said northwesterly line South 00°14'35" East, a distance of 30.09 feet to the southwesterly line of said GRANT DEED; thence along said southeasterly line North 34°53'57" West, a distance of 24.75 feet to the **Point of Beginning**.

Containing 212 square feet, more or less.

Assessor's Parcel Number: 767-05-024

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.




Travis Timothy Bohan, LS 8965

AUG. 16, 2017
Date

Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)

Exhibit B

LEGEND

POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 ○ DIMENSION POINT
 ▨ AREA TO BE ACQUIRED
 ☒ CENTERLINE

SECTION 28,
 T9S, R3E, M.D.B.&M.

LINE TABLE

L1 N55°06'29"E 17.11'
 L2 S00°14'35"E 30.09'
 L3 N34°53'57"W 24.75'

**PACIFIC GAS
 & ELECTRIC
 COMPANY**

APN: 767-05-001

NORTHERLY LINE
 OF DOC 23399988

POB

0.00 Ac

212± sf



**KERR, SUSAN L.
 & ROBERT A.**

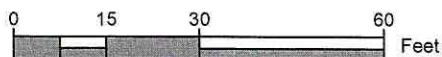
APN: 767-05-024

DOC: 23399988

SOUTHWESTERLY
 LINE OF
 DOC 23399988

25' STREET
 EASEMENT & PUE
 2987 OR 215
 POLE EASEMENT
 2184 OR 431

WARREN AVENUE



SCALE 1" = 30'

SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 30'
 Date Aug. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B
 APN 767-05-024
 FEE

Plat to Accompany Legal Description
 In the City of Morgan Hill
 Santa Clara County, California



RECORDING REQUESTED BY:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

WHEN RECORDED MAIL TO:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037-4128

Attn: City Clerk

SPACE ABOVE FOR RECORDER'S USE

APN: 767-05-024, (Portion, if applicable)

This document is exempt from the payment of a recording fee pursuant to Government Code § 27383 and §6103, and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922 (Governmental Agency acquiring title).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SUSAN L. KERR AND ROBERT A. KERR, A WIFE AND HUSBAND AS JOINT TENANTS

HEREBY GRANT(S) TO

CITY OF MORGAN HILL (GRANTEE), a Municipal Corporation

That certain property in the County of Santa Clara, State of California, more particularly described in Exhibits A and B, attached hereto and by this reference incorporated herein.

**SUSAN L. KERR AND ROBERT A. KERR, AS
 WIFE AND HUSBAND AS JOINT TENANTS**

By: _____

SUSAN L. KERR

Date: _____

By: _____

ROBERT A. KERR

Date: _____

NOTARY ACKNOWLEDGMENT ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Santa Clara

On this 1 day of December, 2017, before me, Rosalyn M. Zeigler, a Notary Public in and for the State of California, personally appeared Robert A. Kerr & Susan L. Kerr proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL the day and year first above written.

Rosalyn M. Zeigler
NOTARY PUBLIC



Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)

EXHIBIT "A"
LEGAL DESCRIPTION

All that real property situate in Section 28, Township 9 South, Range 3 East, in the City of Morgan Hill, County of Santa Clara, State of California, being a portion of land described in GRANT DEED from Robert A. Kerr and Susan L. Kerr to Susan L. Kerr and Robert A. Kerr, recorded August 15, 2016 Doc. 23399988, Official Records of Santa Clara County, more particularly described as:

Beginning at a point on the northwest corner of said GRANT DEED; thence along the northwesterly line of said GRANT DEED, North 55°06'29" East, a distance of 17.11 feet; thence leaving said northwesterly line South 00°14'35" East, a distance of 30.09 feet to the southwesterly line of said GRANT DEED; thence along said southeasterly line North 34°53'57" West, a distance of 24.75 feet to the **Point of Beginning**.

Containing 212 square feet, more or less.

Assessor's Parcel Number: 767-05-024

This real property description has been prepared at Mark Thomas, by me, or under my direction, in conformance with the Professional Land Surveyors Act.



A handwritten signature in black ink, appearing to read "Travis Timothy Bohan".

Travis Timothy Bohan, LS 8965

AUG. 16, 2017

Date

Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)

LEGEND

POB POINT OF BEGINNING
 CB CHORD BEARING
 CH CHORD DISTANCE
 ○ DIMENSION POINT
 ▨ AREA TO BE ACQUIRED
 ☒ CENTERLINE

SECTION 28,
 T9S, R3E, M.D.B.&M.

LINE TABLE

L1 N55°06'29"E 17.11'
 L2 S00°14'35"E 30.09'
 L3 N34°53'57"W 24.75'

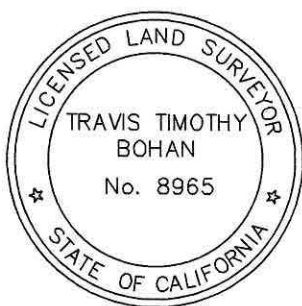
**PACIFIC GAS
 & ELECTRIC
 COMPANY**

APN: 767-05-001

NORTHERLY LINE
 OF DOC 23399988

POB

0.00 Ac
 212± sf

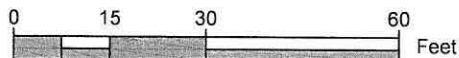


**KERR, SUSAN L.
 & ROBERT A.**

APN: 767-05-024
 DOC: 23399988

SOUTHWESTERLY
 LINE OF
 DOC 23399988

25' STREET
 EASEMENT & PUE
 2987 OR 215
 POLE EASEMENT
 2184 OR 431



SCALE 1" = 30'

WARREN AVENUE

SHEET 1 OF 1



MARK THOMAS

Scale: 1" = 30'
 Date Aug. 2017
 Drawn By MSW
 Checked By TTB

Exhibit B
APN 767-05-024
FEE

Plat to Accompany Legal Description
In the City of Morgan Hill
Santa Clara County, California



Attachment: Agreement & deed -Kerr (1621 : Acquisition of Kerr Property)



2300 Contra Costa Blvd.
Suite 525
Pleasant Hill, CA 94523

925.691.8500 **phone**
925.691.6505 **fax**
www.arws.com

Memorandum

Date: August 9, 2017

To: David Gittleson – City of Morgan Hill

From: Karen M. Couto, MAI, SR/WA – ARWS

Re: **Memorandum of Appraisal Update (MAU):** Appraisal Report No. 17019A
Owner: Kerr
205 Warren Avenue, Morgan Hill, CA
Assessor's Parcel Number: 767-05-024
Amends Appraisal Report No. 17019
Project: Hale Avenue Extension

Background

Karen M. Couto, MAI, SR/WA of Associated Right of Way Services appraised the above referenced property on April 24, 2017 with a date of value of March 31, 2017. The Right of Way Needs Map has been revised, dated June 16, 2017, and the proposed acquisition area had changed. In the original appraisal, the proposed acquisition parcel included one fee simple acquisition parcel. The revised Right of Way Needs Map also includes one fee simple acquisition parcel but with a reduced land area required.

I have prepared this Memorandum and updated the appraisal work file, which collectively meets the reporting requirements for this appraisal assignment in accordance with the requirements of Standard 2 of the Uniform Standards of Professional Appraisal Practice (USPAP).

Advisory Opinion 3 in USPAP further states that a new report is not required to have the same level of detail as the original report as long as the new report incorporates by reference specified information/analyses from the prior report, so that, in combination, the referenced portions and the new information/analysis added satisfies the applicable reporting requirements. This option can be used if the original appraiser's firm and the original client/intended user(s) involved are the same since the prior reports were issued. If at any time the client/intended user is in need of a copy of the original appraisal, one will be provided upon request, as the original report is necessary to understand the analysis provided in this document.

Attachment: Updated Appraisal Summary-Kerr (1621 : Acquisition of Kerr Property)

David Gittleson
August 9, 2017
Page 2



Summary of Amended Analysis

Since the date of the original appraisal report, the area of the fee simple parcel has changed as reflected on the updated Right of Way Needs Map prepared by Mark Thomas and dated June 16, 2017. The land area required in the original appraisal and the revised land area required are summarized as follows:

	<u>Original Appraisal</u>	<u>Updated Appraisal (MAU)</u>
APNs: 767-05-024	Fee: 261 sf.	Fee: 212 sf.

The location of the proposed acquisition area has not changed. As directed by the Client, the date of value remains unchanged as March 31, 2017.

The estimate of value for the proposed fee simple acquisition parcel has been amended to reflect the revised area proposed to be acquired for the project from the subject larger parcel.

The revised Right of Way Needs Map showing the updated land requirements of the proposed partial acquisition parcel is included in the Addenda of this memorandum.

All other elements of analysis in the original report remain the same. The assumptions and limiting conditions in the original appraisal report remain unchanged and are carried forward herein. **This amendment can only be relied upon by the intended users of the original report.**

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Summary of Salient Facts and Estimate of Just Compensation - Revised

Fee Simple Acquisition Parcel	Site Improvements	Damages: Cost to Cure	Benefits	Estimate of Just Compensation
\$7,950	\$1,070	\$427	\$0	\$9,450 (Rounded)

Date of Valuation: March 31, 2017 (date of site visit)

Assessor's Parcel Number: 767-05-024

Property Location/Address: 205 Warren Avenue, Morgan Hill, CA

Owner: Kerr

Owner's Contact Information: Susan Kerr: email: rsmr@charter.net; mobile: 408-767-8297

Owner's Address: 205 Warren Avenue, Morgan Hill, CA 95037

Owned Since: More than five years

Occupied By: Susan & Robert Kerr

Principal Improvements: Single-Family Home, Detached Garage, Pool

Total Site Area: 0.18 acre or 7,840 square feet

Proposed Area to be Acquired: Revised

Fee Simple Interest Parcel: 212 square feet; <0.01 acre

Highest and Best Use

As Vacant: Residential development

As Improved: Continued use as an improved single-family home

Attachment: Updated Appraisal Summary-Kerr (1621 : Acquisition of Kerr Property)

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Table of Contents

BACKGROUND

SUMMARY OF AMENDED ANALYSIS

SUMMARY OF SALIENT FACTS AND ESTIMATE OF JUST COMPENSATION

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ADDENDA

REVISED RIGHT OF WAY NEEDS MAP
APPRAISER QUALIFICATIONS
DIARY NOTES - UPDATED

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Introduction

Scope of Assignment

The Purpose of Assignment, Client, Intended User and Intended Use as stated in the original report remain the same.

The scope of the appraisal MAU includes an amendment to the proposed partial acquisition areas only. **All other analysis and conclusions from the previous appraisal are carried forward and incorporated by reference herein. The date of value remains the same as of March 31, 2017.**

The Appraiser previously inspected the subject property to determine the size, condition, and utility of the land and any existing improvements and/or encumbrances. Searches of public records, real estate listings and sales services were employed to obtain data. Analysis of market conditions was completed, both general and specific to the market. Market participants were interviewed. Relevant property sales were researched and confirmed to the extent possible. The data is set out in the property valuation section of the original report and carried forward herein.

The Appraisal Report update conforms to Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. The information contained in this revised MAU report is specific to the needs of the client and for the intended use stated in this report. The Appraiser is not responsible for unauthorized use of this report. The intent of this report is to provide sufficient data and analysis so as to have no misleading information and a conclusion of value of high reliability.

Date of Valuation

The property in this report has been valued as of **March 31, 2017**. The date of value is the date of the site inspection.

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Certification of Appraiser

Property Owner	Assessor's Parcel Number
Kerr	767-05-024

I hereby certify that to the best of my knowledge and belief:

I have personally inspected the property that is the subject of this report.

The statements of fact contained in the appraisal report are true and correct, and the information upon which the opinions expressed therein are based is correct; subject to the Limiting Conditions therein set forth.

I understand that such appraisal may be used in connection with the proposed acquisition of a portion of the subject larger parcel to be acquired by the City of Morgan Hill; that such appraisal has been made in conformity with the appropriate State laws, Title VI of the 1964 Civil Rights Act, and regulations, policies and procedures applicable to the appraisal of right of way for such purposes; and that to the best of my knowledge, no portion of the value assigned to such property consists of items which are non-compensable under the established law of the State of California.

Neither my employment nor my compensation for completing this assignment is in any way contingent upon the values reported herein. My compensation is not contingent upon the developing or reporting of predetermined values or direction in value that favors the cause of the Client, the amounts of the value opinions, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.

I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the acquiring agency and I will not do so until so authorized by said officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

The owner or representative for the owner has been given an opportunity to accompany me during the inspection of the subject property.

I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

I previously appraised the subject property for the same purpose on April 24, 2017 with a date of value of March 31, 2017. This amended appraisal report memorandum with the same date of value of March 31, 2017 can only be used and relied upon by parties familiar with the original appraisal report.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



The reported analyses, opinions, and conclusions are limited only by the reported Assumptions and Limiting Conditions, and are my own personal, impartial, unbiased professional analyses, opinions, and conclusions.

Any decrease or increase in the fair market value of the subject real property prior to the date of valuation caused by the project or improvements for which portions of such property are acquired, or by the likelihood that the property would be acquired for such project or improvements, other than due to physical deterioration within the reasonable control of the owner, has been disregarded in appraising the subject property.

The reported analyses, opinions, and conclusions were developed, and this report, to the best of my knowledge and belief, has been prepared in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice (USPAP).

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute, the International Right of Way Association and the California Bureau of Real Estate Appraisers.

The opinion of fair market value for the proposed acquisition of a portion of the subject larger parcel as of the date of valuation is set forth in the Summary of Salient Facts and Estimate of Just Compensation and is based upon my independent appraisal and the exercise of professional judgment.

No one provided significant real property assistance to the person signing this certification.

I hereby certify that my opinion of the market value of the property appraised as described in this report is included herein and that my opinions and conclusions were made subject to the Assumptions and Limiting Conditions in this report and without collusion, coercion or direction from anyone as to value.

August 9, 2017

Date

Karen M. Couto, MAI, SRWA
State Certified General Appraiser
CA License No. AG005275

Inspection Date(s):

March 31, 2017

Attachment: Updated Appraisal Summary-Kerr (1621 : Acquisition of Kerr Property)

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Valuation Update

Since the date of value remains unchanged from the original appraisal report previously referenced, the concluded unit value of the subject property is carried forward as follows:

Land Value of the Subject Parcel: Before Condition				
	Estimated Value		Land Area	Estimated Value
Whole Property - Before (land only)	\$/Sq. Ft.		Sq. Ft.	
Total Land Area			7,840	
Fee Simple Interest Parcel: Underlying Land Only	\$37.50	x	7,840	= \$294,000
Concluded Fair Market Value of the Subject Underlying Land				\$294,000

Value of the Area to be Acquired: Updated

Fee Simple Acquisition Parcel

The City of Morgan Hill requires one parcel from the subject property in fee simple interest for the Hale Avenue Extension Project. The fee simple parcel is located at the northwest corner of the subject back yard behind the detached garage. It is intended for a small portion of the Hale Avenue road right-of-way as the planned roadway curves away from the subject. According to the revised Right-of-Way Needs Map provided, the area required is a small triangular parcel and consists of approximately 212 square feet.

Based on the previously concluded fee simple value of the subject underlying land parcel of \$37.50 per square foot, the proposed fee simple acquisition area is valued as illustrated below:

Proposed Fee Simple Interest Parcel: Updated				
	Estimated Value		Land Area	Estimated Value
Property Rights Required	\$/Sq. Ft.		Sq. Ft.	
Fee Simple Interest Parcel			212	
Proposed Fee Simple Interest Parcel:	\$37.50	x	212	= \$7,950
Fee Simple Parcel:				\$7,950

Site Improvements in Acquisition Area

The subject property is improved with a single-family house, detached garage and an in-ground swimming pool. None of the permanent improvements are located in the proposed acquisition area. However, the proposed acquisition area does include perimeter fencing built with various

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



materials including plywood and a concrete block wall topped with vertical wood boards. There is also a covered open storage or work area, a concrete pad, a wooden dividing wall, a built-in work bench and a medium size tree. The site improvements in the rear corner of the yard are in fair to poor condition and nearing the end of their useful lives. The property owner reported that they are planning to replace the older sections of fencing in the rear yard, pending the outcome of the planned Hale Avenue Extension Project and the location of the new property line. The depreciated contributory value of these site improvements is estimated using the Marshall Valuation Services manual, Section 66, pages 2 through 8, as follows:

Site Improvements in Acquisition Area: Updated							
	Quantity LF/ Sq. Ft./ Each	x	\$/LF, \$/Sq. Ft. or Each	-	Less: % Depreciation	=	Site Improvements
Site Improvements:							
6' Plywood Fencing (LF)	25	x	\$18	-	75%	=	\$113
3' Concrete Block Wall (SF)	68.0	x	\$10	-	75%	=	\$170
3' Wood Fencing (LF)	17.0	x	\$10	-	75%	=	\$43
Covered Open Storage (SF)	40	x	\$10	-	75%	=	\$100
Concrete Pad (SF)	212	x	\$5	-	75%	=	\$265
Wood Wall (LF)	12	x	\$18	-	75%	=	\$54
Work Bench	1	x	\$100	-	75%	=	\$25
Tree	1	x	\$300	-	0%	=	\$300
Total Value of Site Improvements in Acquisition Area:							\$1,070

Value of the Remainder in the Before Condition

The value of the remainder subject parcel after the fee simple interest partial acquisition in the before condition is expressed in the following table:

Value of the Remainder Land as Part of the Whole - Before Condition - Updated	
Value of the Subject Property: Before Condition	\$294,000
Less: Value of the Fee Acquisition Parcel:	<u>\$7,950</u>
Value of the Remainder Parcel: Before Condition	\$286,050

Damages

Damages generally occur when the acquisition of a portion of a property results in the remaining property having less value after the acquisition and construction of the project in the manner proposed than it had as part of the original property prior to the taking. Stated another way, after the acquisition of a portion of the property and construction of the project in the manner proposed, the value of the remaining property is less than it was as part of the entire property before the taking.

In the before condition, the subject property consists of 0.18 acre or 7,840 square foot residential lot improved with a single-family house, detached garage and an in-ground swimming pool. After

City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



the proposed acquisition, the size of the residential lot is reduced by the area of the proposed fee simple interest parcel for a remainder area of 7,628 square feet or 0.175 acre. None of the permanent residential improvements are impacted and will remain on the site in a significantly similar manner as in the before condition. Once a new fence is built to replace the portions of the rear fence at the northwest corner of the backyard, the yard will be enclosed and secured in a significantly similar manner as currently exists.

In addition, the Hale Avenue extension has been planned for decades and in the planning process the roadway was shifted west and curves away from the subject after it clips the northwest corner of the subject site and a sound wall is planned for this section of roadway providing a buffer from the new roadway for the subject. Therefore, no permanent damages were found to accrue to the subject remainder parcel as a result of the proposed partial acquisition parcel or from the construction of the project in the manner proposed

However, to secure the perimeter of the yard in the after condition, a new section of six-foot high fencing is needed at a cost of approximately \$18.00 per linear foot offset by the depreciated replacement cost of the plywood fencing included in the site improvements section of the estimate of Just Compensation. The cost to cure the damages or replace the fencing along the new property line is calculated as follows:

Site Improvements: Damages: Cost to Cure - Replace Rear Fencing - Updated						
Site Improvement	Quantity (LF)	x	\$/LF	-	Less: Depreciated Value	= Cost to Cure
Fencing - Rear Corner Yard (LF)	30	x	\$18	-	\$113	= \$427
Total Cost to Cure Site Improvements:						\$427

Benefits

In the after condition, circulation in the area will be improved with the extension of Hale Avenue and the construction of a roundabout at the intersection of West Dunne Avenue and the new Hale Avenue extension to provide improved circulation at controlled speeds. Thus, there will be general benefits to the properties west of the downtown area and the Morgan Hill community as a result of the project. However, no specific benefits were found to occur for the subject property remainder.

Construction Contract Work (CCW)

For the purpose of this appraisal, it is assumed that the removal of the rear fencing, covered storage area and other site improvements located within the proposed acquisition parcel will be conducted as part of the construction of the project so the subject property owners can replace a section of the fencing in a timely manner. There is no other construction contract work known for the remainder of the subject property.

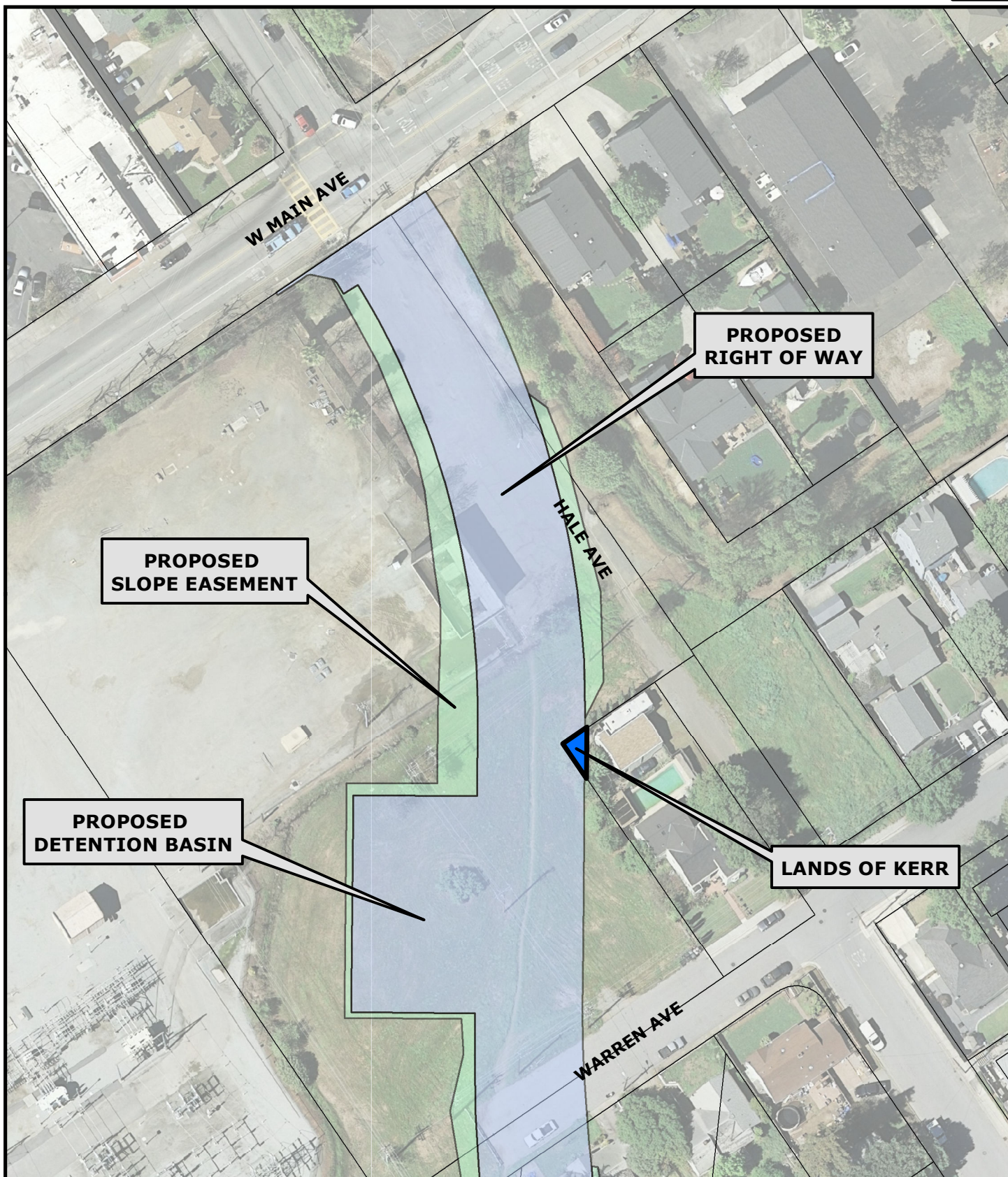
City of Morgan Hill
Hale Avenue Extension Project
APN: 767-05-024 – Kerr



Estimated Just Compensation

The estimated fair market value of the proposed acquisition parcel required from the subject property, site improvements, cost to cure damages, and the recommended Just Compensation are summarized as follows:

Land:	
Fee Simple Parcel:	\$7,950
Site Improvements:	\$1,070
Damages: Cost to Cure - Replace Fencing	\$427
Benefits:	\$0
Total Value: Recommended Just Compensation:	\$9,447
<i>Rounded To:</i>	\$9,450



Attachment: Project Location Map-Kerr (1621 : Acquisition of Kerr Property)



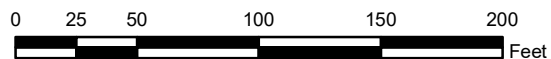
CITY OF MORGAN HILL

**Department of Public Works
Engineering and Utilities Division**

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SITE MAP

**LANDS OF KERR
APN 767-05-024**





CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

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

ACCEPTANCE OF GALVAN PARK HANDBALL COURT IMPROVEMENTS PROJECT

RECOMMENDATION(S)

1. Accept as complete the Galvan Park Handball Court Improvements Project in the final amount of \$512,031;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file the said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2018 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

On November 1, 2017, City Council awarded the construction contract for the Galvan Park Handball Court Improvements Project to Calstate Construction, Inc. in the amount of \$482,888 with an authorized contingency of \$48,288. The project scope included the 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 Galvan Park Handball Court Improvements Project began on December 4, 2017 and the project was substantially completed by March 30, 2018. During construction, two change orders were authorized totaling \$29,143 due to project changes. The final construction contract with Calstate Construction, Inc. is \$512,031.

This project was partially funded through the County of Santa Clara's Community Development Block Grant (CDBG) program. A total of approximately \$132,000 of the overall cost was granted to the City for this project.

Staff recommends the acceptance of this project as it is completed according to plans and specifications.

COMMUNITY ENGAGEMENT: Inform

In the developmental phase of the project, a community engagement process was initiated in 2014 with the explicit goal of involving the park's neighbors in designing park improvements.

Prior to commencement of work, the contractor notified all affected residents and business owners in the vicinity with project updates. Staff and contractor met with concerned residents/business owners to go over any issues that arose during construction.

A grand opening ceremony was held on April 7, 2018 to officially open the handball court for use.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

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.

September 6, 2017 – City Council rejected bids for the Galvan Park Handball Court Improvements Project.

October 18, 2017 – City Council approved Second Amendment to the County Community Development Block Grant (CDBG) agreement for Galvan Park.

November 1, 2017 – City Council awarded rebid of the Galvan Park Handball Court Improvements Project.

February 22, 2018 – City Council approved Third Amendment to the County Community Development Block Grant (CDBG) agreement for Galvan Park.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Galvan Park Handball Courts Improvement Project is \$512,031. The project was awarded to Calstate Construction, Inc. in the amount of \$482,888 with an authorized 10% construction contingency of \$48,288 (total of \$531,176).

The balance of \$19,145 will be returned to the Park Impact Fund (301)

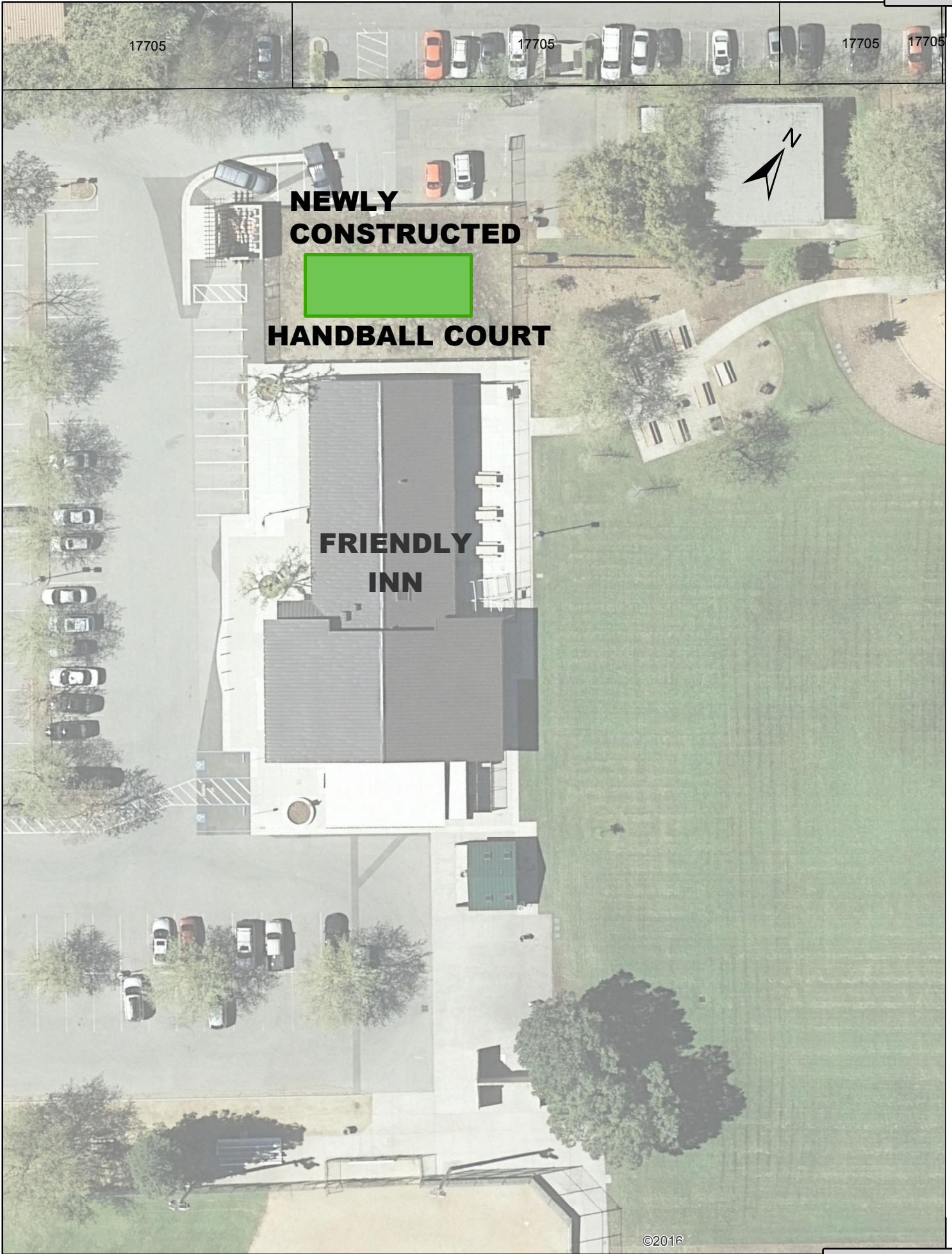
CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of CEQA Guidelines (Existing Facilities), as this project was a minor alteration of an existing public park resulting in a negligible increase of use at the park.

LINKS/ATTACHMENTS:

1. Vicinity Map Galvan Park Handball Courts
2. Galvan Park Handball Court Improvements Change Order Closeout
3. Notice of Completion



CIP Contract Acceptance Funding Closeout Statement

Project:	Galvan Park Handball Court Improvements		
Project No:	141A16		
Date of Project Award:	1-Nov-17	Project Award Amount:	\$482,888
Funding Source:		Contingency Authorized:	\$48,288
Date of Project Acceptance:	18-Jul-18	Total Authorized:	\$531,176
		Actual Base Contract Spent:	\$482,888

Change Orders				
	Description	Date	Council Approval Req'd? (Y/N)	
C.O. #1:	Existing Handball Court Demolition	15-Jan-18	N	\$11,739
C.O. #2:	Fencing Changes to the Handball Court	15-Mar-18	N	\$17,404
			Total C.O.:	\$29,143

Additional Appropriations		
Source	Amount	Date
None		

Total
Construction
Amount (Base
Contract plus
CO's): \$512,031

Construction Fund Balance: \$19,145

Attachment: Galvan Park Handball Court Improvements Change Order Closeout (1807 : Acceptance of Galvan Park Handball Court

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE
NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On November 1, 2017, the City of Morgan Hill, a Municipal Corporation, entered into a contract with Calstate Construction, Inc. for the Galvan Park Handball Court Improvements Project located at 17666 Crest Avenue Morgan Hill, CA 95037.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is Calstate Construction, Inc. located at: 4165 Business Center Drive Fremont, CA 94538
- 4) The surety is The Guarantee Company of North America USA.
- 5) The project was completed on March 30, 2018 and accepted by the City Council of the City of Morgan Hill on July 18, 2018.

CITY OF MORGAN HILL, a Municipal Corporation

By _____

Scott Creer
City Engineer

I, the undersigned, declare that I am the Public Works Director for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion (1807 : Acceptance of Galvan Park Handball Court Improvements Project)



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

ACCEPT OAK CANYON BOOSTER STATION REHABILITATION PROJECT

RECOMMENDATION(S)

1. Accept as complete the Oak Canyon Booster Station Rehabilitation Project in the final amount of \$1,721,585;
2. Authorize the City Engineer to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

On March 2, 2016, City Council awarded a construction contract for the Oak Canyon Booster Station Rehabilitation Project. The scope of work included new high efficiency vertical turbine pumps, new fire pump, new motor control system, and a new hydro-pneumatic mini tank - all enclosed in a new secured building. A new emergency generator was also installed to meet the current Bay Area Air Quality Management District regulations.

The project was awarded to Monterey Peninsula Engineering for \$1,592,000 and the project was authorized a 10% contingency of \$159,200. During construction, fifteen contract change orders totaling \$129,585 were authorized to address unforeseen conditions and project changes. The project was delayed due to the time involved in obtaining an electrical service, relocating the transformer, and station programming issues.

Staff recommends accepting the project as the work is complete and in accordance with the plans and specifications.

COMMUNITY ENGAGEMENT: Inform

Staff met with the Jackson Oaks and Holiday Lake Estates neighborhood residents in

August of 2015 and March of 2016 to inform them of multiple water improvement projects, including the Oak Canyon Booster Station project.

Prior to commencement of the work, the contractor notified the residents living adjacent to the site. In addition, email notifications were sent through NextDoor and the City's email subscribers. Project updates were also available on the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 2, 2016, City Council awarded a construction contract to Monterey Peninsula Engineering for \$1,592,000 for the Oak Canyon Booster Station Rehabilitation Project.

FISCAL AND RESOURCE IMPACT:

The final contract amount for the Oak Canyon Booster Station Rehabilitation Project is \$1,721,585. The project was awarded to Monterey Peninsula Engineering for \$1,592,000 and the project was authorized a 10% construction contingency of \$159,200 (total of \$1,751,200). The base contract amount of \$1,592,000 plus change orders totaling \$129,585 equals the total contract price of \$1,721,585 (\$1,592,000+\$129,585). The balance of \$29,615 (\$1,751,200-\$1,721,585) will be returned to the Water Impact Fund (651). The project was funded by water bond proceeds.

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. Notice of Completion-Oak Canyon 7-18-18
2. Project Location Map-Oak Canyon Booster
3. Funding Closeout Statement Oak Canyon 7-18-18

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On March 2, 2016, the City of Morgan Hill, a Municipal Corporation, entered into a contract with Monterey Peninsula Engineering for the Oak Canyon Booster Station Rehabilitation Project located at 16360 Oak Canyon Drive in Morgan Hill, CA.
- 2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.
- 3) The contractor is Monterey Peninsula Engineering located at 192 Healy Avenue, Marina, CA 93933.
- 4) The surety is "The Continental Insurance Company".
- 5) The project was substantially completed in September 2017 and accepted by the City Council of the City of Morgan Hill on July 18, 2018.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion-Oak Canyon 7-18-18 (1838 : Accept Oak Canyon Booster Station)



Attachment: Project Location Map-Oak Canyon Booster (1838 : Accept Oak Canyon Booster Station)



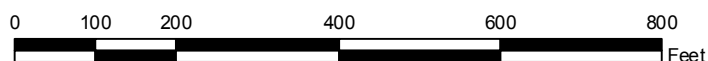
CITY OF MORGAN HILL

Engineering Division

Public Works Department

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**ACCEPT
OAK CANYON BOOSTER STATION
REHABILITATION PROJECT**



CIP Contract Acceptance Funding Closeout Statement

Project:	Oak Canyon Booster Station		
Project No:	607D14		
Date of Project Award:	2-Mar-16	Project Award Amount:	\$1,592,000
Funding Source:	f651 & F653	Contingency Authorized:	\$159,200
Date of Project Acceptance:	18-Jul-18	Total Authorized:	\$1,751,200
		Actual Base Contract Spent:	\$1,592,000

Change Orders				
	Description	Date	Council Approval Reqd? (Y/N)	
C.O. #1:	Generator credit	5-Jul-16	N	-\$15,000
C.O. #2	Increase pump size	5-Jul-16	N	\$5,175
C.O. #3	Add transformer pad plus retaining block wall per PG&E	5-Jul-16	N	\$16,403
C.O. #4	Notify resident/time extension	3-Aug-16	N	\$433
C.O. #5	Install conduits/cables for emergency generator	9-Aug-16	N	\$5,164
C.O. #6	Add restraint expansion joints	19-Aug-16	N	\$163
C.O. #7	Time extension	25-Aug-16	N	\$0
C.O. #8	Repair unforeseen storm drain inlet	5-Jan-17	N	\$9,017
C.O. #9	Add suction pressure gauges	30-Jan-17	N	\$4,978
C.O. #10	Add suction pressure gauges	20-Mar-17	N	\$7,142
C.O. #11	Concrete and paving alterations	20-Apr-17	N	\$6,546
C.O. #12	Install temporary antenna and transducer in existing tank	5-Jun-17	N	\$12,805
C.O. #13	Epoxy coat floor, add ARV's	3-Oct-17	N	\$18,384
C.O. #14	Paint ceiling, fence mods, repair storm drain	24-Oct-17	N	\$33,634

Attachment: Funding Closeout Statement Oak Canyon 7-18-18 (1838 : Accept Oak Canyon Booster Station)

C.O. #15	add sump pumps, AC paving changes, add AC dike, Tesco programming	4-Jan-18	N	\$24,741
Total C.O.:				\$129,585

Additional Appropriations		
Source	Amount	Date
None		

		Total Construction Amount (Base Contract plus CO's):	\$1,721,585
Construction Fund Balance:	\$29,615		



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: Assistant City Manager

ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS – CALLE SIENA - TRACT NO. 10293

RECOMMENDATION(S)

1. Accept the subdivision public improvements for Calle Siena – Tract No. 10293;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the Recorder of Santa Clara County.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

Calle Siena - Tract 10293 is a 12-lot subdivision located on the north side of East Main Avenue (see attached site map). The subdivision improvements have been completed in accordance with the requirements of the Subdivision Improvements Agreement between the City of Morgan Hill and Glenrock Builders, Inc. dated October 6th, 2015 and as specifically set forth in the plans and specifications approved by the City.

As of June 30, 2018, the total length of streets previously accepted by the City is 127.31 miles.

The streets and street lengths to be accepted as part of the development are as follows:

Street	Street Lengths
Calle Siena	0.07 mi
Total	0.07 mi

The value of the public improvements being accepted is \$471,992.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the project acceptance.

ALTERNATIVE ACTIONS: Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the Final Map and Subdivision Improvements Agreement for Calle Siena – Tract No. 10293 on August 19, 2015.

FISCAL AND RESOURCE IMPACT:

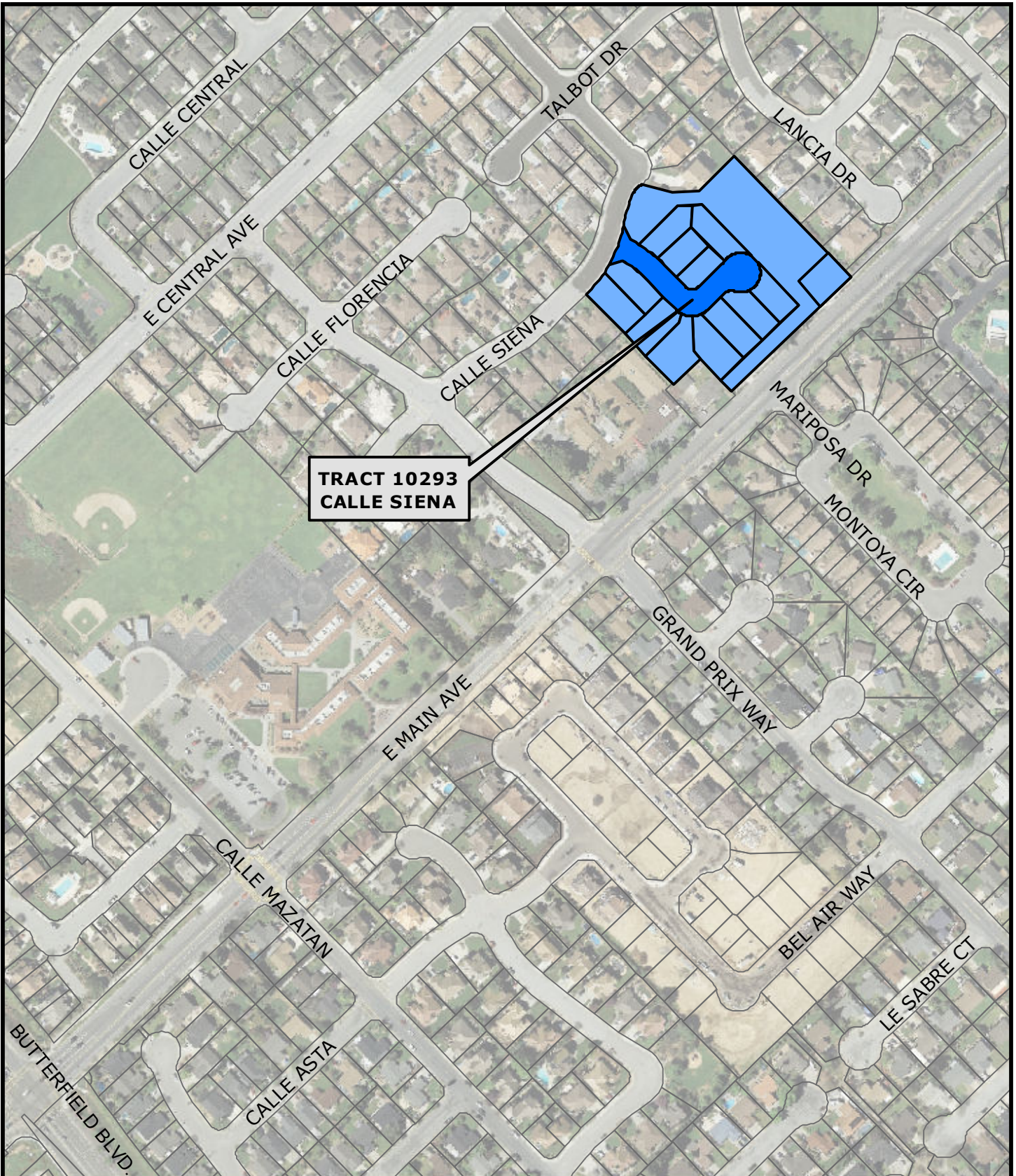
Staff time for this project was paid by the developer's land development fees.

CEQA (California Environmental Quality Act):

Mitigated Negative Declaration was adopted on August 26, 2014.

LINKS/ATTACHMENTS:

1. Site Map
2. Notice of Completion



**TRACT 10293
CALLE SIENA**



CITY OF MORGAN HILL

Engineering Division

Public Works Department

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**SITE MAP
CALLE SIENA
TRACT 10293**



Attachment: Site Map (1853 : ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS - CALLE SIENA - TRACT NO. 10293)

Record at the Request of
and When Recorded Mail to:

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

- 1) On **October 6, 2015**, the City of Morgan Hill, a Municipal Corporation, entered into a contract with **Glenrock Builders, Inc.** for the **Calle Siena – TRACT NO. 10293** subdivision project located on the north side of East Main Avenue, Morgan Hill, California.
- 2) The owner of the subdivision public improvements is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037.
- 3) The contractor is **Glenrock Builders, Inc.**
- 4) The surety is **Developers Surety and Indemnity Company.**
- 5) The project was completed on **June 8, 2018** and accepted by the City Council of the City of Morgan Hill on **July 18, 2018.**

CITY OF MORGAN HILL, a Municipal Corporation

By _____

Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

Attachment: Notice of Completion (1853 : ACCEPTANCE OF SUBDIVISION PUBLIC IMPROVEMENTS – CALLE SIENA - TRACT NO. 10293)



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Charlie Ha, Supervising Civil Engineer
APPROVED BY: City Manager

FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2B - TRACT NO. 10457

RECOMMENDATION(S)

1. Approve the Final Map;
2. 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
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

San Sebastian Phase 2B – Tract No. 10457 is a 26-lot subdivision located on the southerly side of Cochrane Road approximately 1500 feet east of Saint Marks Drive (see attached site map). The developer, Toll CA XX, LP, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 12, 2013.

The City Council is required to approve the map if it conforms to all the requirements of the Subdivision Map Act, and any conditions of approval for the Tentative Map.

The developer has furnished the City with the necessary documents to complete the processing of the Final Map and has made provisions with a Title Company for the recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council approve the Final Map and authorize the City Manager to sign a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney.

On June 6, 2018, City Council approved the Final Map and Subdivision Improvement Agreement for the Phase 2A of San Sebastian – Tract No. 10451 in which the surety bonds and insurance covered all public improvements necessary for all of Phases 2A, 2B, and 2C of the San Sebastian project. Therefore, no additional subdivision improvement agreement will be needed with the processing of this Final Map.

COMMUNITY ENGAGEMENT: Involve

On February 12, 2013, the Planning Commission approved the Tentative Map. Residents within a 300 feet radius were informed of the Planning Commission's intent to approve the Tentative Map for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over Tentative Map requirements.

ALTERNATIVE ACTIONS:

There is no feasible alternative action as the developer has met the requirements of the tentative map conditions approved by the Planning Commission to file for a final map approval.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 27, 2013, the City Council approved the Development Agreement.

FISCAL AND RESOURCE IMPACT:

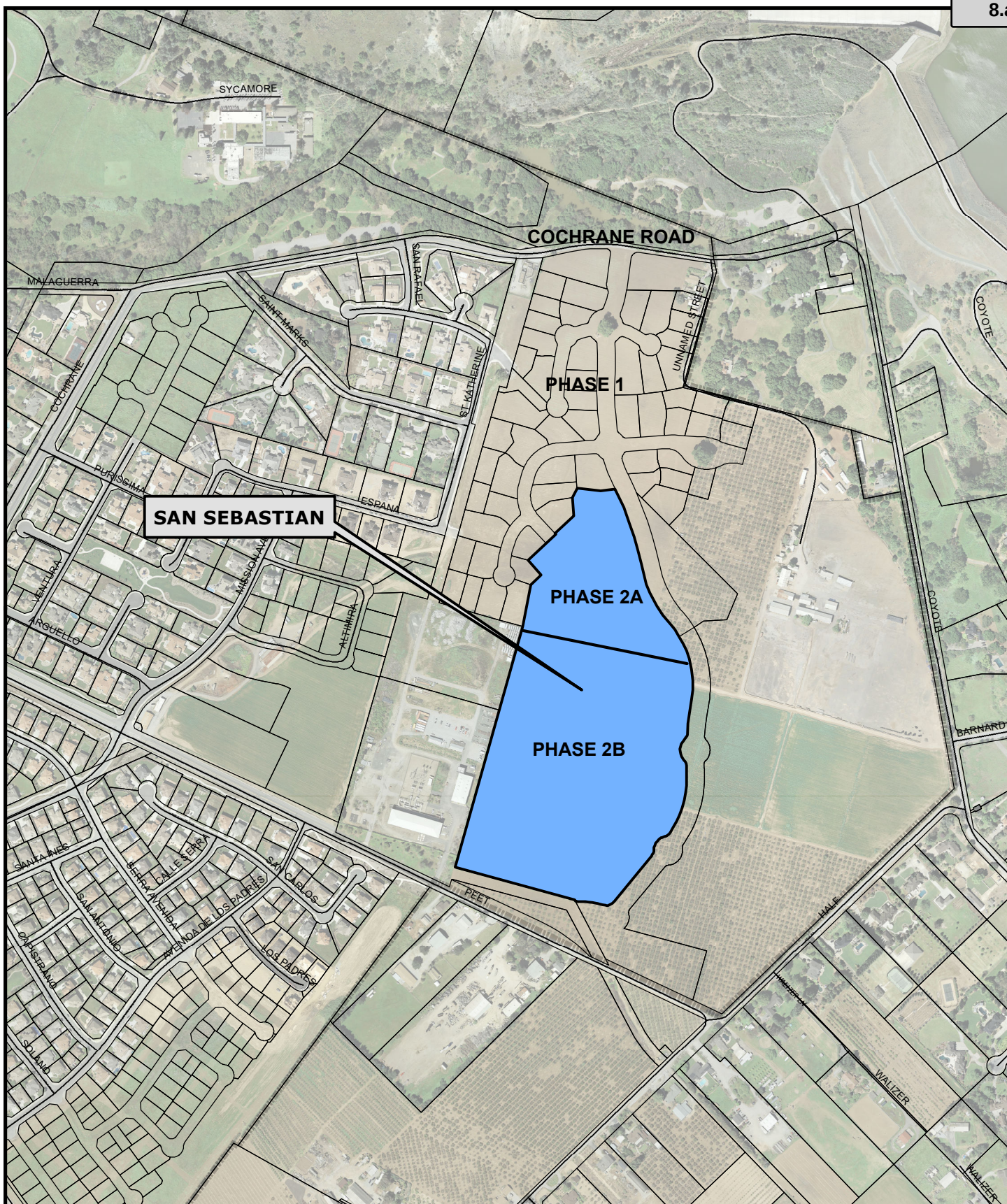
Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

An Environment Impact Report was adopted by the City Council on February 27, 2013.

LINKS/ATTACHMENTS:

1. Site Map
2. Final Map
3. Stormwater BMP Operation and Maintenance Agreement



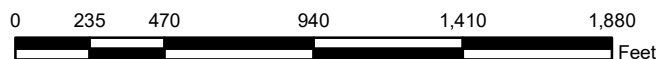
Attachment: Site Map (1844 : FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2B - TRACT NO. 10457)



CITY OF MORGAN HILL
Department of Public Works
Engineering and Utilities Division

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SITE MAP **San Sebastian Phase 2**



OWNERS’ STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B", CONSISTING OF SIX (6) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING, BUT NOT LIMITED TO SIDEWALKS, POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON, OR OVER THE LAND DESIGNATED AS "PUBLIC SERVICE EASEMENT" (PSE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR ACCESS OF EMERGENCY VEHICLES, OVER, ON AND ACROSS THOSE CERTAIN AREAS DESIGNATED AS "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: EASEMENTS FOR NON-VEHICULAR PUBLIC ACCESS OVER THOSE CERTAIN AREAS DESIGNATED AS "PUBLIC ACCESS EASEMENT" (PAE).

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER THOSE CERTAIN AREAS DESIGNATED AS "INGRESS AND EGRESS EASEMENT" (IEE) FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE STORM DRAIN EASEMENT" (PSDE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE STORM WATER MANAGEMENT FACILITIES. SAID EASEMENTS SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, EASEMENTS OVER, UNDER, OR UPON THOSE CERTAIN AREAS DESIGNATED AS "PRIVATE SANITARY SEWER EASEMENT" (PSSE) FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE SANITARY SEWER FACILITIES. SAID EASEMENT SHALL BE CONVEYED TO AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS.

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF THE LOTS AND PARCELS WITHIN THE "SAN SEBASTIAN" SUBDIVISIONS, THEIR LICENSEES, VISITORS, AND TENANTS, FOR THE PURPOSES OF INGRESS, EGRESS, PARKING (WHERE DESIGNATED) AND FOR THE INSTALLATION AND MAINTENANCE OF PRIVATE UTILITIES UNDER, UPON AND OVER THE PRIVATE STREETS SHOWN AS "VIA ORISTA" ("PARCEL A"), "CORTE MATHEO" ("PARCEL B"), AND "VIA TOLENTINOI" ("PARCEL C"). SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS, AND RESTRICTIONS.

ALL OF THE STREETS AND EASEMENTS DESCRIBED HEREIN SHALL BE KEPT FREE OF BUILDINGS, EXCEPT LAWFUL UNSUPPORTED ROOF OVERHANGS, AND OBSTRUCTIONS THAT DO NOT IMPAIR THE USE OF, OR ARE CONSISTENT WITH THE PURPOSE OF THE STREET OR EASEMENT.

THE OFFERS OF DEDICATION DESCRIBED HEREIN TO THE CITY OF MORGAN HILL ARE TO BE ACCEPTED ONLY WHEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL OR ITS SUCCESSOR AGENCY ADOPTS AND RECORDS IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY A RESOLUTION ACCEPTING SAID STREETS OR EASEMENTS. UNTIL SAID RESOLUTION(S) ARE RECORDED, ALL STREETS AND EASEMENTS ENCOMPASSED WITHIN SUCH OFFERS OF DEDICATION SHALL BE MAINTAINED BY THE OWNER DURING ANY REQUIRED WARRANTY PERIOD AND THEREAFTER BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION. THE CITY OF MORGAN HILL SHALL NOT BE RESPONSIBLE FOR MAINTENANCE AND SHALL INCUR NO LIABILITY WITH RESPECT TO SUCH OFFERED STREETS AND EASEMENTS OR ANY IMPROVEMENT THEREON. ALL DEDICATED RIGHTS-OF-WAY AND EASEMENTS NOT ACCEPTED FOR MAINTENANCE BY THE CITY OR OTHER PUBLIC AGENCY SHALL BE MAINTAINED BY THE OWNER(S) OF THE LOTS OR PARCELS IN THE SUBDIVISION.

OWNER: TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP

BY: TOLL WEST COAST LLC,
A DELAWARE LIMITED LIABILITY COMPANY
GENERAL PARTNER

BY: _____

NAME: _____

OWNER ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF _____ }ss.

ON _____, 2018, BEFORE ME, _____, A NOTARY PUBLIC

PERSONALLY APPEARED _____
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND.

NOTARY'S SIGNATURE: _____
NAME OF NOTARY (PLEASE PRINT): _____
PRINCIPAL COUNTY OF BUSINESS: _____
MY COMMISSION NUMBER: _____
MY COMMISSION EXPIRES: _____

SURVEYOR’S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION, AT THE REQUEST OF TOLL CA XX L.P., A CALIFORNIA LIMITED PARTNERSHIP. IT IS BASED UPON A FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECTION COMPLETED FEBRUARY 22, 2013, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP, THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE JULY 2020, AND THAT SAID MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

BRYAN PIERCE, PLS 8859 DATE _____
EXPIRES: 12-31-2019

CITY SURVEYOR’S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP, AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: _____



JOHN K. KING
ACTING CITY SURVEYOR
P.L.S. NO. 6809

NOTES

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 22.23 ACRES, MORE OR LESS.
- 3.) ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 4.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO THE REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNER(S).
- 5.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY ENGEQ, INC. JOB NO. 9301.000.000 AND IS ON FILE WITH THE CITY OF MORGAN HILL

CITY ENGINEER’S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS FINAL MAP AND THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.



DATE: _____

SCOTT C. GREER
CITY ENGINEER
CITY OF MORGAN HILL, CALIFORNIA
R.C.E. NO. 58879

STATEMENT OF THE PLANNING COMMISSION

I HEREBY STATE THAT THE TENTATIVE MAP FOR THE WITHIN FINAL MAP SHOWN HEREON WAS CONDITIONALLY APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL ON FEBRUARY 12, 2013 , BY RESOLUTION NUMBER 13-13, APPLICATION NUMBER SD-09-07.

DATE: _____

JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF SIX (6) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2018; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE), THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), AND THE "PUBLIC ACCESS EASEMENT" (PAE), FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

DATE: _____

IRMA TORREZ – CITY CLERK
OF THE CITY OF MORGAN HILL, CALIFORNIA

RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED IN BOOK _____ OF MAPS AT PAGES _____, SANTA CLARA COUNTY RECORDS, THIS _____ DAY OF _____, 20__ AT _____ M., AT THE REQUEST OF CHICAGO TITLE COMPANY.

REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA BY _____ DEPUTY

TRACT 10457
SAN SEBASTIAN PHASE 2B

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

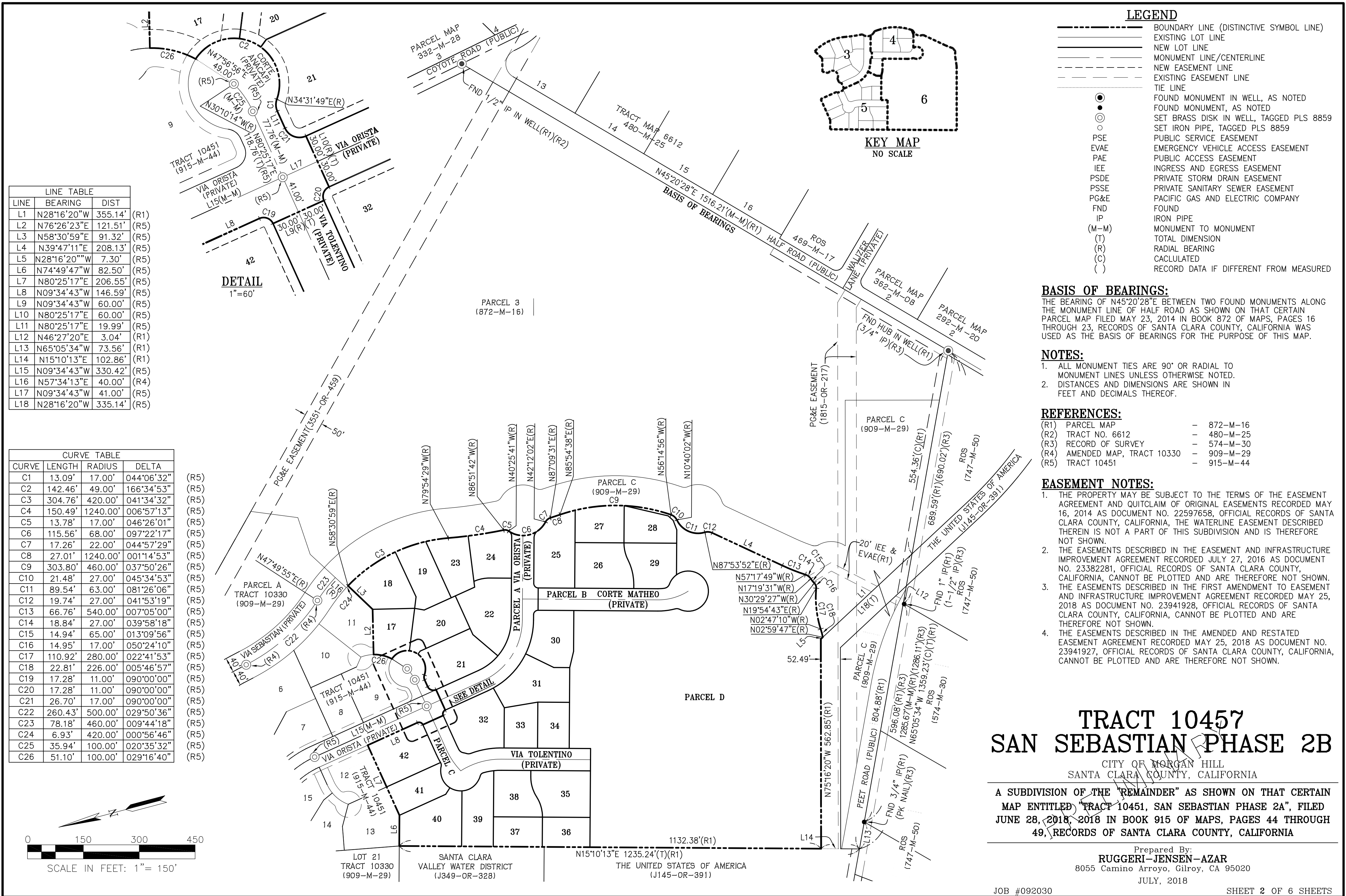
A SUBDIVISION OF THE "REMAINDER" AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 10451, SAN SEBASTIAN PHASE 2A", FILED JUNE 28, 2018, 2018 IN BOOK 915 OF MAPS, PAGES 44 THROUGH 49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

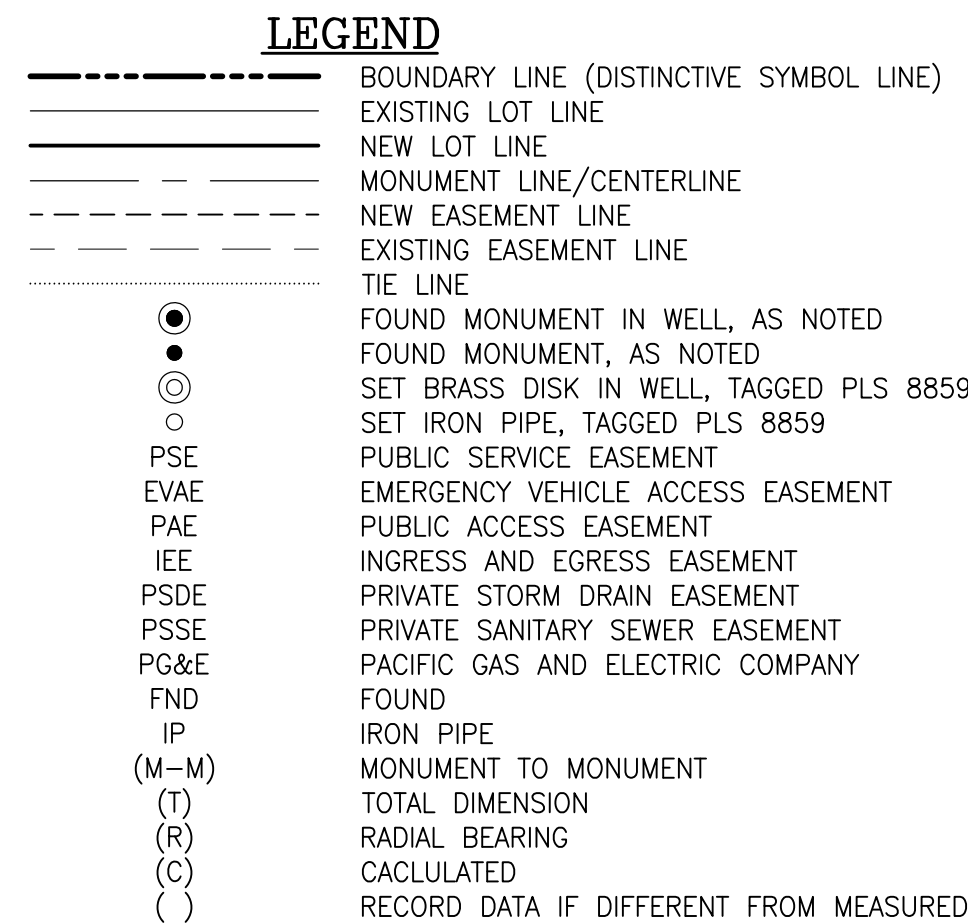
Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
JULY, 2018

JOB #092030

SHEET 1 OF 6 SHEETS

2ND SUBMITTAL JULY 2018





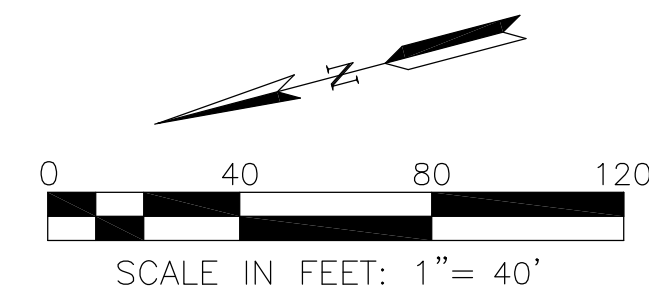
THE BEARING OF N45°20'28"E BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF HALF ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

(R1)	PARCEL MAP	-	872-M-16
(R2)	TRACT NO. 6612	-	480-M-25
(R3)	RECORD OF SURVEY	-	574-M-30
(R4)	AMENDED MAP, TRACT 10330	-	909-M-29
(R5)	TRACT 10451	-	915-M-44

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C22	11.94'	170.0'	040°15'08"
C23	47.28'	180.0'	015°03'02"
C24	70.41'	150.0'	026°53'34"
C25	46.94'	100.0'	026°53'34"
C26	27.50'	120.0'	013°07'53"
C27	3.70'	10.00'	021°10'32"
C28	26.83'	44.00'	034°56'13"
C29	14.34'	44.00'	018°40'18"
C30	31.12'	25.00'	071°19'42"
C31	31.12'	25.00'	071°19'42"
C32	14.34'	44.00'	018°40'18"
C33	15.71'	44.00'	020°27'39"
C34	6.30'	10.00'	036°06'19"
C35	15.71'	80.00'	011°14'54"
C36	41.17'	44.00'	053°36'31"
C37	62.25'	25.00'	142°39'24"
C38	30.05'	44.00'	039°07'57"
C39	11.48'	1240.00'	000°31'50"
C40	15.53'	1240.00'	000°43'03"
C41	21.45'	78.00'	015°45'22"

LINE TABLE		
LINE	BEARING	DIST
L1	N74°49'47"W	9.39'
L2	N74°49'47"W	14.63'
L3	N74°49'47"W	60.00'
L4	N35°52'49"W	43.65'
L5	N56°58'50"E	18.12'



CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

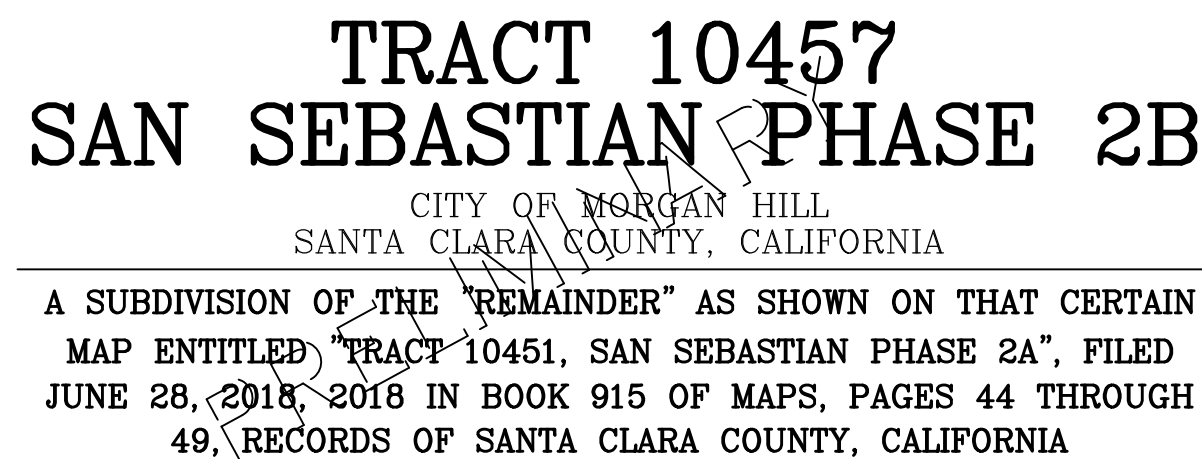
A SUBDIVISION OF THE "REMAINDER" AS SHOWN ON THAT CERTAIN
MAP ENTITLED "TRACT 10451, SAN SEBASTIAN PHASE 2A", FILED
JUNE 28, 2018, 2018 IN BOOK 915 OF MAPS, PAGES 44 THROUGH
49, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
JULY, 2018

LINE TABLE		
LINE	BEARING	DIST
L1	N15°10'13"E	7.06'
L2	S42°36'16"E	20.80'
L3	N74°49'47"W	16.48'
L4	S09°34'43"E	60.00' (R5)
L5	N80°25'17"E	60.00' (R5)

REFERENCES:

(R1)	PARCEL MAP	-	872-M-16
(R2)	TRACT NO. 6612	-	480-M-25
(R3)	RECORD OF SURVEY	-	574-M-30
(R4)	AMENDED MAP, TRACT 10330	-	909-M-29
(R5)	TRACT 10451	-	915-M-44

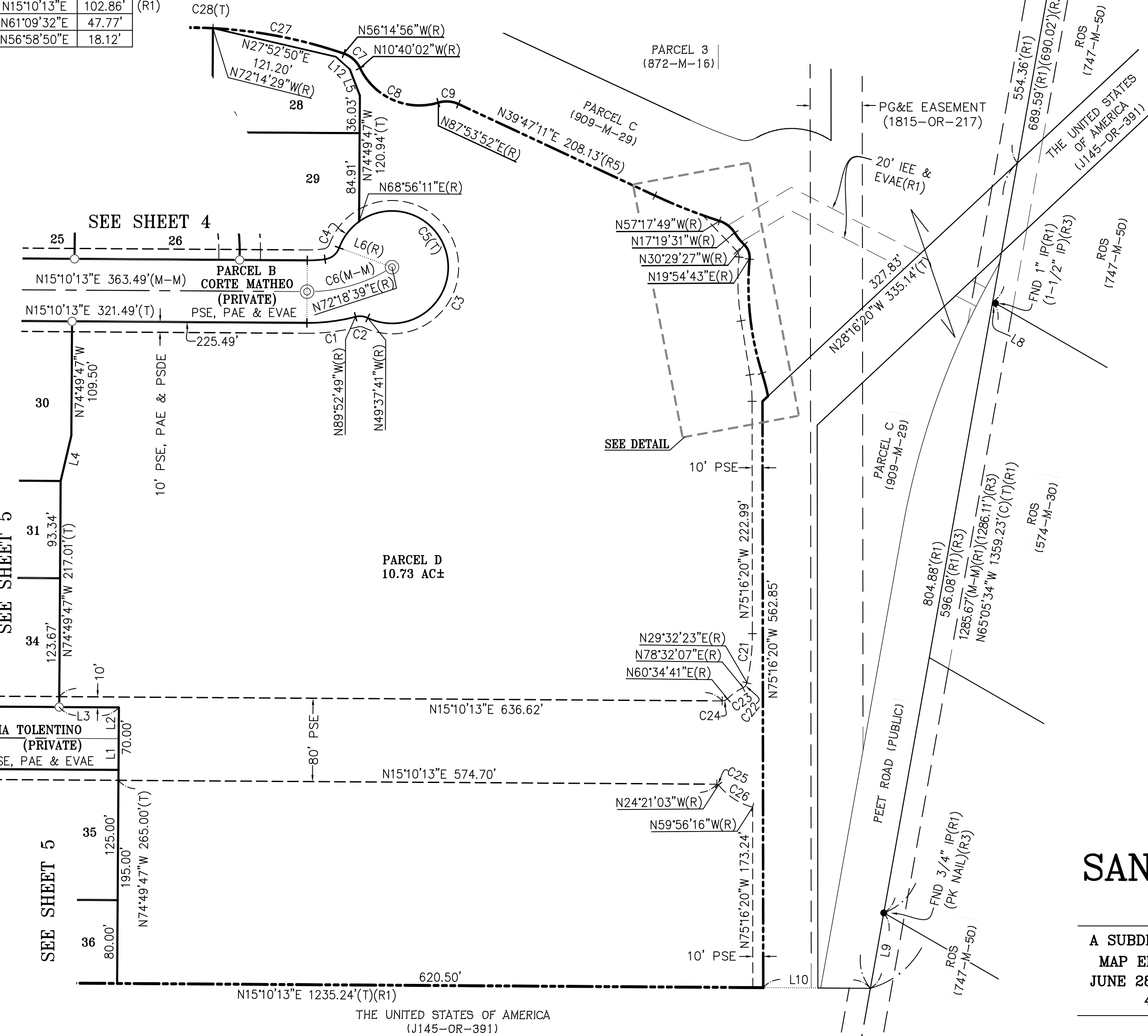


Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
JULY, 2018

SHEET 5 OF 6 SHEETS

LINE TABLE		
LINE	BEARING	DIST
L1	N74°49'47"W	30.00'
L2	N74°49'47"W	30.00'
L3	N15°10'13"E	57.35'
L4	N61°58'49"W	44.97'
L5	N83°53'33"E	26.90'
L6	N34°57'34"E	54.00'
L7	N28°16'20"W	7.30'
L8	N46°27'20"E	3.04'
L9	N65°05'34"W	73.56'
L10	N15°10'13"E	102.86'
L11	N61°09'32"E	47.77'
L12	N56°58'50"E	18.12'

LINE TABLE		
LINE	BEARING	DIST
L1	N74°49'47"W	30.00'
L2	N74°49'47"W	30.00'
L3	N15°10'13"E	57.35'
L4	N61°58'49"W	44.97'
L5	N83°53'33"E	26.90'
L6	N34°57'34"E	54.00'
L7	N28°16'20"W	7.30'
L8	N46°27'20"E	3.04'
L9	N65°05'34"W	73.56'
L10	N15°10'13"E	102.86'
L11	N61°09'32"E	47.77'
L12	N56°58'50"E	18.12'



=====	BOUNDARY LINE (DISTINCTIVE SYMBOL LINE)
-----	EXISTING LOT LINE
=====	NEW LOT LINE
-----	MONUMENT LINE/CENTERLINE
-----	NEW EASEMENT LINE
-----	EXISTING EASEMENT LINE
.....	TIE LINE
●	FOUND MONUMENT IN WELL, AS NOTED
●	FOUND MONUMENT, AS NOTED
◎	SET BRASS DISK IN WELL, TAGGED PLS 8859
○	SET IRON PIPE, TAGGED PLS 8859
PSE	PUBLIC SERVICE EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PAE	PUBLIC ACCESS EASEMENT
IEE	INGRESS AND EGRESS EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PSSE	PRIVATE SANITARY SEWER EASEMENT
PG&E	PACIFIC GAS AND ELECTRIC COMPANY
FND	FOUND
IP	IRON PIPE
(M-M)	MONUMENT TO MONUMENT
(T)	TOTAL DIMENSION
(R)	RADIAL BEARING
(C)	CALCULATED
()	RECORD DATA IF DIFFERENT FROM MEASURED

THE BEARING OF N45°20'28"E BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF HALF ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

(R1)	PARCEL MAP	-	872-M-16
(R2)	TRACT NO. 6612	-	480-M-25
(R3)	RECORD OF SURVEY	-	574-M-30
(R4)	AMENDED MAP, TRACT 10330	-	909-M-29
(R5)	TRACT 10451	-	915-M-44



Prepared By:
RUGGERI-JENSEN-AZAR
 8055 Camino Arroyo, Gilroy, CA 95020
 JULY, 2018

RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

CITY CLERK
CITY OF MORGAN HILL
17575 PEAK AVENUE
MORGAN HILL, CA 95037

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

**STORMWATER BEST MANAGEMENT PRACTICES,
OPERATION, AND MAINTENANCE AGREEMENT**

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 2018, by **TOLL CA XX, LP, a California limited liability**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

- A. CITY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in CITY's National Pollutant Discharge Elimination System permit.
- B. COVENANTOR is the owner of a certain tract or parcel of land more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "PROPERTY").
- C. COVENANTOR desires to construct certain improvements of the kind or nature described in Morgan Hill Municipal Code Chapter 18.71 (the "ORDINANCE") on the PROPERTY that may alter existing stormwater conditions on both the PROPERTY and adjacent lands.
- D. To minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, COVENANTOR is required by CITY to implement Best Management Practices ("BMPs") and to build and maintain, at COVENANTOR's expense, stormwater management facilities ("FACILITIES"), more particularly described and shown in the **Stormwater Runoff Management Plan** prepared by **RJA Engineers** and dated _____, which plans and any amendments thereto, are on file with CITY's Public Works Department, and are hereby incorporated by this reference.
- E. CITY has reviewed and approved the Stormwater Runoff Management Plan (the "PLAN") subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the benefit received and to be received by COVENANTOR, its successors, and assigns, as a result of CITY's approval of the Stormwater Runoff Management Plan, COVENANTOR, hereby covenants and agrees with CITY as follows:

1. Covenants Running With the Land; Property Subject to Agreement: All of the real property described in Exhibit "A" shall be subject to this AGREEMENT. It is intended and

determined that the provisions of this AGREEMENT shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real PROPERTY or any portion thereof and shall be for the benefit of each owner of any of said parcels or any portion of said PROPERTY and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. Each and all of the limitations, easements, obligations, covenants, conditions, and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by any of the owners of any of the PROPERTY subject to this AGREEMENT against any other owner, tenant or occupant of the said PROPERTY, or any portion thereof.

2. Responsibility for Installation, Operation, and Maintenance: At its sole expense, COVENANTOR, its successors, and assigns, shall construct, operate, and perpetually maintain the FACILITIES in strict accordance with the PLAN and any amendments thereto that have been approved by CITY or required by the ORDINANCE.
3. Facility Modifications: At its sole expense, COVENANTOR, its successors, and assigns, shall make such changes or modifications to the FACILITIES as may be determined as reasonably necessary by CITY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved. COVENANTOR agrees that it shall not modify the BMPs and shall not allow BMP maintenance activities to alter the designed function of the FACILITIES from its original design unless approved by CITY prior to the commencement of the proposed modification or maintenance activity.
4. Facility Inspections by CITY: At reasonable times and in a reasonable manner as provided in the ORDINANCE, CITY, its agents, employees, and contractors shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner, and are in compliance with the ORDINANCE, the PLAN and any amendments thereto approved by CITY.
5. Failure to Perform Required Facility Repairs or Modifications: Should either COVENANTOR or its successors and assigns fail to implement the BMPs, maintain the facilities, or correct any defects in the FACILITIES in accordance with the approved design standards and/or the PLAN, and in accordance with the law and applicable regulations of the ORDINANCE, after thirty (30) days from the date of the written notice from CITY, CITY shall have the right to enter the PROPERTY to perform remedial work, for which CITY will collect reimbursement for such work from COVENANTOR. Additionally, conditions from failure to implement the BMPs or to maintain or correct the FACILITIES shall be deemed a nuisance subject to abatement of such conditions as provided in Chapter 1.18 of the Morgan Hill Municipal Code. In addition, CITY may pursue other such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in the ORDINANCE.
6. Indemnity: COVENANTOR, its successors, and assigns, shall defend, indemnify, and hold CITY harmless of and from any and all claims, liabilities, actions, causes of action, and damages for personal injury and property damage, including, without limitation, reasonable attorneys' fees, arbitration fees, or costs and court costs, arising out of or related to COVENANTOR's, its successors', and/or assigns' construction, operation, or maintenance of the FACILITIES except claims, liabilities, actions, causes of action, and damages that arise out of CITY's sole negligence or willful misconduct or the sole negligence or willful misconduct of any of CITY'S employees, agents, representatives, contractors, vendors, or consultants.
7. Obligations and Responsibilities of COVENANTOR: Initially, COVENANTOR is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties

associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (a "Transfer") to a third party (the "Transferee"), COVENANTOR shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of CITY. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to CITY. The provisions of the preceding three sentences shall be applicable to the original COVENANTOR and any successor Transferee who has assumed the obligations and responsibilities of COVENANTOR under this AGREEMENT as provided above.

8. Property Transfer: Nothing herein shall be construed to prohibit a transfer by COVENANTOR to subsequent owners and assigns.
9. Attorneys' Fees: In the event that any Party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' or arbitrators' fees in addition to all other recoverable costs, expenses, and damages.
10. Further Documents: The Parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT.
11. Entire Agreement: This AGREEMENT constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior agreements, whether written or oral. There are no representations, agreements, arrangements, or undertakings, oral or written, that are not fully expressed herein.
12. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.
13. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.
14. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.
15. Authority to Execute: The persons executing this AGREEMENT on behalf of the parties warrant that they are duly authorized to execute this AGREEMENT.
16. In the event that CITY shall determine, at its sole discretion, at any future time, that the FACILITIES are no longer required, then at the written request of COVENANTOR, its successors, and/or assigns, CITY shall execute a release of this AGREEMENT which COVENANTOR, its successors, and/or assigns, shall record in the Recorder's Office, at its expense.

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: _____

Title: _____

CITY OF MORGAN HILL:

By: _____

Name: CHRISTINA J. TURNER

Title: CITY MANAGER, CITY OF MORGAN HILL

APPROVED AS TO FORM:

By: _____

Name: DONALD A. LARKIN

Title: CITY ATTORNEY, CITY OF MORGAN HILL

EXHIBIT "A"

(Description to be inserted)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of **California**
County of **Santa Clara**

On _____ 20__, before me, _____ a Notary Public in and for said County and State, personally appeared _____ proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Gittleson, Associate Engineer
APPROVED BY: City Manager

APPROVE CONSTRUCTION CONTINGENCY INCREASE FOR BOYS RANCH WELL #2A & JACKSON WELL #3 PROJECT

RECOMMENDATION(S)

Adopt resolution approving the following actions:

1. Approve construction contingency increase of 10% (\$128,123) with Conco West, Inc. for the Boys Ranch Well #2A and Jackson Well #3 Project; and
2. Approve an amendment to the City's Fiscal Year 18-19 budget for \$128,123 from the Water Operations CIP Fund Balance (653).

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

On May 3, 2017, City Council awarded a construction contract to Conco West, Inc. for \$1,281,230 for the Boys Ranch Well #2A and Jackson Well #3 project. The project was authorized a 10% contingency of \$128,123, bringing the total authorized amount to \$1,409,353. The scope of work included mobilization, demolition, new well pumps, connection piping and valves, electrical, paving, fencing, well disinfection and testing, and all appurtenances to bring the two replacement wells online.

During the well start-up procedure, neither well passed the required coliform bacteria test. Subsequently, the Boys Ranch well was disinfected 6 times and the Jackson well was disinfected 5 times before the coliform levels reached a passing result. This process usually only takes one or two times.

Prior to putting the wells into service, the wells were re-tested for quality control purposes and once again tested positive for coliform bacteria. Based on these results, the well designer, Luhdorff & Scalmanini Consulting Engineers, recommended that the wells be super chlorinated for a period of five days while circulating the chlorinated water into the upper gravel pack of each well. The assumption being that the upper gravel pack is the point of contamination for both wells. The cost to perform the additional disinfection procedure has exhausted the project contingency. The latest

procedure is on-going. If it fails, the next step will involve removing the pumps from each well at a cost of \$30,000 to \$40,000 per well.

Therefore, staff recommends that the construction contingency be increased an additional 10% (\$128,123) in order to have funding available to pay for removing the pumps from each well should it become necessary and for any future disinfectant procedures. If authorized, the total construction contingency would then become 20% (\$256,246).

The City currently only has one operating well (Boys Ranch #3) for the Boys Ranch water zone (northeast Morgan Hill). Boys Ranch Well #1 is currently down due to a failure earlier this year and is undergoing repairs. Thus, it is critical that the Boys Ranch Well #2 be operational as soon as possible.

COMMUNITY ENGAGEMENT: Inform

Staff met with the Jackson Oaks and Holiday Lake Estates neighborhood residents in August 2015 and in March 2016 to inform them of the multiple water improvement projects, including the well projects. Staff has also sent out construction notifications to nearby residents and provided weekly information through Nextdoor and the City's email subscriber list. Project updates are also provided on the City's website.

ALTERNATIVE ACTIONS:

No alternative actions are presented at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 3, 2017, City Council awarded a construction contract to Conco West, Inc. for the Boys Ranch Well #2A and Jackson Well #3 project.

FISCAL AND RESOURCE IMPACT:

If approved, the construction contingency amount would become 20% or \$256,246. The total authorized contract amount would then be \$1,537,476 (\$1,281,230+\$256,246). Staff recommends appropriating the additional \$128,123 from the Water Operations CIP fund balance (653) to fund the shortfall. This project utilizes water bond proceeds.

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. Resolution for Boys Ranch Well
2. Exhibit A-Score Card
3. Project Location Map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER, THAT CERTAIN CONSTRUCTION CONTRACT WITH CONCO WEST, INC. FOR THE BOYS RANCH WELL #2A AND JACKSON WELL #3 PROJECT AND APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 18-19 ANNUAL BUDGET IN THE WATER OPERATION CIP FUND (FUND NO. 653) TO APPROPRIATE \$128,123 THEREFOR

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to enter into contracts and agreements for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into that certain agreement described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Construction Contingency Increase For Boys Ranch Well #2A and Jackson Well #3 Project" submitted for City Council consideration at its meeting of July 18, 2018, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Annual Budget for Fiscal Year 18-19, 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 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 18-19 Annual 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 18-19 Annual Budget of City.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of July, 2018.

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

APPROVED:

ATTEST:

STEVE TATE, Mayor

IRMA TORREZ, City Clerk

∞ 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. XX-XXX, adopted by the City Council at a regular meeting held on July 18, 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2018-19

ADJUSTMENT #

002

FUND:

DEPARTMENT:

OBJECT:

653	Water System Replacement Fund
8120	Water System Replacement
86360	CONSTRUCTION

AGENDA DATE:

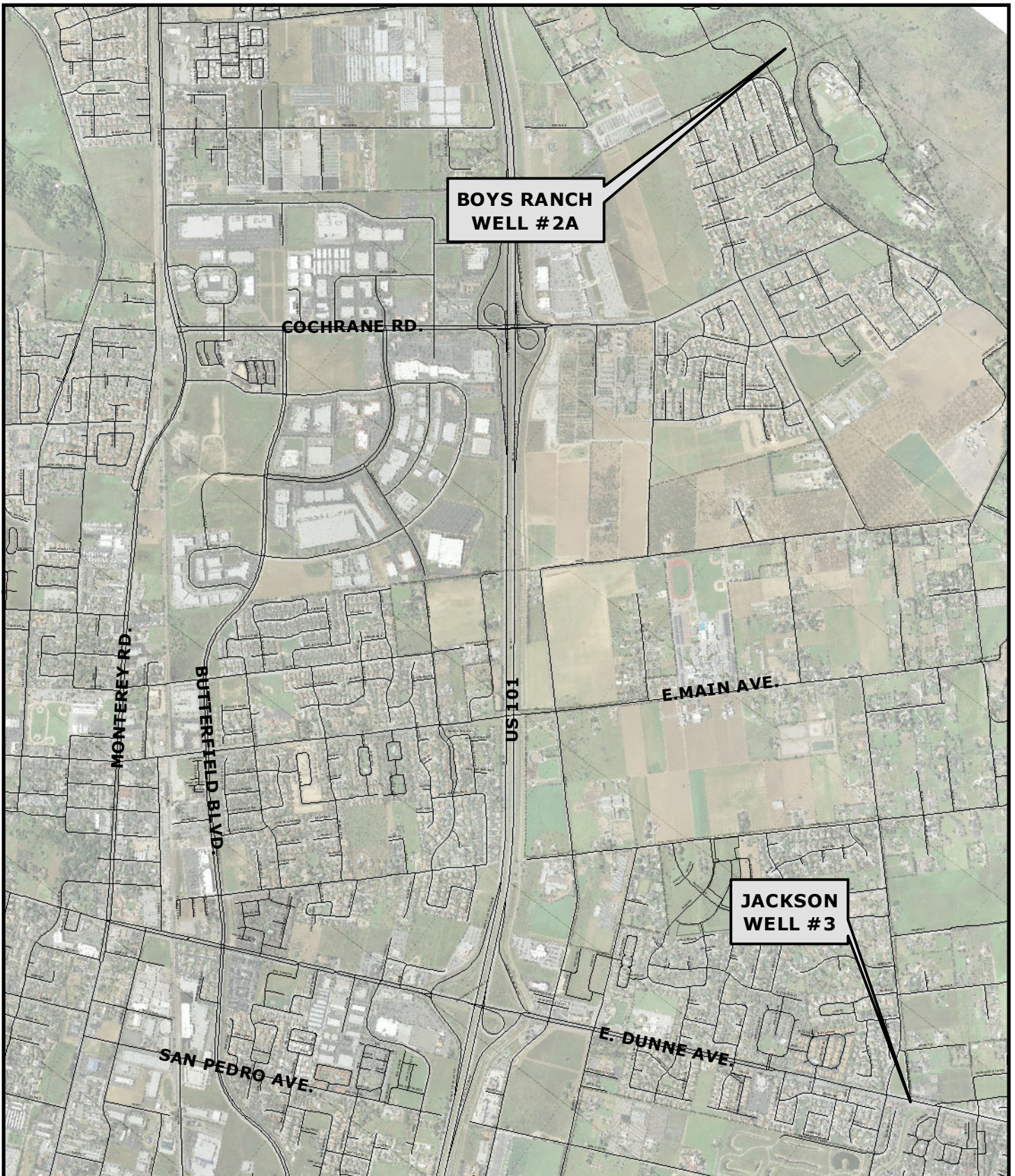
07/18/18

AGENDA ITEM TITLE:

Contingency Increase for Boys Ranch Well #2A and Jackson Well #3 Projects

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	9,064	2,400,895	2,160,938	249,021
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	128,123	(128,123)
RESULT OF RECOMMENDED ACTION	9,064	2,400,895	2,289,061	120,898

Attachment: Exhibit A-Score Card (1845 : Approve Contingency Increase for Boys & Jackson wells)



Attachment: Project Location Map (1845 : Approve Contingency Increase for Boys & Jackson wells)



CITY OF MORGAN HILL
Engineering Division
Public Works Department

G:\R-14\Proj\GIS\John\Dave_ProductionWells_Award.mxd

PROJECT LOCATION MAP



0 800 1,600 3,200 4,800 6,400
 Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Jeff Rosenberger, Information Services Manager

APPROVED BY: City Manager

APPROVAL OF MICROSOFT ENTERPRISE AGREEMENT EXPENDITURES

RECOMMENDATION(S)

Authorize the expenditure of not to exceed \$81,321.89 and \$80,000.00 for the second and third years, respectively, of the existing Microsoft Enterprise Agreement to Insight Public Sector, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

To provide support for unlimited mailbox sizes, access to all emails from any location, centralization of electronic discovery and retention, and to provide continuous upgrades and enhanced support for the latest version of Microsoft Office and Windows Operating systems, the City of Morgan Hill entered into a three year Microsoft Enterprise Agreement leveraging existing State purchasing contracts with Insight Public Sector, Inc.

The original Council approval of the Enterprise Agreement on May 3, 2017 did not explicitly authorize expenditures for the second and third years of the approved three-year contract. While these expenses were already included in the adopted budget, staff is seeking approval for the last two years of the agreement.

COMMUNITY ENGAGEMENT: Not Applicable

This report serves to inform the community of the recommended action of approving expenditure for contracted services.

ALTERNATIVE ACTIONS: Not Applicable

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

A three-year Microsoft Enterprise Agreement was approved by City Council on May 3, 2017.

FISCAL AND RESOURCE IMPACT:

The second year base licenses expense in the amount of \$77,243.82 was included in the Adopted Budget for Fiscal Year 2017-18 in the Information Systems Fund budget

(Fund 730). In addition, there is a “true-up” expense of \$4,078.07 which is for additional licenses added during fiscal year 2017-18, which will be paid with savings generated from other projects. Therefore, the total expense for the 2017-18 year is \$81,321.89 (\$77,243.82+\$4,078.07).

The anticipated license expense for the third year has been included in the Fiscal Year 2018-19 Adopted Budget, Information Systems Fund (Fund 730), in the amount of \$80,000.

The administration of this Agreement is included in the workplan for the Information Services Team.

CEQA (California Environmental Quality Act):

Not a Project.

This is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. May 3, 2017 Staff Report
2. Microsoft Agreement



CITY COUNCIL STAFF REPORT

MEETING DATE: May 3, 2017

PREPARED BY: Jeff Rosenberger, Information Services Manager
APPROVED BY: City Manager

APPROVAL OF MICROSOFT ENTERPRISE AGREEMENT

RECOMMENDATION(S)

1. Approve the purchase of Microsoft Office 365 Government Enterprise 3, Exchange Plan 2 and Software Assurance and Device Client Access Licenses from Insight Public Sector, Inc. for a not-to-exceed amount of \$75,000; and
2. Authorize the City Manager to execute a Microsoft Enterprise Agreement for the licensing of City of Morgan Hill Microsoft products and services, pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2017 Strategic Priorities

Infrastructure

REPORT NARRATIVE:

To provide support for unlimited mailbox sizes, access anywhere to all emails, and for centralized electronic discovery and retention, the City started its move to Microsoft's cloud based services. The City has moved to user-based licensing using Microsoft's Office 365 Government Suite. By approving this Microsoft Enterprise Agreement (Agreement), we would consolidate all our Microsoft services under one contract and leverage cost savings associated with utilizing the State purchasing contract.

Current Office 365 and Exchange licenses require annual renewal and the current license period ends on May 31, 2017. After review of available licensing options and providers, staff recommends entering into an Enterprise License Agreement with Microsoft for the purchase and support of Microsoft software and services.

After polling other local municipalities who had recently completed this same process, pricing and vendor selection was acquired using Cooperative Purchasing (Section 3.04.180 of the Morgan Hill Municipal Code). This leverages prices and vendors qualified for resale of the California State Microsoft contract otherwise known as "The Riverside Contract." After evaluating six vendors authorized to service the State of California purchasing contract, we have selected Insight Public Sector, Inc. for providing the best pricing and service delivery timeline. See Attachment for evaluation results. Insight Public Sector, Inc. is familiar with the licensing process and will work with us on meeting our timeline through the firm's experience with Microsoft, State contract administration, and working with many other local agencies.

COMMUNITY ENGAGEMENT: Not Applicable

This report serves to inform the community of the recommended action of approving a Microsoft Enterprise Agreement.

ALTERNATIVE ACTIONS:

Should the Council decide to not approve the agreement with Insight Public Sector, Inc., the existing Office 365 and Exchange licenses would be renewed under our existing licensing agreement. Licensing for the Windows Operating System support would be purchased under the current Microsoft agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No prior City Council actions on this item.

FISCAL AND RESOURCE IMPACT:

The recommended Agreement with a not-to-exceed amount of \$75,000 is more than the \$46,000 budgeted in FY 2016-17, as it includes licenses for additional users and the licensing of the Office 365 earlier than scheduled. Sufficient budget is available in the Information Systems Fund (Fund 730) in FY 2016-17 with savings from other projects.

The administration of the Agreement is included in the workplan for the Information Services Team.

LINKS/ATTACHMENTS:

1. MS Enterprise Bid Results

Attachment 1

Microsoft Enterprise Agreement License Costs

Vendor	Agreement No.	Quote	MS O365 E3 310	Exchange Plan 2 30	Windows E3 SA 250	O365 Core CAL Bridge 310	Total Number
Insight Public Sector, Inc.	SCA-16-70-0008B	RIVCO-20800-008-12/19	\$ 182.36	\$ 63.58	\$ 44.65	\$ 16.14	\$ 74,604.90
PCMG	SCA-16-70-0002S	SCA Pricelist	\$ 184.80	\$ 64.56	\$ 52.65	\$ 17.16	\$ 77,706.90
SoftwareOne, Inc.	SCA-16-70-0169R	SCA Pricelist	\$ 186.72	\$ 65.40	\$ 53.17	\$ 17.40	\$ 78,531.70
SHI International Corp.	SCA-16-70-0003Q	13289102	\$ 198.87	\$ 69.59	\$ 56.64	\$ -	\$ 77,897.40
CDW Government LLC	SCA-17-70-0025H	HVVM845	\$ 203.44	\$ 81.38	\$ 159.04	\$ -	\$ 105,267.80
Disqualified - Does not offer Windows E3 Software Assurance by Device:							
Crayon Software Experts, LLC	SCA-17-70-0204A	SCA Pricelist	\$ 183.00	\$ 64.08		\$ 17.04	



Enterprise Enrollment

State and Local

Enterprise Enrollment number
(Microsoft to complete)

73814632

Framework ID
(if applicable)Previous Enrollment number
(Reseller to complete)**This Enrollment must be attached to a signature form to be valid.**

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. **Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.
- (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
- 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.
- Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. **Pricing.**

a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.

b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. **Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate's Reseller in full upon acceptance of this Enrollment. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. **End of Enrollment term and termination.**

a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. Renewal option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly

prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and all Affiliates

☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* City of Morgan Hill

Contact name* First Jeff **Last** Rosenberger

Contact email address* jeff.rosenberger@morganhill.ca.gov

Street address* 535 Alkire Ave

City* Morgan Hill

State/Province* CA

Postal code* 95037-4144-

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

Country* United States

Phone* 408-310-4649

Tax ID

** indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

☒ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Jeff Last Rosenberger
Contact email address* jeff.rosenberger@morganhill.ca.gov
Street address* 535 Alkire Ave
City* Morgan Hill
State/Province* CA
Postal code* 95037-4144-
 (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 408-310-4649

Language preference. Choose the language for notices. English

☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

☐ Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Jeff Last Rosenberger
Contact email address* jeff.rosenberger@morganhill.ca.gov
Phone* 408-310-4649

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

- d. **Reseller Information.** Reseller contact for this Enrollment is:

Reseller company name* Insight Direct USA, Inc.
Street address (PO boxes will not be accepted)* 6820 S. Harl Ave.
City* Tempe
State/Province* AZ
Postal code* 85283
Country* United States
Contact name* Software Contract Support
Phone* 800-624-0503
Contact email address* contractsupport@insight.com

** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature*	<u>Helen Johnson</u> Helen Johnson (May 31, 2017)
Printed name*	Helen Johnson
Printed title*	SVP
Date*	May 31, 2017

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

- (i) Additional notices contact
- (ii) Software Assurance manager
- (iii) Subscriptions manager
- (iv) Customer Support Manager (CSM) contact

3. **Financing elections.**

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

Physically Submitted



Volume Licensing

Program Signature Form

MBA/MBSA number

Agreement number

01E73970

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Enrollment (Indirect)	X20-10634
Product Selection Form	0598985.011_PSF

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer

Name of Entity (must be legal entity name)* City of Morgan Hill

Signature*

Printed First and Last Name* Steve Rymer

Printed Title City Manager

Signature Date* 5/23/17

Tax ID

94-6000377

* indicates required field

Microsoft Affiliate

Microsoft Corporation

Microsoft

Microsoft Corporation

Signature

Printed First and Last Name

Printed Title

Signature Date

(date Microsoft Affiliate countersigns)

JUN 01 2017
 Raymond Mann
 Duly Authorized on behalf of
 Microsoft Corporation

Agreement Effective Date

(may be different than Microsoft's signature date)

5/31/17

APPROVED AS TO FORM

Donald A. Larkin, City Attorney

Attachment: Microsoft Agreement (1812 : Microsoft Enterprise Agreement Expenditure)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6100 Neil Road, Suite 210
 Reno, Nevada 89511-1137
 USA

Enterprise Enrollment Product Selection Form

Microsoft | Volume Licensing

Proposal ID

0598985.011

Enrollment Number

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:

Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	310	310	1.0	Yes	User Licenses

Products	Enterprise Quantity
Client Access License (CAL)	
Core CAL	
Bridge for Office 365	310
Windows Desktop	
Windows Enterprise OS Upgrade	250
Office 365 Plans	
Office 365 GOV E3	310

Enrolled Affiliate's Product Quantities:

Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3, E4 and E5) + Secure Productive Enterprise	Client Access License + Office 365 (Plans E1, E3, E4 and E5) + Secure Productive Enterprise	Client Access License + Windows Intune + EMS USL + Secure Productive Enterprise	Win E3 + Win E5 + Win VDA + Secure Productive Enterprise
Quantity	310	310	0	250

Attachment: Microsoft Agreement (1812 : Microsoft Enterprise Agreement Expenditure)



Volume Licensing

Program Signature Form

MBA/MBSA number

Agreement number

CAMSTR-051116

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Agreement	X20-12056
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
Amendment to Contract Documents	CCTM / NEW

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	
Name of Entity (must be legal entity name)*	County of Riverside
Signature*	<i>Melissa Ether</i>
Printed First and Last Name*	Melissa Ether
Printed Title	Procurement Contract Specialist
Signature Date*	8/17/2014
Tax ID	

* indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature _____
Printed First and Last Name
Printed Title
Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

* indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
 Dept. 551, Volume Licensing
 6100 Neil Road, Suite 210
 Reno, Nevada 89511-1137
 USA



Volume Licensing

Enterprise Agreement

State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

This Microsoft Enterprise Agreement ("Agreement") is entered into between the entities identified on the signature form.

Effective date. The effective date of this Agreement is the earliest effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier. Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".

This Agreement consists of (1) these Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product Terms applicable to Products licensed under this Agreement, (3) the Online Services Terms, (4) any Affiliate Enrollment entered into under this Agreement, and (5) any order submitted under this Agreement.

Please note: Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, including the Product Terms and Use Rights. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

"Affiliate" means

- a. with regard to Customer,
 - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
 - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and
 - (iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

"Customer" means the legal entity that has entered into this Agreement with Microsoft;

"Customer Data" means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate and its Affiliates through use of Online Services.

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates that has entered into an Enrollment under this Agreement;

"Enrollment" means the document that an Enrolled Affiliate submits under this Agreement to place its initial order;

"Enterprise" means an Enrolled Affiliate and the Affiliates for which it is responsible and chooses on its Enrollment to include in its enterprise;

"Fixes" means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"License" means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses;

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or an Enrollment and its Affiliates, as appropriate;

"Online Services" means the Microsoft-hosted services identified as Online Services in the Product Terms.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Volume Licensing Site and updated from time to time.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including pre-release or beta versions.

"Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

"SLA" means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service;

"Software Assurance" is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy;

"use" or "run" means to copy, install, use, access, display, run or otherwise interact.

"Use Rights" means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. How the Enterprise program works.

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment

- c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product List.

3. *Licenses for Products.*

- a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- c. **Applicable Use Rights.**
- (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the Agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.
 - (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.
- d. **Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not to use the new version immediately.
- (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
 - (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This Agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.

- g. **Reorganizations, consolidations and privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) a reorganization, consolidation or privatization of an entity or an operating division, (2) a privatization of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this Agreement.

4. *Making copies of Products and re-imaging rights.*

- a. **General.** Enrolled Affiliate may make as many copies of Products, as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
 - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

5. *Transferring and reassigning Licenses.*

- a. **License transfers.** Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:
- (i) an Affiliate or

- (ii) an unaffiliated third party in connection with (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.

Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability. Any License transfer not made in compliance with this section will be void.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

6. **Term and termination.**

- a. **Term.** The term of this Agreement will be 36 full calendar months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- b. **Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this Agreement.
- c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this Agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.
- d. **Termination for cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of that notice and Customer agrees to help resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Enrolled Affiliate, together with Customer's help, within a reasonable period of time, Microsoft may terminate this Agreement and all Enrollments under it. If an Enrolled Affiliate ceases to be Customer's Affiliate, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

- e. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminates an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.
 - (iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:
 - 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.
- Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.
- f. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.
- g. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation.
- h. **Program updates.** Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at the time of an Enrollment renewal.

7. ***Use, ownership, rights, and restrictions.***

- a. **Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply.

- c. **Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.
- d. **Restrictions.** Enrolled Affiliate must not (and must not attempt to) (1) reverse engineer, decompile, or disassemble any Product or Fix, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement, or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Customer must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product or Fix to offer hosting services to a third party.
- e. **No transfer of ownership; reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted in this Agreement.

8. **Confidentiality.**

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) the receiving party received lawfully from another source without a confidentiality obligation, (c) is independently developed, or (d) is a comment or suggestion volunteered about the other party's business, products or services.

Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

9. **Privacy and Compliance and Laws.**

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Personal information collected under this agreement (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth

by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

- c. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies.

10. Warranties.

a. Limited warranties and remedies.

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date the Enterprise is first licensed for that version. If it does not and the Enterprise notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Enrolled Affiliate paid for the Software license, or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during the Enterprise's use. The Enterprise's remedies for breach of this warranty are in the SLA.

The remedies above are the Enterprise's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse, or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. **DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

11. Defense of third party claims.

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent, copyright, or trademark or makes unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of the Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this Agreement; (vi) Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes provided free of charge.
- b. **By Enrolled Affiliate.** Enrolled Affiliate will defend Microsoft against any claims made by an unaffiliated third party that:
 - (i) any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or

- (ii) arises from use of an Online Service in violation of applicable laws and regulations; a violation of the legal rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services.

Enrolled Affiliate will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section titled "By Enrolled Affiliate."

- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software or Fixes and, for Online Services, any amount paid for a usage period after the termination date.
- d. **Other terms.** The party being defended under this section 11 must notify the other party promptly of any claim subject to the subsection titled "By Microsoft," give the other party sole control over the defense or settlement, and provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Any settlement must be approved in writing by the defending party. The remedies provided in this section 11 are the exclusive remedies for the claims described in this section.

12. *Limitation of liability.*

For each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of this Agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.
- b. **Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

13. *Verifying compliance.*

- a. **Right to verify compliance.** Enrolled Affiliate must keep accurate and complete records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to the extent permitted by applicable law, to verify Enrolled Affiliate and its Affiliates' compliance with the Product's license terms for the Products.
- b. **Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Enrolled Affiliate must promptly provide the independent auditor

with any information the auditor reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process, which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 30 days, (1) Enrolled Affiliate must order sufficient licenses to cover that use or distribution, and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 125% of the price based on the then-current price list and Enrolled Affiliate price level. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

14. **Miscellaneous.**

- a. **Notices.** Notices to Microsoft must be sent to the Microsoft address on the signature form with a copy sent to the address below. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Enrolled Affiliate about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Enrolled Affiliate. Emails will be treated as delivered on the transmission date.

A copy of each notice should be sent to:

Microsoft Corporation
Legal and Corporate Affairs
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052
USA

- b. **Assignment.** Either party may assign this Agreement to an Affiliate, but must notify the other party in writing of the assignment. Any other proposed assignment must be approved by the other party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- c. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- d. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance subject to the terms of this Agreement.
- e. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- f. **Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state.

- g. This Agreement is not exclusive. Customer and its Affiliates are free to enter into agreements to license, use or promote non-Microsoft products.
- h. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- i. **Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order from highest to lowest priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product Terms, (4) the Online Services Terms, (5) orders submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- j. **Survival.** All provisions survive termination or expiration of this Agreement except those requiring performance only during the term of the agreement..
- k. **Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- l. **Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product Terms and the Use Rights from time to time in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in an Enrolled Affiliate's purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- m. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- n. **Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.
- o. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this Agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Agreement for unlicensed use.
- p. **Calendar days.** Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".



Volume Licensing

Amendment to Contract Documents

Enterprise Agreement

Amendment ID CTM

CAMSTR-051116

This Enterprise Agreement Amendment ("Amendment") is entered into between the entities and as of the effective date identified in the Signature Form. The terms and conditions in this Amendment supersede any conflicting terms and conditions in the Agreement and Enrollment. The Agreement is hereby amended by adding the following:

1. **Effective Date.** The Effective Date of the Agreement is November 1, 2016.
2. **Pricing.** The following is added to Section 2, entitled "How the Enterprise Program works," of the Enterprise Agreement:

d. **Pricing.**

- (i) **Establishing Price Levels.** Price Level that Microsoft will charge Enrolled Affiliate's reseller will be Level D for Azure metered services ordered under any Enrollment. Enrolled Affiliate's Price Level will be Level D minus 7.5% for all initial orders and subsequent orders (e.g. True-ups, Supplemental Orders, Annual Orders) of all other Products ordered under any Enrollment.
- (ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to Enrolled Affiliate's Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this Agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.

Except for changes made by this Amendment, the Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

CTM_EA_RiversideCountyMaster_May2016_FINAL	CTM	CTM-OTH	BD
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Microsoft | Volume Licensing

Supplemental Contact Information Form State and Local

This form can be used in combination with Agreement and Enrollment/Registration. However, a separate form must be submitted for each Enrollment/Registration, when more than one is submitted on a signature form. For the purposes of this form, "Entity" can mean the signing Entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a Volume Licensing program agreement. Primary and Notices contacts in this form will not apply to Enrollments or Registrations.

This form applies to: ☒ Agreement

☐ Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields; if the Entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

1. Additional notices contact.

This contact receives all notices that are sent from Microsoft. No online access is granted to this individual.

Name of Entity* County of Riverside
 Contact name*: First Melissa Last Etter
 Contact email* melissa.etter@rivcoit.org
 Street address* 3450 14th Street
 City* Riverside State* CA Postal code* 92501-3862
 Country* US
 Phone* 951-955-7731 Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

2. Software Assurance manager.

This contact will receive online permissions to manage the Software Assurance benefits under the Enrollment or Registration.

Name of Entity*
 Contact name*: First Last
 Contact email*
 Street address*
 City* State* Postal code*
 Country*
 Phone* Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

3. *Subscriptions manager.*

This contact will assign MSDN, Expression, and TechNet Plus subscription licenses to the individual subscribers under this Enrollment or Registration. Assignment of the subscription licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

4. *Online Services manager.*

This contact will be provided online permissions to manage the Online Services ordered under the Enrollment or Registration.

Name of Entity* County of Riverside

Contact name*: First Jenifer Last Rutherford

Contact email* jenifer.rutherford@rivcoit.org

Street address* 3450 14th Street

City* Riverside State* CA Postal code* 92501-3862

Country* UA

Phone* 951-955-7785 Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

5. *Customer Support Manager (CSM):*

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

6. *Primary contact information:*

An individual from inside the organization must serve as the primary contact. This contact receives online administrator permissions and may grant online access to others. This contact also receives all notices unless Microsoft is provided written notice of a change.

Name of Entity* County of Riverside

Contact name*: First Jim Last Smith

Contact email* jim.smith@rivcoit.org
Street address* 3450 14th Street
City* Riverside State* CA Postal code* 92501-3862
Country*: US
Phone* 951-955-1000 Fax

7. Notices contact and online administrator information:

This individual receives online administrator permissions and may grant online access to others. This contact also receives all notices.

☐ Same as primary contact

Name of Entity* County of Riverside

Contact name*: First Jenifer Last Rutherford

Contact email* jenifer.rutherford@rivcoit.org

Street address* 3450 14th Street

City* Riverside State* CA Postal code* 92501-3862

Country*: US

Phone* 951-955-7785 Fax

☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Cynthia Iwanaga, Management Analyst

APPROVED BY: City Manager

AWARD PEST CONTROL MAINTENANCE SERVICE AGREEMENT

RECOMMENDATION(S)

1. Award a two-year contract to Animal Damage Management, Inc. in the amount of \$70,320; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Animal Damage Management, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The City has contracted for pest control services for many years as these services require training and equipment that the City does not currently have. Services provided include the control of a variety of different pests including mice, raccoons, gophers, ground squirrels, etc. at City facilities and parks. The City's current contract with Animal Damage Management, Inc. expires on July 30, 2018.

The purpose of this report is to summarize the results of the recent Request for Proposals (RFP) process and authorize the City Manager to enter into a new agreement for these needed services. The proposed term of the new maintenance service agreement is two years with an option to extend for one additional year.

The RFP was issued on May 7, 2018. An optional tour of service locations was conducted by maintenance staff on May 24, 2018 for interested vendors. On June 20, 2018, five proposals were received from the following pest control companies: Round the Clock Pest Control, Rentokil North America, dba Western Exterminator, Pestmaster Services, Animal Damage Management, and Clark Pest Control.

The proposals were first evaluated based on a review of Qualifications, Experience and References. Contractors receiving a minimum score of 40 out of 50 points in this section were further considered in the selection process. Animal Damage Management, Round the Clock Pest Control and Western Exterminator scored the minimum 40 points to be further considered in the selection process.

The second part of the evaluation was the review of each vendor's proposed scope of work and cost for the ten service locations. Each company's scope of work was

evaluated for appropriateness of services proposed and the quantity and frequency of services proposed. Maintenance staff also reviewed the proposed initial maintenance costs and the proposed ongoing maintenance costs. After reviewing all three work proposals, staff identified the top two firms deserving of additional consideration. Staff then conducted interviews with representatives from Animal Damage Management and Round the Clock to discuss their proposals in detail and gain additional information about the proposed approach and services intended to be provided. After the interviews, staff selected Animal Damage Management based on the appropriateness of their scope and cost of services as the recommended vendor.

Staff is recommending a contract for \$70,320. This is based on proposed monthly maintenance costs of \$1,680 for 24 months of service totaling \$40,320 in scheduled preventative maintenance costs plus \$30,000 for two years of estimated additional pest control services for a total contract price of \$70,320.

COMMUNITY ENGAGEMENT: Not Applicable

As pest control services are already expected to be performed at city facilities, no community engagement was completed for this contract.

ALTERNATIVE ACTIONS:

The City Council could elect not to award this maintenance service agreement and request that the services be rebid in hopes of obtaining more bids. However, five proposals is a reasonable amount of proposals to provide a broad representation of services available and related costs.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In the past, the pest control services contract was below \$45,000 for two years and did not require City Council approval. Since staff is adding the anticipated additional pest control services to the preventative maintenance pest control contract, based on the City's past identified need for these services, the total contract amount now exceeds \$45,000 and requires City Council consideration.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$70,320. Funding for pest control services is within the amount included in the Fiscal Years 2018-2019 and 2019-2020 budgets for the Parks Maintenance Fund (302) and Facilities Building Maintenance Fund (740).

CEQA (California Environmental Quality Act):

The pesticide regulatory program certified by the State is functionally equivalent to the environmental review requirements of CEQA. Animal Damage Management, Inc. is licensed by the California Department of Pesticide Regulation, and therefore no further environmental review is necessary pursuant to Public Resources Code section 21080.5.

LINKS/ATTACHMENTS:

1. Revised Animal Damage Management
2. RFP Scoring

MAINTENANCE SERVICE AGREEMENT
Animal Damage Management, Inc,

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Animal Damage Management, Inc. a California corporation ("SERVICE PROVIDER") 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 action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until July 31, 2020 at which time SERVICE PROVIDER'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 SERVICE PROVIDER shall be pest control services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$70,320.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Seventy thousand three hundred twenty 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 for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. 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. **Termination.** CITY or SERVICE PROVIDER 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,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The City Manager is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on **Exhibit C**, "Schedule of Performance," attached hereto and incorporated herein by this reference. The City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of the 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 SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER 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 SERVICE PROVIDER, 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. SERVICE PROVIDER further understands that CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of CITY.

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER'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), SERVICE PROVIDER 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

8.1.5.3. If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation 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 SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.2. **Endorsements.** SERVICE PROVIDER 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 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.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then 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 a financial size rating of "VII" or better.
- 8.4. **Certificates.** SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to SERVICE PROVIDER's agreement with CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer 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 CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER 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. SERVICE PROVIDER 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.
- 10.2. Without limiting the provisions of Section 10.1 above, each worker performing work under this Agreement shall 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>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- 10.3. DIR Registration. CITY will not accept a Bid Proposal from or enter into a contract with a SERVICE PROVIDER, without first receiving proof to the satisfaction of CITY that SERVICE PROVIDER and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. Under Labor Code section 1771.4, this Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
- 10.4. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against SERVICE PROVIDER and/or its Subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS

AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, CITY reserves the right to withhold payment to SERVICE PROVIDER until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
13. **Conflict of Interest and Reporting.** SERVICE PROVIDER 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 SERVICE PROVIDER is as follows:

Animal Damage Management, Inc.
16170 Vineyard Blvd., Ste. 150
Morgan Hill, CA 95037

Address of CITY is as follows:

Community Services Director	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.** SERVICE PROVIDER 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.** SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER shall retain said records until such action is resolved.

16.2. **Access to and Audit of Records.** CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of SERVICE PROVIDER 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 CITY or as part of any audit of 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 SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER'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 SERVICE PROVIDER, 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.** SERVICE PROVIDER 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 SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

21.2. **Exceptions.** SERVICE PROVIDER 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 sole negligence or willful misconduct of 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 SERVICE PROVIDER.

21.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER'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 SERVICE PROVIDER 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.

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 SERVICE PROVIDER. 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 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER 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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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 OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Wilson

 Christina J. Turner

 Print Name

 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

ANIMAL DAMAGE MANAGEMENT, INC.

 City Attorney

By: _____

 Donald A. Larkin

 Cody UW - Vice President

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 7-6-18

 By: _____

 Diane Furpella - Secretary

 Print Name and Title of Signer.

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

Date: 7-6-18.

 Contractor's License Number(s) (if applicable)

 Contractor's DIR Registration Number(s) (if applicable)

 Expiration Date(s)

 Expiration Date(s) 6-2019

Seal:

U:\Legal Forms\Consultant Agreements\City Maintenance Service Agreement.Docx

EXHIBIT A SCOPE OF SERVICES

Contractor to provide ongoing scope of services for city facilities described below:

1. Butterfield Detention Basin located at Railroad, Fisher and Seymour Avenues: Inspect and treat as needed using traps and or carbon monoxide gas. Monitor and report. To be serviced four (4) times per month.
2. Aquatics Center located at 16200 Condit Road. Inspect, set traps as needed in turf and landscaped areas to control gophers. Monitor and report. To be serviced four (4) times per month.
3. Morgan Hill Police Department located at 16200 Vineyard Boulevard: Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month.
4. Boys Ranch 1, 2 & 3 Wells located at 1000 to 1004 Burnett Avenue. Inspect bait stations, service each as needed. Monitor and report. Services include cleaning out debris, replenishing bait, marking record card, and replacing any damaged bait stations. To be serviced twice per month.
5. Jackson Oaks Booster located at 3842 White Oak Court/E Dunne Avenue after Hilltop Court. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month
6. Encino Booster located at 18835 Glen Ayre Drive. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month
7. Woodland Acres Booster located at 17910 Woodland Avenue. Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month
8. Dunne Well located at East Dunne and Condit Road: Inspect bait stations, service each as needed. Monitor and report. Service includes cleaning out debris, replenishing bait, marking record card and replacing any damaged bait stations. To be serviced twice per month
9. Community Park located at 171 W. Edmundson Ave.: Inspect turf and landscape areas for gophers and ground squirrels. Treat as needed using traps and or carbon monoxide gas. Monitor and report. Trappings twice per month. Carbon monoxide gas twice per month.
10. Paradise Park located at La Crosse Drive and Calle Enrique. Inspect turf and landscape areas for gophers and ground squirrels. Set traps as needed. Monitor and report. Serviced twice per month.
11. Extra Services for gophers and ground squirrels, raccoons, birds, wasps, mice, insects, skunks and opossums as requested by City Maintenance Staff.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

1. Butterfield Detention Basin: \$275.00 per month
2. Aquatics Center \$375.00 per month
3. Morgan Hill Police Department \$100.00 per month
4. Boys Ranch 1, 2 & 3: \$50.00 per month
5. Jackson Oaks Booster: \$50.00 per month
6. Encino Booster: \$50.00 per month
7. Woodland Acres Booster: \$50.00 per month
8. Dunne Well: \$50.00 per month
9. Community Park: \$505.00 per month
10. Paradise Park: \$175.00 per month

11. Extra Services:

Gophers and Ground Squirrels \$195.00

Raccoons: \$175.00

Birds: \$225.00

Wasps: \$175.00

Mice: \$185.00

Insects: \$165.00

Skunks: \$195.00

Opossums: \$175.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

- 1. Butterfield Detention Basin: To be serviced four (4) times per month.**
- 2. Aquatics Center To be serviced four (4) times per month.**
- 3. Morgan Hill Police Department To be serviced twice per month.**
- 4. Boys Ranch 1, 2 & 3: To be serviced twice per month.**
- 5. Jackson Oaks Booster: To be serviced twice per month**
- 6. Encino Booster: To be serviced twice per month**
- 7. Woodland Acres Booster: To be serviced twice per month**
- 8. Dunne Well: To be serviced twice per month**
- 9. Community Park: Trappings twice per month. Carbon monoxide gas twice per month.**
- 10. Paradise Park: Serviced twice per month**
- 11. Extra Services: As requested by City Maintenance Staff**

Pest Control Narrative Scores

Company	Avg. Score	Monthly Cost	Startup Fee
Clark Pest	26	\$ 4,324.00	\$ 31,171.00
Pestmaster	35	\$ 2,949.00	\$ 3,429.00
Western Exterminator	40	\$ 3,145.00	\$ 4,952.00
Animal Damage	47	\$ 1,680.00	\$ -
Round the Clock	40	\$ 2,385.00	\$ 2,985.00



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

PROFESSIONAL SERVICE AGREEMENTS WITH CSG CONSULTANTS, INC. AND HARRIS & ASSOCIATES, INC. FOR ON-CALL LAND DEVELOPMENT ENGINEERING PLAN REVIEW AND TECHNICAL SUPPORT SERVICES

RECOMMENDATION(S)

Authorize the City Manager to execute two agreements; one with with CSG Consultants Inc. and one with Harris & Associates, Inc. for \$161,500 each, with a \$48,450 contingency to be specifically authorized by the City Manager, for a total contract amount not to exceed \$209,950 each with a combined total for both two-year agreements not exceeding the budgeted amount of \$439,000.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

For the past several years, the City has contracted with two consultants to provide staff augmentation services to assist with land development engineering review, stormwater and floodplain management program support, and mapping, specifically survey review. Harris & Associates played a vital role in augmenting the land development engineering team for timely processing of development applications and program management support while John K. King Consulting Land Surveyor assisted with subdivision map reviews and City Surveyor functions. Both consultants were selected from a Request for Proposals (RFP) for plan checking and map checking services issued by staff in February 2016. The existing agreements with Harris & Associates and John K. King Consulting Land Surveyor expired on June 30, 2018.

Since staff augmentation services are still a critical need for Fiscal Years (FY) 2018-19 and 2019-20 for on-going development reviews, stormwater program, and floodplain management program activities, staff included the cost of these services in the two-year (FY 2018-19 & FY 2019-20) budget under the Land Development Engineering Division's contract services expenditure. The FY 2018-19 & FY 2019-20 Operating Budget recently adopted by the City Council on June 6, 2018 included a total contract service amount of \$439,000 in the Community Development Fund 206.

On May 15, 2018, staff issued a Request for Qualifications (RFQ) for staff augmentation services (RFQ No. CDENG-RFQ-2018-001) during FY 2018-19 & FY 2019-20 for three

types of services with a total budget amount of \$439,000:

- 1) On-Call Engineering Plan Review & Technical Support Services
(*\$379,000 anticipated spending amount*);
- 2) On-Call Map Review & City Surveyor Services
(*\$40,000 anticipated spending amount*); and
- 3) On-Call Transportation/Traffic Engineering Services
(*\$20,000 anticipated spending amount*)

The objective of this RFQ was to establish three separate on-call lists, with up to four pre-qualified and experienced firms per list, for plan review, mapping review/City Surveyor services and a third new service type, transportation/traffic engineering services. The on-call lists will be valid for three years.

The table below shows the number of RFQ submittals received by the RFQ due date of June 7, 2018. Most of the firms submitted for more than one service type. All submittals were opened on June 8, 2018 and were all considered for evaluation.

	No. of RFQ submittals received
Engineering Plan Review & Technical Support Services	6
Map Review & City Surveyor Services	5
Transportation/Traffic Engineering Services	5

The RFQ submittals were evaluated by a selection committee composed of staff from the Planning Division, Building Division, Land Development Engineering Division, and Engineering & Utilities Department. The RFQ included five evaluation criteria: (1) Overall Proposal; (2) Firm Qualifications; (3) Key Personnel Qualifications & Experience; (4) Understanding of Services & Approach; and (5) References. Each submittal was reviewed based on this RFQ criteria and the consultant's cost.

After a thorough evaluation by the selection committee, staff is recommending the contracts be awarded to the firms listed below with the specified contract amounts shown.

Engineering Plan Review & Technical Support Services				
Firm Name	I. CSG Consultants	II. Harris & Associates	III. MNS Engineers	IV. Mott MacDonald
Contract Amount	\$161,500	\$161,500	\$28,000	\$28,000

Total Contract Amount	\$379,000
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Map Review & City Surveyor Services				
Firm Name	I. John K. King Consulting Land Surveyor	II. CSG Consultants	III. Harris & Associates	IV. MNS Engineers
Contract Amount	\$16,000	\$8,000	\$8,000	\$8,000
Total Contract Amount	\$40,000			

Transportation/Traffic Engineering Services		
Firm Name	I. Hexagon Transportation Consultants	II. TJKM Transportation Consultants
Contract Amount	\$10,000	\$10,000
Total Contract Amount	\$20,000	

Most of the selected firms offered good overall submittals and some had a lower overall cost. Staff is recommending that the top-ranking firms, who have more experience and expertise, be awarded the higher contract amounts.

The two agreements for engineering plan review & technical support services with CSG Consultants and Harris & Associates are the only agreements that require City Council approval. The City Manager will be approving the other contracts with amounts not exceeding \$45,000.

In addition to the two standard consultant agreements, staff is also recommending City Council approval of additional compensation (or contingency amount) not to exceed 30% of the total compensation amount of \$161,500 in each contract, which is equivalent to \$48,450, without exceeding the total budgeted amount of \$439,000. The additional compensation is considered contingency to provide flexibility for staff to cover unexpected work or additional work to be assigned to a consultant which exceed the approved contract amount during the initial term of the agreement. Although expedited review costs will be borne by the applicant, these costs can increase the consultant's compensation amount. The additional compensation will be applied to each of the two consultant agreements and will only be authorized as needed and as long as the total budgeted amount is not exceeded. Staff would return to Council for an augmented budget should applicant requests for expedited review exceed the anticipated overall budget amount.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the two recommended contract approvals for CSG Consultants Inc. and Harris & Associates, Inc. for engineering plan review & technical support services and to provide a summary of the RFQ selection outcomes.

RFQ No. CDENG-RFQ-2018-001 which was issued by staff on May 15, 2018, was also posted on the same date in Public Purchase, Online Exchange, and the City's website until the RFQ due date of June 7, 2018. A separate solicitation email was sent to several engineering consultants that have done projects in Morgan Hill and to those with offices located within the South Bay.

ALTERNATIVE ACTIONS:

City Council could decide to approve the two agreements without the contingency. This will require City Council approval of future amendments to the contracts. Alternatively, City Council could decide not to approve the agreements and have staff solicit new consultant proposals for engineering plan review & technical support services. This may delay the review/approval of some projects and delay the completion of certain stormwater program tasks. Moreover, staff may not be able to offer expedited plan review services for some or all projects.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 21, 2018, the City Council approved a third amendment to the professional service agreement with Harris & Associates for land development review.

On June 6, 2018, the City Council adopted the FY 2018-19 & FY 2019-20 Operating Budget which included the Land Development Engineering Division's contract services expenditure of \$439,000 in the Community Development Fund 206.

