CITY OF MORGAN HILL

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, September 26, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

(Mayor Pro Tem Constantine)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Minutes Clerk Gonzalez)

WORKSHOP

The purpose of this workshop is to discuss a Below Market Rate (BMR) Ownership Program Participation Guide and a Below Market Rate Program Application Guide, including Ownership and Estate Planning and BMR Owners' Minimum Return on Down payment. Guides are attached in Other Business Item #9. (60 Minutes)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming September 30, 2018 as Lewy Body Dementia Awareness Day
In honor of Susan Berghoff

Proclaiming the month of September 2018 as National Hispanic Heritage Month

PUBLIC COMMENT

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

PUBLIC COMMENT RECEIVED

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. ACCEPT DONATION FROM CHIALA FAMILY FOR INCLUSIVE PLAYGROUND

Recommendation:

1. Accept a donation of $23,000 from the Chiala Family for construction of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

2. AWARD 2018-2019 PARKING LOT AND PATH SEAL COAT PROJECT

Recommendation:

1. Award contract to Silicon Valley Paving, Inc. in the amount of $63,466.10;
2. Authorize the expenditure of contingency funds not to exceed $6,346.61; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

3. APPROVE THIRD AMENDMENT TO SERVICE AGREEMENT WITH WESTON MILES ARCHITECTS FOR THE LIBRARY EXPANSION PROJECT

Recommendation:

1. Approve Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project increasing the fee by $20,305 for a total not to exceed amount of $467,430; and
2. Authorize the City Manager to execute the Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project.

4. TERMINATE IMPROVEMENT AGREEMENT WITH NUEVA VISTA, LLC FOR PSYNERGY PROGRAMS CAMPUS AT 18225 HALE AVE

Recommendation:

Terminate Improvement Agreement with Nueva Vista, LLC.

5. ADOPT ORDINANCE APPROVING AN AMENDMENT TO A PLANNED DEVELOPMENT MASTER PLAN FOR “EVERGREEN VILLAGE” TO BE LOCATED ON A 20 ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF BUTTERFIELD BOULEVARD AND COCHRANE ROAD (APN’S 726-25-035 AND 726-32-021)

Recommendation:

Waive the reading, adopt Ordinance No. 2279, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT ORDINANCE APPROVING REVISIONS TO SECTION III- COMPETITION CRITERIA, STANDARDS AND POINTS OF A COMPETITION MANUAL (FILE NO. ZA2018-0003) FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)

Recommendation:

Waive the reading, adopt Ordinance No. 2280, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. ADOPT ORDINANCE ADDING A NEW CHAPTER 12.24 (NEWSRACK CONSOLIDATION) TO TITLE 12 (STREETS SIDEWALKS AND PUBLIC PLACES) TO THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

Recommendation:

Waive the reading, adopt Ordinance No. 2281, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

8. APPROVE THE SEPTEMBER 5, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
   A. Adds Chapter 14.08 to institute a Housing in-lieu fee of $19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, $13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, $29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and $11.00 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
   B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Progam Application Guide;
   C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
   D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

Estimated Time: 30 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.

E-mail: TransLaw@PacBell.Net

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All Council - Members

Joseph P. Thompson
Attorney at Law

952 School St. #376
Napa, CA 94559

TEL: 408/848-5506

Subject: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PRIVATE RETREAT, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP"---Fw: [transport-policy] Re: Cost of highways "NOT" covered by gas taxes?

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: info@sanbenitocog.org; sbcsuper@supervisor.co.san-benito.ca.us; senator.cannella@senate.ca.gov; sanbenitochapter@yahoo.com; jim.gillio@hollister.ca.gov; bholtzclaw@newsvmedia.com; mary@sanbenitocog.org; sallybettencourt@gmail.com; ignaciovelazquez@hotmail.com; mgr42@charter.net; cityclerk@hollister.ca.gov; allcouncilmembers@ci.gilroy.ca.us; gary@custom-1.com; ehoward1965@gmail.com; president@gilroyedc.org; steve.tate@morganhill.ca.gov; onemorejones@yahoo.com; carl@reformcalifornia.org; askmike@garlic.com;

Date: Saturday, September 15, 2018 12:12 PM

The unelected, unaccountable, non-transparent Directors at the SBCCOG (and other transit agencies) should support repeal of the SB-1 gas/diesel taxes if they
believe in sound, sustainable transport policy. Their present policy, called the "transit first policy," includes a double-standard: one for motorists, one for transit riders.
Motorists pay about 102% of their costs, including highway construction and maintenance. Transit riders are paying only about 1% of the fully amortized costs of
their boondoggle rides. The other 99% of the cost of public sector transit are diverted from gas/diesel taxes by boondogglers at the transit agencies so that they
can keep the bankrupt boondoggles running. If we privatized transit, we'd have more transport for less taxes. We'd also have fewer traffic accidents, injuries and
deaths. In reality, the unelected Directors at the transit agencies sacrifice the safety of motorists to reward the wasters at the transit agencies. Caveat viator.

Joe Thompson

Joseph P. Thompson, Esq.
Past-Chair, Legislation Committee, Transportation Lawyers Assn.
Post-Doctoral Student, Transportation Law & Policy, Norman Y. Mineta International Institute for Surface Transportation Policy Studies, SJSU;
Transportation Research Board, Georgetown U.; and Library of Congress
Charter Member, SBCCOG Citizens Transit Task Force
Charter Member, SBCCOG Citizens Rail Advisory Committee
(408) 848-5506
e-Mail: TransLaw@PacBell.Net

cc: Editor - Please publish this Guest Editorial in all three newspapers. jpt

On Saturday, September 15, 2018 11:26 AM, "Randal O'Toole rot@ti.org [transport-policy]" <transport-policy@yahoogroups.com> wrote:

Phil,

In general, state highways (including interstates, which are owned by the states) pay for themselves, while local roads do not. The main reason some roads don't pay for themselves is that politicians are afraid to ask users to pay their fair share. If U.S. car and light truck owners paid the full cost of driving, it would add about a penny or two per vehicle mile. In contrast, if U.S. transit riders were asked to pay the full cost of transit, it would add nearly a dollar per passenger mile.

The argument in this report is self-defeating. "Highways don't pay for themselves out of gas taxes, so let's take even more money from gas taxes to spend on other forms of transportation that lose even more money." How is that going to help roads pay for themselves?

The report says that "Highway boosters have exploited the myth of self-sufficiency to argue that fuel tax revenue should only fund highway and bridge projects." I don't think so; the argument is that transportation users should pay for what they use, not pay for what other people use.

Randal
Cato Institute
26344 SW Metolius Meadows Drive
Camp Sherman, Oregon 97730
541-595-1460
541-588-0518 cell
http://ti.org/antiplanner

Posted by: Randal O'Toole <rot@ti.org>

Reply via web post • Reply to sender • Reply to group • Start a New Topic • Messages in this topic (2)

THE TRANSPORT POLICY DISCUSSION GROUP

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CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

ACCEPT DONATION FROM CHIALA FAMILY FOR INCLUSIVE PLAYGROUND

RECOMMENDATION(S)
1. Accept a donation of $23,000 from the Chiala Family for construction of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES
Ongoing Priorities
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

GUIDING DOCUMENTS
Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:
For the last several years the City has embarked on a campaign to identify and obtain funding to construct an inclusive playground at Community Park. Most recently the City contracted with the Magical Bridge Foundation to support the City in fundraising, grant writing and design for the playground.

Members of the Chiala Family recently reached out to City staff to discuss an opportunity to make a donation to the City in the memory of Rick Chiala. Supporting the Morgan Hill Magical Bridge Inclusive Playground was a top priority for the City and provided as an opportunity. The Chiala Family was not interested in the donor recognition associated with the playground project but agreed to recognition at one of the adjacent picnic areas. In recognition of the donation the current western most picnic area near the playground site would be named the “Rick Chiala BBQ Area.”

COMMUNITY ENGAGEMENT: Inform
This item serves to inform the Community of the acceptance of this donation. The City will further recognize the donation through City communications, such as the 411, social media, etc.

ALTERNATIVE ACTIONS:
The City Council could elect to not accept this donation or direct staff to attempt to further negotiate naming rights associated with the donation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
There have been no prior Council or Commission actions relating to this specific donation.

FISCAL AND RESOURCE IMPACT:
The donation of $23,000, would go directly towards funding the construction of an inclusive playground at Community Park. The donation proceeds will be deposited into Park Impact Fund (301), the project's funding source. Budget scorecard is attached.

CEQA (California Environmental Quality Act): Categorical Exemption
The City filed a Notice of Exemption for the inclusive playground project based on CEQA Guidelines Article 19, Categorical Exemptions, Sections 15301 Existing Facilities, 15304 Minor Alterations to Land and 15311 Accessory Structures.

LINKS/ATTACHMENTS:
1. Agreement Signed
2. Budget Scorecard - Inclusive Playground Donation Fund 301

Gift Agreement

This Gift Agreement ("Agreement"), effective as of ______________, 2018 ("Effective Date"), is made and entered into by and between Tim Chiala ("Donor") and the City of Morgan Hill ("City") for construction of the Inclusive Playground within Community Park ("Facility"). Based upon the Recitals below, and in consideration of the mutual promises and benefits hereunder, the parties hereto hereby agree as follows:

RECITALS

Donor wishes to make a charitable gift to the the City for the benefit of the Facility as set forth in this Agreement.

The City desires to accept such gift, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

1. **Gift**. Donor hereby pledges to the City for the use and benefit of the Facility the following minimum gift: $23,000 ("Gift").

2. **Payment of the Gift**. The Gift is an irrevocable pledge that will be paid to City within 30 days of execution of this Agreement

3. **Use of the Gift**. The Gift shall be used for the specific purpose of contructing an Inclusive Playground within Community Park.

4. **Acknowledgment**. In consideration for the Gift, the City of Morgan Hill will acknowledge the Gift by formally naming the Gazebo Picnic Structure at Community Park the "Rick Chiala BBQ Area". A sign 1x2 feet in size next to or upon the picnic strucure shall be placed to indicate the formal naming.

5. **Termination of Naming**. In addition to any rights and remedies available at law, the City of Morgan Hill may terminate this Agreement and all rights and benefits of the Donor hereunder, including terminating the Naming:

   a. In the event of any default in payment of the Gift as provided in this Agreement, or
   b. In the unlikely event the City determines in its reasonable and good faith opinion that circumstances have changed such that the Naming chosen by the Donor would adversely impact the reputation, image, mission or integrity of the City, in the event of a continued association with Donor and the continuation of the Naming provided for herein.

   Upon any such termination of this Agreement and/or the Naming hereunder, the City shall have no further obligation or liability to Donor and shall not be required to return any portion of the Gift already paid. The City, however, may in its sole and absolute discretion determine an alternative recognition for the portion of the Gift already received.

6. **Modification of Naming**. If during the useful life of the Facility, the Facility is transferred or conveyed from the City, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, or modified; relocated, or replaced, then the Naming will cease. In such event, however, the Donor, if available, and in consultation with and as mutually agreed by the City, will have the right, for no additional payment, to have another available and equivalent facility named after the Donor.

7. **Publicity**

   For purposes of publicizing the Gift and the Naming, the City will have the right, without charge, to photograph the Donor and use the names, likenesses, and images of the Donor in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the City's development and business activities.

   Donor shall have the right to publicizing the Gift and the Naming. Donor shall have the right to utilize photographic images and video of the recognition signage and adjacent park site and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing the Donor's Gift..

8. **Assignment**. This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.

9. **Entire Agreement**. This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

10. **Governing Law and Venue**. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Subject to the sovereign immunity of the State of California, any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Santa Clara County, California, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.

11. **City Approval**. This Agreement and the recognition and naming provided for herein are subject to the approval by the City and this Agreement will not be effective unless and until approved by the City.

ACCEPTED AND AGREED TO:

Tim Chiala	City of Morgan Hill City Manager
By: Tim Chiala	By: ____________________
Name: Tim Chiala	Name: ____________________

AGENDA BUDGET SCORECARD
FISCAL YEAR 2018-19
ADJUSTMENT # 010

FUND:	301 Park Impact Fund
DEPARTMENT:	0000
OBJECT:	37780 DONATIONS
AGENDA DATE:	10/03/18
AGENDA ITEM TITLE:	Inclusive Playground Donation

	07/01/18 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI-ATIONS	06/30/19 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,780,195	7,959,013	8,136,375	2,602,833
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION	-	**23,000**	-	**23,000**
RESULT OF RECOMMENDED ACTION	2,780,195	7,982,013	8,136,375	2,625,833

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

AWARD 2018-2019 PARKING LOT AND PATH SEAL COAT PROJECT

RECOMMENDATION(S)

1. Award contract to Silicon Valley Paving, Inc. in the amount of $63,466.10;
2. Authorize the expenditure of contingency funds not to exceed $6,346.61; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities
Enhancing Public Safety
Maintaining Fiscal Responsibility

2018 Strategic Priorities
Infrastructure

REPORT NARRATIVE:
The scope of work for the 2018 Parking Lot and Path Seal Coat project (“Project”) will include all the labor and material necessary for asphalt pavement seal coating and associated striping at the Outdoor Sports Center parking lot and the Butterfield Boulevard Linear Park from San Pedro Avenue to Central Avenue.

In soliciting bids for this project, the City contacted licensed contractors on the City’s Bidders’ List with the following Contractor’s State Licensing Board classifications: Class A-General Engineering, or C-12 Earthwork and Paving or C-32 Parking and Highway Improvements. The informal bid documents were also posted on the City of Morgan Hill website, and the two online bid services, Public Purchase and OnlinePlanService.

The informal bid opening was held on September 10, 2018 and four (4) bids were received.

2018 Seal Coat Project Bid Results

Contractor	Base Bid	Total with Bid Alternate
Silicon Valley Paving, Inc.	44,238.90	63,466.10
Dryco Construction, Inc.	44,628.45	72,258.55
Graham Contractors, Inc.	49,443.04	70,537.40
Alaniz Construction	86,978.76	119,086.15

Silicon Valley Paving, Inc. submitted the lowest bid of $44,238.90 for the base bid, which included seal coating and painting the pavement markings. Per the informal bid documents, the City is awarding this contract based upon the lowest base bid. The City is also electing to contract for the bid alternate of thermoplastic coating instead of paint for the pavement markings. Thermoplastic coating is designed for heavy traffic and outlasts paint, resulting in a lower cost over time. If approved, the total contract price with the bid alternate will be $63,466.10.

Silicon Valley Paving, Inc. has over 20 years of experience in the pavement resurfacing business. Staff recommends the award of this contract to Silicon Valley Paving, Inc. for $63,466.10. Staff also recommends a 10% contingency of $6,346.61 for a total construction authorization of $69,812.71.

The project will be scheduled to begin construction in October before the winter rains and is expected to take not more than 21 working days from the commencement of construction.

COMMUNITY ENGAGEMENT: Inform

The Contractor is required to post signs informing the public of the dates and times of work at least three (3) days prior to commencement of work. In addition, the City will include information about the planned project in the 411 and The Scoop. Lastly, work will be coordinated with activities at the Outdoor Sports Center to minimize conflicts and disruptions.

ALTERNATIVE ACTIONS:

An alternative action would be to not approve the project or delay the work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Funding for this project is in the approved FY 18-19 Capital Improvement Project (CIP) for parking lot maintenance (CIP Project 568014). The City Council has awarded prior seal coat paving projects for the past several years with the most recent award in June 2017. This work is planned on a rotational basis with different lots and trails receiving treatments each year.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this project will be $69,812.71 which is the contract price with a 10% contingency. The 2019 CSD Parking Lot Maintenance Project is budgeted for $40,000 in the adopted FY 18-19 Capital Improvement budget. An additional $40,000 of unspent project funds will be re-appropriated from FY 17-18 into FY 18-19 and will be utilized for this project.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301(c) 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. Silicon Valley Paving Inc_Contract Signed

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Silicon Valley Paving, Inc. ("Contractor") for work on the 2018-2019 Parking Lot and Path Seal Coat Project ("Project").

The parties agree as follows:

1. **Award of Contract**. In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on September 26, 2018, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. **Contract Documents**. The Contract Documents incorporated into this Contract include and are comprised of all of the following:

   2.1 Notice Inviting Informal Bids;
   2.2 Instructions to Bidders;
   2.3 Addenda, if any;
   2.4 Bid Proposal and attachments thereto;
   2.5 Contract;
   2.6 Payment and Performance Bonds;
   2.7 General Conditions;
   2.8 Special Conditions;
   2.9 Project Drawings and Specifications;
   2.10 Change Orders, if any;
   2.11 Notice of Award;
   2.12 Notice to Proceed;
   2.13 And the following:

   "No other documents"

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

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Sixty-three Thousand Four-Hundred Sixty-Six Dollars and Ten Cents ($63,466.10) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.

5. **Time for Completion.** Contractor will fully complete the Work for the Project within 21 working days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars ($500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.

7. **Labor Code Compliance.**

   7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

   7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.

   7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

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

City:

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

Contractor:

Name: Silicon Valley Paving, Inc.
Address: 1050 Commercial Street, Suite 101
City/State/Zip: San Jose, CA 95112
Phone: (408) 286-9101
Attn: Mr. Todd Slyngstad, President
Email: todd@svpinc.com
Copy to: toddr@svpinc.com

10. **General Provisions.**

10.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.

10.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.

10.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.

10.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5 Integration; Severability. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

10.6 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

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

CITY OF MORGAN HILL:

____
Christina J. Turner
City Manager

Date: ______________________

Attest:

____
Michelle Bigelow
Deputy City Clerk

Date: ______________________

Approved as to Form:

____
Donald A. Larkin
City Attorney

Date: ______________________

CONTRACTOR:
SILICON VALLEY PAVING, INC.

Signature

TODD SLYNGSTAD-PRESIDENT
Name/Title [print]

Date: Sept. 13, 2018

Corporate entities must provide a second signature:

Signature

JOSE VIZCAINO-Secretary
Name/Title [print]

Date: Sept. 13, 2018

#732923
Contractor's License Number(s)

03/31/2019
Expiration Date(s)

Seal:

#1000005040
Contractor's DIR Registration Number(s)

END OF CONTRACT

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

APPROVE THIRD AMENDMENT TO SERVICE AGREEMENT WITH WESTON MILES ARCHITECTS FOR THE LIBRARY EXPANSION PROJECT

RECOMMENDATION(S)

1. Approve Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project increasing the fee by $20,305 for a total not to exceed amount of $467,430; and
2. Authorize the City Manager to execute the Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities	**2018 Strategic Priorities**
Maintaining Fiscal Responsibility	Financial Stewardship
Supporting Our Youth	
Seniors	
and Entire Community	

REPORT NARRATIVE:

On August 24, 2016, the City Council approved a service agreement for Design Professionals with Weston Miles Architects (WMA) for design and construction support services for the Library Expansion Project in the amount of $382,500.

After the service agreement with WMA was executed, City staff and WMA met on several occasions with Library representatives to develop the concept plans for the proposed expansion. On April 5, 2017, City Staff and WMA presented the conceptual plans for the Library Expansion Project to the Council.

On June 7, 2017, the City Council approved a first amendment to the agreement, to perform additional design for the entry area to be expanded. This additional space was to be used to allow seniors and parents to interact with each other, with the potential of a small coffee shop. Additionally, this amendment included an investigation to existing roof leaks and providing for an exterior painting palate for the entire library structure. This first amendment increased the service agreement by $45,500, for a total of $428,000.

On July 10, 2018, a second amendment to the agreement was approved by the City Manager to extend the terms of the agreement with WMA to October 31, 2019, with an increase to $447,125, for additional civil engineering work for the parking lot.

The project plans and specifications were completed in April 2018, and the project was advertised for bidding in May 2018. The scope of work for this project included the following:

- Base Bid - 5,392-square foot addition to the northwest corner (New Children's area and Program Room) along with site work.
- Add Alternate #1 – 1,042-square foot addition to the new lobby.
- Add Alternate #2 – Front entry exterior footings and front entry overhang area.
- Add Alternate #3 – Remodeling of existing flex service area and circulation desk.
- Add Alternate #4 – Storm drain retention system.

The project bid opening was held on July 17, 2018 and the apparent low bidder, Kent Construction, was $3,666,499 above the engineer's estimate of $2,800,000 (including add alternates). Due to insufficient funds allocated for this project, the City Council rejected all bids at the August 22, 2018 City Council Meeting. It is with the understanding that staff, WMA, and Library representatives collaborate to value engineer and reduce the project scope prior to presenting to Library Culture and Arts Commission and City Council.

Following the bid rejection, staff, WMA, and Library representatives have met on a weekly basis to evaluate bids and to begin the process of value engineering the project. It is believed that by value engineering, an expansion project that meets the top priorities of the Library can be obtained within the project budget. The discussions to this point have focused on prioritizing expanding the children's area and program space to the west.

WMA's proposal includes the development of an updated conceptual design, value engineering redesign, and construction support (at a reduced level due to the scope reduction). The increased amount will fund costs associated with the sub-consultant costs associated with the development of new construction documents for the value engineered concept.

The proposed third amendment is for an additional $20,305, which will bring the total of the service agreement to $467,430.

COMMUNITY ENGAGEMENT: Inform

On September 5, 2018, City staff provided the concept for the value-engineered project to the Library, Culture and Arts Commission. While the Commission was disappointed with the reduced scope of the expansion, they were understanding of the fiscal limitations for the project. The Friends of the Morgan Hill Library have also been kept up to speed on the needed value engineering for the project.

ALTERNATIVE ACTIONS:

City Council could elect to not approve the third amendment to the service agreement.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
August 24, 2016 – The City Council approved a Service Agreement for Design Professionals with Weston Miles Architects for Design and Construction Support Services for the Library Expansion Project

April 4, 2017 – Library and Cultural Arts Commission reviewed conceptual design and forwarded recommendations to City Council.

April 5, 2017 – The City Council approved the conceptual design for the Library Expansion Project.

June 7, 2017 – The City Council approved the First Amendment to Weston Miles Architects for the Library Expansion Project.

November 15, 2017 – The City Council approved the adoption of a resolution approving the Design Permit for the Library Expansion Project.

August 22, 2018 – Rejection of bids for the Library Expansion Project

September 4, 2018 – Library and Cultural Arts Commission reviewed updated conceptual design and forwarded recommendations to City Council.

FISCAL AND RESOURCE IMPACT:
If approved, the total service agreement amount will be increased to $467,430. The additional $20,305 is available in the Adopted Capital Improvement Program Budget, Project No. 251015, Library Impact Funds (348).

CEQA (California Environmental Quality Act):
Categorical Exemption
The library expansion project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 (Existing Facilities) (e) (1) of Guidelines for CEQA and Section 21083 of the Public Resources Code.

LINKS/ATTACHMENTS:
1. Third Amendment to Agreement Weston Miles Architects 9-26-18

THIRD AMENDMENT TO AGREEMENT
WESTON MILES ARCHITECTS

This THIRD AMENDMENT TO AGREEMENT is entered into and becomes effective on ______________________ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WESTON MILES ARCHITECTS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Third Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on ______________________.

2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of September 6, 2016, for consultant services for a maximum compensation of THREE HUNDRED EIGHTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($382,500.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 27, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to FOUR HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS ($428,000.00).

4. The CITY and CONSULTANT entered into a "Second Amendment to Agreement" made as of July 10, 2018, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to FOUR HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED TWENTY-FIVE AND NO/100 DOLLARS ($447,125.00) and the term was extended to October 31, 2019. The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS and the First and Second Amendments thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 2 shall be amended by adding the following:

"2. **Term of Agreement**. 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."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services further described in Exhibit "2" dated September 14, 2018, attached hereto and incorporated herein:

1. Perform value engineering to the library expansion project;
2. Provide an updated schematic design to meet project budget;
3. Design development to include meetings with a breakdown of cost estimates;
4. Prepare construction documents;
5. Provide project management and construction support services for expanding the Morgan Hill Library."

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Total compensation to CONSULTANT under this Agreement shall not exceed FOUR HUNDRED SIXTY-SEVEN THOUSAND FOUR HUNDRED THIRTY AND NO/100 DOLLARS ($467,430.00) and shall be billed based on the rate and basis set forth in **Exhibit 2** dated September 14, 2018. 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 FORTY-FIVE THOUSAND AND NO/100 DOLLARS ($45,000.00), unless otherwise authorized by City Council."

[Signatures on Next Page]

2. **Conflicts**. In the event of a conflict between the terms and provisions of this Third Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this Third Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

City Clerk
Date: ____________________

APPROVED AS TO FORM:

City Attorney
Date: ____________________

CITY OF MORGAN HILL

City Manager
Date: ____________________

WESTON MILES ARCHITECTS

By: Jerry Miles
Title: PRESIDENT
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 9/14/18

By: Christy Bilzerian
Title: SECRETARY
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 9/14/18

127-04-16-042

EXHIBIT "1"

SECOND AMENDMENT TO AGREEMENT
WESTON MILES ARCHITECTS

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on July 10, 2018 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WESTON MILES ARCHITECTS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on June 7, 2017.

2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals" made as of September 6, 2016, for consultant services for a maximum compensation of THREE HUNDRED EIGHTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($382,500.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").

3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of June 27, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to FOUR HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS ($428,000.00). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement**. This Agreement shall be effective and cover services rendered from September 6, 2016, until October 31, 2019."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Compensation under this Agreement shall not exceed FOUR HUNDRED FORTY-SEVEN THOUSAND ONE HUNDRED TWENTY-FIVE AND NO/100 DOLLARS ($447,125.00) and shall be billed based on the rate and basis set forth in **Exhibit B**."

C. Paragraph 9 shall be amended and replaced in its entirety by the following:

"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."

D. Paragraph 20.1 shall be amended and replaced in its entirety by the following:

"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."

[Signatures on Next Page]

2. **Conflicts**. In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS or any earlier amendment, the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

Deputy City Clerk
Date: 7/10/18

APPROVED AS TO FORM:

Cynthia L. Olsson

City Attorney
Date: 6-29-18

CITY OF MORGAN HILL

City Manager
Date: 7/10/18

WESTON MILES ARCHITECTS

By: Lesley R Miles
Title: President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 6/28/18

By: Charles D. Weston
Title: Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/28/18

EXHIBIT "1"

R2017-16-042

FIRST AMENDMENT TO AGREEMENT
WESTON MILES ARCHITECTS

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 10/27/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WESTON MILES ARCHITECTS, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on June 7, 2017.

2. The CITY and CONSULTANT entered into that "Service Agreement for Design Professionals, made as of September 6, 2016," for consultant services for a maximum compensation of THREE HUNDRED EIGHTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($382,500.00) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS"). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

A. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services further described in Exhibit "B" dated 5/22/17, attached hereto and incorporated herein:

1. Additional design services for entry redesign;
2. Reduction of overall scope to meet budget requirements;
3. Coordination of roofing repair details; and
4. Specification and painting for new exterior requirements."

B. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. $428,000.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed FOUR HUNDRED TWENTY-EIGHT THOUSAND AND NO/100 DOLLARS and shall be billed based on the rate and basis set forth in Exhibit B to the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

Deputy ~~City Clerk~~
Date: 6/27/17

APPROVED AS TO FORM:

Assistant City Attorney
Date: 6-27-17

CITY OF MORGAN HILL

City Manager
Date: 6/27/17

WESTON MILES ARCHITECTS

By:
Title: LESLEY L MILES
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 5/24/17

By:
Title: Secretary
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5/24/17

127-04-16-042

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
Weston Miles Architects

THIS AGREEMENT is entered into and becomes effective on 9/6/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Weston Miles Architects 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. <u>City Authority</u>. This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on August, 24, 2016.

2. <u>Term of Agreement</u>. This Agreement shall cover services rendered from the Effective Date of this Agreement until October 31, 2018 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. <u>Scope of Service</u>. The services to be performed by CONSULTANT shall be to review the overall expansion program, prepare schematic design, cost estimates, meetings, design development and construction documents, project management, and provide construction support services, for expanding the Morgan Hill Library as further described in Exhibit A.

4. <u>Compensation</u>. CONSULTANT shall be compensated as follows:

4.1. <u>Amount</u>. $382,500.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Three Hundred Eighty Two Thousand Five Hundred dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

4.2. <u>Billing</u>. CONSULTANT shall provide CITY with a monthly 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. 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. <u>Termination</u>. 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

EXHIBIT "A"

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.

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.

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 an 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. 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.

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:

Lesley Miles, A.I.A.
Weston Miles Architects
17500 Depot Street, STE #120
Morgan Hill, CA 95037

Address of CITY is as follows:

Karl Bjarke, P.E.	with a copy to:
Director of Public Works	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	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").