FISCAL AND RESOURCE IMPACT:

Funds for the two agreements for FY 2018-19 & FY 2019-20 will come from the Community Development Fund 206. Services that will be rendered by CSG Consultants and Harris & Associates will be paid for by developer fees.

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 are exempted from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The agreements are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

LINKS/ATTACHMENTS:

1. CSG Consultants Inc. - Agreement
2. Harris & Associates Inc. - Agreement

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS CSG CONSULTANTS, INC.

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and CSG Consultants, 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 action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 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 for On-Call Engineering Plan Review & Technical Support for the Land Development Engineering Division as further described in **Exhibit A**.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$161,500.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Sixty One Thousand Five Hundred dollars, except as provided in Section 4.1.1 of this Agreement, "Additional Compensation", 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 for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.
 - 4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceed the compensation amount listed in Section 4.1 of this Agreement may be approved through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve the additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of Two Hundred Nine Thousand Nine Hundred Fifty dollars (\$209,950.00).
 - 4.2. **Billing.** CONSULTANT shall provide CITY with an invoice 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 on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the

month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. 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. **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.

6. **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 on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance 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.

7. **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 modify 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.

7.1. **Insurance Types and Amounts.**

7.1.1. **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.

7.1.2. **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.

7.1.3. 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.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. 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.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.2.1. **General Liability.**

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

7.2.1.2. 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,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then 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.

- 7.3. **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 a financial size rating of "VII" or better.

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. 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 insurer 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

8. **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.

9. **Compliance with Law.**

9.1. 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.

9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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

11. **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.

12. **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.

13. **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:

Mr. Hatem Ahmed, Senior Principal Engineer
CSG Consultants, Inc.
3150 Almaden Expressway #255
San Jose, CA 95118

Address of CITY is as follows:

Maria Angeles
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

14. **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.

15. **Maintenance of Records.**

- 15.1. 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.
- 15.2. 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.
- 15.3. 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.
16. 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.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. 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.
19. 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.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, 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 negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, 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").
- 20.3. 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 sole negligence, active negligence or willful misconduct of the CITY.
- 20.4. 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.
- 20.5. 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.
- 20.6. 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. 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.
22. 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.
23. 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.

24. **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.

25. **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.

26. **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 OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

CSG CONSULTANTS, INC.

City Attorney

By: 

Donald A. Larkin

Nourdin Khayata, Vice President

Print Name

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 07-09-18



By:

Charles D. Rider, Secretary

Print Name and Title of Signer.

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

Date: 07-09-18

EXHIBIT A SCOPE OF SERVICES

Under the direct supervision of the Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for a two-year period (Fiscal Years 2018-19 and FY 2019-20).

The following are the types of tasks that are included in the CONSULTANT's scope of services:

1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice.
2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.
3. Review the civil engineering and site planning aspects of tentative maps and/or land development applications for conformance with City standards as part of the City's entitlement process.
4. Review and management of Stormwater Pollution Prevention Plans (SWPPPs) and Post-Construction Stormwater Runoff Management Plans (SWRMPs) submitted by private development projects, and other functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed.
6. Train City staff in specific engineering review and/or stormwater reviews as requested.
7. Other general engineering services as needed.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

	2018 Hourly Rate	2019 Hourly Rate
Administrative Assistant	\$70	\$75
Analyst	\$120	\$125
Engineering Designer	\$130	\$135
Construction Inspector	\$135	\$140
Senior Analyst	\$145	\$150
Assistant Resident Engineer	\$160	\$165
Assistant Engineer	\$140	\$145
Associate Engineer	\$160	\$165
Senior Construction Inspector	\$150	\$155
Senior Engineer	\$185	\$190
Resident Engineer	\$190	\$195
Structure Representative	\$190	\$195
Senior Structural Engineer	\$200	\$205
Senior Project Manager	\$200	\$205
Principal Engineer	\$210	\$215
Senior Principal Engineer	\$230	\$235
Two-Person Survey Crew	\$310	\$320

All hourly rates include overhead costs including, but not limited to, salaries, benefits, Workers Compensation Insurance, travel and office expenses.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as-needed, on-call basis.

The scope of work will vary and will be requested on a task order basis as the need arises. Task orders may be in the form of a written or verbal request. The CONSULTANT is responsible for acknowledging receipt of requests within two (2) working days. Task orders may vary significantly in size and scope and will be determined in greater detail as each task order is assigned. The CITY will discuss the scope of services and schedule of performance with the CONSULTANT prior to issuing a task order.

The CONSULTANT will be responsible for preparing a detailed scope and fee estimate for each task order and will provide an estimated date of completion. The CITY may accept the CONSULTANT'S scope and fee or negotiate with the CONSULTANT, as appropriate.

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS HARRIS & ASSOCIATES, INC.

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Harris & Associates, 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 action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2020 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 for On-Call Engineering Plan Review & Technical Support for the Land Development Engineering Division as further described in **Exhibit A**.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$161,500.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Sixty One Thousand Five Hundred dollars, except as provided in Section 4.1.1 of this Agreement, "Additional Compensation", 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 for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement, notwithstanding the Additional Compensation set forth in Section 4.1.1 below.

4.1.1. **Additional Compensation.** Additional compensation during the initial term of this Agreement that exceed the compensation amount listed in Section 4.1 of this Agreement may be approved through a written amendment so long as City Council has appropriated sufficient funds therefor. The City Manager shall have the authority to approve the additional compensation in an amount not to exceed thirty percent (30%) of the total compensation amount listed in Section 4.1 of this Agreement, for a combined total maximum compensation amount of Two Hundred Nine Thousand Nine Hundred Fifty dollars (\$209,950.00).

4.2. **Billing.** CONSULTANT shall provide CITY with an invoice 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 on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the

month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. 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. **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.

6. **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 on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance 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.

7. **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 modify 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.

7.1. **Insurance Types and Amounts.**

7.1.1. **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.

7.1.2. **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.

7.1.3. 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.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. 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.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation 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 CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

7.2.1. **General Liability.**

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

7.2.1.2. 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,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then 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.

- 7.3. **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 a financial size rating of "VII" or better.
- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. 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 insurer 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

8. **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.

9. **Compliance with Law.**

- 9.1. 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.
- 9.2. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

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

11. **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.

12. **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.

13. **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:

Mr. Frank Lopez, Project Manager
Harris & Associates, Inc.
450 Lincoln Avenue, Suite 103
Salinas, CA 93901

Address of CITY is as follows:

Maria Angeles	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

14. **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.

15. **Maintenance of Records.**

- 15.1. **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.
- 15.2. **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.
- 15.3. **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.
16. **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.
17. **Time of Essence.** Time is of the essence in the performance of this Agreement.
18. **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.
19. **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.
20. **Defense and Indemnification.**
- 20.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, 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 negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.

- 20.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 20.1 above, 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").
- 20.3. **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 sole negligence, active negligence or willful misconduct of the CITY.
- 20.4. **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.
- 20.5. **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.
- 20.6. **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. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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 OF MORGAN HILL

 City Clerk/Deputy City Clerk

 City Manager

 Michelle Bigelow
 Print Name

 Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

HARRIS & ASSOCIATES, INC.

 City Attorney

By: _____

Lisa Larrabee, CEO/President

 Donald A. Larkin
 Print Name

 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

Date: 7/10/18

By: _____

Lisa Larrabee, Sec. of the Board

 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 7/10/18

EXHIBIT A SCOPE OF SERVICES

Under the direct supervision of the Land Development Engineering staff, the CONSULTANT will provide On-Call Engineering Plan Review & Technical Support Services for a two-year period (Fiscal Years 2018-19 and FY 2019-20).

The following are the types of tasks that are included in the CONSULTANT's scope of services:

- 1. Standard and Expedited engineering plan review of improvement plans for conformance with adopted City standards, approved conditions of approval, and/or accepted industry practice.**
- 2. Review storm drain and/or sanitary sewer hydraulic calculations for conformance with City standards and/or accepted industry practice.**
- 3. Review the civil engineering and site planning aspects of tentative maps and/or land development applications for conformance with City standards as part of the City's entitlement process.**
- 4. Review and management of Stormwater Pollution Prevention Plans (SWPPPs) and Post-Construction Stormwater Runoff Management Plans (SWRMPs) submitted by private development projects, and other functions to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.**
- 5. Prepare flood studies, review floodplain proposals, Flood Program management support, and other related functions as needed.**
- 6. Train City staff in specific engineering review and/or stormwater reviews as requested.**
- 7. Other general engineering services as needed.**

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

	2018 Hourly Rate	2019 Hourly Rate
ENGINEERING SERVICES		
Senior Project Directors	\$240	\$250
Project Directors	\$230	\$240
Senior Project Managers	\$195	\$205
Project Managers	\$175	\$185
Senior Project Engineers	\$175	\$185
Project Engineers	\$150	\$160
Technical Support	\$110	\$115
Administration	\$100	\$105
CONSTRUCTION MANAGEMENT		
Senior Project Directors	\$220	\$230
Project Directors	\$200	\$210
Senior Construction Managers	\$190	\$195
Construction Managers	\$175	\$185
Inspectors (prevailing wage)	\$165	\$170
Inspectors (non-prevailing wage)	\$135	\$145
ENVIRONMENTAL SERVICES		
Project Director	\$220	\$230
Project Manager	\$160	\$170
Project Analyst	\$140	\$150

All hourly rates include most direct costs such as travel, equipment, computers, communications and reproduction (except large quantities such as construction documents for bidding purposes).

All subconsultant charges are subject to a 10% mark-up.

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

CONSULTANT'S services will be on an as-needed, on-call basis.

The scope of work will vary and will be requested on a task order basis as the need arises. Task orders may be in the form of a written or verbal request. The CONSULTANT is responsible for acknowledging receipt of requests within two (2) working days. Task orders may vary significantly in size and scope and will be determined in greater detail as each task order is assigned. The CITY will discuss the scope of services and schedule of performance with the CONSULTANT prior to issuing a task order.

The CONSULTANT will be responsible for preparing a detailed scope and fee estimate for each task order and will provide an estimated date of completion. The CITY may accept the CONSULTANT'S scope and fee or negotiate with the CONSULTANT, as appropriate.



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

MAY 2018 FINANCIAL AND INVESTMENT REPORT

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the month ended May 31, 2018. The Revenue and Expense Summary for the month of May is included on the first page. Overall, General Fund revenues through May totaled \$35.4 million or 93% of the budget. Expenditures totaled \$36.1 million, and including encumbrances amounted to \$38.8 million or 91% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers such as Cal-West Lighting and Signal Maintenance for the maintenance of the City's streetlights and traffic signals, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a monthly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendaized under the Consent Agenda, and quarterly financial

and investment reports be presented to City Council as an “Other Business” item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. May 2018 Financial Statement Analysis
2. May 2018 Financial and Investment Report

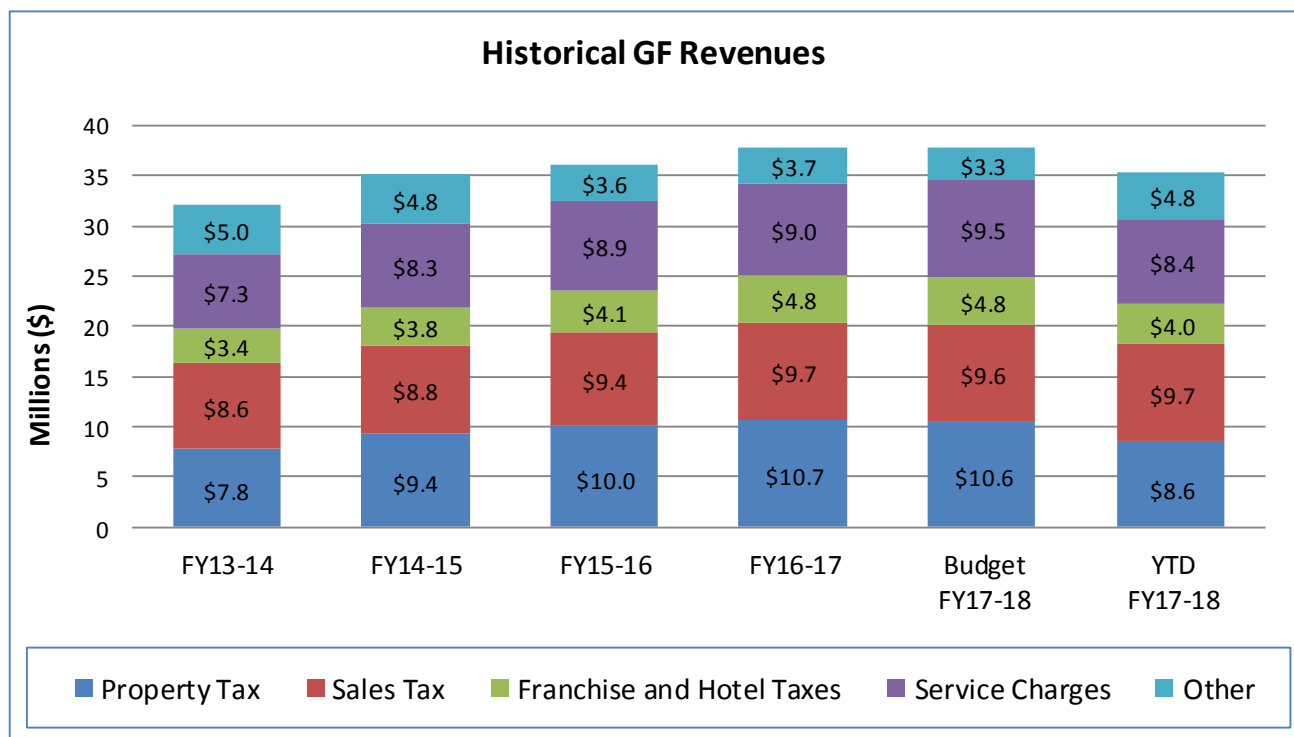


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED MAY 2018 – 92% OF YEAR COMPLETE

- **General Fund** – Overall, revenues received through May totaled \$35.4 million, or 93% of the budgeted revenues. The amount received is 10% or \$3.3 million higher than a year ago at this time. A portion of this difference is due to an increase in sales tax collection of approximately \$996,000. As for property tax, the first four advances for the April 10, 2018 secured and unsecured property tax installment have been received and are 5% or approximately \$407,000 higher than a year ago at this time.

Property tax revenue, excluding property transfer tax, is forecasted to end the year at \$11.3 million, which is approximately \$700,000 more than the mid-cycle revised estimate. The increase is mainly due to \$500,000 in excess Educational Revenue Augmentation Fund (ERAF) revenue. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 28% of the approximately \$38.1 million budgeted General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The chart below shows historical General Fund revenues by major revenue category from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of May 31, 2018.



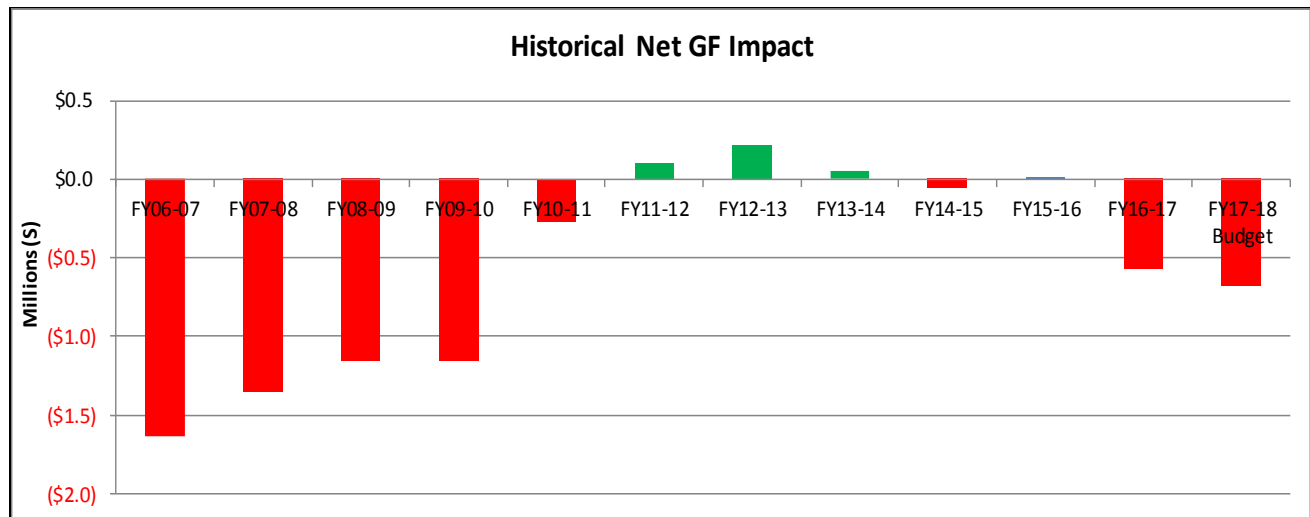
General Fund expenditures and encumbrances as of May 31, 2018 totaled \$38.8 million, of which approximately \$2.7 million is attributable to outstanding encumbrances.

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED MAY 2018 – 92% OF YEAR COMPLETE

impact to the General Fund of approximately \$751,000 through the month of May. Without the encumbrances, year to date operations resulted in a smaller negative impact to the general fund of approximately \$161,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund. The following chart reflects the effect of Community Services activity on the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Community Development Fund** – Revenues through May totaled \$4.1 million, exceeded budgeted revenues by approximately 11% partially due to the fee increase that went into effect January 1, 2018. However, the amount received to date is approximately \$230,000 or 5% less than prior year. Expenditures, including encumbrances totaled \$5.1 million or 92% of the budget.
- **Debt Service Funds** – Expenditures through May totaled \$678,000. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than 1% of the General Fund's budgeted revenues.
- **Sewer Operations** – Revenues from Sewer Service Fees through May totaled \$9.2 million, 3% or \$275,000 higher than a year ago at this time. However, revenues are projected to come in lower than the original budget of \$10.8 million due to lower water consumption as a result of wet winter months (which was based upon the quarter from January to March 2017). Sewer bills are based on the lowest



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2017-18
FOR THE MONTH ENDED MAY 2018 – 92% OF YEAR COMPLETE

three consecutive months of water consumption from the prior fiscal year. Expenditures and outstanding encumbrances totaled \$9.6 million or 88% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of May 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	9.4	10.3	10.2	9.7	10.3	9.2
Expenditures	8.6	8.8	12.0	9.8	10.8	9.6
Operating Margin	0.8	1.5	(1.8)	(0.1)	(0.5)	(0.4)
Operating Margin without Encumbrances	0.8	1.5	(1.8)	(0.0)	(0.5)	(0.2)

- Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through May totaled \$11.5 million, approximately \$1.9 million more than a year ago at this time. Revenues are expected to come in slightly better than budget partially due to higher water consumption than estimated. Water Operations expenditures, including outstanding encumbrances, through the month of May totaled \$10.4 million. Without the encumbrances, however, the expenditures amounted to \$9.6 million. The table below shows Water Operations revenues and expenditures from FY13-14 through FY16-17 Actual, FY17-18 Budget, and YTD as of May 31, 2018.

(amount in millions)	FY13-14	FY14-15	FY15-16	FY16-17	Budget FY17-18	YTD FY17-18
Revenues	12.2	8.8	8.5	10.9	12.2	11.5
Expenditures	12.1	9.3	9.7	10.8	12.1	10.4
Operating Margin	0.1	(0.5)	(1.2)	0.1	0.1	1.1
Operating Margin without Encumbrances	0.1	(0.5)	(1.2)	0.3	0.1	1.8

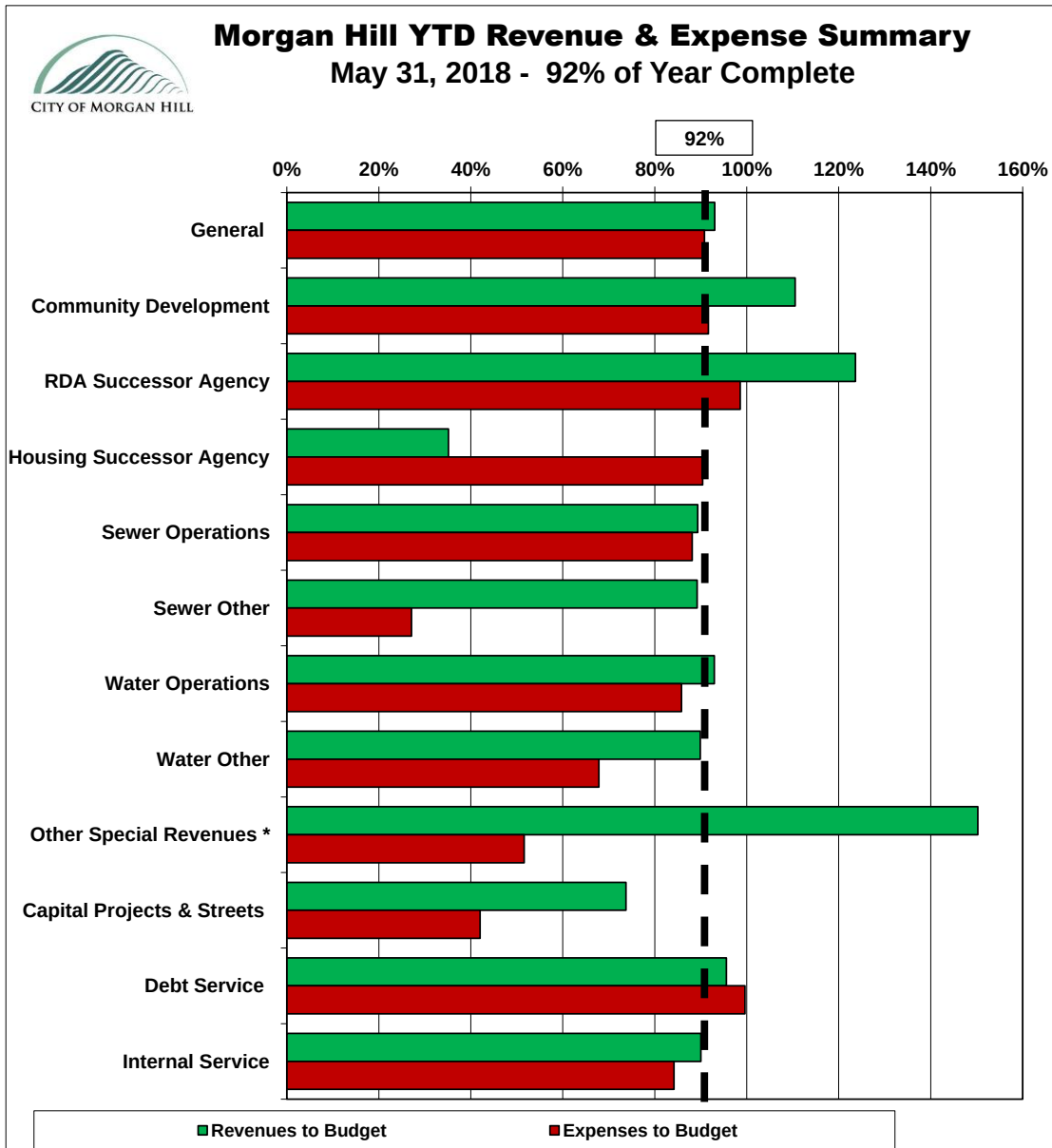
- Investments** – No purchases were made during the month of May 2018. Total interest earnings received on investments were \$143,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
May 31, 2018 - 92% of Year Complete



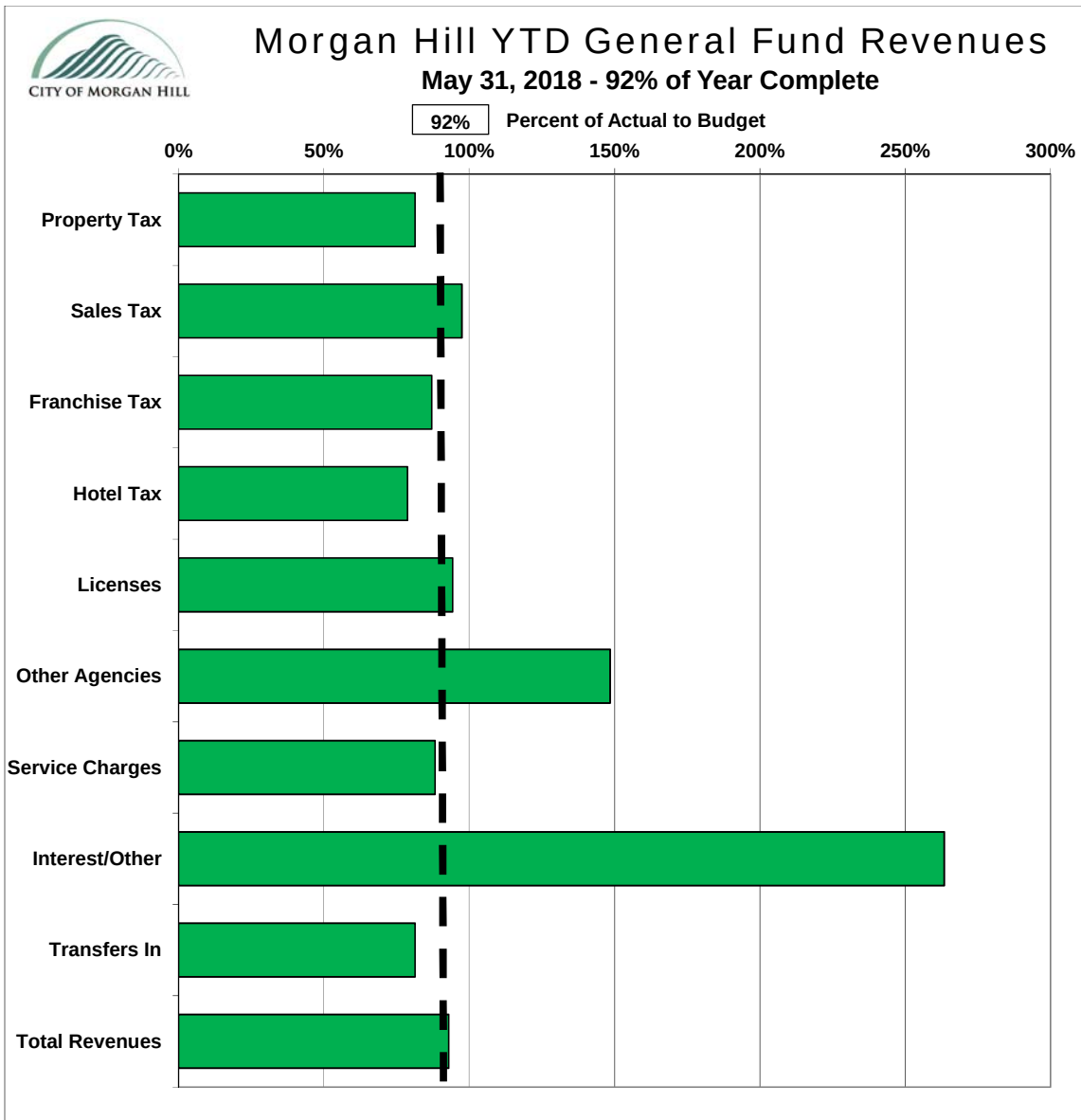
CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 35,437,746	93%	\$ 38,831,568	91%
Community Development	4,067,466	111%	5,080,714	92%
RDA Successor Agency	8,817,136	124%	7,077,491	99%
Housing Successor Agency	451,993	35%	2,812,480	90%
Sewer Operations	9,233,780	89%	9,581,758	88%
Sewer Other	6,446,248	89%	7,483,713	27%
Water Operations	11,549,426	93%	10,365,820	86%
Water Other	2,748,329	90%	4,341,059	68%
Other Special Revenues *	3,636,179	150%	2,441,293	52%
Capital Projects & Streets	13,029,334	74%	14,702,736	42%
Debt Service	652,483	96%	678,343	100%
Internal Service	9,412,789	90%	9,465,456	84%
TOTAL FOR ALL FUNDS	\$ 105,482,907	92%	\$ 112,862,432	68%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.

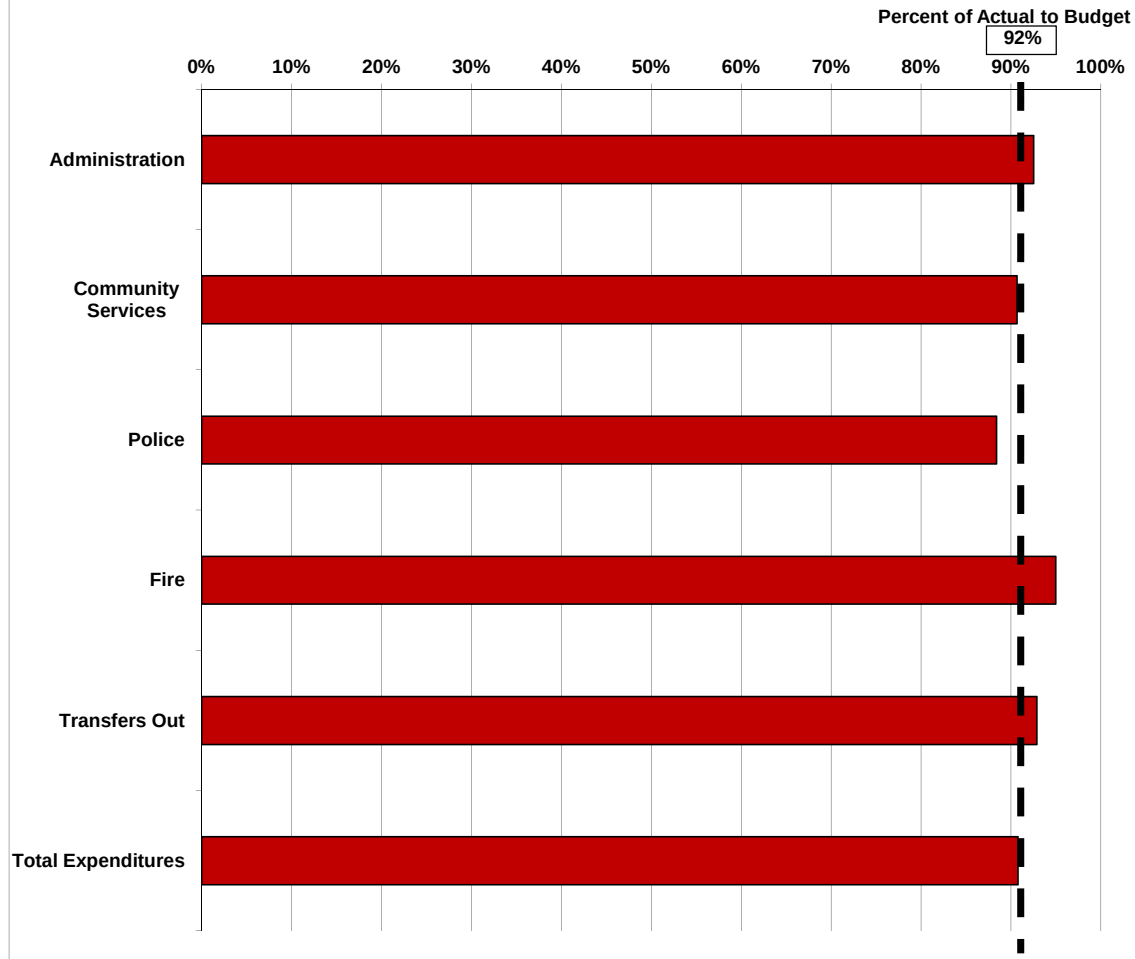


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$10,566,000	\$ 8,599,607	81%	\$ 8,318,531	3%
Sales Tax	9,928,502	9,671,906	97%	8,659,953	12%
Franchise Tax	1,981,796	1,726,156	87%	1,591,183	8%
Hotel Tax	2,827,050	2,226,481	79%	2,210,503	1%
Licenses	210,621	198,522	94%	192,502	3%
Other Agencies	319,875	474,958	149%	461,268	3%
Service Charges	9,536,644	8,425,003	88%	8,089,159	4%
Interest/Other	1,042,760	2,746,233	263%	1,319,551	108%
Transfers In	1,682,103	1,368,881	81%	1,342,778	2%
TOTAL REVENUES	\$38,095,351	\$35,437,746	93%	\$ 32,185,429	10%



Morgan Hill YTD General Fund Expenditures

May 31, 2018 - 92% of Year Complete



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 7,443,327	\$ 6,886,773	93%	\$ 5,527,277	25%
Community Services	11,050,226	10,020,532	91%	9,382,883	7%
Police	16,587,190	14,662,412	88%	13,662,956	7%
Fire	5,785,389	5,495,388	95%	5,050,687	9%
Transfers Out	1,901,915	1,766,463	93%	1,929,040	-8%
TOTAL EXPENDITURES	\$ 42,768,047	\$ 38,831,568	91%	\$ 35,552,843	9%

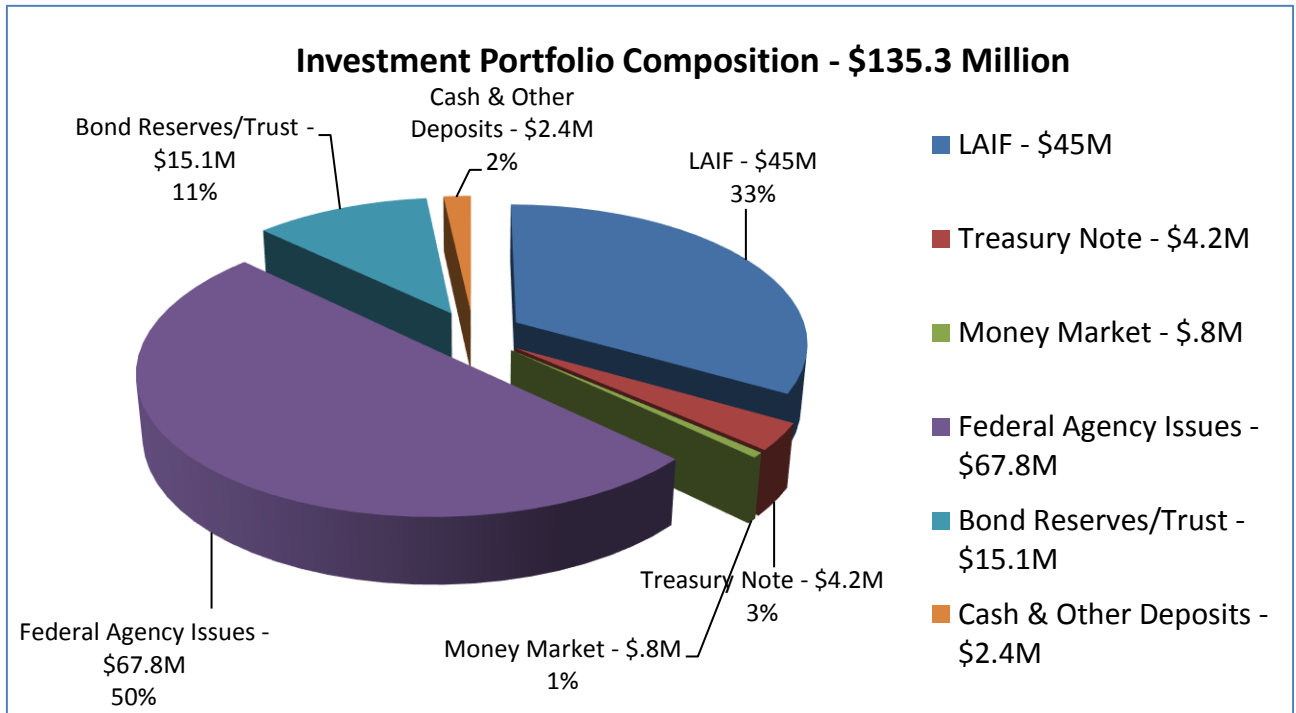


**City of Morgan Hill
Recreation Report - Fiscal Year 2017-18
For the Month and Eleven Months Ended May 31, 2018
92% of Year Complete**

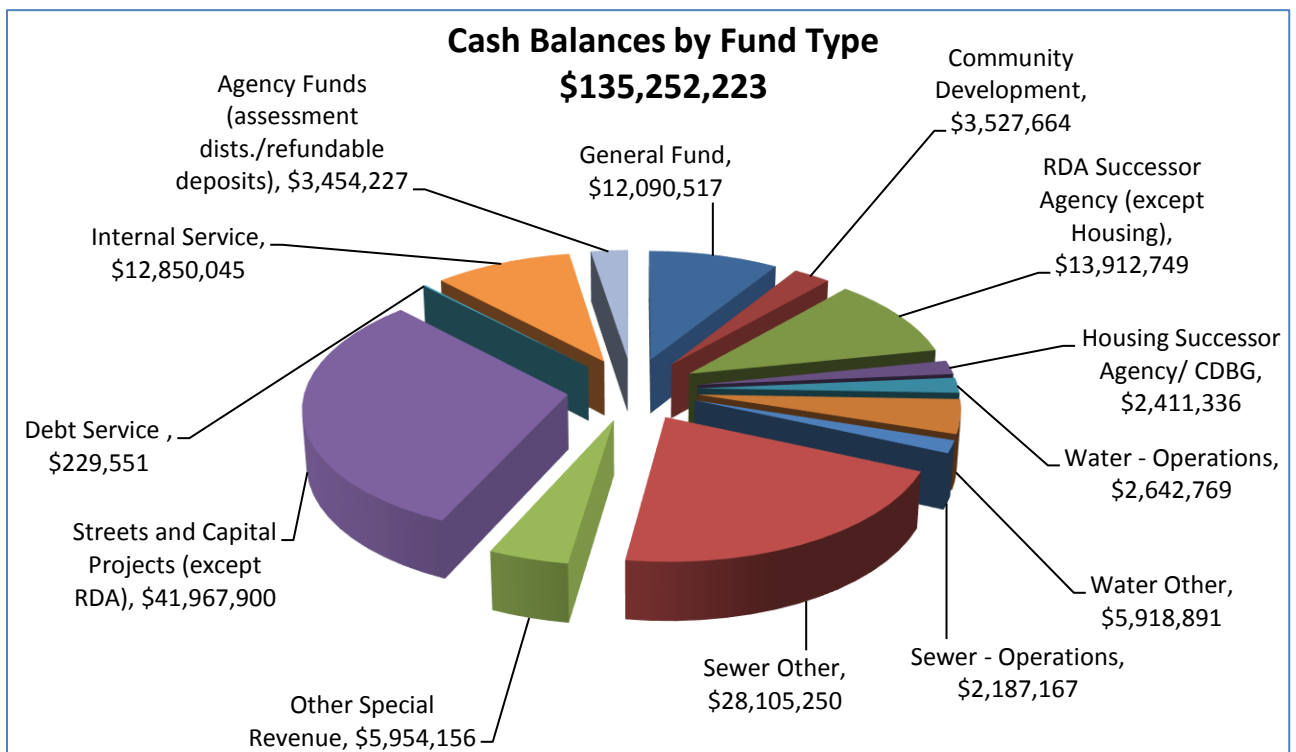
	<u>Budget</u>	<u>May 2018</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,197,036	\$ 548,471	\$ 5,459,854	
Facility Rentals	904,666	52,630	872,573	
Community Services	139,190	3,953	129,581	
Transfers in	75,000	6,250	68,750	
Total Revenues	<u>\$ 7,315,892</u>	<u>\$ 611,304</u>	<u>\$ 6,530,759</u>	89%
Less: Expenditures				
Membership & Program Services	\$ 5,914,430	\$ 328,159	\$ 4,895,324	
Facility Rentals	1,299,185	98,297	1,177,970	
Community Services	768,671	44,522	618,289	
Total Expenditures	<u>\$ 7,982,287</u>	<u>\$ 470,977</u>	<u>\$ 6,691,583</u>	84%
Net Impact without encumbrances	<u>\$ (666,395)</u>	<u>\$ 140,327</u>	<u>\$ (160,824)</u>	
Encumbrances	-	-	590,027	
Net Impact with encumbrances	<u>\$ (666,395)</u>	<u>\$ 140,327</u>	<u>\$ (750,851)</u>	

City of Morgan Hill Monthly Investment Report - May 31, 2018

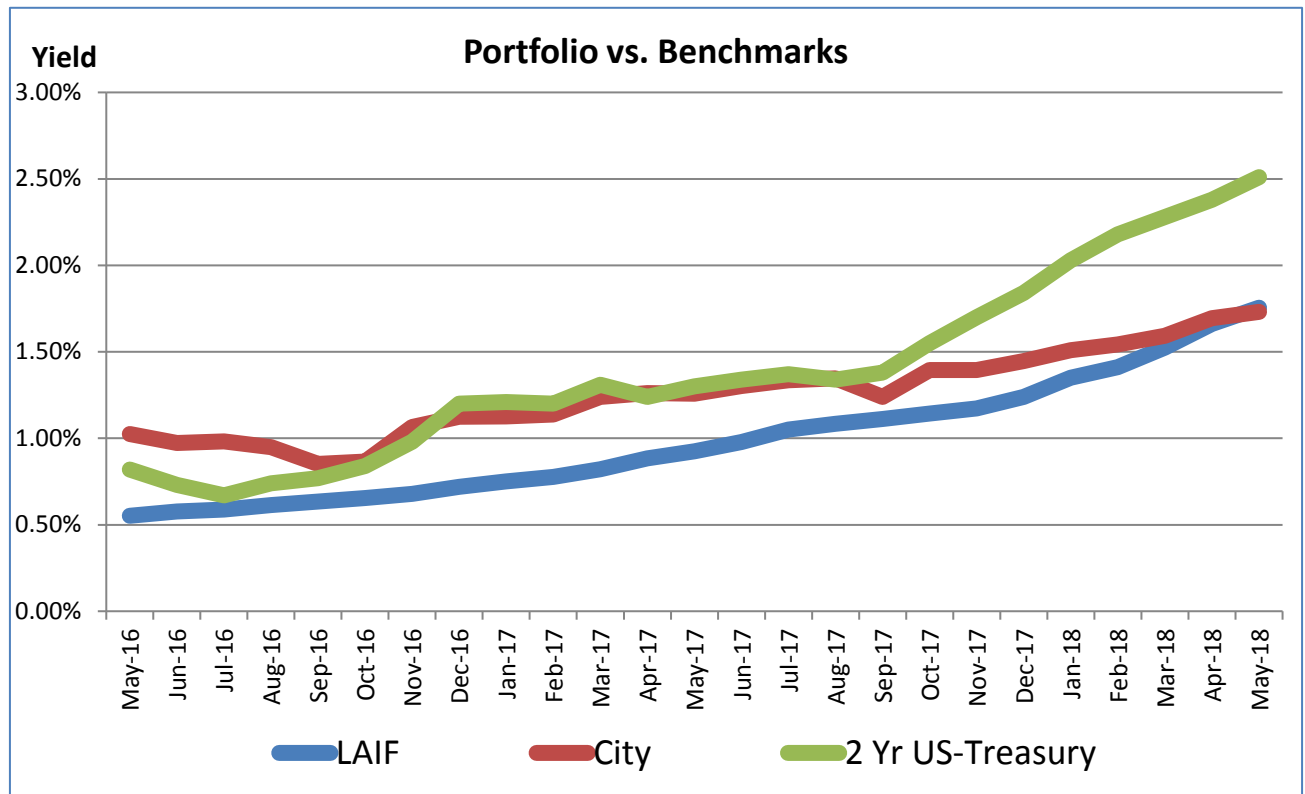
The following are the snapshots of City's investment portfolio as of May 31, 2018. The first chart shows the portfolio composition by investment type:



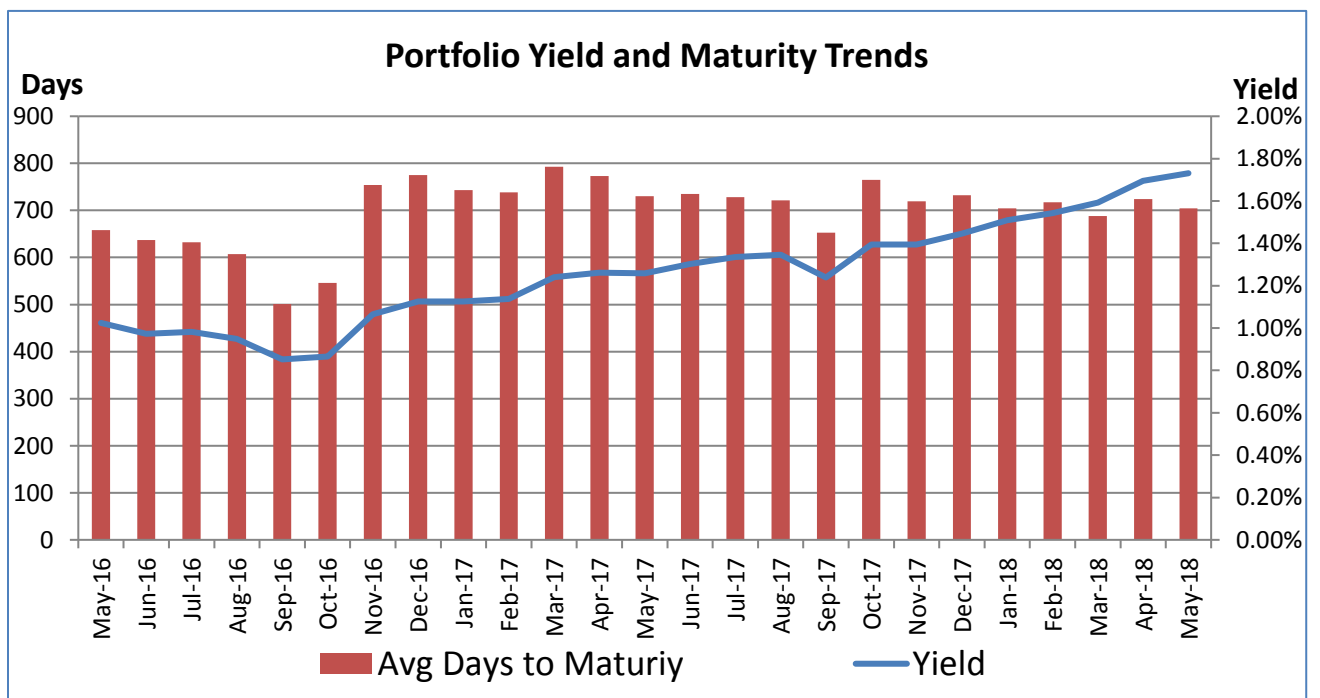
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of May 31, 2018

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 44,977,251	33.25%	\$ 44,866,517	1.76%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.96%	3,914,160	1.70%	7/19/2018	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.96%	3,847,920	1.50%	6/30/2021	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.96%	3,853,120	1.40%	8/25/2021	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.48%	1,937,020	1.65%	6/29/2018	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.96%	3,837,080	1.60%	6/29/2018	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.96%	3,819,720	1.60%	7/27/2018	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.96%	3,818,160	1.55%	7/28/2018	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.48%	1,911,960	1.65%	7/28/2018	10/28/2021
Fed Home Loan Bank	11/15/2016	4,000,000	2.96%	3,846,600	1.55%	11/15/2021	11/15/2021
Fed Home Loan Bank	11/23/2016	3,000,000	2.22%	2,889,360	1.65%	6/23/2018	11/23/2021
Fed Home Loan Bank	11/23/2016	4,000,000	2.96%	3,852,360	1.63%	6/23/2018	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.96%	3,874,080	1.88%	6/26/2018	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,266,967	2.15%	9/29/2018	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.85%	3,745,588	2.15%	10/19/2018	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.07%	4,034,464	2.20%	10/26/2018	10/26/2022
Fed Home Loan Mortgage	1/30/2018	3,000,000	2.22%	2,944,440	2.50%	1/30/2019	1/30/2023
Treasury Note	4/30/2018	4,251,244	3.14%	4,263,750	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 59,551,244	44.03%	\$ 57,656,749	1.82%		
Money Market		\$ 575,084	0.43%	\$ 575,084	1.65%		
Total City Managed/Average		\$ 105,103,579	77.71%	\$ 103,098,349	1.79%		
City Managed - HighMark							
Fed Natn'l Mortgage Assn	8/18/2016	\$ 749,704	0.55%	\$ 744,158	1.06%	1/25/2019	1/25/2019
Fed Natn'l Mortgage Assn	8/18/2016	749,759	0.55%	739,463	1.18%	1/26/2019	7/26/2019
Fed Natn'l Mortgage Assn	8/23/2016	749,969	0.55%	740,265	1.25%	8/23/2018	8/23/2019
Fed Home Loan Mortgage	8/31/2016	750,000	0.55%	740,198	1.25%	8/15/2019	8/15/2019
Fed Home Loan Mortgage	9/13/2016	750,000	0.55%	747,983	1.10%	6/13/2018	9/3/2018
Fed Home Loan Bank	9/15/2016	750,000	0.55%	749,753	1.00%	6/15/2018	6/15/2018
Fed Home Loan Bank	9/21/2016	749,954	0.55%	747,810	1.12%	6/21/2018	9/21/2018
Fed Home Loan Mortgage	10/7/2016	749,853	0.55%	740,625	1.29%	6/12/2018	9/12/2019
Fed Natn'l Mortgage Assn	10/11/2016	749,888	0.55%	741,308	1.22%	8/23/2018	5/23/2019
Fed Home Loan Mortgage	10/24/2016	739,603	0.55%	733,843	1.03%	7/30/2018	1/30/2019
Fed Natn'l Mortgage Assn	10/24/2016	749,966	0.55%	739,380	1.25%	6/30/2018	9/30/2019
Federal Farm Credit Bank	11/1/2016	749,859	0.55%	746,640	1.02%	11/1/2018	11/1/2018
Fed Home Loan Mortgage	12/13/2016	1,003,939	0.74%	994,830	1.35%	5/30/2019	5/30/2019
Fed Home Loan Bank	12/13/2016	999,874	0.74%	994,080	1.27%	1/16/2019	1/16/2019
Fed Home Loan Mortgage	12/29/2016	748,440	0.55%	742,725	1.37%	4/15/2019	4/15/2019
Fed Natn'l Mortgage Assn	12/29/2016	742,751	0.55%	735,960	1.39%	6/20/2019	6/20/2019
Money Market		229,995	0.17%	229,995	1.65%		
Sub Total/Average		\$ 12,713,556	9.40%	\$ 12,609,013	1.21%		
Bond Reserve Accounts - Held By Trustees		\$ 13,293,812	9.83%	\$ 13,298,268			
Cash/Deposits		\$ 2,353,872	1.74%	\$ 2,353,872			
PARS Trust		\$ 1,787,404	1.32%	\$ 1,984,097	*Value as of 04/30/2018		
GRAND TOTAL/AVERAGE		\$ 135,252,223	100.00%	\$ 133,343,601			

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF MAY 31, 2018
FOR THE FISCAL YEAR OF 2017-18

	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	1.76%	\$ 38,627,649	28.56%	\$ 38,532,548
2014 Water Rev Bonds - Water Impact	Water Fund	1.76%	524,471	0.39%	523,180
2014 Water Rev Bonds - Water CIP	Water Fund	1.76%	114,670	0.08%	114,387
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	1.76%	5,710,461	4.22%	5,696,402
Federal Issues	All Funds Pooled	1.49%	67,783,560	50.12%	65,772,017
US Treasury Notes	All Funds Pooled	2.73%	4,251,244	3.14%	4,263,750
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.65%	805,079	0.60%	805,079
	SUBTOTAL		\$ 117,817,135	87.11%	\$ 115,707,363
Bond Reserve Accounts - held by trustees					
BNY - 2015 Wastewater Bonds					
Cash Balance	Wastewater Fund	0.00%	-	0.00%	-
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.39%	55	0.00%	55
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.39%	70	0.00%	70
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	1.64%	235,146	0.17%	235,146
US Treasury Notes - Reserve Acct.	Successor Fund	0.75%	11,919,666	8.81%	11,924,122
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.39%	572,046	0.42%	572,046
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.39%	566,829	0.42%	566,829
	SUBTOTAL		13,293,812	9.83%	13,298,268
Other Cash/Deposits					
General Checking	All Funds		2,316,760	1.71%	2,316,760
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			987,404	0.73%	1,127,512 *
PARS - PENSION Trust			800,000	0.59%	856,585 *
	SUBTOTAL		4,141,276	3.06%	4,337,970
Total Cash and Investments			\$ 135,252,223	100.00%	\$ 133,343,601

CASH ACTIVITY SUMMARY
FY 2017-18

Fund Type	07/01/17 Balance	Change in Cash Balance	5/31/2018 Balance
General Fund	\$ 13,850,210	\$ (1,759,693)	\$ 12,090,517
Community Development	4,641,472	(1,113,808)	3,527,664
RDA Successor Agency (except Housing)	12,149,330	1,763,419	13,912,749
Housing Successor Agency/ CDBG	4,732,509	(2,321,173)	2,411,336
Water - Operations	1,512,329	1,130,439	2,642,769
Water Other	5,507,256	411,635	5,918,891
Sewer - Operations	2,085,815	101,352	2,187,167
Sewer Other	26,927,307	1,177,943	28,105,250
Other Special Revenue	4,381,840	1,572,316	5,954,156
Streets and Capital Projects (except RDA)	42,727,410	(759,510)	41,967,900
Debt Service	256,088	(26,536)	229,551
Internal Service	12,201,454	648,591	12,850,045
Agency Funds (assessment dists./refundable deposits)	4,008,713	(554,486)	3,454,227
Total	\$ 134,981,732	\$ 270,490	\$ 135,252,223

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

* Values as of April 30, 2018.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by:

Harjot Sangha, Accounting Manager

Approved by:

Reviewed by:

Dat Nguyen, Finance Director

David Clink, Treasurer

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eleven Months Ended May 31, 2018
92% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 8,852,000	\$ 9,083,000	\$ 8,091,982	89%	\$ 7,684,825	\$ 407,158	5%
Property Tax - RPTTF Residual Distribution	1,100,000	1,200,000	265,874	22%	412,978	(147,104)	-36%
Property Tax - Supplemental Roll	162,000	283,000	241,751	85%	220,729	21,022	10%
Sales Tax	9,151,500	9,566,502	9,380,332	98%	8,384,675	995,657	12%
Public Safety Sales Tax	362,000	362,000	291,574	81%	275,278	16,296	6%
Transient Occupancy Taxes	2,827,050	2,827,050	2,226,481	79%	2,210,503	15,977	1%
Franchise (Refuse, Cable, PG&E)	1,981,796	1,981,796	1,726,156	87%	1,591,183	134,973	8%
Property Transfer Tax	481,000	481,000	438,903	91%	345,803	93,099	27%
TOTAL TAXES	24,917,346	25,784,348	22,663,052	88%	21,125,973	1,537,079	7%
LICENSES/PERMITS							
Business License	202,878	202,878	195,035	96%	190,177	4,858	3%
Other Permits	7,743	7,743	3,487	45%	2,325	1,162	50%
TOTAL LICENSES/PERMITS	210,621	210,621	198,522	94%	192,502	6,020	3%
FINES AND PENALTIES							
Parking Enforcement	12,240	12,240	7,205	59%	6,717	488	7%
Bails & Fines	65,280	65,280	59,819	92%	55,380	4,439	8%
Administrative Citations	-	-	61,100	n/a	700	60,400	8629%
TOTAL FINES AND PENALTIES	77,520	77,520	128,123	165%	62,796	65,327	104%
OTHER AGENCIES							
Motor Vehicle in-Lieu	17,538	17,538	23,237	132%	19,552	3,685	19%
Other Revenue - Other Agencies	406,875	319,875	474,958	148%	461,268	13,690	3%
TOTAL OTHER AGENCIES	424,413	337,413	498,195	148%	480,820	17,375	4%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	32,640	32,640	37,245	114%	44,283	(7,038)	-16%
Business License Application Review	36,633	36,633	34,012	93%	38,739	(4,727)	-12%
Membership Services & Rec Programs	6,023,650	6,197,036	5,459,854	88%	5,118,310	341,544	7%
Facility Rentals	932,986	904,666	872,573	96%	846,895	25,679	3%
Community Services	139,190	139,190	129,581	93%	118,803	10,779	9%
General Administration Overhead	1,323,077	1,323,077	1,210,264	91%	1,152,635	57,629	5%
Other Charges Current Services	903,402	903,402	681,473	75%	769,495	(88,022)	-11%
TOTAL CURRENT SERVICES	9,391,578	9,536,644	8,425,003	88%	8,089,159	335,844	4%
OTHER REVENUE							
Use of money/property	309,396	309,396	350,270	113%	305,391	44,879	15%
Other Revenues	151,306	157,306	1,805,700	1148%	586,008	1,219,692	208%
TOTAL OTHER REVENUE	460,702	466,702	2,155,970	462%	891,399	1,264,570	142%
TRANSFERS IN							
One Time Transfer	-	26,595	-	0%	-	-	0%
Public Safety	100,000	100,000	106,000	106%	113,192	(7,192)	-6%
Streets	761,458	761,458	535,000	70%	528,336	6,664	1%
Police Impact	25,000	25,000	22,913	92%	-	22,913	n/a
Sewer Operations	347,025	347,025	318,109	92%	316,250	1,859	1%
Water Operations	347,025	347,025	318,109	92%	316,250	1,859	1%
Park Development	75,000	75,000	68,750	92%	68,750	-	n/a
TOTAL TRANSFERS IN	1,655,508	1,682,103	1,368,881	81%	1,342,778	26,103	2%
TOTAL GENERAL FUND	37,137,688	38,095,351	35,437,746	93%	32,185,429	3,252,317	10%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	761,458	761,458	658,290	86%	577,628	80,662	14%
Interest / Other Revenue/Other Charges	72	72	885	1230%	1,065	(180)	-17%
202 STREET MAINTENANCE	761,530	761,530	659,175	87%	578,693	80,482	14%

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eleven Months Ended May 31, 2018
92% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	395	395	239	61%	356	(117)	-33%
Police Grant/SLEF/JAG	100,000	100,000	106,083	106%	95,990	10,093	11%
205 PUBLIC SAFETY TRUST	100,395	100,395	106,322	106%	96,347	9,976	10%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,937,862	1,937,862	2,399,666	124%	2,344,738	54,928	2%
Planning Fees	1,131,051	1,131,051	933,971	83%	721,981	211,991	29%
Engineering Fees	601,640	601,640	683,861	114%	979,317	(295,456)	-30%
Other Revenue/Current Charges	9,417	9,417	49,967	531%	251,368	(201,400)	-80%
206 COMMUNITY DEVELOPMENT	3,679,970	3,679,970	4,067,466	111%	4,297,403	(229,937)	-5%
207 LONG RANGE PLANNING	706,212	706,212	585,889	83%	681,939	(96,050)	-14%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	417	120,417	197,784	164%	21,724	176,061	810%
215 and 216 HCD BLOCK GRANT	417	120,417	197,784	164%	21,724	176,061	810%
225 ASSET SEIZURE	250	250	1,804	722%	66,866	(65,062)	-97%
229 LIGHTING AND LANDSCAPE	187,321	187,321	95,925	51%	100,109	(4,183)	-4%
230 COMMUNITY FACILITIES DISTRICT	43,340	43,340	23,728	55%	21,554	2,174	10%
232 ENVIRONMENTAL PROGRAMS	382,164	382,164	423,439	111%	344,651	78,787	23%
234 MOBILE HOME PARK RENT STAB.	3,931	3,931	3,023	77%	5,823	(2,800)	-48%
235 SENIOR HOUSING	1,633	1,633	2,774	170%	2,070	704	34%
236 HOUSING MITIGATION	842,443	842,443	2,167,281	257%	2,777,465	(610,185)	-22%
240 EMPLOYEE ASSISTANCE	30,966	30,966	26,449	85%	24,407	2,042	8%
247 ENVIRONMENT REMEDIATION	1,104	1,104	1,761	159%	1,399	362	26%
250 COMH-SUCCESSOR AGENCY-MHRDA	7,131,889	7,131,889	8,817,136	124%	9,081,928	(264,792)	-3%
255 HOUSING SUCCESSOR AGENCY	1,285,374	1,285,374	451,993	35%	553,626	(101,634)	-18%
TOTAL SPECIAL REVENUE FUNDS	15,158,940	15,278,940	17,631,948	115%	18,656,003	(1,024,055)	-5%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	1,439,640	3,693,620	2,185,180	59%	2,098,459	86,722	4%
302 PARK MAINTENANCE	888,026	905,061	1,337,769	148%	944,289	393,480	42%
303 LOCAL DRAINAGE	1,822,884	1,822,884	1,995,556	109%	1,218,979	776,577	64%
304 LOCAL DRAINAGE/NON AB1600	70,894	70,894	156,118	220%	161,715	(5,597)	-3%
306 AGRICULTURE & OPEN SPACE PRESERVATION	1,539,970	1,539,970	945,228	61%	252,679	692,549	274%
308 STREET CIP	1,357,235	3,555,460	2,510,522	71%	1,317,192	1,193,330	91%
309 TRAFFIC IMPACT	1,348,287	1,348,287	621,284	46%	537,074	84,210	16%
311 POLICE IMPACT	256,218	256,218	248,584	97%	105,956	142,627	135%
313 FIRE IMPACT	94,577	94,577	86,934	92%	123,500	(36,566)	-30%
346 PUBLIC FACILITIES NON-AB1600	617,956	617,956	107,623	17%	787,382	(679,759)	-86%
347 PUBLIC FACILITIES IMPACT	171,217	171,217	170,879	100%	69,980	100,898	144%
348 LIBRARY	1,250,509	1,250,509	729,673	58%	368,867	360,807	98%
350 UNDERGROUNDING	53,236	53,236	204,432	384%	897,326	(692,893)	-77%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	544,341	544,341	117,353	22%	847,083	(729,731)	-86%
360 COMMUNITY/REC IMPACT FUND	985,274	985,274	953,025	97%	210,458	742,566	353%
TOTAL CAPITAL PROJECTS FUNDS	12,440,264	16,909,504	12,370,159	73%	9,940,939	2,429,220	24%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	297,408	297,408	271,025	91%	274,963	(3,938)	-1%
441 POLICE FACILITY BOND	385,373	385,373	381,458	99%	382,878	(1,420)	0%
TOTAL DEBT SERVICE FUNDS	682,781	682,781	652,483	96%	657,841	(5,358)	-1%

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2017-18
For the Eleven Months Ended May 31, 2018
92% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	10,602,695	10,102,695	8,925,545	88%	8,563,100	362,445	4%
Interest Income/Transfers	48,461	48,461	27,788	57%	20,095	7,693	38%
Other Revenue/Current Charges	183,354	183,354	280,447	153%	375,144	(94,696)	-25%
640 SEWER OPERATION	10,834,510	10,334,510	9,233,780	89%	8,958,339	275,441	3%
641 SEWER EXPANSION							
Interest Income	59,474	59,474	187,498	315%	134,808	52,691	39%
Development Impact Fee	4,727,753	4,727,753	3,618,196	77%	1,536,808	2,081,388	135%
Transfers/Other	-	-	-	0%	600	(600)	-100%
641 SEWER EXPANSION	4,787,227	4,787,227	3,805,695	79%	1,672,216	2,133,479	128%
642 SEWER RATE STABILIZATION	15,702	15,702	339,840	2164%	59,917	279,923	467%
643 SEWER-CAPITAL PROJECT	2,424,509	2,424,509	2,300,713	95%	2,483,417	(182,704)	-7%
TOTAL SEWER FUNDS	18,061,948	17,561,948	15,680,028	89%	13,173,888	2,506,139	19%
650 WATER OPERATION							
Water Sales	11,201,856	11,401,856	10,252,808	90%	8,409,529	1,843,279	22%
Meter Install & Service	120,575	120,575	239,067	198%	134,642	104,425	78%
Transfers-In / Interest Income	424,507	424,507	408,538	96%	382,299	26,239	7%
Other Revenue/Current Charges	475,784	475,784	649,013	136%	695,488	(46,475)	-7%
650 WATER OPERATION	12,222,722	12,422,722	11,549,426	93%	9,621,958	1,927,468	20%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	1,944	1,944	46,854	2410%	34,977	11,877	34%
Development Impact Fee	1,196,984	1,196,984	981,360	82%	473,333	508,027	107%
651 WATER EXPANSION	1,198,928	1,198,928	1,028,214	86%	508,310	519,904	102%
652 Water Rate Stabilization	505,618	912,836	467,929	51%	460,889	7,039	2%
653 Water Capital Project	1,351,992	944,774	1,252,187	133%	890,267	361,919	41%
TOTAL WATER FUNDS	15,279,260	15,479,260	14,297,755	92%	11,481,424	2,816,330	25%
TOTAL ENTERPRISE FUNDS	33,341,208	33,041,208	29,977,782	91%	24,655,313	5,322,470	22%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,592,812	1,592,812	1,474,769	93%	1,473,653	1,117	0%
740 BUILDING MAINTENANCE	3,066,615	3,149,985	2,847,866	90%	2,815,205	32,662	1%
741 BUILDING REPLACEMENT	487,008	487,008	459,228	94%	434,999	24,229	6%
745 CIP ADMINISTRATION	1,869,109	1,869,109	1,261,806	68%	1,130,449	131,357	12%
760 UNEMPLOYMENT INSURANCE	1,094	1,094	2,047	187%	1,615	432	27%
770 WORKERS COMPENSATION	763,390	763,390	935,671	123%	707,414	228,257	32%
790 EQUIPMENT REPLACEMENT	974,418	1,024,418	992,820	97%	967,371	25,449	3%
791 EMPLOYEE BENEFITS	624,676	624,676	562,887	90%	1,168,335	(605,448)	-52%
793 CORPORATION YARD COMMISSION	-	-	1,850	0%	1,010	840	83%
795 GENERAL LIABILITY INSURANCE	941,342	941,342	873,844	93%	790,476	83,368	11%
TOTAL INTERNAL SERVICE FUNDS	10,320,464	10,453,834	9,412,789	90%	9,490,527	(77,739)	-1%
TOTAL FOR ALL FUNDS	\$ 109,081,345	\$ 114,461,618	\$ 105,482,907	92%	\$ 95,586,052	\$ 9,896,855	10%

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Eleven Months Ended May 31, 2018
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 25,641	\$ 401,865	\$ 309,459	\$ 21,600	\$ 331,059	82%	\$ 27,100
	CITY ATTORNEY	49,184	836,813	646,367	146,926	793,293	95%	61,100
	CITY MANAGER/ATTORNEY LOAN	-	1,300,000	1,300,000	-	1,300,000	100%	83,100
	CITY MANAGER	77,915	1,901,979	1,014,174	711,383	1,725,557	91%	77,100
	HUMAN RESOURCES	52,727	757,742	617,362	5,880	623,242	82%	60,100
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	46,738	601,195	531,420	11,200	542,620	90%	50,100
	Elections	1,762	30,669	71,325	-	71,325	233%	13,100
	COUNCIL SVCS & RECORDS MGMT	48,500	631,864	602,746	11,200	613,946	97%	64,100
	FINANCE	119,474	1,613,065	1,459,568	40,107	1,499,675	93%	1,47,100
	TOTAL ADMINISTRATION	373,442	7,443,327	5,949,677	937,096	6,886,773	93%	5,21,100
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	328,159	5,914,430	4,895,324	563,229	5,458,553	92%	4,65,100
	Recreation Facility Rentals	98,297	1,299,185	1,177,970	-	1,177,970	91%	1,15,100
	Community Services	44,522	768,671	618,289	26,798	645,087	84%	59,100
	Solid Waste Management	13,599	277,104	170,726	-	170,726	62%	16,100
	Street Maintenance	188,506	2,225,954	1,828,268	238,407	2,066,675	93%	1,78,100
	Downtown Maintenance	31,724	296,241	256,560	54,401	310,961	105%	15,100
	Cable Television	1,544	49,443	17,897	-	17,897	36%	2,100
	COMMUNITY SERVICES	706,351	10,831,028	8,965,034	882,835	9,847,869	91%	8,53,100
	CODE COMPLIANCE	10,215	141,628	112,979	-	112,979	80%	11,100
	CONGESTION MANAGEMENT	1,337	77,570	59,684	-	59,684	77%	7,100
	TOTAL COMMUNITY SERVICES	717,902	11,050,226	9,137,697	882,835	10,020,532	91%	8,71,100
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	67,274	1,185,166	1,057,829	21,812	1,079,641	91%	1,06,100
	Field Operations	610,323	8,620,306	7,000,202	840,234	7,840,436	91%	6,76,100
	Support Services	168,383	2,089,756	1,877,934	3,536	1,881,470	90%	1,85,100
	Emergency Services/Haz Mat	28,563	217,012	183,925	15,639	199,563	92%	16,100
	Special Operations	133,772	2,779,972	2,226,090	-	2,226,090	80%	2,36,100
	Dispatch Services	118,401	1,694,978	1,435,212	-	1,435,212	85%	1,40,100
	POLICE	1,126,716	16,587,190	13,781,191	881,221	14,662,412	88%	13,62,100
	FIRE	470,580	5,785,389	5,452,797	42,591	5,495,388	95%	5,03,100
	TOTAL PUBLIC SAFETY	1,597,296	22,372,579	19,233,988	923,812	20,157,800	90%	18,65,100
IV. TRANSFERS								
	Other	145,443	1,901,915	1,766,463	-	1,766,463	93%	1,92,100
	TOTAL TRANSFERS	145,443	1,901,915	1,766,463	-	1,766,463	93%	1,92,100
	TOTAL GENERAL FUND	2,834,084	42,768,047	36,087,825	2,743,743	38,831,568	91%	34,51,100

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2017-18
For the Month and Eleven Months Ended May 31, 2018
92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	169	763,480	536,909	-	536,909	70%	53%
205	PUBLIC SAFETY/SUPP.LAW	-	100,000	106,000	-	106,000	106%	11%
206	COMMUNITY DEVELOPMENT FUND							
	Planning	188,292	2,241,307	1,752,237	354,850	2,107,087	94%	1,78%
	Building	138,853	1,864,823	1,549,556	5,729	1,555,285	83%	1,53%
	Engineering	99,041	1,437,702	1,207,006	211,335	1,418,342	99%	91%
206	COMMUNITY DEVELOPMENT FUND	426,187	5,543,832	4,508,799	571,915	5,080,714	92%	4,23%
207	LONG RANGE PLANNING	71,798	1,530,662	565,090	208,747	773,837	51%	50%
215/216	CDBG	-	165,331	204,975	-	204,975	124%	21%
225	ASSET SEIZURE	-	26,595	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	8,830	205,430	152,327	36,235	188,562	92%	14%
230	COMMUNITY FACILITIES DISTRICT	2,189	45,100	17,457	1,356	18,813	42%	1%
232	ENVIRONMENT PROGRAMS	19,697	345,422	344,115	16,385	360,500	104%	50%
234	MOBILE HOME PARK	71	880	781	-	781	89%	-
236	HOUSING MITIGATION	34,245	2,270,091	630,114	130,843	760,957	34%	2,98%
240	EMPLOYEE ASSISTANCE	2,104	41,247	26,867	-	26,867	65%	3%
250	COMH-SUCCESSOR AGENCY-MHRDA	15,102	7,178,310	7,053,601	23,890	7,077,491	99%	8,58%
255	HOUSING SUCCESSOR AGENCY	1,148,830	3,111,103	2,787,480	25,000	2,812,480	90%	86%
TOTAL SPECIAL REVENUE FUNDS		1,729,222	21,327,483	16,934,514	1,014,372	17,948,887	84%	18,56%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	98,414	9,252,699	4,348,205	225,963	4,574,169	49%	1,30%
302	PARK MAINTENANCE	83,030	2,688,257	2,379,996	245,943	2,625,939	98%	83%
303	LOCAL DRAINAGE	3,142	47,010	15,864	3,423	19,287	41%	1%
304	LOCAL DRAIN. NON-AB1600	384	189,171	53,950	-	53,950	29%	1%
306	AGRICULTURE & OPEN SPACE PRESERVATION	2,457	4,481,696	101,652	81,481	183,133	4%	82%
308	STREET CIP	36,945	5,335,964	2,150,384	305,557	2,455,941	46%	13%
309	TRAFFIC IMPACT	15,281	3,913,053	1,956,042	240,812	2,196,854	56%	1,09%
311	POLICE IMPACT	4,366	237,117	231,300	3,423	234,723	99%	26%
313	FIRE IMPACT	2,273	623,735	6,067	3,423	9,491	2%	-
346	PUBLIC FAC.NON AB1600	5,028	1,020,977	563,224	78,991	642,215	63%	63%
347	PUBLIC FACILITIES IMPACT	2,269	439,481	5,825	3,423	9,248	2%	-
348	LIBRARY IMPACT	26,172	3,824,836	434,253	102,873	537,126	14%	35%
350	UNDERGROUNDING	45	55,539	495	-	495	1%	71%
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	330	1,809,032	257,437	64,042	321,479	18%	2%
360	COMM/REC CENTER IMPACT	37,765	309,400	76,273	225,504	301,777	0%	-
TOTAL CAPITAL PROJECTS FUNDS		317,902	34,227,966	12,580,968	1,584,859	14,165,827	41%	6,25%
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	97	297,423	285,442	-	285,442	96%	29%
441	POLICE FACILITY BOND DEBT	198	383,610	392,900	-	392,900	102%	38%
TOTAL DEBT SERVICE FUNDS		295	681,033	678,343	-	678,343	100%	68%

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2017-18
 For the Month and Eleven Months Ended May 31, 2018
 92% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,162,677	10,871,377	9,346,280	235,478	9,581,758	88%	8,841,377
641	SEWER CAPITAL EXPANSION	123,092	19,130,592	1,286,266	610,738	1,897,003	10%	1,971,377
642	SEWER RATE STABILIZATION	325	3,900	3,575	-	3,575	92%	3,575
643	SEWER-CAPITAL PROJECTS	94,904	8,453,383	3,311,695	2,271,440	5,583,135	66%	3,251,377
TOTAL SEWER FUND(S)		1,380,998	38,459,252	13,947,815	3,117,656	17,065,471	44%	14,071,377
WATER								
	Water Operations	556,094	11,030,629	8,872,176	667,615	9,539,791	86%	7,921,377
	Utility Billing	55,234	836,258	659,758	25,712	685,470	82%	631,377
	Water Conservation	7,072	212,502	90,560	50,000	140,560	66%	90,560
650	WATER OPERATIONS	618,400	12,079,389	9,622,494	743,327	10,365,820	86%	8,661,377
651	WATER CAPITAL EXPANSION	5,059	3,405,848	351,674	1,829,782	2,181,456	64%	1,381,377
652	WATER RATE STABILIZATION	51	662	561	-	561	85%	561
653	WATER-CAPITAL PROJECTS	10,075	2,991,557	1,869,178	289,865	2,159,042	72%	3,391,377
TOTAL WATER FUND(S)		633,585	18,477,455	11,843,907	2,862,973	14,706,880	80%	13,441,377
TOTAL ENTERPRISE FUNDS		2,014,583	56,936,707	25,791,722	5,980,629	31,772,351	56%	27,512,754
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	114,323	1,796,307	1,476,249	26,052	1,502,301	84%	1,141,377
740	BUILDING MAINTENANCE	222,513	3,328,743	2,741,032	181,309	2,922,341	88%	2,721,377
741	BUILDING REPLACEMENT	8,803	524,821	359,604	77,193	436,798	83%	871,377
745	CIP ADMINISTRATION	113,344	1,872,190	1,261,763	18,105	1,279,868	68%	1,241,377
760	UNEMPLOYMENT	-	20,400	3,728	-	3,728	18%	1,377
770	WORKERS COMPENSATION	5,099	808,807	910,317	-	910,317	113%	441,377
790	EQUIPMENT REPLACEMENT	129,630	1,275,467	778,520	192,699	971,219	76%	1,291,377
791	EMPLOYEE BENEFITS FUND	22,070	558,538	604,625	-	604,625	108%	471,377
793	CORP YARD COMMISSION	103	-	8,570	1,903	10,473	0%	1,903
795	GEN. LIABILITY INSURANCE	5,396	1,059,920	823,787	-	823,787	78%	851,377
TOTAL INTERNAL SERVICE FUNDS		621,282	11,245,194	8,968,195	497,262	9,465,456	84%	9,071,377
REPORT TOTAL		\$ 7,517,367	\$ 167,186,429	\$ 101,041,567	\$ 11,820,865	\$ 112,808,482	67%	\$ 96,611,377

Attachment: May 2018 Financial and Investment Report (1839 : May 2018 Financial and Investment Report)

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Eleven Months Ended May 31, 2018 92% of Year Complete										
Fund No.	Fund	Fund Balance 06-30-17	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance		
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	
010	GENERAL FUND	\$ 16,830,617	\$ 35,437,746	93%	\$ 36,087,825	84%	\$ (650,080)	\$ 2,743,743	\$ 13,436,795	
TOTAL GENERAL FUND		\$ 16,830,617	\$ 35,437,746	93%	\$ 36,087,825	84%	\$ (650,080)	\$ 2,743,743	\$ 13,436,795	
202	STREET MAINTENANCE	440	\$ 659,175	87%	\$ 536,909	83%	\$ 122,266	\$ -	\$ 122,706	
205	PUBLIC SAFETY/SUPPL. LAW	16,702	106,322	106%	106,000	84%	322	-	17,025	
206	COMMUNITY DEVELOPMENT	2,646,685	4,067,466	111%	4,508,799	81%	(441,333)	571,915	1,633,437	
207	LONG RANGE PLANNING	1,170,077	585,889	83%	565,090	37%	20,799	208,747	982,129	
215 / 216	CDBG	95,752	197,784	164%	204,975	0%	(7,191)	-	88,561	
225	ASSET SEIZURE	136,345	1,804	722%	-	0%	1,804	-	138,149	
229	LIGHTING AND LANDSCAPE	160,594	95,925	51%	152,327	74%	(56,402)	36,235	67,957	
230	COMMUNITY FACILITIES DISTRICT	60,276	23,728	55%	17,457	0%	6,271	1,356	65,190	
232	ENVIRONMENTAL PROGRAMS	157,637	423,439	111%	344,115	100%	79,323	16,385	220,575	
234	MOBILE HOME PK RENT STAB.	41,059	3,023	77%	781	89%	2,242	-	43,301	
235	SENIOR HOUSING	220,710	2,774	170%	-	0%	2,774	-	223,484	
236	HOUSING MITIGATION	2,178,174	2,167,281	257%	630,114	28%	1,537,167	130,843	3,584,498	
240	EMPLOYEE ASSISTANCE	36,302	26,449	85%	26,867	65%	(418)	-	35,884	
247	ENVIRONMENT REMEDIATION	139,723	1,761	159%	-	0%	1,761	-	141,484	
250	COMH-SUCCESSOR AGENCY-MHRDA	4,650,153	8,817,136	124%	7,053,601	98%	1,763,535	12,178,134	(5,764,446)	
255	HOUSING SUCCESSOR AGENCY	3,956,700	451,993	35%	2,787,480	90%	(2,335,487)	2,538,275	(917,062)	
TOTAL SPECIAL REVENUE FUNDS		\$ 15,667,329	\$ 17,631,948	115%	\$ 16,934,514	79%	\$ 697,433	\$ 15,681,891	\$ 682,871	
301	PARK DEV. IMPACT FUND	4,850,439	\$ 2,185,180	59%	\$ 4,348,205	47%	(2,163,025)	\$ 225,963	\$ 2,461,451	
302	PARK MAINTENANCE	5,431,371	1,337,769	148%	2,379,996	89%	(1,042,227)	245,943	4,143,201	
303	LOCAL DRAINAGE	8,381,669	1,995,556	109%	15,864	34%	1,979,692	3,423	10,357,937	
304	LOCAL DRAINAGE/NON-AB1600	1,301,563	156,118	220%	53,950	29%	102,168	-	1,403,731	
306	AGRICULTURE AND OPEN SPACE PRESERV	6,014,381	945,228	61%	101,652	2%	843,576	81,481	6,776,476	
308	STREET CIP	1,819,399	2,510,522	71%	2,150,384	40%	360,138	305,557	1,873,980	
309	TRAFFIC IMPACT FUND	4,539,601	621,284	46%	1,956,042	50%	(1,334,758)	240,812	2,964,031	
311	POLICE IMPACT FUND	(778,194)	248,584	97%	231,300	98%	17,284	3,423	(764,334)	
313	FIRE IMPACT FUND	3,818,916	86,934	92%	6,067	1%	80,867	3,423	3,896,359	
346	PUBLIC FACILITIES NON-AB1600	1,117,552	107,623	17%	563,224	55%	(455,601)	3,423	658,527	
347	PUBLIC FACILITIES IMPACT FUND	343,009	170,879	100%	5,825	1%	165,054	102,873	405,189	
348	LIBRARY IMPACT FUND	2,103,639	729,673	58%	434,253	11%	295,420	-	2,399,060	
350	UNDERGROUNDING	510,438	204,432	384%	495	1%	203,937	64,042	650,334	
355	SCHOOL PEDESTRIAN/TRAFFIC SFTY	1,640,864	117,353	22%	257,437	14%	(140,084)	225,504	1,275,276	
360	COMM/REC CTR IMPACT FUND	268,766	953,025	97%	76,273	0%	876,752	-	1,145,518	
TOTAL CAPITAL PROJECT FUNDS		\$ 41,363,413	\$ 12,370,159	73%	\$ 12,580,968	37%	\$ (210,809)	\$ 1,505,868	\$ 39,646,736	
420	CIVIC CENTER DEBT	161,328	\$ 271,025	91%	\$ 285,442	96%	\$ (14,417)	\$ 63	\$ 146,847	
441	POLICE FACILITY BOND DEBT	93,903	381,458	99%	392,900	102%	(11,442)	80	82,381	
TOTAL DEBT SERVICE FUNDS		\$ 255,231	\$ 652,483	96%	\$ 678,343	100%	\$ (25,860)	\$ 144	\$ 229,228	

City of Morgan Hill Fund Activity Summary - Fiscal Year 2017-18 For the Eleven Months Ended May 31, 2018 92% of Year Complete									
Fund No.	Fund	Fund Balance 06-30-17	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,997,397	\$ 9,233,780	89%	\$ 9,346,280	86%	\$ (112,500)	235,478	2,649,419
641	SEWER IMPACT FUND*	13,739,517	3,805,695	79%	1,286,266	7%	2,519,429	610,738	15,648,208
642	SEWER RATE STABILIZATION	2,538,125	339,840	2164%	3,575	92%	336,265	-	2,874,390
643	SEWER-CAPITAL PROJECTS	8,964,265	2,300,713	95%	3,311,695	39%	(1,010,982)	2,271,440	5,681,843
650	WATER OPERATIONS	1,329,683	11,549,426	93%	9,622,494	80%	1,926,932	743,327	2,513,288
651	WATER IMPACT FUND*	3,153,845	1,028,214	86%	351,674	10%	676,540	1,829,782	2,000,603
652	WATER RATE STABILIZATION	539,303	467,929	51%	561	85%	467,368	-	1,006,670
653	WATER -CAPITAL PROJECT	613,123	1,252,187	133%	1,869,178	62%	(616,991)	289,865	(293,733)
TOTAL ENTERPRISE FUNDS		\$ 33,875,258	\$ 29,977,782	91%	\$ 25,791,722	45%	\$ 4,186,061	\$ 5,980,629	\$ 32,080,689

730	INFORMATION SERVICES	\$ 612,170	\$ 1,474,769	93%	\$ 1,476,249	82%	\$ (1,480)	\$ 26,052	\$ 584,638
740	BUILDING MAINTENANCE	126,409	2,847,866	90%	2,741,032	82%	106,834	181,309	51,934
741	BUILDING REPLACEMENT	2,063,612	459,228	94%	359,604	69%	99,623	77,193	2,086,042
745	CIP ENGINEERING	32,485	1,261,806	68%	1,261,763	67%	44	18,105	14,424
760	UNEMPLOYMENT	164,584	2,047	187%	3,728	18%	(1,681)	-	162,903
770	WORKERS COMPENSATION	1,647,992	935,671	123%	910,317	113%	25,355	30,000	1,643,347
790	EQUIPMENT REPLACEMENT	4,110,874	992,820	97%	778,520	61%	214,300	192,699	4,132,475
791	EMPLOYEE BENEFITS FUNDS	584,228	562,887	90%	604,625	108%	(41,737)	-	542,491
793	CORP YARD COMMISSION	-	1,850	0%	8,570	0%	(6,721)	1,903	(8,624)
795	GEN. LIABILITY INSURANCE	1,106,814	873,844	93%	823,787	78%	50,056	-	1,156,870
TOTAL INTERNAL SERVICE FUNDS		\$ 10,449,167	\$ 9,412,789	90%	\$ 8,968,195	80%	\$ 444,594	\$ 527,262	\$ 10,366,499

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,830,617	\$ 35,437,746	93%	\$ 36,087,825	84%	\$ (650,080)	\$ 2,743,743	\$ 13,436,795
SPECIAL REVENUE GROUP	15,667,329	17,631,948	115%	16,934,514	79%	697,433	15,681,891	682,871
DEBT SERVICE GROUP	255,231	652,483	96%	678,343	100%	(25,860)	144	229,228
CAPITAL PROJECTS GROUP	41,363,413	12,370,159	73%	12,580,968	37%	(210,809)	1,505,868	39,646,736
ENTERPRISE GROUP	33,875,258	29,977,782	91%	25,791,722	45%	4,186,061	5,980,629	32,080,689
INTERNAL SERVICE GROUP	10,449,167	9,412,789	90%	8,968,195	80%	444,594	527,262	10,366,499
TOTAL ALL GROUPS	\$ 118,441,015	\$ 105,482,907	92%	\$ 101,041,567	60%	\$ 4,441,340	\$ 26,439,537	\$ 96,442,818

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.

DRAFT



Meeting Minutes City Council

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

Wednesday, June 20, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The Establishment of an Annual Regulatory Fee for Massage Establishments within City Limits will be scheduled for a future meeting with date uncertain.

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 called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING AGENDA

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Mayor Pro Tem Constantine spoke about the Magical Bridge Inclusive Park project. The project started three and a half years ago with a \$5.2 million budget. To date the project has received just over \$2 million from the City, grants, and fund raising. Thanks to Supervisor Mike Wasserman, they also received a generous grant from the County of Santa Clara in the amount of \$2 million. With all these contributions considered, the group now needs to raise an additional \$1.2 million. Although they have made great progress in their fundraising efforts to date, there is still a large amount of money needed. He encouraged the community to contribute. Donations can be made on the Magical Bridge Morgan Hill Facebook page.

CITY MANAGER'S REPORT

City Manager Christina Turner announced the evening's supplements and presentations.

She mentioned that the City has been working with the County of Santa Clara on rolling out the 2020 census. The theme is "Your Community Counts." Volunteers are working to canvas neighborhoods and have almost completed their efforts. She wanted to let the community know that volunteers will not knock on your door or collect any names or personal information. Census information is never shared with immigration and customs enforcement. It is very important for us to get an accurate census because it helps provide more funding for families within the community, including money for schools, healthcare, libraries, and services.

She shared that early in June, the Santa Clara Valley Water District (SCVWD) held a meeting to provide an update on the Anderson Dam Retrofit project. They provided a presentation and held an extensive question and answer session. She shared that recreational boating will not be allowed in the reservoir in 2018 as low water levels are required to perform the retrofit work. The SCVWD is in communication with the High Speed Rail Authority (HSRA) to discuss the coordination of these projects and their respective schedules, so that the two projects can work together well. Lastly, the SCVWD conveyed that most of the dirt stockpiling will take place on site, reducing the amount of large trucks on the roads. We will likely get another update from the SCVWD in the fall.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that he is the City's representative on the Board for the Pooled Liability Assurance Network which functions as our liability and property insurance. The Board meets twice yearly and today was the fiscal year end meeting. The Board voted to dissolve the Plan Corporation which was a non-profit organization run by the Association of Bay Area Governments (ABAG). Those responsibilities have been transferred to the Plan Joint Powers Authority (JPA) which is the JPA that Council voted to join in January 2018. ABAG is no longer part of what we do, but everything else will function the same as it always has. The Board adopted the Plan's budget for the next fiscal year. The largest item in the City Attorney's budget is the payment to the Plan and each year staff estimates what that payment will be. He was relieved to learn that the City's payment to the Plan Board will be a little less than was budgeted, offering a small savings to the City. He highlighted that the Board voted unanimously to spend up to \$13,000 on mass shooting insurance which covers expenses not covered by existing insurance, such as psychological counseling, expenses for employees that were killed, and services to redesign and reconstruct facilities in case of a covered incident.

He announced that the Council was supposed to meet today as the Successor Agency to the Morgan Hill Redevelopment Agency, however, that meeting was canceled. There were to have been two items of discussion. The first was the transfer of 41% interest in the Valley Transportation Authority (VTA) parking lot to the City. The County Counsel's office raised several potential legal challenges to any of the proposed actions that we wanted to consider. It looks like we may have the opportunity to work with VTA on another solution, so we agreed to comply with the County's request to postpone the item. The second item was a restructuring of the loan for El Toro Brew Pub. The County informed the City and El Toro Brew Pub that they were not in support of the restructuring and would use their authority to block that item from approval at the Oversight Board. In response, El Toro Brew Pub withdrew their request.

He shared that the Oversight Board meeting that was scheduled for next week, would have been the last meeting of our local Oversight Board. The Oversight Board was charged with the dissolution of Redevelopment Agency (RDA) assets. Now that most RDAs are winding down, the State has now created a County-wide Oversight Board. From now on, all our related items will go up to that Board. The city representative will be someone from Sunnyvale, so we will not have any local representation.

OTHER REPORTS

Council Member Jachimowicz announced that in relation to the families being separated at the border, Cecelia Ponzini of the Edward Boss Prado Foundation and Showing up for Racial Justice (SURJ) have organized a rally. They are taking part in the "Nation-Wide Families Belong Together Event." You can get more information at www.moveon.org/familiesbelongtogether and select the South Santa Clara County event. The event will be June 30th at 9:00 a.m. at the Community and Cultural Center and will have a rally with speakers. The details are still being put together; they may do a march after the rally. They have also asked if the City Council would be interested in drafting and signing a letter of support. There is not another City Council meeting before the event, but she will ask under the future business items of the agenda for an item to come back for discussion.

Council Member Carr announced that he and the Mayor attended a City/School Liaison meeting last week. He shared that there will be construction going on at some of the school sites over the summer. The summer school program will be held at Jackson Academy of Math and Music (JAMM) and asked the people who live in the area to be patient with the added traffic.

Mayor Tate announced that his next Coffee with the Mayor will take place Saturday from 10:00 a.m. to 11:30 a.m. at Booksmart. His guest will be Council Member Rene Spring.

PROCLAMATIONS

Proclaiming the month of July 2018 as Parks and Recreation Month

PRESENTATIONS

RECYCLER OF THE YEAR, CHILI'S RESTAURANT- BY JULIE ALTER, RECOLOGY SOUTH VALLEY

YAC PRESENTATION- ASSET # 15- POSITIVE PEER INFLUENCE

PUBLIC COMMENT

The public comment was opened at 7:21 p.m. The following people were called to speak:

Jeff Dixon
Brian Faircloth

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR**MOTION:**

Approving consent calendar items 1 through 6, 8 through 10, and 12 through 14.

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

1. APPROVE LEASE WITH GO KIDS, INC

Recommendation:

Authorize the City Manager to execute and administer a ground lease with GO Kids, Inc.

2. FINAL MAP APPROVAL OF LAS COLINAS (FORMERLY E DUNNE MANA/E DUNNE KYONO) - TRACT NO. 10471

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with MH Las Colinas 2017 LLC, a California Corporation;
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, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

3. FINAL MAP APPROVAL OF HENCKEN OAKS - TRACT NO. 10448

Recommendation:

1. Approve the Final Map;
2. Authorize the City Manager to execute the Subdivision Improvements Agreement with Reliance Development LLC, a California Limited Liability Company;
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;
4. Authorize the City Manager to execute a Cash Deposit Agreement Guaranteeing Improvements; and
5. Authorize the recordation of the Final Map, the Subdivision Improvements Agreement, and the Stormwater BMP Operation and Maintenance Agreement.

4. AWARD ANNUAL TRAFFIC SIGNAL AND LIGHTING AGREEMENT

Recommendation:

1. Award a three-year contract to Cal-West Lighting and Signal Maintenance, Inc. in the amount of \$450,000; and
2. Authorize the City Manager to execute and administer the Maintenance Service Agreement with Cal-West Lighting and Signal Maintenance, Inc.

5. AWARD 2018 PAVEMENT RESURFACING PROJECT TO O'GRADY PAVING, INC.

Recommendation:

1. Approve the 2018 Pavement Resurfacing Project plans and specifications;
2. Award contract to O'Grady Paving, Inc. for the 2018 Pavement Resurfacing Project in the amount of \$1,556,650.50;
3. Authorize expenditure of construction contingency funds not to exceed \$155,665.05; and
4. Authorize the City Manager to execute and administer the construction contract with O'Grady Paving, Inc. pending review and approval by the City Attorney.

6. AMENDMENT OF DEVELOPMENT AGREEMENT WITH UHC 00661 MORGAN HILL, LP

Recommendation:

Approve technical modifications to the Development Agreement (Agreement) by and between the City of Morgan Hill and UHC 00661, LP, for the development of the Crossings on Monterey 39-unit housing project, and authorize staff to make the appropriate changes to the Exhibit C of the Agreement.

7. ITEM PULLED FOR SEPARATE VOTE

8. FIFTH AMENDMENT TO AGREEMENT WITH LEONE AND ALBERTS

Recommendation:

Authorize City Manager to Execute Fifth Amendment to Legal Services Consultant Agreement with Leone and Alberts for Litigation Services For a Total Not to Exceed Amount of \$170,000.

9. APPROVAL OF MEYERS NAVE AGREEMENT

Recommendation:

Approve contract with Meyers Nave to provide labor negotiations services for an amount not to exceed \$50,000.

10. APPROVE PURCHASE OF POLICE VEHICLES

Recommendation:

1. Authorize the purchase (including build-out) of three patrol vehicles - 2018 Ford Explorers - for an amount not to exceed \$65,400 each;
2. Authorize the purchase (including build-out) of one MSO Patrol Vehicle - Ford F150 Truck— in an amount not to exceed \$50,800;
3. Auction two aged patrol vehicles: 2011 Ford Crown Victoria - #133 (VIN#:2767) and 2011 Ford Crown Victoria - #139 (VIN#: 6669);
4. Salvage one 2005 Chevrolet Silverado Graffiti Abatement Vehicle (VIN#: 3348);
5. Repurpose one 2010 Ford Crown Victoria - #140 (VIN#:8668) to the Traffic Division; and
6. Repurpose one 2007 Chevrolet Silverado Truck (VIN#: 9290) to a Graffiti Abatement Vehicle.

11. ITEM PULLED FOR DISCUSSION

12. TENTH SEMI-ANNUAL REPORT ON POST-ISSUANCE COMPLIANCE FOR TAX ADVANTAGED BONDS

Recommendation:

Receive and accept report.

13. APRIL 2018 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

14. APPROVE THE JUNE 6, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR SEPARATE VOTE

7. THIRD AMENDMENT TO AGREEMENT WITH LUHDORFF & SCALMANINI CONSULTING ENGINEERS

Recommendation:

1. Approve Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers for an additional amount of \$54,000 for a total not to exceed contract amount of \$283,840; and
2. Authorize the Assistant City Manager to execute and administer the Third Amendment to Agreement with Luhdorff & Scalmanini Consulting Engineers.

MOTION:

Approving the recommended action.

RESULT:	APPROVED [4 TO 0]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Carr, Jachimowicz, Spring
RECUSED:	Constantine

ITEMS PULLED FOR DISCUSSION

11. BOOKSMART UPDATE

Recommendation:

Informational Only.

MOTION:

Approving the recommended action.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

PUBLIC HEARING

15. APPEAL (AAE2018-0006 AND AAE2018-0008) OF PLANNING COMMISSION'S DISTRIBUTION OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENTS FOR RDCS2017-0013: COCHRANE – MWEST PROP CO AND RDCS2017-0014: MONTEREY/CENTRAL-ECA FOR FISCAL YEAR 2019/20

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and,
3. Adopt a Resolution denying the appeals and reaffirming the distribution of the Residential Development Control System (RDCS) Building Allotments for Fiscal Year 2019/20.

Principal Planner Gina Paolini and Development Services Director Jennifer Carman presented the report.

The public hearing for the Monterey/Central - ECA project was opened at 7:38 p.m.

Scott Murray was called to speak.

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

The public hearing for the Cochrane - MWest Property Co. project was opened at 8:22 p.m. The following people were called to speak:

Ryan McDaniel

Kerry Williams

Tamsen Plume

Dick Oliver

Rocke Garcia

John Telfer

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

A recess was called at 9:47 p.m.

The meeting was reconvened at 9:53 p.m.

The public hearing was re-opened at 9:54 p.m. The following people were called to speak:

Kerry Williams and Ryan McDaniel

John Telfer

Tamsen Plume

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

MOTION:

Approving the recommended action.

RESULT: DENIED [4 TO 1]
MOVER: Rene Spring, Council Member
SECONDER: Caitlin Jachimowicz, Council Member
AYES: Tate, Constantine, Jachimowicz, Spring
NAYS: Carr

OTHER BUSINESS

16. ACQUISITION OF 41% INTEREST IN MORGAN HILL TRANSIT CENTER LOT

Recommendation:

1. Authorize the transfer at no cost, of the 41% interest for future parking, subject to negotiation of compensation agreement and approval of the Successor Agency and Oversight Board; or
2. Authorize the transfer of the property by purchase and compensation agreement for the 2011 value of the asset of \$1,489,218. Or, should this not be negotiable and or supported by the Department of Finance,
3. Authorize the transfer and sale of the property to the City of Morgan Hill, for up to \$2.6 million, as supported by the 2018 appraisal prepared by Valbridge/Hulberg and Associates.
4. Adopt resolution approving an amendment to the Fiscal Year 2018-19 Fund 255 Housing Fund budget for the purchase of the 108,408-sf (41%) Successor Agency interest in the jointly owned Valley Transportation Authority/Successor Agency parking and transit facility located at 17295 Butterfield Blvd. up to the fair market appraised value of \$2.6 million, for future development at a time when replacement parking can be required of the development and important transit operation functions considered;
5. Authorize the City Manager to prepare and execute any and all related documents to affect the purchase; and
6. Direct staff to forward the recommendation to the Morgan Hill Successor Agency, Oversight Board, and subsequently the state Department of Finance (DOF) for review and concurrence, consistent with AB 1484, the California Redevelopment Dissolution Act.

Council Member Carr excused himself from the dais.

Assistant City Manager for Development Services Leslie Little presented the report.

The public comment was opened at 10:15 p.m.

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

MOTION:

Approving recommended action number 4; adopting resolution approving an amendment to the Fiscal Year 2018-19 Fund 255 Housing Fund budget for the purchase of the 108,408-sf (41%) Successor Agency interest in the jointly owned Valley Transportation Authority/Successor Agency parking and transit facility located at 17295 Butterfield Blvd. up to the fair market appraised value of \$2.6 million, for future development at a time when replacement parking can be required of the development and important transit operation functions considered.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Mayor Tate requested a review of next year's RDCS allotments and how the MWest project can be accelerated at the Mid-Year Goal Review Workshop. He also asked that an item come back to Council to address the Cities Association request for the Council to review materials regarding the Regional Housing Needs Allocation (RHNA) sub-region.

Council Member Carr would like to explore the decision-making process for future multi-year allocations and how the Council should be a part of that discussion. He also asked that a resolution be brought to Council regarding the families that are being separated.

Council Member Jachimowicz asked that the Mayor or City Council draft and sign a letter of support for Cecelia Ponzini and SURJ's efforts and that a resolution be brought to Council regarding the families being separated.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:18 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Edith Ramirez, Economic Development Director
APPROVED BY: City Manager

APPROVE PLACING A TRANSIENT OCCUPANCY TAX (TOT) INCREASE ON THE NOVEMBER 2018 BALLOT AND PROVIDE DIRECTION REGARDING THE ESTABLISHMENT OF A TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)

RECOMMENDATION(S)

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a 1% increase to the transient occupancy tax for general revenue purposes and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet;
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters; and
7. Determine whether to direct staff to complete the steps to establish a TBID.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2018 Strategic Priorities

Economic Development and
Telecommunications
Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Economic Blueprint

POLICY CONSIDERATIONS:

1. Should a Ballot Measure to increase the Transient Occupancy Tax (TOT) be placed on the November 2018 ballot to fund general city services? If yes, should the increase be up to four (4) percent?
2. Should the City establish a TBID to promote and increase business in the area as a sports/recreation and wine tourism destination?
3. Should the City increase the TOT through a November 2018 ballot measure as well

as work with the hotels to form a Tourism Business Improvement District (TBID)?

4. If the City does not establish a TBID in 2018, and if the City Council places the Transient Occupancy Tax (TOT) on the ballot and the voters approve the increase in TOT through the ballot measure, should the City try to dedicate some of the new revenue to promote the area as a sports/recreation and wine tourism destination?

REPORT NARRATIVE:

On June 6, 2018, the City Council directed staff to draft ballot language that would allow the City to increase the Transient Occupancy Tax (TOT) up to 4% and explore language that suggests dedicating some of the funds to tourism marketing. This staff report is intended to provide information regarding a potential Transient Occupancy Tax (TOT) increase and establishment of a potential TBID. Given their interrelationship, there is one staff report for both issues. However, the narrative is divided into two separate discussions.

Hotel Industry and TOT

TOT is an additional charge added to hotel/motel room night stays and is collected by the hotels and transferred to the City. TOT collected goes directly to the City's General Fund to help pay for services provided to the community. The City has approximately 900 hotel rooms in 17 facilities that function as hotels, motels, or RV parks that rent rooms or spaces for 30 days or less and collect TOT. Of the 17 facilities, only six are categorized as upper or upper-midscale class. The rest of the hotel inventory is categorized as economy class and many of the older hotels are nearing the end of their economic life.

A 2014 hotel market analysis prepared for the City by Hotel Appraisers & Advisors, reported that the upper or upper midscale class hotels represented nearly 80% of total TOT revenue. The study showed that the Morgan Hill hotel market was dependent on San Jose and non-Morgan Hill businesses and that the leisure demand was highly seasonal. The study identified the growing supply of hotels in San Jose and general economic cycles as threats for the industry. However, key opportunities include:

- Strong occupancy and ADR (Average Daily Rate) trends
- Substantial unaccommodated demand
- Opportunities for major hotel brands not in the market
- Potential to grow additional demand generators

The City of Morgan Hill collects a 10% TOT. Many of the nearby cities collect higher TOT or have a TBID. Campbell and Los Gatos collect a 12% TOT; Los Altos TOT is at 11%; Gilroy has a combined TOT and TBID of 11% (9% TOT with a 2% TBID); and San Jose is at 14% (10% TOT with a 4% TBID/CCFD). Several cities in Santa Clara County will have ballot measures in November 2018 to increase TOT.

On February 7, 2018, the City Council directed staff to conduct a statistically valid survey to better understand the rate at which residents support an increase to the Transient Occupancy Tax (TOT). Godbe Research (Godbe) conducted a survey which revealed solid support an increase to the TOT with 63.9% informed support for an

increase of up to 14% TOT and a 69.3% support for an increase of up to 12% TOT. Prospective voters rated streets, police patrols, and police officers in schools as the three highest priorities for additional funding. Tourism development was ranked the lowest priority.

The City anticipates generating approximately \$2.7 million in TOT revenue in FY 2017-18. Below is a projected additional revenue by half percent increments:

.5% Increase	1% Increase	1.5% Increase	2% Increase	2.5% Increase	3% Increase	3.5% Increase	4% Increase
\$135K	\$270K	\$405K	\$540K	\$675K	\$810K	\$945K	\$1.1 M

An increase to the TOT rate would require voter approval. A general tax increase requires only a majority vote. If the increase is for a specific purpose, it would require a 2/3 vote. As a non-specific ballot measure, the funds must be used for general purposes as defined by proposed ballot language, such as “to fund for police patrols, fire services, and other city services.”

On June 6, 2018, the City Council provided direction to draft ballot language that would allow the City to increase the TOT up to 4% and explore language that suggests dedicating some of the funds to tourism marketing. Since the June 6th Council meeting, staff has been doing additional research and has spent additional time with the hotels to understand their support for a TOT ballot measure. Below are the findings:

Use of funds under a non-specific ballot measure:

At the June 6 meeting, the Council directed staff to explore language for the Ballot Measure that suggests dedicating some of the funds to tourism marketing. The City can add ‘tourism’ to the list of other services that was vetted with the voters during the Godbe survey to include funding police patrols, fire services, street repairs, tourism promotion, and other city services.” In this context, the ballot measure continues to be non-specific. However, a percentage of funds cannot be indicated in the ballot measure, or this would make it “specific” and trigger a 2/3 vote. If the City wishes to support tourism through a TOT increase and not through a TBID, the Council could use other mechanisms such as the Budget and other City strategic and master planning documents to provide additional direction to fund tourism development.

The City can support tourism efforts in multiple ways. Currently, the Economic Development team supports the industry by championing changes to land use regulations or policies that support streamlining the uses in this industry, such as hotels, short-term rentals, wineries, breweries, sports recreation facilities, etc.

The City’s Economic Blueprint identifies Tourism as one of the key industries for growth of the City’s future economic prosperity. The Blueprint suggests the City of Morgan Hill should grow leisure, agriculture, wine country, and recreational tourism. More specifically, the Blueprint recommends actions to:

- Work with Hotels to Develop a Tourism Based Improvement District (TBID) to help Finance Capital Improvements to Sports Recreational Facilities and to Promote and Market the Region (Action 28); and to
- Collaborate with Regional Partners to Enhance Branding, Marketing and Promotions of Regional Assets (Action 29)

As indicated by the Economic Blueprint, a second way to support tourism efforts is by creating a TBID. More information on what a TBID is and how it is formed is stated later in the report. Essentially, this is a business district formed by the hotels where through a majority vote they self-tax to generate revenues that would be used for tourism promotions. The City must approve a TBID and provide annual oversight.

A third way to support tourism is by dedicating public funds to tourism efforts and directly overseeing the effort. Like a TBID, the City can form an oversight committee (like a Tourism Commission) made up of hotels and community groups that are invested in growing tourism in the area. In this scenario, the City can dedicate funds to sports/recreation promotions, tourism and marketing and manage these funds with the help of the Tourism Commission. This approach is used by other cities and can provide some efficiencies and cost savings as a new non-profit does not need to be created, the tourism work program can be added to staff already working on economic development or community services, and the efforts can be better coordinated with other City efforts.

Ballot Measure Process, Ballot Arguments and Impartial Analysis:

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure to increase the TOT. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the ROV by 5:00 p.m. on August 14, 2018, and rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on August 21, 2018. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal arguments.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one against each ballot measure will be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors of proponents of the measure.
3. Bona fide associations of citizens.

4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference as identified above, the Council may either:

1. Author an argument in favor of the measure as a whole body at the July 25, 2018 Council Meeting (subject to Brown Act considerations outlined in the next paragraph);
2. Authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of the City Council to sign the argument; or
3. Authorize up to two Councilmembers to author and sign the argument and have up to three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Morgan Hill community author the argument.

If the City Council decides to author an argument body, this could be accomplished in several ways to comply with the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

Roles & Limitations During Ballot Measure Campaign Period:

To be successful in securing voter approval of the measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money or effort advocating a position supporting passage of the ballot measure. Council members and staff can work on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not utilizing City resources.

Staff requests guidance as to whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

If the measure is approved, the City Attorney is required to prepare an impartial analysis of the ballot measure. The impartial analysis would be included in the voter pamphlet and must be submitted to the ROV by 5:00 p.m. on August 21, 2018.

Whether Full Text of Ordinance Should Be Included in Voter Pamphlet:

Printing the full text of the ordinance in the voter pamphlet is not required and is cost prohibitive. The Council has the option of directing the full text of the ordinance to be printed in the voter pamphlet or including a statement following the impartial analysis that the full text is available by calling the elections official's office (City Clerk's Office)

and requesting a copy at no cost. The text of the ordinance will also be posted on the City website.

Hotel Group Support for TOT Increase:

Staff has held several meetings with hotel owners and/or their representatives to discuss the City's desire for a TOT increase and interest in supporting tourism. The hotels have indicated support for a 1% TOT with a 1.5% TBID. This would increase the tax to hotel guests by 2.5% from an existing 10% to 12.5%.

The hotels have conveyed a strong interest in helping the City increase revenue and suggest that a TBID investment of 1.5% will support the City's goals of increasing revenue through tourism. The hotels felt strongly that going above the 2.5% combined increase would be too significant an increase for local customers to absorb and that it would be counterproductive to the efforts as it could place the Morgan Hill market at a disadvantage and reduce the number of bookings. The hotels understand the City's need to increase revenue and are open to future TOT increases if the market can support it. Furthermore, the hotels have indicated that if the City chooses to pursue a higher TOT increase that they will no longer support the formation of TBID and oppose the Ballot Measure.

Tourism Business Improvement District (TBID)

In California, tourism business improvement districts for general law cities formed under the provisions of Property and Business Improvement District Law of 1994, the Parking and Business Improvement Area Law of 1989. California districts are also subject to other laws designed to ensure approval by business owners paying the assessment and accountability by the managing body to those business owners.

Tourism business improvement districts are formed with a majority of assessed businesses consenting and the local government's approval. Funds raised are returned to a non-profit corporation which is under contract with the local government to manage those funds. Several accountability mechanisms ensure that funds are spent in accordance with a specifically defined district plan that includes marketing and sales programs approved by the businesses paying into the district. Reasons for TBIDs' growing popularity among tourism-related businesses are:

- ☐ Funds cannot be spent on programs that don't benefit the businesses paying the assessment
- ☐ Funds cannot be diverted by the government for other programs
- ☐ TBID Board approves the expenditure of the funds

Establishing a TBID will help fund and attract sports/recreation events that support hotels, retailers, restaurants, and the City. In preparation for the creation of a TBID, the City hired Civitas Advisors (Civitas), one of the leading entities assisting with creation of tourism business improvement districts in California. They recently performed a comprehensive evaluation of lodging charges and the allocation of revenues from taxes and assessments on lodging. This study evaluated 100 destinations across the US and provided benchmarks for evaluating appropriations of funds in tourism efforts. The key

findings concluded that:

- In most cities, nearly half of the lodging tax charges go into a general fund and an average of 20.92% of lodging charges collected are dedicated for tourism marketing and sales efforts, whether by a Destination Management Organization (DMO) or other local entities.
- Larger cities have higher lodging tax charges, yet, smaller cities dedicate a greater proportion of lodging tax charges to support DMOs and other tourism marketing and sales.
- Cities with less than 350,000 residents have an average total lodging tax charge of 13.80% while larger cities report an average of 15.63%. (The highest in California is Los Angeles, and it is 15%)
- The average lodging charge for the 100 cities studied in the report is 14.62%.

According to Civitas, the destinations surveyed confirmed that they did not see a decrease in business because of a lodging charge increase.

With Civitas' help, staff has been meeting with hotel representatives to explore the prospects of a TBID. A draft Management District Plan (Plan) has been created, which identifies the proposed TBID's boundary, budget, services and governance. Below is a summary of the parameters of the proposed TBID:

- **Boundary**: All lodging businesses located within the boundaries of the City of Morgan Hill.
- **Term**: Five (5)-year assessment through 2023, with an annual 30-day period of protest for termination.
- **Budget**: Annual assessment rate of 1.5% (on top of the existing 10% TOT) of gross short-term room rental revenue producing an annual budget of approximately \$405,000.
- **Mission**: Marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales.
- **Governance**: A new non-profit board is proposed to be formed to serve as the "Owner's Association" charged with management of funds and implementation of the Plan. An annual report is required to be provided to the City Council within 90 days of each anniversary prior to annual renewal.

TBID dollars allow for a wide range of activities and can be customized to fit the need of the destination. These funds cannot be diverted to general government programs and must be spent on services and improvements that provide specific benefit to those contributing. Similarly, these entities are designed to provide stable, long-term funding for tourism promotion and be governed by those who pay into the assessment. While the funds can be used to promote the area to increase tourism and subsequently

increase room nights, the funds cannot be used to promote any specific hotel or replace the hotel's unique marketing.

The proposed Plan suggests most of the funds (70%) to be allocated to Sales and Marketing, 15% to Administration and Operations, 11% to Sports Facility Management, 2% to City (as a service fee for administration of the TBID) and 2% for Contingency.

The City Council has the right, pursuant to Streets and Highway Code §36651, to identify the body that shall implement the proposed program (Owner's Association).

Owners' Association:

Working with the City, the local "hotel group," recommended that if formed, the TBID Owners' Association be comprised of nine (9) directors with the following representation:

- ☐ Five (5) directors shall be an owner or approved manager of a lodging business paying the TBID assessment;
- ☐ One (1) director shall be a representative of the Wineries Association of Santa Clara County
- ☐ One (1) director shall be a representative of the Outdoor Sports Center
- ☐ Two (2) directors shall be City of Morgan Hill staff members.

Staff recommends that the two representatives from the City consist of an individual from the Economic Development Department as well as an individual from the Community Services Department. This will allow better alignment and efficiency with the City's marketing and promotion efforts as well as management of the sports recreation facilities.

Oversight:

The Owner's' Association is required to present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650, within ninety (90) days of the TBID's anniversary. The annual report shall include:

- ☐ Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- ☐ The improvements and activities to be provided for that fiscal year.
- ☐ An estimate of the cost of providing the improvements and the activities for that fiscal year.
- ☐ The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- ☐ The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- ☐ The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

It is expected that the expenses associated with the formation of the TBID, the Civitas

Advisors contract, will be refunded to the City through funds generated by the TBID. The hotels have also agreed to pay for 50% of the May 2018 Amgen Tour of California expenses (\$27,500). If the City Council is agreeable to the proposed TBID and its make-up, with an agreed upon District Management Plan, the next step is to circulate a petition of support of the district to the Hotel Owners. Once Owners generating 50% of the projected assessment budget support the district, the City Council can begin the public hearing process.

ANALYSIS AND RECOMMENDATION

The City's financial outlook requires increased revenue sources for the City to continue to provide basic services to the community. Doing some form of a TOT increase is prudent and there is clear support for an up to 4% TOT increase based on the recent polling survey. Two of the eight 2018 City Council Priority and Goals include maintaining fiscal responsibility and enhancing public safety. Two key strategies include financial stewardship and infrastructure. The 2018-19 and 2019-20 Operating Budget and CIP Budget identified the unfunded needs and the gaps for infrastructure and services. The City is not in a position to fully address its aging public infrastructure. Funding is also needed to address public safety, including increased call volume for fire services, a third fire station, and crime prevention. The City tried to address these funding needs in 2016 when a potential ballot measure was floated to the residents in 2016 but did not receive enough support during the public survey.

While the City's financial needs are well known, it is also prudent to recognize that the market in Morgan Hill is developing and that we need stronger demand generators to increase the demand and the visitors to Morgan Hill. Demand generators for this area include the sports/recreational facilities such as the Outdoor Sports Center, the Aquatics Center, the wineries, parks, golf courses, and Downtown. While Civitas suggested that there is no corollary decrease in business because of a lodging charge increase, Civitas advised the City that a large TOT increase (4%) would place this market at a competitive disadvantage and that an *incremental* increase to up to and no more than 4% is advisable. Staff believes that a 2.5% or 3% increase is the maximum the market can tolerate at this moment. As the market matures, the City will be better positioned to consider a greater TOT.

The City's Economic Blueprint identifies Tourism as a key strategy. Growing tourism is also a basic tenet of the General Plan. Establishment of a TBID will support promotion and attraction of events to the community and should increase the number of visitors, which in turn will grow revenue to the City. While there are efficiencies that can be realized by the City managing a tourism effort, there are also intangible benefits to creating collaborative partnerships such as a TBID. More can be achieved by industry professionals/investors taking an active role in growing business in the area, collaborating with the City to attract events and additional investments.

Given these three fundamental notions, it is recommended that the City Council pursue a 1% TOT increase and continue to work with the hotels to establish a 1.5% TBID, for a combined increase of 2.5%. This approach will generate an additional \$270,000 annually to the City's General Fund and \$405,000 for a TBID. A 2.5% increase is a

substantial increase for a developing market. This judicious increase will allow for the hotels to move forward with the TBID and for the City and the hotels to forge healthy relationships and better align our efforts. The City can evaluate the TBID on an annual basis and as the market matures and the demand generators grow, then reconsider other increases once the impacts of the measure and the TBID are known.

Alternatively, the Council could consider a greater TOT of 1.5% and a 1.5% TBID. However, the hotels will not support this higher TOT, believing the combined impact could have a negative impact on their business.

Finally, another approach for the Council, is not to pursue a TBID, instead dedicating resources to tourism promotions, pursuing either a 2.5% increase or a 2% TOT increase for 2018 and a 1% increase in 2019, for a total of 13%. While there are infinite approaches to the TOT and TBID mix, for discussion purposes, the three options below are outlined, with a preferred recommendation.

	Recommended			
Proposed Increase	1.5% TBID & 1% TOT	1.5% TBID & 1.5% TOT	2.5% TOT	2% TOT in 2018 1% TOT in 2019
Establishment of a TBID	Yes	Yes	No	No
Total Tax	12.5%	13%	12.5%	13%

If the City Council chooses to work with the hotels to establish a TBID, staff will finalize the District Management Plan and work with the hotels to circulate a TBID Assessment ballot petition among the Owners. The deadline to submit TOT ballot measure language for the November election is August 10th.

COMMUNITY ENGAGEMENT: Inform

Staff met on several occasions with the hotel representatives as well as representatives from the Chamber of Commerce.

ALTERNATIVE ACTIONS:

1. The Council could decide to increase the TOT at a different rate than recommended, up to 4%.
2. The Council could decide to promote the area for tourism without the establishment of TBID.
3. The Council could decide to not move forward with an increase in the TOT or establishment of a TBID.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council workshops and meetings on TOT were held on February 1 and September 27, 2017, and staff reports presented on February 15, 2017, July 19, 2017, January 17, 2018, February 7, 2018, April 18, 2018 and June 6, 2018.

FISCAL AND RESOURCE IMPACT:

The costs to establish the TBID are included in the FY 2018-19 General Fund budget.

An increase of the TOT would require the City Council to place a ballot measure before the voters for, the November 2018 election, at a cost of approximately \$52,300.

If the City approves the creation of a TBID at 1.5%, the TBID could generate \$405,000 annually. These funds could only be used for tourism promotions and be managed by an outside board (Owner's Board).

The current TOT rate is 10%, which is anticipated to generate approximately \$2.7 million in revenue in FY 2017-18. If the rate were increased by 1%, the increase in revenue is anticipated to be \$270,000. A TOT increase would go to the General Fund and the City would have complete discretion regarding the use of these funds.

CEQA (California Environmental Quality Act):

Not a Project - Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and are therefore exempt activities.

LINKS/ATTACHMENTS:

1. TOT Ballot Measure Resolution
2. Exhibit A
3. May 16, 2018 City Council Staff Report (weblink)
4. WSCV Letter
5. 15 Presentation TOT-TBID
6. 15 Supplement 1
7. 15 Supplement 2
8. 15 Supplement 3
9. 15 Supplement 4 - Revised Resolution with Ordinance

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY INCREASING THE TRANSIENT OCCUPANCY TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Section 7280 of the California Revenue and Taxation Code authorizes the City to levy a transient occupancy tax, for revenue purposes, on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for up to 30 days; and

WHEREAS, the City Council desires to increase the rate of the current transient occupancy tax from 10% to 11%; and

WHEREAS, the transient occupancy tax rate cannot be increased without voter approval; and

WHEREAS, the City Council desires to submit a transient occupancy tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date.

WHEREAS, the proposed increase to the transient occupancy tax is more completely described in the ordinance attached hereto as Exhibit “A” and incorporated herein by reference (the “Tax Ordinance”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes an increase in the rate of transient occupancy tax from 10% to 11%.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

To fund city services including, 9-1-1 emergency response times, neighborhood police patrols, and crime prevention; to repair potholes and maintain city streets; and for unrestricted general revenue purposes, shall the City of Morgan Hill adopt an ordinance increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 11%, providing \$270,000 annually, requiring financial audits, and all funds staying in Morgan Hill?	YES	
	NO	

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 4 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the referendum may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption.

APPROVED and ADOPTED this ___ day of July, 2018.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

EXHIBIT A

ORDINANCE NO. ___, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 3.24.020 (TAX IMPOSED- AMOUNT) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORGAN HILL MUNICIPAL CODE

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1. Section 3.24.020 (Tax Imposed – Amount) of Chapter 3.24 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

3.24.020 - Tax imposed—Amount.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~ten-~~ eleven percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the city.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date. This ordinance shall be effective if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council and the duty of the service providers to collect the tax shall commence as provided in California Public Utilities Code Section 799.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

Attachment: Exhibit A (1832 : Tourism Business Improvement District (TBID))



To: Morgan Hill City Council

The Wineries of Santa Clara Valley (WSCV) supports implementing TBID within Morgan Hill.

The WSCV promotes and advertises heavily twice per year during our Spring and Fall Passport (month long) fundraisers. During this time we also promote our hotels and restaurants as our “Passport Partners” through printed materials, print advertising and social media campaigns.

With the additional money generated from TBID, we could promote this region year-round and our city could potentially draw in thousands of new visitors from business travelers to leisure visitors and those who are planning their bay area vacations – all who would be visiting our wineries, restaurants, retail stores and ultimately staying in our hotels.

If passed, examples of new initiatives we propose may include:

- Resurrect “You’re Entering Wine Country” signage on north and southbound 101
- Advertise in transportation hubs (airports, bus & BART stations)
- Offer social media training for hotels and restaurants to help them promote themselves and cross promote
- Incorporate video marketing
- Create advertising campaigns that visually embed “Dream”, “Plan” and “Go”
- WSCV creates additional winery events (think mini BottleRocks, Wine Maker Dinners on 3rd street extending 200’, Grape Stomp, Barrel Craft shows)
- Invite target influencers for weekend stays (journalists, travel writers, bloggers)
- Create cross promoting websites (our new site will focus on “visiting” the region)
- Partner with San Jose Downtown Association and others

We are extremely proud of this region with a recent short list below:

1. We have award-winning wines – just this week Alara Cellars won Best of Show, Double Gold, Best in Class and Best White Wine.
2. We have gorgeous country wineries and roads leading to them- the Santa Clara Wine Trail was created in 2015.
3. We have numerous special event venues - Fernwood Cellars was mentioned this month as one of the top 25 bay area venues for weddings.
4. We have a large number of special wine events throughout the year – 44 just this month!
5. We have 32 winery members with potentially several more signing up in 12-16 months.
6. We have exceptional strategic partners: Downtown Business Association, Chamber, local restaurants, hotels, service providers, and others who work together with us to promote this region as a destination.

Thank you,

Stacy Giannini

Director of Marketing / Wineries of Santa Clara Valley

Attachment: WSCV Letter (1832 : Tourism Business Improvement District (TBID))

July 18, 2018

- 1 TOT
- 2 TBID
- 3 Recommendation
- 4 Next Steps

Godbe Survey on TOT Increase

- 63.9% support for up to 14%
- 69.3% support for up to 12%

Prospective voters rated streets, police patrols, and police officers in schools as the three highest priorities for additional funding.





City Needs More Financial Resources

- ✓ Currently collect 10% or \$2.7 M
- ✓ City has unfunded needs and gaps for infrastructure & services
- ✓ Public Safety is a priority - but funds not available to support all needs
- ✓ 2016 proposed ballot measure did not receive enough support as shown in survey

.5% Increase	1% Increase	1.5% Increase	2% Increase	2.5% Increase	3% Increase	3.5% Increase	4% Increase
\$135K	\$270K	\$405K	\$540K	\$675K	\$810K	\$945K	\$1.1 M

Ways to Grow Tourism



Present Practice

- Policies
- Land Use
- Collaborating
- Creating Demand Generators
- Supporting Downtown, Wineries, Hotels, Restaurants, etc.

TBID

- New Assessment
- Approval by Hotels
- Led by Hotels
- Can only be used for Tourism
- City must approve annual work program

Dedicated Funds

- Will require new TOT Tax Measure
- Led by City
- Can create commission for oversight
- Can offer efficiencies

Proposal



- ✓ 1.5 % TBID + 1% TOT Increase
- ✓ 2.5% Total Increase

Draft Management Plan

TBID Mission: Marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales.