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 Clerk/Deputy City Clerk

fw Michelle Wilson
Print Name

Date: 9/6/16

APPROVED AS TO FORM:

fw City Attorney

Donald A. Larkin
Print Name

Date: 09/01/16

CITY OF MORGAN HILL

City Manager

Steve Rymer
Print Name

Date: 9/6/16

Weston Miles Architects

By:

Title: President
Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 8/9/16

By:

Title: Vice President
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 8/9/16

P:\Forms\Consultant Agreements\City Services Agreement For Design Professionals Revised 8-11-15.Docx

WESTON MILES
ARCHITECTS

17500 Depot St. Suite #120,
Morgan Hill, CA 95037
www.wmarchitects.com

Tel 408.779.6680
Fax 408.778.9417

California Air Resources Board, Cool California Small Business of the Year
Santa Clara League of Conservation Voters Environmental Business of the Year

Exhibit A - Scope of Work

1. **ANALYSIS**
   a. Additional review of the existing conditions to incorporate into next phases.
2. **PROGRAMMING**
   a. 1 meeting regarding programming revisions based on the time frame since the original schematic design was approved
3. **SCHEMATIC DESIGN**
   a. 3 meetings to discuss and review schematic design and develop a final phasing and budget plan. This includes floor plans, elevations and a 3D rendering.
4. **DESIGN DEVELOPMENT**
   a. 3 meetings including selection of all finishes and materials. This includes a breakdown of estimated costs between itemized cost for related to both City and County so that the final budgets and phasing plans can be developed.
   b. Review of electrical and mechanical equipment selections with both teams and also provide a 50% level of specification including selection of all interior materials.
5. **CONSTRUCTION DOCUMENTS**
   a. Development of construction documents for bidding and construction. This package will be submitted to the City of Morgan Hill at 30%, 60% and 90% plan/spec submittal for review. WMA to incorporate changes will incorporate comments at each submittal.
   b. 3 meetings to coordinate with all City and County staff for final approval on data Communications fire alarm, all HVAC and utility information.
   c. Prepare 100% final plan/specifications per the city of Morgan Hill's bidding standards (mylar originals)
6. **SUBMITTAL TO THE BUILDING DEPT**
   a. submit to the city of Morgan Hill Building Department for review and approval (4 full size stamped copies)
7. **BIDDING**
   a. Prepare bid documents and answer questions during the bidding process plus any addendums
8. **CONSTRUCTION ADMINISTRATION**
   a. Attend weekly meetings, prepare meeting notes, review submittals, review/respond to RFI's and review change orders, review as-builts for the construction period noted as Phase 1.

A California Corporation

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EXHIBIT B
SCHEDULE OF COMPENSATION RATES

	Construction	Fee Schedule	Amount
Fee Structure	$4,100,000		
First $1 million	$1,000,000	10.0%	$ 100,000
Next $1 million	$1,000,000	8.50%	$ 85,000
Next $2 million	$2,100,000	7.50%	$ 157,500
Architectural Fee			$ 342,500
Programming Phase:			$ -
Master Plan			$ -
Landscape Architect			$ 10,000
Civil Engineer			$ 10,000
Cost Estimate Cummings			$ 20,000
Total Design Fee			$ 382,500

Phasing Summary – Phase I and II
Includes design for all three phases and CA for only the first two

Schematic Design	5%	$ 19,125
Design Development	27%	$ 103,275
Construction Documents	40%	$ 153,000
Construction Documents City processing	2%	$ 7,650
		$ -
Bidding	2%	$ 7,650
Construction Administration	22%	$ 84,150
Close-Out	2%	$ 7,650
Total phases I,II,III for design and I,II for Construction Administration		[illegible]

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EXHIBIT C
SCHEDULE OF PERFORMANCE

Program Review — Estimated Duration: 9/15/16-10/4/16

Lesley Miles
Charles Weston
Sharon Morris

Schematic Design — Estimated Duration: 9/30/16-10/29/16

An update to Schematic Design is proposed to ensure that any changes are incorporated
Lesley Miles
Charles Weston
Sharon Morris
Nathan Thome

Design Development — Estimated Duration: 10/30/16-12/15/16

Selection of specific phasing, final design and material selection
Lesley Miles
Charles Weston
Sharon Morris
Nathan Thome
Jo Conmever

Construction Documents — Estimated Duration: 12/16/16-2/16/17

Complete project drawings and detailing and final phasing document
Lesley Miles
Sharon Morris
Charles Weston
Nathan Thome
Robin Blair
Dawn Miller

City Processing — Estimated Duration: 2/17/17-4/17/17

Provide comments and responses
Lesley Miles
Sharon Morris
Charles Weston

Bidding — Estimated Duration: 2/20/17-3/20/17

Lesley Miles
Sharon Morris
Sam Carlsen

Construction Administration — Estimated Duration: 6/15/17-6/15/19

Sam Carlsen
Sharon Morris
Lesley Miles
Charles Weston
Robin Blair

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Close Out

Sam Carlson

Sharon Morris

Lesley Miles

Robin Blau

Estimated Duration: 6/15/18-10/15/18

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WESTON MILES
ARCHITECTS

17500 Depot St. Suite #120,
Morgan Hill, CA 95037
www.wmarchitects.com

Tel 408 779 [illegible]
Fax 408 778 9417

California [illegible] of the Year
Santa Clara League of Conservation Voters [illegible] of the Year

ADDITIONAL SERVICE REQUEST (ASR)

Project: Morgan Hill Library Expansion

ASR No.: 1

Date: 5/22/2017

Owner Name: Keri Bjarke
Company: The City of Morgan Hill
Address: 17575 Peak Ave.
Morgan Hill, CA 95037

Project No.: 15058

WMA PIC: Lesley Miles, Principal AIA, LEED AP

Subject:

Scope of Change: The Contract is changed per the following scope additions:

Item 1: Changes in the building design necessitated additional design services- the addition of the 1000sq ft cafe space at the front- To date we have expended approxmately $75,000 this adjustment will take us back to the end of program adjustment. schematic design and the begining of final design development. In an effort not to incur additional costs for consultants we did not have our consultants provide drawings but only review of our concept sketches.
Architectural: additional fees for entry redesign $35,000.

Item 2 Reduction in overall scope of services to include the areas shown in the plan attached in order to meet the current budget requirments. the drawing saltached indicates the adjustment to the entire project based on the addional scope of work and the addition of repair and repaiting to the overall budget. The complete area of work is shown in the attachment.

Item 3 Coordination of the Roofing repair details for the Library based on the March 2017 report by Bryan Schalesky, PE additional fee for detailing flashing and sealants Fee breakdown is as follows: predesign and identification- $3,000

Item 4 Specification and painting for compete new exterior requirments for completed building - $7,500

Fee Change Amount: $45,500.00

*Please note reimbursable expenses are in addition to the above and invoiced per the original contract.

Not valid until signed by the Owner and Architect

Original Contract Sum:	$382,500.00
Total Sum of previous ASR:	$0.00
Original Contract Sum + Total Previous ASRs:	$382,500.00
Fee Change for this ASR:	$45,500.00

EXHIBIT "B" 5/22/17

Revised Contract Total: $428,000.00

Weston Miles Architects, Inc.
Lesley Miles, Principal AIA, LEED AP
17500 Depot Street Suite 120
Morgan Hill, CA 95037

Lesley Miles, Principal AIA, LEED AP

Karl Bjarke
The City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Karl Bjarke

WESTON MILES
ARCHITECTS
SINCE 1965

17500 Depot Street, Suite #200
Morgan Hill, California 95037

Tel : 408 . 779 . 6686
www.wmarchitects.com

Exhibit 2 - Scope of Work

9/14/2018

1. ANALYSIS
    a. Review and analysis of current design to decrease construction cost due to high bids
    b. Review decrease in project size and scope
2. PROGRAMMING
    a. Review program revisions based on revised scope
3. SCHEMATIC DESIGN
    a. 1 Meeting to discuss and review revised design
4. DESIGN DEVELOPMENT
    a. 1 Meeting to discuss and review revised design including floor plans, elevations and selection of finishes and materials
    b. Develop preliminary schedule and cost estimate
    c. Review of electrical and mechanical systems
    d. 60% Package (drawings and specifications) submittal to City of Morgan Hill for plan/spec review
5. CONSTRUCTION DOCUMENTS
    a. Development of construction documents for bidding and construction
    b. 1 Meeting to coordinate all City and County staff for final approval on materials, finishes, data, communications, fire alarm, HVAC and utility locations
    c. Finalize schedule and cost estimate
    d. 90% Package submittal to City of Morgan Hill for plan/spec review
6. SUBMITTAL TO THE BUILDING DEPARTMENT
    a. 100% Package submittal to City of Morgan Hill for plan/spec review and approval
7. BIDDING
    a. Prepare bid documents and answer questions during the bidding process plus any addendums
8. CONSTRUCTION ADMINISTRATION
    a. Attend weekly meetings, parepare meeting notes, review submittals, review/respond to RFI's, review Change Orders, and review As-Builts

WESTON MILES
ARCHITECTS
SINCE 1985

17500 Depot Street, Suite #200
Morgan Hill, California 95037

Tel : 408 . 779 . 6686
www.wmarchitects.com

STANDARD SERVICE FEES

HOURLY FEES FOR SERVICE

Principal Architect	$185.00
Project Architect	$125.00
Project Manager	$100.00
Architect	$120.00
Principal Landscape Architect	$185.00
Architectural Draftsperson	$80.00
Landscape Draftsperson	$80.00
Clerical	$65.00

MISCELLANEOUS COSTS

Blue Prints, Reproductions and Materials	Costs plus 15%
Consultant Services- Architectural Coordination Fee	Fees plus 15%
Mileage	56 cents per mile

Effective through **December 31, 2018**
Subject to Revision Annually

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

TERMINATE IMPROVEMENT AGREEMENT WITH NUEVA VISTA, LLC FOR PSYNERGY PROGRAMS CAMPUS AT 18225 HALE AVE

RECOMMENDATION(S)
Terminate Improvement Agreement with Nueva Vista, LLC.

COUNCIL PRIORITIES, GOALS & STRATEGIES
<u>Ongoing Priorities</u>
Maintaining Fiscal Responsibility

GUIDING DOCUMENTS
General Plan/Housing Element

REPORT NARRATIVE:
On February 15, 2017, the City Council approved an Improvement Agreement with Nueva Vista, LLC to ensure the required public improvements along the project frontage would be completed concurrently with the Psynergy Programs campus expansion of the parking lots and construction of a new 4800 square foot residential facility.

On July 30, 2018, the City was informed by Nueva Vista, LLC they will not move forward with the Psynergy Programs campus expansion at 18225 Hale Avenue. No building or encroachment permits associated with the Pysnergy Programs campus expansion have been issued.

Therefore, staff recommends that the City Council authorize the termination of the Improvement Agreement with Nueva Vista LLC.

COMMUNITY ENGAGEMENT: Inform
This report serves to inform the community about the termination of the improvement agreement with Nueva Vista, LLC.

ALTERNATIVE ACTIONS:
None. The applicant has decided not to move forward with the campus expansion therefore, there is no need for frontage improvements at this time.

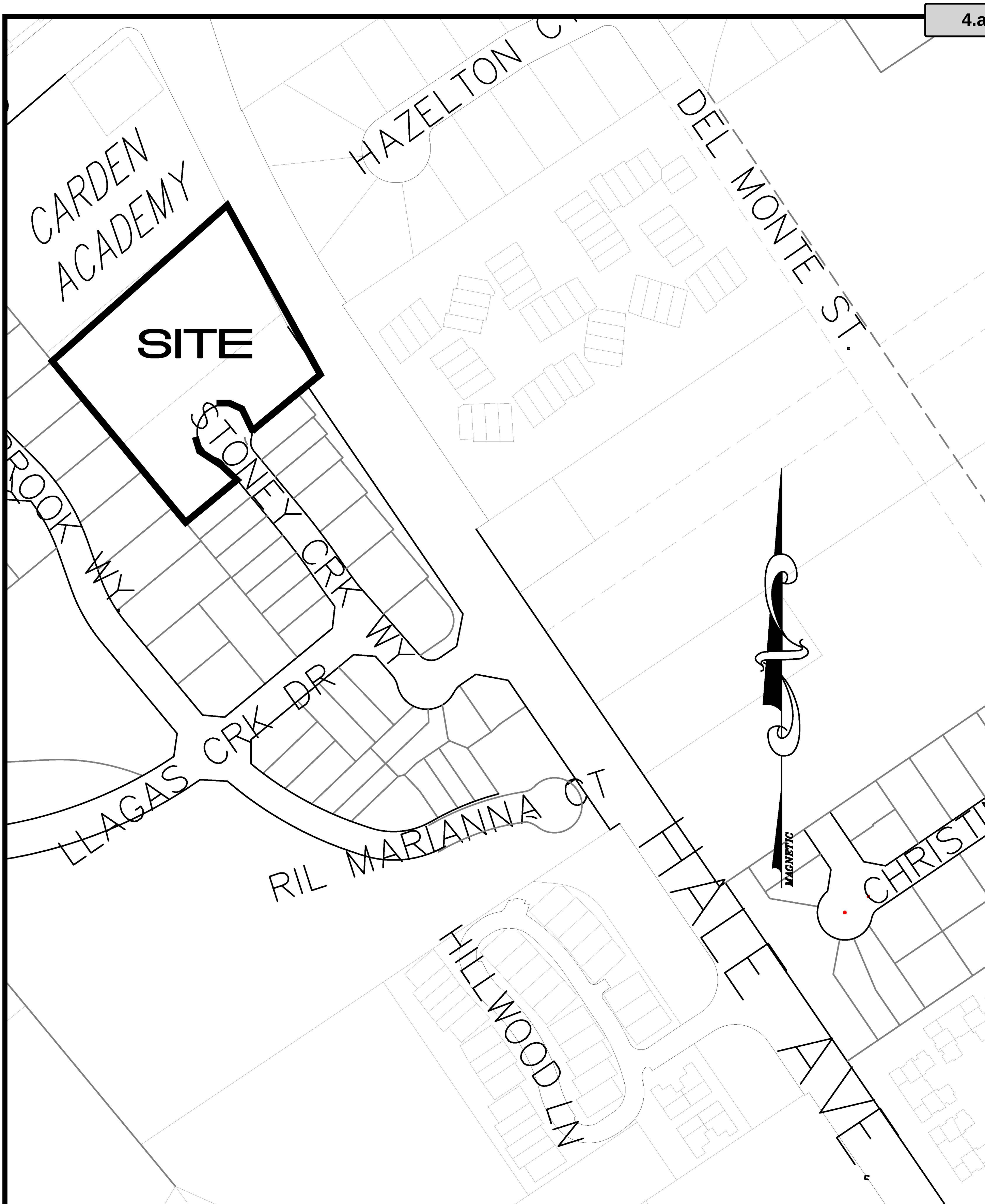
PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
On February 15, 2017, the City Council approved an Improvement Agreement with Nueva Vista, LLC.

FISCAL AND RESOURCE IMPACT:
Development review costs for this project are paid from development processing fees. By terminating this agreement, City would release any bonds provided by the property owner, pursuant to the Improvement Agreement.

CEQA (California Environmental Quality Act):
Categorical Exemption

The project is categorically exempt from the California Environmental Quality Act CEQA pursuant to Section 15301, Existing Facilities.

LINKS/ATTACHMENTS:
1. Site Map



City of Morgan Hill

Public Works Department

CITY OF MORGAN HILL

DESKTOP

SITE MAP
PSYNERGY PROGRAMS

Date: 02/03/2017	Drwn by: CMH

Attachment: Site Map (1923 : TERMINATE IMPROVEMENT AGREEMENT WITH NUEVA VISTA, LLC FOR PSYNERGY PROGRAMS CAMPUS AT

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

ADOPT ORDINANCE APPROVING AN AMENDMENT TO A PLANNED DEVELOPMENT MASTER PLAN FOR "EVERGREEN VILLAGE" TO BE LOCATED ON A 20 ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF BUTTERFIELD BOULEVARD AND COCHRANE ROAD (APN'S 726-25-035 AND 726-32-021)

RECOMMENDATION(S)
Waive the reading, adopt Ordinance No. 2279, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities
Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2018 Strategic Priorities
Community Engagement and Messaging

GUIDING DOCUMENTS
General Plan/Housing Element

REPORT NARRATIVE:
On September 5, 2018, the City Council introduced Ordinance No. 2279 New Series, by the following roll call vote: AYES: Carr, Robinett Jachimowicz, Tate; NOES: Constantine, Spring; ABSTAIN: None; ABSENT: None.

Evergreen Devco, Inc. proposes an amendment to an existing master plan, development standards, and allowed uses within an existing Planned Development (PD) zoning district. The original master plan for this site was approved in August 2014. The current project includes a number of different uses for the site including a hotel, up to three drive-thru uses, gas station/convenience store, shop space, office space, and automobile maintenance. The applicant is planning to subdivide the property into 12 parcels, install the offsite and on-site infrastructure improvements and landscaping, and sell the individual parcels to end users who would then develop the individual parcels. The proposed change to the existing PD enables the creation of a shopping center containing clustered development that is sensitive to the character of adjacent structures and the immediate neighborhood. The existing PD encourages big box retail uses that are discouraged by the General Plan.

COMMUNITY ENGAGEMENT: Inform
The Morgan Hill Community was informed about the project through public notification, including site signage, newspaper notice, and direct mail to property owners within 300 feet.

The project was initially noticed for a public hearing with the Planning Commission on July 5, 2018.

ALTERNATIVE ACTIONS:
None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The project site is located within the Morgan Hill Ranch Planned Unit Development (PUD).

On June 24, 2014, the Planning Commission approved a Tentative Subdivision Map for the site (SD-13-14), which proposed to subdivide the property into eight parcels.

The City Council adopted Ordinance No. 2109, N.S. on August 8, 2014, amending the PD to include a Precise Development Plan for the 20.25-acre site. The Master Plan included site development standards and a list of permitted and conditional uses for the site.

On April 10, 2018, the Planning Commission conducted a Preliminary Review for the proposed project. The Planning Commission requested the applicant relocate the gas station within the site, reposition the tire store so that the repair bays were facing away from the adjoining residences, and reconfigure the retail and office uses so that they were more pedestrian friendly.

On July 24, 2018, the Planning Commission recommended approval of the Zoning Amendment and the Tentative Subdivision Map.

FISCAL AND RESOURCE IMPACT:
The City development review functions are cost-recovery, with fees collected from applicants to cover cost of services. These fees have been collected.

CEQA (California Environmental Quality Act):
An addendum to the previously approved Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

LINKS/ATTACHMENTS:
1. Ordinance 2279

ORDINANCE NO. 2279, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO A PLANNED DEVELOPMENT MASTER PLAN FOR "EVERGREEN VILLAGE" TO BE LOCATED ON A 20 ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF BUTTERFIELD BOULEVARD AND COCHRANE ROAD (APN's 726-25-035 AND 726-32-021)

WHEREAS, the City Council at its regular meeting of August 8, 2014, adopted Ordinance 2109 N.S. which approved a PD Master Plan and development standards for the Morgan Hill Business Park Planned Unit Development;

WHEREAS, Evergreen Development Co**.** proposes to develop the property, identified by Assessor Parcel Number(s) 726-25-035 and 726-32-021, on the southeast corner of Butterfield Boulevard and Cochrane Road, with a 12-parcel commercial development;

WHEREAS, the proposed project requires the adoption of an amendment to the Planned Development (PD) Master Plan prior to development on the site;

WHEREAS, findings must be made pursuant to Section 18.114.060 to support a request for an amendment to a PD Master Plan, and any Plan shall be found consistent with such findings;

WHEREAS, such request was considered by the Planning Commission at its regular meeting of July 24, 2018 at which time the Planning Commission recommended approval of Zoning Amendment application AAE2017-0035, amending application ZA 13-12; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE CITY COUNCIL OF THE OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The proposed Zoning Amendment is consistent with the General Plan as required by Section 18.114.060 of the Municipal Code. The development plan established by this amended PD Master Plan will define an orderly and logical development plan and establish uses that are supportive of the surrounding development and future development permitted in the Morgan Hill Business Park PUD.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.114.060 of the Municipal Code.

SECTION 3. The City Council of the City of Morgan Hill hereby finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment beyond what was anticipated in the previously adopted Mitigated Negative Declaration (June 24, 2014) and the project specific Addendum to the Mitigated Negative Declaration prepared, and this finding reflects the City Council's independent judgment and analysis; therefore, the City Council recommends approval of the addendum to the Mitigated Negative Declaration. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 4. The City Council finds that the Planned Development (PD) Master Plan is consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.

A. The proposed development is consistent with the General Plan, Zoning Code and any applicable specific plan or area plan adopted by the City Council.

The proposed project is listed as Commercial in the Morgan Hill General Plan. The PD is the zoning code for the site. There are no specific plans for the site.

B. The proposed development is superior to the development that could occur under the standards applicable in the existing zoning districts.

The proposed development is superior to the plan that was previously approved for the site, in that it incorporates plazas, pedestrian connections, and significant landscaping.

C. The proposed project will provide a substantial public benefit. The public benefit provided shall be of sufficient value as determined by the Planning Commission to justify deviation from the standards of the zoning district that currently applies to the property.

The project will provide two public plazas located on the northwest corner of the site along with a public plaza between the market building and the retail building, which will provide opportunities for people to informally meet and gather. The project will provide improved pedestrian connection and enhanced circulation within the property and the surrounding neighborhood. The project will provide the opportunity for residents of the adjoining residential properties and users of the adjoining commercial properties to walk or bike to the center for daily needs rather than utilizing automobiles, reducing greenhouse gas emissions.

D. The site for the proposed development is adequate in size and shape to accommodate proposed land uses.

The site is approximately 20 acres in size and is able to accommodate the square footage of the proposed uses as well as the required parking and infrastructure improvements.

E. Adequate transportation facilities, infrastructure, and public services exist or will be provided to serve the proposed development.

The site will be serviced by six vehicle access points that connect to public right-of-way and one access point to adjoining commercial property. The developer will install an intersection turn signal at the main entrance to the site from Cochrane Road. Public infrastructure exists to service the site and the developer of the project will upgrade or install any additional infrastructure needed to provide service the site.

F. The proposed development will not have a substantial adverse effect on surrounding property and will be compatible with the existing and planned land use character of the surrounding area.

An addendum to the previously approved Mitigated Negative Declaration was produced that analyzed the impact of the development on surrounding properties. It was determined that the project would not have any impacts on the surrounding properties as mitigated.

G. Findings required for the concurrent approval of a Zoning Map Amendment can be made.

Concurrent approval of the zoning map can be made.

SECTION 5. The City Council hereby adopts the amendment to the Precise Development Plan on file at the Development Services Department entitled "Amended Tentative Map Evergreen Village" prepared by MH Engineering and the landscape plans entitled “Morgan Hill Development” prepared by Reed Associates, dated June 29, 2018; the plan includes 12 commercial parcels for the development of the project on the 20-acre site as illustrated in Exhibit A and the Development Standards for the site as described in Exhibit B.

THE FORGOING ORDINANCE WAS INTRODUCED AT THE MEETING OF THE CITY COUNCIL HELD ON THE 5th DAY OF SEPTEMBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 26th DAY OF SEPTEMBER, 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:**

ATTEST: **APPROVED:**

______________________________ ______________________________

IRMA TORREZ, City Clerk **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 Ordinance No. 2279, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 26th day of September 2018.

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

DATE:___________________ ________________________

IRMA TORREZ, City Clerk

Exhibit A
Morgan Hill Business Ranch
"Evergreen Village" Master Plan

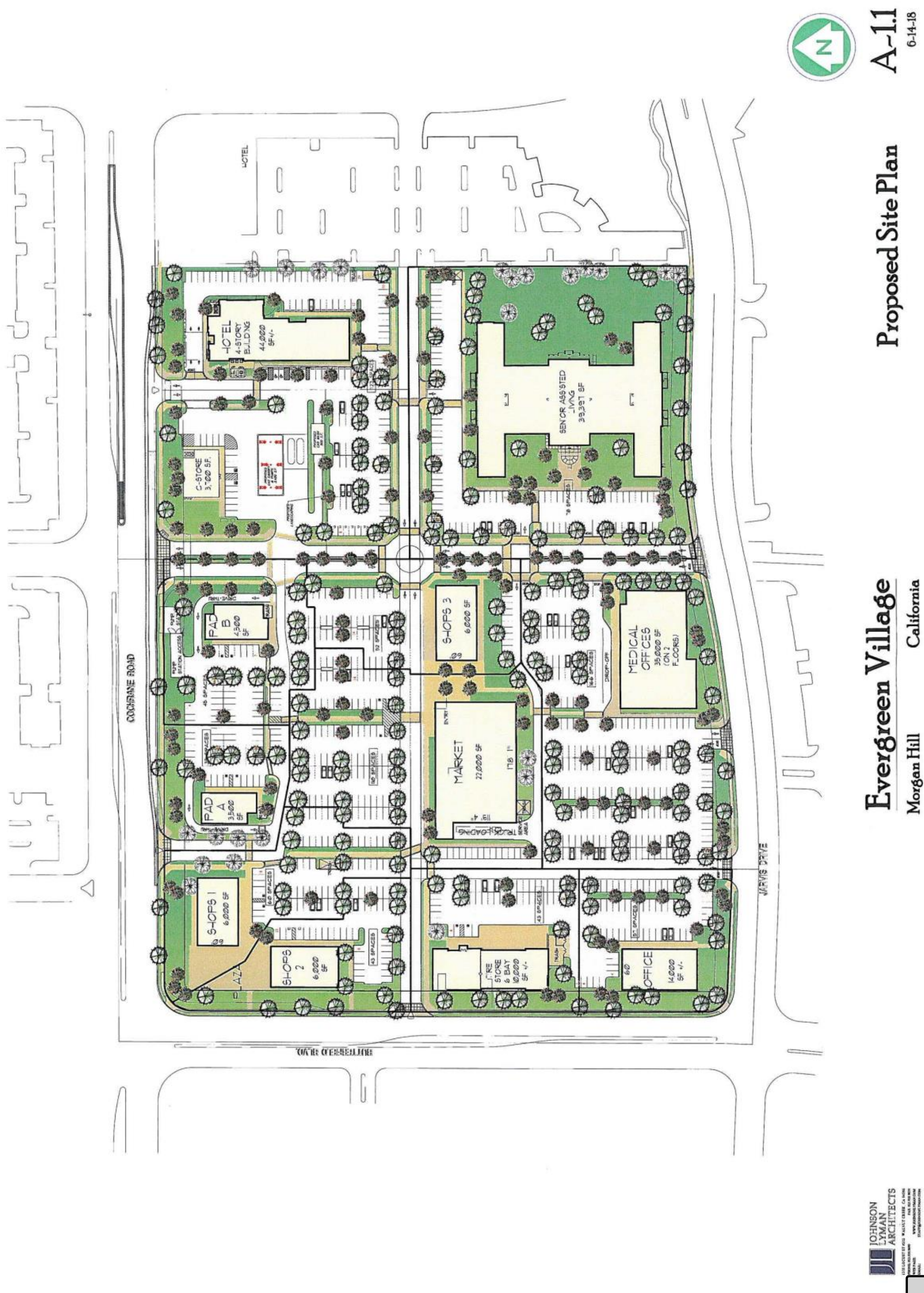


Exhibit B
Morgan Hill Business Ranch
"Evergreen Village" PUD Development Standards

PUD Location:
The 20-acre "Evergreen Village" is located in the southeast quadrant of Butterfield Blvd. and Cochrane Road, and bound by Jarvis Dr. to the south. APN's 726-25-035 & 726-32-021

PUD Objective:

The objective of planned development is to create and maintain a broad range of general office, medical office, light R & D and retail uses that would be supportive of the surrounding businesses, residential uses and the residents of the City of Morgan Hill.

Site development standards:

A. Maximum building size shall be per the approved PD Master Plan
B. Building location shall be per the approved PD Master Plan
C. Building setbacks shall be per the approved PD Master Plan
D. Maximum building height:
    a. Hotels - 60 ft., including all architectural features and mechanical equipment.
    b. All Others - 50 ft.
E. Any subdivision must be consistent with the approved PD Master Plan

The following uses as defined in the Morgan Hill Municipal Code shall be permitted or conditional uses within The Village precise development boundary:

Permitted and Conditional Uses "The Village"

Use	Staff Recommendation
Business Support Services	P
Commercial Services	P
Commercial Recreation, Indoor <15,000 sq. ft.	P
Commercial Recreational, Indoor >15,000 sq. ft.	P
Drive-Thru (maximum 3)	P
Drive-Thru (4 or more)	C
Banks and Financial Institutions	P
Grocery Store	P
Home Improvement Center	P
Hotels & Motels	P
Professional Offices	P
Personal Services	P
Research & Development	P
Restaurants, fast food	P

Use	Staff Recommendation
Restaurants, sit-down	P
General Retail	P
Convenience Markets	P
Fuel and Service Station	P for parcel 5, C for additional parcels
Vehicle Repair and Maintenance, Minor	P for parcel 7, C for additional parcels
Residential Care Facility	P for parcel 12 C for additional parcels
Nursing Homes and Long-Term Care	P for parcel 12 C for additional parcels
Day Care Centers	C
Day Care Centers, Adult	P if ancillary to Elderly/Assisted Living Use, C if not ancillary
Kennel	C

P = Permitted Use
C = Conditional Use

Permitted and Conditional Uses shall be defined in accordance with Morgan Hill Municipal Code section 18.08.040. Uses not specifically listed may be considered as either permitted or conditional by the Planning Commission if found to be consistent in nature with other listed permitted or conditional uses.

All uses, whether permitted or conditional, shall be conducted in such a manner so as to avoid any nuisance, hazard or commonly recognized offensive condition or characteristic, as established by the commercial and industrial performance standards of Morgan Hill Municipal Code Chapter 18.76.

Additional required conditions.

A. Parking standards for all uses within The Village PD shall be consistent with Chapter 18.72 Parking and Loading of the Morgan Hill Municipal Code.

B. Sign limitations shall be satisfied in accordance with Chapter 18.88 of the Morgan Hill Municipal Code.

C. Design Permit approval by the Community Development Director shall be required of all new construction, additions or substantial building or site alterations

D. All development and landscaping shall be consistent with Chapter 18.108.040 Design Permit of the Morgan Municipal Code.

E. Design Permit approval by the Community Development Director shall be required of all substantial landscape alterations.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

ADOPT ORDINANCE APPROVING REVISIONS TO SECTION III-COMPETITION CRITERIA, STANDARDS AND POINTS OF A COMPETITION MANUAL (FILE NO. ZA2018-0003) FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)

RECOMMENDATION(S)
Waive the reading, adopt Ordinance No. 2280, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities	**2018 Strategic Priorities**
Protecting the Environment	Infrastructure
Maintaining Fiscal Responsibility	
Preserving and Cultivating Public Trust	

GUIDING DOCUMENTS
Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element

REPORT NARRATIVE:
On September 5, 2018, the City Council introduced Ordinance No. 2280 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The RDCS Competition Manual has been revised to ensure that the criteria are objective standards. References to zoning code chapters or sections within the RDCS Competition Manual have been updated to reflect the appropriate references within the newly adopted zoning code.

The Manual also includes the number of available Fiscal Year 2020/21 allotments as stated below:

2018 Competition for Fiscal Year 2020/21
Competition Category Number of Allotments

On-going Projects (Measure C) 25

On-going Projects (Measure S)	15
Unassigned	85
Total	125

COMMUNITY ENGAGEMENT: Involve
The Planning Commission held two workshops, on June 5, 2018 and June 19, 2018 to consider input from the community on the revisions to the RDCS Competition Manual.

Members of the community, including developers and their representatives attended the public workshops and actively participated with the Planning Commission providing valuable feedback on the revisions to the RDCS Competition Manual.

ALTERNATIVE ACTIONS:
None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
At its hearing on July 10, 2018, the Planning Commission unanimously recommended that the City Council adopt the RDCS Competition Manual for the upcoming 2018 RDCS competition and with a 5-2 (Tanda, Martinez-Beltran) vote, that the number of available Fiscal Year 2020/21 allotments for the 2018 RDCS competition remain at 215.

The City Council continued the public hearing on the adoption of the RDCS Competition Manual and the discussion of the 2018 RDCS available allotments to the August 22, 2018 meeting. The public hearing was continued to September 5, 2018.

FISCAL AND RESOURCE IMPACT:
Revisions to the RDCS Competition Manual is within the Planning Division's work plan and budget.

For any reduction in allotments from the 215 allowed under Measure S, there may be a potential loss of RDCS related revenues received from developers. With the overall number reduced this year to a new low of 85 for market rate allotments, staff believes there will be reduced RDCS related revenue generated from this competition.

CEQA (California Environmental Quality Act):
An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074).

LINKS/ATTACHMENTS:
1. Ordinance 2280
2. Revised Competition Manual-9_5_18 (Final Adopted)

ORDINANCE NO. 2280, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING REVISIONS TO SECTION III-COMPETITION CRITERIA, STANDARDS AND POINTS OF A COMPETITION MANUAL (FILE NO. ZA2018-0003) FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)

WHEREAS, a comprehensive update of the City of Morgan Hill Residential Development Control System (RDCS) was approved by voters on November 8, 2016 (Measure S) and became effective on March 1, 2017 and codified in Chapter 18.156 of Title 18 (Zoning) of the Morgan Hill Municipal Code; and

WHEREAS, Section 18.156.100 of the RDCS ordinance requires that the City Council adopt and maintain an RDCS Competition Manual that establishes criteria and point values that the City will use to award allotments to competing residential projects; and

WHEREAS, the RDCS Competition Manual contains policies that guide the implementation of the RDCS; and

WHEREAS, the Planning Commission held two workshops on June 5, 2018 and June 19, 2018 to review, consider input from the community, discuss, and provide feedback on revisions to the RDCS Competition Manual; and

WHEREAS, said revisions to RDCS Competition Manual were considered by the Planning Commission at its regular meetings held on June 26, 2018 and July 10, 2018, at which time the Planning Commission recommended approval of Ordinance ZA2018-0003: Residential Development Control System (RDCS) Competition Manual; and

WHEREAS, additional revisions were recommended to refine objective standards;

WHEREAS, said revisions to RDCS Competition Manual were considered by the City Council at its regular meeting of September 5, 2018; and

WHEREAS, the proposed revisions to the RDCS Competition Manual are consistent with the RDCS Ordinance (Chapter 18.156 of the Municipal Code), and the General Plan; and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials have been considered in the review process.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEARBY ORDAIN AS FOLLOWS:

SECTION 1. Revisions to RDCS Competition Manual Section III – Competition Criteria, Standards, and Points are herby adopted.

SECTION 2. An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the Residential Development Control System (RDCS) Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074)

SECTION 3. 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 4. 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 5TH DAY OF SEPTEMBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 26TH DAY OF SEPTEMBER 2018, 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:**

ATTEST: **APPROVED:**

IRMA TORREZ, City Clerk **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 Ordinance No. 2280, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 26th day of September 2018.

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

DATE:________________________ ______________________________

IRMA TORREZ, City Clerk

RDCS Competition Manual

MORGAN HILL 2035

CONTENTS

I. COMPETITION MANUAL OVERVIEW

This RDCS Competition Manual contains the criteria and standards that the City of Morgan Hill uses to award residential allotments to projects. These criteria and standards are consistent with the RDCS ballot measure approved by the voters in 2016, the RDCS Ordinance in Division IV of the Morgan Hill Development Code, and with the growth management goals and policies in the General Plan.

The RDCS Competition Manual is an official City policy document adopted by the City Council on June 7, 2017 (Section III by Ordinance No. 2248) and June 21, 2017 (Section I, II, and IV by Resolution No. 17-053). The Manual contains the specific rules to award points to competing projects, as well as examples of how these rules are applied and interpreted for sample projects. The Manual will be revised overtime to help the City identify projects that best meet the community's development objectives and award points to competing projects in a predictable and consistent manner. This manual is implementing Chapter 18.156; in the case of a conflict with Title 18 and this manual, the code shall take precedence.

Following this introduction, Section II the RDCS Competition Manual presents the nine Objectives, which are categories of RDCS competition criteria established by the RDCS ordinance and lists the individual competition criteria within these nine Objectives. The manual then presents each individual standard and criteria with definitions of terms, rules for scoring projects, and example project scoring as needed. The competition criteria identified in this Section are intended to be objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdictions' share of the regional housing need pursuant to Section 65584 for which all housing development projects must demonstrate compliance. These objective criteria further supplement the zoning standards and design review standards in effect at the time of application. The final section of the manual establishes policies and procedures for administering the RDCS competition and award of allotments. The RDCS ordinance is attached to this manual as an appendix.

The Updated RDCS

The Residential Development Control System (RDCS) is Morgan Hill's voter-approved growth management system that limits the total amount and 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.

In November of 2016 the voters approved the current version of the RDCS, known as Measure S. This updated RDCS establishes a maximum population limit of 58,200 in 2035 and a maximum of 215 allotments available each year. The updated RDCS continues the requirement that a residential development project compete for allotments each year, predicated upon the City awarding allotments to projects based on established scoring criteria. Unlike previous versions of the RDCS, the specific competition criteria are contained in this Competition Manual, not in the RDCS Ordinance itself.

The RDCS Ordinance contains rules and requirements that may only be modified by the voters as well as content that may be modified by the City Council without voter approval. Content within the Competition Manual which may be modified only by the voters include the nine City Objectives and limitations regarding the number of points available within these nine Objectives described in the next section. Other contents of this Competition Manual, including the specific competition criteria and standards and the specific point values for each, may be modified by the City Council without voter approval.

II. COMPETITION CRITERIA SUMMARY

A. Criteria and Points Overview

Section 18.156.100.A (Competition Criteria) of the RDCS Ordinance states that the Competition Manual must establish the criteria that the City will use to award points to competing projects, and these criteria must advance nine specific City Objectives. Table 1 below lists these nine Objectives, identifies the maximum number of points that may be awarded from criteria that advance the Objectives, and shows the percent of the maximum points that may be awarded for each.

TABLE 1: CRITERIA ADVANCING OBJECTIVES

Objective	Maximum Score	
	Points	Percent
1. Schools	10	5%
2. Location	22	11%
3. Affordable Housing	34	17%
4. Housing Diversity	23	11.5%
5. Parks and Open Space	29	14.5%
6. Environmental Protection	22	11%
7. Transportation	15	7.5%
8. Municipal Infrastructure	10	5%
9. Project Quality	35	17.5%
Total	**200**	**100%**

Section 18.156.100.B (Points) of the RDCS Ordinance states that the cumulative total number of points for competition criteria that advance each of the nine Objectives shall be a minimum of 5 percent (i.e., 10 points) and a maximum of 20 percent (i.e., 40 points) of the maximum total number of RDCS competition points (i.e., 200 points). The City Council may adjust the number of points within each Objective by no more than 15 percent of the points available within the Objective the previous year. For purposes of the RDCS, the term "points available" is intended to mean the Objective maximum points. A 15 percent reduction or increase in points shall be rounded to the closest whole number (e.g. a 15 percent change that is equivalent to 1.8 points, shall be rounded to 2.0 points).

B. Specific Criteria and Available Points

Table 2 shows each of the competition criteria for the nine Objectives, the available points for each competition criteria, and the maximum number of points that may be awarded within each Objective. Within each Objective there are typically more *available* points than *maximum* points that may be awarded. For example, within the Location Objective there are 36 available points and 22 maximum points. A project may select any of the 36 available points to maximize its score but may not be awarded more than 22 points within the Objective. With total available points that exceed maximum points that may be awarded in each Objective, projects have multiple pathways to maximize their scores and may earn points from criteria that are most appropriate for the project type. Partial points may not be awarded unless specifically stated.

Points are intended to be awarded only for projects that provide a community benefit that exceeds minimum requirements of the City and other governmental agencies. All projects must comply with City standards established in the General Plan, Municipal Code, and other City rules and regulations together with other applicable laws.

To promote long term consistency and reduce uncertainty for applicants for residential development, the City Council may amend competition criteria and point values in the Competition Manual only when necessary and no more frequently than once per year. Annually the Planning Commission reviews and recommends to the City Council any revisions to the competition criteria and/or point values. If amended, competition criteria and/or point values must be established no later than six months prior to the RDCS application submittal deadline.

TABLE 2: RDCS COMPETITION CRITERIA

Criteria	Points Available	Objective Maximum Points
1. Schools	**17**	**10**
1-A: Proximity to Schools	5 (6 Senior)	
1-B: Proximity to Schools with Capacity	2	
1-C: Student Transportation Improvements	10	
2. Location	**42**	**22**
2-A: Central Core	12	
2-B: Infill Corridors	10	
2-C: Adjacent to Development	5	
2-D: Proximity to Daily Needs	5	
2-E: Proximity to Police and Fire Service	5	
2-F: Areas with Public Utility Capacity	5	
3. Affordable Housing	**34**	**34**
3-A: Affordable Housing Fund Contribution	30	
3-B: Development of Affordable Units	34	
4. Housing Diversity	**54**	**23**
4-A: Accessory Dwelling Units	6	
4-B: Diversity of Housing Types	12	

4-C: Variation in Housing Size	12	
4-D: Small Units	12	
4-E: Housing Stock Diversity	8	
4-F: Single-Story Homes	4	
5. Parks and Open Space	**62**	**29**
5-A: Park Fund Contribution	6	
5-B: Excess Park Land	5	
5-C: Agriculture Conservation or Open Space Easement	12	
5-D: Agriculture Buffer	4	
5-E: Agriculture Preservation or Open Space Fund Contribution	9	
5-F: On-Site Recreational Amenities	8	
5-G: Amenities for All Age Groups	2	
5-H: Public Gathering Places	3	
5-I: Proximity to Public Park	3	
5-J: Open Space Design	10	
6. Environmental Protection	**54**	**22**
6-A: Energy Efficiency	6	
6-B: On-Site Solar Energy Generation	10	
6-C: Indoor Water Use	4	
6-D: Outdoor Water Use	12	
6-E: Sustainable Site and Building Design	22	
7. Transportation	**31**	**15**
7-A: Bicycle and Pedestrian Improvements	6	
7-B: Transit Improvements	3	
7-C: Off-Site Roadway Improvements or Fund Contribution	6	
7-D: Transportation Demand Management	5	
7-E: Connections to Adjacent Property	3	
7-F: Internal Connections	4	
7-G: EV Charging Stations	4	
8. Municipal Infrastructure	**18**	**10**
8-A: Water Infrastructure	3	
8-B: Wastewater Infrastructure	3	
8-C: Storm Water Infrastructure	3	
8-D: Infrastructure and Services Fund Contribution	3	

8-E: Broadband Connectivity	6	
9. Project Quality	**55**	**35**
9-A: Exterior Building Design	15	
9-B: Building Placement and Massing	15	
9-C: Site Improvements	7	
9-D: Vehicle Parking and Access	11	
9-E: Public Art	3	
9-F: Smart Homes	4	
Total Points Available	**367**	**200**

C. Types of Criteria and Project Scoring Examples

There are four general types of RDCS competition criteria: 1) location criteria; 2) development standards criteria; 3) off-site criteria; and 4) voluntary funding criteria.

Location Criteria

Location criteria award points based on the location of a property within the City of Morgan Hill. These points are awarded based on location and therefore cannot be "earned" through project features or contributions. Location points are primarily within the Location Objective but also in the Schools and Parks and Open Space Objectives. Location criteria are intended to encourage and prioritize infill development and housing close to existing services and infrastructure.

Location Criteria Example: Criteria 2-A (Central Core)

Within Criteria 2-A (Central Core) a project receives 1 to 12 points depending on its distance from Morgan Hill's central core. A project that is two miles from the central core would receive 1 point. Projects closer to the central core would receive more points, up to 12 points for projects within the central core. The central core boundaries are shown in Figure 2 in Part 3 of the Competition Manual. The distance from the central core is measured using the minimum distance between any portion of a parcel and the central core boundary measured in a straight line.

Development Standard Criteria

Development Standard criteria award points for improvements and design features located on the development site. Development Standard points are available in all Objectives except for Schools and Location. Development Standard points are awarded for project features such as diversity in housing types and sizes, parks and recreational amenities, on-site bicycle and pedestrian facilities, and site and building design. Development Standard criteria directly benefit project residents as well as the community at large.

Development Standard Criteria Example: Criteria 4-A (Accessory Dwelling Units)

Within Criteria 4-A (Accessory Dwelling Units) a project receives 1 to 3 points for incorporating accessory dwelling units on lots with detached single-family homes. An accessory dwelling unit is a secondary dwelling unit located on the same lot as a detached single-family dwelling and may be either attached or detached from the main home. Within this criteria projects receive 1 point for providing 10 to 20 percent of lots with accessory dwelling units, 2 points for 20 to 30 percent of lots with accessory dwelling units, and 3 points for more than 30 percent of lots with accessory dwelling units.

Off-Site Criteria

Off-site criteria award points for the construction of improvements outside of the project site that would provide a public benefit. Points are available for constructing bicycle, pedestrian, and roadway improvements, establishing an agricultural conservation easement, and constructing public utility improvements. Points awarded for off-site improvements are typically based on the value of the improvement per number of units (e.g., 1 point for $1,000 in improvement value per unit). In some cases, the City may accept a financial contribution in-lieu of constructing the improvement to better meet community needs.

Off-Site Criteria Example: Criteria 7-C (Off-Site Street and Parking Improvements)

Within Criteria 7-C (Off-Site Street and Parking Improvements) a project receives up to 6 points for constructing off-site street roadway improvements or providing funds for the construction of off-site street roadway improvements. A project receives 1 point for every $1,000 in value of improvement per unit. For example, if a 10-unit project constructs off-site street improvements valued at $20,000, the project would receive 2 points. To receive these points, the off-site improvement must be voluntary and not otherwise required by the City or any other public agency.

Voluntary Funding Criteria

Voluntary funding criteria awards points for financial contributions to City funds used to provide community services and infrastructure. Voluntary contributions are available for affordable housing, parks and open space, agricultural preservation, transportation improvements, infrastructure, and services. Points awarded for voluntary fund contributions are based on the value of the improvement per number of units (e.g., 1 point for $1,000 in contribution per unit). Points are awarded only for contributions beyond minimum City fees and are separate from any required development impact fees.

Voluntary Funding Criteria Example: Criteria 5-E (Agriculture Preservation or Open Space Fund Contribution)

Within Criteria 5-E (Agriculture Preservation or Open Space Fund Contribution) a project receives up to 9 points for contributing to the City's agriculture preservation or open space fund beyond the minimum requirement. Points awarded are based on amounts established through the City's Special Funds Ordinance (4 points for $3,899.09 contributed per unit and 9 points for $7,798.19 contributed per unit). Based on this a 10-unit project that contributes $38,990.90 would receive 4 points and a 10-unit project that contributes $77,981.90 would receive 9 points.

In most cases, a project feature or contribution may not earn a project point in more than one criteria. For example, a project that earns points for installing safe-routes-to-school pedestrian improvements within Criteria 1-C (Student Transportation Improvements) may not also receive points for the same improvement within Criteria 7-A (Bicycle and Pedestrian Improvements). However, there are cases where a project design feature may allow a project to receive points from multiple criteria. For example, a project that incorporates accessory dwelling units may earn points in criteria 4-A (Accessory Dwelling Units) and 4-B (Diversity of Housing Types). Points may be awarded in multiple criteria for a single project feature only where expressly identified in Section III of this manual.

D. Minimum Score

Section 18.156.080.B (Minimum Score) of the RDCS Ordinance states that a project may receive allotments only if it receives a score of at least 80 percent of the total maximum score in the RDCS competition criteria. As shown in Table 1, the total maximum score is 200, therefore, a project must receive at least 160 points (80 percent of 200) to receive allotments.

To receive allotments, a project must receive a minimum score of 18 points, except as provided for within Section III Objective 3 Affordable Housing. For all other Objectives, there is no minimum score to be eligible for allotments. However, to receive at least 160 points, a project would need to receive points from criteria within at least six of the nine Objectives, if not more.

RDCS criteria and point values have been designed to provide a realistic pathway for all types of projects to achieve a minimum score through location and development standard criteria points. It is expected that many projects will elect to receive points from off-site and funding contribution in order to achieve a winning score and receive allotments.

III. COMPETITION CRITERIA, STANDARDS, AND POINTS

1. SCHOOLS

Intent: Support safe and convenient access to schools and promote high quality schools in Morgan Hill.

Points Available: See Table 3.

TABLE 3: SCHOOL POINTS AVAILABLE

Criteria	Points Available	
1-A: Proximity to Schools	5	
1-B: Proximity to Schools with Capacity	2	
1-C: Student Transportation Improvements	10	
Total	**17**	**10 Maximum**

Criteria 1-A: Proximity to Schools

Standard: The project is within walking distance of one or more Morgan Hill Unified School District (MHUSD) schools.

Points: See Table 4.

TABLE 4: POINTS FOR PROXIMITY TO SCHOOL

Project Location	Points
Walking distance from one school (elementary, middle, or high school)	2
Walking distance from two schools, each serving different grade levels (elementary, middle, or high school)	5

Total Available Points: 5

Senior Projects. Housing projects for senior citizens as defined in Section 51.2 of the State Civil Code will receive an automatic 6 points regardless of proximity to schools.

Scoring Instructions: A project is within walking distance of a school if it is 0.75 miles or less from an elementary school and 1.5 miles or less from a middle or high school.

To be eligible for points, students must be able to walk along a safe route from the project to the school as determined by the MHUSD. A safe route means a continuous sidewalk, pedestrian path, or trail with street crossings, intersection controls, and other physical improvements that reduce potential conflicts between pedestrians, bicyclists, and vehicles. A safe route must be in place at time of application submittal or established by the applicant within the first year of project construction.

The distance to a school is measured as the lineal distance a student would walk, from the project point of entrance nearest to the school to the nearest entrance point of the school grounds.

Schools eligible for points include any MHUSD school or charter school included on the MHUSD official list of existing and planned schools. MHUSD schools and programs which serve all students in the district and don't have specific boundaries (e.g., Community Adult School, Continuation High School) are not eligible for points.

Scoring Example: A project located within walking distance of an elementary school would receive two points. If the project is within walking distance of both an elementary and a middle school, the project would receive five points.

Criteria 1-B: Proximity to Schools with Capacity

Standard: The project is located within walking distance of one or more Morgan Hill Unified School District (MHUSD) schools with capacity to serve new students.

Total Available Points: 2 points

Scoring Instructions: To be eligible for points, the project must be located within walking distance of an elementary, middle, or high school that has capacity to house the number of students that the development would yield as determined by the MHUSD in writing prior to the RDCS competition application deadline.

For multi-year projects, the project shall retain the points received during the first phase.

The requirements for walking distance, safe routes to schools, rules of measurement, and eligible schools for Criteria 1-B above also apply to Criteria 1-C.

Criteria 1-C: Student Transportation Improvements

Standard: The project contributes funds or constructs off-site pedestrian, bicycle and/or vehicle access improvements for Morgan Hill Unified School District (MHUSD) schools within the Morgan Hill Sphere of Influence.

Points: 1 point for every $1,000 of improvement value per unit; and/or 1 point for every $1,000 in funds contributed per unit.

Total Available Points: 10 points

Scoring Instructions: A project may receive points if it constructs sidewalks, pedestrian paths, trails with street crossings, intersection controls, vehicle access enhancements, and other physical improvements that reduce potential conflicts between pedestrians, bicyclists, and vehicles. Improvements must facilitate a safe route to school for pedestrians and bicyclists from the project to a MHUSD school. A project may also receive points for contributing funds to the City's Safe Access to Schools Fund to be used by the City to construct physical improvements to enhance safe student access to MHUSD schools including a project that is not within walking distance of an eligible school as provided in Criteria 1-B.

2. LOCATION

Intent: Encourage infill projects adjacent to existing development and close to existing community services and facilities.

Points Available: See Table 5.

TABLE 5: LOCATION POINTS AVAILABLE

Criteria	Points Available	
2-A: Central Core	12	
2-B: Infill Corridors	10	
2-C: Adjacent to Development	5	
2-D: Proximity to Daily Needs	5	
2-E: Proximity to Police and Fire Service	5	
2-F: Areas with Public Utility Capacity	5	
Total	**42**	**22 Maximum**

Criteria 2-A: Central Core

Standard: The project is in or near Morgan Hill's central core.

Points: See Table 6.

TABLE 6: POINTS FOR CENTRAL CORE

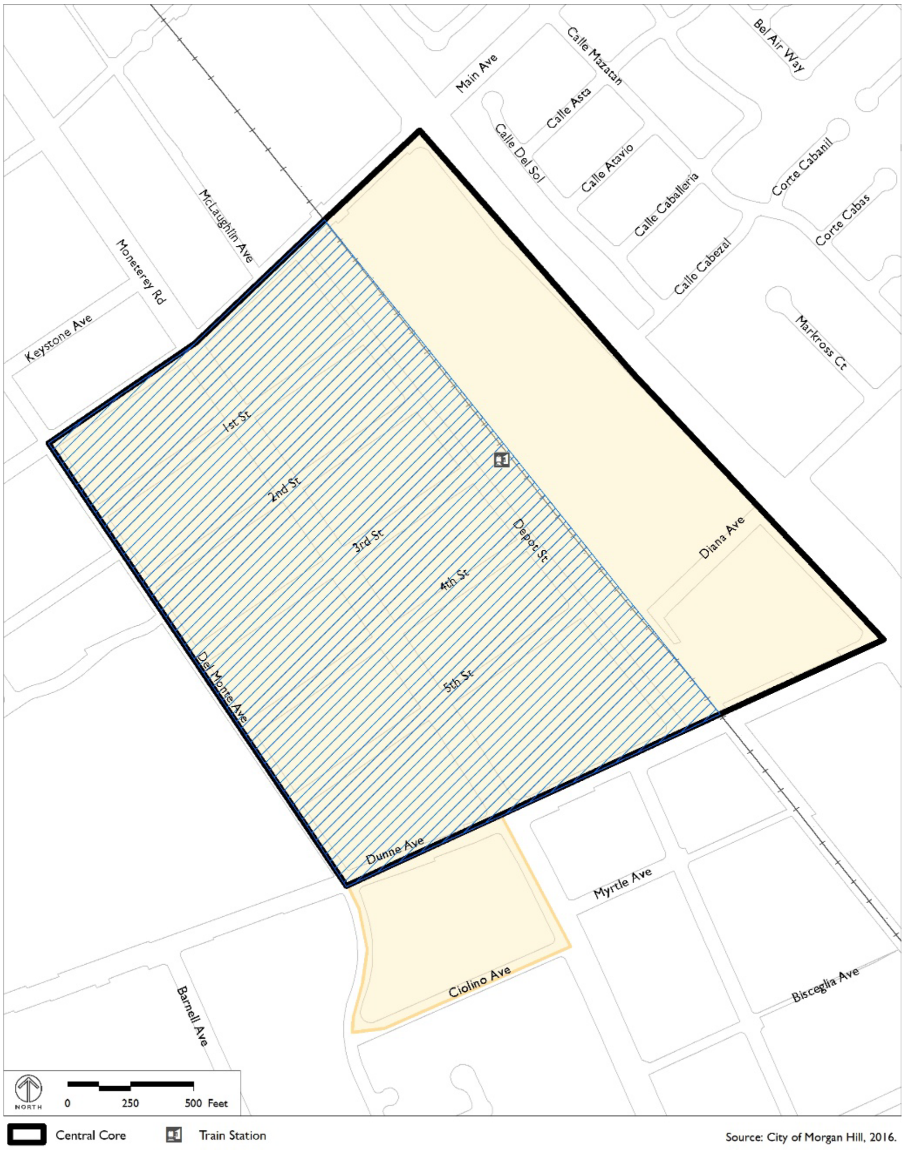
Project Distance from Central Core	Points
Within two miles	2
Within one mile	4
Within three-quarters mile	6
Within one-half mile	8
Within one-quarter mile	10
Within the Central Core	12

Total Available Points: 12

Scoring Instructions: Central core boundaries are shown in Figure 1. The distance from the central core is measured using the minimum distance between any portion of a parcel and the central core boundary measured in a straight line.

If any portion of a project is within a distance from the central core shown in Table 6, the project may receive the total number of points corresponding to that distance. For example, if any portion of the project area is within a half mile of the central core, the project may receive 8 points.