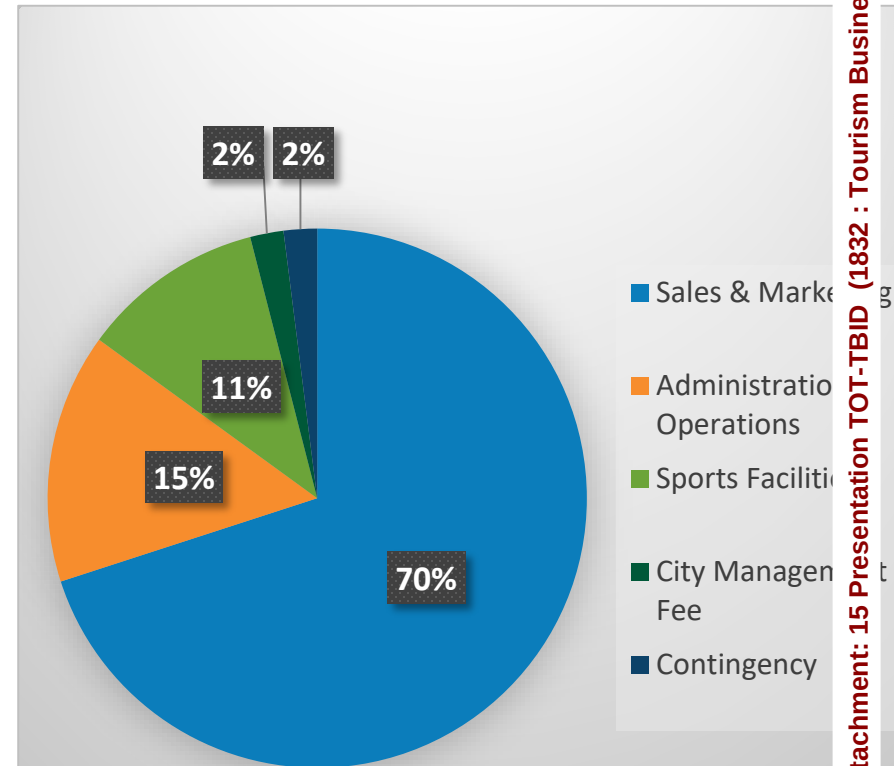
All Hotels within City Boundaries

Five-Year Term

1.5% Assessment = \$405,000

Governed by Owner's Association

Annual City Review & Approval



Owner's Association

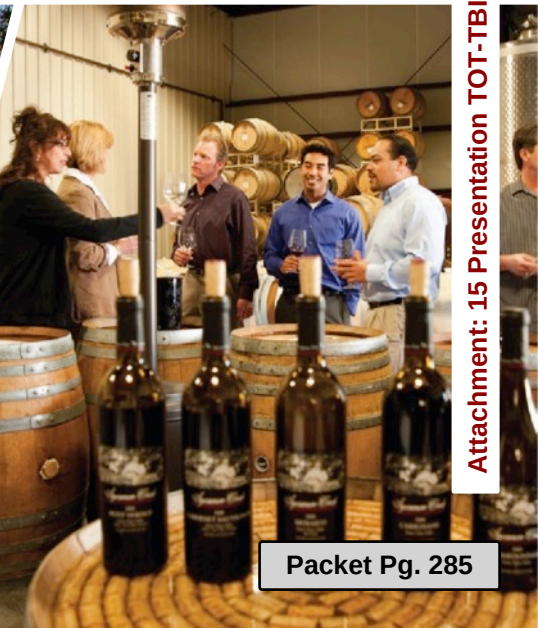
9 Person Board of Directors:

5 Hotel Representatives

1 Wineries Association Representative

1 Outdoor Sports Center Representative

2 City of Morgan Hill Representatives





Recommendation

- ✓ 1.5% TBID + 1% TOT
- ✓ Market's ability to tolerate tax increase
- ✓ Growing collaborative partnerships
- ✓ Will generate \$270,000 of new General Fund revenues annually

	Recommended	Option A	Option B	Option C
Proposed Increase	1.5% TBID & 1% TOT	1.5% TBID & 1.5% TOT	2.5% TOT	2% TOT in 2018 + 1% TOT in 2019
Establishment of a TBID	Yes	Yes	No	No
Total Tax	12.5%	13%	12.5%	12.5%



Actions Needed

- Open and close the public hearing
- Adopt a resolution
- Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure
- Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Council members to write the argument
- Determine whether to print the full text of the ordinance in the voter pamphlet
- Direct the City Clerk and City Attorney to take all necessary actions to submit the proposed ballot measure to the voters

Questions/Comments



CITY OF MORGAN HILL

From: Gene Guglielmo
To: [CityClerk](#)
Subject: Letter to council supporting TBID
Date: Monday, July 16, 2018 1:07:00 PM

Dear Honorable City Council,

I am reaching out to you to express our strong support of the establishment of a Tourism Based Improvement District (TBID) for Morgan Hill. Being in business in Morgan Hill since 1925 our Family has been members and supporters of many local, regional and state organizations to not only promote the history and the quality of the wineries in historic Santa Clara Valley but to make people aware of all the wonderful amenities that make our area such a special place. We feel it is so important to keep sending out that message! With this great opportunity to establish a TBID we can only make that message louder! Sincerely, The Guglielmo Family

Gene Guglielmo
Guglielmo Winery
1480 East Main Ave
Morgan Hill, CA 95037
O: 408-779-2145
F: 408-779-3166
gene@guglielmowinery.com
www.guglielmowinery.com





17485 Monterey Road, Suite 105
Morgan Hill, CA 95037
(408)779-9444, info@morganhill.org

2018 Board Executive Committee

Board Chair: **Rich Firato**, Firato Janitorial Morgan Hill Life
Vice Chair: **Diana Wood**, Wood Motivation
Past Chair: **Robert Airoidi**, Morgan Hill Life
Board Secretary: **Fawn Myers**, Morgan Hill Unified School District
Treasurer: **Phil Couchee**, Recology South Valley

2018 Board Members

Matthew Bowen, Real Estate Solutions
Bill Gardner, Silicon Valley Relocation Services
Heather Geddes, Santa Clara County Library
Ken Murray, Associate Member
Dusty Perryman, Associate Member
Ashis Roy, Holiday Inn Express
John Varela, Santa Clara Valley Water District
Mark Phillips, Cochrane Road Self Storage
Sunday Minnich, Minnich Productions

July 17, 2018

RE: July 18, 2018 Agenda Item 15

Dear Mayor Tate, Mayor Pro Tem Constantine, and Council Members Carr, Jachimowicz and Spring:

The Morgan Hill Chamber of Commerce supports the city staff's suggested course of action regarding establishment of a Tourism Based Improvement District (TBID) and putting a measure on the upcoming ballot for voters to approve an increase in the general fund supporting Transient Occupancy Tax (TOT).

For reference, the exact language from the staff report is: "Given these three fundamental notions, it is recommended that the City Council pursue a 1% TOT increase and continue to work with the hotels to establish a 1.5% TBID, for a combined increase of 2.5%. This approach will generate an additional \$270,000 annually to the City's General Fund and \$405,000 for a TBID. A 2.5% increase is a substantial increase for a developing market. This judicious increase will allow for the hotels to move forward with the TBID and for the City and the hotels to forge healthy relationships and better align our efforts. The City can evaluate the TBID on an annual basis and as the market matures and the demand generators grow, then reconsider other increases once the impacts of the measure and the TBID are known."

This course of action will provide new funding to support sustainable efforts to grow the local tourism, which in turn benefits both the city (increased taxable activities) and local businesses (restaurants, wineries, hotels, sports facilities, etc.). The proposal also provides (with voter approval) for immediate increased general fund revenues even before the pie is grown larger. Furthermore, the existence of an effective TBID aids attraction of additional investments in hotels, restaurants, sports facilities and other tourist dependent businesses.

Please embrace this opportunity to move into a new phase of cooperation and joint prosperity.

Sincerely,

John Horner, President & CEO



MORGAN Hill Tourism Alliance

July 18, 2018

Dear Mayor Tate, Mayor Pro Tem Constantine, and Council Members Carr, Jachimowicz and Spring:

Members of the Tourism Alliance have been working hard to boost Morgan Hill's visibility as a tourism destination for individuals, groups, family events, sporting events and business users. These all volunteer efforts have born some fruit, but a well-funded, professionally managed, on-going tourism promotion and co-ordination organization is necessary to generate the kind of economic impact we all wish for and stand to benefit from.

Morgan Hill has many underappreciated assets. These include: athletic facilities such as the Outdoor Sports Center, wilderness areas such as Henry W. Coe State Park (California's second largest state park), recreation areas such as Anderson Reservoir, a vibrant downtown scene with many exceptional restaurants, historical treasures such as the Machado School and Villa Mira Monte and nearly 30 wineries on the Santa Clara Valley Wine Trail. Our neighbors to the north (San Jose) and south (Gilroy) have both demonstrated that dedicated funding and organizational effort focused on tourism pays off in business generated and taxes collected.

Now is the time for Morgan Hill to step up to the plate and form a Tourism Business Improvement District (TBID) through which restaurants, retailers, hotels, facility operators and city government will all benefit. Morgan Hill has the need, the opportunity, the talent and the willingness to make this happen. We urge the City Council to make formation of a well-structured TBID an urgent priority and that the city and hotel owners continue in the newfound spirit of mutual cooperation.

Thank you,
The Morgan Hill Tourism Alliance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY INCREASING THE TRANSIENT OCCUPANCY TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Section 7280 of the California Revenue and Taxation Code authorizes the City to levy a transient occupancy tax, for revenue purposes, on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for up to 30 days; and

WHEREAS, the City Council desires to increase the rate of the current transient occupancy tax from 10% to 11%; and

WHEREAS, the transient occupancy tax rate cannot be increased without voter approval; and

WHEREAS, the City Council desires to submit a transient occupancy tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date.

WHEREAS, the proposed increase to the transient occupancy tax is more completely described in the ordinance attached hereto as Exhibit "A" and incorporated herein by reference (the "Tax Ordinance").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes an increase in the rate of transient occupancy tax from 10% to 11%.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Transient Occupancy Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

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City of Morgan Hill

Resolution No.

Page 2 of 5

Page 2 of 5

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Shall the Morgan Hill ordinance ~~To fund~~ providing funding, that cannot be taken by the State, for city services including, 9-1-1 emergency response times, neighborhood police patrols, and crime prevention; to repair potholes and maintain city streets; and for unrestricted general revenue purposes, ~~shall the City of Morgan Hill adopt an ordinance by~~ increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 11%, providing approximately \$270,000 annually, requiring financial audits, and all funds staying in Morgan Hill, ~~be adopted?~~

YES

NO

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the ~~County Clerk~~ Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the ~~County Clerk~~ Board of Supervisors.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 34 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ~~referendum ballot measure~~ may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

City of Morgan Hill

Resolution No.

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Page 3 of 5

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Section 11. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California ~~Increasing the t~~Transient oOccupancy tTax. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov/>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

Section 12. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

Section 13. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

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The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to -rebut.

City of Morgan Hill

Resolution No.

Page 2 of 5

Page 4 of 5

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

Section 14. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 15. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

Section 11.

APPROVED and ADOPTED this ___ day of July, 2018.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk **PASSED AND ADOPTED** by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

AYES: _____ **COUNCIL MEMBERS:** _____

NOES: _____ **COUNCIL MEMBERS:** _____

ABSTAIN: _____ **COUNCIL MEMBERS:** _____

ABSENT: _____ **COUNCIL MEMBERS:** _____

DATE: _____

Steve Tate, MAYOR

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City of Morgan Hill

Resolution No.

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□ 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. , adopted by the City Council at the meeting held on July 18, 2018.

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

DATE:

Irma Torrez, CITY CLERK

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EXHIBIT A

ORDINANCE NO. ___, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 3.24.020 (TAX IMPOSED- AMOUNT) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORGAN HILL MUNICIPAL CODE

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1. Section 3.24.020 (Tax Imposed – Amount) of Chapter 3.24 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

3.24.020 - Tax imposed—Amount.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~ten~~ eleven percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the city.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date. This ordinance shall be effective if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council and the duty of the service providers to collect the tax shall commence as provided in California Public Utilities Code Section 799.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

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

APPROVE BALLOT MEASURE FOR APPOINTIVE CITY CLERK AND CITY TREASURER

RECOMMENDATION(S)

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of seeking voter approval for appointed City Clerk and City Treasurer positions and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Adopt resolution approving an amendment to the Fiscal Year 2018-19 budget to appropriate \$52,300 to the elections budget (010.2420.42231) for this ballot measure;
4. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
5. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Background

State law requires all general law cities, like the City of Morgan Hill, to have a City Clerk and City Treasurer. The positions may be appointed or elected. In the City of Morgan Hill, the offices of City Clerk and City Treasurer are elected by the voters to a four-year term. Pursuant to state law, there are three qualifications for the positions of elected clerk and elected treasurer; 1) the individual must be a resident of the city, 2) the individual must be registered to vote in the city, and 3) the individual must be at least 18 years old. As an elected position, there are no minimum educational or professional requirements.

The City Clerk and City Treasurer positions in the City of Morgan Hill have been elected since the City's incorporation in 1906. Since that time, the duties, responsibilities, and requirements of these positions have changed significantly.

Government Code §36508 provides that each City Council may place the question(s) on the ballot whether the City Clerk and/or City Treasurer should be an appointed office.

The term of the current City Clerk and City Treasurer ends in November 2020. If the Council was to place this measure on the ballot for November 2018, and it passed, the incumbents would remain in office until they either resigned or until the end of their term.

In order to place the proposed resolution on the November 2018 ballot, state election law requires that certain procedures be followed by the Council. First, Council needs to adopt a resolution requesting the services of the Registrar of Voters (ROV) of Santa Clara County to conduct the election. This was completed on June 6, 2018. Second, Council needs to direct the City Attorney to submit an impartial analysis to the City Clerk. Third, Council needs to determine the process for submission of an argument in favor of the measure and select the authors for the argument in favor. The options for Council to consider in developing the arguments for the ballot measure are included below.

City Clerk

Based on data from the League of California Cities, of 482 incorporated cities and towns in California, 167 (or 35%) have elected City Clerks. In Santa Clara County, only two of fifteen cities have elected City Clerks (Morgan Hill and Santa Clara). The remaining thirteen cities have appointed City Clerks. Of these appointed positions, four are appointments made directly by the City Council (Campbell, Mountain View, Palo Alto, and San Jose¹) and the rest are appointed by the City Manager.

Over the past few decades, the role of City Clerk has evolved and become far more technical with numerous laws governing the designated responsibilities. The City Clerk's Association of California summarized the City Clerk's duties and responsibilities as follows:

The City Clerk is the local official for elections, local legislation, the Public Records Act, the Political Reform Act, and the Brown Act (open meeting laws). Before and after the City Council takes action, the City Clerk ensures that actions are in compliance with all federal, state, and local statutes and regulations and that all actions are properly executed, recorded, and archived. The statutes of the State of California prescribe the basic functions and duties of the City Clerk, and the Government Code and Election Code provide precise and specific responsibilities and procedures to follow. The office of the City Clerk is a service department within the municipal government upon which the City Council, all City departments, and the general public rely for information regarding the operations

¹ Three of the four are charter (as opposed to general law) cities

and legislative history of the City. The City Clerk serves as the liaison between the public and City Council and provides related municipal services.

To assure competency in performing these tasks, those cities that have appointed City Clerks find it desirable for the incumbent to possess or be working toward a Certified Municipal Clerk (CMC) designation which is earned after attaining approximately 300 hours of institute training over a 2-3 year period. This certification is granted by the International Institute of Municipal Clerks which promotes professional skill development and maintains a professional standard code of ethics.

Morgan Hill's City Clerk responsibilities are outlined in a variety of documents including the Government Code (Attachment 1), Elections Code, and the City's Municipal Code. A summary of responsibilities includes serving as the City's chief records manager who has responsibility in maintaining and preserving the City's permanent records like minutes, resolutions, and ordinances; certifying Council actions; keeper of the City Seal; coordinating and managing the City's municipal elections; updating the City's municipal codes; and managing the conflict of Interest (form 700) statement annual process. The City's Municipal Code separately lists the responsibilities of the City Clerk (Attachment 2). Most of these duties are currently delegated to the Council Services & Records Manager position.

Proponents of converting the elected City Clerk office to an appointed position argue that public accountability, with respect to the above duties, should occur daily and not every four years at election time. Hiring competent and qualified professionals who have adequate experience and knowledge of applicable laws to manage the City's public documents and meetings is critical. Further, if the appointed City Clerk does not perform to expectation, their performance can be addressed immediately rather than waiting for the next election cycle.

Opponents of converting the elected City Clerk office to an appointed position argue that the electoral process provides more checks and balances and establishes a higher level of public accountability than an appointed position.

If appointed, by City Council or by City Manager?

There are two ways an appointment of the City Clerk can be accomplished. The City Council, an elected body, could decide to make the City Clerk appointment directly which would address concerns about political accountability. While Council-appointed City Clerks are a minority amongst Santa Clara County cities, this appointment structure maintains ultimate accountability to the City Council and public and would be akin to the City Council appointing a City Manager or a City Attorney. In this fashion, if residents are concerned about losing their "voice" should the City Clerk switch from its elected capacity, then the Council-appointment maintains a more direct reporting relationship to the public. If council makes the appointment, then all five members of the council would be responsible for advertising the position, reviewing applications, interviewing, and making the final selection. An employment contract would then be established, and annual performance evaluations conducted.

Alternatively, the City Manager could be the appointing authority. Under this model, and like all City positions under him or her, the City Council would approve a job specification and salary range; then the City Manager would have responsibility for the recruitment, hiring, and management of the City Clerk. The City Clerk would report directly to the City Manager like other management positions.

City Treasurer

The League of California Cities reports that 181 of 482 cities (38%) have elected City Treasurers. In Santa Clara County, only one of the fifteen cities have an elected City Treasurer (Morgan Hill).

Morgan Hill's City Treasurer is an elected office with a primary focus on investment of City funds. Currently, that portfolio stands at about \$109,000,000. In practice, though not required by State law or the Municipal Code, the City Treasurer, prior to making any investment, routinely consults with the Finance Director about the City's short-term cash flow projection and the characteristics (safety, liquidity, and yield) of the particular security. Both the City Treasurer and Finance Director's investments are constrained by Government Code and the City Council's formally adopted investment policy. Both report their investment activity to the City Council, as required by State law, in the monthly financial reports prepared by the Finance Department.

California Government Code §41001 outlines the responsibilities of the City Treasurer (Attachment 3) as collection of City taxes and license fees, bank deposit of revenue, and payments to creditors. Most of these duties are currently delegated to the Finance Director. Effective financial management requires professional skills and expertise in areas such as electronic banking, municipal fund accounting, government reporting requirements, investment regulations, and debt management. Today's professional staff, independent audits, and internal accounting controls provide the necessary oversight and control of the City's finances.

Proponents of converting the City Treasurer position into an appointed position may argue that hiring professionals to handle the taxpayers' money may be more prudent because the City Council can establish minimum job qualifications for the position and the City Manager can hold the individual accountable. To this end, the applicant pool would not be limited to current residents.

Opponents of converting the City Treasurer office to an appointed position may argue that public oversight and checks and balances would be lost without the electoral process as well as the residency requirement.

Summary

Considerations in favor of the elected process include:

- Elected officials are directly selected by the voters without control or influence from City Councils or City Managers.

- Elected officials are directly accountable to the voters, with a process established in state government code for voters to remove a person from office.

Consideration in favor of the appointive process include:

- City Clerk and City Treasurer roles have become increasingly technical, demanding certain skills, experience, and reliability. These responsibilities are unlike those of other elected positions whose primary responsibility is policy making.
- CA Govt. Code does not allow qualification criteria (beyond residency in the city) to be established for elective offices.
- Cities can set qualification criteria for appointed positions, requiring applicants to demonstrate the requisite skills.
- City Councils and City Managers are readily able and accustomed to selecting and holding appointed city positions accountable.
- Experience statewide has shown that unqualified and/or unreliable City Clerks and City Treasurers can be disruptive and damaging to local government operations.

Ballot Arguments and Impartial Analysis

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure to convert the City Clerk and City Treasurer to appointive positions. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the ROV by 5:00 p.m. on August 14, 2018, with the public viewing period open until August 24, 2018. Rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on August 21, 2018. The public viewing period for rebuttals would be opened until August 31, 2018. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal arguments.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one against each ballot measure will be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors of proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In the event Council decides to place the measure on the ballot and to author the argument in favor, example arguments are attached (Attachment 4) for Council review.

If the City Council decides to author an argument as a whole body, this could be accomplished in several ways in compliance with the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

In order for the City Council to authorize an argument to be given preference as identified above, the Council may either;

1. Author an argument in favor of the measure as a whole body at the July 25, 2018 Council Meeting (subject to Brown Act considerations outlined in the next paragraph) or call a special meeting to draft the argument;
2. Authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of the City Council to sign the argument; or
3. Authorize up to two Councilmembers to author and sign the argument and have up to three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Morgan Hill community author the argument.

Roles & Limitations During Ballot Measure Campaign Period

In order to be successful in securing voter approval of the measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money or effort advocating a position supporting passage of the ballot measure. Council members and staff can work on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not utilizing City resources.

Staff requests guidance as to whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

If the measure is approved, the City Attorney is required to prepare an impartial analysis of the ballot measure. The impartial analysis would be included in the voter pamphlet and must be submitted to the ROV by 5:00 p.m. on August 21, 2018.

Conclusion

While there is no “one way” to address this issue, staff recommends:

1. That the City Council provide direction to staff as to whether the City Clerk and City Treasurer positions should be appointed by the City Council or City Manager.
2. That the City Council provide direction to the City Manager to delegate all the City Clerk's traditional roles and responsibilities to the Council Services & Records Manager.
3. That the City Council provide direction to the City Manager to establish minimum qualifications for the City Treasurer position and delegate all the Treasurer's traditional roles and responsibilities to the Finance Director.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the proposed action to place a measure on the November 6, 2018 ballot asking the voters to make the City Clerk and City Treasurer appointed positions.

ALTERNATIVE ACTIONS:

Council could choose to not approve moving forward with the ballot measure asking voters to make the City Clerk and City Treasurer offices appointed.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council previously placed a measure on the ballot in 2010 asking voters to make the City Clerk and City Treasurer offices appointed. However, it failed by a vote of 45.97% yes and 54.03% no.

FISCAL AND RESOURCE IMPACT:

According to the ROV, the estimated election cost to the City of Morgan Hill to place an additional ballot measure on the November 2018 Mayor and City Council election could be as much as \$52,300. Actual costs will depend on the length of the measure, analysis, and arguments for and against. The cost for this proposed measure is not included in the current adopted FY 18-19 budget. A budget amendment is required if Council approves moving forward with the proposed measure for the November 2018 General Election.

The cost of the ballot measure would be offset by the cost savings from the City Clerk and City Treasurer stipend and health insurance costs. Currently the elected City Clerk and City Treasurer both receive a monthly stipend of \$200 and are eligible for the City's Health Benefits. For FY 18-19, the budgeted amount based on the incumbent's stipends and medical insurances is \$49,000. There would also be some future cost savings associated in not having an election for City Clerk and City Treasurer every four years.

CEQA (California Environmental Quality Act):

Not a Project - Pursuant to CEQA, organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and are therefore exempt activities.

LINKS/ATTACHMENTS:

1. 1 - Government Code 40804-40814 City Clerk
2. 2 - Municipal Code City Clerk Duties
3. 3 - Government Code 410014-41007 City Treasurer
4. 4 - Sample Arguments for Converting to Appointed City Clerk Positions
5. Resolution - Budget Amendment 7-18-18
6. Budget Scorecard
7. Resolution - Ballot Measure 7-18-18
8. 17 Supplement 1 - Revised Resolution


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GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] (Title 4 added by Stats. 1949, Ch. 79.)

DIVISION 3. OFFICERS [36501 - 41805] (Division 3 added by Stats. 1949, Ch. 79.)

PART 3. OTHER OFFICERS [40601 - 41805] (Part 3 added by Stats. 1949, Ch. 79.)

CHAPTER 2. City Clerk [40801 - 40814] (Chapter 2 added by Stats. 1949, Ch. 79.)

40801. The city clerk shall keep an accurate record of the proceeding of the legislative body and the board of equalization in books bearing appropriate titles and devoted exclusively to such purposes, respectively. The books shall have a comprehensive general index.

(Added by Stats. 1949, Ch. 79.)

40802. The city clerk is the accounting officer of the city and shall maintain records readily reflecting the financial condition of the city.

(Added by Stats. 1949, Ch. 79.)

40804. The city clerk shall cause a summary of the city's financial report required by Section 53891, in a form prescribed by the State Controller, to be published once in a newspaper of general circulation, pursuant to Article 1 (commencing with Section 6000), Chapter 1, Division 7, Title 1 of the Government Code. If there is no such newspaper he shall cause copies of the statement to be posted in three public places in the city designated by ordinance as the places for posting of public notices.

(Added by Stats. 1968, Ch. 857.)

40805. The report shall be published or posted consistent with the timelines established in Section 53891 after the close of the fiscal year for which the report is compiled.

(Amended by Stats. 2016, Ch. 366, Sec. 10. (SB 974) Effective January 1, 2017.)

40805.5. The financial and accounting duties imposed upon the city clerk by Sections 40802 through 40805 may be transferred to a director of finance when such office has been established and the powers and duties thereof defined by ordinance.

(Added by Stats. 1955, Ch. 1754.)

40806. The city clerk shall keep a book marked "ordinances" and record in it all city ordinances with his certificate annexed to each, stating:

- (a) It is a true and correct copy of a city ordinance.
- (b) The ordinance number.
- (c) It has been published or posted pursuant to law.

(Added by Stats. 1949, Ch. 79.)

40807. The record with the certificate is prima facie evidence of the contents of each ordinance and of its passage and publication. It is admissible as such evidence in any court or proceedings.

(Added by Stats. 1949, Ch. 79.)

40808. The official city records in the custody of the city clerk shall not be filed in any court proceeding or other action but shall be returned to the custody of the city clerk.

(Added by Stats. 1949, Ch. 79.)

40809. This article does not prevent the proof of the passage and publication of ordinances in the usual way.

(Added by Stats. 1949, Ch. 79.)

40810. The city clerk is the ex officio assessor unless the legislative body provides for the assessment and collection of city taxes by county officers or otherwise.

(Added by Stats. 1949, Ch. 79.)

40811. The city clerk is the custodian of the city seal.

(Added by Stats. 1949, Ch. 79.)

40812. He shall perform such additional duties as are prescribed by ordinance.

(Amended by Stats. 1955, Ch. 628.)

40813. The city clerk may appoint deputies, for whose acts he and his bondsmen are responsible. The deputies shall hold office at the pleasure of the city clerk and receive such compensation as is provided by the legislative body.

(Added by Stats. 1949, Ch. 79.)

40814. The city clerk and his deputies may administer oaths or affirmations and take and certify affidavits and depositions pertaining to city affairs and business which may be used in any court or proceedings in the state. The acknowledgment of an instrument may be made before a city clerk and his deputies within the city in which they were elected or appointed.

(Amended by Stats. 1968, Ch. 576.)

City of Morgan Hill
Municipal Code Sections detailing Elected City Clerk Responsibilities

2.10.050 Records disposition schedule.

A. The records disposition schedule will serve as the basis for the city's records management program. The head of each department shall prepare a records disposition schedule for his/her department and any subsequent proposed amendments thereto. With the assistance of the records management officer, this preparation shall include:

1. A physical inventory and appraisal of all records to determine their administrative, fiscal, legal and historical value;
2. Identification of an official record series title for all department records and specific and accurate descriptions of records listed thereunder in accordance with guidelines developed by the city clerk. Terms used as record series titles or as description of files on the records disposition schedule, or any revision thereto, shall be descriptive. They shall not include the use of the words "miscellaneous" or "various," or words of similar connotation; nor shall any such schedule or request bearing such nomenclature be submitted to the city clerk and the city attorney for their consideration and approval;
3. A periodic review or audit of records to make sure they are properly covered by the records disposition schedule.

B. Following the review or audit, the city clerk will be notified of any proposed amendments to the records disposition schedule that are needed. Such amendments may include the addition of new record series titles to the records disposition schedule, or requests to have superseded record series titles removed from the records disposition schedule.

C. Final approval of the records disposition schedule shall require the written consent of the department head, the city attorney and the city clerk. The records disposition schedule must then be approved by the city council by resolution. Amendments and revisions thereto shall require the written consent of the department head, the city attorney and the city clerk.

(Ord. 705 N.S. § 1 (III-6-1.05), 1984)

2.10.060 Responsibilities.

A. The city clerk shall:

1. Be responsible for the maintenance of all official records, with the following exceptions:
 - a. Records identified pursuant to this chapter in the records disposition schedule, which are entrusted to the custody of other city officers or departments,
 - b. Newly created or unidentified record series, which shall be the responsibility of the originating department, until properly identified within the records disposition schedule,
 - c. Inactive records which have been transferred to non-city organizations,
 - d. Records which are legally maintained by other government agencies;
2. Be responsible for the administration of a uniform records management program assisting all city departments, and for the development, administration and coordination of procedures thereunder;
3. Administer a Records Center for the efficient and economical storage, maintenance and servicing of inactive city records;
4. Appoint a records management officer who shall serve in the office of the city clerk as the head of the records management program.

- B. The records management officer, under the direction of the city clerk, shall:
1. Provide effective control over the identification appraisal, maintenance, protection, preservation, transfer, retention and disposition of all city records. This shall include:
 - a. Providing assistance and guidelines to departments in the preparation of their records disposition schedules and amendments thereto,
 - b. Establishing proper procedures for securing necessary revisions to the records disposition schedule, with the approval of the city attorney,
 - c. Providing direct technical assistance and guidance to departments that will aid in resolving specific files and related records problems;
 2. Operate the Records Center in an orderly and efficient manner. This operation shall include:
 - a. Providing information, assistance and records to using departments to ensure optimum utilization of the Records Center,
 - b. Notifying using departments periodically when records held by the Records Center are eligible for destruction,
 - c. Causing to be destroyed records held by the Records Center only after receiving proper authorization from the responsible department head.
- C. Each department head shall:
1. Cooperate with the city clerk to assure proper administration and implementation of the city's records management program;
 2. Ensure the proper application of the records disposition schedule to his/her department's records;
 3. Ensure that records are transferred to the Records Center for storage at the end of the office retention period listed in the records disposition schedule;
 4. Review the records disposition schedule and recommend to the city clerk any amendments thereto which are necessary due to changing requirements;
 5. Comply with procedures mentioned in this chapter regarding the destruction of records and nonrecords;
 6. Appoint a records coordinator to serve as liaison between the records management officer and the department and to assist in the implementation of the records management program.
- (Ord. 705 N.S. § 1 (III-6-1.06), 1984)

2.10.070 Destruction of records.

- A. Eligibility. No record shall be destroyed until it has been properly inventoried, appraised and entered in the records disposition schedule. Furthermore, before a record is eligible for destruction, the department head must first make the following determinations:
1. Required retention periods listed in the records disposition schedule have lapsed;
 2. The record is maintained by said department;
 3. The record is no longer required to fulfill any administrative, fiscal, legal or historical interests of the city or the public;
 4. The record series title is descriptive and does not include the use of the words "miscellaneous" or "various," or words of similar connotation.
- B. Procedures. Before records are destroyed, the department head shall:
1. In compliance with the records disposition schedule, exercise a final review over all records eligible for destruction for the purpose of determining any further administrative, fiscal, legal or historical needs;

2. Ensure that if the records disposition schedule does not specify records for transfer to the Records Center, the records shall be destroyed at the end of the listed office retention period in compliance with the records disposition schedule;
 3. Ensure that if the records disposition schedule does specify records for transfer to the Records Center, and this has not occurred, the records shall be destroyed, providing they have exceeded their total retention requirement (office plus Records Center);
 4. Destroy duplicate records and nonrecords when they are no longer needed in the course of the city's business.
- (Ord. 705 N.S. § 1 (III-6-1.07), 1984)


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TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] (Title 4 added by Stats. 1949, Ch. 79.)

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PART 3. OTHER OFFICERS [40601 - 41805] (Part 3 added by Stats. 1949, Ch. 79.)

CHAPTER 3. City Treasurer [41001 - 41007] (Chapter 3 added by Stats. 1949, Ch. 79.)

41001. The city treasurer shall receive and safely keep all money the treasurer receives.

(Amended by Stats. 2017, Ch. 77, Sec. 1. (SB 742) Effective January 1, 2018.)

41002. (a) The city treasurer shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in his or her possession.

(b) If the city has issued bonds, the city treasurer shall use a system of accounting and auditing that adheres to generally accepted accounting principles.

(Amended by Stats. 2017, Ch. 77, Sec. 2. (SB 742) Effective January 1, 2018.)

41003. The city treasurer shall pay out money only on warrants signed by legally designated persons.

(Amended by Stats. 2017, Ch. 77, Sec. 3. (SB 742) Effective January 1, 2018.)

41004. Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.

(Amended by Stats. 2017, Ch. 77, Sec. 4. (SB 742) Effective January 1, 2018.)

41005. The city treasurer shall perform such duties relative to the collection of city taxes and license fees as are prescribed by ordinance.

(Added by Stats. 1949, Ch. 79.)

41006. The city treasurer may appoint deputies.

(Amended by Stats. 2017, Ch. 77, Sec. 5. (SB 742) Effective January 1, 2018.)

41007. The deputies shall hold office at the pleasure of the city treasurer and receive such compensation as is provided by the legislative body.

(Added by Stats. 1949, Ch. 79.)

Sample Arguments for Converting to Appointed City Clerk Positions

(Source: <http://www.smartvoter.org/>)

Measure I City Clerk City of Burlingame

November 3, 2009 Election
Majority Approval Required

As cities have grown and government has become more complex, so have the duties of city clerks. Today city clerks perform important legal, technical, and administrative tasks that require professional skills and expertise. Yet state law only requires elected city clerks to be over the age of 18, citizens of the U.S., and registered voters in the cities where they serve.

More than two-thirds of California cities and 13 of the 20 cities in San Mateo County have switched from the outdated model of an elected city clerk to an appointed city clerk, which allows cities to make appointments using the same thorough process they use to select department heads, including police and fire chiefs. In 1991, Burlingame voters approved making the city treasurer an appointed position.

If this measure is approved, the city clerk would be appointed beginning in 2013 and could save the city the cost of an expensive election (\$32,000).

Today the city clerk plays a vital role in communicating information to the public, working with online video streaming resources that allow public viewing of city meetings, taking minutes, keeping records of municipal codes current, and making sure officials and candidates for office follow laws relative to fair political activities and conflicts of interest. Cities don't have the luxury of dedicating a person to handle the narrowly defined duties performed by city clerks of 30 to 50 years ago.

An elected city clerk may be heavily dependent on support from politicians. In nearby cities, we have seen how politicized an elected city clerk position can become. Like other professional department heads, the city clerk needs to be politically neutral.

Please vote Yes on Measure I to save our city money and bring the city clerk out from the world of politics and into the world of professionalism.

/s/ Ann Keighran, Mayor

/s/ Terry Nagel, Council Member & Former Mayor

/s/ Rosalie O'Mahony, Council Member & Former Mayor

/s/ Jerry Deal, Council Member

/s/ Doris Mortensen, Former Burlingame City Clerk (retired December 2008)

Measure Y

Appointment of City Clerk and Treasurer City of Placentia

November 5, 2002 Election

Charter Amendment - Majority Approval Required

records have greatly expanded since we adopted our first Charter in 1965. As a result, the City has hired full time and highly experienced professionals to perform the vast majority of the duties that could once be performed or managed by a part time City Clerk and a part time City Treasurer.

We need to face the reality that we have outgrown the need for a part time City Clerk and City Treasurer.

We have City staff members who are experienced professional clerks and financial managers. These dedicated City employees can and do perform the full range of duties of the City Clerk and the City Treasurer. A part time City Clerk and a part time City Treasurer no longer have meaningful roles to play in a lean, experienced, service oriented City government that serves a large urban community. These offices are luxuries we can no longer afford.

This measure asks our residents to change the way our City Clerk and City Treasurer are chosen and to ensure that the City Administrator develops comprehensive sets of qualifications for the jobs. The criteria for choosing who will manage City funds and public records should be straightforward qualifications and competence. These jobs require experts -- not an election -- and should be positions for which one has to qualify -- not run.

We urge you to vote YES for Measure Y and help ensure accountability in the protection of our City's funds and records.

Measure V

Election of the City Clerk

City of San Carlos

November 3, 2009 Election
Majority Approval Required

The selection of the City Clerk should be based on qualifications and experience - not the result of a political campaign.

Demands on the City Clerk have evolved over the past few decades. The complexities of the position have increased and the technical skills and knowledge required are significant. The Clerk's responsibilities include management of the City's electronic document management program, oversight of all municipal elections, compliance with conflict of interest regulations, following federal/state laws, and recording decisions of the representative government.

Logic demands that the Clerk be selected based on an extensive screening designed to recruit and hire the person with the strongest technical, administrative, and professional skills. Once hired, an appointed City Clerk can be held accountable to perform to the same standards established for City department heads and executive staff.

Under California law, the only qualifications to serve as an elected City Clerk are that the person be at least 18 years old and that they are registered to vote in San Carlos. This potentially eliminates qualified candidates living nearby but unable to afford living in San Carlos.

You expect the duties of this vital position will be performed by an experienced and skilled professional. This can best be accomplished by selecting a person to serve based on technical skill, education, and relevant experience.

Statewide, the trend has moved towards appointed rather than elected City Clerks. Seventy-six percent of California cities appoint their City Clerks. We join many groups and individuals in California committed to quality local government and encourage you to support this logical and necessary change.

Your yes vote ensures the duties of the City Clerk are performed by a qualified professional selected on experience, education, and training, not by popular vote.

/s/ Bob Grassilli, Mayor of San Carlos

/s/ Christine D. Boland, CMC, City Clerk of San Carlos

Measure C

Appoint Clerk/Treasurer

Town of Los Gatos

February 5, 2008 Election
Majority Approval Required

PLEASE VOTE "YES" on Measure C and bring Los Gatos into the 21st century.

When Los Gatos was incorporated in 1887, the Town Clerk and Treasurer were elected, as was the practice at the time. All that was required was responsible citizens to record minutes of meetings and deposit monies in the bank. However, over time these jobs have grown considerably in terms of complexity and responsibility. Today the vast majority of California cities no longer elect their Clerks and Treasurers. Instead, they are appointed or hired as part of the city's professional staff.

The only qualification for being the elected Treasurer or Clerk is being a registered Los Gatos voter. However, the duties and responsibilities of these positions warrant considerable experience and professionalism in such areas as financial markets, investment policies, risk mitigation, information technology, records management, election processes and conflict of interest laws. Most lay persons do not meet these job requirements.

Some believe that only publicly elected officials can provide oversight and visibility for these jobs. However, today the oversight function is actually accomplished via external audits, performance reviews, mandatory Council approval of the Town's investment policy, publishing of agenda items and reports on the Town's website, television and Internet coverage of Council meeting, and the state's open meeting and public records laws.

The Clerk and Treasurer positions are too important to our Town to be left to the possibility of unqualified candidates or an electorate unable to evaluate their qualifications. It is time to join the majority of California cities and move to a more efficient, professional, effective government by voting to appoint these positions. Please join the people knowledgeable about both sides of this matter and bring Los Gatos into the 21st century by VOTING YES on Measure C.

/s/ Randy Attaway
Former Mayor & Council Member

/s/ Joanne Benjamin
Former Mayor & Council Member

/s/ Eric Carlson
Former Mayor & Council Member

/s/ Sandy Decker
Former Mayor & Council Member

/s/ MarLyn Rasmussen
Former Council Member & Clerk Administrator

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2018-2019 BUDGET IN THE GENERAL FUND (FUND NO. 010) TO APPROPRIATE FIFTY-TWO THOUSAND THREE HUNDRED DOLLARS (\$52,300)

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2018-2019 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 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 2018-2019 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 2018-2019 Budget of City.
- c. That the Finance Director be directed to spend no more than the estimated \$52,300.00

cost to place the elimination of City Clerk and City Treasurer as elected positions on the general election ballot.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 18th day of July 2018.

AYES: COUNCIL MEMBERS:
 NOES: COUNCIL MEMBERS:
 ABSTAIN: COUNCIL MEMBERS:
 ABSENT: COUNCIL MEMBERS:

APPROVED:

ATTEST:

 STEVE TATE, Mayor

 IRMA TORREZ, City Clerk

— **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. 18-XXX, adopted by the City Council at a regular meeting held on July 18, 2018.

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

DATE: _____

 IRMA TORREZ, City Clerk

Attachment: Resolution - Budget Amendment 7-18-18 (1861 : Consideration of appointed City Clerk/Treasurer)

AGENDA BUDGET SCORECARD**FISCAL YEAR 2018-19****ADJUSTMENT #**

003

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

010	General Fund
2420	City Clerk-Elections
42231	CONTRACT SERVICES

AGENDA DATE:**AGENDA ITEM TITLE:**

07/18/18
Additional Ballot Measure on November 2018 Ballot

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	17,687,052	41,264,549	41,658,489	17,293,112
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	-	52,300	(52,300)
RESULT OF RECOMMENDED ACTION	<u>17,687,052</u>	<u>41,264,549</u>	<u>41,710,789</u>	<u>17,240,812</u>

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUBMITTING TO THE CITY OF MORGAN HILL'S QUALIFIED VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION A MEASURE SEEKING VOTER APPROVAL TO CONVERT THE OFFICES OF THE CITY CLERK AND CITY TREASURER; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California on Tuesday, November 6, 2018;

WHEREAS, Morgan Hill's elected City Clerk and City Treasurer positions were established at the time of the City's incorporation in 1906; and

WHEREAS, however, over time, the duties and requirements of these positions have changed; and

WHEREAS, the California Government Code requires each general law city to have a City Clerk and City Treasurer; and

WHEREAS, however, in a majority of California cities these positions are appointed, not elected; and

WHEREAS, on July 18, 2018, the City Council met and considered a staff report pertaining to the issues on converting the elected City Clerk and City Treasurer offices to appointed positions; and

WHEREAS, during the City Council Meeting, the Council directed staff to move forward with placing the issues before voters; and

WHEREAS, California Government Code §36508 provides that the City Council may place the question on the ballot whether the City Clerk and City Treasurer should be appointive offices.

City of Morgan Hill
Resolution No.
Page 2 of 4

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

SECTION 1. The following ballot measure shall be submitted to the voters at the General Municipal Election to be held on Tuesday, November 6, 2018:

Shall the offices of City Clerk and City Treasurer be appointive?	Y E S
	N O

SECTION 2. If the voters approve converting these two elected offices into appointed positions, then the appointments become effective upon the earlier of either vacancies or at the end of each current terms of office (i.e., December 2020).

SECTION 3. The municipal election is hereby ordered consolidated with the general municipal election, which will be held within the City of Morgan Hill on Tuesday, the 6th day of November 2018. The elections hereby consolidated shall be held in all respects as if there were only one election, and from only one form of ballot shall be used.

SECTION 4. Pursuant to Section 10002 of the Elections Code, the City Council hereby request the Board of Supervisors of Santa Clara County (“Board of Supervisors”) to permit the County Elections Official to render services necessary to place this measure on the ballot of the next general municipal election and to conduct the election of this ballot measure. The City Council recognizes that additional costs may be incurred by the County by reason of these services and agrees to reimburse the County for these costs.

SECTION 5. The election on this measure shall be held, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and a result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 6. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the referendum may be submitted to the City Clerk.

Attachment: Resolution - Ballot Measure 7-18-18 (1861 : Consideration of appointed City Clerk/Treasurer)

City of Morgan Hill
Resolution No.
Page 3 of 4

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

SECTION 7. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies and equipment that may be necessary in order to properly and lawfully conduct the election. Specifically, the City Clerk shall cause copies of the Notice of Special election to be posted in three (3) public places in the City of Morgan Hill and shall cause copy of the Notice to be published once in a local newspaper used to publish official notices for the City of Morgan Hill. Notice of the election shall be given as required by applicable provisions of the Elections Code of the State of California and shall include the dates for the primary arguments and rebuttal arguments set forth in Section 5 above.

SECTION 8. Ballots for said election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting spaces shall be set off to the right of the ballot measure, in the manner provided by law, one having the word "Yes" printed before it and the other having the word "No" printed before it.

SECTION 9. If, at the election, a majority of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved by the votes upon the date that that vote is declared by the City of Morgan Hill and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 10. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

Attachment: Resolution - Ballot Measure 7-18-18 (1861 : Consideration of appointed City Clerk/Treasurer)

City of Morgan Hill
Resolution No.
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∞ 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.6351, adopted by the City Council at the meeting held on July 18, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution - Ballot Measure 7-18-18 (1861 : Consideration of appointed City Clerk/Treasurer)

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUBMITTING TO THE CITY OF MORGAN HILL'S QUALIFIED VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION A MEASURE SEEKING VOTER APPROVAL TO CONVERT THE OFFICES OF THE CITY CLERK AND CITY TREASURER TO APPOINTIVE POSITIONS; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California on Tuesday, November 6, 2018;

WHEREAS, Morgan Hill's elected City Clerk and City Treasurer positions were established at the time of the City's incorporation in 1906; and

WHEREAS, over time, the duties and requirements of these positions have changed; and

WHEREAS, the California Government Code requires each general law city to have a City Clerk and City Treasurer; and

WHEREAS, in a majority of California cities these positions are appointed, not elected; and

WHEREAS, on July 18, 2018, the City Council met and considered a staff report pertaining to the issues on converting the elected City Clerk and City Treasurer offices to appointed positions; and

WHEREAS, during the City Council Meeting, the Council directed staff to move forward with placing the issues before voters; and

WHEREAS, California Government Code §36508 provides that the City Council may place the question on the ballot whether the City Clerk and City Treasurer should be appointive offices.

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

SECTION 1. The following ballot measure shall be submitted to the voters at the General Municipal Election to be held on Tuesday, November 6, 2018:

Shall the offices of City Clerk and City Treasurer be appointive?	YES
	NO

SECTION 2. If the voters approve converting these two elected offices into appointed positions, then the appointments become effective upon the earlier of either vacancies or at the end of each current terms of office (i.e., December 2020).

SECTION 3. The municipal election is hereby ordered consolidated with the general municipal election, which will be held within the City of Morgan Hill on Tuesday, the 6th day of November 2018. The elections hereby consolidated shall be held in all respects as if there were only one election, and from only one form of ballot shall be used.

SECTION 4. Pursuant to Section 10002 of the Elections Code, the City Council hereby request the Board of Supervisors of Santa Clara County (“Board of Supervisors”) to permit the Santa Clara County Registrar of Voter’s Office to render services necessary to place this measure on the ballot of the next general municipal election and to conduct the election of this ballot measure. The City Council recognizes that additional costs may be incurred by the County by reason of these services and agrees to reimburse the County for these costs.

SECTION 5. The election on this measure shall be held, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and a result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 6. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the referendum may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

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Resolution No.
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SECTION 7. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

SECTION 8. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

SECTION 9. Ballots for said election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting spaces shall be set off to the right of the ballot measure, in the manner provided by law, one having the word "Yes" printed before it and the other having the word "No" printed before it.

SECTION 10. If, at the election, a majority (50% plus 1) of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved

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by the votes upon the date that that vote is declared by the City of Morgan Hill and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

SECTION 12. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	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., adopted by the City Council at the meeting held on July 18, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

APPROVE PROPOSED BALLOT MEASURE REGARDING THE TAXATION OF CANNABIS

RECOMMENDATION(S)

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a cannabis business tax ordinance and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

POLICY CONSIDERATIONS:

1. Should the City Council present a cannabis business tax to voters in the November 6, 2018 election to tax the cultivation, retail sale, distribution, testing and manufacture of medicinal or adult use of cannabis in Morgan Hill?
2. If so, what tax structure and amount should be used?

REPORT NARRATIVE:

Background

Since the passage of Proposition 64 in November 2016, Council has had two workshops, multiple updates, and conducted a statistically significant community survey to determine the impact and level of community support for cannabis sales in Morgan Hill. The results of the survey reflected a community that was evenly split on the concept of retail sales of cannabis for recreational use ~~medical marijuana use~~ in Morgan Hill at 48.3% in support and 48.1% opposed. For ~~recreational use~~ medical marijuana

use, the survey showed 61.3% in support and 36.7% opposed. Council directed staff at the May 16, 2018 Council meeting to return with a proposed ordinance and ballot language for a revenue measure for the November 6, 2018 election. Staff worked with David McPherson from HdL to prepare the attached proposed ordinance and tax structure.

Highlights of Draft Ordinance

5.06.030 – Intent: Describes the intent of the ordinance to impose a Cannabis Business Tax. This tax would apply to both legal and illegal businesses. For example, if a business was operating without proper permits, the City could still collect tax revenue.

5.06.050 – Tax Imposed: Identifies the tax imposed by type and amount.

5.06.260 – Relief from taxes – disaster relief: In the event of certain circumstances a business owner may request relief from taxes by appealing to the Tax Administrator or City Council.

Taxation Structure and Revenue

Local agencies may tax medicinal and recreational cannabis with voter approval for general fund purposes. The tax rate is set by the local agency and is not limited by statute. Other jurisdictions, who were early adopters of cannabis sales, have found that imposing a tax rate that is too high will inhibit legitimate purchases and encourages the existing black market to thrive. As a result, some of these cities and counties have lowered their tax rate.

HdL's position is that any taxing structure should be at or below a cumulative tax rate of 30% – including state and local taxes – to encourage legitimate sales and discourage the black market. The State imposes a 15% excise tax on all sales of cannabis. In addition all retail sales are subject to the usual sales tax charge of 9%. Should the City impose a 6% tax the total tax level would be 30%. In addition the City actually receives 1 cent of the 9 cent sales tax, so the effect City tax rate of 6% is actually a net 7% to the City based upon its share of sales tax revenue. Staff is recommending following this advice since other cities have lowered their cannabis tax rate in recent months.

Taxation can be assessed at multiple places in the cycle of cannabis. For example, the Council could choose to impose a percent of gross receipts – like sales tax (Retail Tax), a percent of dollar value of manufactured or shipped for all or certain uses (Manufacturing Tax), tax the square footage of a growing area or canopy (Canopy Tax), or a hybrid of each form.

Retail Tax: The retail tax is most like the application of sales tax and applies to the gross sales receipts of the business. Some jurisdictions have passed variable tax structures that create a ceiling and allow for taxes to be increased to up to a certain amount based on organizational needs and market demand. Assuming a 10% tax rate, a business with reported receipts of \$5,000,000 a year would generate \$500,000 in tax revenue.

Manufacturing or Processing Tax: This tax would assess the product value manufactured from the location. For example, if a 4% tax were levied and a business produced \$1,000,000 annually, the tax revenue would be \$40,000.

Canopy Tax: A canopy or cultivation tax would charge an annual tax based on the square footage of canopy grow, as opposed to total square feet of a building. In this model, if a canopy tax of \$10.00 per square foot were passed, a business of 7,500 total square feet with 5,000 square feet of canopy would pay \$50,000 annually.

Godbe Research polled likely voters in March of this year and found that 64.9% of respondents supported a tax on cannabis products with a ceiling of 15%. Due to the variation in the type of use, staff recommends a hybrid taxing structure of up to \$15.00 per canopy square foot (adjusted over time for inflation), up to 10% of gross receipts for all other cannabis business which would include retail sales, manufacturing and/or distribution facilities, and testing laboratories. The attached ordinance and resolution provide the specifics of the proposed cannabis tax structure and the proposed ballot language for a tax.

The cannabis excise tax rate for the State of California is 15%. Legislation was introduced this year to lower the excise rate by 4% which, if passed, would provide an opportunity to increase the local cannabis tax rate accordingly and stay within the recommended 30% cumulative tax rate. Council could ask voters to establish a variable tax rate with a ceiling above 6% to quickly respond to any fluctuations in the State's taxing structure or to adjust for market conditions or City needs. The attached ordinance contains the initial recommended tax rates.

Ballot Arguments and Impartial Analysis

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure for a cannabis tax. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the ROV by 5:00 p.m. on August 14, 2018, and rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on August 21, 2018. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal arguments.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one against each ballot measure will be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.

2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors of proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference as identified above, the Council may either;

1. Author an argument in favor of the measure as a whole body at the July 25, 2018 Council Meeting (subject to Brown Act considerations outlined in the next paragraph);
2. Authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of the City Council to sign the argument; or
3. Authorize up to two Councilmembers to author and sign the argument and have up to three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Morgan Hill community author the argument.

If the City Council decides to author an argument as a whole body, this could be accomplished in several ways in compliance with the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

Roles & Limitations During Ballot Measure Campaign Period

In order to be successful in securing voter approval of the measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money or effort advocating a position supporting passage of the ballot measure. Council members and staff can work on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not utilizing City resources.

Staff is requesting guidance concerning whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

If the measure is approved, the City Attorney is required to prepare an impartial analysis of the ballot measure. The impartial analysis would be included in the voter pamphlet

and must be submitted to the ROV by 5:00 p.m. on August 21, 2018.

Whether Full Text of Ordinance Should Be Included in Voter Pamphlet

Printing the full text of the ordinance in the voter pamphlet is not required and is cost prohibitive. The Council has the option of directing the full text of the ordinance to be printed in the voter pamphlet or including a statement following the impartial analysis that the full text is available by calling the elections official's office (City Clerk's Office) and requesting a copy at no cost. The text of the ordinance will also be posted on the City website.

CONCLUSION:

As directed by the Council, staff has prepared a draft ordinance for the cannabis business tax for the City Council to consider for submittal to the voters as Council initiated ballot measure on November 6, 2018. If the Council decides to submit a ballot measure to the voters, direction is needed regarding the ballot argument and an impartial analysis. After placing any measures on the ballot, the City cannot use public resources other than to provide basic factual information regarding these measures. Placing a tax on the ballot does not allow for the presence of cannabis in Morgan Hill. Council still must decide on what uses are allowable and their location, should the measure pass.

COMMUNITY ENGAGEMENT: Inform – Staff has used several mechanisms to inform the community about this issue to include workshops, staff reports, a community survey and this staff report.

ALTERNATIVE ACTIONS:

Council could choose to not place the taxation of cannabis on the ballot and cease further action to determine allowable uses.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 17, 2017, the Council held a workshop to discuss cannabis related policies; January 17, 2018, the Council considered a cannabis registration for personal cultivation and directed staff to conduct a community survey; February 7, 2018, the Council held a Cannabis Policy Workshop; April 18, 2018 Council received the report regarding the community survey on cannabis and Transit Occupancy Tax; and on May 16, 2018 Council directed staff to develop language to place a tax measure on the November 2018 ballot.

FISCAL AND RESOURCE IMPACT: Placing the measure on the ballot will cost approximately \$53,000 and will be paid from fund 010.2420.42231 – Elections, Contract Services, which is included in the 2018-19 Adopted Budget. If successful **and** if the Council choose to allow cannabis uses, the City could realize an increase in General Fund revenues. The amount of the increase is anticipated to be between approximately \$720,000 and \$2,500,000 dependent on several variables including types and number of uses and quantity of purchases or production.

CEQA (California Environmental Quality Act):

Not a Project: The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

LINKS/ATTACHMENTS:

1. Morgan Hill Cannabis Business Tax Resolution
2. Cannabis Ordinance
3. May 16, 2018 City Council Staff Report (weblink)
4. 16 Presentation Cannabis Tax
5. 16 Supplement 1
6. 16 Supplement 2 - Revised Resolution
7. 16 Supplement 3

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, cannabis businesses are likely to create demands upon City services if permitted;

WHEREAS, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”; and

WHEREAS, the Cannabis Business Tax cannot be imposed without voter approval; and

WHEREAS, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Exhibit “A” and incorporated herein by reference (the “Tax Ordinance”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes the Cannabis Business Tax.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday, November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

To fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, shall the City tax cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$720,000 to \$2,500,000 annually and will be levied until repealed by the voters?	YES	
	NO	

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 4 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the referendum may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption.

APPROVED and ADOPTED this 18th day of July, 2018.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

EXHIBIT A

EXHIBIT A**ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF MORGAN HILL,
CALIFORNIA ADDING CHAPTER 5.06 (CANNABIS
BUSINESS TAX) TO TITLE 5 OF THE MORGAN HILL
MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1. CODE AMENDMENT. Chapter 5.06 is added to Title 5 of the Morgan Hill Municipal Code to read as follows:

**CHAPTER 5.06
CANNABIS BUSINESS TAX**

Sections:

- 5.06.010 Title.
- 5.06.020 Authority and Purpose.
- 5.06.030 Intent.
- 5.06.040 Definitions.
- 5.06.050 Tax imposed.
- 5.06.060 Reporting and remittance of tax.
- 5.06.070 Payments and communications –timely remittance.
- 5.06.080 Payment – when taxes deemed delinquent.
- 5.06.090 Notice not required by City.
- 5.06.100 Penalties and interest.
- 5.06.110 Refunds and credits.
- 5.06.120 Refunds and procedures.
- 5.06.130 Personal cultivation not taxed.
- 5.06.140 Administration of the tax.
- 5.06.150 Appeal procedure.
- 5.06.160 Enforcement –action to collect.
- 5.06.170 Apportionment.
- 5.06.180 Constitutionality and legality.
- 5.06.190 Audit and examination of premises and records.
- 5.06.200 Other licenses, permits, taxes or charges.
- 5.06.210 Payment of tax does not authorize unlawful business.
- 5.06.220 Deficiency determinations.
- 5.06.230 Failure to report – nonpayment, fraud.
- 5.06.240 Tax assessment –notice requirements.
- 5.06.250 Tax assessment – hearing, application, and determination.
- 5.06.260 Relief from taxes-disaster relief.
- 5.06.270 Conviction for violation – taxes not waived.
- 5.06.280 Violation deemed misdemeanor.

- 5.06.290 Severability.
- 5.06.300 Remedies cumulative.
- 5.06.310 Amendment or repeal.

5.06.010 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

5.06.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

5.06.030 Intent.

The intent of this Ordinance is to levy a business tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted or is legal or illegal in the future. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

This ordinance was adopted by a vote of the people. The voter approved ballot measure allowed for a gross receipts tax of “up to ten (10)%”. This ordinance sets the gross receipts tax at 6%. Based upon voter authorization the gross receipts tax may be increased by the City Council up to no more than 10% in the future. The voter approved ballot measure allowed for a canopy tax of “not to exceed \$15.00”. This ordinance sets the canopy tax at various levels starting at \$10.00 per square foot and less for other types of growing operations. The City Council could increase the canopy tax up to the level of \$15.00 per square foot in the future.

5.06.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. “Business” shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

C. “Cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. “Cannabis product” also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. “Canopy” means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. “Cannabis business tax” or “business tax,” means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. “Commercial cannabis cultivation” means cultivation in the course of conducting a cannabis business.

H. “City permit” means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

K. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person

shall be deemed engaged in business within the City if:

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the City; or
5. Such person or person's employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

L. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. "Calendar year" means January 1 through December 31 of the following calendar year.

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business;

6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the year when they are recovered;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.06.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.

O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

Q. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

- R. “Sale” means and includes any sale, exchange, or barter.
- S. “State” means the State of California.
- T. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26050, *et seq.* or other applicable state law.
- U. “Tax Administrator” means the Finance Director of the City of Morgan Hill or his or her designee.
- V. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

5.06.050 Tax imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a cannabis business license or permit to operate lawfully in the City or is operating unlawfully. The City’s acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City’s approval or consent to such illegal operations.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - b. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - c. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business’s City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation

allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

2. For every person who engages in the operation of a testing laboratory: two percent (2%) of gross receipts.
 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): six percent (6%) of gross receipts.
 4. For every person who engages in a cannabis distribution business: four percent (4%) of gross receipts.
 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): four percent (4%) of gross receipts.
- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Through January 1, 2021, the maximum rate shall be:
 - i. Fifteen dollars (\$15.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - ii. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - iii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.

- b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-Hayward area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed ten percent (10%) of gross receipts.

5.06.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business’s canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.
- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

5.06.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

5.06.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.06.060 and 5.06.070.

5.06.090 Notice not required by the City.

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

5.06.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

5.06.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 5.06.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

5.06.120 Refunds and procedures.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from the date that the tax was paid.

5.06.130 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined in the “Medicinal and Adult Use Cannabis Regulation and Safety Act”. This Chapter shall not apply to personal use of cannabis that is specifically exempted from City and state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

5.06.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

5.06.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City’s Hearing Officer by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City’s Hearing Officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

5.06.160 Enforcement - action to collect.

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

5.06.170 Apportionment.

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

5.06.180 Constitutionality and legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

5.06.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

5.06.200 Other licenses, permits, taxes, fees or charges.

- A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any City Cannabis License, permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.
- B. Notwithstanding subdivision A of this Section a cannabis business shall not be required to pay the license fee required by Chapter 5.04 of Title 5 of this Code so long as all of business's activities within the City that would require payment of a license fee are activities subject to the cannabis business tax and the cannabis business tax exceeds the amount of the annual business tax for that particular cannabis business..
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 5.04 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 5.06.060.

5.06.210 Payment of tax does not authorize unlawful business.

- A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.
- B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

5.06.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall

be given to the person concerned in the same manner as notices of assessment are given under Section 5.06.240.

5.06.230 Failure to report—nonpayment, fraud.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;

2. If the person has not paid the tax due under the provisions of this Chapter;

3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or

4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

5.06.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

5.06.250 Tax assessment - hearing, application and determination.

Within thirty (30) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days of the receipt of any such

application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.06.240 for giving notice of assessment.

5.06.260 Relief from taxes -disaster relief.

A. If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

1. A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time.

B. The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a Federal or State declared disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster of such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City's Hearing Officer;

D. Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the Tax Administrator or the City Council, as applicable in order to allow the cannabis business time to recover from the Federal or State declared disaster;

E. The Tax Administrator or City Council, as applicable may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

F. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes which results in a Federal or State declaration of disaster.

5.06.270 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

5.06.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

5.06.290 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

5.06.300 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Morgan Hill Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

5.06.310 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Morgan Hill affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax or incrementally implement an increase authorized by this Chapter;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax;

D. Should the ballot approval by the voters include an amount for tax listed as up to a certain percentage or amount, when this ordinance sets a lower percentage or amount, the City Council may increase the rate to the maximum amount or percentage contained in the ballot approved by the voter; or

E. An increase in the tax on an annual basis of not more than the San Francisco – San Jose Cost of Living increase for the prior calendar year, starting the first day of January in the first full year after this measure is enacted by the voters. .

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk



Proposed Cannabis Business Tax Ordinance

David Swing, Chief of Police
David McPherson, HdL



Policy Considerations

- Should the City Council present a cannabis business tax to voters in the November 6, 2018 election?
- If so, what tax structure and amount should be used?