Figure 1: Central Core Boundaries



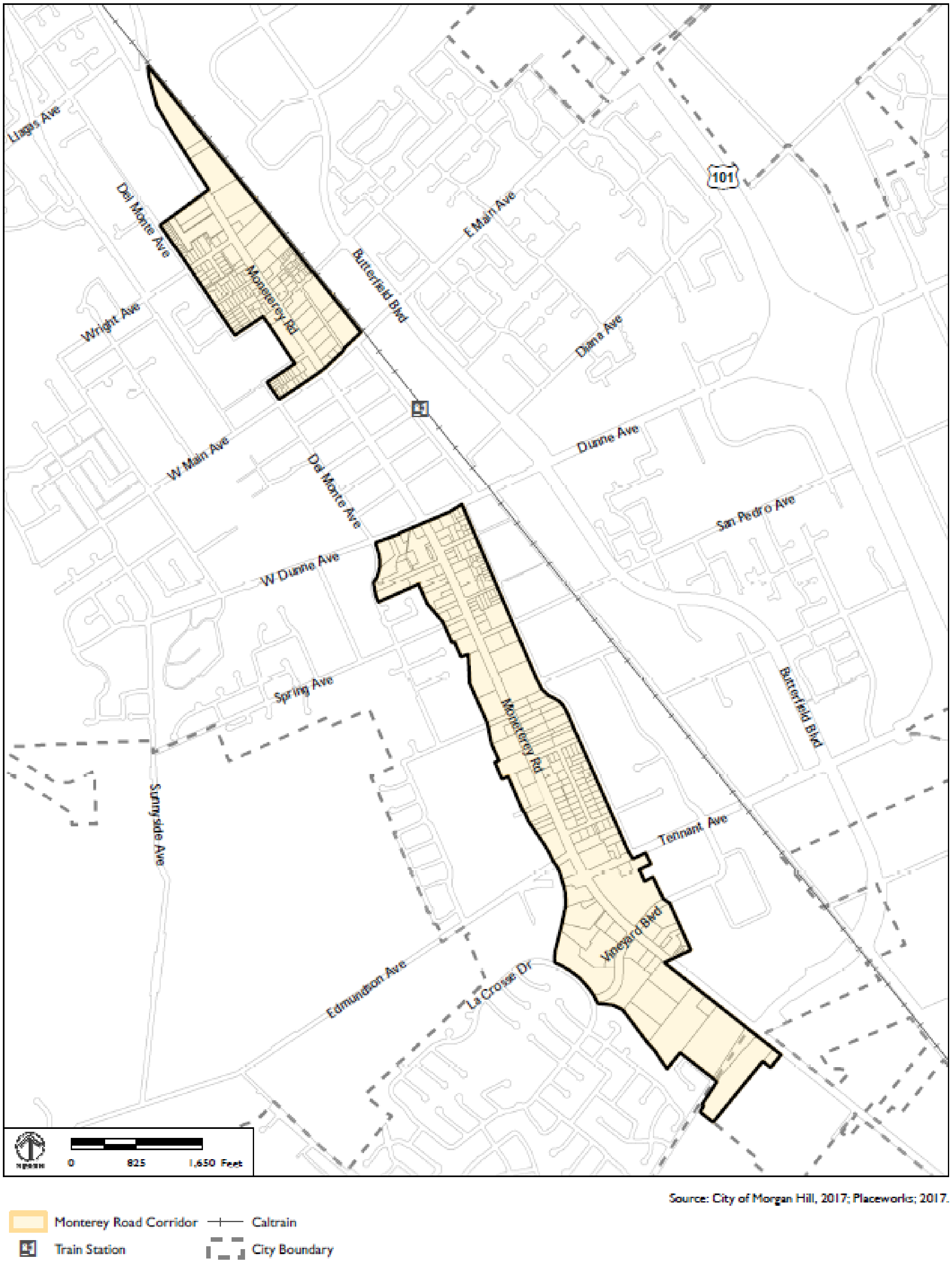
Criteria 2-B: Infill Corridors

Standard: The project is located in an infill corridor as shown in Figure 2.

Points: 10 points for projects located in the Monterey Road infill corridor.

Total Available Points: 10

FIGURE 2: INFILL CORRIDORS



Criteria 2-C: Adjacent to Development

Standard: The project is adjacent to land that is developed, utilized to its ultimate potential, or that requires no further discretionary approvals for development.

Points: See Table 7.

TABLE 7: POINTS FOR ADJACENT TO DEVELOPMENT

Percent of Project Boundary Adjacent to Existing Development	Points
25% to less than 50%	2
50% to less than 75%	3
75% to 100%	5

Total Available Points: 5

Scoring Instructions: A project boundary is adjacent to existing development if the project boundary abuts the property line of the adjacent development or is across a street from the existing development. Existing development means the following:

- Property in Morgan Hill's city limits with at least 95 percent of its contiguous land area developed or utilized to its ultimate potential use according to the General Plan or applicable zoning.
- Land in unincorporated Santa Clara County owned or under control (i.e., permanent easement) of a public agency that is developed or utilized to its ultimate potential use according to the County's General Plan or applicable zoning.
- Privately owned, non-agricultural (designated Rural County or greater) land in unincorporated Santa Clara County that is utilized to its ultimate potential according to the City's General Plan.
- Undeveloped property which by RDCS Application submittal deadline of the competition year has received final map approval, tentative map and development agreement approval for projects with previously completed phase(s), or for which building permits have been issued.

Criteria 2-D: Proximity to Daily Needs

Standard: The project is within walking distance of non-residential land uses that meet residents' daily needs.

Points: See Table 8.

Table 8: Points Available for Proximity to Daily Needs

Project Distance from Two or More Different Land Use Categories	Points
Within three-quarters mile	1
Within one-half mile	3
Within one-quarter mile	5

Total Available Points: 5

Scoring Instructions: Land use categories are as follows:

1. Community-serving retail, such as a supermarket, pharmacy, or convenience store.
2. Restaurants and cafes.
3. Personal services, such as bank, salons, and medical offices.
4. Public and quasi-public uses such as places of worship; community centers; and parks, trails and recreational facilities.
5. An existing or planned bus or rail transit stop or station.

A single establishment may not be counted in two categories (e.g., retail establishment may be counted only once even if it also contains a café). Establishments in a mixed-use building may each count if they are distinctly operated enterprises with separate exterior entrances. No more than two of the minimum number of land use categories can be situated in a single building or under a common roof.

The distance to a land use category is measured as the lineal distance a pedestrian would walk, from the average center point of housing in a project to the nearest entrance point of the land use category.

Criteria 2-E: Proximity to Emergency Services

Standard: The project is located within the established response time for emergency services.

Points: See Table 9.

Table 9: Points Available for Proximity to EMERGENCY SERVICES

Standard	Points
The project is located within the established response time of the police station	2
The project is located within 5 minutes of one fire station	1
The project is located within 6 minutes of two fire stations	2
The project is located within 8 minutes of three fire stations	3

Total Available Points: 5

Scoring Instructions: Determinations of whether a project is located within an established response time and eligible for points within these criteria shall be made by the Community Development Director in consultations with the City of Morgan Hill Police and Fire Departments.

Three fire stations serve Morgan Hill: the El Toro Fire Station (18300 Old Monterey Road) the Dunne Hill Fire Station, (2100 E. Dunne Avenue), and the CAL FIRE station (15670 Monterey Road).

The Morgan Hill Police Department headquarters is located at 16200 Vineyard Boulevard. The Police Department's aims to respond to Priority One calls within 5 minutes and Priority Two calls within 8 minutes.

Criteria 2-F: Areas with Public Utility Capacity

Standard: The project is located in areas with sufficient public utility capacity to serve the project.

Points: See Table 10.

Table 10: Points for Proximity to Municipal Services and Facilities

Standard	Points
Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	2
The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or replacing existing sewer pipes or lift stations outside of the project site.	2
Existing off-site storm drainage facilities are sufficient to serve the project.	1

Total Available Points: 5

3. AFFORDABLE HOUSING

Intent: Increase the supply of affordable housing in Morgan Hill in the extremely low income (0-30% Area Median Income), very low income (30-50% Area Median Income), and the moderate category (81-120% Area Median Income).

The City is in its 5th Regional Housing Needs Allocation (RHNA) Housing Element Cycle. The current Housing Element "cycle" is for Housing Element Planning Period: January 31, 2015 to January 31, 2023. The City's Housing Element is in compliance until January 31, 2023. Permits issued on or before December 31, 2022 will be included in this reporting period. The California Department of Housing and Community Development (HCD) publishes official State maximum income limits which are based on surveys of local area AMI. The commonly used income categories for households in Santa Clara County are subject to variations for household size and other factors.

"AMI" means Area Median Income for Santa Clara County as established by the U.S. Department of Housing and Urban Development (HUD)

Santa Clara County AMI: The 2018 Median Income for a family of four in Santa Clara County is $125,200, adjusted by household size.

HCD Income Limits (Published April 26, 2018)

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

# of Persons in the Household	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

Points Available: See Table 11.

TABLE 11: AFFORDABLE HOUSING POINTS AVAILABLE

Criteria	Points Available	
3-A: Affordable Housing Fund Contribution	30	
3-B: Development of Affordable Units	34	
Total	**64**	**34 Maximum**

Minimum Score: 18 (for-sale projects) and 10 (rental projects)

Criteria 3-A: Affordable Housing Fund Contribution

Standard: The project makes a voluntary contribution to the City's affordable housing fund.

Points: 30

TABLE 12: POINTS FOR CONTRIBUTION TO AFFORDABLE HOUSING FUND

Contribution to Affordable Housing Fund	Points
20% of baseline contribution	2
30% of baseline contribution	4
40% of baseline contribution	6
50% of baseline contribution	8
60% of baseline contribution	9
70% of baseline contribution	10
80% of baseline contribution	11
90% of baseline contribution	12
Baseline contribution	**18**
1% above baseline contribution	20
2% above baseline contribution	22
3% above baseline contribution	24
4% above baseline contribution	26
5% above baseline contribution	30

Total Available Points: 30

Scoring Instructions: Points shall be awarded consistent with the City of Morgan Hill's Inclusionary Housing Ordinance. A project may receive points for incorporating BMR units within the project and for contributing to the City's Affordable Housing Fund provided the total number of combined points awarded from both Criteria 3-A and 3-B does not exceed 34.

Criteria 3-B: Development of Affordable Units

Standard: The project incorporates below market rate (BMR) units within the project for a mixed income community.

Points: See Tables 13, 14, 15, 16, 17 and 18.

TABLE 13: POINTS FOR DEVELOPMENT OF AFFORDABLE UNITS, MARKET RATE FOR-SALE PROJECTS

Percent of Total Project Units available at an affordable AMI level (to be included in State HCD annual report)			Points
Total	**81% AMI Moderate**	**110% AMI Moderate**	
15%	6%	9%	18
15%	7%	8%	20
15%	8%	7%	22
15%	9%	6%	24
15%	10%	5%	26

Project Scoring Example: A proposed project contains 56 units. The project provides 15% of the total units within the project as affordable, 6% of the project at the 81% AMI moderate level, and 9% percent of the project at the 110% moderate level for a total of 15%. The project would receive 20 points for providing 8.4 affordable units within the project.

TABLE 14: POINTS FOR DEVELOPMENT OF AFFORDABLE UNITS, 100 PERCENT AFFORDABLE FOR-SALE PROJECTS

100% Affordable For-Sale Projects with various Moderate affordability levels within the project					Points
	81% AMI Moderate	**90% AMI Moderate**	**100% AMI Moderate**	**120% AMI Moderate**	
100% Affordable	25%	25%	25%	25%	26
100% Affordable	30%	24%	23%	23%	28
100% Affordable	35%	22%	22%	21%	32
100% Affordable	40%	20%	20%	20%	34

Table 15: Points for Development of Deed restricted Affordable Rental Units, Market Rate Projects

	Percent of Total Project Units			Points
Total	**30% AMI ELI**	**50% AMI VLI**	**80% AMI LI**	
15%	4%	4%	7%	20
15%	5%	5%	5%	22
15%	6%	5%	4%	24
15%	6%	6%	3%	26

Table 16: Points for Development of Affordable Units, 100 percent Affordable Rental Projects

	Percent of Total Project Units			Points
Total	**30% AMI ELI**	**50% AMI VLI**	**80% AMI LI**	
100%	20%	45%	35%	22
100%	30%	40%	30%	26
100%	40%	35%	25%	30
100%	50%	30%	20%	34

Table 17: Points for Development of Deed Restricted For-Sale Affordable Units (Downtown Projects)

	Percent of Total Project Units		Points
Total	**81% AMI Moderate**	**110% AMI Moderate**	
10%	3%	7%	18
10%	4%	6%	22
10%	5%	5%	24
10%	6%	4%	26

Table 18: Points for Development of Deed Restricted Rental Affordable Units (Downtown Projects)

	Percent of Total Project Units		Points
Total	**50% AMI VLI**	**80% AMI LI**	
10%	5%	5%	18
10%	6%	4%	22
10%	7%	3%	24
10%	8%	2%	26

TABLE 19: POINTS FOR DEDICATING LAND TO NON-PROFIT DEVELOPMENT FOR AFFORDABLE HOUSING

Land Dedication for Affordable Housing	Points
The project shall dedicate an area of the project development as part of a joint venture agreement with a non-profit developer for an affordable housing project of at least 40 units.	8

Total Available Points: 34

Scoring Instructions: Points shall be awarded and monitored consistent with the City of Morgan Hill's Below Market Rate Housing Program policies and procedures. When a calculation produces a fraction of a unit less than one-half, the applicant shall pay the corresponding fraction of the standard housing fee. A fraction of one-half or greater requires one additional BMR unit. If a project receives the maximum 34 points for constructing BMR units and pays the corresponding fraction of the standard housing fee, the project does not receive additional points for the fractional housing fee. A project with 12 units or more receiving points for incorporating BMR units within the project may also receive points for contributing to the City's affordable housing fund from Criteria 3-A provided the total number of combined points awarded from both Criteria 3-A and 3-B does not exceed 34.

When dedicating land for a joint venture development with a non-profit developer, a letter of intent with the named non-profit must be included with the RDCS application.

For market rate for-sale or rental projects (Tables 13, 15, 17 and 18) to be eligible for points, BMR units must comply with the City Council approved BMR unit policies.

4. HOUSING DIVERSITY

Intent: Encourage a diverse housing stock in Morgan Hill.

Points Available: See Table 19.

Table 19: Housing Diversity Points Available

Criteria	Points Available	
4-A: Accessory Dwelling Units	6	
4-B: Diversity of Housing Types	12	
4-C: Variation in Housing Size	12	
4-D: Small Units	12	
4-E: Housing Stock Diversity	8	
4-F: Single-Story Homes	4	
Total	**54**	**23 Maximum**

Criteria 4-A: Accessory Dwelling Units

Standard: The project incorporates accessory dwelling units on lots with detached single-family homes.

Points: See Table 20.

Table 20: Points for accessory dwelling Units

Percentage of Detached Single-Family Lots with Accessory Dwelling Units	Points
10 to 20 percent	2
21 to 30 percent	4
More than 30 percent	6

Total Available Points: 6

Scoring Instructions: Accessory dwelling units are secondary dwelling units located on a lot occupied by a detached single-family dwelling. Accessory dwelling units must be a permanent structure and include provisions for living, sleeping, eating, cooking, and sanitation and have a private entry accessed from the exterior of the building. Accessory dwelling units may be either detached from or attached to the primary dwelling on the lot. To be eligible for points, accessory dwelling units must comply with development standards for new accessory dwelling units in Chapter 18.84 (Accessory Dwelling Units) in the Zoning Code.

Scoring Example: A project contains 10 single-family detached homes and 10 single-family attached (townhome) units. Two of the detached single-family homes feature an accessory dwelling unit on the same lot. The project would receive 2 points as twenty percent of the detached single-family lots contain accessory dwelling units.

Criteria 4-B: Diversity of Housing Types

Standard: The project contains a diversity of housing types.

Points: See Table 21 and 22.

Table 21: Points Available for Diversity of Housing Types for Projects with 16 or More Units.

Number of Different Housing Types in the Project	Points
2	4
3	8

Table 22: Points Available for Diversity of Housing Types for Projects with up to 15 Units.

Number of Different Housing Types in the Project	Points
2	8
3	12

Total Available Points: 8 for projects with 16 or more units. 12 for projects with up to 15 units.

Scoring Instructions: To be eligible for points, a housing type must constitute at least 10 percent of total number of units in the project. Different housing types are defined as follows:

1. **Multiple-Story Detached Single-Family Home.** A detached building that contains one single-family dwelling with two or more stories of living space.
2. **Single-Story Detached Single-Family Home.** A detached building that contains one single-family dwelling with one story of living space.
3. **Accessory Dwelling Unit.** A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on the parcel.
4. **Single-Family Attached.** Three or more single-family dwelling units connected by common walls along the side property lines, sometimes called a townhouse or row house. Excludes “duplexes” and “duets.”
5. **Courtyard Housing**. Detached or attached single-family homes with unit entrances oriented toward a shared common area/communal courtyard (and not an interior corridor or street).
6. **Custom Lots.** Lots left undeveloped for future development by the lot buyer.
7. **Duet**. A residential structure that contains two independent dwelling units, each with its own entrance that are separated by a property line along a shared building wall with each unit located on a separate lot.
8. **Duplex.** A single residential structure on one lot that contains two independent dwelling units, each with its own entrance.

9. **Townhouse.** A series of three or more adjacent single-family dwelling units, each on an independent parcel, which are connected by common walls along the side property lines.
10. **Triplex or Quadplex.** A single residential structure that contains three or four dwelling units, with each unit having its own entrance.
11. **Multi-Family.** A building that contains three or more dwelling units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Includes multi-family senior housing limited to occupancy by persons 55 years of age or older for residents who are independent and do not require assistance with everyday living ("independent living").
12. **Mixed Use Residential.** A development project with both residential and commercial/office uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties.

A unit may qualify as only one housing type even if it meets the definition for two or more housing types. For example, a single-story detached single-family home oriented towards a shared common area may qualify only as courtyard housing (housing type number 5 above), not courtyard housing and single-story detached single-family home (housing type number 2 above).

Scoring Examples: A 100-unit project with 90 detached single-family homes and 10 townhome units would receive six points as both the detached single-family homes and townhome units constitute 10 percent or more of the total project units. A 100-unit project with 50 detached single-family homes, 25 duplex units, 25 townhome units, and 25 single-story detached single-family homes would receive 12 points as the three housing types each constitute 10 percent or more of the total project units.

Criteria 4-C: Variation in Housing Size

Standard: The project includes a diversity of housing sizes.

Points: See Tables 23 and 24.

TABLE 23: POINTS AVAILABLE FOR DIVERSITY OF HOUSING SIZE FOR PROJECTS WITH 16 OR MORE UNITS.

Number of Different Housing Size Categories in the Project	Points
2	3
3	6
4	8

TABLE 24: POINTS AVAILABLE FOR DIVERSITY OF HOUSING SIZE FOR PROJECTS WITH UP TO 15 UNITS.

Number of Different Housing Size Categories in the Project	Points
2	6
3	9
4	12

Total Available Points: 8 for projects with 16 or more units. 12 for projects with up to 15 units.

Scoring Instructions: Diversity of housing types is calculated by determining the percent of units that are in two or more housing size categories. Housing size categories for multi-family projects is based on the number of bedrooms. For all other housing types housing size categories are based on square footage of the unit. To be eligible for points, the number of units in a housing size category must constitute at least 10 percent of total number of units in the project.

Housing size categories for multi-family housing types are as follows:

1. Studio apartment
2. One-bedroom
3. Two-bedroom
4. Three-bedroom
5. Four-bedroom or more

For all other housing types (single-family detached, duplex, etc.) and for projects with both multi-family units and other housing types, a project shall be considered to have two or more different size categories only if there is a minimum 35 percent variation between the smallest and largest floor plan the project. In such a case, every floor plan that varies in size from another floor plan by 200 square feet or more shall be considered a different housing size category.

Scoring Example: A proposed project contains ten detached single-family homes with two different floor plans. The smaller floor plan is 2,000 square feet and the larger floor plan is 3,000 square feet. The project would receive six points because there is 50 percent variation in size between the smallest and largest floor plans and more than 200 feet in variation between the two floor plans.

Criteria 4-D: Small Units

Standard: The project includes small dwelling units.

Points: See Table 25.

TABLE 25: POINTS AVAILABLE FOR SMALL UNITS

Percent Small Units	Points
10	4
20	6
30	8
40	10
50 or more	12

Total Available Points: 12

Scoring Instructions: Small units are defined as follows:

- **Detached Single-Family Home:** Less than 1,700 square feet
- **Single-Family Attached:** Less than 1,500 square feet
- **Duplex or Duet**: Less than 1,500 square feet
- **Triplex or Quadplex:** Less than 1,250 square feet
- **Multi-Family:** Less than 1,000 square feet (rental); 1,200 square feet (ownership)

Unit square footage means total livable building area excluding garages. Unit type definitions are the same as in Criteria 4-B.

Scoring Example: A 100-unit project with 10 detached single-family homes less than 1,700 square feet would receive 4 points. A 100-unit project with 10 detached single-family homes less than 1,700 square feet and 10 duplex units less than 1,250 square feet would receive 8 points.

Criteria 4-E: Housing Stock Diversity

Standard: The project adds housing types that are underrepresented in Morgan Hill's citywide housing stock.

Points: See Table 26.

TABLE 26: POINTS AVAILABLE FOR HOUSING STOCK DIVERSITY

Housing Type	Points
Courtyard Housing	4
Multi-Family Owner Occupied	6
Market-rate Senior	8
Multi-Family Rental	8
Vertical Mixed Use (owner-occupied or rental)	8

Total Available Points: 8

Scoring Instructions: Unit type definitions are the same as in Criteria 4-B. To be eligible for points, the housing type must constitute 75 percent or more of the total project housing units.

Scoring Example: A 100-unit project with 25 detached single-family homes and 75 townhomes would receive 4 points. A 100-unit project with 40 detached single-family homes and 60 townhomes would not receive any points within this criteria, but may be eligible for points within Criteria 4-B.

Criteria 4-F: Single-Story Homes

Standard: The project includes single-story single-family homes.

Points: See Table 27.

TABLE 27: POINTS FOR SINGLE-STORY SINGLE-FAMILY HOMES

Percentage of Single-Story Single-Family Homes	Points
25 percent	1
50 percent	2
75 percent	3
100 percent	4

Total Available Points: 4

Scoring Instructions: Percentage is calculated by dividing the number of single-story single-family homes in the project by the total number of units (regardless of type) within the project. A story is defined in Chapter 18.128 of the zoning code.

Scoring Example: A 100-unit project that includes 50 single-story detached single-family homes would receive 2 points. If all units within the project are single-story detached single-family homes, the project would receive 4 points.

5. PARKS AND OPEN SPACE

Intent: Provide high quality parks and recreational facilities, encourage publicly accessible outdoor amenities, and preserve open space and agricultural land.

Points Available: See Table 28.

TABLE 28: PARKS AND OPEN SPACE POINTS AVAILABLE

Criteria	Points Available	
5-A: Park Fund Contribution	6	
5-B: Excess Park Land	5	
5-C: Agriculture Conservation or Open Space Easement	12	
5-D: Agriculture Buffer	4	
5-E: Agriculture Preservation or OS Fund Contribution	9	
5-F: On-Site Recreational Amenities	8	
5-G: Amenities for All Age Groups	2	
5-H: Public Gathering Places	3	
5-I: Proximity to Public Park	3	
5-J: Open Space Design and Outdoor Amenities	10	
Total	**62**	**29 Maximum**

Criteria 5-A: Park Fund Contribution

Standard: The project contributes to the City's park fund beyond the minimum requirement.

Points: 1 points for every $1,000 contributed per unit.

Total Available Points: 6

Scoring Instructions: To be eligible for points, the project must contribute funds in addition to the minimum required park impact fee and fees in lieu of park land dedication. Contributed funds may be used by the City to fund acquisition and maintenance of parks.

The required park impact fee is identified in the current City of Morgan Hill Fee Schedule as adopted by the City Council. Minimum requirements for payment of fees in lieu of park land dedication is established in Chapter 17.28 (Land Dedications and Reservations) in Title 17 (Subdivisions) of the Morgan Hill Municipal Code. The Community Development Director shall estimate the minimum park land dedication in-lieu fee for competing projects using the standards and formula in Chapter 17.28 (Land Dedications and Reservations). Minimum in-lieu fee estimates are prepared only for the purpose of awarding points for the RDCS competition. Actual in-lieu fee requirements will be determined at the time of subdivision approval and may be different from these estimates.

Criteria 5-B: Excess Park Land

Standard: The project provides land for parks beyond the minimum City park land requirement.

Points: See Table 29.

TABLE 29: POINTS FOR EXCESS PARK LAND

	Points
Park Land Provided in Excess of Minimum City Requirement	**16 or more units**
10%	1
20%	2
30%	3
40%	4
50%	5

*Includes custom lot projects

Total Available Points: 5

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 5 points within Criteria 5-B without dedicating any park land.

Scoring Instructions: Minimum park land dedication and private park requirements are in Chapter 17.28 (Land Dedications and Reservations) in Title 17 (Subdivisions) of the Morgan Hill Municipal Code. The Community Development Director shall estimate the minimum required park land for competing projects using the standards and formula in Section 17.28.060 (Acreage Required – Formula).

Minimum park land estimates are prepared only for the purpose of awarding points for the RDCS competition. Actual dedication requirements will be determined at the time of subdivision approval and may be different from these estimates.

To be eligible for points within this criteria, projects must comply with the following requirements:

- Park land must be either a) within the project boundaries; or a) adjacent to the project boundaries and owned or controlled by the project applicant.
- Land for parks shall be consistent with the City of Morgan Hill Parks, Facilities & Recreation Program Master Plan, the General Plan, and any other adopted City policy or ordinance concerning park and recreational facilities.
- Either: a) Dedicated park land shall be deeded to the City for public park purposes, or b) Private park land for use by residents shall be maintained by the home owners' association or other similar maintenance entity.

- The calculation of park land may not include yards, court areas, setbacks and other open areas required by the Zoning Code, Building Code, or other City ordinances. Points may not be awarded to passive open space or landscape buffer areas deeded to a homeowners' association.

Project Scoring Example: Section 17.28.060 (Acreage Required – Formula) of the Subdivision Ordinance states that 0.01 acres of land per dwelling unit shall be provided as a park in a single-family subdivision. Assuming a 100-unit single-family subdivision, the minimum required dedication of park land would be 1.0 acres. Providing 1.5 acres of park land would exceed the minimum requirement by 50 percent and would receive 5 points.

Criteria 5-C: Agriculture Conservation or Open Space Easement

Standard: The project establishes an agriculture conservation easement consistent with the City's agriculture conservation easement policy or an open space easement.

Points: 12 points

TABLE 30: POINTS FOR EASEMENTS

Type of Easement	Points
Agricultural Conservation – Proposed easement is at least as large as the proposed parcel(s) being developed by the project and is at least ten acres in size when combined with other adjacent land that is used for agricultural purposes	12
Agricultural Conservation – Proposed easement is at least as large as 75% of the proposed parcel(s) being developed by the project and is at least ten acres in size when combined with other adjacent land that is used for agricultural purposes	9
Agricultural Conservation – Proposed easement is at least as large as 50% of the proposed parcel(s) being developed by the project and is at least five acres in size when combined with other adjacent land that is used for agricultural purposes	6
Agricultural Conservation – Proposed easement is at least as large as 25% of the proposed parcel(s) being developed by the project and is at least five acres in size when combined with other adjacent land that is used for agricultural purposes	3

Open Space– Proposed easement is at least as large as the proposed parcel(s) being developed by project	9
Open Space– Proposed easement is at least 75% as large as the proposed parcel(s) being developed by project	6
Open Space– Proposed easement is at least 50% as large as the proposed parcel(s) being developed by project	3

Total Available Points: 12

Scoring Instructions: Points may be awarded for projects that establish one of the following: an agricultural conservation easement or an open space easement. Points are awarded only for one type of easement. A project may not receive points for establishing a second or third type of easement on the property unless the proposed easement is exclusively preserving land that is not otherwise preserved by an existing easement.

Agricultural Conservation Easement

Establishment of an agricultural conservation easement shall occur in a manner consistent with Municipal Code Chapter 18.85 (Agricultural Lands Preservation Program). If a project is required to establish an agricultural conservation easement to mitigate the loss of agricultural land pursuant to Chapter 18.152, points may be awarded only for establishing an agriculture conservation easement beyond the minimum 1:1 mitigation ratio required by Chapter 18.152.

To be eligible for points, an agricultural conservation easement must be established within the Morgan Hill Sphere of Influence (SOI) and accepted by a land conservation entity or agency. The property subject to the easement must meet the criteria for "eligible mitigation lands" as established in Municipal Code Section 18.152.090 (Eligible Mitigation Lands). Proposed conservation easement sites not adjacent to agricultural lands that are already permanently protected by an agricultural conservation easement shall be a minimum of ten acres. Proposed conservation easements adjacent to lands that are already permanently protected by an agricultural conservation easement shall be at least as large as the proposed parcel(s) being developed by the project as long as the aggregate sum is at least 10 acres.

Open Space Easement

To be eligible for points, an open space easement must be established within the Morgan Hill Sphere of Influence (SOI) and accepted by a land conservation entity or agency. The property subject to the easement must be in a location to protect and/or preserve open space and natural resources as identified in the General Plan. Natural resources include but are not limited to agricultural lands, undeveloped open space, scenic hillsides, habitat for sensitive species, and riparian areas and aquatic habitat as defined in the General Plan Natural Resources and Environment Element. Land that is required to be set-aside for other reasons, such as project mitigation measure and required setbacks shall not be eligible to be counted as an open space easement or for points.

Project Scoring Example: A proposed project that converts five acres of agriculture land to non-agricultural use proposes the establishment of a five-acre agricultural conservation easement on agricultural land within the SOI to satisfy the agricultural mitigation requirement in Municipal Code Chapter 18.152. If the project establishes an additional ten-acre agricultural conservation easement on a property separate from the easement land used for mitigation, the project would receive 12 points. These points would only be awarded if the additional easement was at least five acres, if it is contiguous to existing agricultural lands, or ten acres, if it not contiguous to permanently preserved agricultural lands.

Criteria 5-D: Agriculture Buffer

Standard: The project establishes an agriculture buffer easement.

Points: 4

Scoring Instructions. To be eligible for points, a project shall establish an open space easement to provide a buffer between active agricultural operations that are adjacent to the proposed project and new development. To receive points, the City must determine that the agriculture buffer easement is needed in order to preserve the viability of the active agricultural operations and that the size and configuration of the buffer results in a minimum of 500 feet between active agricultural operations and the nearest new structure.

Criteria 5-E: Agriculture Preservation or Open Space Fund Contribution

Standard: The project contributes to the City's agriculture preservation or open space fund beyond the minimum requirement.

Points: See Table 31.

TABLE 31: POINTS FOR AGRICULTURE PRESERVATION OR OPEN SPACE FUND CONTRIBUTION

Contribution Amount	Points
Single: $4,117.43 per unit*	4
Double: $8,234.86 per unit*	9

* Adjusts annually.

Total Available Points: 9

Scoring Instructions: Contribution to the City's agriculture preservation fund shall occur in a manner consistent with Municipal Code Chapter 18.152 (Agricultural Lands Preservation Program). If a project is required to pay an agricultural preservation in-lieu fee to mitigate the loss of agricultural land pursuant to Chapter 18.152, points may be awarded only for the amount of the contribution to the City's agriculture preservation fund in that exceeds the required in-lieu fee.

Project Scoring Example: A 10-unit project that converts one acre of agricultural land pays an in-lieu mitigation fee of $14,960 to satisfy the minimum requirement in Chapter 18.152. If the project contributes an additional $38,990.90 beyond the required mitigation fee, the project would receive 4 points.

Criteria 5-F: On-Site Recreational Amenities

Standard: The project provides on-site recreational amenities to serve residents.

Points: See Table 32. Points identified in Table 24 are for each individual amenity included in the project. **Total points.** Total points awarded to a project within this criteria will be the sum of points for each individual amenity up to a maximum of eight points.

TABLE 32: POINTS FOR ON-SITE RECREATIONAL AMENITIES

	Points for Each Amenity Provided			
Project Size	**Tier 1**	**Tier 2**	**Tier 3**	**Tier 4**
1 to 15 units	6	8		
16 to 50 units	2	3	4	-
51-100 units	1	2	3	4
101-150 units	0	1	2	3
151+ units	0	0	1	2
201+ units	0	0	1	1

Recreational amenities eligible for points are divided into the four tiers as follows:

Tier 1 amenities:

- Shuffleboard
- Horseshoes
- Bowling green w/artificial turf
- Passive recreation area and/or gardens
- Passive water feature (e.g., fountain)
- Picnic/barbeque area

Tier 2 amenities:

- Cabana or shade trellis area
- Two picnic/barbeque areas
- Clubhouse
- Volleyball court and/or Bocce ball court
- Outdoor racquetball/handball tilt-up wall
- Dog Park (add one point more with dog wash station)
- Sauna and/or Jacuzzi
- Tree grove as approved by the community development director or designated staff.

- Community garden plots (minimum one forty-eight-square-foot plot per each ten dwelling units) with water service
- ½ court basketball (one hoop)
- Bridle paths
- Bocce ball
- Artificial turf putting green
- Tot lots (age appropriate play equipment/minimum three activities; can be integrated in structure)

Tier 3 amenities:

- Softball field
- Sports court and/or 2 1/2-court basketball courts (two hoops)
- Restroom area
- ½ scale soccer field
- Tot lots (age appropriate play equipment/minimum five activities; can be integrated in structure)
- Jacuzzi and separate child wading pool (for projects between twenty and fifty units zoned R-2, R-3 or higher density development)
- Tennis court
- Recreation hall
- Exercise room
- Clubhouse w/ kitchen

Tier 4 amenities:

- Swimming pool (for projects of fifty-one or more units zoned R-2, R-3 or higher density development)

Small and Micro Projects: Projects with up to 15 units with no usable common open space or shared recreational amenities, including custom lot projects, shall automatically receive 8 points within Criteria 5-F without providing on-site recreational amenities.

Scoring Instructions: Points awarded are based on the number and type of recreational amenities for different project sizes as shown in Table 30. Projects with 50 or fewer units may receive points for a maximum of one Tier 1 amenity. Projects with 50 to 150 units may receive points only for Tier 2, 3 and 4 amenities. To be eligible for points, projects with more than 150 units must provide at least two Tier 3 or Tier 4 amenities. For a project of more than 150 units, two Tier 2 amenities may count as one Tier 3 amenity if the project provides at least one Tier 3 amenity. Projects with between 201 and 300 units must provide two Tier 3 amenities before two Tier 2 amenities may be counted as one Tier 3 amenity. Projects over 300 units must provide three Tier 3 amenities before two Tier 2 amenities may be counted as one Tier 3 amenity.

The Planning Commission may award points for unlisted amenities that provide recreational amenities to a level similar to those described above.

Total Available Points: 8

Project Scoring Example: A 25-unit project includes common open space with shuffleboard court, horseshoe area, and a volleyball court. The project would receive a total of four points with one point awarded for the shuffleboard court, one point for the horseshoe area, and two points for the volleyball court.

Criteria 5-G: Amenities for Age Groups

Standard: The project provides on-site social and recreational amenities for various age groups.

Points: 2

Total Available Points: 1 or 2 (two age groups = 1; all age groups =2)

Scoring Instructions: To be eligible for points, a project must provide on-site social and recreational amenities exclusively designed to meet the unique needs of all age groups, including children, teens, adults, and seniors. Each proposed amenity can only be counted for one age group. Examples of amenities appropriate for different age groups include the following:

- **Children:** tot lots, children's wading pool
- **Teens:** Outdoor spaces for socializing, recreational equipment that provides physical challenge (e.g., skate park), indoor recreational amenities (pool tables, table tennis) that are highly attractive to teens
- **Adults:** Indoor gym, outdoor picnic/barbecue area
- **Seniors:** Walking paths, low-impact outdoor exercise equipment designed for seniors ("senior playgrounds")

Criteria 5-H: Public Gathering Places

Standard: The project provides publicly accessible outdoor gathering places and open space in higher density and more urban settings.

Points: 1 point per $1,000 value of amenity per unit.

Total Available Points: 3

Scoring Instructions: To be eligible for points, a project must provide one or more outdoor public gathering places such as plazas, courtyards, and parks that exceed minimum City requirements. Points awarded for the criteria are primarily intended for projects located Downtown and in other higher intensity areas with pedestrian activity originating outside of the proposed development. To receive points, the public gathering place shall be open for use by the general public and must comply with the following standards:

- **Location:** The public gathering places space must be located close to pedestrian activity, along streets, or where pathways intersect. Open spaces must support an integrated pedestrian network by providing on-site and off-site connections to the open space.
- **Activity:** For public gathering places incorporated into mixed use development with ground commercial uses, the proposed public gathering place must be located along the edge of active ground-floor uses (e.g., retail or restaurants).
- **Visibility and Access:** Plazas, courtyards, and other similar spaces must open to public sidewalks and building entrances to provide visibility and access opportunities along project frontages.
- **Seating:** Usable open spaces must include well-designed seating, such as seat walls, free-standing elements, fixed and moveable seating, and other seating options.
- **Year-Round Use:** Open space must be usable year-round with features such as awnings, wind breaks, and sun shades, umbrellas, or other similar features that provide shelter from the elements.

Criteria 5-I: Proximity to Public Parks

Standard: The project is within walking distance of a public park or recreational facility.

Points: See Table 33.

TABLE 33: POINTS AVAILABLE FOR PROXIMITY TO PUBLIC PARKS

Project Distance from Public Park	Points
Within three-quarters mile	1
Within one-half mile	2
Within one-quarter mile	3

Total Available Points: 3

Scoring Instructions: To be eligible for points, the project must be located within walking distance of an existing City of Morgan Hill or Santa Clara County park with recreational amenities available for public use without charge. The distance to the park is measured as the lineal distance a pedestrian would walk, from the average center point of housing in a project to the nearest entrance point of the park.

Criteria 5-J: Open Space Design and Outdoor Amenities

Standard: The project provides common open space and outdoor amenities that enhance project residents' quality of life and the overall project design quality.

Points: See Table 34.

TABLE 34: POINTS FOR OPEN SPACE

Open Space	Points
1. **Visibility.** The project locates open space areas so that they can be viewed from individual units, preferably from the kitchen, living room, or dining room.	2
2. **Adjacent Units.** The project maximizes the number of units that are immediately adjacent to common open space. Units not immediately adjacent to common open space can access open space areas through pedestrian connections separate from drive aisles and vehicle parking lots.	2
3. **Existing Trees.** The project retains existing native trees on the property which, if removed, would require a tree removal permit in accordance with Municipal Code Chapter 12.32 (Restrictions on Removal of Significant Trees).	1
4. **Rear Yard Open Space.** For detached single family and duplex/duet projects, private rear-yard usable open space is 25 percent, or more than the minimum rear setback area required by the applicable zoning.	2
5. **Backyard Improvements.** Finished (e.g., landscape, hardscape, irrigation) private backyard improvements are installed by the developer.	2
6. **Private Open Space - Attached Projects.** For attached projects, usable private open space for ground floor units is 25 percent or more than required by the applicable zoning and finished private open space improvements are installed by the developer.	3

Total Available Points: 10

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, with no common open space, shall automatically receive 6 points within Criteria 5-J and can obtain additional points, up to the total maximum of ten, by installing the noted improvements in private open space areas.

6. ENVIRONMENTAL PROTECTION

Intent: Encourage protection of natural resource and promote the City's environmental sustainability goals.

Points Available: See Table 35.

TABLE 35: ENVIRONMENTAL PROTECTION POINTS AVAILABLE

Criteria	Points Available	
6-A: Energy Efficiency	6	
6-B: On-Site Solar Energy Generation	10	
6-C: Indoor Water Use	4	
6-D: Outdoor Water Use	12	
6-E: Sustainable Site and Building Design	22	
Total	**54**	**22 Maximum**

Criteria 6-A: Energy Efficiency

Standard: The project exceeds the minimum building energy efficiency required by the California Energy Code.

Points: See Table 36.

TABLE 36: POINTS FOR ENERGY EFFICIENCY

Energy Efficiency Beyond Minimum Requirement	Points
5%	2
10%	4
15%	6

Total Available Points: 6

Scoring Instructions: Energy use and efficiency is calculated as the aggregate of all buildings within a project. To receive points, a project must show a reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.

Criteria 6-B: On-Site Solar Energy Generation

Standard: The project incorporates on-site solar energy generation systems to provide energy for on-site use.

Points: See Table 37.

TABLE 37: POINTS FOR ON-SITE SOLAR ENERGY GENERATION

Project's annual electrical energy cost provided from an on-site solar energy generation system	Points
60%	4
70%	6
80%	8
90%	10

Total Available Points: 10

Scoring Instructions: Percentage of energy generated from on-site renewable sources must be demonstrated using a building energy performance simulation tool consistent with industry standards.

Criteria 6-C: Indoor Water Use

Standard: The project exceeds the minimum indoor water efficiency and conservation requirements of the California Green Building Standards Code (CalGreen).

Points: See Table 38.

TABLE 38: POINTS FOR INDOOR WATER EFFICIENCY AND CONSERVATION

Water Efficiency Beyond Minimum Requirement	Points
5%	2
10%	4

Total Available Points: 4

Scoring Instructions: Applicants shall demonstrate attainment of water efficiency standards utilizing methods consistent with CalGreen and industry standards.

Criteria 6-D: Outdoor Water Use

Standard: The project reduces outdoor water use through water efficiency landscaping and irrigation.

Points: See Table 39.

TABLE 39: POINTS FOR OUTDOOR WATER USE

Standard	Points
Less than 50% of landscaped area contains natural turf	2
The project contains no natural turf outside of common areas used for active play	4
The project exceeds outdoor water efficiency standards by 10 percent	2
The project exceeds outdoor water efficiency standards by 20 percent	4
The project exceeds outdoor water efficiency standards by 30 percent	6
The project installs subsurface irrigation for all natural turf areas	2

Total Available Points: 12

Scoring Instructions: The project's outdoor water efficiency shall be calculated in accordance with Morgan Hill Municipal Code Chapter 18.148 (Water Conservation in Landscaping). Standards (a) and (b) and standards (c) and (d) are mutually exclusive; points for all other standards may be combined.

Criteria 6-E: Sustainable Site and Building Design

Standard: The project incorporates sustainable building site design features beyond the minimum requirements of the California Green Building Standards Code (CalGreen).

Points: 1 point for every 2 Build It Green (BIG) Points over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code

Total Available Points: 22

Scoring Instructions: Applicants shall use the current Build It Green Checklist maintained by the City of Morgan Hill. A project may receive Build It Green Points only for measures beyond the minimum requirements of the California Green Building Standards Code adopted by the City of Morgan Hill. Consistent with Chapter 15.65 of the City of Morgan Hill Municipal Code, Community points in the Build It Green checklist are excluded from the sustainability standard and the project is required to meet minimum point requirements within the checklist categories (energy, water, resource, and indoor air quality).

If construction on a project has not commenced within 3 years of initial award of allotments, project must use Build It Green checklist in effect at the time of application for building permits.

7. TRANSPORTATION

Intent: Support a balanced and efficient transportation system for pedestrians, cyclists, public transit, and automobiles that maintains quality of life in residential neighborhoods.

Points Available: See Table 40.

TABLE 40: TRANSPORTATION POINTS AVAILABLE

Criteria	Points Available	
7-A: Bicycle and Pedestrian Improvements	6	
7-B: Transit Improvements	3	
7-C: Off-Site Roadway Improvements or Fund Contribution	6	
7-D: Transportation Demand Management	5	
7-E: Connections to Adjacent Property	3	
7-F: Internal Connections	4	
7-G: EV Charging Station	4	
Total	**31**	**15 Maximum**

Criteria 7-A: Bicycle and Pedestrian Improvements

Standard: The project constructs pedestrian and bicyclist improvements beyond the minimum requirement.

Points: 1 point for every $1,000 in improvements constructed per unit.

Total Available Points: 6

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 4 points within Criteria 7-A without constructing pedestrian and bicyclist improvements.

Scoring Instructions: Improvements may be on-site or off-site consistent with the City's Bikeways Master Plan. Points may be awarded only for the construction of improvements that exceed improvements normally required as a condition of approval for a subdivision map or other project permit. For example, the City would not typically award points for the installation of a bikeway along the property frontage identified as a future bikeway in the City's Bikeways Master Plan as the installation of this bikeway would be a typical condition for the approval of a proposed subdivision.

To be eligible for points, bicycle improvements must be consistent with the City of Morgan Hill Bikeways Master Plan. Types of bicycle improvements may include construction of bicycle paths, lanes, and routes; repair of existing facilities, installation of bicycle racks and lockers, and installation of way-finding signs. Types of pedestrian improvements may include installation of new sidewalks, enhanced street crossings, ADA-compliant curb ramps, mid-block crossings, traffic calming measures, and curb extensions.

Points may be awarded for creative or innovative amenities that support bicycling and walking, including but not limited to secure indoor bicycle storage for each unit, shared bicycle repair facilities, and car sharing facilities.

Criteria 7-B: Transit Improvements

Standard: The project constructs bus stop or other bus transit improvements beyond the minimum requirement

Points: 1 point for every $1,000 in value of improvement per unit.

Total Available Points: 3

Scoring Instructions: Points may be awarded only for the construction of improvements that exceed improvements normally required as a condition of approval for a subdivision map or other project permit. For example, the City would not typically award points for the installation of a bus turnout along the property frontage if the City's General Plan or other policy documents identify the location as requiring the turnout. The requirement to install the turnout or other similar improvement would be a typical condition for the approval of a proposed subdivision to comply with and achieve consistency with the General Plan.

Types of improvements eligible for points include bus shelters, benches, reinforced street sections or bus pullout areas, information signs and displays, enhanced pedestrian access, security enhancements, and landscaping. These improvements must be located on an approved or planned Valley Transportation Agency (VTA) transit route and accepted by the VTA for maintenance. A letter from the VTA must be submitted confirming VTA's acceptance and maintenance of the proposed bus stop. For planned bus routes, the VTA letter shall provide confirmation of the future bus route extension. This standard may apply to a bus stop constructed in the initial or previous phase that would serve subsequent phases of the same development.

There is no geographic requirement for improvements - points may be awarded for improvements located outside of the project boundary or away from the immediate vicinity of the project.

Criteria 7-C: Off-Site Street and Parking Improvements or Fund Contribution

Standard: The project constructs and/or funds off-site street roadway improvements.

Points: 1 point for every $1,000 in value of improvement per unit.

Total Available Points: 6

Scoring Instructions: To be eligible for points, a project must provide for the dedication and/or improvement of extensions to existing streets and/or shared parking lots outside of the project boundaries. Shared parking must be subject to an agreement between property owners to ensure the continued availability of shared parking. Projects which offer to complete adjacent or nearby off-site street or parking improvements which were committed to be installed by another previously approved application will not receive points for the same commitment. To be eligible for points improvements must be voluntary and not otherwise required by the City or any other public agency.

After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the City Engineer determines that the in-lieu funds will allow for street and parking improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 7-D: Transportation Demand Management

Standard: The project incorporates transportation demand management (TDM) measures

Points: See Table 41.

TABLE 41: POINTS FOR TRANSPORTATION DEMAND MANAGEMENT MEASURES

Building Design Feature and Construction Method	Points
The project contributes to the City's transportation fund to be used to provide city-wide TDM programs	1 per $1,000 contributed per unit, up to 2
For rental projects, a TDM program will be maintained for the life of the project incorporating identified TDM measures	1
For rental projects, the project incorporates three or more TDM measures	2

Total Available Points: 5

Scoring Instructions: To be eligible for points, TDM measure must be in excess of those required as environmental mitigation and may not be used to receive point within other competition criteria. Rental projects may receive one point for committing to maintain a TDM program for the life of the project and two points for incorporating three or more of the following TDM measures:

- Free transit passes for residents.
- Free car share membership for residents.
- On-site cargo bicycle available for residents' use.
- Operation of a dedicated shuttle service during the peak period to a rail station.
- Operation of a commute assistance center, offering on site, one stop shopping for transit and commute alternatives information.
- Installation of shared office facilities for the use of residents to facilitate telecommuting and home-based employment. high bandwidth connections in employees' homes to the Internet to facilitate home telecommuting.
- Other similar measures as approved by the Planning Commission.

Criteria 7-E: Connections to Adjacent Property

Standard: The project maximizes connections to adjacent property for vehicles, bicyclists, and pedestrians.

Points: See Table 42.

Table 42: Points for Connections to Adjacent Property

Connection to Adjacent Property	Points
For projects abutting developed land, the project aligns and connects streets intersecting the project boundary with all adjoining streets.	1
For projects abutting undeveloped land, the project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	1
The project provides off-street bicycle and pedestrian connections, including private or public parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public. This is intended to implement Policy No. P2-4 “Encourage public accessibility of new privately-owned and developed parks through the RDCS process” from the Bikeways, Trails, Parks and Recreation Master Plan, as well as GP Policy CNF-11.5 Outside Connections and Policy CNF-11.6 Open Space Connections.	1

Total Available Points: 3

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 4 points within Criteria 7-E.

Criteria 7-F: Internal Connections

Standard: The project maximizes internal connections within the project with minimal physical barriers that provide continuous, safe, and convenient travel for vehicles, bicyclists, and pedestrians.

Points: See Table 43.

Table 43: Points for Internal Connections

Internal Connection	Points
The project incorporates two or more design elements of “complete streets” that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	1
The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage. One improvement is required for one point.	1

The project provides pedestrian connections with minimal physical barriers from all units to common open space, recreational facilities, and other project amenities.	1
The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulbouts, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	1

Total Available Points: 4

Small and Micro Projects: Projects with up to 15 units, including custom lot projects, shall automatically receive 4 points within Criteria 7-F.

Scoring Instructions: Complete Streets is a transportation policy and design approach, adopted as one of the transportation goals in the City's 2035 General Plan, that requires streets to be planned, designed, operated, and maintained to enable safe, convenient and comfortable travel and access for users of all ages and abilities regardless of their mode of transportation. Complete Streets allow for safe travel by those walking, cycling, driving automobiles, riding public transportation, or delivering goods.

The specific design elements of Complete Streets vary, based on context and project goals, but they may include the following, as approved by the City Engineer:

a. Pedestrian infrastructure such as sidewalks; traditional and raised crosswalks; median crossing islands; Americans with Disabilities Act of 1990 compliant facilities including audible cues for people with low vision, pushbuttons reachable by people in wheelchairs, and curb cuts; and curb extensions.
b. Traffic calming measures to lower speeds of automobiles and define the edges of automobile travel lanes, including a road diet, center medians, shorter curb corner radii, elimination of free-flow right-turn lanes, angled and face-out parking.
c. Bicycle accommodations, such as protected or dedicated bicycle lanes, neighborhood greenways, wide paved shoulders, and bicycle parking.
d. Public transit accommodations, such as bus pullouts, transit signal priority, bus shelters, and dedicated bus lanes.
e. Green Streets, the natural systems approach (incorporates vegetation and/or permeable pavements) to enhance pedestrian safety, reduce stormwater flow and improve water quality. Green Streets are designed to capture rainwater at its source.

Criteria 7-G: Electric Vehicle Charging Stations

Standard: The project provides electric vehicle charging stations beyond minimum requirements.

Points: 1 point per charging station.

Maximum Points: 4

Scoring Instructions. Charging stations shall be available for use by all project residents and visitors. Charging stations are not required to be available to the general public. The developer shall install all connections and equipment necessary for the charging stations to be ready to use by residents and visitors upon project completion. Technical specifications for charging stations and related improvements shall be as required by the Building Official upon time of installation.

8. MUNICIPAL INFRASTRUCTURE

Intent: Encourage the efficient use of public infrastructure and services.

Points Available: See Table 44.

TABLE 44: MUNICIPAL INFRASTRUCTURE POINTS AVAILABLE

Criteria	Points Available	
8-A: Water Infrastructure	3	
8-B: Wastewater Infrastructure	3	
8-C: Storm Water Infrastructure	3	
8-D: Infrastructure and Services Fund Contribution	3	
8-E: Broadband Connectivity	6	
Total	**18**	**10 Maximum**

Criteria 8-A: Water Infrastructure

Standard: The project constructs off-site water infrastructure improvements beyond minimum requirements.

Points: 1 point for every $1,000 in improvements constructed per unit

Total Available Points: 3

Scoring Instructions: Off-site water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the City Engineer, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the City Engineer determines that the in-lieu funds will allow for water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-B: Wastewater Infrastructure

Standard: The project constructs off-site wastewater infrastructure improvements beyond minimum requirements.

Points: See Table 45.

Table 45: Points Available for Wastewater Infrastructure

Standard	Points
The project provides off-site extensions or replacement of wastewater collection pipes and lift stations beyond minimum requirements.	1 point for every $1,000 in improvements constructed per unit

Total Available Points: 3

Scoring Instructions: Off-site waste water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the City Engineer, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the City Engineer determines that the in-lieu funds will allow for waste water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-C: Storm Water Infrastructure

Standard: The project utilizes low impact development (LID) techniques and/or constructs storm water improvements beyond minimum requirements.

Points: See Table 46.

Table 46: Points Available for Storm Water Infrastructure

Standard	Points
The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	1 point for $1,000 in improvements constructed

Total Available Points: 3

Scoring Instructions: Low-Impact Development (LID) is a stormwater management approach that manages rainfall on the site through landscape features that infiltrate, filter, store, evaporate and detain stormwater at the source. LID techniques integrate green space, native landscaping, natural hydrologic functions, and other techniques to generate less runoff from developed land. City LID requirements can be found in the City's Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements (2015). The applicant is required to demonstrate that the LID techniques specifically proposed will result in water quality and flood control benefits to the project site and community. Projects shall show the location and preliminary dimensions/outline of the stormwater facility in their RDCS plan submittal. A stormwater note will not be acceptable.

Off-site storm water infrastructure improvements must be consistent with the City's Infrastructure Master Plan, approved by the City Engineer, and constructed consistent with the City's standard specification for water infrastructure improvements. After a project receives entitlements and before the completion of construction, the City may allow the applicant to contribute in-lieu funds equal to the value of the improvements for which points were awarded. The City may allow the contribution of in-lieu funds only if the City Engineer determines that the in-lieu funds will allow for storm water infrastructure improvements with a greater community benefits than could be provided by the construction of improvements by the project developer.

Criteria 8-D: Infrastructure and Services Fund Contribution

Standard: The project contributes water, sewer, storm drain funds greater than the minimum required.

Points: 1 point for every $1,000 contributed.

Total Available Points: 3

Criteria 8-E: Broadband Connectivity

Standard: The project provides advanced broadband connectivity.

Points: See Table 47.

Table 47: Points Available for Communication Technology

Standard	Points
The project installs broadband conduit in the public right-of way.	2
The project installs broadband conduit from the public right-of-way to each home or occupied building in the project.	1
The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	1
The project provides primary broadband service to each unit from a competitive telecommunications company (i.e., a company other than Frontier or Charter)	6

Total Available Points: 6

Scoring Instructions: Broadband means telecommunications service capable of supporting digital data transmission at minimum download speeds of 25 Mbps. To be eligible for points, projects must install conduit each with at least two pull cables and of sufficient size and quality to accommodate multiple future broadband providers in all the public right-of ways fronting the project site. At least one conduit shall remain empty and reserved for use by a potential future broadband service provider. Points for providing broadband service from a competitive telecommunications company may not be combined with points for installing conduit pathways within the right-of way, from the right-of-way to buildings, and within buildings.

The RDCS submittal shall provide a schematic location of the broadband conduit. A note demonstrating broadband compliance will not be acceptable.

9. PROJECT QUALITY

Intent: Encourage exceptional project design at the neighborhood, site, and building scale.

Points Available: See Table 48.

TABLE 48: PROJECT QUALITY POINTS AVAILABLE

Criteria	Points Available	
9-A: Exterior Building Design	15	
9-B: Building Placement and Massing	15	
9-C: Site Improvements	7	
9-D: Vehicle Parking and Access	11	
9-E: Public Art	3	
9-F: Smart Homes	4	
Total	**55**	**35 Maximum**

Criteria 9-A: Exterior Building Design

Standard: Exterior architectural elements support walkable and attractive neighborhoods.

Points: See Table 49.