Background and Agenda

- Community split retail sales 48%
- New Cannabis Regulations permit delivery in local jurisdictions – without local pre-emption
- Tonight's item will:
 - Review ordinance
 - Review fiscal analysis
 - Recommend next steps

Draft Ordinance

- Covers many important issues
- Provides for taxation for legal and illegal (non-permitted) activities
- Provides for an appeal for relief from payment of taxes for declared disaster
- Defines the tax structure for various uses



Tax Structure

- Survey polled up to 15% tax rate on gross receipts for all uses
- Various taxation methodologies (retail, processing, canopy, testing)
- Goal is 30% cumulative tax rate or less (State/Local)
- Other jurisdictions:
 - Have used a hybrid approach
 - Some have recently lowered the tax rate
- High tax rate drives the black market and discourages investment

Tax Structure (continued)

- Taxation Methodologies
 - Retail Tax – places a percentage charge on gross receipts (specific or ceiling)
 - Could be set at multiple points for various uses
 - Manufacturing or Processing Tax – Assesses value of product shipped
 - Canopy Tax – Assesses square footage of grow area for cultivators
- Council can select one methodology or a hybrid for voters
- Tax rate can be set at or lower than ceiling

Proposed Initial Rates

INITIAL RATES

LICENSE TYPE	RATE
Cultivation: Indoor, artificial lighting	\$10.00 SF
Cultivation: Indoor, mix lighting	\$7.00 SF
Cultivation: Outdoor	\$2.00 SF
Cultivation: Nursery	\$1.00 SF
Testing Laboratory	2% GR
Retailer/Deliveries	6% GR
Distribution	4% GR
Manufacturing	4% GR

Proposed Maximum Rates

TOP-END RATES

LICENSE TYPE	RATE
Cultivation: Indoor, artificial lighting	\$15.00 SF
Cultivation: Indoor, mix lighting	\$10.00 SF
Cultivation: Outdoor	\$7.00 SF
Cultivation: Nursery	\$2.00 SF
Testing Laboratory	10% GR
Retailer/Deliveries	10% GR
Distribution	10% GR
Manufacturing	10% GR

Fiscal Analysis

RETAILERS

	Gross Receipts	# of Businesses	Total GR	6%	8%	10%
Scenario 1	\$2.5M	1	\$2.5M	\$150,000	\$200,000	\$250,000
Scenario 2	\$2.5M	2	\$5M	\$300,000	\$400,000	\$500,000
Scenario 3	\$2.5M	3	\$7.5M	\$450,000	\$600,000	\$750,000



Fiscal Analysis

CULTIVATION

	Avg. Sq. Ft.	# of Businesses	Total Sq. Ft.	\$10	\$12	\$15
Scenario 1	5,000	1	5,000	\$50,000	\$60,000	\$75,000
Scenario 2	5,000	2	10,000	\$100,000	\$120,000	\$150,000
Scenario 3	5,000	3	15,000	\$150,000	\$180,000	\$225,000



Fiscal Analysis

MICROBUSINESS

	Gross Receipts	# of Businesses	Total GR	4%	7%	10%
Scenario 1	\$2.5M	1	\$2.5M	\$100,000	\$175,000	\$250,000
Scenario 2	\$2.5M	2	\$5M	\$200,000	\$350,000	\$500,000
Scenario 3	\$2.5M	3	\$7.5M	\$300,000	\$525,000	\$750,000



Fiscal Analysis

Revenue Projections – All Businesses

	Retail	Cultivation	MicroBusiness	Testing
Conservative	\$150 - 250K	\$50 – 75K	\$100 – 250K	\$40 – 200K
Moderate	\$300 - 500K	\$100 – 150K	\$200 – 500K	\$80 – 400K
Aggressive	\$450 - 750K	\$150 - 225K	\$300 – 750K	\$120 – 300K



Ballot Arguments and Impartial Analysis

- If placed on the ballot, Council may:
 - Submit an argument in favor of the ordinance to be included in the voter pamphlet
 - Ask the City Attorney to provide an impartial analysis included in the voter pamphlet
 - Provide the full ordinance in the voter pamphlet or include the URL in the voter pamphlet



Staff Recommendation

- Hybrid tax approach
- Cannabis business tax not to exceed 10% on gross receipts on all uses except cultivation
- Propose a business tax on cultivation not to exceed \$15 per square foot of canopy
- Proposed ordinance has tax rates lower than the ceiling
 - \$10 Canopy, 6% Retail, 4% Production, 2% Testing
- Add delivery to the ballot language and ordinance with an initial tax rate of 6%

Actions Needed

- Open and close the public hearing
- Adopt a Resolution
- Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure
- Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument
- Determine whether to print the full text of the ordinance in the voter pamphlet
- Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters

Questions?





CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

APPROVE PROPOSED BALLOT MEASURE REGARDING THE TAXATION OF CANNABIS

RECOMMENDATION(S)

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a cannabis business tax ordinance and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

POLICY CONSIDERATIONS:

1. Should the City Council present a cannabis business tax to voters in the November 6, 2018 election to tax the cultivation, retail sale, distribution, testing and manufacture of medicinal or adult use of cannabis in Morgan Hill?
2. If so, what tax structure and amount should be used?

REPORT NARRATIVE:

Background

Since the passage of Proposition 64 in November 2016, Council has had two workshops, multiple updates, and conducted a statistically significant community survey to determine the impact and level of community support for cannabis sales in Morgan Hill. The results of the survey reflected a community that was evenly split on the concept of retail sales of cannabis for ~~medical marijuana~~ recreational use in Morgan Hill at 48.3% in support and 48.1% opposed. For ~~recreational~~ medical marijuana use, the

survey showed 61.3% in support and 36.7% opposed. Council directed staff at the May 16, 2018 Council meeting to return with a proposed ordinance and ballot language for a revenue measure for the November 6, 2018 election. Staff worked with David McPherson from HdL to prepare the attached proposed ordinance and tax structure.

Highlights of Draft Ordinance

5.06.030 – Intent: Describes the intent of the ordinance to impose a Cannabis Business Tax. This tax would apply to both legal and illegal businesses. For example, if a business was operating without proper permits, the City could still collect tax revenue.

5.06.050 – Tax Imposed: Identifies the tax imposed by type and amount.

5.06.260 – Relief from taxes – disaster relief: In the event of certain circumstances a business owner may request relief from taxes by appealing to the Tax Administrator or City Council.

Taxation Structure and Revenue

Local agencies may tax medicinal and recreational cannabis with voter approval for general fund purposes. The tax rate is set by the local agency and is not limited by statute. Other jurisdictions, who were early adopters of cannabis sales, have found that imposing a tax rate that is too high will inhibit legitimate purchases and encourages the existing black market to thrive. As a result, some of these cities and counties have lowered their tax rate.

HdL's position is that any taxing structure should be at or below a cumulative tax rate of 30% – including state and local taxes – to encourage legitimate sales and discourage the black market. The State imposes a 15% excise tax on all sales of cannabis. In addition all retail sales are subject to the usual sales tax charge of 9%. Should the City impose a 6% tax the total tax level would be 30%. In addition the City actually receives 1 cent of the 9 cent sales tax, so the effect City tax rate of 6% is actually a net 7% to the City based upon its share of sales tax revenue. Staff is recommending following this advice since other cities have lowered their cannabis tax rate in recent months.

Taxation can be assessed at multiple places in the cycle of cannabis. For example, the Council could choose to impose a percent of gross receipts – like sales tax (Retail Tax), a percent of dollar value of manufactured or shipped for all or certain uses (Manufacturing Tax), tax the square footage of a growing area or canopy (Canopy Tax), or a hybrid of each form.

Retail Tax: The retail tax is most like the application of sales tax and applies to the gross sales receipts of the business. Some jurisdictions have passed variable tax structures that create a ceiling and allow for taxes to be increased to up to a certain amount based on organizational needs and market demand. Assuming a 10% tax rate, a business with reported receipts of \$5,000,000 a year would generate \$500,000 in tax revenue.

Manufacturing or Processing Tax: This tax would assess the product value manufactured from the location. For example, if a 4% tax were levied and a business produced \$1,000,000 annually, the tax revenue would be \$40,000.

Canopy Tax: A canopy or cultivation tax would charge an annual tax based on the square footage of canopy grow, as opposed to total square feet of a building. In this model, if a canopy tax of \$10.00 per square foot were passed, a business of 7,500 total square feet with 5,000 square feet of canopy would pay \$50,000 annually.

Godbe Research polled likely voters in March of this year and found that 64.9% of respondents supported a tax on cannabis products with a ceiling of 15%. Due to the variation in the type of use, staff recommends a hybrid taxing structure of up to \$15.00 per canopy square foot (adjusted over time for inflation), up to 10% of gross receipts for all other cannabis business which would include retail sales, manufacturing and/or distribution facilities, and testing laboratories. The attached ordinance and resolution provide the specifics of the proposed cannabis tax structure and the proposed ballot language for a tax.

The cannabis excise tax rate for the State of California is 15%. Legislation was introduced this year to lower the excise rate by 4% which, if passed, would provide an opportunity to increase the local cannabis tax rate accordingly and stay within the recommended 30% cumulative tax rate. Council could ask voters to establish a variable tax rate with a ceiling above 6% to quickly respond to any fluctuations in the State's taxing structure or to adjust for market conditions or City needs. The attached ordinance contains the initial recommended tax rates.

Ballot Arguments and Impartial Analysis

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure for a cannabis tax. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the ROV by 5:00 p.m. on August 14, 2018, and rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on August 21, 2018. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal arguments.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one against each ballot measure will be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.

2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors of proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference as identified above, the Council may either;

1. Author an argument in favor of the measure as a whole body at the July 25, 2018 Council Meeting (subject to Brown Act considerations outlined in the next paragraph);
2. Authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of the City Council to sign the argument; or
3. Authorize up to two Councilmembers to author and sign the argument and have up to three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Morgan Hill community author the argument.

If the City Council decides to author an argument as a whole body, this could be accomplished in several ways in compliance with the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

Roles & Limitations During Ballot Measure Campaign Period

In order to be successful in securing voter approval of the measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money or effort advocating a position supporting passage of the ballot measure. Council members and staff can work on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not utilizing City resources.

Staff is requesting guidance concerning whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

If the measure is approved, the City Attorney is required to prepare an impartial analysis of the ballot measure. The impartial analysis would be included in the voter pamphlet

and must be submitted to the ROV by 5:00 p.m. on August 21, 2018.

Whether Full Text of Ordinance Should Be Included in Voter Pamphlet

Printing the full text of the ordinance in the voter pamphlet is not required and is cost prohibitive. The Council has the option of directing the full text of the ordinance to be printed in the voter pamphlet or including a statement following the impartial analysis that the full text is available by calling the elections official's office (City Clerk's Office) and requesting a copy at no cost. The text of the ordinance will also be posted on the City website.

CONCLUSION:

As directed by the Council, staff has prepared a draft ordinance for the cannabis business tax for the City Council to consider for submittal to the voters as Council initiated ballot measure on November 6, 2018. If the Council decides to submit a ballot measure to the voters, direction is needed regarding the ballot argument and an impartial analysis. After placing any measures on the ballot, the City cannot use public resources other than to provide basic factual information regarding these measures. Placing a tax on the ballot does not allow for the presence of cannabis in Morgan Hill. Council still must decide on what uses are allowable and their location, should the measure pass.

COMMUNITY ENGAGEMENT: Inform – Staff has used several mechanisms to inform the community about this issue to include workshops, staff reports, a community survey and this staff report.

ALTERNATIVE ACTIONS:

Council could choose to not place the taxation of cannabis on the ballot and cease further action to determine allowable uses.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 17, 2017, the Council held a workshop to discuss cannabis related policies; January 17, 2018, the Council considered a cannabis registration for personal cultivation and directed staff to conduct a community survey; February 7, 2018, the Council held a Cannabis Policy Workshop; April 18, 2018 Council received the report regarding the community survey on cannabis and Transit Occupancy Tax; and on May 16, 2018 Council directed staff to develop language to place a tax measure on the November 2018 ballot.

FISCAL AND RESOURCE IMPACT: Placing the measure on the ballot will cost approximately \$53,000 and will be paid from fund 010.2420.42231 – Elections, Contract Services, which is included in the 2018-19 Adopted Budget. If successful **and** if the Council choose to allow cannabis uses, the City could realize an increase in General Fund revenues. The amount of the increase is anticipated to be between approximately \$720,000 and \$2,500,000 dependent on several variables including types and number of uses and quantity of purchases or production.

CEQA (California Environmental Quality Act):

Not a Project: The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

LINKS/ATTACHMENTS:

1. Morgan Hill Cannabis Business Tax Resolution
2. Cannabis Ordinance
3. May 16, 2018 City Council Staff Report (weblink)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, cannabis businesses are likely to create demands upon City services if permitted;

WHEREAS, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”; and

WHEREAS, the Cannabis Business Tax cannot be imposed without voter approval; and

WHEREAS, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Exhibit “A” and incorporated herein by reference (the “Tax Ordinance”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes the Cannabis Business Tax.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday, November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Cannabis Business Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

<u>Shall the Morgan Hill ordinance, To fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, shall the City by taxing cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$720,000 to \$2,500,000 annually and will be levied until repealed by the voters, <u>be adopted</u>?</u>	YES	
	NO	

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the ~~County Clerk~~ Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the ~~County Clerk~~ Board of Supervisors.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section ~~34~~ above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ~~referendum ballot measure~~ may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

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Section 11. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California Adding Chapter 5.06 (Cannabis Business Tax) to Title 5 of the Morgan Hill Municipal Code. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov/>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

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Section 12. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

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Section 13. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

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The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

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Section 14. Effective Date. This Resolution shall be effective immediately upon adoption.

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Section 15. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

Section 11.

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PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

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<u>AYES:</u>	<u>COUNCIL MEMBERS:</u>
<u>NOES:</u>	<u>COUNCIL MEMBERS:</u>
<u>ABSTAIN:</u>	<u>COUNCIL MEMBERS:</u>
<u>ABSENT:</u>	<u>COUNCIL MEMBERS:</u>

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. __, adopted by the City Council at the meeting held on July 18, 2018.

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

DATE: _____

Attachment: 16 Supplement 2 - Revised Resolution (1840 : Taxation of Cannabis)

Irma Torrez, CITY CLERK
~~APPROVED and ADOPTED~~ this 18th day of July, 2018.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

EXHIBIT A

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City Council,

As stated before I encourage the city council to deny any and all business allowances, propositions, or permissions related to the cannabis industry in or around Morgan Hill.

The residual issues related to access to cannabis and the community's acceptance or tolerance of cannabis related industry in city areas has adverse impact on students and the community.

If the city were going to enable such businesses in the city, then I advise that the city council establish a regulation that no such industry business or retail establishment may be located within a mile of any school. In addition, I advise that half of all taxes collected by the city be designated to the school district for drug education and intervention programs.

Steve Betando

MHUSD



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

INCLUSIONARY HOUSING ORDINANCE

RECOMMENDATION(S)

1. Waive the First and Second Reading of the Ordinance; and
2. Introduce Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

Should the City Council consider adopting an Inclusionary Housing Ordinance (IHO)?

REPORT NARRATIVE:

Staff recommends the City Council adopt an Inclusionary Housing Ordinance (IHO) establishing a requirement for a minimum of 15% affordable housing units in all housing projects citywide, consistent with discussions with the Council, Planning Commission, and the Development Community regarding the new and changing State housing legislation, including rules for performance and accountability (the Housing Accountability Act), the City's assigned Regional Housing Needs Allocation (RHNA) Goals performance, and the relationship to the intricacies of the Residential Development Control System (RDCS), Measure "S".

The City's affordable housing efforts have historically derived from, and been guided by, the RDCS Program, Morgan Hill's voter-approved growth management system that limits the total amount of new population as well as the pace of new residential construction and encourages high-quality development that enhances residents' quality of life. The RDCS was first established in 1977 and has been extended and modified multiple times by voters since then. It has continued to serve as a tool to respond to diverse housing needs by implementing various policies to improve, preserve, and create safe quality rental and ownership housing in Morgan Hill for residents at all income levels. In partnership with private and non-profit developers, combined with efforts of the former Morgan Hill Redevelopment Agency, the City, utilizing RDCS, has

achieved a per capita housing diversity legacy which is rivaled by none. The City's housing portfolio consists of 14,415 housing units, of which 1,682 or nearly 12% (1 of every 8) are affordable and deed restricted. In addition, the City has over 800 mobile home units, which are affordable by design, and protected with limited rental increases by the City's 1988 Mobile Home Ordinance.

Morgan Hill has consistently set aside 20% of the available RDCS allocations on an annual basis, *in addition* to encouraging 8% of all residential projects to be affordable deed restricted units by providing points through the competition to projects during annual competition. The City has adjusted the 8% provision of RDCS over the years, generally ranging from 8 to 25%, based on the market conditions.

Although the City of Morgan Hill has proudly produced a significant amount of affordability per capita, it remains tasked with responding to changing legislation which requires deeper levels of affordability be produced in accordance with RHNA goals. This means that not only is the state setting goals for the number of units which represent the City's fair share of production, but is requiring the City to produce those housing units with affordability to specific extremely low, very low, low, and moderate-income families within a set time-frame. State law requires each local government in California to adopt a Housing Element as part of its General Plan demonstrating how the community plans to meet the existing and projected housing needs of people at all income levels. The current Housing Element cycle established by the State Housing and Community Development (HCD) is 2015-2022. HCD in collaboration with the Bay Area's Council of Government, and the Association of Bay Area Governments (ABAG), determines each community's housing fair share which numbers are distributed to individual cities based on State population projections and local conditions. These designations establish the Regional Housing Needs Allocation (RHNA) goal numbers.

The City of Morgan Hill has historically met its "overall" housing production numbers but, like most other cities in the State, has been unable to meet production as a function of affordability level. With the dissolution of redevelopment in 2011, these affordable housing efforts became out of reach for Morgan Hill and many other communities who lacked local funds to invest in affordable housing projects. For the current eight-year cycle (2015-2022), Morgan Hill's RHNA allocation is a total of 928 units, of which 612 or 66% of those units are required to be at Moderate Income levels or below. The City has to-date permitted 1,103 units and has an additional 456 units pledged in the pipeline. Including units pledged but not built, the City has exceeded every income level target, except the very low-income level. In this current cycle, if all the units currently pledged get constructed, the remaining housing goal need is 193 very low-income units, with building permits required to be issued by December 31 of 2022. The City has produced more than double the number of market rate units required.

Measure "S" allows a maximum of 215 units annually or 1,720 total to be permitted citywide during the 8-year cycle. Morgan Hill is unique because of these RDCS guidelines that require builders to compete two years prior to building and then "pace" the timing of construction so that no more than the permitted number of units begin construction during a given year. As such, the City is aware of the housing units that are

in the pipeline, *including affordable units*. The following summarizes the City's RHNA production to date and includes pledged units that have been awarded housing allocations through RDCS but have not yet started construction. This is both deed restricted and non-restricted units.

5th Cycle (2015 - 2023) Summary with Pledged Affordable Units

Morgan Hill	RHNA	Units Permitted	Units Pledged	Remaining / (Surplus)	% Complete
VLI	273	41	39	193	29.3%
LI	154	144	60	(50)	132.5%
Mod	185	84	357	(256)	238.4%
Above Mod	316	834	0	(518)	263.9%
TOTAL	928	1,103	456	(631)	168.0%

Where are we today?

Historically low State housing supplies, as well as recent changes to State housing laws, now require the City to re-double its affordable housing efforts. The latest economic boom has created what many have called a “housing crisis” statewide. On May 2, 2018, the City Council was presented with an informational packet providing an overview of new Housing Accountability Act requirements, and Morgan Hill's Regional Housing Needs Allocation (RHNA) housing goals. Additionally, the Council received a Keyser Marston and Associates (KMA) report, “Strategy for Increasing the Supply of Affordable Housing” and discussed a menu of options and policy considerations to increase affordable housing production at specific income levels, and the implications of modifications to the RDCS Program. The Council directed staff to take steps to prepare policy documents related to affordable housing accountability and production as well as an Inclusionary Housing Policy.

What is Inclusionary Housing?

Local inclusionary housing policies require the development of affordable homes for low- and moderate-income households in all market-rate housing projects. It is recommended that the City Council consider adopting an inclusionary housing policy of 15% for all market rate rental and ownership housing. This recommendation establishes 15% as the City baseline, with additional goals for up to 5% more affordable units recommended to be included within the RDCS tool for a total of 20%. Should the City Council decide to increase the inclusionary requirement percentage above 15%, the City could be subject to additional review and audit by state HCD. With the RDCS tool, the City can set development criteria to encourage up to 20% affordable, with a mix of the inclusionary ordinance and RDCS incentive and avoid additional state review.

Inclusionary housing policies require developers to set aside a certain percentage of housing units in newly constructed or rehabilitated projects for income qualified low- and moderate-income buyers/renters. In some cases, a developer may be allowed to pay a fee in-lieu of providing affordable housing onsite, which is used to create units off-site. By creating mixed-income developments, people from different socio-economic backgrounds are given the opportunity to access the same services and amenities, addressing federal fair housing obligations. Until recently, inclusionary housing law could be applied only to the development of “ownership” or for-sale housing in California, as determined by the Courts in *Palmer Sixth Street Properties v Los Angeles*. This changed effective January 1, 2018 when the new State law, AB 1505 (Bloom), went into effect. AB 1505 gave local jurisdictions legal authority to require that new rental developments also offer a proportion of their units at affordable rates. AB 1505 changed the law and nullified the Palmer decision and now permits inclusionary requirements for rental housing.

Inclusionary housing ordinances generally include alternative means of compliance, e.g. in lieu fees, off-site construction to provide maximum flexibility for program implementation. HCD may review certain ordinances adopted or amended after September 15, 2017, specifically if ordinances require more than 15% at 80% Area Median Income (AMI), if the jurisdiction failed to submit a general plan annual report, or if the jurisdiction failed to meet 75% of its share of above-moderate RHNA. Morgan Hill has satisfied both requirements in the current RHNA cycle.

Who is using Inclusionary Housing? Which cities in Santa Clara County have *not* adopted traditional inclusionary housing policies to date?

There are more than 880 inclusionary housing programs in 25 states. They serve large central cities and smaller suburban communities wherever housing prices are rising. Gilroy, Los Altos Hills, Monte Sereno, and Saratoga have not adopted traditional IHO. All ten of the other cities in the County have established inclusionary housing policies ranging from 5% to 15%, with 15% being the most common policy.

On June 21, 2018, the Santa Clara County Civil Grand Jury published a review of countywide affordable housing policy and performance in a report entitled “Affordable Housing Crisis, *Density is our Destiny*.” In that document the Grand Jury recommended that “inclusionary BMR percentage requirements should be increased to at least 15% in Gilroy, Los Altos, Los Gatos, Milpitas, Morgan Hill, Palo Alto, and Sunnyvale, by the end of 2019.”

What impact is it having?

Inclusionary housing will not solve the housing crisis alone, however inclusionary housing is one of several important sources of new affordable housing opportunities. Key components of a successful inclusionary housing ordinance include:

- A minimum of 15% of the units in approved projects restricted to lower-income households at 80% of Area Median Income (AMI) in rental and a minimum of 15% of the units in approved for-sale developments restricted to moderate-income households at 100% of AMI or 120% and below.

- Affordable homes that contain the same amenities as market rate units and are integrated into the development.
- Alternative compliance options that may include enabling developers to partner with nonprofit developers, pay an in-lieu fee, and/or build a standalone affordable development, allowing flexibility to achieve its RHNA goals.

Recommendation and General Requirements

The new requirements are proposed to include a combination of inclusionary requirements for residential projects of ten units or more, provide a steady stream of affordable housing units, and income to fund the provision of affordable housing projects across the City and the administration of such programs.

Provided is a general summary of the most significant provisions of the Inclusionary housing ordinance. For more information please review Ordinance Section 14.04–Inclusionary Housing. General Requirements:

- a. **Percentage Requirement.** Except as indicated below in Downtown projects, at least fifteen percent (15%) of all units in Residential Projects shall be Inclusionary Units that shall be made available at Affordable Rents or Affordable Sales Prices. Whenever a fractional number of required Inclusionary Units is 0.50 or greater, construction of the next higher whole number of Inclusionary Units shall be required, and where there is a fraction is 0.49 or less, payment of the applicable housing fee adopted by City Council shall be required for the fractional unit, as prescribed in Chapter 14.04, unless an alternative requirement is approved.
- b. **For-Sale Projects in Downtown.** All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within downtown are required to restrict ten percent (10%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- c. **For-Sale Projects Outside of the Downtown.** All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of downtown are required to restrict fifteen percent (15%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- d. **Rental Projects in Downtown.** All new rental Residential Projects consisting of two (2) or more Dwelling Units located within the downtown are required to restrict ten percent (10%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.

- e. Rental Projects Outside of the Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of downtown are required to restrict fifteen percent (15%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- f. Exceptions. The City Manager and or Community Development Director may grant exceptions to the requirements of this chapter to residential projects, upon a finding that such exception is necessary to effective implementation of the City's housing goals, while maintaining overall compliance with affordable housing production requirements set forth in Health and Safety Code Section 33413.
- g. Location and design of affordable units. All affordable units shall be reasonably dispersed throughout the project and shall be comparable to the design of the market-rate units in terms of distribution of model types, number of bedrooms, appearance, materials and finished quality of the market-rate units in the project consistent with the standards of the City's affordable Housing Ordinance. There shall not be significant identifiable differences between affordable units and market-rate dwelling units that are visible from the exterior of the dwelling units and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. Affordable units shall have the same access to project amenities and recreational facilities as market rate units. The City Manager and or the Community Development Director may grant exceptions to the requirements of this chapter to residential projects, upon a finding that such exception is necessary to effectively implement the City's affordable Regional Housing Needs Allocation goals and or to facilitate the creation of affordable housing.
- h. Eligibility requirements. No household shall be permitted to begin occupancy of an affordable unit unless the city or its designated administrator as referenced in the Below Market Rate (BMR) Program Administration Ordinance 2204 enacting Chapter 15.23, adopted by the City Council on June 15, 2016, has inspected the unit for consistency with plans and this Ordinance and subsequently accepted the unit.
- i. An applicant may elect, in lieu of building affordable units within a residential project, to satisfy the requirements by one of the following alternative modes of compliance: Rental units in for-sale projects, Off-site construction, Land dedication, and an in-lieu housing fee in specified circumstances.
- j. The pending Inclusionary Housing Guidelines and each Inclusionary Housing Agreement shall include provisions for the monitoring by the City of each Residential Development and each inclusionary Unit for compliance with the terms of Chapter 14.04.

NOTE: Pending City Council's decision, staff will return with "Implementation Guidelines"

and new Housing In- Lieu Fee ordinance consisting of new housing fees for both rental and ownership which reflect the increased percentage of production requirement of the inclusionary ordinance. The current housing fee is \$12.92 per square foot of a project's total livable space; however, this was created to correspond to the existing 8% affordability provision and thus will need to be adjusted to accommodate the City County's direction if the recommendation is supported.

COMMUNITY ENGAGEMENT: Inform

This report is intended to inform the public.

ALTERNATIVE ACTIONS:

The City Council may choose to not adopt the Inclusionary Housing Ordinance at 15%, to recommend a 20% IHO, and/or direct staff to return with alternatives.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- Beginning in May 2016, several Housing Workshops were held to discuss several elements of the City of Morgan Hill's Housing Program.
- May 2, 2016 City Council BMR Workshop
- June 15, 2016 City Council Meeting adopted a BMR Ordinance regulating administration of the Ownership Program
- June 15, 2016 KMA Housing In-lieu fee workshop with the development community
- June 22, 2016, KMA Housing In-lieu fee discussion with City Council
- November 1, 2016, Second KMA Housing In-lieu fee workshop with the development community
- April 19, 2017 Housing Program workshop with City Council to discuss the 8% annual percentage of affordable units in projects and the RDCS competition
- May 17, 2017 City Institutes a \$12.92 housing in-lieu fee (based on 8% affordability provision), per square foot of livable space of the entire project, effective with the Fiscal Year (FY) 2019-20 Residential Development Control System (RDCS), May 17, 2017
- February 7, 2018 City Council meeting, the Housing Team provided an update to the City's Housing Program and discussed new 2017 housing legislation impacts
- May 2, 2018 City Council meeting to discuss meeting the Housing Accountability Act requirements, Morgan Hill's Regional Housing Needs Allocation (RHNA) housing goals. Additionally, the Council received a KMA report, "Strategy for Increasing the Supply of Affordable Housing"

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this report.

CEQA (California Environmental Quality Act):

Adoption of this Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. Specifically, adoption of the Ordinance is consistent with and implements several policies and programs reviewed in the Morgan Hill 2035 Environmental Impact Report (EIR) for the General Plan Update,

which was certified and adopted on July 27, 2016 by Council Resolution No 16-128. No additional environmental analysis is warranted at this time. All future discretionary development that may be impacted by the proposed Ordinance will be subject to a project-specific CEQA analysis as part of the required planning entitlement review (e.g. Rezoning, Site and Architectural Review, Subdivision, etc.) to determine if there are any environmental impacts.

LINKS/ATTACHMENTS:

1. Inclusionary Housing Ordinance
2. 2017-2018 Santa Clara County Civil Grand Jury's Report on Affordable Housing (weblink)
3. 18 Presentation Inclusionary Housing
4. 18 Supplement 1
5. 18 Supplement 2

ORDINANCE NO. _____ NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING TITLE 14 “HOUSING” TO THE MORGAN HILL
MUNICIPAL CODE INCLUDING CHAPTER 14.04
“INCLUSIONARY HOUSING” THAT MANDATES 15
PERCENT AFFORDABLE HOUSING UNITS FOR NEW
RESIDENTIAL DEVELOPMENTS WITHIN THE CITY.**

WHEREAS, the Morgan Hill City Council desires to adopt a Citywide Inclusionary Housing Program to enhance the public welfare by establishing policies that require the development of housing affordable to households of very low-, low-, and moderate-incomes, enable the City to meet its share of regional housing needs, and implement the City’s Housing Element goals and objectives; and

WHEREAS, a Citywide Inclusionary Housing Program will assist in alleviating the lack of available residential land for affordable housing because market-rate development will be required to contribute to the provision of housing affordable for all segments of the Morgan Hill community; and

WHEREAS, a Citywide Inclusionary Housing Program will also assist in meeting the demand for housing affordable to very low-, low-, and moderate-income households caused by the service demands of new residents in market-rate residential units; and

WHEREAS, since 1977, the City has amassed one of the largest below market-rate (“BMR”) property portfolios in the State, and has established a BMR Program that provides affordable ownership and rental opportunities to low-income and moderate-income households; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish an Inclusionary Housing Ordinance and affordable housing fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City’s General Plan; and

WHEREAS, the Housing Element of the City’s General Plan, adopted by the City Council on February 28, 2015, and approved by the Department of Housing and Community Development on April 21, 2015, includes the following housing policies and actions in support of the creation of an Inclusionary Housing Ordinance:

- Policy HE-1c: RDCS Allocations
- Policy HE-1d: Variety of Housing
- Policy HE-1h: Affordable Housing Strategy Implementation
- Policy HE-1i: Flexible Housing
- Policy HE-1j: New Market-Rate Developments

- Policy HE-1l: Incentives for Affordable Developments
- Policy HE-1q: Affordable Housing

WHEREAS, the Legislature recently enacted Assembly Bill 1505, which restores the authority of local governments to impose inclusionary housing requirements on residential rental housing, and the City intends to codify an Inclusionary Housing Program for both ownership and rental housing; and

WHEREAS, the proposed Ordinance requires developers of market-rate for-sale and rental residential projects of two (2) or more units to provide fifteen percent (15%) of the units at affordable rents or affordable sales prices; and

WHEREAS, the City Council adopted Resolution No. 16-018 on February 3, 2016, reaffirming the City of Morgan Hill's commitment to affordable housing; and

WHEREAS, the City Council adopted an ordinance on June 1, 2016 adding Chapter 15.23 Below Market-Rate (BMR) Program Administration to Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code; and

WHEREAS, at its meeting of May 2, 2018, the City Council considered the "Strategy for Increasing the Supply of Affordable Housing" dated March 28, 2018 and prepared by Keyser-Marston Associates, Inc., which included adoption of an Inclusionary Housing Ordinance as one of the recommended strategies.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 14 is hereby added the Morgan Hill Municipal Code as follows.

TITLE 14 - HOUSING

Chapter 14.04 - INCLUSIONARY HOUSING

- 14.04.010 Findings.**
- 14.04.020 Purpose.**
- 14.04.030 Definitions.**
- 14.04.040 General Requirements.**
- 14.04.050 Time of Performance.**
- 14.04.060 Continued Affordability and City Review of Occupancy.**
- 14.04.070 Alternatives.**
- 14.04.080 Use of In-Lieu Housing Fees.**
- 14.04.090 Waiver of Requirements.**
- 14.04.100 Enforcement.**
- 14.04.110 Monitoring.**

14.04.010 - Findings.

The City Council finds that:

- A. Housing prices and rents in the City of Morgan Hill have increased at a significantly higher rate than general wages. The lack of affordable housing forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion throughout Santa Clara County. The lack of affordable housing has made it more difficult to recruit workers, potentially affecting the economic vitality of the City. New housing developments do not provide an adequate supply of housing affordable to Low- and Moderate-Income Households.
- B. Rental and owner-occupied housing in Morgan Hill has become steadily more expensive. Although Morgan Hill has historically met its Regional Housing Needs Allocation goals, in recent years, housing costs have escalated sharply, increasing faster than incomes. As a result, there is a severe shortage of adequate, affordable housing for Extremely Low-, Very Low-, Low-, and Moderate-Income Households.
- C. In order to meet the needs of Morgan Hill households, residential developments will need to provide housing for a variety of household types of a range of incomes and ages. The Inclusionary Housing Ordinance codified in this Title will substantially advance the City's interest in providing additional rental and ownership housing affordable to all income levels and dispersed throughout the City.
- D. Continued new housing development that does not include housing for Low- and Moderate-Income Households will further contribute to the current shortage of affordable housing by reducing the small remaining supply of undeveloped land.
- E. On February 18, 2015, the City Council approved the City's Housing Element, a chapter of the General Plan which includes strategies to build new housing to meet the full range of future community housing needs, including affordable and accessible housing.
- F. Implementation of the Inclusionary Housing Ordinance is a necessary part of the City's efforts to meet its Regional Housing Needs Allocation goals and obligations. Pursuant to the Ordinance, at least fifteen percent (15%) of the units in a new housing development of two (2) or more units will be required to be price or rent-restricted and available for occupancy by Low- and Moderate-Income households. In some circumstances, developers will have an option to provide Inclusionary Units off-site or to pay an in-lieu housing fee.

14.04.020 - Purpose.

The purpose of this Chapter is to further the City's efforts to require housing available to Extremely Low-Income, Very Low-Income, Low-Income and Moderate-Income Households. The Housing Element of the City's General Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

Providing the Inclusionary Units required by this Chapter will help to ensure that part of Morgan Hill's remaining developable land is used to provide affordable housing to encourage an

economically balanced community. Requiring builders of new market-rate housing to include some housing affordable to households at a range of incomes is consistent with the goal of fostering an adequate supply of housing for persons at all income levels, and serves the goal of mixed-income housing.

The Inclusionary Housing Ordinance is required in order to promote and protect the public health, safety, and general welfare while preserving and enhancing economic diversity and inclusiveness within the City.

14.04.030 - Definitions.

When used in this Chapter, the following terms shall have the meaning set forth below:

1. **"Affordable Ownership Cost"** means average monthly housing costs during the first calendar year of a household's occupancy, including mortgage principal and interest payments, mortgage insurance fees, if any, property taxes, reasonable allowances for utilities and property maintenance and repairs, homeowners insurance, and homeowners' association dues that in the aggregate do not exceed thirty five percent (35%) of the applicable income limit for Eligible Households for a particular Inclusionary Unit that is a for-sale unit.
2. **"Affordable Rent"** means a monthly rent and utility allowance that does not exceed the limits as defined in Section 50053 of the California Health and Safety Code, as may be amended from time-to-time.
3. **"Affordable Sales Price"** means a sales price that will result in an Affordable Ownership Cost for an Eligible Household of the applicable income limit for an Inclusionary Unit that is a for-sale unit, and that does not exceed the limits as defined in Section 50052.5 of the California Health and Safety Code, as may be amended from time-to-time.
4. **"Applicant"** means a person or entity who applies for approvals for a Residential Project, and if the applicant does not own the property on which the Residential Project is proposed, also means the owner or owners of the property.
5. **"Area median income" or "AMI"** means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).
6. **"Assumed Household Size"** means, for the purpose of establishing Affordable Sales Prices and Affordable Rent, a household with a total number of members equal to the number of bedrooms in the Dwelling Unit, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and subject to applicable federal rules (if any). For example, the assumed household size for a 3-bedroom home is a 4-person household.
7. **"Building Permit"** means full structural building permits as well as partial permits such as foundation-only permits.

8. **“Certificate of Occupancy”** means that construction is complete and the City Building Official or his or her designee has signed off the “Residential Dwelling Occupancy Approval” on the backside of the City of Morgan Hill Building Permit Card.
9. **“City Manager”** means the City Manager of Morgan Hill or his or her designee.
10. **“Contiguous”** means any parcel of land that is:
 - a. Touching another parcel at any point;
 - b. Separated from another parcel at any point only by a public right-of-way, private street or way, or public or private utility, service, or access easement; or
 - c. Separated from another parcel only by other real property of the Applicant which is not subject to the requirements of this Chapter at the time of the Planning Permit application by the Applicant.
11. **“Density Bonus”** means an increase in the number of units permitted in a proposed residential project provided pursuant to the State Density Bonus Law as set forth in Section 65915 *et seq.* of the California Government Code, as amended.
12. **“Downtown”** means the geographical area as depicted in Figure CNF-2 of the General Plan.
13. **“Dwelling Unit”** means a residential unit consisting of one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities.
14. **“Eligible Household”** means a household whose Gross Annual Household Income does not exceed the applicable maximum for a given Inclusionary Unit.
15. **“Extremely Low-Income Household”** means a household with a Gross Annual Household Income that does not exceed 30% of AMI for Santa Clara County. This definition corresponds to the definition of extremely low-income household used for state- and federally-assisted housing programs. Extremely Low-Income Households are a subset of Very Low-Income Households.
16. **“First Approval”** means the first of the following approvals to be issued with respect to a Residential Project: building permit, planned development permit, tentative parcel map, tentative subdivision map, conditional use permit, site and architectural review permit, or other discretionary City land use approval.
17. **“For-sale project”** means a Residential Project, or portion thereof, that is intended to be sold to owner-occupants upon completion.
18. **“Gross Annual Household Income”** means the combined adjusted gross (pre-tax) income of all adult persons in a household who is an Applicant for an Inclusionary Unit, or who are residing in an Inclusionary Unit, as calculated pursuant to the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.

19. **"Inclusionary Affordable Housing Agreement"** means an agreement between the City and an Applicant, governing how the Applicant will comply with this Chapter.
20. **"Inclusionary Unit"** means a Dwelling Unit that pursuant to this Chapter is required to be rented at an Affordable Rent or sold at an Affordable Sales Price to Extremely Low-, Very Low-, Low-, or Moderate-Income Households as applicable.
21. **"In-Lieu Fee"** means the fee payable pursuant to this Chapter as an alternative to the construction of on-site Inclusionary Units.
22. **"Low-Income Household"** means a household with a Gross Annual Household Income between 51% and 80% of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
23. **"Market-Rate Unit"** means a Dwelling Unit offered on the open market at the prevailing market-rate for purchase or rental.
24. **"Moderate-Income Household"** means a household with a Gross Annual Household Income between 81% and 120% of AMI for Santa Clara County. This definition corresponds to the definition of moderate-income household for state-assisted housing programs.
25. **"Regional Housing Need Allocation" (RHNA)** means the State of California mandated process that identifies the total number of housing units by affordability level that each jurisdiction must accommodate in its Housing Element.
26. **"Rental Project"** means a Residential Project, or portion thereof, that is intended to be rented to tenants upon completion.
27. **"Residential Project"** means a project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a permit for construction, and that will include two (2) or more Dwelling Units. "Residential Project" also includes developments on Contiguous lots for which applications are filed by the same property owner or Applicant and that will include two (2) or more Dwelling Units.
28. **"Very Low-Income Household"** means a household with a Gross Annual Household Income that does not exceed 50% of AMI for Santa Clara County. This definition corresponds to the definition of very low-income household used for state- and federally-assisted housing programs. Very Low-Income Households are a subset of Low-Income Households.

14.04.040 - General Requirements.

- A. Percentage Requirement. Except as provided in paragraphs B and D of this Section, at least fifteen percent (15%) of all units in Residential Projects shall be Inclusionary Units that shall be made available at Affordable Rents or Affordable Sales Prices as prescribed in this Section. The Inclusionary Units shall be approved, and construction of the Inclusionary Units shall be completed not later than the times prescribed in Section 14.04.050 of this Chapter, unless an alternative requirement is approved pursuant to Section 14.04.070 of this Chapter.

Whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, if the fraction is 0.50 or greater, construction of the next higher whole number of Inclusionary Units shall be required, and where the fraction is 0.49 or less, payment of the applicable housing fee adopted by City Council shall be required for the fractional unit.

- B. For-Sale Projects in Downtown. All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- C. For-Sale Projects Outside of Downtown. All new for-sale Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for sale at Affordable Sales Prices to Moderate-Income Households. Such Dwelling Units must be sold to Eligible Households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five (45) years.
- D. Rental Projects in Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within Downtown are required to restrict ten percent (10%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- E. Rental Projects Outside of Downtown. All new rental Residential Projects consisting of two (2) or more Dwelling Units located within the City but outside of Downtown are required to restrict fifteen percent (15%) of the Dwelling Units for rent at Affordable Rents and occupancy by Low-Income and Very Low-Income Households. Such Dwelling Units must be occupied by, or if vacant, available for occupancy by Eligible Households, and such restrictions shall be documented in a recorded Inclusionary Affordable Housing Agreement with a term of fifty-five (55) years. At least one-half of the required Inclusionary Units shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- F. Location and Design of Inclusionary Units. All Inclusionary Units shall be reasonably dispersed throughout the Residential Project, and shall be comparable to the design of the market-rate units in the Residential Project in terms of distribution of model types, number of bedrooms, appearance, materials and quality of finishes. There shall not be significant identifiable differences between Inclusionary Units and market-rate dwelling units that are visible from the exterior of the dwelling units, and the size and design of the dwelling units

shall be reasonably consistent with the market-rate units in the development. Occupants of Inclusionary Units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.

- G. For-sale Projects. Inclusionary Units that will be offered for sale shall be sold for owner-occupancy at an Affordable Sales Price to Moderate-Income Households that qualify as Eligible Households.
- H. Rental projects. The Inclusionary Units that are constructed in market-rate Rental Projects shall be offered for rent to Eligible Households at Affordable Rents to Low- and Very Low-Income Households. At least one-half of the required Inclusionary Units in Rental Projects, shall be offered at Affordable Rents exclusively to Very Low-Income Households.
- I. Exceptions. The affordability levels required for a Residential Project may be modified by written agreement between the City and the Applicant upon a finding that such modification is necessary to effectively achieve the City's RHNA goals in the then-current housing element cycle.

14.04.050 - Time of performance.

- A. An application for First Approval of a Residential Project will not be deemed complete until the Applicant has submitted plans and proposals that demonstrate how the Applicant proposes to meet requirements of this Chapter, including any plans for the construction of on-site units pursuant to Section 14.04.040 of this Chapter or the Applicant's proposal for an alternative means of compliance pursuant to Section 14.04.070, of this Chapter.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the First Approval for a Residential Project. Additional conditions may be imposed on later City approvals or actions, including without limitation planned development permits, tentative parcel maps, tentative subdivision maps, conditional use permits, site and architectural review permits, or building permits. The conditions of approval included with the First Approval of the Residential Project shall further provide that prior to the recordation of the parcel map or final map in the case of subdivisions and/or prior to the issuance of building permits in the case of all other land use permits to which this Chapter applies, the Applicant shall enter into an Inclusionary Affordable Housing Agreement prepared by the City Attorney and approved by the City Manager that contains specific requirements implementing the conditions of approval including, but not limited to, as applicable, the number of Inclusionary Units, the level(s) of affordability, the location and type of Inclusionary Units, timing of construction of Inclusionary Units in relation to the construction of the Market-Rate units contained in the development, marketing and selection of tenants and homebuyers, and the amount of the In-Lieu Fee, if any. The Inclusionary Affordable Housing Agreement may be amended by the parties, provided the amendment is consistent with the condition of approval imposed as part of the First Approval and the then-existing City approvals. If such proposed amendment is minor or technical in nature, the City Manager shall have authority to approve or disapprove the amendment on behalf of the City. If such proposed amendment makes a substantive or material change to the Inclusionary Affordable Housing Agreement, such amendment shall be effective only following notice and hearing and such other procedures as may be required by law, and approval by the City department that issued the First Approval for the project.

- C. No building permit shall be issued for any Market-Rate unit until the Applicant has obtained permits for Inclusionary Units sufficient to meet the requirements of Section 14.04.040 of this Chapter, or received approval of an alternative requirement under Section 14.04.070 of this Chapter. No final inspection for occupancy for any Market-Rate unit shall be completed until the Applicant has constructed the Inclusionary Units required by Section 14.04.040 of this Chapter, or completed corresponding alternative performance under Section 14.04.070 of this Chapter. The time requirements set forth in this subsection for issuance of building permits for Market-Rate units and for final inspections for occupancy for Market-Rate units may be modified to accommodate phasing schedules, model variations, or other factors in a Residential Project, if the City determines this will provide greater public benefit.

14.04.060 - Continued affordability and City review of occupancy.

- A. Term of affordability—For-sale projects. A resale restriction, covenant, deed of trust and/or other documents in form prepared by the City Attorney, shall be recorded against each Inclusionary Unit that is a for-sale unit. These documents shall have an initial term of forty-five (45) years, and shall be renewed upon each change of title to the Inclusionary Unit. The resale restriction, or other documents required by this subsection, and any change in the form of any such documents, shall be approved by the City Manager or his or her designee prior to execution and recordation of such document. The City shall be a party to the resale restriction or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- B. Term of affordability—Rental projects. A regulatory agreement, covenant, deed of trust, and/or other documents prepared by the City Attorney, shall be recorded against each Residential Project that contains Inclusionary Units that are rental units. These documents shall have a term of fifty-five (55) years. The regulatory agreement and other documents required by this subsection, shall run with the land and shall not be affected by the sale of the property or units in the project. The regulatory agreement and other documents required by this subsection, and any modification to such document, shall be approved by the City Manager or his or her designee and approved as to form by the City Attorney, prior to execution and recordation of such document. The City shall be a party to the regulatory agreement or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein.
- C. Eligibility requirements. No household shall be permitted to begin occupancy of an Inclusionary Unit unless the City or its designated administrator as referenced in the Below Market-Rate (BMR) Program Administration Ordinance 2204, Chapter 15.23, Section 15.23.040, Duties of Program Administrator, has approved the household's eligibility. If the City or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of Inclusionary Units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or his or her designee.
- D. Below Market-Rate (BMR) Program Administration. Ordinance No. 2204, Chapter 15.23 of Title 15 of the Morgan Hill Municipal Code, is hereby incorporated, including but not limited to, Section 15.23.010 Purpose, 15.23.020 Definitions, 15.23.030 Applicability, 15.23.040 Duties of Program Administrator, 15.23.050 Occupancy and Sale Restrictions, 15.23.060

Affordable Housing Agreement, 15.23.070 Approved Program Participants and Vendors, 15.23.080 Default, Foreclosure, Loss of Units, 15.23.090 Annual Report, and 15.23.095 Enforcement.

14.04.070 - Alternatives.

In lieu of building Inclusionary Units within a Residential Project, an Applicant may propose to satisfy the requirements of this Chapter by one of the following alternative modes of compliance, provided that the Applicant includes such proposal in its application for the First Approval of the Residential Project, and further provided that the criteria stated in the relevant subsection below are satisfied.

- A. Rental units in for-sale projects. Where owner-occupied Inclusionary Units are required by Section 14.04.040 of this Chapter, an Applicant may instead elect to construct as part of the Residential Project the same or a greater number of rental units, affordable to Extremely Low-, Very Low-, Low- and Moderate-Income Households in the proportions and at the rents as prescribed in Section 14.04.030 of this Chapter. Substitution of rental units shall be allowed under this subsection only if either: (1) the rental units are at least equal in number of bedrooms to the owner-occupancy units that would have been allowed, or (2) any comparative deficiency in the number of bedrooms is compensated for by additional units and/or affordability to households with lower incomes.
- B. Off-site construction. An Applicant may propose to construct, or make possible construction by another developer, units that will not be physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the City determines this will provide greater public benefit). Off-site construction pursuant to this subsection shall be approved only if:
 1. An Inclusionary Affordable Housing Agreement acceptable to the City Manager or his or her designee that requires an equal or greater number of Inclusionary Units as required under Section 14.04.040 of this Chapter is recorded;
 2. Approval has been secured for the off-site units not later than the time the Residential Project is approved, and completion of the off-site units is secured by a requirement that Certificates of Occupancy for the related Market-Rate units will be issued after Certificates of Occupancy have been issued for the Inclusionary Units, provided that the time requirements set forth in this subsection for final inspections for occupancy for Market-Rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors, if the City determines this will provide greater public benefit;
 3. The off-site units will be greater in number, larger, or will be affordable to households with lower incomes than would otherwise be required by Section 14.04.040 of this Chapter;
 4. Financing or a viable financing plan is in place for the off-site units;

5. If the off-site units receive any public assistance, the developer of the market-rate project will contribute economic value to the off-site units equivalent to the cost that would have been incurred to provide the required number of Inclusionary Units on-site in the Residential Project; and
 6. The City may require that completion of off-site units shall be further secured by the developer's agreement to pay an In-Lieu Fee in the amount approved by City Council in the event the off-site units are not timely completed.
- C. Land dedication. An Applicant may propose to dedicate without cost to the City, a lot or lots within or contiguous to the Residential Project, sufficient to accommodate at least the required Inclusionary Units for the Residential Project. An election to dedicate land in lieu of compliance with other provisions of this Chapter shall be allowed only if:
1. The value of the lot or lots to be dedicated is sufficient to make development of the otherwise required Inclusionary Units economically feasible, and financing or a viable financing plan is in place for at least the required number of Inclusionary Units; and
 2. The lot or lots are zoned for and suitable for construction of affordable housing at a feasible cost, served by utilities, streets and other infrastructure; there are no hazardous materials present or other material constraints on development of affordable housing on the lot or lots; and land use approvals have been obtained as necessary for the development of the Inclusionary Units on the lot or lots.
- D. In-lieu housing fee. For Residential Projects for which a Residential Detached Low General Plan Land Use designation (allowing up to four (4) dwelling units per acre) (10,890 sf lots) applies; for Residential Projects of four Dwelling Units or less; and as provided in Section 14.04.040A, whenever application of the requirements of this Chapter results in a fractional number of required Inclusionary Units, where the fraction is 0.49 or less; the Applicant may elect to pay an In-Lieu Fee, instead of developing the Inclusionary Units required in Section 14.04.040 of this Chapter, pursuant to the requirements set forth below in this subsection.
1. The initial In-Lieu Fee schedule shall be set by City Council resolution or other action of the City Council so that the fee amounts are not greater than the difference between: (a) the amount of a conventional permanent loan that an Inclusionary Unit would support based on the Affordable Rent or Affordable Sales Price for the Inclusionary Unit; and (b) the estimated total development cost of a prototypical Inclusionary Unit.
 2. The City Council may annually review the fees authorized by this subsection by resolution, and may, based on that review, adjust the fee amount. For any annual period during which the City Council does not review the fee authorized by this subsection, fee amounts shall be adjusted once by the City Manager or his or her designee based on the construction cost index.
 3. In-Lieu Fees shall be calculated based on the fee schedule in effect at the time the fee is paid. In-Lieu Fees shall be paid prior to issuance of building permits for

Market-Rate units in a Residential Project. If building permits are issued for only part of a Residential Project, the fee amount shall be based only on the number of units then permitted. Where payment is delayed, in the event of default or for any other reason, the amount of the In-Lieu Fee payable under this subsection shall be based upon the fee schedule in effect at the time the fee is paid.

14.04.080 - Use of in-lieu fees.

- A. All In-Lieu Fees collected pursuant to this Chapter shall be deposited into a separate account to be designated as the City of Morgan Hill Housing In-Lieu Fee Fund.
- B. The In-Lieu Fees collected pursuant to this Chapter, and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the City through acquisition, construction, development assistance, rehabilitation, financing, rent subsidies, or other methods, and for costs of administering programs that serve those ends. The housing assisted with such funds shall be of a type, or at an affordability level, for which there is a need in the City and that is not adequately supplied by private development

14.04.090 - Waiver of requirements.

Notwithstanding any other provision of this Chapter, the requirements of this Chapter shall be waived, adjusted, or reduced if the Applicant demonstrates that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. To receive a waiver, adjustment or reduction under this Section, the Applicant must file a written request together with the development application(s) when applying for a First Approval for the Residential Project, and/or as part of any appeal that the City provides as part of the process for the First Approval. The written request shall provide substantial evidence showing that applying the requirements of this Chapter would take property in violation of the constitutions of the United States or the State of California or would otherwise result in an unconstitutional application of this Chapter. The City may assume that: (a) the Applicant will provide the most economical Inclusionary Units feasible meeting the requirements of this Chapter; and (b) the Applicant is likely to obtain housing subsidies when such funds are reasonably available. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this Section.

14.04.100 - Enforcement.

- A. The City Council may adopt guidelines, by resolution, to assist in the implementation and administration of all aspects of this Chapter.
- B. The City shall be authorized to enforce the provisions of this Chapter and all Inclusionary Affordable Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceeding or method permitted by law.
- C. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any Applicant or owner from the requirements of this Chapter.

- D. The remedies provided for in this Chapter shall be cumulative and not exclusive, and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- E. The City shall evaluate the effectiveness of the Ordinance codified in this Title, for review by the City Council, five (5) years after the operative date of this Title.
- F. No permit, license, map, or other approval or entitlement for a Residential Project shall be issued, including without limitation a final inspection or Certificate of Occupancy, until all applicable requirements of this Chapter have been satisfied.

14.04.110 - Monitoring.

The Inclusionary Housing Guidelines adopted or to be adopted by the City, and each Inclusionary Affordable Housing Agreement shall include provisions for monitoring by the City of each Residential Project and each Inclusionary Unit for compliance with the terms of this Chapter, the Inclusionary Housing Guidelines, and the applicable Inclusionary Affordable Housing Agreements. The City and/or its designated administrator shall also monitor and submit compliance reports to governmental agencies as required by law. Such provisions shall require property owners to submit annual compliance reports to the City and/or its administrator, and shall authorize the City or its administrator to conduct periodic on-site inspections and audits to ensure compliance with all applicable laws, policies, and agreements. The City Council may adopt fees to cover the City's costs of monitoring and compliance. Such fees shall be payable by the property owner and shall be deposited into the City's Housing In-Lieu Fee Fund.

14.04.120 - On-Site Inclusionary Housing Incentives.

A. The developer of a Residential Project providing all required Inclusionary Units on the same site as the Market-Rate units may, at the developer's option and concurrently with the submittal of the Affordable Housing Plan and the earlier of the zoning or Planning Permit application, submit a written request for one or more of the following on-site inclusionary housing development incentives:

1. Density Bonus. The Residential Project may receive a density bonus if the Residential Project includes affordable units in accordance with the threshold requirements for density bonus pursuant to California Government Code Section 65915 *et seq.* For Residential Projects qualifying for a density bonus pursuant to this subsection, the City shall, upon request of the Applicant at the time of application for the First Approval, authorize a density bonus in the amount specified in California Government Code Section 65915 *et seq.* unless such a density bonus would cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment. The City shall not provide any other incentives or concessions, other than those listed in this Section 14.04.120, in addition to such density bonus unless otherwise required by law.

2. Reduction in Minimum Setback Requirements. The Developer may request a reduction in the minimum setback requirements for the Residential Project, provided such reduction will not cause an adverse impact to the public health, safety and welfare, including but not limited to historic or natural resources, or the environment.

3. Alternative Unit Type. The Developer may request to provide Inclusionary Units that are of a different unit type than the Market-Rate units to be constructed within the Residential Project; provided however, the Inclusionary Units shall have the same bedroom count in the same percentage distribution as the Market-Rate units.

4. Alternative Interior Design Standards. The Developer shall provide the same amenities within the Inclusionary Units as provided in the Market-Rate units, but may request to provide different but functionally equivalent amenities for the Inclusionary Units; provided however, residents of Inclusionary Units shall have access to all common areas of the Residential Project equal to the access provided to residents of Market-Rate units.

SECTION 2. The Development Standards considered and adopted by Resolution of the City Council of the City of Morgan Hill at its regular meeting of July 18, 2018, as such Development Standards may be amended, are hereby incorporated by this reference.

SECTION 3. Adoption of this Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City; specifically, adoption of the Ordinance is consistent with and implements several policies and programs reviewed in the Morgan Hill 2035 Environmental Impact Report (EIR) for the General Plan Update, which was certified and adopted on July 27, 2016 by Council Resolution No 16-128. No additional environmental analysis is warranted at this time. All future discretionary development that may be impacted by the Ordinance will be subject to a project-specific CEQA analysis as part of the required planning entitlement review (e.g. Rezoning, Site and Architectural Review, Subdivision, etc.) to determine if there are any environmental impacts.

SECTION 4. 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 5. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF JULY 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF ____, 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:

 STEVE TATE, Mayor

ATTEST:

DATE:

 IRMA TORREZ, City Clerk

Effective 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 ____th day of _____ 2018.

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

DATE: _____

 IRMA TORREZ, City Clerk



INCLUSIONARY HOUSING



Inclusionary Housing

Local Inclusionary housing policies require the development of affordable homes for low and moderate income households in all market-rate housing projects.

Proposed:

- 15% Inclusionary Citywide
- 10% Inclusionary Downtown

Inclusionary Housing in Morgan Hill

18.c



- Housing Accountability Act
- Regional Housing Needs Allocation Goals
- Residential Development Control System (RDCS), Measure S

RHNA SUMMARY 2015-2022

WITH PLEDGED AFFORDABLE UNITS TO DATE

Morgan Hill	RHNA	Units Permitted	Units Pledged	Remaining/ (Surplus)	% Complete
VLI	273	41	39	193	29.3%
LI	154	144	60	(50)	132.5%
Mod	185	84	357	(256)	238.4%
Above Mod	316	834	0	(518)	263.9%
TOTAL	928	1,103	456	(631)	168.0%

Proposed Requirements

For-Sale Projects in Downtown: 2 or more Units, restrict 10% of the Units at Affordable Sales Prices to Moderate-Income Households (45-year term)

Rental Projects in Downtown: 2 or more Units, restrict 10% of the Units for Low-Income and Very Low-Income Households, at least one-half of the required Inclusionary Units to be offered at Affordable Rents exclusively to Very Low-Income, (55 year term)

For-Sale Projects Outside of the Downtown: 2 or more Units, required to restrict 15% of the Units at Affordable Sales Prices to Moderate-Income Households (45 year term)

Rental Projects Outside of the Downtown: 2 or more Units required to restrict 15% of the Units for Low-Income and Very Low-Income Households, at least one-half of the required Inclusionary Units to be offered at Affordable Rents exclusively to Very Low-Income Households (55 years)

Proposed:

The City Manager and or Community Development Director may grant exceptions to the requirements upon a finding that such exception is necessary to effective implementation of the City's housing goals

Location and design, affordable units shall be reasonably dispersed throughout the project and shall be comparable to the design of the market-rate units

Eligibility requirements and monitoring

In lieu of building there are alternative modes of compliance: Rental units in for-sale projects, Off-site construction, Land dedication, and an in-lieu housing fee

Next Steps

- Inclusionary Housing Guidelines
- Development Standards
- New Housing In-lieu fees for Ownership and Rental

Board of Directors

Ron Gonzales, Chair
*Hispanic Foundation
of Silicon Valley*

Janice Jensen, Vice Chair
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Eden Housing

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Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

Staff

Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

July 17, 2018

Mayor Steve Tate and members of the City Council
17555 Peak Avenue
Morgan Hill, CA 95037

Dear Mayor Tate, Mayor Pro Tempore Constantine, and Councilmembers Carr, Spring, and Robinett Jachimowicz:

Re: Inclusionary Housing Ordinance, Item 18, July 18, 2018

Silicon Valley at Home (SV@Home) is the voice of affordable housing in Silicon Valley. We advocate for policies, programs, land use, and funding that lead to an increased supply of affordable homes. SV@Home represents a broad range of interests, from leading employers who drive the Bay Area economy, to labor and service organizations, to nonprofit and for-profit developers who provide housing and services to those most in need, and more.

Inclusionary Housing Ordinances are a critical tool for addressing our region's severe housing crisis. In light of the passage of AB 1505 in the State Legislature, we commend the City for taking the initiative to establish an IHO that reflects many of the [best practices we recommend](#).

During the last Regional Housing Needs Allocation (RHNA) period, Morgan Hill met a third of its cumulative affordable housing responsibilities for very low-, low-, and moderate-income households while exceeding its market rate production by 200 percent. We would like to thank City Council for their continued hard work and dedication towards reaching these goals. It is important to build on this momentum and work towards meeting the housing needs of very low income households. The proposed IHO will allow the City to add to its existing stock of affordable homes and bring housing relief to many residents and workers in Morgan Hill.

On behalf of our members, we urge the Council to adopt and implement the draft IHO proposed by staff without delay.

We thank and commend staff for all their work on the IHO and for continuing to strive to bring equity through housing affordability in Morgan Hill. We look forward to partnering with you to create thriving, sustainable communities that welcome people from all walks of life.

Honorable Mayor Steve Tate and members of the City Council
Re: Inclusionary Housing Ordinance, Item 18, July 18, 2018
Page 2 of 2

Please let us know if we can provide you with any technical assistance or examples of best practices for IHOs from other jurisdictions.

Thank you for the opportunity to provide our input.

Sincerely,



Pilar Lorenzana
Deputy Director, SV@Home



July 18, 2018

Mayor Tate and City Councilmembers
City of Morgan Hill
VIA EMAIL

RE: Council Meeting 7.18.18 Agenda Item 18. INCLUSIONARY HOUSING ORDINANCE

Dear Mayor Tate and Councilmembers,

BIA Bay Area, representing hundreds of home builders throughout the Bay Area, respectfully objects to several Staff recommendations regarding the proposed Inclusionary Housing Ordinance (the Ordinance). BIA urges the City Council to defer adoption of the Ordinance to take more time considering the following concerns:

- Payment of fees in lieu of building affordable units should be a “by right” option for the developer. AB 1505 clearly spells out that the Ordinance must offer alternative means of compliance including payment of fees, dedication of land, etc. The proposed ordinance falls short of offering this as a clear alternative to building units.
- The inclusionary requirement for for-sale housing is pegged to moderate income levels. In the past, this has proven problematic for developers to implement due to difficulty in selling these units. The price differential between market and moderate hasn’t been enough for potential buyers to want to purchase a deed restricted home. The deal is equivalent to a glorified long-term lease at a capped rent. In the past, some jurisdictions have provided that if a BMR unit does not sell within a reasonable time frame (say 90 days), the developer can sell the unit and pay the difference to the city as an affordable housing fee.
- The Ordinance’s treatment of State Density Bonus Law (DBL) is problematic. The ordinance should expressly state that the mandated BMR units count toward State DBL eligibility. The Ordinance is not clear that density bonus is mandatory if triggered by the projects affordable provision.
- The Ordinance seems to suggest that the City can refuse to grant a density bonus and additional concessions and waiver to an otherwise eligible project if it finds that doing so is necessary for public health, safety, or welfare. That is not what the DBL requires.
- The DBL statute requires the city to GRANT any incentive proposed by the applicant UNLESS the city makes a written finding supported by substantial evidence the concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment. The City should make sure that the Ordinance is consistent with State DBL and the City’s density bonus ordinance.

BIA Bay Area looks forward to working with the City of Morgan Hill on development issues. Thank you for your attention to these concerns.