TABLE 49: POINTS FOR EXTERIOR BUILDING DESIGN

Building Design Features	Points
1. **Front Porches.** A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. Porches must be part of the home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard. Multi-family projects may earn points if 50 percent of ground floor units with exterior entrances include a porch.	1 (attached) 3 (detached)
2. **Balconies Facing Street or Courtyard.** A minimum of 25 percent of homes facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. Multi-family projects may earn points if 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	1
3. **Balconies Facing Alleys.** A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle. Multi-	1

family projects may earn points if 25 percent of upper floor units facing an alley, parking area, or drive aisle include a balcony.	
4. **Façade Articulation and Finishes –** Front building facades feature finishes to break up blank, flat walls, including but not limited to windows, shutters, awnings, balconies, bay windows, and stone enhancements.	1 (attached) 3 (detached)
5. **360-degree Architecture.** The project features full and consistent articulation and design detail on all building facades.	1 (attached) 3 (detached)
6. **Corner Treatments.** For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates façade feature finishes, including but not limited to widows, shutters, awning, balconies, bay windows, and stone enhancements.	1
7. **Multi-family Ground Level Entrances.** For multi-family residences, the project provides as many private, exterior ground-level entries to individual units as possible.	1
8. **Individual Residences – Attached Projects.** Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	4
9. **Residential-Scale Design Elements – Attached Projects.** Buildings incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.	1

Total Available Points: 13 (attached); 15 (detached)

Criteria 9-B: Building Placement and Massing

Standard: The placement of buildings on lots, orientation of units to the street, and configuration of building height and volume supports a high-quality design environment.

Points: See Table 50.

TABLE 50: POINTS FOR BUILDING PLACEMENT AND MASSING

Building Placement and Massing Features	Points
1. **Entrance Orientation – Collector and Residential Streets.** The primary entrance of homes face streets along the project perimeter for projects:	2

• Fronting an existing residential or collector street; or • Located Downtown or in the Monterey Road corridor.	
2. **Entrance Orientation – Single-Family Detached Projects/Arterial Streets.** The primary entrances of detached single-family homes outside of Downtown or the Monterey Road corridor do not face an arterial street. Project perimeters along arterial streets feature landscaping, fences, walls, and other improvements that create visual interest and support a pedestrian-friendly environment.	2
3. **Variation in Building Height.** The project incorporates variation in building heights to minimize monotony.	2
4. **Variation in Building Placement.** The project incorporates variation in building front setbacks and placement on lots to minimize monotony.	2
5. **Roof Line Variation.** Variation in roof lines through changes in roof height provides breaks in building massing.	2
6. **Upper Floor Set Back – Detached Homes.** A minimum of 50 percent of detached single-family homes feature second stories stepped back a minimum of 10 feet from the street-facing ground floor building wall.	2
7. **Upper Floor Set Back – Attached Homes.** Upper floors of attached housing types facing a street are stepped back a minimum of 10 feet from the street-lower floor building wall.	1
8. **Height and Project Edge – Attached Projects.** The project minimizes building heights along the project edge and locates larger buildings towards the interior of the site.	1
9. **Separate Structures – Attached Projects.** Large projects divide units into multiple separate structures. Maximum number of units per structure is as follows: • Attached single-family (townhomes): 5 units maximum per structure • Multi-family: 10 units maximum per structure	4
10. **Adjacent Building Types– Attached Projects.** The project matches building types along project edge with adjacent land that is developed to its ultimate potential use according to the General Plan or applicable zoning. For example, the project locates detached single-family homes along the project perimeter when facing existing detached single-family homes in an area zoned for detached single-family homes.	1

Total Available Points: 12 (detached); 15 (attached)

Criteria 9-C: Site Improvements

Standard: Landscaping and other site improvements contribute to a high-quality design environment.

Points: See Table 51.

TABLE 51: POINTS FOR SITE IMPROVEMENTS

Site Improvements	Points
1. **Landscaping – Parkway Design.** The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements. For private streets with no minimum parkway standard, projects may receive points for exceed the width of an equivalent public street standard.	2
2. **Landscaping – Visual Relief.** Landscaping is placed and designed to minimize the appearance of building bulk and mass.	1
3. **Exterior Lighting.** Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors.	1
4. **Entrance Pathways.** The project provides a direct pathway connection from a public sidewalk to the primary entrance of each unit or building adjacent to the sidewalk. For buildings and units oriented towards interior common open space, points may be awarded if direct pathway connection is provided from the open space to each unit or building facing the open space.	1
5. **Public/Private Transitions.** The project includes transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation.	1
6. **Mechanical Equipment.** All mechanical equipment is screened from the public right-of-way and common areas enclosed within an architecturally compatible structure. Equipment closures are screened through landscaping.	1

Total Available Points: 7

Criteria 9-D: Vehicle Parking and Access

Standard: The project minimizes visual impacts from on-site vehicle access and parking facilities.

Points: See Table 52.

TABLE 52: POINTS FOR VEHICLE PARKING AND ACCESS

Vehicle Parking and Access Features	Points
1. **Garage Door Orientation.** Garage doors do not face the front street. All garages are configured on the site such that garage doors face either the side or rear of the property, or screened by buildings or landscaping is provided to avoid a direct line of sight to garage doors from public spaces.	3
2. **Garage Door Design – Minimizing Visual Dominance.** For garage doors that face the front street, garage doors and entrances are designed to be visually subservient to other building elements through methods such as increasing garage door setbacks, incorporating greenery within the driveway, and other methods.	1
3. **Garage Door Design - Detailing.** Garage doors feature windows or architectural detailing consistent with the main dwelling.	1
4. **Garage Configuration.** No more than 50 percent of single-family homes feature an identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.	1
5. **Parking – Attached Projects.** The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	1
6. **Screening.** Parking visible from a public street is screened with fences, walls, and/or landscaping.	1
7. **Setback Areas.** For detached single-family projects, paved areas and hard surface for vehicle access and parking occupies not more than 50 percent of the front and street-side setback area.	1
8. **Pavement Design.** Areas for vehicle parking and circulation feature paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	2

Total Available Points: 11

Criteria 9-E: Public Art

Standard: The project incorporates public art to create a livable and visually stimulating environment.

Points: 1 point for every $1,000 in artwork cost per unit.

Total Available Points: 3

Scoring Instructions: Public art means privately funded, constructed, and maintained artwork located on private property, but which also provides a public benefit, or on public property pursuant to City approval. The public art must be located in areas on the site clearly visible from the public street or sidewalk or in publicly accessible outdoor areas. Public art must be displayed in a manner that will enhance its enjoyment by the general public.

Artwork costs include all costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the public art. Public art may include sculpture, murals, photography and original works of graphic art, earthworks, fiber works, waterworks, neon, glass, mosaics, or any combination of forms of media, furnishing or fixtures permanently affixed to the building or its grounds, and may include architectural features of the building or elements of landscape design. The creator of public art shall be a practitioner in the visual arts who is not a member of the project engineering, architecture or landscape architecture firm.

Criteria 9-F: Smart Homes

Standard: The project accommodates or provides home automation devices that are connected to and controlled through a digital network.

Points: See Table 53.

Table 53: Points Available for Smart Homes

Standard	Points
The project installs home automation devices within units.	1 per $1,000 in device value per unit
The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	1 per $1,000 in device value per unit

Total Available Points: 4

Scoring Instructions: A home automation device means a household device, appliance, or fixture that is connected to a digital network and controlled remotely by the resident. Example home automation devices include, but are not limited to major homes appliances (refrigerators, freezers, ovens washers/dryers), heaters and air conditions, thermostats, lighting systems, locks and home security, doorbells, and home theatre and entertainment systems.

IV. RDCS IMPLEMENTATION POLICIES

A. Schedule for 2018 Competition

All of the following dates, excluding the RDCS application submittal deadline, are tentative and subject to adjustment.

July 10	Planning Commission Evaluation and Recommendation of Available Allotments (18.156.110B)
September 5	City Council Determination on Possible Reduction to Available Allotments (18.156.110B)
October 22	Pre-Competition Orientation (18.156.120A)
November 5	Pre-Application Review (18.156.130)
December 5	Pre-Application Review Letter (18.156.130F)
March 8	Applicant Response to Pre-Application Review Letter (18.156.130G)
March 8	**RDCS Application Submittal Deadline (18.156.120C)**
March 25	General Plan and Zoning Consistency Determination (18.156.120D)
April 4	Deadline to file General Plan and Zoning Consistency Appeal to City Council
May 3	Staff Scoring of Applications/Recommendation to Planning Commission (18.156.120E)
May 1	Appeals of General Plan and Zoning Consistency Heard by City Council
May 28	Planning Commission Hearing - Project Scores (18.156.120F)
June 11	Planning Commission Hearing – Finalize Project Scores
June 21	Deadline to File Scoring Appeal to City Council
July 17	Scoring Appeal Heard by City Council
July 19	Staff Recommendation - Award of Allotments (18.156.120G)
July 23	Planning Commission Hearing - Award of Allotments (18.156.120H)
August 2	Deadline to File Allotment Appeal to City Council
August 21	Allotment Appeal Heard by City Council

* All decisions of the Planning Commission may be appealed to the City Council (18.112)

B. Exemptions

The following types of residential projects may be developed without first receiving any allotments:

1. One single-family home on a lot existing as of March 1, 2017;
2. Secondary dwelling units;
3. The conversion of an existing single-family home into a duplex provided that a new detached primary structure is not constructed on the lot or lots;
4. Assisted living/nursing homes (reference Zoning Ordinance for definition); and
5. The annexation of existing dwelling units outside of City limits into the City.

Projects may receive credit for legal residences that exist on the project site at the time of an RDCS application.

C. Application Submittal Requirements

See RDCS Process and Filing Requirements section on RDCS Process web page:

http://www.morgan-hill.ca.gov/109/RDCS-Process

The following additional submittal requirements shall also apply:

- When evaluating and scoring applications, the City may not consider any additional information submitted by the applicant after the application filing date. However, staff may request and consider additional information (calculations, tables, graphics, etc.) to clarify the applicant's submittal.
- For projects requesting points for an activity on property not owned by the applicant or developer, the applicant must submit a written approval from the property owner consenting to the activity.
- For projects requesting points to provide access to public parks and open space areas outside the project boundary, the applicant must submit written approval from the agency in control of the facilities to allow access between the project and the facilities.
- In cases of conflict between a written project narrative and plans, the narrative shall take precedent over plans.

D. General Plan and Zoning Consistency

After deeming an RDCS application complete, the Community Development Director or the Director's designee shall evaluate each application for consistency with the City's General Plan and Zoning Code and reject any applications which are found to be inconsistent with either the City's General Plan or Zoning Code. The Community Development Director's determination is appealable to the City Council. The City Council may direct the applicant to make modifications to the application and if these modifications bring the application into compliance with the General Plan and Zoning Code the application may continue to compete for allotments.

A proposal is consistent with the General Plan when:

1. The subject site's General Plan Land Use designation allows the proposed use at the proposed density; and
2. The proposal meets the overall intent of the Goals and Policies of applicable elements of the General Plan.

A proposal is consistent with the Zoning Code when the base Zoning District or PD Zoning for the site allows the proposed use; and the proposal meets the zoning regulations (e.g., setbacks) of the subject site's base Zoning District or PD Zoning, or the proposal only includes minor deviations from zoning regulations that, at the entitlement stage, could either be modified to be fully consistent with zoning regulations or the applicant would secure approval of a PD Zoning to establish modified development standards.

Minor deviation means an adjustment to the development standard in the project's base zoning district not to exceed the percentages in Table 55. For example, if a project is in a zoning district with a minimum front setback of 25 feet and proposes front setbacks of no less than 20 feet through PD Zoning, the project would be consistent with the Zoning Code. If a project in a zoning district with a maximum height of 30 feet proposed a height of 35 feet (more than a 10 percent deviation from the zoning district standard), the project would not be considered consistent with the Zoning Code. In this example, no structure within the project may have a height of more than 35 feet for the project in its entirety to be considered consistent with the Zoning Code.

TABLE 55: MAXIMUM DEVIATIONS FOR ZONING CONSISTENCY

Standard	Maximum Deviation
Setbacks, Front and Rear	20 percent decrease
Setbacks, Side	30 percent decrease
Lot Coverage and FAR	10 percent increase
On-site Parking (number of spaces)	10 percent decrease
Building Height	10 percent increase
Lot Size	15 percent decrease

Any proposed minor deviation(s) must be clearly identified with justification for the deviation(s) provided in writing as part of the required Pre-Application Review process, per Section 18.156.130 of the RDCS Ordinance. Proposed deviations shall not unreasonably affect abutting sites.

The Community Development Director may allow greater deviations from the percentages shown in Table 55 if the applicant can demonstrate that the greater deviation would produce a public benefit that cannot be provided without the greater deviation.

E. Competition Categories and Ongoing Projects

Each year the City Council may establish competition categories for certain types of projects. Projects within a competition category will compete for allotments only with other projects in the same competition category. For each competition category, the City Council shall identify the number of allotments available for projects competing within the competition category. Examples of competition categories may include, but are not limited to, projects within the Monterey Road Corridor, small projects (less than 15 units), senior housing, vertical mixed use, custom lots, and multi-family rental.

2018 Competition for Fiscal Year 2020/21

Competition Category	Number of Allotments
On-going Projects (Measure C)	25
On-going Projects (Measure S)	15
Unassigned	85
Total	**125**

Affordable Housing: Through 2035, the City Council shall ensure that an adequate number of allotments are available for 100 percent affordable housing projects consistent with the City's Regional Housing Needs Allocation (RHNA) and adopted Housing Element. To be eligible to receive allotments, a 100 percent affordable housing project must receive at least eighty percent of the total maximum score in the RDCS competition criteria. Eligible projects are not required to compete for allotments.

Micro Projects: A Micro Project consists of a maximum of six (6) dwelling units on a site with an ultimate development potential of no more than six (6) units.

Small Projects: A Small Project consists of between seven (7) and 15 dwelling units on a site with an ultimate development potential of no more than 15 units.

Multi-family Rental: A Multi-family Rental project is a development of any size providing market rate rental housing.

Open/Market: The Open/Market category applies to housing of any type typically consisting of more than 15 units at build-out.

Senior Housing: Senior Housing projects are any market-rate housing type for persons 55 and older. For RDCS purposes Senior Housing must meet the following minimum requirements: 1) Must be 25 units or more; 2) Lot sizes shall not exceed an average 9,000 square feet (unless a single lot multi-family development); 3) Must have an HOA to maintain all common amenities and front yard landscaping; 4) Seventy-five percent or more of the units must be single story in projects proposed in single-family zoning districts (or single level flats in multi-family zoning districts) with the exception of R-1 4,500 Zoning District where fifty percent or more shall be single story; 5) All 2-story units shall be designed and prewired for elevators or stair lifts; 6) All units within the project must meet visitability and adaptability standards.

Custom Lot: A Custom Lot is defined as a project which includes the opportunity for individuals to purchase lots. Custom lots shall be defined as follows: 1) Minimum lot size shall be based on the underlying zoning (no RE or large lot minimums); 2) The original developer can retain ownership of up to 50% of the lots with the balance made available for purchase by individual builders who wish to construct homes; 3) Of the "for sale lots", no more than 2 lots may be purchased by any one person; 4) Exterior elevations should vary throughout the project and floor plans may not be repeated, but can be reversed if elevation is varied.

<u>On-going Projects</u>: In addition to the competition categories, allotments may also be given to on-going projects. These are projects that were awarded building allotments in previous competitions, but were not fully allocated. Each on-going project can receive allotments without submitting a new application. See Section N below for additional details.

<u>Prior Multi-Year Commitment</u>: The number of allotments in a given competition year that were previously awarded to multi-year/phased projects.

F. Scoring

<u>Scoring Errors</u>: After the Planning Commission approval of final points no point adjustments are allowed.

<u>Changes to Approved Projects/Substitution of Points/Criteria</u>: Changes will be considered on a case-by-case basis with any changes resulting in the project receiving the same or higher score within each Objective and the change would maintain or improve the quality of the project and would result in the same or greater value to the City or its project's future residents. If project is refined, allow points to be made up in a different Objective only if it is not possible to make-up in Objective where loss of points occurred.

Substitution of Commitments within the same objective may be allowed in limited circumstances, with approval of the Community Development Director documented through an Administrative Amendment. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or would subject the Project to further environmental review pursuant to CEQA, shall be approved. In circumstances in which substitution within the same Objective is not possible, substitution may be allowed only by resolution of the Planning Commission.

<u>Point Opportunities for Project Feature Within Multiple Criteria.</u> In most cases, a project feature or contribution may not earn a project points in more than one criteria. For example, a project that earns points for installing safe-routes-to-school pedestrian improvements within Criteria 1-C (Student Transportation Improvements) may not also receive points for the same improvement within Criteria 7-A (Bicycle and Pedestrian Improvements). However, there are cases where a project design feature may allow a project to receive points from multiple criteria. For example, a project that incorporates accessory dwelling units may earn points in criteria 4-A (Accessory Dwelling Units) and 4-B (Diversity of Housing Types). Points may be awarded in multiple criteria for a single project feature only where expressly identified in Section III of this manual.

G. Multi-year Allotments

Section 18.156.140 Project Phasing allows the Planning Commission to distribute allotments awarded to a single project over multiple years to support a fair and efficient RDCS process by allowing high quality projects constructed over multiple years to compete one time for allotments.

The Planning Commission has discretion to determine which projects are eligible for multi-year allotments and may award multi-year allotments over a period of up to: 1) Three years for projects with less than 100 units; and 2) Five years for projects with 100 or more units. How well a project scores will be one factor Planning Commission will consider when awarding multi-year allotments.

The Planning Commission may award multi-year allotments to projects only upon finding that:

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.

The Planning Commission will strive to ensure that a sufficient number of allotments are available each year for non-multi-year allotted projects, in addition to affordable allotments, to allow for a yearly competition.

Multi-year projects are not eligible to compete for additional allotments within the years awarded.

H. Development Agreement

An Applicant must enter into a Development Agreement as stated within Chapter 18.156 (RDCS) of the Municipal Code. A project's RDCS commitments and deadline to commence construction within the fiscal year building allotment shall be incorporated into the Development Agreement approved by City Council ordinance. Future minor amendments, such as time extensions and allotment adjustments for ongoing projects, shall be approved by Planning Commission resolution. Planning Commission decisions are appealable to the City Council.

I. Tentative Subdivision Map

The City will allow for the processing of tentative subdivision maps which exceed the number of allotments currently assigned to a development if the following criteria are met:

- The overall project must be consistent with the Zoning Code.
- The Tentative Map shall be non-vesting.
- The recordation of a Final Map will not be permitted until allotments are secured within the RDCS and a Development Agreement has been recorded.
  The Tentative Map approval would expire after two years (or sooner as specified by the Planning Commission) and the Tentative Map approval period will not be automatically extended through the filing of a Final Map, but may be extended through separate application and approval by the Planning Commission.

J. Exercise of Allotments

Allotments must be exercised within 30 months of approval or by an alternative date specified in the RDCS Agreement. An allotment is considered exercised with the recordation of a Final Map, issuance of a grading permit, or the commencement of construction if no Final Map or grading permit is required.

A project shall be deemed to have physically commenced construction upon issuance of a building permit for the lot (or each building for multi-family/mixed-use projects) and completion of the following improvements: Installation of on-site and off-site improvements including grading and certification of the building pad by the Building Division and completion of one or more of the following: a) Excavation of the footings and foundations for the dwelling units; b) Installation of water or sewer laterals to the relevant units.

Issuance of a grading permit means the issuance of a Grading and On-Site Development Permit by the City's Building Division. The Grading and On-Site Development Permit may not be issued until the project secures all required Planning entitlements.

Allotments granted to a project within the previous RDCS (e.g., Measure C) may, with the approval of an amendment to the project's development agreement, change when the allotments are considered exercised pursuant to Section 18.156.160.A of the RDCS Ordinance (Measure S).

K. Early Start of Construction

An early start of construction date is possible as long as the units are not completed and occupied until after the start of the fiscal year in which the allotments must be used. The construction schedule incorporated into the project development schedule shall ensure that dwelling units are not completed before the start of the fiscal year in which the allotments must be used.

L. Extensions

For Projects that received allotments within the previous RDCS, but have not secured a Development Agreement, the Community Development Director may issue a (single) six (6) month extension based on current Measure S criteria.

Extension requests shall be submitted in writing to the Community Development Department a minimum of 60 days prior to the allotment expiration date and shall describe how the project meets the extension eligibility criteria listed below and in Section 18.156.170F of the Zoning Code.

In addition to receiving an Administrative Extension and/or prior extensions within the previous RDCS, a project, for each allocation year, may receive no more than one (1) extension for a maximum one additional year period for reasons due to delay by the City or public agency. On-going projects and projects that re-compete for allotments in future allocation years may receive subsequent extensions each allocation year subject to these same limitations.

Phased projects, including multi-year projects, may only receive one, one-year extension. For phased projects, the commencement date of successive phases may, at the discretion of the Planning Commission, be extended at the time of granting the one extension.

Eligibility Criteria

1. The Planning Commission may approve an extension only when the City or other public agency is responsible for a delay (evaluated on a case-by-case basis) in the issuance of permits or granting approvals required to exercise the allotments, or due to an earthquake, flood, fire, or other severe act of nature outside of the applicant's control. It is the applicant's responsibility to provide evidence that the request is consistent with this requirement. (Note: This may include governmental requirements related to soil contamination or archaeological finds)

2. The Planning Commission may not approve an extension for any reason other than in the above paragraph, including but not limited to difficulties obtaining financing, changes to the project not required by the City or other public agencies, applicant delays responding to requests from the City or other public agency, personal circumstances of the applicant, or changes in property ownership. (Note: Public financed affordable housing projects are exempt from this requirement.)

M. Transfer of Allotments

In order to expedite the completion of projects awarded allotments within the RDCS, the transfer of fiscal year allotments between and within projects that meet the following criteria, may occur:

1. The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.
2. The transfer must work as a trade between two developments or within a project.
3. The transfer may apply to partially allotted and fully allotted projects.
4. Both on-going and recently allotted first time projects may transfer allotments.

A transfer only changes the year the units may be built. A transfer does not alter in any way project commitments.

N. On-Going Allotments

Each on-going project can receive up to 15 allotments (up to 25 for projects that are transitioning from Measure C to Measure S) each year without submitting a new application. Projects are required to submit a letter by the RDCS Application filing date requesting on-going allotments. Projects that have previously competed and are partially allotted shall be considered on-going and may receive allotments from the on-going category. To be eligible to receive an allotment, the following criteria must be met:

1. A project has completed all planning entitlements (Tentative Map, Development Agreement, and Site Review).
2. A project is in compliance with their development schedule.
3. A project will pay additional fees for Development Agreement compliance related to the additional award and any fees for processing and administration of on-going allotments should they be established and required.

Projects that were awarded, but do not use on-going allotments will lose their eligibility to be considered on-going and must re-compete.

O. CEQA

An Environmental Impact Report (EIR) for the Morgan Hill 2035 Project, which included the RDCS Update, was prepared in accordance with the California Environmental Quality Act (CEQA) and certified by the Morgan Hill City Council on July 27, 2016. (SCH #2015022074). The City of Morgan Hill must conduct environmental analysis before a project is approved. Award of allotments is not considered approval of a project, but rather authorizes an applicant to apply for entitlements. Environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a tentative subdivision map, design review, a Development Agreement, or a building or grading permit.

APPENDIX: RDCS ORDINANCE ([MORGAN HILL MUNICIPAL CODE CHAPTER 18.156](#))

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

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

ADOPT ORDINANCE ADDING A NEW CHAPTER 12.24 (NEWSRACK CONSOLIDATION) TO TITLE 12 (STREETS SIDEWALKS AND PUBLIC PLACES) TO THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

RECOMMENDATION(S)
Waive the reading, adopt Ordinance No. 2281, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities
Enhancing Public Safety

2018 Strategic Priorities
Economic Development and
Telecommunications
Telecommunications

GUIDING DOCUMENTS
Economic Blueprint

REPORT NARRATIVE:
On September 5, 2018, the City Council introduced Ordinance No. 2281 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The Morgan Hill Newsrack Consolidation Program goals are to eliminate sidewalk clutter, improve sidewalk safety, and develop a uniform look for newsracks. The Program is intended to regulate the placement, size, and appearance of newsracks in Morgan Hill located in the public right-of-way.

COMMUNITY ENGAGEMENT: Inform
The City issued a letter to publishers that currently have a newsrack in the public right-of-way and hosted a public meeting on July 16, 2018. The Chamber of Commerce, the Downtown Association, and the Downtown Restaurant Group were also invited to provide feedback on the Newsrack Consolidation Program.

ALTERNATIVE ACTIONS:
None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
None.

FISCAL AND RESOURCE IMPACT:
It is anticipated that the majority of staff resources for this program will be involved with the establishment of the program. The Economic Development Department is tasked with establishing the program. The costs for the newsrack units are minimal since the investment to purchase the racks was previously done. Implementing the Newsrack Consolidation Program will require maintenance, with teammates in the Community Service Department to manage the removal, storage, and disposal of future unpermitted newsracks. While the program is designed for efficiency in this matter, this additional workload may reduce the ability of maintenance staff to complete other low priority parks and street maintenance functions.

Ongoing program maintenance will also require managing business license renewals and accepting applications for new publications. Going forward, the City expects to generate business license tax income by bringing publications into compliance with the business license requirement. Staff will evaluate the program and may return to City Council with a proposal to establish a regulatory fee, if necessary.

CEQA (California Environmental Quality Act):
Not a Project - Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:
1. Ordinance 2281

ORDINANCE NO. 2281, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 12.24 (NEWSRACK CONSOLIDATION) TO TITLE 12 (STREETS SIDEWALKS AND PUBLIC PLACES) TO THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL

WHEREAS: Newsracks placed on or within public rights-of-way are historically associated with sale and distribution of newspapers, periodicals, and other publications; and

WHEREAS: Uncontrolled design, placement, installation, or maintenance of newsracks on and within the public rights-of-way can interfere with and obstruct use of public rights-of-way, can interfere with safe passage of pedestrians or vehicles, and can obstruct and interfere with safe and reasonable use of private property adjoining or in the vicinity of public rights-of-way; and

WHEREAS: Public health, safety, welfare, and convenience require that interference with vehicular, bicycle, wheelchair, or pedestrian traffic must be avoided; obstruction of sight distance and views of traffic signs and crosswalks must be eliminated; damage done to sidewalks or streets must be minimized and repaired; good appearance of the public streets and grounds must be maintained; trees and landscaping must be allowed to grow without disturbance; access to emergency and other public facilities must be maintained; and ingress and egress from properties adjoining the public rights-of-way must be protected; and

WHEREAS: Newsrack placement should promote and not interfere with protections set by the Americans with Disabilities Act ("ADA"; 11 USC 12101 et seq.); and

WHEREAS: Available space for newsrack installation is limited; This limited space is best assigned and used for newsrack placement in accord with a uniform regulatory process; and

WHEREAS: The public interest is promoted when all newsracks are of uniform and coordinated construction and appearance; and

WHEREAS: The City has a compelling interest in protecting the physical and psychological well-being of minors; this interest extends to shielding minors from the influence of literature that is not obscene by adult standards, but which is harmful to minors; and

WHEREAS: This Chapter shall encourage installation of newsracks and balance the foregoing interests through regulation of the time, place, and manner of placement, installation and maintenance of any newsrack within the City.

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

Section 1. Chapter 12.24 (Newsrack Consolidation) of Title 12 (Streets, Sidewalks and Public Places) is hereby added to read as follows:

12.24.010 Purpose

The purpose of this chapter is to promote the public health, safety, and welfare through the regulation of placement, appearance, number, size, and servicing of newsracks on the public right-of-way in Morgan Hill. It is not the intent of this chapter to in any way discriminate against, regulate, or interfere with the publication, circulation, distribution, or dissemination of any printed material that is constitutionally protected.

12.24.020 Definitions

For this chapter, the following words are defined as follows:

"Abandoned newsrack or newsrack space" is any newsrack or newsrack space which remains empty for 30 calendar days or more, except that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack or newsrack space shall not be deemed abandoned.

"Newsrack(s)" means any self-service, coin-operated or credit card-activated box, container, storage unit, kiosk, or other dispenser installed, used or maintained for the sale or distribution of newspapers, news periodicals, magazines, or other news or informational publications.

"Newsrack space" means the area within a newsrack accessed by one or more publications placed by publishers or distributors and intended for retrieval by customers or members of the public.

"Downtown Zone" The area of Morgan Hill generally known as Downtown which includes Monterey Road to the West, Depot Street to the Ease, Main Street to the north, and Dunne Avenue to the South

"Sidewalk" means any surface provided for the exclusive use of pedestrians.

12.24.030 Permit Required

It is unlawful to place, install, maintain, or cause to be placed, installed, or maintained a newsrack on, within, or projecting into a public right-of-way or public property in the City of Morgan Hill without first receiving a permit therefor from the City Manager and unless such newsrack is in compliance with the provisions of this chapter; and

12.24.040 Placement of Newsracks

A. Each newsrack installed, used or maintained on a public sidewalk or parkway, or portion thereof, shall be of the modular type, or its equivalent. Each newsrack at a given location shall be part of a multi-unit configuration subject to standards set forth in this chapter. Each newsrack facility shall be located so as to maximize the public convenience, health, safety and welfare, both as to accessibility to the newsracks and the use of the public right-of-way as a thoroughfare, and the aesthetic appearance of the area.