Yours truly,
Dennis Martin
BIA Bay Area



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Ray Ramos, Administrative Sergeant
APPROVED BY: City Manager

RESPONSE TO 2017-2018 CIVIL GRAND JURY REPORT

RECOMMENDATION(S)

1. Accept report and response to the Santa Clara County Civil Grand Jury Report, "Police and the Mentally Ill; Improving Outcomes"; and
2. Authorize the City Manager to send the response letter.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Regional Initiatives

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

On May 9, 2018, the Santa Clara County Civil Grand Jury issued the attached report entitled "*Police and the Mentally Ill: Improving Outcomes*." The report is an examination of fatal Officer Involved Shootings (OIS) between 2013-2017. The Grand Jury determined that 13 of 28 cases involved persons with history of mental illness. According to a report prepared by the Santa Clara County District Attorney's Office for the Grand Jury, in 1 in 28 cases, an officer with crisis intervention training (CIT) was available or called to the scene. The Grand Jury further researched, if having a person/officer with enhanced CIT and de-escalation techniques could have resulted in a different outcome.

The police department had zero OIS incidents during the reporting period. Additionally, 85% of Morgan Hill Police Officers have completed CIT training, with plans to achieve 100% participation in the current fiscal year. This allows for the police department to regularly deploy CIT trained officers to calls for service involving someone suffering from a mental illness. Furthermore, CIT and De-Escalation Training are separate but related topics. De-escalation training is woven into the police department's annual training program and practiced during defensive tactics, firearms, and tactical communication training throughout the year.

The information in the report was taken from surveys sent to law enforcement agencies in the County; including the Morgan Hill Police Department. The survey was focused on law enforcement training for mental health and law enforcement use of force interactions with those suffering from mental illness.

As part of their report the Civil Grand Jury issues “findings,” the City is required to respond to these findings and agree or disagree with them pursuant to California Penal Code Section 933.05. Staff recommends that the City agree with Civil Grand Jury Findings 1 and 2, as follows:

Finding 1

AB 71-required criminal justice reporting surpasses that of many jurisdictions nationwide. However, the presence of mental illness in each incident report is not mandated by AB 71. Reporting this data would assist law enforcement agencies in understanding the relationship between mental illness and officer involved shootings and help in revising their training programs.

City Response: The Morgan Hill Police Department has been collecting this data since 2016 if the police report narrative mentions mental health factors in a use-of-force case. Training and policy updates will formalize this process, directing Officers to include mental health factors on all use of force cases.

Finding 2

The Grand Jury found that training in crisis intervention and de-escalation techniques beyond what is included in the POST Basic Police Academy helps improve the outcome of law enforcement contacts with the mentally ill.

City Response: The Morgan Hill Police Department agrees with this finding and is working towards having all officers trained in crisis intervention and de-escalation techniques.

The City is required to respond to each Civil Grand Jury “recommendation” by selecting from one of four responses pursuant to Penal Code Section 933.05. Staff recommends that the City respond by implementing **Recommendation 1**. The Morgan Hill Police Department has already implemented **Recommendations 2A, 2B, 2C, and 2D**.

Recommendation 1: Indicates that the Morgan Hill Police Department should report the required data for AB 71, to the extent possible, where mental illness was involved in their use of force data, starting in 2019.

City Response: The Morgan Hill Police Department agrees with Recommendation 1; we agree to report all the data required by AB 71, in addition to reporting incidents where use of force was used involving a mentally ill person; starting 2019.

Recommendation 2A: Encourages the Morgan Hill Police Department to prepare a plan to ensure that all their officers receive POST-approved Crisis Intervention Training

(CIT) and de-escalation technique training.

City Response: The Morgan Hill Police Department agrees with Recommendation 2A. We have already implemented this recommendation as a part of our officers' individual training plan. Crisis Intervention Training is a mandatory course for all our officers. De-Escalation techniques are integrated into various training components, such as interactive video simulator, firearms, arrest control/defensive tactics and tactical communications training.

Recommendation 2B: Suggests the Morgan Hill Police Department provide funding for their officers to complete POST-approved CIT and de-escalation technique training, beyond the training included in the POST Basic Police Academy, by June 30, 2019.

City Response: The Morgan Hill Police Department agrees with Recommendation 2B; we have allocated funds from our annual training budget for POST approved CIT courses. Additionally, the Council allocated additional funds for our officers and dispatchers to be the first in Santa Clara County to train officers and dispatchers in the Applied Suicide Intervention Skills and Training (ASIST) program.

Recommendation 2C: Indicates the Morgan Hill Police Department should execute their plan to ensure that all officers receive POST-approved CIT, De-Escalation technique training, beyond training included in the POST Basic Police Academy, by June 30, 2020:

City Response: The Morgan Hill Police Department agrees with Recommendation 2C. We have previously implemented this recommendation as a part of our officers' individual training plan. CIT is a mandatory training course for all our officers. De-Escalation techniques are reinforced throughout the year during the many training courses provided to our officers.

Recommendation 2D: Stated the Morgan Hill Police Department should include Crisis Intervention Training (CIT) and de-escalation technique training in their Continuing Professional and Perishable Skills (PSP) and Communications training.

City Response: The Morgan Hill Police Department agrees with Recommendation 2D; as of POST training cycle 2017/2018; we have combined our Tactical Communications course with "Interactive Video Simulation Training- Responding to Persons in a Mental Health Crisis." Additionally, we also added a video simulator to our training program, which allows officers to enhance their training, by fine-tuning their command presence, tone of voice, and de-escalation strategies.

Through the use of hundreds of POST certified interactive video scenarios focused on persons dealing with mental health illnesses, the instructor can make adjustments to enhance both individual and interdependent aspects of their students' judgment, situational awareness, and de-escalation skills.

In addition to the findings and recommendations from the Civil Grand Jury, by the end of fiscal year 2019/2020, we will send all officers and dispatchers to ASIST, a 15-hour course which focuses on suicide intervention training.

COMMUNITY ENGAGEMENT: Inform

ALTERNATIVE ACTIONS:

1. Provide direction to revise the response
2. Do not respond to the Grand Jury

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

No previous actions have been taken on this matter by Council.

FISCAL AND RESOURCE IMPACT:

No fiscal impact

CEQA (California Environmental Quality Act):

Not a Project

Continuing administrative activities, such as the response to a Grand Jury Report is not a project subject to environmental review.

LINKS/ATTACHMENTS:

1. Mental Illness Commitments
2. Civil Grand Jury- Final Report (05.08.18)
3. MH response to Grand Jury Mental Illness

Mental Illness Commitments

417.1 PURPOSE AND SCOPE

This policy provides guidelines for when officers may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

417.2 POLICY

It is the policy of the Morgan Hill Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

417.3 AUTHORITY

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, officers are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

- (a) An individual who is providing or has provided mental health treatment or related support services to the person
- (b) A family member
- (c) The person subject to the determination or anyone designated by the person

417.3.1 VOLUNTARY EVALUATION

If an officer encounters an individual who may qualify for a 5150 commitment, he/she may inquire as to whether the person desires to voluntarily be evaluated at an appropriate facility. If the person so desires, the officers should:

- (a) Transport the person to an appropriate facility that is able to conduct the evaluation and admit the person pursuant to a 5150 commitment.
- (b) If at any point the person changes his/her mind regarding voluntary evaluation, officers should proceed with the 5150 commitment, if appropriate.
- (c) Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.

417.4 CONSIDERATIONS AND RESPONSIBILITIES

Any officer handling a call involving an individual who may qualify for a 5150 commitment should consider, as time and circumstances reasonably permit:

Mental Illness Commitments

- (a) Available information that might assist in determining the cause and nature of the person's action or stated intentions.
- (b) Community or neighborhood mediation services.
- (c) Conflict resolution and de-escalation techniques.
- (d) Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

Officers should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor crimes or creating other public safety issues.

417.4.1 SECURING OF PROPERTY

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person's personal property, the officer shall take reasonable precautions to safeguard the individual's personal property in his/her possession or on the premises occupied by the person (Welfare and Institutions Code § 5150).

The officer taking the person into custody shall provide a report to the court that describes the person's property and its disposition in the format provided in Welfare and Institutions Code § 5211, unless a responsible person took possession of the property, in which case the officer shall only include the name of the responsible person and the location of the property (Welfare and Institutions Code § 5150).

417.4.2 CRISIS INTERVENTION TRAINED (CIT) OFFICERS

Crisis Intervention Trained (CIT) Officers are specially trained to respond to incidents involving individuals who are either known or suspected to be in acute psychological or emotional crisis. Whenever possible, a CIT Officer will respond to any call involving mentally ill individuals involving threats or violence. The use of CIT Officers is not limited to situations involving mental illness but includes those situations where an individual is either known, or suspected, to be in psychological or emotional crisis and is in need of intervention due to posing a danger to him/her self and/or others. Unless otherwise directed by a SWAT supervisor or Command Officer, a CIT Officer shall not act in the capacity of a Hostage Negotiator at a SWAT incident.

Upon receiving a call involving an individual known or suspected to be mentally ill or in psychological or emotional crisis, dispatch will assign the appropriate number of Officers, to include a CIT Officer (if available).

If an Officer is on the scene of an incident where he or she determines the expertise of a CIT Officer would be beneficial, a request may be made through dispatch to dispatch a CIT Officer (if available).

Mental Illness Commitments

In a situation where a mentally ill individual is the victim of a crime, an Officer not trained in CIT may request the response of a CIT Officer to assist with interviews or other resource information.

417.5 TRANSPORTATION

When transporting any individual for a 5150 commitment, the transporting officer should have the Communications Center notify the receiving facility of the estimated time of arrival, the level of cooperation of the individual and whether any special medical care is needed.

Officers may transport individuals in a patrol unit and shall secure them in accordance with the Handcuffing and Restraints Policy. Should the detainee require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an officer during the transport, Watch Commander approval is required before transport commences.

417.6 TRANSFER TO APPROPRIATE FACILITY

Upon arrival at the facility, the officer will escort the individual into a treatment area designated by a facility staff member. If the individual is not seeking treatment voluntarily, the officer should provide the staff member with the written application for 5150 commitment and remain present to provide clarification of the grounds for detention, upon request.

Absent exigent circumstances, the transporting officer should not assist facility staff with the admission process, including restraint of the individual. However, if the individual is transported and delivered while restrained, the officer may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, officers will not apply facility-ordered restraints.

417.7 DOCUMENTATION

The officer shall complete an application for a 72-Hour detention for evaluation and treatment, provide it to the facility staff member assigned to that patient and retain a copy of the application for inclusion in the case report.

The application shall include the circumstances for officer involvement; the probable cause to believe the person is, as a result of a mental health disorder, a danger to others or him/herself or gravely disabled; and all information used for the determination of probable cause (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05).

The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the involuntary detention.

417.7.1 ADVISEMENT

The officer taking a person into custody for evaluation shall advise the person of:

- (a) The officer's name and agency.
- (b) The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals and the mental health staff will advise him/her of their rights.

Mental Illness Commitments

- (c) The name of the facility to which the person is being taken.
- (d) If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items, which the officer must approve, and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (Welfare and Institutions Code § 5150).

417.8 CRIMINAL OFFENSES

Officers investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or a Notice to Appear as appropriate.

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

- (a) Arrest the individual when there is probable cause to do so.
- (b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this department to regain custody of the individual, department resources (e.g., posting a guard) and other relevant factors in making this decision.

417.9 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for a 5150 commitment, the handling officers should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institute § 8100. Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g. safekeeping, evidence, consent).

Officers are cautioned that a search warrant may be needed before entering a residence or other place to search, unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent). A search warrant may also be needed before searching for or seizing weapons

Mental Illness Commitments

The handling officers shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Officers shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

417.9.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS

Whenever the handling officer has cause to believe that the future return of any confiscated weapon might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the Special Operations Division, which shall be responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

417.10 TRAINING

This department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.

417.11 FOLLOW-UP

Peer Support shall be made available to CIT Officers on an as needed basis. Peer Support response and follow-up may be initiated either by the involved Officer(s) or a supervisor/command Officer.

The CIT coordinator should be the liaison with the Santa Clara County Department of Mental Health (DMH), Adult Probation and County Multi-Disciplinary Committees to share dispositions and follow-up needs of individuals who have required intervention from law enforcement. Follow-up may include joint cooperation between Patrol, Special Operations and the Law Enforcement Liaisons for County Mental Health

POLICE AND THE MENTALLY ILL: IMPROVING OUTCOMES



2017-2018 Civil Grand Jury
of Santa Clara County

May 9, 2018

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SUMMARY

In Santa Clara County during 2013-2017, 31 people died as a result of officer involved shootings. Nine of the 31 suffered from mental illness, and in some of those encounters police used deadly force against unarmed citizens.

Local law enforcement agencies are under scrutiny whenever deadly force is used. This report examines the circumstances around law enforcement officers using deadly force against citizens who were in a mental health crisis, whether or not they were committing a crime. The key focus of this report is law enforcement mental health training policies.

In its examination of the 31 fatal Officer Involved Shootings (OIS) within Santa Clara County during 2013-2017, the Santa Clara County Civil Grand Jury (Grand Jury) learned that the Santa Clara County District Attorney (DA) had determined 28 of the OIS incidents to be justifiable under California Criminal Law. The DA was still reviewing the other three cases as of this report.

The Grand Jury found that major efforts have been undertaken in the County to train law enforcement officers in recognizing and dealing with people in mental health crisis and to provide “in the field” mental health professionals who can respond to these events. The Grand Jury, however, feels there is room for improvement in the depth of training, the number of officers trained, current Crisis Intervention Training (CIT) class protocols and the deployment of “in the field” mental health professional teams.

BACKGROUND

In Santa Clara County, if you dial 911 to report a life-threatening health emergency involving a loved one in your home or a stranger in a public setting, the local fire department and ambulance are dispatched on an Emergency Medical Service. The fire service is responsible for overall scene management; this includes the provision of first-response Basic Life Support or Advanced Life Support services prior to the arrival of the ambulance. If, on the

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other hand, that call to 911 involves a mental health crisis — often involving your or somebody else's loved one — it is the law enforcement community that must respond, safely intervene, de-escalate and provide an appropriate outcome for citizens who may be in crisis. Law enforcement officers have a difficult challenge in responding to these situations, especially where citizens are not committing any criminal acts.

In the 31 deadly encounters with citizens experienced by County law enforcement agencies during 2013-2017, at least nine¹ involved individuals known to have been suffering from a mental illness or crisis. In 2017, police in the County's largest city, San Jose, faced eight deadly encounters, seven of which reportedly involved individuals with a mental illness.² The San Jose Police Department (SJPd) reports that 15% of all calls for law enforcement involve some element of behavioral health. A Santa Clara County Sheriff's Office (SO) representative reports an average of two to three mental illness calls daily, though not all are criminal in nature, and five to 10 arrests per month involving individuals with mental illness. Law enforcement officials say these types of calls have become more frequent.

A variety of mental health training courses are available to police agencies in the County that expose officers to mental health syndromes and crisis recognition, de-escalation techniques, and community resources. All local law enforcement agencies within the County mandate some form of mental health training. The level and type of mandated crisis intervention training, however, is not consistent across all agencies. Some patrol officers in the County have not yet undertaken their agency's mandatory training, but all agencies have some crisis intervention-trained officers on staff. Additionally, the County Behavioral Health Services (BHS) is deploying crisis intervention teams staffed with mental health professionals.

¹ <http://www.fatalencounters.org/people-search/>. A website created by Brian Burghart, founder and executive director of Fatal Encounters Dot Org, and a lifelong journalist and former editor/publisher of the Reno News & Review.

²San Jose Mercury News, 9/17/2017

METHODOLOGY

The Grand Jury conducted this investigation through interviews with law enforcement officers, DA officials, SJPd Communications Center staff and County Behavioral Health Services managers. A total of 15 individuals were interviewed. The Grand Jury surveyed municipal and county law enforcement agencies as to their respective mental health training requirements and compliance statistics. The Grand Jury reviewed the DA's OIS reports, which are published online. Several websites that collect officer involved encounters throughout the U.S. also were reviewed. Members of the Grand Jury monitored portions of a weeklong CIT training class sponsored by the SO and participated in the Force Options Simulator training conducted at the SO's training center.

DISCUSSION

In 2015, California adopted AB 71³, which mandates the reporting on an annual basis of every instance of the use of force by a police officer against a civilian, and vice versa, where death or great bodily injury results. The California Department of Justice (DOJ) collects and tabulates the data into its URSUS (Latin for 'bear') database. The reporting period began with 2016, but for the first year the data collection process was incomplete and not every agency within the County reported.⁴ The DOJ released its initial URSUS report on Use of Force in August 2017. SJPd has submitted data in compliance with AB 71 and has commissioned Police Strategies LLC to collect and analyze all use of force incidents. This police force analysis methodology has recently been made available on SJPd's public website for 2015-2016 and will continue to be available to the public.⁵ It should be noted that there is no mandatory national database that collects OIS statistics. The FBI database on the use of force depends on the voluntary reporting, and many jurisdictions fail to report.⁶ The FBI

³ Government Code Section 12525.2.

⁴<http://www.jrsa.org/pubs/sac-digest/vol-27/ca-ursus-2016.pdf>

⁵ <http://www.sjpd.org/CrimeStats/ForceAnalysis.asp>

⁶ National Data Collection on the Use of Force (1996) US Department of Justice, Bureau of Justice Statistics, Page 3.

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continues to encourage law enforcement agencies to take part in the National Use of Force Data Collection program.

The DA has a dedicated team who review OIS incidents to determine if the use of deadly force was justifiable under California law. The DA reviewed 31 officer involved citizen deaths in the County from 2013 through November 2017, the timeframe of the Grand Jury's investigation. The DA publishes reports of those investigations on its website where the use of force was found justifiable. Twenty-seven of the 28 published investigations involved agencies studied by the Grand Jury. Three incidents are still under review. Out of those 28, 13 involved persons who had some history of mental illness, based on the investigative reports.⁷

Under California Penal Code Sections 835a and 196, a peace officer may use deadly force in self-defense, defense of another, or to prevent the escape of a felon who might cause immediate substantial injury to others if not detained.

Penal Code Section 835a reads:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 196 reads:

⁷ Santa Clara County District Attorney Website, Officer Involved Shooting reports.
<https://www.sccgov.org/sites/da/Pages/Search.aspx?k=officer%20involved%20shootings>

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Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Essentially, an officer is permitted to use reasonable force in the defense of others or the officer, and the officer need not retreat.

The DA's review of the 28 OIS incidents found that in each case, the involved officers' use of deadly force was legally justifiable. The incidents involved a variety of weapons, including guns, knives, a saw blade, a pellet gun and in one incident a power-drill painted black. In only one of the 28 incidents did it appear from the DA's reporting that a crisis intervention-trained officer was available or called to the scene. The question arises whether the presence of a person with enhanced training in crisis intervention and de-escalation techniques could have resulted in a different outcome, especially in six incidents where apparently no bystanders were in immediate danger. The Grand Jury explores the benefit of crisis intervention training in this report.

Survey of County Law Enforcement Agencies

A written survey was sent to the SO and to each of the other 11 law enforcement agencies: Palo Alto, Sunnyvale, Campbell, Santa Clara, Mountain View, Los Gatos-Monte Sereno, Los Altos, Milpitas, San Jose, Gilroy and Morgan Hill. The survey sought data from Jan. 1, 2013, to Nov. 30, 2017, on:

- number of peace officers on staff
- number of OIS incidents

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- number of OIS incidents resulting in death
- number of OIS incidents where the deceased was suffering from a serious mental illness (SMI)
- number of officers killed or injured by suspects suffering from a serious mental illness
- number of officers who have taken department mandated Crisis Intervention Training (CIT) beyond the Police Academy training course
- whether recertification training is required
- whether the agency offers the option to take further Crisis Intervention-related Training
- whether the agency employs a CIT team
- whether the agency requires dispatch operators to undergo CIT.

All agencies responded and the survey results are in Table A below. Crisis Intervention Training as used in this report includes developing an awareness of the various forms of mental illness, e.g., autism, excited delirium, development disabilities, and Alzheimer's recognition, as well as instruction in de-escalation techniques.

Combined, the agencies reported a total of 56 OIS incidents during the past five years, which includes 31 fatal incidents. These agencies reporting fatal OIS during this span are: San Jose (15), Sunnyvale (6), Santa Clara (4), Sheriff's Office (4), Gilroy (1) and Palo Alto (1). Of the 56 total OIS incidents, 22 involved a suspect suffering from a serious mental illness. One agency, Sunnyvale, did not track this criterion. One officer was killed and six were injured by suspects suffering from a serious mental illness during this period. Several agencies do not track mental illness involvement when officers are injured or killed.

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The number of fatal OIS across all agencies during this period corresponds with the data collected by the “Fatal Encounters” website.⁸

Every agency reported that it mandates that some or all of its officers complete additional CIT beyond the Peace Officer Standards and Training (POST) Basic Police Academy courses. Gilroy, Milpitas and Mountain View require the additional training only of its Field Training Officers. The length of the additional mandated CIT ranged from 40 hours (Campbell, Los Altos, Los Gatos-Monte Sereno, Morgan Hill, Sunnyvale, San Jose and Sheriff) to eight hours (Milpitas, Mountain View) to four hours (Palo Alto, Santa Clara).

Many law enforcement agencies employ uniformed Community Service Officers and Parking Control Officers who are not peace officers and do not carry firearms. Whether these other agency employees should undergo some level of CIT training is an important inquiry but beyond the scope of this report.

The number of officers who have completed the additional mandated training varied as of the date of the survey, ranging from 100% in Campbell and Santa Clara to 19% in Gilroy. Seven agencies reported that at least half of their officers have completed the additional mandated CIT. The total number of officers across all agencies who have not completed any additional mandated Crisis Intervention Training is 1519, or 49%. Some current active officers did not receive CIT in their Basic Police Academy because it was not part of their curriculum.

Four of the 12 agencies deploy a CIT on-call unit or officers (Los Gatos-Monte Sereno, Morgan Hill, Sunnyvale and San Jose). Most agencies dispatch their own public safety responders. Eight of the agencies require that their dispatchers take some level of CIT.

⁸ <http://www.fataleencounters.org/people-search/>. A website created by Brian Burghart, founder and executive director of Fatal Encounters Dot Org, and a lifelong journalist and former editor/publisher of the Reno News & Review.

Table A

	Campbell PD	Gilroy PD	Los Altos PD	Los Gatos PD	Milpitas PD	Morgan Hill PD	Mountain View PD	Palo Alto PD	Santa Clara PD	Sunnyvale DPS	San Jose PD	Sheriff's Office	Total
Number of police officers employed	42	62	31	36	81	39	87	80	146	183	1,019	1,302	3108
Number of OIS from Jan. 2013 - Nov. 2017	0	1	0	0	1	0	0	1	6	6	34	7	56
Number of fatal OIS	0	1	0	0	0	0	0	1	4	6	15	4	31
Number of OIS involved SMI as factor	0	0	0	0	0	0	0	1	2	Unk	17	2	22
Number of officers killed in line of duty (SMI)	0	0	0	0	0	0	0	0	0	0	1	0	1
Number of officers injured in line of duty (SMI)	5	0	0	Unk	1	0	Unk	0	Unk	0	Unk	N/A	6
CIT training required above basic academy	Yes	FTOs	Yes	Yes	FTOs	Yes	FTOs	Yes	Yes	Yes	Yes	Yes	-
Number of additional CIT training hours	40	Unk	40	40	8	40	8	4	4	40	40	40	4-40
Number of peace officers completed above	42	12	26	28	49	33	55	60	146	107	511	520	1589
Additional mandated mental health training	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	16	FTOs	Yes	Varies
Number of peace officers completed above	42	N/A	26	32	Unk	39	Unk	65	33	66	13	766	Varies
Other optional mental health-related training	Yes	Yes	Yes	39	81	Yes	Unk	Yes	No	Yes	Yes	Yes	Varies
Dedicated CIT deployed in field	No	No	No	Yes	No	No	Yes	No	No	Yes	Yes	No	Varies
Dispatchers required to complete CIT training	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	N/A	-
Number of hours for dispatchers	0	0	40	40	0	16	0	40	4	4	40	N/A	4-40
Officers not completed mandated CIT (#)	0	50	5	8	32	6	32	20	0	76	508	782	1519
Mandated CIT trained officers (%)	100	19	84	78	60	85	63	75	100	59	50	40	-
Additional mandated mental health training (%)	100	Unk	84	89	N/A	100	Unk	81	23	36	FTOs	59	-

OIS – Officer Involved Shooting SMI – Serious Mental Illness

Unk – Unknown

FTO – Field Training Officer

Crisis Intervention Training

The Grand Jury attended several sessions of the SO-sponsored CIT held in September 2017. This 40-hour course over four days was presented by the County's Behavioral Health Services and Mental Health Police Liaisons Team. The 70-plus attendees included new Correctional Academy recruits as well as active police officers from several agencies. The sessions attended were the introductory overview, de-escalation and the excited delirium, and de-escalation training, including role playing video simulations.

Students were instructed on identifying and confronting Psychosis, Autism, Development Disabilities, Alzheimer's and Excited Delirium. Given the large audience, mix of academy recruits and sworn officers, and limited time it was impossible for each attendee to engage in the video simulation, only five pairs of students took part. However, the instructors were excellent facilitators for the role playing as they commented and critiqued the student's efforts. It seemed that the video simulations were crucial in introducing and developing mental health recognition and de-escalation skillsets. One police department supervisor commented that devoting two full days to role playing simulations would be more beneficial for officers than the two-plus hours set aside.

The SO and SJPD sponsor crisis intervention/de-escalation training classes that vary in length from four to eight to 16 and to 40 hours. Some of the classes serve to refresh perishable skills for veteran officers. The Mental Health Liaisons Team is involved in many of these trainings and the video simulations. All of these courses must be certified by POST to ensure a consistent level of quality. BHS has commissioned the creation of additional video simulations to update and expand the variety of the scenarios. The Sheriff's Training Unit believes that CIT training is beneficial for veteran officers because "street experience" adds perspective and value to the training that is not available to new deputies. The SO patrol deputies are now required to undergo four-hour refresher training every two years.

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The SJPD sponsors a 40-hour course for its own officers that includes the four-hour video simulation segment on de-escalation techniques. New SJPD recruits are now required to take the course during their first months in the field. Given the recent increase in new recruits along with existing staff mandated to take the CIT course, class sizes are large, often 70 or more individuals. Course instructors believe 35 is the optimal class.

County Behavioral Health Services

Santa Clara County BHS provides or funds many mental health community-based services as well as a locked inpatient ward and transitional facilities. The County is developing two Mobile Crisis Response Teams (MCRT) scheduled to begin in spring 2018, one in South County and one in East San Jose. These teams will consist of two mental health professionals (at least one to be licensed to write holds under Welfare & Institutions Code Section 5150⁹) and will be available to respond to non-life-threatening incidents from 8 a.m. to midnight, working four 10-hour shifts. Teams will respond via dispatch or at the request of officers in the field. The idea is to offer an additional resource to field officers during and after incidents. Officials expect the teams will play an important role contacting persons who have been brought to their attention as needing mental health services and channeling those persons to the appropriate resources. All law enforcement agencies in the County favor an increase in the availability of CIT teams.

The County also is sponsoring a Psychological Emergency Response Team (PERT) for the City of Palo Alto, to be funded by an Innovation grant from the Mental Health Services Act (California Proposition 63) funds. This program will team an officer with a licensed mental health worker to focus on Transitional Age Youth (16 to 24) in that community.

⁹ Section 5150 permits a peace officer or other credentialed professional to take into custody a person who appears to be gravely disabled or who presents a danger to themselves or others because of a mental health disorder.

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The mental health team professionals staffing these teams will need to have 13 different types of training. A significant challenge to implementing the mobile CIT teams is hiring and retaining qualified professional staff. There is a shortage of qualified mental health professionals who wish to work different shifts and outside of traditional work hours.

Peace Officer Force Options

Most law enforcement agencies have policies that guide their use of force. These policies describe an escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds.¹⁰ A use-of-force continuum includes mere officer presence, verbal commands, empty-hand control, less-lethal methods (blunt impact, chemical and conducted energy devices), and lethal force.

California peace officers are required to complete Perishable Skills and Communications training including Arrest and Control, Tactical Firearms and/or Force Options Simulator in each two-year period as part of their Continuing Professional Training.¹¹

Members of the Grand Jury were exposed to the Sheriff's Force Option Simulator. This experience demonstrated both the need to make swift decisions in threatening situations and the skill necessary to judge people and their cognitive functioning.

There is some public perception that police officers should shoot to disarm a suspect rather than a fatal shot. When an officer must use their firearm, they are trained to aim for the body core (center mass) to avoid missing the target and to ensure the best chance that the threat presented is neutralized. Officers are not trained to shoot at an extremity. This is standard

¹⁰ <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>

¹¹ <https://post.ca.gov/perishable-skills-program>

methodology across all U.S law enforcement agencies and is perfected through firearms qualification drills.

Dispatch and Communications

Information is a key resource for officers in the field when responding to a potential dangerous encounter with a person suffering from mental illness, alcohol or drugs. Dispatch operators are a key link in the pipeline as their information is the initial and often the only knowledge that a responding officer has when arriving at a call. The SJPD Communications Center requires that their Operators/Dispatchers undertake the 40-hour CIT training course, and currently 41 of its approximately 130 staff have taken this training. There is no set protocol for determining whether mental health issues are involved in a given 911 situation. However, call center dispatchers do have a standard operating procedure to guide them to identify possible mental health crisis situations that can then be communicated to officers. Communications Center policy requires a "CIT needed" note in the Computer Aided Dispatch remarks when there is a history of a particular individual having crisis incidents or possibly posing a risk to themselves or to others.

FINDINGS AND RECOMMENDATIONS

Finding 1

The County's AB 71-required criminal justice reporting surpasses that of many jurisdictions nationwide. However, the presence of mental illness in a given incident report is not mandated by AB 71. Reporting this data would assist law enforcement agencies in understanding the relationship between mental illness and officer involved shootings, and help in revising their training programs.

Recommendation 1

Law enforcement agencies submitting AB 71-required data should report, to the extent possible, whether mental illness was involved in their use of force data, starting in 2019. This applies to all the agencies reviewed by the Grand Jury, which are the Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara.

Finding 2

The Grand Jury found that training in crisis intervention and de-escalation techniques beyond what is included in the POST Basic Police Academy helps improve the outcome of law enforcement contacts with the mentally ill.

Recommendation 2A

The law enforcement agencies of Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and the Santa Clara County Sheriff's Office, should prepare a plan to ensure that all their officers receive POST-approved Crisis Intervention Training and De-Escalation technique training, beyond the training included in the POST Basic Police Academy, by the end of calendar 2018.

Recommendation 2B

The law enforcement agencies of Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and Santa Clara County, should provide funding for their law enforcement agencies to complete POST-approved Crisis Intervention Training and De-Escalation technique training, beyond the training included in the POST Basic Police Academy, by June 30, 2019.

Recommendation 2C

The following law enforcement agencies should execute their plan to ensure that all officers receive POST-approved Crisis Intervention Training and De-Escalation technique training, beyond training included in the POST Basic Police Academy, by June 30, 2020: Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and the Santa Clara County Sheriff's Office.

Recommendation 2D

The following law enforcement agencies should include Crisis Intervention Training and De-Escalation technique training in their Continuing Professional Perishable Skills and Communications training: Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara.

Recommendation 2E

The law enforcement agencies in the cities of Gilroy, Milpitas and Mountain View should expand their Crisis Intervention Training and De-Escalation technique training to include all of their officers, not just their Field Training Officers.

Finding 3

The Grand Jury found that in large classes, the 40-hour Crisis Intervention Training often does not provide enough time for all attendees to participate in the simulation exercises.

Recommendation 3

The Santa Clara County Sheriff's Office and the San Jose Police Department, as the County's primary Crisis Intervention Training providers, should by Dec. 30, 2018, adjust class sizes in order to provide enough time for all attendees to participate in the simulation exercises.

Finding 4A

It is difficult to recruit sufficient numbers of behavioral health professionals to staff mobile Crisis Intervention Teams and assist law enforcement officers with individuals in crisis.

Finding 4B

Additional mobile Crisis Intervention Teams would be helpful to handle the frequency of law enforcement contacts with citizens suffering adverse mental health issues throughout the county.

Recommendation 4A

Santa Clara County should immediately expand efforts to attract, recruit and train behavioral health professionals to staff existing and future mobile Crisis Intervention Teams.

Recommendation 4B

Santa Clara County should fund additional mobile Crisis Intervention Team units to be deployed within the entire County to increase the geographical area served and the operational frequency, by July 1, 2020.

REFERENCES

1. Santa Clara County District Attorney, Officer Involved Shooting reports.
<https://www.sccgov.org/sites/da/Pages/Search.aspx?k=officer%20involved%20shootings>
2. Fatal Encounters, which describes itself as a step toward creating an impartial, comprehensive, and searchable national database of people killed during interactions with law enforcement.
<http://www.fatalencounters.org/people-search/>
3. Gun Violence, Archive 2017. <http://www.gunviolencearchive.org/>
4. Washington Post / Data-Police-Shootings. <https://github.com/washingtonpost/data-police-shootings/blob/master/fatal-police-shootings-data.csv>
5. San Jose Mercury News, 9/17/2017. <http://www.mercurynews.com/2017/09/17/man-shot-cops-san-jose-was-known-armed-police-say>
6. National Data Collection on the Use of Force (1996) U.S. Department of Justice, Bureau of Justice Statistics, Page 3. <https://www.bjs.gov/content/pub/pdf/ndcopuof.pdf>
7. Department of Justice, Uniform Crime Reporting Statistics. (2014) https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2010-2014.xls
8. <http://www.killedbypolice.net/> Six reported in Santa Clara County in 2017: San Jose (4), Sunnyvale (1), Santa Clara (1).

POLICE AND THE MENTALLY ILL

This report was **ADOPTED** by the 2017-2018 Santa Clara County Civil Grand Jury on this
4 day of May, 2018.



Peter L. Hertan

Foreperson

June 20, 2018

Honorable Patricia Lucas, Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

**Re: RESPONSE TO SANTA CLARA COUNTY CIVIL GRAND JURY REPORT,
“POLICE AND THE MENTALLY ILL: IMPROVING OUTCOMES.”**

Dear Honorable Patricia Lucas:

In response to the enclosed Santa Clara County Civil Grand Jury’s 2017-2018 Final Report entitled “Police and the Mentally Ill: Improving Outcomes,” the City of Morgan Hill hereby responds to the applicable findings and recommendations as required by California Penal Code Section 933.05(a) and 933.05(b), as directed by City Council on July 18, 2018.

The City of Morgan Hill agrees with Grand Jury Findings 1 & 2:

Finding 1

AB 71-requires criminal justice reporting surpasses that of many jurisdictions nationwide. However, the presence of mental illness in a given incident report is not mandated by AB 71. Reporting this data would assist law enforcement agencies in understanding the relationship between mental illness and officer involved shootings and help in revising their training programs.

The Morgan Hill Police Department has been collecting this data since 2016 if the police report narrative mentions mental health factors in a use-of-force case. Training and policy updates will formalize this process, directing Officers to include mental health factors on all use of force cases.

Finding 2

The Grand Jury found that training in crisis intervention and de-escalation techniques beyond what is included in the POST Basic Police Academy helps improve the outcome of law enforcement contacts with the mentally ill.

The Morgan Hill Police Department agrees with this finding and is working towards having all officers trained in crisis intervention and de-escalation techniques.

The City is required to respond to each Civil Grand Jury “recommendation” by selecting from one of four responses pursuant to Penal Code Section 933.05. Staff will implement

Recommendation 1. The Morgan Hill Police Department has already implemented **Recommendations 2A, 2B, 2C, and 2D.**

Recommendation 1: Indicates that the Morgan Hill Police Department should report the required data for AB 71, to the extent possible, where mental illness was involved in their use of force data, starting in 2019.

The Morgan Hill Police Department agrees with Recommendation 1; we agree to report all the data required by AB 71, in addition to reporting incidents where use of force was used involving a mentally ill person; starting 2019.

Recommendation 2A: Encourages the Morgan Hill Police Department to prepare a plan to ensure that all their officers receive POST-approved Crisis Intervention Training (CIT) and De-Escalation technique training.

The Morgan Hill Police Department agrees with Recommendation 2A. We have already implemented this recommendation as a part of our officers' individual training plan. Crisis Intervention Training is a mandatory course for all our officers. De-Escalation techniques are integrated into various training components, such as interactive video simulator, firearms, arrest control/defensive tactics and tactical communications training.

Recommendation 2B: Suggests the Morgan Hill Police Department provide funding for their officers to complete POST-approved Crisis Intervention Training and De-Escalation technique training, beyond the training included in the POST Basic Police Academy, by June 30, 2019.

The Morgan Hill Police Department agrees with Recommendation 2B; we have allocated funds from our annual training budget for POST approved CIT courses.

Additionally, the Council allocated additional funds for our officers and dispatchers to be the first in Santa Clara County to train officers and dispatchers in the Applied Suicide Intervention Skills and Training (ASIST) program.

Recommendation 2C: Indicates the Morgan Hill Police Department should execute their plan to ensure that all officers receive POST-approved Crisis Intervention Training and De-Escalation technique training, beyond training included in the POST Basic Police Academy, by June 30, 2020:

The Morgan Hill Police Department agrees with Recommendation 2C. We have already implemented this recommendation as a part of our officers' individual training plans. Crisis Intervention Training (CIT) and De-Escalation technique training are mandatory training courses for our officers.

Recommendation 2D: Stated the Morgan Hill Police Department should include Crisis Intervention Training (CIT) and De-Escalation technique training in their Continuing Professional and Perishable Skills and Communications training.

The Morgan Hill Police Department agrees with Recommendation 2D; as of POST training cycle 2017/2018; we have combined our Tactical Communications course with “Interactive Video Simulation Training-Responding to Persons in a Mental Health Crisis.” Additionally, we also added a video simulator to our PSP Training, with the video simulator, officers have an opportunity to exercise their training, from fine-tuning their command presence, tone of voice to de-escalation strategies.

Through the use of hundreds of POST certified interactive video scenarios specifically focused on persons dealing with mental health illnesses, the instructor can make adjustments to enhance both individual and interdependent aspects of their students’ judgment, situational awareness and de-escalation skills.

In addition to the findings and recommendations from the Civil Grand Jury, by the end of fiscal year 2019/2020, we will send all officers and dispatchers to ASIST, a 15-hour course which focuses on suicide intervention training.

Please contact me with any questions regarding this Civil Grand Jury response.

Sincerely,

Christina Turner
City Manager
Enclosures: City Council Staff Report
Grand Jury Report
Morgan Hill PD Policy # 417- Mental Illness Commitments

c w/enclosures: Donald Larkin, City Attorney



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

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

VOTING DELEGATES FOR THE 2018 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

RECOMMENDATION(S)

1. Appoint voting delegate and up to two (2) alternate voting delegates to the League of California Cities' Annual Conference; and
2. Direct the Clerk's team to complete and forward the voting delegate form to the League of California Cities.

COUNCIL PRIORITIES, GOALS & STRATEGIES

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

2018 Strategic Priorities

Community Engagement and Messaging
Economic Development and
Telecommunications
Financial Stewardship
Infrastructure
Regional Initiatives

REPORT NARRATIVE:

The League of California Cities will be holding its Annual Conference Wednesday, September 12th through Friday, September 14th in Long Beach. At the Annual Conference, the League conducts its Annual Business Meeting at which League Members take action on conference resolutions. These resolutions help guide cities and the League in their efforts to improve the quality, responsiveness, and vitality of local government in California. The League's bylaws stipulate that each city is entitled to one vote on matters affecting municipal or League policy. The voting delegate and/or alternate(s) must be registered for the conference and present to vote. The Annual Business meeting is scheduled for Friday, September 14th at 12:30 p.m. The memorandum from the League of California Cities requesting the designation of a voting delegate for the League's Annual Conference is attached to the staff report.

It has been the City Council's past practice to appoint the Mayor as the primary voting delegate and the Mayor Pro Tem as the alternate voting delegate. The team is requesting that the Council appoint a primary voting delegate and up to two alternate

voting delegates. In 2006, the League of California Cities authorized the appointment of up to two alternates to plan for unforeseen situations (bylaw amendment).

COMMUNITY ENGAGEMENT: Inform

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Each year the City Council appoints voting delegates to attend and vote at the League of California Cities Annual Conference.

FISCAL AND RESOURCE IMPACT:

The cost of the conference registration and travel are included in the FY 2018-19 City Council budget.

CEQA (California Environmental Quality Act):

Not a project

The appointment of voting delegates is not a project, as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. Voting Delegate Letter and form 2018



1400 K Street, Suite 400 • Sacramento,
California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Council Action Advised by July 31, 2018

May 17, 2018

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 12 - 14, Long Beach**

The League's 2018 Annual Conference is scheduled for September 12 – 14 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, September 14, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, August 31, 2018. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

Attachment: Voting Delegate Letter and form 2018 (1848 : LOCC Voting delegate)

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 12, 8:00 a.m. – 6:00 p.m.; Thursday, September 13, 7:00 a.m. – 4:00 p.m.; and Friday, September 14, 7:30 a.m.– 11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Friday, August 31. If you have questions, please call Kayla Curry at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.


CITY: _____

**2018 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Friday, August 31, 2018. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail: _____

 Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Friday, August 31, 2018

League of California Cities
ATTN: Kayla Curry
 1400 K Street, 4th Floor
 Sacramento, CA 95814

FAX: (916) 658-8240
 E-mail: kcurry@cacities.org
 (916) 658-8254

Attachment: Voting Delegate Letter and form 2018 (1848 : LOCC Voting delegate)



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

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

COMMISSION FISCAL YEAR 18/19 WORK PLANS

RECOMMENDATION(S)

1. Approve the proposed Parks and Recreation Commission FY 2018/19 Work Plan; and
2. Approve the proposed Library, Culture and Arts Commission FY 2018/19 Work Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Preserving Our Cultural Heritage
Enhancing Diversity and Inclusiveness

2018 Strategic Priorities

Economic Development and
Telecommunications
Financial Stewardship
Regional Initiatives

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Economic Blueprint
Vision Zero

REPORT NARRATIVE:

Annually, the Library, Culture and Arts Commission (LCAC) and the Parks and Recreation Commission (PRC) submit Work Plans for approval by the City Council. After approval by the Council, the Commissions use these Work Plans to guide their work over the next year.

In development of this year's proposed Work Plans, both the LCAC and the PRC reviewed the Council priorities for 2018 to align their work with the Council. As has become practice, the Commissions held a special joint meeting on April 17th, at which the Mayor presented an update on the City Council priorities. Some of the key areas of alignment include supporting youth and inclusiveness by supporting special events and programs, planning efforts for City facilities, and cultivating partnerships.

COMMUNITY ENGAGEMENT: Consult

The development of the Work Plans occurred at noticed public meetings of the PRC and the LCAC. Specific Work Plan items will include appropriate public engagement.

ALTERNATIVE ACTIONS:

The Council could alternatively modify a Commission's Work Plan to eliminate, add, or change specific items within a Work Plan.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Parks and Recreation Commission approved their Work Plan for City Council review on June 19, 2018 and the LCAC is scheduled to approve their Work Plan for City Council review on July 17, 2018.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact associated with the approval of the Commission Work Plans. Each Work Plan identifies the estimated staff resources necessary to support the specific work plan items. Supporting the LCAC and PRC is an ongoing activity for the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project

Development of Commission Work Plans is an administrative activity of government that will not result in direct or indirect physical changes in the environment. While some projects on the work plans may result in changes to the physical environment, those projects would undergo appropriate environmental review on a project by project basis to meet CEQA requirements.

LINKS/ATTACHMENTS:

1. LCAC 2018-2019 Workplan Draft
2. PRC Workplan 1819 Draft
3. 21 Supplement 1

Library, Culture & Arts Commission
FY 2018-19 Work Plan
City Council Approved: DRAFT

Overall Mission: To assist the City Council in accomplishing its goals by fostering an environment conducive to and supportive of the arts, culture, and life-long learning in Morgan Hill, working with existing community groups to promote resources, and facilitate partnerships.

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness Community Engagement and Messaging	CS Director (minimal) CS Coordinator (minimal) Program Administrator (minimal)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates) (Paul/Bussing) (2) Explore development of a calendar relating to library, culture and arts events (Khera) (3) Review opportunities to fund local public access cable television (Benich)
Permanent and Proposed Public Art	Supporting our Youth, Seniors and Entire Community Preserving Our Cultural Heritage	CS Director (minimal) CS Supervisor (minimal) CS Coordinator (minimal) Maintenance Coordinator (minimal)	(1) Partner with local Artists to display their work. Review the possibility of implementing a utility box art program or other programs (doors, walls, etc.) (Bussing/Khera) (2) Form subcommittees as needed to support specific art requests that come forward (All) (3) Review opportunities for funding public art and performing arts in the future (TBD) (4) Support the Bike Rack Artwork selection (Crawford/Bussing) (5) Develop Tarantula branding and promotion (Crawford/Khera) (6) Review art inventory and maintenance per Commission Policy (Benich) (7) Explore the options and feasibility of creating an artist registry (TBD)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Art and Culture Events	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	CS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event and look to include incorporate culture and music into the event (Lake is the lead/all members will support) (2) Explore opportunity to partner with artists on a children's art show (Paul) (3) Explore partnership opportunities for the City supporting performing arts with South Valley Civic Theater (Lake/Khera)
Library Outreach and Support	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (moderate) Senior Project Manager (significant)	(1) Support Library outreach, including possible pop-up locations (Lake) (2) Coordinate Commissioner's Corner in Library to provide book recommendations (Khera) (3) Support the Library Expansion Project (All) (4) Participate in annual Library Commissioners Forum (All) (5) Support incorporation of Children's art into the Library (Lake)
Support of Historical Resources	Preserving our Cultural Heritage	CS Director (moderate) CS Srvs Coordinator (moderate)	(1) Coordinate with the Morgan Hill Historical Society to support Villa Mira Monte partnership (Bussing/Crawford)

Staff Resources Required:

0-50 hours: Minimal; 51-100 hours: Moderate; 100+ hours: Significant

Parks & Recreation Commission

FY 2018-19 Work Plan – Draft

Project (Commissioner Responsible)	City Council Priority Supported	Staff Resources Required	Desired Outcome
1. Get Youth More Active in Parks and Recreation.	Supporting Our Youth, Seniors & Entire Community	Recreation Manager (Minimal)	Review program opportunities for new youth programming. (Grzan-Pieracci & Locicero)
2. Support Bicycle and Trails Development Efforts	Supporting Our Youth, Seniors & Entire Community	CS Director (Minimal)	1. Support the VTA Bicycle and Pedestrian Advisory Committee. (VACANT) 2. Work to coordinate with community members on bicycle and trails issues with volunteer Bicycle and Pedestrian Advocacy Group. (Green)
3. Support efforts to create an inclusive playground	Supporting Our Youth, Seniors & Entire Community	CS Director (Significant) CS Coordinator (Moderate)	Support the group that has formed for the creation of an inclusive playground in Morgan Hill. Support in the planning and fundraising efforts. (Locicero, Wendt, Scott)
4. Support planning for updated sports facilities and partnerships	Supporting Our Youth, Seniors & Entire Community Economic Development & Telecommunications	CS Director (Significant)	1. Support development of partnership with new OSC operator. Provide recommendations on capital improvement projects. (van Keulen, Seehaffer) 2. Evaluate opportunities to construct sand volleyball facilities in partnership with a facility operator, including evaluating sports tourism impacts. (Wendt)
5. Support the Planning for the CRC Health and Wellness Expansion Project	Supporting Our Youth, Seniors & Entire Community	Recreation Manager (Significant)	Support planning for future health and wellness needs. Provide recommendations on proposals and designs. (van Keulen, Green)
6. Increase volunteer Adopt a Park Program participation	Supporting Our Youth, Seniors & Entire Community Maintaining Fiscal Responsibility Protecting the Environment	CS Director (Minimal) CS Coordinator (Minimal)	As an exploratory committee, evaluate the opportunity to recreate ongoing volunteer groups to support park maintenance. (Scott)

Staff Resources Required: **0-50 hours = Minimal** **51-100 hours = Moderate** **100+ hours = Significant**

Attachment: PRC Workplan 1819 Draft (1860 : Commission FY 18/19 Work Plans)

Library, Culture & Arts Commission

FY 2018-19 Work PlanCity Council Approved: DRAFT 7.17.18

Overall Mission: To assist the City Council in accomplishing its goals by fostering an environment conducive to and supportive of the arts, culture, and life-long learning in Morgan Hill, working with existing community groups to promote resources, and facilitate partnerships.

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness Community Engagement and Messaging	CS Director (minimal) CS Coordinator (minimal) Program Administrator (minimal)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates) (<u>Paul Chabra</u> /Bussing) (2) Explore development of a calendar relating to library, culture and arts events (Khera) (3) Review opportunities to fund local public access cable television (Benich)
Permanent and Proposed Public Art	Supporting our Youth, Seniors and Entire Community Preserving Our Cultural Heritage	CS Director (minimal) CS Supervisor (minimal) CS Coordinator (minimal) Maintenance Coordinator (minimal)	(1) Partner with local Artists to display their work. Review the possibility of implementing a utility box art program or other programs (doors, walls, etc.) (Bussing/Khera) (2) Form subcommittees as needed to support specific art requests that come forward (All) (3) Review opportunities for funding public art and performing arts in the future (TBD Redfield) (4) Support the Bike Rack Artwork selection (Crawford/Bussing) (5) Develop Tarantula branding and promotion (Crawford/Khera) (6) (4) Review art inventory and maintenance per Commission Policy (Benich) (7) (5) Explore the options and feasibility of creating an artist registry (TBD Bussing/Chabra)

Attachment: 21 Supplement 1 (1860 : Commission FY 18/19 Work Plans)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Art and Culture Events	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	CS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event and look to include incorporate culture and music into the event (Lake is the lead/all members will support) (2) Explore opportunity to partner with artists on a children's art show (Paul <u>Khera/Chabra</u>) (3) Explore partnership opportunities for the City supporting performing arts with South Valley Civic Theater (Lake/Khera)
Library Outreach and Support	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (moderate) Senior Project Manager (significant)	(1) Support Library outreach, including possible pop-up locations (<u>Chabra</u> /Lake) (2) Coordinate Commissioner's Corner in Library to provide book recommendations (Khera) (3) Support the Library Expansion Project (All) <u>(a) Provide specific project support as requested by Library (Benich)</u> (4) Participate in annual Library Commissioners Forum (All) (5) Support incorporation of Children's art into the Library (Lake/ <u>Chabra</u>)
Support of Historical Resources	Preserving our Cultural Heritage	CS Director (moderate) CS Srvs Coordinator (moderate)	(1) Coordinate with the Morgan Hill Historical Society to support <u>of</u> Villa Mira Monte partnership (Bussing/Crawford)

Staff Resources Required:

0-50 hours: Minimal; 51-100 hours: Moderate; 100+ hours: Significant



CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: Christina Turner, City Manager

APPROVED BY: City Manager

UPDATES TO THE CITY COUNCIL POLICY, RULES FOR THE CONDUCT OF PLANNING COMMISSION MEETINGS

RECOMMENDATION(S)

Approve the Rules for the Conduct of Planning Commission Meetings.

The City Council held a Mid-Year Goal Review Workshop on July 13, 2018 at which the Council reviewed Council Policy 97-01, Rules for the Conduct of City Council Meetings. The Council directed staff to make certain edits to this policy. The applicable edits to the City Council Policy, Rules for the Conduct of Planning Commission Meetings, have been incorporated into the attached redlined draft policy for Council's consideration. The policy references Council Policy 03-01, Public Hearing Procedures, which is also attached for reference.

LINKS/ATTACHMENTS:

1. Updated City Council Policy, Rules for the Conduct of Planning Commission meetings
2. CP-03-01

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-18-XX

SUBJECT: Rules for the Conduct of Planning Commission Meetings
EFFECTIVE DATE: July 18, 2018
ORIGINATING DEPARTMENT: Community Development Department

SECTION 1. SCOPE

- 1.1 These rules shall establish the procedures for the conduct of all meetings of the Planning Commission of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all Commissioners and contribute to the orderly conduct of City business.

SECTION 2. MEETINGS

- 2.1 Open to Public. All meetings of the Planning Commission, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2 Regular Meetings. The Planning Commission shall conduct its regular meetings at the time and place established by ordinance or resolution if specified in the ordinance. Regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority vote of the Planning Commission pursuant to Section 5.2 of this policy.
- 2.3 Special Meetings. A special meeting may be called at any time by the Community Development Director or by four Commissioners. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.4 Quorum. Four (4) Commissioners shall constitute a quorum and shall be sufficient to transact business. If less than four Commissioners appear at a regular meeting, the Chair, Vice Chair in the absence of the Chair, any Commissioner, or in the absence of all Commissioners, the Minutes Clerk, shall adjourn the meeting to a stated day and hour.
- 2.5 Adjourned Meetings. The Planning Commission may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.
- 2.6 Attendance. Any commissioner who will be absent from a meeting shall communicate to the Chair and to the Community Development Director in advance of the meeting the date(s) of the meeting(s) that will be missed.

SECTION 3. POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda. For every regular or special meeting, the Minutes Clerk or other authorized person, shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all items of business to be discussed at the meeting. This notice and agenda may be combined in a single document.
- 3.2 Location of Posting. The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Posting for Regular Meetings. For any regular meeting of the Planning Commission, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting.
- 3.4 Posting for Special Meetings. For any special meeting of the Planning Commission, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting.

SECTION 4. AGENDA CONTENTS

- 4.1 Description of Matters. All items of business to be discussed at a meeting of the Planning Commission shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Availability of the Agenda to the Public. The agenda for any regular or special meeting shall be made available to the general public as soon as is practical after delivery to the Commissioners.
- 4.3 Limitation to Act on Only Items on the Agenda. No action shall be taken by the Planning Commission on any item not on the posted agenda.

SECTION 5. ORDER OF BUSINESS

- 5.1 The order of business at meetings of the Planning Commission shall be as follows:
 - A. CALL TO ORDER
 - B. ROLL CALL ATTENDANCE
 - C. DECLARATION OF POSTING AGENDA
 - D. WORKSHOP (as deemed appropriate)
 - E. PLEDGE OF ALLEGIANCE

F. PUBLIC COMMENT

This item refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the Planning Commission. Since the matter is not one on the agenda, no action by Commission can be taken. If a Commissioner so desires, the matter may be placed on the agenda of a future Commission meeting for review and consideration pursuant to Section 9.

G. CHANGE IN ORDER OF BUSINESS.

The Chair may entertain a motion by a majority request of Commissioners present to take matters listed on the agenda out of the prescribed order.

H. CONSENT CALENDAR

These are items of a routine or generally uncontested nature. Any Commissioner or member of the public may request to have an item pulled from the Consent Calendar and acted on individually by the Commission. Items pulled will be discussed after action is taken on the balance of the Consent Calendar and before moving on to public hearings.

I. PUBLIC HEARINGS

These matters are ones that are duly noticed and published in a newspaper of general circulation and, where required by Law, written notice is given to the affected residents who have the opportunity to speak in favor or against a matter or ask questions about the matter. Public hearings shall be conducted pursuant to City Council Policy CP-03-01.

J. OTHER BUSINESS

These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Commission action and direction.

K. DIRECTOR'S REPORT/ANNOUNCEMENTS

These are communication items from the Director, including future agenda items. Director will take input from Commissioners on items of interest. Examples of a Director's report or announcement include notice of cancellation of meetings, reminders of scheduled workshops, report back to the Commission, and pending agenda items.

L. ADJOURNMENT

- 5.2 Review Status of Agenda at 11:00 p.m. If, at 11:00 p.m., the Planning Commission has not concluded its business, it shall review the status of the agenda and determine by majority vote whether to extend the meeting beyond 11:00 p.m., continue any remaining items, or adjourn the meeting to another date and time.

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment. Persons present at meetings of the Planning Commission may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda.
- 6.2 Limitations. The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Chair or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. The Chair or Presiding Officer may allow more time and/or allow speakers to concede their time to a designated speaker of a group unless a majority of the Planning Commission objects. Speakers that wish to designate a group speaker shall notify the CityMinutes Clerk before discussion on the item begins.
- 6.3 Procedure. To address the Planning Commission, each speaker is requested to fill out a Speaker Card and turn it in to the Minutes Clerk before discussion on the agenda item begins. The speaker is requested to provide their name and contact information and the subject or subjects upon which the speaker wishes to address the Planning Commission. Speakers who do not wish to provide their name should provide an alternative designation so that they can be recognized by the Minutes Clerk.

SECTION 7. APPOINTMENT OF OFFICERS

- 7.1 In June of each year, the selection of chair and vice chair shall be pursuant to City Council Policy CP 96-02, except that if a majority of the Commissioners see the need to extend the term due to special circumstances, the term of the Chair and Vice Chair may be extended for one year. The term of service for these offices shall be one year, beginning at the first meeting in July of each year. No commissioner shall serve more than two consecutive full terms as chairperson. The Chair may resign at any time during his or her role as chair, at which time the Vice Chair may serve the remaining term.

SECTION 8. PROCEDURES FOR THE CONDUCT OF MEETINGS

- 8.1 Role of the Chair/Presiding Officer
- A. The Presiding Officer of the Planning Commission, who shall be the Chair or in the Chair's absence shall be the Vice Chair, or in their absence any other designated Commissioner, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Commissioners and between the Commission, staff, and public.
- B. Communication with Commissioners
1. Commissioners should request the floor from the Presiding Officer before speaking.

2. When one Commissioner has the floor and is speaking, other Commissioners shall not interrupt or otherwise disturb the speaker.
 3. With the concurrence of the Chair, a Commissioner holding the floor may address a question to another Commissioner. The Commissioner being questioned may or may not respond while the floor is still held by the Commissioner asking the question. The reply shall be limited to the question asked.
- C. The Chair/Presiding Officer may declare that an item within the meeting will be conducted in “workshop” format, which means that the procedures described in section 8.1B do not strictly apply. This is to allow for a more open discussion without strict formalities.
- D. Communication with Members of the Public Addressing the Commission
1. The Chair shall open the floor for public testimony (typically referred to as public comment) as appropriate.
 2. Commissioners may question a person addressing the Commission at the conclusion of the person's comments or upon expiration of the person's time to speak. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Commissioner permission to directly question the person.
 3. Staff shall be a resource to the Planning Commission to answer questions arising during discussions between Commissioners and between Commissioners and members of the public. Communications in this regard shall be through the Presiding Officer.
 4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 8.2 Rules of Order. The Planning Commission adopts no specific rules of order except those listed herein. The Planning Commission shall refer to *The Standard Code of Parliamentary Procedure* by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Chair has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the Commissioners present.
- 8.3 Motions. The Chair or any Commissioner may bring a matter of business on the agenda before the Commission by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to debate to the moving party and, thereafter, to any Commissioner recognized by the Chair or Presiding Officer. Debate shall be closed upon consent of a majority of the Commission.

- 8.4 Reconsideration. Immediately after a vote on a matter, any Commissioner may request to have his/her vote changed on a matter before the Commission moves on to the next item. Such a request will be granted by the Chair unless a majority of the Commission objects.

A matter may be reconsidered by the Planning Commission if a Commissioner on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Commission, however, nothing in this policy precludes the majority of Commissioners from requesting reconsideration of any item.

8.5 Debate.

- A. The discussions and deliberations at meetings of the Planning Commission are to secure the ~~mature~~-informed judgement of Commissioners on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every Commissioner a reasonable and equal opportunity to be heard.

- B. Obtaining the Floor for Debate.

As soon as a debatable motion has been stated to the Commission by the Chair, any Commissioner has a right to discuss it after obtaining the floor. The Commissioner obtains the floor by seeking recognition from the Chair. A Commissioner who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

- C. Speaking More Than Once.

To encourage the full participation of all of the Commissioners, no Commissioner or Commissioners shall be permitted to monopolize the discussion of the question. If a Commissioner has already spoken and other Commissioners wish to speak, the latter Commissioners should be recognized in preference to the Commissioner who has already spoken. However, if no other Commissioners seek recognition, the Chair may recognize the Commissioner who has already spoken.

- D. Relevancy of Debate.

All discussion must be relevant to the motion before the Planning Commission. A Commissioner is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Chair should then direct the speaker to limit discussion to the question before the Planning Commission.

A motion-its nature or consequences-may be attacked vigorously. But, it is never permissible to attack the motives, character, or personality of a Commissioner, City staff, or any member of the public either directly or by innuendo or implication. It is the duty of the Chair instantly to stop any Commissioner who engages in personal attacks. It is the motion, not its proposer, that is the subject of debate. Meetings must

discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Chair and must never be directed to any individual.

E. Chair's Duties During Debate.

The Chair has the responsibility of controlling and expediting debate. A Commissioner who has been recognized to speak on a question has a right to the undivided attention of the Commission.

It is the duty of the Chair to keep the subject clearly before the Commissioners, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 9. ITEMS TO BE PLACED ON THE AGENDA

- 9.1 Any Commissioner may at any time request to have any matter that can be legally agendized to be placed on the agenda of the Planning Commission by submitting a memo to the Community Development Director. The memo should be succinct, describe the issue, and the proposed referral, and include any background materials or information relating to the matter. The Community Development Director will transmit all of the documentation to the Deputy City Clerk for distribution to the Planning Commission and public as part of the agenda packets for the meeting.
- 9.2 The Community Development Director will place the item on the next available Planning Commission meeting agenda.
- 9.3 At the meeting at which the referral is agendized, the Planning Commission will consider the proposal and vote on its disposition. A majority of those present are necessary to formally refer an item to the City Staff. Staff will indicate if the referral is inappropriate or otherwise unattainable which shall be considered by the Planning Commission during its deliberation.

SECTION 10. DECORUM

- 10.1 Commissioners. Commissioners value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Commissioners shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the Planning Commission.
- 10.2 City Employees. City staff and consultants shall observe the same rules of order and decorum applicable to the Planning Commission. City staff shall act at all times in a business and professional manner towards Commissioners and members of the public.
- 10.3 Public. Members of the public attending Planning Commission meetings shall observe the same rules of order and decorum applicable to the Planning Commission.

- 10.4 Noise in the Chambers. Noise emanating from the audience within the Commission Chambers or lobby area, which disrupts Planning Commission meetings, shall not be permitted.
- 10.5 Sergeant-at-Arms. The Chief of Police, or his/her designated representative, shall be ex-officio Sergeant-at-Arms of the Planning Commission.

SECTION 11. VIOLATIONS OF PROCEDURES

- 11.1 Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the Planning Commission in accordance with State Law.

This Policy Shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 03-01

SUBJECT: Public Hearing Procedures

EFFECTIVE DATE: August 20, 2003, Amended October 22, 2003
REVIEWED JULY 18, 2007

ORIGINATING DEPARTMENTS: City Manager/City Attorney

POLICY:

The City Council of the City of Morgan Hill is charged with conducting public hearings on various matters, including zoning appeals.

Various interests must be considered in establishing rules for conducting public hearings. Such hearings often draw a large number of people, many of whom wish to address the Council on the matter being heard. However, the time devoted to any one public hearing is subject to constraint because the Council also has other pressing matters it must consider on any particular agenda, as well as other duties and responsibilities outside of Council meetings.

The City Council therefore believes that the following interests should be taken into consideration in establishing rules for the conduct of public hearings:

1. promotion of courteous civic discourse;
2. presentation of relevant information and opinions;
3. the due process rights of applicants; and
4. the limited time available to the Council to hear and consider any one particular matter.

In order to assure that such hearings are conducted in a manner which balances these interests, the Council hereby adopts the following rules of procedure for such hearings.

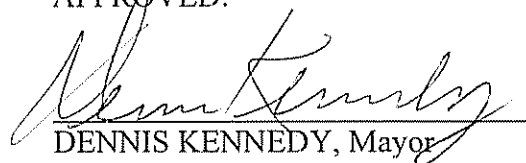
PROCEDURE:

1. Preliminary Announcements. Mayor announces procedures to be followed, including limitations on presentations, as further addressed below.
2. Presentation of Staff Report.
 - A. Explanation of applicant's proposal and action to be taken by the Council.

- B. Review of Planning Commission's analysis and recommendation, if any. Depending on the project, other committees or commissions may have recommendations.
 - C. Staff's analysis of, and recommendation, if any, regarding applicant's proposal.
 - D. Council questions of staff, if any.
3. Public Hearing:
- A. Mayor formally opens public hearing.
 - B. Presentation by applicant. (May be limited to ten minutes, or other time as the Mayor deems appropriate as dictated by the complexity of the proposal).
 - C. Council questions, if any, of applicant.
 - D. Public comment. Mayor may limit time for total public comment, and/or for individual presentations, but will assure that all arguments are given an opportunity to be presented. Mayor may encourage speakers to avoid duplication by combining speaker presentations, and/or by a show of hands in support of or opposition to a particular viewpoint. If there is organized opposition to a project, the Mayor may allow a designated chief opposition spokesperson to make an extended presentation. The Council may ask questions, if any, of speakers.
 - F. Project applicant rebuttal. The time allowed for rebuttal may be extended beyond three (3) minutes in the discretion of the Mayor.
 - G. Public hearing closed.
4. Council Deliberation. Council may make inquiries of staff. However, inquiries to the applicant or others will require re-opening the public hearing.

This policy shall remain in effect until modified. However, the Council may depart from this process in any particular matter upon a majority vote of the Council members present and participating in that matter.

APPROVED:



DENNIS KENNEDY, Mayor

July 18, 2018

- 1 TOT
- 2 TBID
- 3 Recommendation
- 4 Next Steps

Godbe Survey on TOT Increase



- 63.9% support for up to 14%
- 69.3% support for up to 12%

Prospective voters rated streets, police patrols, and police officers in schools as the three highest priorities for additional funding.



City Needs More Financial Resources



- ✓ Currently collect 10% or \$2.7 M
- ✓ City has unfunded needs and gaps for infrastructure & services
- ✓ Public Safety is a priority - but funds not available to support all needs
- ✓ 2016 proposed ballot measure did not receive enough support as shown in survey

.5% Increase	1% Increase	1.5% Increase	2% Increase	2.5% Increase	3% Increase	3.5% Increase	4% Increase
\$135K	\$270K	\$405K	\$540K	\$675K	\$810K	\$945K	\$1.1 M

Ways to Grow Tourism



Present Practice

- Policies
- Land Use
- Collaborating
- Creating Demand Generators
- Supporting Downtown, Wineries, Hotels, Restaurants, etc.

TBID

- New Assessment
- Approval by Hotels
- Led by Hotels
- Can only be used for Tourism
- City must approve annual work program

Dedicated Funds

- Will require new TOT Tax Measure
- Led by City
- Can create commission for oversight
- Can offer efficiencies

Proposal



- ✓ 1.5 % TBID + 1% TOT Increase
- ✓ 2.5% Total Increase

Draft Management Plan



TBID Mission: Marketing and sales promotions as well as sports facility improvements/programs designed to market the area as a tourism and event destination and increase room night sales.

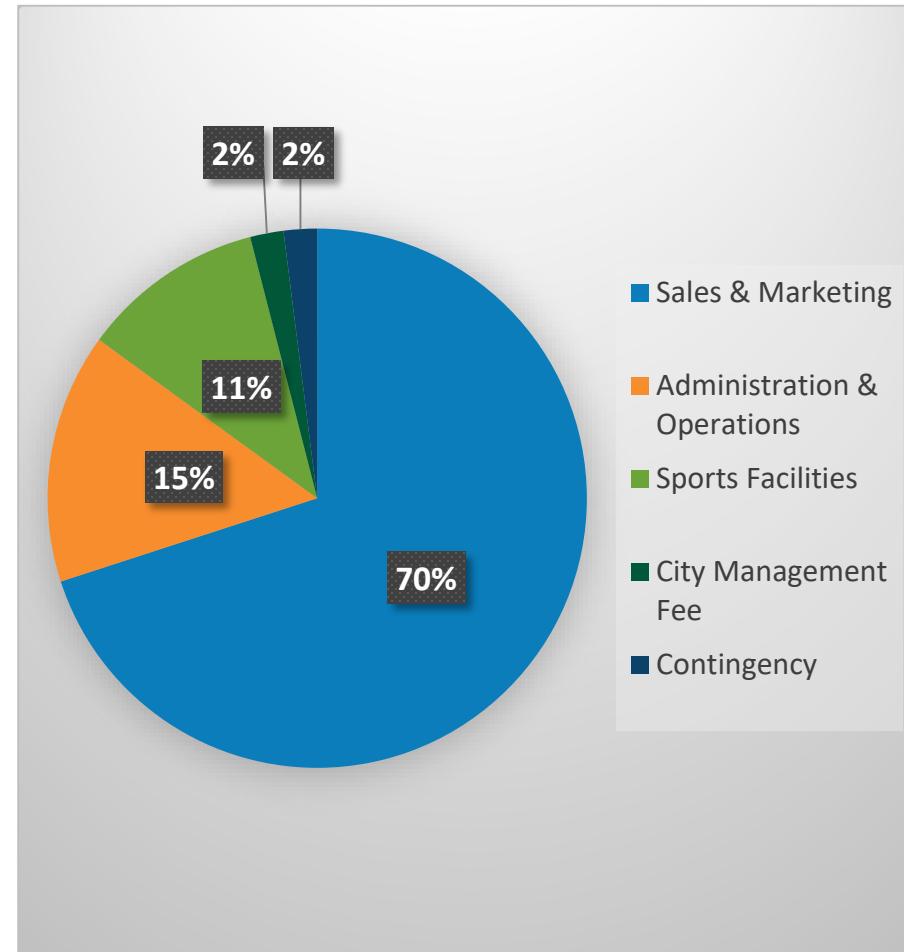
All Hotels within City Boundaries

Five-Year Term

1.5% Assessment = \$405,000

Governed by Owner's Association

Annual City Review & Approval



Owner's Association



9 Person Board of Directors:

5 Hotel Representatives

1 Wineries Association Representative

1 Outdoor Sports Center Representative

2 City of Morgan Hill Representatives



Recommendation



- ✓ 1.5% TBID + 1% TOT
- ✓ Market's ability to tolerate tax increase
- ✓ Growing collaborative partnerships
- ✓ Will generate \$270,000 of new General Fund revenues annually

	Recommended	Option A	Option B	Option C
Proposed Increase	1.5% TBID & 1% TOT	1.5% TBID & 1.5% TOT	2.5% TOT	2% TOT in 2018 + 1% TOT in 2019
Establishment of a TBID	Yes	Yes	No	No
Total Tax	12.5%	13%	12.5%	13%

Actions Needed



- Open and close the public hearing
- Adopt a resolution
- Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure
- Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Council members to write the argument
- Determine whether to print the full text of the ordinance in the voter pamphlet
- Direct the City Clerk and City Attorney to take all necessary actions to submit the proposed ballot measure to the voters
- Direct staff to continue to work on establishment of a TBID

Questions/Comments



CITY OF MORGAN HILL

From: Gene Guglielmo
To: [CityClerk](#)
Subject: Letter to council supporting TBID
Date: Monday, July 16, 2018 1:07:00 PM

Dear Honorable City Council,

I am reaching out to you to express our strong support of the establishment of a Tourism Based Improvement District (TBID) for Morgan Hill. Being in business in Morgan Hill since 1925 our Family has been members and supporters of many local, regional and state organizations to not only promote the history and the quality of the wineries in historic Santa Clara Valley but to make people aware of all the wonderful amenities that make our area such a special place. We feel it is so important to keep sending out that message! With this great opportunity to establish a TBID we can only make that message louder! Sincerely, The Guglielmo Family

Gene Guglielmo
Guglielmo Winery
1480 East Main Ave
Morgan Hill, CA 95037
O: 408-779-2145
F: 408-779-3166
gene@guglielmowinery.com
www.guglielmowinery.com





17485 Monterey Road, Suite 105
Morgan Hill, CA 95037
(408)779-9444, info@morganhill.org

2018 Board Executive Committee

Board Chair: **Rich Firato**, Firato Janitorial Morgan Hill Life
Vice Chair: **Diana Wood**, Wood Motivation
Past Chair: **Robert Airoidi**, Morgan Hill Life
Board Secretary: **Fawn Myers**, Morgan Hill Unified School District
Treasurer: **Phil Couchee**, Recology South Valley

2018 Board Members

Matthew Bowen, Real Estate Solutions
Bill Gardner, Silicon Valley Relocation Services
Heather Geddes, Santa Clara County Library
Ken Murray, Associate Member
Dusty Perryman, Associate Member
Ashis Roy, Holiday Inn Express
John Varela, Santa Clara Valley Water District
Mark Phillips, Cochrane Road Self Storage
Sunday Minnich, Minnich Productions

July 17, 2018

RE: July 18, 2018 Agenda Item 15

Dear Mayor Tate, Mayor Pro Tem Constantine, and Council Members Carr, Jachimowicz and Spring:

The Morgan Hill Chamber of Commerce supports the city staff's suggested course of action regarding establishment of a Tourism Based Improvement District (TBID) and putting a measure on the upcoming ballot for voters to approve an increase in the general fund supporting Transient Occupancy Tax (TOT).

For reference, the exact language from the staff report is: "Given these three fundamental notions, it is recommended that the City Council pursue a 1% TOT increase and continue to work with the hotels to establish a 1.5% TBID, for a combined increase of 2.5%. This approach will generate an additional \$270,000 annually to the City's General Fund and \$405,000 for a TBID. A 2.5% increase is a substantial increase for a developing market. This judicious increase will allow for the hotels to move forward with the TBID and for the City and the hotels to forge healthy relationships and better align our efforts. The City can evaluate the TBID on an annual basis and as the market matures and the demand generators grow, then reconsider other increases once the impacts of the measure and the TBID are known."

This course of action will provide new funding to support sustainable efforts to grow the local tourism, which in turn benefits both the city (increased taxable activities) and local businesses (restaurants, wineries, hotels, sports facilities, etc.). The proposal also provides (with voter approval) for immediate increased general fund revenues even before the pie is grown larger. Furthermore, the existence of an effective TBID aids attraction of additional investments in hotels, restaurants, sports facilities and other tourist dependent businesses.

Please embrace this opportunity to move into a new phase of cooperation and joint prosperity.

Sincerely,

A handwritten signature in black ink, appearing to read "John Horner".

John Horner, President & CEO



MORGAN Hill Tourism Alliance

July 18, 2018

Dear Mayor Tate, Mayor Pro Tem Constantine, and Council Members Carr, Jachimowicz and Spring:

Members of the Tourism Alliance have been working hard to boost Morgan Hill's visibility as a tourism destination for individuals, groups, family events, sporting events and business users. These all volunteer efforts have born some fruit, but a well-funded, professionally managed, on-going tourism promotion and co-ordination organization is necessary to generate the kind of economic impact we all wish for and stand to benefit from.

Morgan Hill has many underappreciated assets. These include: athletic facilities such as the Outdoor Sports Center, wilderness areas such as Henry W. Coe State Park (California's second largest state park), recreation areas such as Anderson Reservoir, a vibrant downtown scene with many exceptional restaurants, historical treasures such as the Machado School and Villa Mira Monte and nearly 30 wineries on the Santa Clara Valley Wine Trail. Our neighbors to the north (San Jose) and south (Gilroy) have both demonstrated that dedicated funding and organizational effort focused on tourism pays off in business generated and taxes collected.

Now is the time for Morgan Hill to step up to the plate and form a Tourism Business Improvement District (TBID) through which restaurants, retailers, hotels, facility operators and city government will all benefit. Morgan Hill has the need, the opportunity, the talent and the willingness to make this happen. We urge the City Council to make formation of a well-structured TBID an urgent priority and that the city and hotel owners continue in the newfound spirit of mutual cooperation.

Thank you,
The Morgan Hill Tourism Alliance

RESOLUTION NO. _____

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY INCREASING THE TRANSIENT OCCUPANCY TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Section 7280 of the California Revenue and Taxation Code authorizes the City to levy a transient occupancy tax, for revenue purposes, on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging for up to 30 days; and

WHEREAS, the City Council desires to increase the rate of the current transient occupancy tax from 10% to 11%; and

WHEREAS, the transient occupancy tax rate cannot be increased without voter approval; and

WHEREAS, the City Council desires to submit a transient occupancy tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date.

WHEREAS, the proposed increase to the transient occupancy tax is more completely described in the ordinance attached hereto as Exhibit "A" and incorporated herein by reference (the "Tax Ordinance").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes an increase in the rate of transient occupancy tax from 10% to 11%.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Transient Occupancy Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

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Shall the Morgan Hill ordinance ~~To fund~~ providing funding, that cannot be taken by the State, for city services including, 9-1-1 emergency response times, neighborhood police patrols, and crime prevention; to repair potholes and maintain city streets; and for unrestricted general revenue purposes, ~~shall the City of Morgan Hill adopt an ordinance by~~ increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 11%, providing approximately \$270,000 annually, requiring financial audits, and all funds staying in Morgan Hill, ~~be adopted?~~

YES

NO

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the ~~County Clerk~~ Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the ~~County Clerk~~ Board of Supervisors.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 34 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ~~referendum ballot~~ measure may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

City of Morgan Hill

Resolution No.

Page 2 of 5

Page 3 of 5

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Section 11. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California ~~Increasing the t~~ransient o~~ccupancy t~~ax. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov/>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

Section 12. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

Section 13. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

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The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to -rebut.

City of Morgan Hill

Resolution No.

Page 2 of 5

Page 4 of 5

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Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

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Section 14. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 15. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

Section 11.

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APPROVED and ADOPTED this ___ day of July, 2018:

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Steve Tate, Mayor

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ATTEST:

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Irma Torrez, City Clerk **PASSED AND ADOPTED** by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

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AYES: _____ **COUNCIL MEMBERS:** _____

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NOES: _____ **COUNCIL MEMBERS:** _____

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ABSTAIN: _____ **COUNCIL MEMBERS:** _____

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ABSENT: _____ **COUNCIL MEMBERS:** _____

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DATE: _____

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Steve Tate, MAYOR

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City of Morgan Hill

Resolution No.

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□ 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. , adopted by the City Council at the meeting held on July 18, 2018.

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

DATE:

Irma Torrez, CITY CLERK

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EXHIBIT A

ORDINANCE NO. ___, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 3.24.020 (TAX IMPOSED- AMOUNT) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE MORGAN HILL MUNICIPAL CODE

THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:

SECTION 1. Section 3.24.020 (Tax Imposed – Amount) of Chapter 3.24 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~).

3.24.020 - Tax imposed—Amount.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~ten~~ eleven percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the city.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. Effective Date. This ordinance shall be effective if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council and the duty of the service providers to collect the tax shall commence as provided in California Public Utilities Code Section 799.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

TBID Recommendation



MHUSA

More Kids In More Sports

TBID Considerations

Staff Recommendation

- 1.5% TBID + 1% TOT
- Market's ability to tolerate tax increase
- Growing collaborative partnerships
 - Wineries
 - Local DMOs
 - National associations
 - Athletic events organizers

MHYSA Experience

- Local/Grassroots events on the decline
- Cooperation between all parties is important
- Need TBID to compete in RFP Sports Tourism Industry
 - Longer term cycle – 1 to 3 years
 - Regional, national and international events
 - Offset opportunity costs
- Critical to filling missing weekends
- Other opportunities unrealized – games, etc.
- Keep benefits local – National travel agencies



RFP Tournament Opportunities



US Quidditch Cup

- Bids for 2019 and 2020 due June of 2018
- Minimum financial/in-kind support of \$35,000, \$30,000 cash
- Facility and fields at no charge, including parking
- Provide complimentary trips for site inspection
- Hotel rooms no more than \$120/night including taxes
- Commission on room night charges
- Complimentary medical services
- Volunteers and on site staff at no charge
- Golf carts, VIPs and team areas, sanitation, advertising free

Implications

- Estimated Direct Spending = \$550,000
- Opportunity costs:
 - Facility rental revenue = ~\$25,000, plus ~\$14,000 in parking
 - Hotel room nights = ~\$33,000
- Fixed costs
 - Equipment rental = ~\$12,000
 - Services = ~\$9,000
- Total = ~\$83,000 plus \$30,000 cash





Proposed Cannabis Business Tax Ordinance

David Swing, Chief of Police
David McPherson, HdL



July 18, 2018

Policy Considerations

- Should the City Council present a cannabis business tax to voters in the November 6, 2018 election?
- If so, what tax structure and amount should be used?



Background and Agenda



- Community split retail sales 48%
- New Cannabis Regulations permit delivery in local jurisdictions – without local pre-emption
- Tonight's item will:
 - Review ordinance
 - Review fiscal analysis
 - Recommend next steps

Draft Ordinance

- Covers many important issues
- Provides for taxation for legal and illegal (non-permitted) activities
- Provides for an appeal for relief from payment of taxes for declared disaster
- Defines the tax structure for various uses



Tax Structure

- Survey polled up to 15% tax rate on gross receipts for all uses
- Various taxation methodologies (retail, processing, canopy, testing)
- Goal is 30% cumulative tax rate or less (State/Local)
- Other jurisdictions:
 - Have used a hybrid approach
 - Some have recently lowered the tax rate
- High tax rate drives the black market and discourages investment

Tax Structure (continued)



- Taxation Methodologies
 - Retail Tax – places a percentage charge on gross receipts (specific or ceiling)
 - Could be set at multiple points for various uses
 - Manufacturing or Processing Tax – Assesses value of product shipped
 - Canopy Tax – Assesses square footage of grow area for cultivators
- Council can select one methodology or a hybrid for voters
- Tax rate can be set at or lower than ceiling

Proposed Initial Rates



INITIAL RATES

LICENSE TYPE	RATE
Cultivation: Indoor, artificial lighting	\$10.00 SF
Cultivation: Indoor, mix lighting	\$7.00 SF
Cultivation: Outdoor	\$2.00 SF
Cultivation: Nursery	\$1.00 SF
Testing Laboratory	2% GR
Retailer/Deliveries	6% GR
Distribution	4% GR
Manufacturing	4% GR

Proposed Maximum Rates



TOP-END RATES

LICENSE TYPE	RATE
Cultivation: Indoor, artificial lighting	\$15.00 SF
Cultivation: Indoor, mix lighting	\$10.00 SF
Cultivation: Outdoor	\$7.00 SF
Cultivation: Nursery	\$2.00 SF
Testing Laboratory	10% GR
Retailer/Deliveries	10% GR
Distribution	10% GR
Manufacturing	10% GR

Fiscal Analysis

RETAILERS

	Gross Receipts	# of Businesses	Total GR	6%	8%	10%
Scenario 1	\$2.5M	1	\$2.5M	\$150,000	\$200,000	\$250,000
Scenario 2	\$2.5M	2	\$5M	\$300,000	\$400,000	\$500,000
Scenario 3	\$2.5M	3	\$7.5M	\$450,000	\$600,000	\$750,000



Fiscal Analysis

CULTIVATION

	Avg. Sq. Ft.	# of Businesses	Total Sq. Ft.	\$10	\$12	\$15
Scenario 1	5,000	1	5,000	\$50,000	\$60,000	\$75,000
Scenario 2	5,000	2	10,000	\$100,000	\$120,000	\$150,000
Scenario 3	5,000	3	15,000	\$150,000	\$180,000	\$225,000



Fiscal Analysis

MICROBUSINESS

	Gross Receipts	# of Businesses	Total GR	4%	7%	10%
Scenario 1	\$2.5M	1	\$2.5M	\$100,000	\$175,000	\$250,000
Scenario 2	\$2.5M	2	\$5M	\$200,000	\$350,000	\$500,000
Scenario 3	\$2.5M	3	\$7.5M	\$300,000	\$525,000	\$750,000



Fiscal Analysis

Revenue Projections – All Businesses

	Retail	Cultivation	MicroBusiness	Testing
Conservative	\$150 - 250K	\$50 – 75K	\$100 – 250K	\$40 – 200K
Moderate	\$300 - 500K	\$100 – 150K	\$200 – 500K	\$80 – 400K
Aggressive	\$450 - 750K	\$150 - 225K	\$300 – 750K	\$120 – 300K



Ballot Arguments and Impartial Analysis

- If placed on the ballot, Council may:
 - Submit an argument in favor of the ordinance to be included in the voter pamphlet
 - Ask the City Attorney to provide an impartial analysis included in the voter pamphlet
 - Provide the full ordinance in the voter pamphlet or include the URL in the voter pamphlet



Staff Recommendation



- Hybrid tax approach
- Cannabis business tax not to exceed 10% on gross receipts on all uses except cultivation
- Propose a business tax on cultivation not to exceed \$15 per square foot of canopy
- Proposed ordinance has tax rates lower than the ceiling
 - \$10 Canopy, 6% Retail, 4% Production, 2% Testing
- Add delivery to the ballot language and ordinance with an initial tax rate of 6%

Actions Needed

- Open and close the public hearing
- Adopt a Resolution
- Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure
- Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument
- Determine whether to print the full text of the ordinance in the voter pamphlet
- Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters

Questions?





CITY COUNCIL STAFF REPORT

MEETING DATE: July 18, 2018

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

APPROVE PROPOSED BALLOT MEASURE REGARDING THE TAXATION OF CANNABIS

RECOMMENDATION(S)

1. Open and close the public hearing;
2. Adopt resolution calling a general municipal election and ordering consolidation with the statewide general election for the purpose of submitting to the voters a cannabis business tax ordinance and authorizing the City Clerk to contract with the County of Santa Clara for services to be performed in connection with the statewide general election to be held on Tuesday, November 6, 2018;
3. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure;
4. Determine whether the Council will submit an argument related to the ballot measure and designate the Mayor and/or Councilmembers to write the argument;
5. Determine whether to print the full text of the ordinance in the voter pamphlet; and
6. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities

Financial Stewardship

POLICY CONSIDERATIONS:

1. Should the City Council present a cannabis business tax to voters in the November 6, 2018 election to tax the cultivation, retail sale, distribution, testing and manufacture of medicinal or adult use of cannabis in Morgan Hill?
2. If so, what tax structure and amount should be used?

REPORT NARRATIVE:

Background

Since the passage of Proposition 64 in November 2016, Council has had two workshops, multiple updates, and conducted a statistically significant community survey to determine the impact and level of community support for cannabis sales in Morgan Hill. The results of the survey reflected a community that was evenly split on the concept of retail sales of cannabis for ~~medical marijuana~~ recreational use in Morgan Hill at 48.3% in support and 48.1% opposed. For ~~recreational~~ medical marijuana use, the

survey showed 61.3% in support and 36.7% opposed. Council directed staff at the May 16, 2018 Council meeting to return with a proposed ordinance and ballot language for a revenue measure for the November 6, 2018 election. Staff worked with David McPherson from HdL to prepare the attached proposed ordinance and tax structure.

Highlights of Draft Ordinance

5.06.030 – Intent: Describes the intent of the ordinance to impose a Cannabis Business Tax. This tax would apply to both legal and illegal businesses. For example, if a business was operating without proper permits, the City could still collect tax revenue.

5.06.050 – Tax Imposed: Identifies the tax imposed by type and amount.

5.06.260 – Relief from taxes – disaster relief: In the event of certain circumstances a business owner may request relief from taxes by appealing to the Tax Administrator or City Council.

Taxation Structure and Revenue

Local agencies may tax medicinal and recreational cannabis with voter approval for general fund purposes. The tax rate is set by the local agency and is not limited by statute. Other jurisdictions, who were early adopters of cannabis sales, have found that imposing a tax rate that is too high will inhibit legitimate purchases and encourages the existing black market to thrive. As a result, some of these cities and counties have lowered their tax rate.

HdL's position is that any taxing structure should be at or below a cumulative tax rate of 30% – including state and local taxes – to encourage legitimate sales and discourage the black market. The State imposes a 15% excise tax on all sales of cannabis. In addition all retail sales are subject to the usual sales tax charge of 9%. Should the City impose a 6% tax the total tax level would be 30%. In addition the City actually receives 1 cent of the 9 cent sales tax, so the effect City tax rate of 6% is actually a net 7% to the City based upon its share of sales tax revenue. Staff is recommending following this advice since other cities have lowered their cannabis tax rate in recent months.

Taxation can be assessed at multiple places in the cycle of cannabis. For example, the Council could choose to impose a percent of gross receipts – like sales tax (Retail Tax), a percent of dollar value of manufactured or shipped for all or certain uses (Manufacturing Tax), tax the square footage of a growing area or canopy (Canopy Tax), or a hybrid of each form.

Retail Tax: The retail tax is most like the application of sales tax and applies to the gross sales receipts of the business. Some jurisdictions have passed variable tax structures that create a ceiling and allow for taxes to be increased to up to a certain amount based on organizational needs and market demand. Assuming a 10% tax rate, a business with reported receipts of \$5,000,000 a year would generate \$500,000 in tax revenue.

Manufacturing or Processing Tax: This tax would assess the product value manufactured from the location. For example, if a 4% tax were levied and a business produced \$1,000,000 annually, the tax revenue would be \$40,000.

Canopy Tax: A canopy or cultivation tax would charge an annual tax based on the square footage of canopy grow, as opposed to total square feet of a building. In this model, if a canopy tax of \$10.00 per square foot were passed, a business of 7,500 total square feet with 5,000 square feet of canopy would pay \$50,000 annually.

Godbe Research polled likely voters in March of this year and found that 64.9% of respondents supported a tax on cannabis products with a ceiling of 15%. Due to the variation in the type of use, staff recommends a hybrid taxing structure of up to \$15.00 per canopy square foot (adjusted over time for inflation), up to 10% of gross receipts for all other cannabis business which would include retail sales, manufacturing and/or distribution facilities, and testing laboratories. The attached ordinance and resolution provide the specifics of the proposed cannabis tax structure and the proposed ballot language for a tax.

The cannabis excise tax rate for the State of California is 15%. Legislation was introduced this year to lower the excise rate by 4% which, if passed, would provide an opportunity to increase the local cannabis tax rate accordingly and stay within the recommended 30% cumulative tax rate. Council could ask voters to establish a variable tax rate with a ceiling above 6% to quickly respond to any fluctuations in the State's taxing structure or to adjust for market conditions or City needs. The attached ordinance contains the initial recommended tax rates.

Ballot Arguments and Impartial Analysis

The State Elections Code allows the City Council to determine its interest in authoring an argument in favor of the ballot measure for a cannabis tax. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the ROV by 5:00 p.m. on August 14, 2018, and rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on August 21, 2018. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal arguments.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one against each ballot measure will be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.

2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors of proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference as identified above, the Council may either;

1. Author an argument in favor of the measure as a whole body at the July 25, 2018 Council Meeting (subject to Brown Act considerations outlined in the next paragraph);
2. Authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of the City Council to sign the argument; or
3. Authorize up to two Councilmembers to author and sign the argument and have up to three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Morgan Hill community author the argument.

If the City Council decides to author an argument as a whole body, this could be accomplished in several ways in compliance with the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

Roles & Limitations During Ballot Measure Campaign Period

In order to be successful in securing voter approval of the measure, it will be necessary for various community leaders to assist in putting together a community campaign to support passage of the ballot measure. The City cannot expend any time, money or effort advocating a position supporting passage of the ballot measure. Council members and staff can work on the campaign on their own time and at their own expense, provided it is made clear that they are doing so on their own time and not utilizing City resources.

Staff is requesting guidance concerning whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

If the measure is approved, the City Attorney is required to prepare an impartial analysis of the ballot measure. The impartial analysis would be included in the voter pamphlet

and must be submitted to the ROV by 5:00 p.m. on August 21, 2018.

Whether Full Text of Ordinance Should Be Included in Voter Pamphlet

Printing the full text of the ordinance in the voter pamphlet is not required and is cost prohibitive. The Council has the option of directing the full text of the ordinance to be printed in the voter pamphlet or including a statement following the impartial analysis that the full text is available by calling the elections official's office (City Clerk's Office) and requesting a copy at no cost. The text of the ordinance will also be posted on the City website.

CONCLUSION:

As directed by the Council, staff has prepared a draft ordinance for the cannabis business tax for the City Council to consider for submittal to the voters as Council initiated ballot measure on November 6, 2018. If the Council decides to submit a ballot measure to the voters, direction is needed regarding the ballot argument and an impartial analysis. After placing any measures on the ballot, the City cannot use public resources other than to provide basic factual information regarding these measures. Placing a tax on the ballot does not allow for the presence of cannabis in Morgan Hill. Council still must decide on what uses are allowable and their location, should the measure pass.

COMMUNITY ENGAGEMENT: Inform – Staff has used several mechanisms to inform the community about this issue to include workshops, staff reports, a community survey and this staff report.

ALTERNATIVE ACTIONS:

Council could choose to not place the taxation of cannabis on the ballot and cease further action to determine allowable uses.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 17, 2017, the Council held a workshop to discuss cannabis related policies; January 17, 2018, the Council considered a cannabis registration for personal cultivation and directed staff to conduct a community survey; February 7, 2018, the Council held a Cannabis Policy Workshop; April 18, 2018 Council received the report regarding the community survey on cannabis and Transit Occupancy Tax; and on May 16, 2018 Council directed staff to develop language to place a tax measure on the November 2018 ballot.

FISCAL AND RESOURCE IMPACT: Placing the measure on the ballot will cost approximately \$53,000 and will be paid from fund 010.2420.42231 – Elections, Contract Services, which is included in the 2018-19 Adopted Budget. If successful **and** if the Council choose to allow cannabis uses, the City could realize an increase in General Fund revenues. The amount of the increase is anticipated to be between approximately \$720,000 and \$2,500,000 dependent on several variables including types and number of uses and quantity of purchases or production.

CEQA (California Environmental Quality Act):

Not a Project: The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

LINKS/ATTACHMENTS:

1. Morgan Hill Cannabis Business Tax Resolution
2. Cannabis Ordinance
3. May 16, 2018 City Council Staff Report (weblink)

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE**

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, cannabis businesses are likely to create demands upon City services if permitted;

WHEREAS, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”; and

WHEREAS, the Cannabis Business Tax cannot be imposed without voter approval; and

WHEREAS, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Exhibit “A” and incorporated herein by reference (the “Tax Ordinance”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes the Cannabis Business Tax.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday, November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Cannabis Business Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

<u>Shall the Morgan Hill ordinance, To fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, shall the City by taxing cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$720,000 to \$2,500,000 annually and will be levied until repealed by the voters, <u>be adopted</u>?</u>	YES	
	NO	

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the ~~County Clerk~~Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the ~~County Clerk~~Board of Supervisors.

Section 10. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section ~~34~~ above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ~~referendum ballot measure~~ may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 11. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California Adding Chapter 5.06 (Cannabis Business Tax) to Title 5 of the Morgan Hill Municipal Code. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov/>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

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Section 12. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

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Section 13. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

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The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

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Section 14. Effective Date. This Resolution shall be effective immediately upon adoption.

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Section 15. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

Section 11.

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PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

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<u>AYES:</u>	<u>COUNCIL MEMBERS:</u>
<u>NOES:</u>	<u>COUNCIL MEMBERS:</u>
<u>ABSTAIN:</u>	<u>COUNCIL MEMBERS:</u>
<u>ABSENT:</u>	<u>COUNCIL MEMBERS:</u>

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. __, adopted by the City Council at the meeting held on July 18, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK
~~APPROVED and ADOPTED~~ this 18th day of July, 2018.

Steve Tate, Mayor

~~ATTEST:~~

Irma Torrez, City Clerk

|

EXHIBIT A

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City Council,

As stated before I encourage the city council to deny any and all business allowances, propositions, or permissions related to the cannabis industry in or around Morgan Hill.

The residual issues related to access to cannabis and the community's acceptance or tolerance of cannabis related industry in city areas has adverse impact on students and the community.

If the city were going to enable such businesses in the city, then I advise that the city council establish a regulation that no such industry business or retail establishment may be located within a mile of any school. In addition, I advise that half of all taxes collected by the city be designated to the school district for drug education and intervention programs.

Steve Betando

MHUSD

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL SUBMITTING TO THE CITY OF MORGAN HILL'S QUALIFIED VOTERS AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION A MEASURE SEEKING VOTER APPROVAL TO CONVERT THE OFFICES OF THE CITY CLERK AND CITY TREASURER TO APPOINTIVE POSITIONS; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, a General Municipal Election has been called and is to be held in the City of Morgan Hill, California on Tuesday, November 6, 2018;

WHEREAS, Morgan Hill's elected City Clerk and City Treasurer positions were established at the time of the City's incorporation in 1906; and

WHEREAS, over time, the duties and requirements of these positions have changed; and

WHEREAS, the California Government Code requires each general law city to have a City Clerk and City Treasurer; and

WHEREAS, in a majority of California cities these positions are appointed, not elected; and

WHEREAS, on July 18, 2018, the City Council met and considered a staff report pertaining to the issues on converting the elected City Clerk and City Treasurer offices to appointed positions; and

WHEREAS, during the City Council Meeting, the Council directed staff to move forward with placing the issues before voters; and

WHEREAS, California Government Code §36508 provides that the City Council may place the question on the ballot whether the City Clerk and City Treasurer should be appointive offices.

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

SECTION 1. The following ballot measure shall be submitted to the voters at the General Municipal Election to be held on Tuesday, November 6, 2018:

Shall the offices of City Clerk and City Treasurer be appointive?	YES
	NO

SECTION 2. If the voters approve converting these two elected offices into appointed positions, then the appointments become effective upon the earlier of either vacancies or at the end of each current terms of office (i.e., December 2020).

SECTION 3. The municipal election is hereby ordered consolidated with the general municipal election, which will be held within the City of Morgan Hill on Tuesday, the 6th day of November 2018. The elections hereby consolidated shall be held in all respects as if there were only one election, and from only one form of ballot shall be used.

SECTION 4. Pursuant to Section 10002 of the Elections Code, the City Council hereby request the Board of Supervisors of Santa Clara County (“Board of Supervisors”) to permit the Santa Clara County Registrar of Voter’s Office to render services necessary to place this measure on the ballot of the next general municipal election and to conduct the election of this ballot measure. The City Council recognizes that additional costs may be incurred by the County by reason of these services and agrees to reimburse the County for these costs.

SECTION 5. The election on this measure shall be held, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, the returns made, and a result ascertained and determined, and all other proceedings conducted in connection with the election, under the regulations of the Registrar of Voters of Santa Clara County, in accordance with the provisions of the law governing general municipal elections in general law cities.

SECTION 6. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 1 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the referendum may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

SECTION 7. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

SECTION 8. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

SECTION 9. Ballots for said election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting spaces shall be set off to the right of the ballot measure, in the manner provided by law, one having the word "Yes" printed before it and the other having the word "No" printed before it.

SECTION 10. If, at the election, a majority (50% plus 1) of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved

by the votes upon the date that that vote is declared by the City of Morgan Hill and shall go into effect ten (10) days after that date, pursuant to Section 9217 of the Elections Code.

SECTION 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

SECTION 12. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 18th day of July 2018 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	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., adopted by the City Council at the meeting held on July 18, 2018.

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

DATE: _____

Irma Torrez, CITY CLERK



INCLUSIONARY HOUSING



Inclusionary Housing



Local Inclusionary housing policies require the development of affordable homes for low and moderate income households in all market-rate housing projects.

Proposed:

- 15% Inclusionary Citywide
- 10% Inclusionary Downtown

Inclusionary Housing in Morgan Hill



- Housing Accountability Act
- Regional Housing Needs Allocation Goals
- Residential Development Control System (RDCS), Measure S

RHNA SUMMARY 2015-2022



WITH PLEDGED AFFORDABLE UNITS TO DATE

Morgan Hill	RHNA	Units Permitted	Units Pledged	Remaining/ (Surplus)	% Complete
VLI	273	41	39	193	29.3%
LI	154	144	60	(50)	132.5%
Mod	185	84	357	(256)	238.4%
Above Mod	316	834	0	(518)	263.9%
TOTAL	928	1,103	456	(631)	168.0%

Proposed Requirements



For-Sale Projects in Downtown: 2 or more Units, restrict 10% of the Units at Affordable Sales Prices to Moderate-Income Households (45-year term)

Rental Projects in Downtown: 2 or more Units, restrict 10% of the Units for Low-Income and Very Low-Income Households, at least one-half of the required Inclusionary Units to be offered at Affordable Rents exclusively to Very Low-Income, (55 year term)

For-Sale Projects Outside of the Downtown: 2 or more Units, required to restrict 15% of the Units at Affordable Sales Prices to Moderate-Income Households (45 year term)

Rental Projects Outside of the Downtown: 2 or more Units required to restrict 15% of the Units for Low-Income and Very Low-Income Households, at least one-half of the required Inclusionary Units to be offered at Affordable Rents exclusively to Very Low-Income Households (55 years)

Proposed:



The City Manager and or Community Development Director may grant exceptions to the requirements upon a finding that such exception is necessary to effective implementation of the City's housing goals

Location and design, affordable units shall be reasonably dispersed throughout the project and shall be comparable to the design of the market-rate units

Eligibility requirements and monitoring

In lieu of building there are alternative modes of compliance: Rental units in for-sale projects, Off-site construction, Land dedication, and an in-lieu housing fee

Next Steps

- Inclusionary Housing Guidelines
- Development Standards
- New Housing In-lieu fees for Ownership and Rental

Board of Directors

Ron Gonzales, Chair
*Hispanic Foundation
of Silicon Valley*

Janice Jensen, Vice Chair
*Habitat for Humanity
East Bay/Silicon Valley*

Kevin Zwick, Treasurer
Housing Trust Silicon Valley

Kathy Thibodeaux, Secretary
KM Thibodeaux Consulting LLC

Shiloh Ballard
Silicon Valley Bicycle Coalition

Bob Brownstein
Working Partnerships USA

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Katie Ferrick
LinkedIn

Amie Fishman
*Non-Profit Housing Association of
Northern California*

Javier Gonzalez
Google

Poncho Guevara
Sacred Heart Community Service

Jan Lindenthal
MidPen Housing

Jennifer Loving
Destination: Home

Mary Murtagh
EAH Housing

Chris Neale
The Core Companies

Andrea Osgood
Eden Housing

Kelly Snider
Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

Staff

Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

July 17, 2018

Mayor Steve Tate and members of the City Council
17555 Peak Avenue
Morgan Hill, CA 95037

Dear Mayor Tate, Mayor Pro Tempore Constantine, and Councilmembers Carr, Spring,
and Robinett Jachimowicz:

Re: Inclusionary Housing Ordinance, Item 18, July 18, 2018

Silicon Valley at Home (SV@Home) is the voice of affordable housing in Silicon Valley. We advocate for policies, programs, land use, and funding that lead to an increased supply of affordable homes. SV@Home represents a broad range of interests, from leading employers who drive the Bay Area economy, to labor and service organizations, to nonprofit and for-profit developers who provide housing and services to those most in need, and more.

Inclusionary Housing Ordinances are a critical tool for addressing our region's severe housing crisis. In light of the passage of AB 1505 in the State Legislature, we commend the City for taking the initiative to establish an IHO that reflects many of the [best practices we recommend](#).

During the last Regional Housing Needs Allocation (RHNA) period, Morgan Hill met a third of its cumulative affordable housing responsibilities for very low-, low-, and moderate-income households while exceeding its market rate production by 200 percent. We would like to thank City Council for their continued hard work and dedication towards reaching these goals. It is important to build on this momentum and work towards meeting the housing needs of very low income households. The proposed IHO will allow the City to add to its existing stock of affordable homes and bring housing relief to many residents and workers in Morgan Hill.

On behalf of our members, we urge the Council to adopt and implement the draft IHO proposed by staff without delay.

We thank and commend staff for all their work on the IHO and for continuing to strive to bring equity through housing affordability in Morgan Hill. We look forward to partnering with you to create thriving, sustainable communities that welcome people from all walks of life.

Honorable Mayor Steve Tate and members of the City Council
Re: Inclusionary Housing Ordinance, Item 18, July 18, 2018
Page 2 of 2

Please let us know if we can provide you with any technical assistance or examples of best practices for IHOs from other jurisdictions.

Thank you for the opportunity to provide our input.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Pilar', with a stylized flourish extending to the right.

Pilar Lorenzana
Deputy Director, SV@Home





July 18, 2018

Mayor Tate and City Councilmembers
City of Morgan Hill
VIA EMAIL

RE: Council Meeting 7.18.18 Agenda Item 18. INCLUSIONARY HOUSING ORDINANCE

Dear Mayor Tate and Councilmembers,

BIA Bay Area, representing hundreds of home builders throughout the Bay Area, respectfully objects to several Staff recommendations regarding the proposed Inclusionary Housing Ordinance (the Ordinance). BIA urges the City Council to defer adoption of the Ordinance to take more time considering the following concerns:

- Payment of fees in lieu of building affordable units should be a “by right” option for the developer. AB 1505 clearly spells out that the Ordinance must offer alternative means of compliance including payment of fees, dedication of land, etc. The proposed ordinance falls short of offering this as a clear alternative to building units.
- The inclusionary requirement for for-sale housing is pegged to moderate income levels. In the past, this has proven problematic for developers to implement due to difficulty in selling these units. The price differential between market and moderate hasn’t been enough for potential buyers to want to purchase a deed restricted home. The deal is equivalent to a glorified long-term lease at a capped rent. In the past, some jurisdictions have provided that if a BMR unit does not sell within a reasonable time frame (say 90 days), the developer can sell the unit and pay the difference to the city as an affordable housing fee.
- The Ordinance’s treatment of State Density Bonus Law (DBL) is problematic. The ordinance should expressly state that the mandated BMR units count toward State DBL eligibility. The Ordinance is not clear that density bonus is mandatory if triggered by the projects affordable provision.
- The Ordinance seems to suggest that the City can refuse to grant a density bonus and additional concessions and waiver to an otherwise eligible project if it finds that doing so is necessary for public health, safety, or welfare. That is not what the DBL requires.
- The DBL statute requires the city to GRANT any incentive proposed by the applicant UNLESS the city makes a written finding supported by substantial evidence the concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment. The City should make sure that the Ordinance is consistent with State DBL and the City’s density bonus ordinance.

BIA Bay Area looks forward to working with the City of Morgan Hill on development issues. Thank you for your attention to these concerns.

Yours truly,
Dennis Martin
BIA Bay Area

Library, Culture & Arts Commission

FY 2018-19 Work Plan

City Council Approved: DRAFT 7.17.18

Overall Mission: To assist the City Council in accomplishing its goals by fostering an environment conducive to and supportive of the arts, culture, and life-long learning in Morgan Hill, working with existing community groups to promote resources, and facilitate partnerships.

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Community Outreach	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness Community Engagement and Messaging	CS Director (minimal) CS Coordinator (minimal) Program Administrator (minimal)	(1) Participate with other groups to support community outreach and support arts and culture in the community (including Valle del Sur, El Toro Arts, SV Creates) (Paul <u>Chabra</u> /Bussing) (2) Explore development of a calendar relating to library, culture and arts events (Khera) (3) Review opportunities to fund local public access cable television (Benich)
Permanent and Proposed Public Art	Supporting our Youth, Seniors and Entire Community Preserving Our Cultural Heritage	CS Director (minimal) CS Supervisor (minimal) CS Coordinator (minimal) Maintenance Coordinator (minimal)	(1) Partner with local Artists to display their work. Review the possibility of implementing a utility box art program or other programs (doors, walls, etc.) (Bussing/Khera) (2) Form subcommittees as needed to support specific art requests that come forward (All) (3) Review opportunities for funding public art and performing arts in the future (TBD <u>Redfield</u>) (4) Support the Bike Rack Artwork selection (Crawford/Bussing) (5) Develop Tarantula branding and promotion (Crawford/Khera) (6) (4) Review art inventory and maintenance per Commission Policy (Benich) (7) 5) Explore the options and feasibility of creating an artist registry (TBD <u>Bussing/Chabra</u>)

Project Area	City Council Goal Supported	Staff Resources Required	Specific Task / Commissioners Assigned
Art and Culture Events	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	CS Director (minimal) CS Coordinator (minimal) CS Supervisor (minimal)	(1) Facilitate the Art a la Carte event and look to include incorporate culture and music into the event (Lake is the lead/all members will support) (2) Explore opportunity to partner with artists on a children's art show (Paul <u>Khera/Chabra</u>) (3) Explore partnership opportunities for the City supporting performing arts with South Valley Civic Theater (Lake/Khera)
Library Outreach and Support	Supporting our Youth, Seniors and Entire Community Enhancing Diversity and Inclusiveness	Library Staff (moderate) Senior Project Manager (significant)	(1) Support Library outreach, including possible pop-up locations (<u>Chabra</u> /Lake) (2) Coordinate Commissioner's Corner in Library to provide book recommendations (Khera) (3) Support the Library Expansion Project (All) <u>(a) Provide specific project support as requested by Library (Benich)</u> (4) Participate in annual Library Commissioners Forum (All) (5) Support incorporation of Children's art into the Library (Lake/ <u>Chabra</u>)
Support of Historical Resources	Preserving our Cultural Heritage	CS Director (moderate) CS Srvs Coordinator (moderate)	(1) Coordinate with the Morgan Hill Historical Society to support <u>of</u> Villa Mira Monte partnership (Bussing/Crawford)

Staff Resources Required:

0-50 hours: Minimal; 51-100 hours: Moderate; 100+ hours: Significant

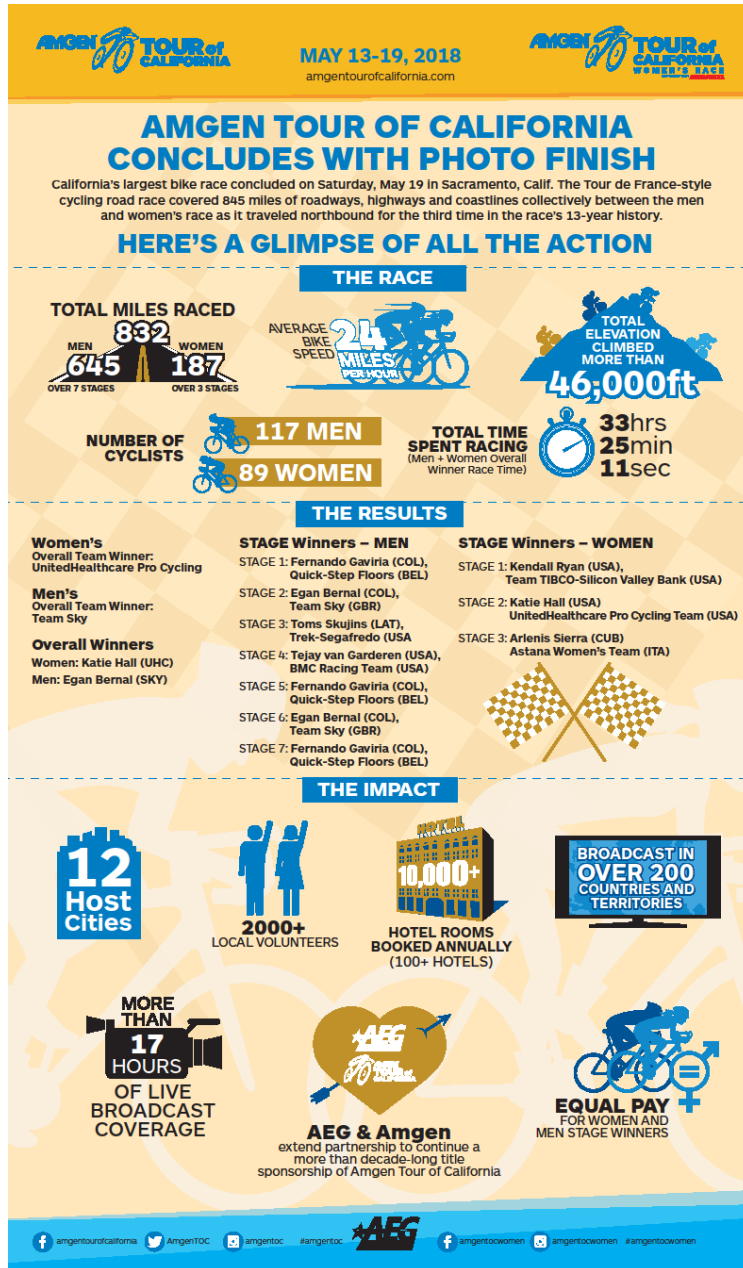


Amgen Tour of California

City Council Meeting
July 18, 2018



https://www.nbcbayarea.com/on-air/as-seen-on/Amgen-Tour-of-California-Rolls-Through-Morgan-Hill_Bay-Area-482868821.html



832 Miles Raced

24 MPH Avg. Speeds

117 Men

89 Women

33:25:11 Total Time Spent Racing

12 Host Cities

2,000 Volunteers

10,000+ Hotel Rooms Booked

200 Countries & Territories Broadcast

17 Hours of Live Broadcast Coverage

Equal Pay for Men & Women Stage Winners

Stage 4 was home to one of the biggest days in Amgen TOC history!

Total impressions totaled **19.6 MM** across social and paid media.

20.6K Social Community Engagements (Likes, etc.)

102.6K LOC Page Views

824K Email Deliveries

5,242 Unique Stories

18,000 Program Guides

580K Grassroot Fans Reached



COMMUNITY PARTNERS & SPONSORS



live+love+léal



School Outreach

10 Schools

2 Bike Giveaways

3,800 Water Bottles

3 Land Art Activations



COMMUNITY EVENTS

Bike Party —**100 Riders**

Bike Rodeo & Concert—**1,000 Participants**

Mother's Day Ride & Pancake Breakfast—**54 Riders**

Specialized Bicycles Components Open House—**2,000 Guests**

AMGEN TOUR
OF CALIFORNIA

CA MH

EVENTS & ACTIVITIES

AMGEN TOUR OF CALIFORNIA
MORGAN HILL MAY 2018

MAY 4 – BIKE PARTY

Morgan Hill Bike Party hosted by Bike Therapy

Friday, May 4th 7:30pm
Start and Finish at Bike Therapy,
17540 Depot St, Morgan Hill
facebook.com/events/206335884393268

MAY 9 – BIKE TO SCHOOL DAY

Wednesday, May 9th
Contact your school administrator
to see if your school is participating!

MAY 10 – BIKE TO WORK DAY

Thursday, May 10th 6:00am - 9:00am
EnergiZer station at Community
and Cultural Center, 17000 Monterey Road,
Morgan Hill

MAY 11 – AMGEN TOUR OF CALIFORNIA KICK OFF CONCERT

Community Concert featuring Isaiah Pickett,
Local Bike Shops, and Specialized Bicycles

Friday, May 11th 6:00pm - 9:30pm
Morgan Hill Downtown Amphitheater,
17000 Monterey Road, Morgan Hill

MAY 13 – MOTHER'S DAY RIDE & PANCAKE BREAKFAST

Mother's Day Ride with the Mayor, followed
by a Pancake Breakfast hosted
by Bike Therapy

Sunday, May 13th 9:00am
The Grange, 40 E 4th Street, Morgan Hill
Register on City of Morgan Hill website.

MAY 15 – SPECIALIZED BICYCLES OPEN HOUSE

Specialized Open House
Food trucks, tours of the Wintunnel,
Bike Museum

Tuesday, May 15th 5:30pm - 8:00pm
Specialized HQ, 15130 Concord Circle,
Morgan Hill

MAY 16 – AMGEN TOUR OF CALIFORNIA TIME TRIAL

Stage 4 Amgen Tour of California Time Trial

Wednesday, May 16th 12:45pm
Start and finish in Downtown Morgan Hill

For more information and registration
links, please visit www.morganhill.ca.gov-/1679/Events-and-Activities



COMMUNITY OUTREACH

- **500 Posters**
- **6,500 Flyers**
- **10,032 Households**—Water Bills
- **3,015 Views**—Project Website
- **15k Subscribers**—411 Emails
- **Hot Line**
- **2 Billboards**
(**561,888 Impressions**)
- **12 Street Pole Banners**
(**15,600 Estimated Viewership**)



Amgen Tour of California
is coming to Morgan Hill!
Wednesday, May 16, 2018

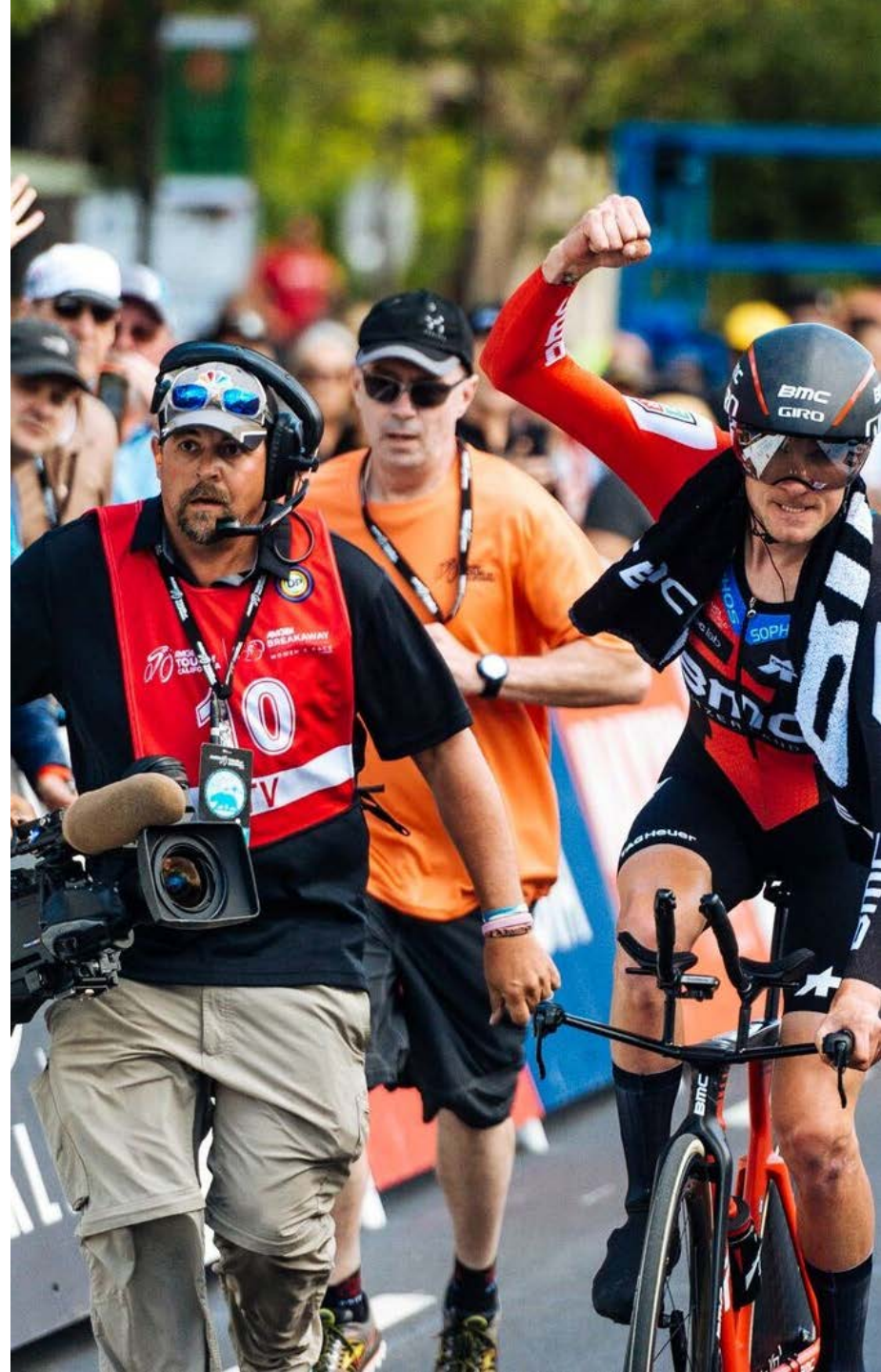
Note: Some streets will be closed.
Plan Ahead to avoid delays—or
take the day off and **join the party!**



See back for route map
For more information about upcoming
event festivities and street closures, visit
www.morganhill.ca.gov/ATOC

Thank you!

https://www.youtube.com/watch?v=_KJDSwhQ5KU&feature=youtu.be





July 18, 2018 City Council Residential Development Control System Workshop



Multi-Year Allotments



- Section 18.78.140 Project Phasing allows the distribution of allotments awarded to a single project over multiple years
- Allows high quality projects constructed over multiple years to compete one time for allotments
- Adopted with the first year of Measure S in mid 2017 - in advance of the first Housing Package of Bills adopted by the State
- Jan 2018 - change in Regional Housing Needs Allocation (RHNA) from demonstration of capacity to required production

Multi-Year Allotments



- City determined that to meet RHNA – 193 Very Low Income units needed to be produced in two years of RDCS – final building permits issued by Dec 31, 2022
- In this cycle, findings for multi-year applications were unable to be made
- If the City was not responsible for producing the 193 VLI units, findings may have been possible

Multi-Year Allotments Required Findings



1. The multi-year allotments will support a steady rate of growth and help to avoid a sudden spike in construction of new housing;
2. The multi-year allotments will help the City to plan for adequate public services and infrastructure to accommodate new development;
3. The City will benefit from requiring the applicant to compete only once to receive allotments for all project phases; and
4. An adequate number of allotments will remain in future years to accommodate a range of housing types to meet Morgan Hill's housing needs.

Multi-Year Allotments



- As part of the implementation measure, Planning Commission responsible to ensure that a sufficient number of allotments are available to allow for a yearly competition
- Yearly competition would not have been possible if multi-year was granted along with RHNA production requirements based on allotment calculations

Multi-Year Allotments

- New RHNA cycle begins in 2023
- RHNA numbers will be obtained in 2022
- Planning for RHNA production will be done within the RDCS program via revisions to the Manual
- If RHNA number doubles, multi-year projects may still be difficult to accommodate within RDCS depending on size
- Consideration of effects on revenue without competition

Multi-Year Allotments

Future years:

(Both examples assume 1600 unit RHNA)

Set-Asides	FY23/24	FY24/25	FY25/ 26	FY26/ 27	FY27/28	FY28/29	FY29/ 30	FY30/ 31
ELI/VLI (29%)	58	58	58	58	58	58	58	58
Low (17%)	34	34	34	34	34	34	34	34
Moderate (20%)	40	40	40	40	40	40	40	40
Above Moderate (34%)	68	68	68	68	68	68	68	68
Sub-total	200	200	200	200	200	200	200	200
Market	15	15	15	15	15	15	15	15
Total	215	215	215	215	215	215	215	215

Required Income Levels with Multi-Year Projects

Set-Asides	FY23/24	FY24/25	FY25/ 26	FY26/ 27	FY27/28	FY28/29	FY29/ 30	FY30/ 31
Affordable								
ELI/VLI	58	58	58	58	58	58	58	58
Low	34	34	34	34	34	34	34	34
Sub-total	92	92	92	92	92	92	92	92
200 Unit Multi- Year RDCS Project								
Moderate	15	15	0	0	0			
Above Moderate	22	22	34	34	33			
Market	5	5	5	5	5			
Sub-total	42	42	39	39	38			
200 Unit Multi-Year RDCS Project								
Moderate	15	15	0	0	0			
Above Moderate	22	22	34	34	33			
Market	5	5	5	5	5			
Sub-total	42	42	39	39	38			
Other RDCS Projects								
Moderate	10	10	40	40	40	40	40	40
Above Moderate	24	24	0	0	2	68	68	68
Market	5	5	5	5	5	15	15	15
Sub-total	39	39	45	45	47	123	123	123
Total	215	215	215	215	215	215	215	215

2018 RDCS Available Allotments



- No more than 215 allotments may be awarded
- No later than 6 months prior to RDCS application deadline, Planning Commission may recommend number of available allotments for competition

2018 RDCS Available Allotments



- 97 Affordable
- 40 On-going
 - 25 Measure C transitional
 - 15 Measure S
- 78 Unassigned

RDCS Competition Manual



Affordable Housing

- Affordable Housing Inclusionary Ordinance to be presented to City Council on July 18, 2018 (15%)
- Tables within the RDCS Competition Manual mirror proposed ordinance

RDCS Competition Manual



Affordable Housing

- Baseline established at 15% instead of 8%
- Allows combination of building and contributing to housing fund
- Allows additional points for over 15% contribution

RDCS Competition Manual



Affordable Housing

- Point availability would differ based on affordability levels within a project
- Structure allows City to create incentives for certain affordability levels using points.
- Downtown Projects would not be exempt from requirement

Next Steps



- City Council considers Inclusionary Ordinance July 18, 2018
- City Council RDCS public hearing July 25, 2018
- Future Discussion on BMR policies to create multi-income developments TBD

Questions?



Santa Clara County Income Limits

TABLE I: HCD Income Tables (Published April 26, 2018)

Source: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>.

# of Persons	1	2	3	4	5	6	7	8
Extremely Low	27,950	31,950	35,950	39,900	43,100	46,300	49,500	52,700
Very Low	46,550	53,200	59,850	66,500	71,850	77,150	82,500	87,800
Lower	66,150	75,600	85,050	94,450	102,050	109,600	117,150	124,700
Median	87,650	100,150	112,700	125,200	135,200	145,250	155,250	165,250
Moderate	105,200	120,200	135,250	150,250	162,250	174,300	186,300	198,350

	BELOW MARKET RATE (BMR) RENTAL RATES				
No. of Bedrooms	Extremely Low	Very Low	Lower	Median	Moderate
0 Bedroom (Efficiency)	\$699	\$1,164	\$1,654	\$2,191	\$2,630
1 Bedroom	\$799	\$1,330	\$1,890	\$2,504	\$3,005
2 Bedrooms	\$899	\$1,496	\$2,126	\$2,818	\$3,381
3 Bedrooms	\$998	\$1,663	\$2,361	\$3,130	\$3,756
4 Bedrooms	\$1,078	\$1,796	\$2,551	\$3,380	\$4,056



July Developmental Asset

Asset #27

Equality & Social Justice

Young person places high value on promoting equality and reducing hunger and poverty.

Activities related to this asset

- Women's March
 - o Fight for gender equality
- School Walkout
 - o Against gun violence
 - o For safety of students
- LGBTQ community center
 - o Safe place for LGBTQ youth



Tips on this asset

- Be educated on social justice issues
- Participate in non-violent protests
- Actively volunteer and support others





July Complementary Asset

Asset #29

Honesty

Young person “tells the truth even when it is not easy.”

Connection to main asset

- Acknowledging that there is inequality
- Take responsibility for your actions
- Speak up when there is injustice



**Have you participated in any social
justice movements?**