B. No newsrack shall be installed, used or maintained in the public right-of-way in the R-1, R-2 or R-3 residential districts.

C. Newsracks shall be placed adjacent to the wall of a building and shall be parallel to such wall and not more than six inches from the wall. Newsracks may be placed near a curb at a location as approved by the City Manager. Newsracks placed near a curb shall be placed not less than eighteen inches nor more than twenty-four inches from the edge of the curb. The City Manager may approve an exception to these locations for public access purposes.

D. No newsrack shall be placed on a sidewalk opposite another newsrack.

12.24.050 Newsrack Standards

Each newsrack which in whole or in part rests upon, in or over any sidewalk or parkway shall comply with the following standards:

A. No newsrack shall exceed five feet in height, three feet in width, three feet in depth.

B. No newsrack may encroach onto the public right-of-way except as allowed under an encroachment permit issued by the City.

C. No newsrack shall be chained, bolted or otherwise attached to any property not owned by the owner of the newsrack or to any permanently fixed object.

D. Newsracks may be chained or otherwise attached to one another; however, no more than three newsracks may be joined together in this manner, and a space of no more than 1 inch shall separate each group of three newsracks so attached.

E. No newsrack, or groups of attached newsracks allowed under subsection C. of this section, shall weigh, in the aggregate, more than 500 pounds when empty.

F. No newsrack shall be placed, installed, used or maintained:

1. Within five feet of any marked or unmarked crosswalk;
2. Within five feet of any fire hydrant or other emergency facility;
3. Within five feet of any driveway;
4. Within five feet of any bus bench or sign marking a designated bus stop;
5. At any location whereby the clear space for the passage of pedestrians is reduced to less than five feet;
6. Within two feet of any area improved with lawn, flowers, shrubs or trees or within two feet of any display window of any building abutting the sidewalk or parkway

or in such manner as to impede or interfere with the reasonable use of such window for display purposes.

7. At any location where the newsrack causes, creates or constitutes a traffic hazard;
8. At any location where the newsrack unreasonably obstructs or interferes with access to or the use and enjoyment of abutting property;
9. Where the newsrack will endanger persons or property;
10. Where the newsrack will unreasonably interfere or obstruct the flow of pedestrian or vehicular traffic or access to parked vehicles on a highway; or
11. Within 200 feet of any city-owned newsrack facility in the public right-of-way.

G. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical housed therein. No exterior signs, stickers, or advertising shall be permitted, other than the available front clear portion of the newsrack space.

H. Each newsrack shall be designed and constructed so that wind action will not cause papers to be blown from the rack

12.24.060 Installation and Maintenance

A. Stands for newsracks shall be single or multi-unit pedestal. Such pedestal shall not exceed 58 inches in height.

B. Newsrack mounts shall be painted RAL 7022 – Umbra Grey.

C. No newsrack shall be used for commercial advertising, signs, or publicity purposes, other than the available front clear portion of the newsrack space.

D. Each newsrack and newsrack space shall be maintained by the permittee in a clean and neat condition, free of graffiti, dirt, stickers, grease, and corrosion, and in good repair at all times. No newsrack shall be allowed to be chipped, faded, or cracked or shall contain broken or cracked plastic, glass, or structural parts. Adhesive labels, other than City-issued markers, or adhesive labels related to publications in the newsrack or newsrack space, shall not be displayed on newsracks.

E. Each permittee is responsible for placement of publications or other materials within newsracks. All work undertaken shall be the sole responsibility of the permit holder. Damage to City-owned newsracks resulting from the installation of the material into the newsrack shall be reported to the city immediately and repaired per city approval, at the expense of the permittee. Failure to make required repairs may result in City staff undertaking efforts to make such repairs. Cost of repairs shall be chargeable as a civil debt to the permit holder, owner or operator of the newsrack, and may be collected by the City in the same manner as it collects any other civil debt or obligation.

12.24.080 Standards for installation and maintenance of newsracks on designated portions of Downtown Zone

Notwithstanding any other provision in this Chapter, newsracks on public sidewalks, parkways, rights-of-way, and streets in the City's Downtown Zone, must be installed and maintained only within the specially constructed newsrack display support structures that are approved and installed by the City.

12.24.90.1 Abandoned or Unauthorized Use of Newsrack or Newsrack Space

A. Any newsrack installed, used or maintained in violation of this chapter may be summarily removed and stored in any convenient place by the City. The City shall take reasonable steps to notify the permittee, owner or other person responsible for its installation or maintenance. Upon failure of these persons to claim such newsrack and pay the expenses of removal and storage within 30 calendar days after such removal, the newsrack is deemed unclaimed property in possession of the City and may be disposed of by any means allowed by law.

B. The cost of removal and/or storage by the City of any newsrack publications subject to this chapter shall be chargeable as a civil debt to the owner thereof and may be collected by the City in the same manner as it collects any other civil debt or obligation.

C. Unauthorized publications or items placed in a newsrack space may be removed and disposed of by the City.

SECTION 2: Severability

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

SECTION 3: Effective Date

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

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5TH DAY OF SEPTEMBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 26TH DAY OF SEPTEMBER 2018 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

<u>CERTIFICATE OF THE CITY CLERK</u>

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. 2281, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 26th day of September 2018.

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

DATE:______________________ ____________________________
IRMA TORREZ, City Clerk

Attachment: Ordinance 2281 (1952 : Adopt Ordinance 2281- Newsracks)

DRAFT

CITY OF MORGAN HILL

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, September 5, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

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

Council Member Jachimowicz shared that there were over 300 participants for the 2018 Women's Week events. She thanked the City for its continued support, along with the Chamber of Commerce, the volunteers and organizers, and the wonderful panelists. She mentioned that next week is the League of California Cities Annual Conference in Long Beach and shared that the Brown Act does apply to the Conference which means that a lot of the activities are open to the public. She gave a shout out to the City's Housing Team. They were recently recognized in the League of California Cities' newsletter for the 14 million dollars in tax exempt bonds that were utilized for a 39-unit affordable housing project, The Crossings, on Monterey Road. She concluded by sharing that one of the hardest parts of the Council's job is when they receive information about tragic events within the community and the sorrow and pain that they feel is just a small percentage of what our first responders experience. She thanked all of the first responders in uniform for their work along with everyone behind the scenes; the 911 operators, the dispatchers, the chaplains, the coroners, everyone within the team that has experience with these tragedies. They perform an invaluable service to the community and she extended a thank you for everything they do. She mentioned that Starbucks keeps a gift card behind the register for people that want to load it for first responders as a good way to simply say thank you and give back.

CITY MANAGER'S REPORT

Quarterly Teammate Recognition

New Hires

Jose Garcia Gomez- Recreation Services Coordinator
Ericka Davis - Accounting Assistant II
Mariah Dabel- Community Services Supervisor
Patricia Pretell- Accounting Technician
Kira Sareli- Police Recruit
Samuel (Sam) Huezo- Police Officer
Andrew Martinez- Health & Wellness Director (CRC/YMCA)
Katie Plaza- Health & Wellness Coordinator (CRC/YMCA)

Promotions

Eric Blomquist - Building Official
Daniel Cardwell- Building Inspector Supervisor
Chris Ghione - Public Services Director
John Lang - Economic Development Manager
Nichole Martin- Community Services Supervisor

Retirement

Jerry Neumayer- Police Captain
Pat Heikens- Accounting Technician

TEAMMATE RECOGNITION PRESENTATION

City Manager Christina Turner spoke to the evening's supplements and presentations. She mentioned that this month is National Hispanic Heritage Month and spoke to the events that will take place throughout the month.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that MWest/Divco has filed a writ of mandate challenging the City's denial of their application for multi-year allotments through our Residential Development Control System (RDCS). We are still discussing our response to the lawsuit, including a potential settlement. The suit raises a number of issues that are relevant to tonight's RDCS discussion. Questions can be answered when we get to that item. Most significantly, as applied to affordable housing projects, which includes the MWest/Divco project, our RDCS ordinance is preempted by some of the recently enacted state housing laws. While the preemption question is clear, what's not written in the state law is how we address that preemption in our RDCS ordinance. Our plan, whether or not there is a settlement with MWest/Divco, is that we would treat affordable housing projects as exempt projects like Downtown projects or agricultural set aside projects which are allowed to move forward independent of and without competing in the RDCS process. We first need to present this option to a court to determine whether that is an appropriate resolution. All we know at this point is that there is a conflict between state law and our RDCS ordinance and we need to resolve that conflict. Under RDCS, Morgan Hill has achieved one of the highest, if not the highest, rates of affordable housing units in the state of California. We are doing all we can to preserve a growth management system that both controls the pace of growth and ensures housing opportunities at all income levels. While local control is really being threatened, at the state level and across the state, we are going to continue to do what we can to preserve the RDCS system which has helped maintain the quality, rate, and affordability of development in Morgan Hill for the last 40 years.

OTHER REPORTS

Mayor Tate shared that the next Coffee with the Mayor will take place at Booksmart on Saturday, September 8th from 10:00 a.m. to 11:30 a.m. with special guest Council Member Caitlin Jachimowicz.

PROCLAMATIONS

Proclaiming the week of September 17-23, 2018 as Constitution Week
Proclaiming the month of September as Childhood Cancer Awareness Month
Proclaiming the month of September as Emergency Preparedness Month

RECOGNITIONS

South Valley Civic Theatre 50th Anniversary

Tropos Technology Donation

ADOPTION OF AGENDA

MOTION:
Adopting the agenda as posted.

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

PUBLIC COMMENT

The public comment was opened at 7:28 p.m.
Brian Faircloth was called to speak.
There being no further requests to speak, the public comment was closed.

PUBLIC COMMENT SUPPLEMENTAL

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 5 and 7 through 14.

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

1. ACCEPT DONATION OF TWO ELECTRIC COMPACT UTILITY VEHICLES FROM TROPOS TECHNOLOGIES

Recommendation:

1. Accept donation of two electric utility vehicles from Tropos Technologies, Inc. valued at approximately $32,000; and
2. Authorize the City Manager to execute and administer all agreements necessary to accept the donation.

2. WATER METERING INFRASTRUCTURE EXPENDITURE REPORT AND CONTINUATION OF SENSUS USA SOLE SOURCE DESIGNATION

Recommendation:

1. Receive report on sole source purchases of water meters, advanced metering infrastructure (AMI) equipment and supporting services; and
2. Reaffirm Sensus USA, Inc.'s designation as the City's sole source provider through the term of the existing agreement between the City and Sensus USA, Inc. (January 21, 2034).

3. APPROVE CITY SUPPORT OF THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE RESOLUTIONS

Recommendation:

1. Authorize the City's voting delegate(s) to vote on the two resolutions to be considered at the League of California Cities (LOCC) annual conference; and
2. Direct staff to participate in advocacy efforts related to the resolutions: 1) Local Municipal Authority, Control, and Revenue and 2) Repeal Preemption of Regulating Pesticides.

4. UPDATE ON DOWNTOWN SPECIAL EVENTS AND STREET CLOSURES

Recommendation:

Receive update on Downtown Special Events and Street Closures.

5. APPROVE STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR A NEW OFFICE AND WAREHOUSE BUILDING LOCATED AT 16250 VINEYARD BOULEVARD (APN: 817-05-065)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for a new office and warehouse building located at 16250 Vineyard Boulevard (APN: 817-05-065); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

6. ITEM PULLED FOR DISCUSSION

7. APPROVE RE-SUBORDINATION OF EXISTING CITY LOAN FOR REHABILITATION OF SYCAMORE GLEN SENIOR AFFORDABLE HOUSING APARTMENTS

Recommendation:

Approve re-subordination of existing $200,000 City loan for rehabilitation of 20-unit Sycamore Glen Senior Affordable Housing Apartment Complex.

8. APPROVE THE JULY 13, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE JULY 18, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE JULY 25, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

11. APPROVE THE JULY 25, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

12. APPROVE THE JULY 27, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

13. APPROVE THE AUGUST 22, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

14. APPROVE THE AUGUST 27, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR DISCUSSION

6. APPROVE AGRICULTURAL PROPERTY PURCHASE, EASEMENT, AND RESALE FOR 1469 MAPLE AVENUE

Recommendation:

1. Approve the purchase of the land at 1469 Maple Ave., subject to the City Attorney and City Manager's approval of the appraisal and toxics evaluation, and authorize the City Manager to execute all agreements, documents, and certifications related to the purchase of the property;
2. Adopt resolution amending the FY 2018-2019 Adopted Budget by increasing the appropriation for

land acquisition in the Agricultural Preservation CIP Project (No. 140016) by $400,000;

3. Direct staff to enter into and complete negotiations with a land trust, public agency, or other qualified conservation easement administrator for the administration of an agricultural conservation easement and record an easement on the rear ten acres of the property which prevents any development for nonagricultural purposes on these lands in perpetuity. The City Manager is authorized to execute all agreements, documents, and certifications required to complete the agreement for the easement and its related recordation with Santa Clara County and to make all payments required for the easement so long as they are within the appropriated budget; and
4. Direct staff to take all reasonable measures available, in compliance with State law, to resell the property for the highest return available and return the net proceeds of the sale to the City's Agricultural Preservation and Open Space Fund. The City Manager is authorized to execute all agreements, documents, and certifications necessary to complete the sale.

MOTION:
Approving the recommended actions.

The public comment was opened at 7:37 p.m.
There being no requests to speak, the public comment was closed.

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

OTHER BUSINESS

15. CONSIDER JOINING THE SANTA CLARA/SANTA CRUZ COUNTIES AIRPORT/COMMUNITY ROUNDTABLE

Recommendation:

1. Consider adopting a resolution for the City to join the Santa Clara/Santa Cruz Airport/Community Roundtable and appoint a representative and alternate; and
2. Authorize the City Manager to execute all documents necessary for participation in the Roundtable.

City Manager Christina Turner provided the report. Andi Jordan, Executive Director of the Cities Association, answered questions.

The public comment was opened at 7:43 p.m.
There being no requests to speak, the public comment was closed.

MOTION:
Authorizing the Mayor to report back to the Cities Association that Morgan Hill is not interested in participating at this time.

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

16. REGIONAL HOUSING NEEDS ASSESSMENT (RHNA) SUBREGION CONSIDERATION

Recommendation:

1. Consider the Cities Association of Santa Clara County Board of Directors' request of each City Council and the County Board of Supervisors to support the concept of forming a Regional Housing Needs Allocation (RHNA) Sub-Region and forward the city's response to the Cities Association Board of Directors by September 28, 2018; and
2. Adopt resolution of support for the creation of a RHNA Sub-Region.

Assistant City Manager for Community Development Leslie Little provided the report.

Mayor Tate called a recess at 8:07 p.m.
The meeting was reconvened at 8:12 p.m.

The public comment was opened at 8:19 p.m.
There being no requests to speak, the public comment was closed.

MOTION:
Approving the recommended action.

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

PUBLIC HEARING

17. APPROVE AMENDMENTS TO TENTATIVE SUBDIVISION MAP AND PLANNED DEVELOPMENT MASTER PLAN FOR A PROPOSED COMMERCIAL AND RETAIL CENTER LOCATED ON THE EASTERLY SIDE OF BUTTERFIELD BOULEVARD BETWEEN COCHRANE ROAD AND JARVIS DRIVE APN 726-25-035 AND 726-32-021 (COCHRANE ROAD INVESTORS, LLC, OWNERS)

Recommendation:

1. Open and close public hearing;
2. Adopt Subdivision resolution;
3. Waive first and second reading of Zoning Amendment Ordinance; and
4. Introduce Zoning Amendment Ordinance.

Development Services Director Jennifer Carman and contract planner Rick Smeaton provided the report. Rogg Collins and Zach Lauterbach with Evergreen Development presented the proposed project.

The public hearing was opened at 8:41 p.m. The following people were called to speak:
John Horner, representing the Chamber of Commerce
Sharon Luna
There being no further requests to speak, the public hearing was closed.

MOTION:
Adopting the subdivision resolution.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Waiving the first and second reading of the Zoning Amendment Ordinance.

RESULT:	**WAIVED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Introducing the Zoning Amendment Ordinance.

RESULT:	**INTRODUCED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

18. APPROVE URBAN SERVICE AREA AMENDMENT USA2018-0001: TENNANT-SOUTH COUNTY CATHOLIC HIGH SCHOOL

Recommendation:

Adopt resolution authorizing the City to apply to the Santa Clara County Local Agency Formation Commission (LAFCO) for an amendment to the City's Urban Service Area (USA) boundary, as proposed in application USA2018-0001: Tennant-South County Catholic High School, to include approximately 64.56 acres located on both sides of Murphy Avenue between Barrett Avenue and Tennant Avenue (APNs: 817-17-001, -025, -026; 817-13-008, -011, and -037).

Interim Principal Planner John Baty provided the report.

The public hearing was opened at 9:38 p.m. The following people were called to speak:
Andy Pashby
Chuck Berghoff
Father Steve Kim
Angelo Grestoni
Julie Hutcheson with the Committee for Green Foothills
John McKay
There being no further requests to speak, the public hearing was closed.

MOTION:
Approving the recommended action, adding that staff review the three parcels that are designed SRL sites with a new zoning that would not allow any type of commercial, residential, or hotel uses and that we include that in the submittal to LAFCO, and directing staff to come back to Council before November 7, 2018.

RESULT:	**ADOPTED [3 TO 2]**
MOVER:	Larry Carr, Council Member
SECONDER:	Caitlin Jachimowicz, Council Member
AYES:	Tate, Carr, Jachimowicz
NAYS:	Constantine, Spring

19. ZA2018-0003: AN ORDINANCE AMENDING THE COMPETITION MANUAL FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) AND ESTABLISHING THE AVAILABLE ALLOTMENTS FOR THE 2018 COMPETITION YEAR

Recommendation:

1. Open/close public hearing;
2. Waive first and second reading of Ordinance amending Section III of the RDCS Competition Manual;
3. Introduce Ordinance amending Section III of the RDCS Competition Manual;
4. Adopt resolution amending Sections I, II and IV of the RDCS Competition Manual; and
5. Adopt resolution establishing 215 Fiscal Year 2020/21 allotments for the 2018 RDCS competition.

Mayor Tate called a recess at 10:27 p.m.
The meeting was reconvened at 10:35 p.m.

Development Services Director Jennifer Carman provided the report.

The public hearing was opened at 10:59 p.m. The following people were called to speak:
Dick Oliver
Vince Burgos
There being no further requests to speak, the public hearing was closed.

MOTION:
Extending the meeting to 12:00 a.m.

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

MOTION:
Waiving the first and second reading of the ordinance amending Section III of the RDCS Competition Manual to reflect the total of 215 allotments (90 attributed to MWest and 125 FY 2020/21 competition).

RESULT:	**WAIVED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Introducing the ordinance as amended.

RESULT:	**INTRODUCED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Adopting resolution amending sections I, II, and IV of the RDCS Competition Manual as amended.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Larry Carr, Council Member
SECONDER:	Steve Tate, Mayor
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Adopting resolution establishing 125 fiscal year 2020/21 allotments (40 ongoing and 85 unassigned) for the 2018 RDCS competition.

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

20. CONDUCT HEARING AND CONSIDER ADOPTION OF RESOLUTION OF NECESSITY FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt resolution of Necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Pacific Gas and Electric Company as identified in Exhibits A and B for the Hale Avenue Extension Project;
2. Authorize the City Attorney to file suit in eminent domain with respect to said property; and
3. Approve the expenditure of $869,000 for said properties for deposit into the State Condemnation Deposit Fund.

Associate Engineer David Gittleson provided the report.

The public hearing was opened at 11:28 p.m.
There being no requests to speak, the public comment was closed.

MOTION:
Approving the recommended actions.

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

OTHER BUSINESS

21. ADOPT ORDINANCE ESTABLISHING NEWSRACK CONSOLIDATION PROGRAM

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance authorizing the City Manager to create a Newsrack Consolidation Program to regulate the placement, size, and appearance of newsracks located in the public-right-of-way.

Special Project Coordinator Vera Fisher provided the report.

The public comment was opened at 11:37 p.m.
There being no requests to speak, the public comment was closed.

MOTION:
Waiving the first and second reading of the ordinance.

RESULT:	**WAIVED [UNANIMOUS]**
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

MOTION:
Introducing the ordinance.

RESULT:	**INTRODUCED [UNANIMOUS]**
MOVER:	Caitlin Jachimowicz, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Tate, Constantine, Carr, Jachimowicz, Spring

22. PROVIDE DIRECTION REGARDING NON-PROFIT CENTER PURCHASE OPPORTUNITY AND FRIENDLY INN SALE

Recommendation:

1. Direct City staff to incorporate the acquisition of a non-profit center within the negotiations for the redevelopment of the Hale Lumber site; and
2. Provide City staff direction on the future sale of the El Toro Youth Center Building.

Public Services Director Chris Ghione and Associate Planner Tiffany Brown provided the report.

The public comment was opened at 11:50 p.m.
Brian Sullivan was called to speak.
There being no further requests to speak, the public comment was closed.

RESULT:	**NO ACTION TAKEN**

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Constantine asked the City Attorney to bring an ordinance to Council listing all lobbyists registered with the City.

Mayor Tate would like to have a discussion regarding the Saint Louise Hospital bankruptcy proceedings and what the implications are to the City.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:02 a.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

RECOMMENDATION(S)

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
   A. Adds Chapter 14.08 to institute a Housing in-lieu fee of $19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, $13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, $29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and $11.00 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
   B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Progam Application Guide;
   C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
   D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

COUNCIL PRIORITIES, GOALS & STRATEGIES

<u>Ongoing Priorities</u>
Supporting Our Youth
Seniors

<u>2018 Strategic Priorities</u>
Regional Initiatives

and Entire Community
Preserving and Cultivating Public Trust
Enhancing Diversity and Inclusiveness

GUIDING DOCUMENTS
General Plan/Housing Element

POLICY CONSIDERATIONS:
In-Lieu Fee
Should the City Council:

1. Formally modify the housing in-lieu fee from $12.92 per square foot of the total project (8% affordability) to housing in lieu fees that will equate to the recently adopted 15% and 10% ownership Inclusionary Housing Policy as adopted on July 25, 2018?

2. Adopt a rental housing in-lieu fee to equate to the rental Inclusionary Policy, reflecting the distribution of affordability level requirements?

BMR Program
Should the City Council:

1. Adopt a revised Below Market Rate (BMR) Ownership Program *Participation* Guide (also known as the BMR Program Manual) for existing BMR homeowners?
2. Adopt a BMR Ownership Program *Application* Guide for potential homebuyers?
3. Adopt a policy that would establish a baseline for allowing a BMR homeowner a minimum return upon resale?
4. Adopt revised BMR Program Development Standards, consistent with the Inclusionary Housing Ordinance?

REPORT NARRATIVE:
NEW IN-LIEU FEES
The most recent tool added to the Housing Program is the adopted Inclusionary Housing Ordinance (Chapter 14.04 of the Morgan Hill Municipal Code), an example of the City's ongoing commitment to mixed income affordable housing. The Council voted to increase the previous 8% affordability goal for new BMR rental and ownership units to 15% for projects outside of Downtown and 10% for projects in the Downtown. This report serves as a follow up to the July 18, 2018 City Council Meeting, where the Inclusionary Housing Ordinance was introduced and discussed in conjunction with the need to update the corresponding housing in lieu fees for both rental and ownership projects. An analysis summary of corresponding fees was prepared by Keyser Marston and Associates (KMA).

The City retained KMA to conduct an analysis of the impact of the City's Inclusionary Housing Ordinance and Residential Development Control System (RDCS) requirements, and to estimate the financial cost to developers of providing on-site BMR units; provide a comparison of the cost of providing on-site BMR units to the Housing program's in-lieu fee, and recommend changes to the in-lieu fees themselves, so that they more closely approximate the cost of providing on-site units in today's market.

The KMA summary report (Attachment No. 6) titled "Summary of Per Square Foot, In-Lieu Fee Amounts Equivalent to Range of On-site BMR Requirements" dated August 23, 2018, provides guidance for consideration of new rental and ownership In-lieu Housing fees, appropriately aligned with the actual cost of providing on-site units, consistent with the affordability levels recently adopted in the Inclusionary Housing Ordinance. This recommendation is based on KMA's analysis of rental and ownership case studies, whereby the developer's foregone profit associated with providing on-site affordable units was converted to an amount per square foot of building area. This change makes the fee equitable to the new 15% and 10% requirement, and accounts for the differences in affordability level, unit sizes and sales prices across projects. Based on KMA's analysis, the Housing Team is recommending the following Housing In-Lieu fees:

The proposed In-Lieu Housing Fee for "Ownership" Residential Projects consisting of two (2) or more dwelling units outside of Downtown is nineteen dollars and seventy cents ($19.70) per habitable square foot of the residential building area of market-rate housing, where there is a 15% Inclusionary Housing Requirement at the moderate income level, 10% of units at 81% AMI and 5% of units at 110 % AMI .

The proposed In-Lieu Housing Fee for "Ownership" Residential Projects consisting of two (2) or more dwelling units within the Downtown is thirteen dollars and twenty cents ($13.20) per habitable square foot of the residential building area of market-rate housing, where there is a 10% Inclusionary Housing Requirement at moderate income level, 6% of units at 81% AMI and 4% of units at 110% AMI.

The proposed In-Lieu Housing Fee for "Rental" Residential Projects consisting of two (2) or more dwelling units outside of Downtown is twenty-nine dollars ($29.00) per habitable square foot of the residential building area of market-rate housing, where there is a 15% Inclusionary Housing Requirement at the extremely low (6%), very low (6%), and low income (3%) level.

The proposed In-Lieu Housing Fee for "Rental" Residential Projects consisting of two (2) or more dwelling units within the Downtown is eleven dollars ($11.00) per habitable square foot of the residential building area of market-rate housing, where there is a 10% Inclusionary Housing Requirement at the very low (8%), and low income (2%) level.

The proposed In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.

The Proposed In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.

Example Calculation of Proposed (Ownership – Outside Downtown) In-Lieu Housing Fee Amount $19.70:

Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $19.70 X 56 units X 2,000 square feet = $2,206,400, or $39,400 per unit.

Example Calculation of Proposed (Ownership- Within Downtown) In-Lieu Housing Fee Amount $13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $13.20 X 56 units X 2,000 square feet = $1,478,400, or $26,400 per unit.

Example Calculation of Proposed (Rental – Outside Downtown) In-Lieu Housing Fee Amount $29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $29.00 X 56 units X 2,000 square feet = $3,248,000, or $58,000 per unit.

Example Calculation of Proposed (Rental - Within Downtown) In-Lieu Housing Fee Amount $11.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $11.00 X 56 units X 2,000 square feet = $1,232,000, or $22,000 per unit.

Lastly, this report coincides with the new Inclusionary Housing Ordinance and the Residential Development Control System (RDCS) Competition Manual and scoring workbook recommended by the Planning Commission and pending City Council review and approval. If the Council chooses to approve the new fees, they will become effective with the upcoming RDCS Competition Year.

The second part of this report discusses the BMR Ownership Program administration.

BMR PROGRAM AND HISTORY

Since 1977, the City has amassed one of the largest Below Market Rate ("BMR") property portfolios per capita in the State and established a robust BMR Program that provides much needed homeownership opportunities and affordability to low-income and moderate-income households. The BMR Program is comprised of more than 500 homes with an average of 12-15 homes added to the program through new construction each year. The Residential Development Control System (“RDCS”) awards competing development points for the provision of BMR low-income and moderate-income housing. Updating the BMR Resolution adopted by City Council on May 18, 2016, and the BMR Ordinance adopted on June 15, 2016, which affirmed the City's nearly forty year commitment to preserve and create affordable housing, the Housing Team is recommending that the City Council adopt a BMR Program Participation Guide and an Application Guide to clarify, fortify, and address some of the recent questions about covenants and restrictions, as well as program practices raised by BMR homeowners.

PURPOSE OF THE BMR PROGRAM PARTICIPATION AND APPLICATION GUIDES

In response to recent inquiries and benchmarking our program against similar programs in Santa Clara County, and San Francisco, Housekeys staff and the Housing Team have created a revised BMR Ownership Program Participation Guide (Attachment No. 4) (this was formerly known as the BMR Program Manual that is Attachment No. 3) and a Program Application Guide (Attachment No. 5). The purpose of the program Application Guide is to describe the BMR opportunity and the application process. The purpose of BMR Program Participation Guide is to further provide participation guidance and formalize the BMR Program, related to the following:

- Program participation guidelines
- Resale price determination
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Transfers
- Vendors

The BMR Ordinance adopted on June 15, 2016, coupled with the BMR resolution adopted on May 18, 2016, provided the authority and the process for continued implementation of this program. Post RDA, recognizing that the City no longer had the same monetary resources available to assist First-Time Homebuyers with down payment and closing cost assistance, the City modified the Resale Restriction Agreement Template signed by the Owners upon initial purchase of the unit to base restricted resale price calculations on the movement/change in the Housing Component of the Consumer Price Index, as opposed to the change in County Area Median Income. This enables a more accelerated appreciation schedule, as cost of living has outpaced incomes in recent years.

Although the achievements of the BMR Program are commendable, it continues to have great complexity due to policy and RDCS changes over the years. Evaluating the BMR Program will be an ongoing effort and staff will continue to work toward responding to the current needs of BMR homeowners, unpacking historical decisions and implications in today's market, and responding to an ever-evolving housing landscape.

One of the challenges the City faces is continuing to address BMR owners who do not always appear to fully understand the agreements they signed many years ago and/or who may no longer find their recorded agreement beneficial to them individually at the time of sale, compared to their market rate neighbors. Staff recognizes that it is a balancing act to address the concerns of BMR homeowners in today's market, and simultaneously respect the accountability for the agreement that the BMR homeowner originally executed.

It is important to note the benefits that a BMR homeowner receives when obtaining a BMR home. Often the BMR benefit is only described as a monetary benefit, such as a lower mortgage payment and home price; however, there is also the benefit of living in a beautiful neighborhood that one could not otherwise afford due to cost, the ability to possibly save money for many years because one's mortgage payment is significantly less, the ability to claim mortgage interest to offset income tax payments, the stability of a mortgage payment and not being subjected to high rent increases and or landlord decisions to sell. Unlike affordable rental units, once a home is owned, the homeowner is not subject to income restrictions which would require them to vacate the home if their incomes grow and exceed the original qualifying income level. This provides security that only home ownership can provide.

Most of the content in the BMR Ownership Program Application Guide for *applicants* and the BMR Ownership Program Participation Guide for *existing homeowners* has remained the same; however, there are a few important changes that staff proposes the City Council consider as policy changes.

SOUTH COUNTY HOUSING

The complexities of the BMR Program and its many agreements has coincided with the equally complex and prolific development history of South County Housing, and their unfortunate wind-down of their portfolio. South County Housing, Inc. (SCH) was not only the developer/manager of 285 affordable housing rental units contained in eight (8) separate rental projects in Morgan Hill, they were also the developer and builder of 234 ownership units in 8 development projects; they either built or rehabbed between 1983 and 2012. In June of 2013, South County Housing, Inc., and its affiliates began working with Eden Housing, Inc (Eden) to facilitate the transfer of ownership and operations of the SCH multifamily rental portfolio. Since that time, the entities have transferred rental assets and obligations to Eden Housing.

Although the rental portion of the portfolio has settled and found a home with EDEN housing, there are still some issues that have surfaced in the BMR ownership portfolio that present some challenges and require resolution. Recent inquiries from BMR homeowners requested that the City revisit the resale calculation defined in their older agreements from years 1983 to 2012, especially in the Madrone and Viale developments. This was the genesis of the policy recommendation regarding a minimum return upon resale below.

Several homeowners were concerned that after years in their BMR home they would not recoup even their down payment, or much more than that, based on their existing resale calculation. Untangling this issue is compounded by the multi layered financing that took place, several layers of down payment assistance from various entities (many with deferred interest), plus personal down payment sources, all of which often served as the gap between the BMR price and the purchase loan (first mortgage).

While developing a recommendation to address the homeowner’s concerns, staff is mindful of Council direction that it is critical for the home to remain in the BMR Program if possible, and that any concessions made should not price the home out of the BMR Program and or create a burden for the next income qualified family. Anytime a current homeowner is allowed to sell their property for more, it translates to the next first-time homebuyer paying more for their BMR. The Madrone Development and others built by South County Housing were unique in that they were provided a significant amount of down payment and closing cost assistance to fill the gap between the maximum purchase money mortgage loan (first mortgage) and the BMR price. Thus, the new homebuyer bought at a market rate price but was given substantial down payment from various entities. Fast forward to today, and homeowners who are anxious to sell, are concerned that they are not reaping much benefit at the time of sale if they are to use the calculation in their older agreement, either using an increase based on the consumer price index (CPI) or the area median income (AMI).

RESALE PRICE DETERMINATION

Each resale restriction agreement has a price determination method that outlines how the resale price is calculated if the City exercises its option to purchase the unit, assign its option to a designee or eligible buyer, or instruct the Administrator to facilitate a resale to an eligible purchaser. Each Owner must use the price determination method contained in their agreements unless otherwise instructed by the City. There are five primary methods that BMR programs utilize to determine resale price. Not all exist in Morgan Hill agreements.

#	Price Determination Method	Description
1	*Indexed Price Based on Consumer Price Index (CPI)	Throughout the year, the U.S. Department of Labor's Bureau of Labor Statistics publishes a Consumer Price Index for metropolitan areas throughout the United States. This determination method allows for a resale price that is based on the increase in the Housing Component of the Consumer Price Index based on the month and year the home was purchased.
2	Indexed Price Based on Area Median Income (AMI)	Each year, the State of California Department of Housing and Community Development publishes the statewide income limits. This determination method allows for a resale price that is based on an increase in the applicable Median Income based on the year the home was purchased.
3	Equity Share Agreement	Some Agreements have an Equity Share Provision that is based on the initial subsidy provided by the City or Agency when the BMR Unit was purchased. The subsidy determines the percentage of Equity returned to the City upon resale.
4	Forgivable Loan	These are Agreements that have a promissory note with a feature that allows the principal and interest to be forgiven in equal portions during the final years of the agreement term. The note balance amount at the end of the initial accrual period is reduced by a certain percentage each year until there is no balance remaining. This enables the Owner to sell for full price if they remain in the home for the entire Agreement term.
5	Shared Appreciation	Agreements that require a percentage of the Fair Market Value to be paid to the City as a Shared Appreciation Payment. The remaining amount is paid to the Owner.

*The current price determination method used in resale restriction agreements is the Indexed Price Based on Consumer Price Index.

SALE PROCEEDS AND OWNER'S MINIMUM RETURN ON DOWN PAYMENT

Depending on the Price Determination Method used, the Fair Market Value of the home, and any liens and/or encumbrances recorded (including any interest or fees owed at time of sale), there will be a portion of the sale proceeds that are due to the Owner and a portion of the sale proceeds that are due to the City. The City's portion is considered Program Equity or Public Equity.

Staff is proposing that the Council consider allowing a new policy to be added to the Ownership Program Guide to allow a minimum return to the BMR homeowner, in addition to a return on their out of pocket down payment. Provided that the City determines that enough sale proceeds are available and due to the Program and that the resulting resale price will not remove the housing asset from affordability, the Housing Team is recommending that the City allow the BMR home owner to receive their initial out of pocket down payment plus an annual return based on the number of years that they occupied the unit. The City can use any one of the price determination methods above or assign a fixed percentage to the minimum return calculation. The following is an example of the recommendation.

If an Owner made a down payment contribution of $20,000 to purchase a BMR home that they want to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a $14,000 ($2,000 x 7 years) return on their initial down payment for a total of $34,000. The City could also base the increase on any of the price determination methods above.

OWNERSHIP AND ESTATE PLANNING

Additionally, several BMR households have raised concerns regarding the topic of "Ownership and Estate Planning." The following is stated in the ownership guide, "New purchasers of BMR Units may not purchase the BMR Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts. Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term." In general, estate issues have generated numerous questions which are as varied as the owner's desires and interests, length of ownership, term of occupancy and the vehicle used for trust and the lack of qualification and needs of heirs to occupy an income restricted property. Specific recommendations regarding ownership estate planning will be forthcoming in the next several months. Due to their complexity, and the impact of multiple years of differing recorded restricted covenants in the program pool, this is a task that is taking some time.

Note: The City is exploring ways to add language to the Participation Guide that addresses Transfers upon death of the Owner. Payable-on-Death (POD) Accounts and Transfer-on-Death (TOD) Deeds are two methodologies that are being explored to provide a path for BMR Owners to designate beneficiaries and avoid having a BMR Unit become part of a probate case. Staff will return to Council to provide an overview of BMR ownership estate planning and trusts after consulting with legal counsel.

MORGAN HILL MUNICIPAL CODE: HOUSING

In conclusion, staff is recommending reorganization of existing Chapters in the Municipal Code for consistency. Chapter 15.22 “Affordable Housing Fee” is repealed and replaced by Chapter 14.08 “In-Lieu Housing Fee” in Title 14 of the Morgan Hill Municipal Code (Attachment No. 1).

By way of this Ordinance, Chapter 15.23 titled “Below Market Rate Program” of the Morgan Hill Municipal Code is repealed in its entirety from Title 15 for organizational purposes and added in its entirety in Title 14 (Housing) as Chapter 14.12 Below Market Rate Program of Title 14 (Housing). Additionally, the following two sections are added to Chapter 14.12, *14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide, and 14.12.120 BMR Ownership Program Application Guide for potential homebuyers.*

BELOW MARKET RATE (BMR) PROGRAM DEVELOPMENT STANDARDS

The City’s Below Market Rate (BMR) Program Development Standards (Attachment No. 2) were presented with a report titled “Housing Program Update” and previously approved by City Council Resolution No. 16-081 on May 18, 2016. The Affordable Housing Development Standards establish criteria and requirements that the City will use to ensure that affordable residential units (rental and ownership), are planned and developed in accordance with City Council policies, and the Residential Development Control System (RDCS). The Development Standards are designed to guide the implementation and construction of the units, to ensure quality homes are built consistent with the character of the neighborhood and providing guidance for the inclusion of materials and amenities within each unit. The most recent 2017 State Housing and Community Development annual report indicates that the City is required to produce 193 more Very Low Income (VLI) affordable units to meet the goals for this Regional Housing Needs Allocation (RHNA) cycle (2015-2022).

The Planning Commission spent a significant amount of time on the Affordable Housing Criteria of the RDCS Competition Manual and recommended the City Council require a 15 percent inclusionary public benefit requirement. To further the City’s affordable housing production efforts, the City Council considered and approved an Inclusionary Housing Ordinance (IHO) on July 25, 2018. 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 meeting all 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.

Unique opportunities may present themselves with partnerships between market rate and nonprofit developers, as such, the BMR Program Development Standards have been updated to facilitate high quality projects and to be used as a tool to achieve the RHNA goals.

The proposed BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project. These BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units that result in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council).

A provision has been added to provide the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit than a straight dispersal. Example: A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits and County Measure A funds to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's RHNA goals.

To assist in achieving the City's RHNA requirements, it is recommended that the revised BMR Development Standards be implemented for this next RDCS competition to encourage market rate and affordable housing developers to partner whenever possible to promote mixed income developments.

COMMUNITY ENGAGEMENT: Inform, Consult.
A notice of the public hearing was placed in the Morgan Hill Times September 14, 2018 and September 21, 2018.

ALTERNATIVE ACTIONS:
The Council can choose not to approve any one of the recommendations, and/or direct staff to return with alternate considerations. The City Council may choose to not adopt the Below Market Rate Ownership Program Participation Guide and or the Below Market Rate Ownership Program Application Guide, and/or direct staff to return with alternatives.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:
The City Council adopted a BMR Program Resolution on May 18, 2016, and the BMR Ordinance was adopted on June 15, 2016. The City's Below Market Rate (BMR) Program Development Standards were presented with a report titled "Housing Program Update" and previously approved by City Council Resolution No. 16-081 on May 18, 2016.

On July 18, 2018, the City Council introduced the Inclusionary Housing Ordinance No. 2278, adopted it on July 25, 2018, and it became effective on August 25, 2018. At the time of introduction, staff indicated that they would continue further refining the in-lieu fees and development standards.

FISCAL AND RESOURCE IMPACT:
In-lieu fees are used for the preservation, creation, and administration of affordable housing projects and programs, and managed as part of the City's existing affordable housing program. There is no fiscal impact associated with this report.

CEQA (California Environmental Quality Act):
Not a Project: This report is to inform policy regarding the Housing In-Lieu Fees and the Below Market Rate Program. Under the CEQA guidelines, activities that qualify to be listed as "Not a Project" include general policy and procedure making.

LINKS/ATTACHMENTS:
1. Ordinance 9_26_2018
2. BMR Program Development Standards 9_20_2018
3. City of Morgan Hill Manual FINAL
4. Morgan Hill BMR Owner Program Participation Guide - Ownership 9_20_2018
5. Morgan Hill BMR Program Application Guide - Ownership 9_20_2018
6. KMA Housing Fees Summary 9_20_2018

ORDINANCE NO. _______ NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM".

WHEREAS, this proposed Ordinance was considered by the City Council of the City of Morgan Hill at its regular meeting of September 26, 2018; and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials submitted as a part of public hearing, have been considered in the review process; and

WHEREAS, to increase the supply of affordable housing in Morgan Hill, the City of Morgan Hill has both a 15% (outside of downtown) and a 10% (within downtown) Inclusionary Housing Ordinance, and the Residential Development Control System ("RDCS") that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDCS competition obtain points to satisfy the affordable housing requirement to build a percentage of their project as Below Market Rate (BMR) units or in some cases they pay the In-Lieu Housing Fee in lieu of building affordable housing on-site; and

WHEREAS, since 1977, the City has amassed one of the largest BMR property portfolios per capita in the State and established a BMR Program that provides ownership and rental opportunities and affordability to very low, low and moderate-income households; and

WHEREAS, the City retained Keyser Marston and Associates (KMA) to conduct an analysis of the impact of the City's Inclusionary Housing Ordinance and the RDCS BMR requirements, and to:

1. Estimate the financial cost to developers of providing on-site BMR ownership and rental units equivalent to the percentages adopted in the Inclusionary Housing Ordinance ;
2. Provide a comparison of the cost of providing on-site BMR units to the RDCS program's in-lieu fee and, if appropriate, recommend changes to the in-lieu fee amount so that it more closely approximates the cost of providing on-site units in today's market; and

WHEREAS, KMA recommended an ownership housing in-lieu fee of $19.70 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and $13.20 per square foot for ownership projects in the downtown where there is a 10% Inclusionary Housing Requirement. The recommended fees for Rental projects are $29.00 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and $11.00 per square foot for projects in the downtown where there is a 10% Inclusionary Housing Requirement. This would replace the previously adopted $12.92 per square foot of the total project's livable space; 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 In-Lieu 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 City Council adopted an Inclusionary Housing Ordinance No. 2278 on July 25, 2018, establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.08 of Title 14 is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.08 – IN-LIEU HOUSING FEES

14.08.010 Findings and Purpose.
14.08.020 Fee Established.
14.08.030 Applicability

14.08.010 Findings and Purpose.

1. Need for in-lieu housing fees. The City Council has determined, based on the City's General plan including the housing element, and existing statutes and regulations of the State of California, that the In-Lieu Housing Fee is needed in order to finance the preservation of the existing Below Market Rate Portfolio, the administration of the Housing Program, future affordable housing programs and new projects.

2. Consistency with City General, Specific and Master Plans. In establishing the In-Lieu Housing Fee, the City Council finds that it is consistent with the City's General plan, including the housing element and applicable specific plans and master plans.
3. The City of Morgan Hill Residential Development Control System ("RDCS") awards competing developments points for construction of very low, low-income and moderate-income housing or for the contribution of In-Lieu Housing Fees to the Housing In-Lieu Fee Fund.
4. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios per capita in the State and established a BMR Program that provides ownership opportunities and affordability to very low, low-income and moderate-income households.
5. In-Lieu Housing Fees provide for the cost of administering the City's Housing Program, maintaining the BMR portfolio, as well as the creation and preservation of affordable units, as funding is available.

14.08.020 – Fee Established.

1. There is created an In-Lieu Housing Fee for new residential development for Residential Projects that are required or which volunteer to pay an In-Lieu Housing Fee.
2. For-Sale Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents ($19.70) per habitable square foot of the residential building area of market-rate housing.
3. For-Sale Residential Projects Within Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents ($13.20) per habitable square foot of the residential building area of market-rate housing.
4. Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is twenty nine dollars ($29.00) per habitable square foot of the residential building area of market-rate housing.
5. Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is eleven dollars ($11.00) per habitable square foot of the residential building area of market-rate housing.
6. Basis for calculation of the In-Lieu Housing Fee. The City approves, adopts and incorporates the summary report from Keyser Marston Associates (KMA), entitled "Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill" dated August 23, 2018. This establishes the value of the In-Lieu Housing Fee, which is determined to be a fair and effective fee to maintain the BMR Program.

14.08.30 Applicability

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1. The In-Lieu Housing Fees are established for Residential Projects and will be incorporated into development agreements entered into after the effective date of this ordinance.
2. All collected In-Lieu Housing Fees shall be used to finance the administration and implementation of affordable housing programs and projects within the City of Morgan Hill in support of the goals and objectives established in the City of Morgan Hill housing element.
3. The In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.
4. The In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.
5. Example Calculations of In-Lieu Housing Fee:
   1. Amount, $19.70: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $19.70 X 56 units X 2,000 square feet = $2,206,400.
   2. Amount, $13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $13.20 X 56 units X 2,000 square feet = $1,478,400.
   3. Amount, $29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $29.00 X 56 units X 2,000 square feet = $3,248,000.
   4. Amount, $11.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $11.00 X 56 units X 2,000 square feet = $1,232,000.
6. The In-Lieu Housing Fee must be provided to the Housing Division in proportion to the market rate units being delivered prior to Housing Division signing off for occupancy.
7. Whenever application of the Inclusionary Housing Requirements results in a fractional number of required Inclusionary Units of .49 or less, the Applicant may elect to pay the In-Lieu Housing Fee instead of developing the Inclusionary Unit.
8. Example Calculation of Fractional In-Lieu Housing Fee: the fractional BMR threshold is .5 to encourage the construction of new BMR units. The program applies the fractional fee to fractional requirements less than 0.5 of a unit. Project has 56 total units; average size of market rate units is 2,000 square feet. To receive maximum RDCS points the 56-total unit project has committed to a 15% affordable commitment, 56 units x 15% = 8.4. This equates to 8 on-site BMR units and a fractional fee payment due for the ".4" units. First, calculate the implicit in-lieu fee: 56 units X 2,000 square feet X $19.70 per SF = an implicit in-lieu fee of $2,206,400. From that implicit in-lieu fee, calculate the per BMR unit cost: $2,206,400. / 8.4= $262,666. per BMR unit cost. The fractional payment owed for this project.

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<u>SECTION 2.</u> Chapter 14.12 Below Market Rate Program of Title 14 (Housing) is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.12 – Below Market Rate Program

14.12.010 Purpose and Findings

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly.

2. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the state and established a BMR program that provides ownership opportunities and affordability to low-income and moderate-income households.

3. The excess sales proceeds value in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR property owner ("owner") and is a vehicle that can be used to renovate older units, build new units and help pay for program administration.

4. The City recognizes that the declaration of restrictions, which secures the excess sale proceeds, is a covenant that runs with the land by and between the BMR property owner and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially.

5. A program and program guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment.

6. In order to respond to program needs, the City Manager or his or her designee should be empowered to approve BMR program guidelines and BMR agreements.

7. In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside Administrator. The City is empowered to delegate the day-to-day management of the program to a third-party Administrator.

8. Either in-house or third party administration is vital to ensure program integrity and continued affordability of below market rate properties.

9. In response to the dissolution of the City's redevelopment agency, schedules have been put in place to pay for the costs of services funded by former redevelopment agency funds.

14.12.020 - Definitions.

When used in this chapter, these terms mean the following:

1. "Adjacent lots" means parcels with boundary lines that touch at any point. "Adjacent lots" includes parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.
2. "Administrator" means below market rate program Administrator which may either be the City itself or a third party Administrator acting as an agent for the City in connection with all aspects of the operation of the City's below market rate program pursuant to an agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
3. "Area median income (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).
4. "BMR assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.
5. "Assumed household size" means, for the purpose of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.
6. "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.
7. "CC&Rs" means, covenants, conditions and restrictions containing a covenant that runs with the land existing in favor of the City where a development project contains at least one BMR unit.
8. "Covenant that runs with the land" means the BMR property interest held by the City of Morgan Hill as a result of the recorded declaration of restrictions that restrict the right of use of enjoyment by the BMR owner-occupant.
9. "Decision-making body" means the Planning Commission or City Council, whichever is authorized to make a final decision on the project application for land use approvals.
10. "Excess sale proceeds" means the difference between the fair market value of a BMR property and the maximum restricted resale price.
11. "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy,

a BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.

12. "Fee schedule" means the schedule of fees, adopted by City Council resolution and published annually, that outlines charges to program participants, including, but not limited to applicants, owner-occupants, housing professionals and developers.

13. "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR ownership housing guidelines.

14. "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, owners' association dues, and owner's insurance.

15. "Low income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.

16. "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.

17. "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate income household for state-assisted housing programs.

18. "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.

19. "Property" means properties contained with the below market rate program portfolio subject to occupancy and sale restrictions.

20. "Very low income household" means a household with a gross annual household income that does not exceed fifty percent 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 lower income households.

14.12.030 - Applicability.

A. Residential Development Control System ("RDCS"). All projects subject to RDCS that provide units to meet the City's need for low and moderate income and elderly housing and the extent to which such units meet the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.

B. BMR Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. The BMR ownership housing guidelines shall be approved by the City Manager or the City Manager's designee, and approved by the City Council from time to time.

C. BMR Program Letters. BMR program letters may be issued by the Administrator to update procedures and guidelines not yet incorporated into the BMR ownership housing guidelines. These letters shall be approved by the City Manager or designee and serve as amendments to the guidelines that will be published online and made available to the public including guidelines for refinances, purpose and hardship review.

D. BMR Agreements. Declaration of restrictions and affordable housing agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.

14.12.040 - Duties of Program Administrator.

The City may either handle in-house or contract responsibility for administration of the BMR ownership housing program and monitoring compliance with the requirements to a program Administrator pursuant to an agreement executed between the City and the Administrator.

The Administrator shall perform the following services, among others:

1. Maintain and update the BMR ownership housing guidelines and BMR program letters;
2. Conduct ongoing homebuyer education training programs, including preparation of program materials;
3. Screen and select qualified buyers according to BMR ownership housing guidelines and maintain qualified owner eligibility list;
4. Assist in seeking and arranging mortgage financing for purchase of the below market units;
5. Administer programs for monitoring compliance with terms and conditions of the occupancy and sale restrictions;
6. Administer BMR ownership housing guidelines concerning sale and resale of the below market units at a restricted price, including exercise of the City's option to buy the below market units upon assignment of such option, and assist in resale of the unit to eligible purchasers or families; and
7. In cases of default, administer the process of taking possession of the BMR property as appropriate, and completing the acquisition, rehabilitation and resale to an eligible buyer.

14.123.050 - Occupancy and Sale Restrictions.

Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner, Administrator, and the City shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration establishes a valid and enforceable covenant that runs with the land in favor of the City and is binding to the heirs, assigns and successors in interest of the property owner.

1. Timing of Sale. At completion of each BMR unit, the Administrator will be contacted to coordinate the sale of the property to an eligible buyer. The seller shall accept the first

valid offer from a buyer deemed eligible by the Administrator, and shall cooperate to close escrow within the timeframe outlined in the affordable housing agreement.

2. Term of Restrictions. BMR units shall be reserved for lower and moderate income households subject to guidelines of the RDCS and shall be subject to the occupancy and sale restrictions for a specified period of time. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term shall begin upon resale and shall be secured by a new declaration of restrictions.

3. Maximum Sales Price. The Administrator shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR ownership housing guidelines as approved by the City Manager. The maximum BMR unit sale prices shall not exceed a price affordable to households at the applicable income level, based on a predetermined housing cost, specified with a maximum percentage of monthly gross household income for the unit's assumed household size. The percentage of AMI used shall be published annually by the Administrator.

4. Sale Requirements. The following requirements shall be met in any sale and resale of a BMR unit after the issuance of a building permit and during the term of restrictions:

    a. The seller shall notify the Administrator of the intent to sell before offering the unit for sale, contacting a real estate agent or listing the property on any listing service

    b. The Administrator shall respond to the seller with the sales procedure and maximum sale price

    c. The Administrator shall follow the process outlined in the BMR Ownership housing guidelines to locate and deliver an eligible buyer to complete the home purchase

    d. The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR ownership housing guidelines; and

    e. Closing costs and title insurance fees shall be paid or according to the BMR ownership housing guidelines.

5. Eligible Buyers. The Administrator shall determine the eligibility of prospective buyers of BMR units. It is prohibited for any person to willfully make a false or misleading representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:

6. Income Limits. The prospective buyer's combined household income and assets shall not exceed specific household income limits, as further defined in the BMR ownership housing guidelines;

7. Conflict of interest. The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:

    a. Any Administrator, City official or employee who administers or has policy-making authority over City housing programs;

    b. The developer of the unit; or

c. The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, Administrator employees, City employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and

8. Additional Criteria. The Administrator may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR ownership housing guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.

9. Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:

a. BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the Administrator; and

b. The Administrator may allow the temporary rental of a BMR unit upon a finding of hardship beyond the control of the owner and after a full review of the hardship documentation.

10. Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the Administrator. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of the BMR ownership housing guidelines of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing.

11. Additional Refinancing Criteria. The Administrator may establish other refinancing criteria in the course of seeking financing to change the rate and/or term of a mortgage, consolidate purchase money lines or cash out a portion of the excess sale proceeds that would be due to the owner upon sale.

14.12.060 - Affordable Housing Agreement.

A. Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record an affordable housing agreement (agreement) with the Administrator and City outlining the details of the below market rate unit commitment as outlined in the "specific restrictions and requirements (including RDCS requirements)" of the development agreement.

B. Agreement Provisions. The agreement shall include, at a minimum, the following provisions:

1. Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;

2. Binding of Project Site. The obligation for the entire project site to fulfill the for the project under this chapter;

3. Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;

4. Transaction Processing Fee. For each BMR unit, the developer shall pay a BMR transaction processing fee to the City according to the most current fee schedule approved by the City. The City may provide this fee to the Administrator as an offset to charges incurred. This fee is not a real estate commission or real estate broker commission. This fee shall be listed as an "additional settlement charge" fee paid by the seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "other costs" paid by the seller in the new closing disclosure as determined by the TILA-REPA Integrated Disclosure rule.
5. Project Covenants, Conditions and Restrictions. A provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the owners' association dues or assessments payable by any BMR unit. The provision must also acknowledge the covenant that runs with the land in favor of the City where the development project contains at least one BMR unit. This provision shall create a right of judicial enforcement by the City or the owner of any affected BMR unit.
6. Enforcement. A provision that shall require the property owner to pay the City rent for a BMR unit from the date of any unauthorized use of the unit, and for the City's recovery of reasonable attorney's fees and costs to pursue legal action in enforcing this agreement.
7. Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the Administrator. Upon approval, a new agreement containing the amendments shall be executed and recorded.

14.12.070 - Approved Program Participants and Vendors.

The City and Administrator shall maintain a list of approved program participants and vendors to protect the integrity of the BMR program, BMR properties contained within the portfolio, and excess sale proceeds. The approval requirements and process will be included in the BMR ownership housing guidelines. The program participant list will include, but will not be limited to:

1. Mortgage Lenders. Due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the Administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing. In no event shall a deed of trust securing any loan to a BMR Owner be valid or enforceable as to any recorded interest, resale agreement or option of the City of Morgan Hill unless the following conditions are satisfied:
   a. The City of Morgan Hill or its Administrator has first approved the loan;
   b. The loan is in accordance with the BMR ownership housing guidelines and any and all recorded deed restrictions;
   c. The City of Morgan Hill or its Administrator has expressly subordinated its recorded restrictions to the specific deed of trust; and
   d. Prior to making any loan to a BMR property owner for the purchase of a BMR unit intended to be secured by a deed of trust against the BMR unit, a lender shall disclose to the City of Morgan Hill or its Administrator the following information:

i. The borrower's loan application describing the loan terms; and

ii. Provide an acknowledgement in writing that that the total encumbrance does not exceed the maximum restricted resale value for the BMR unit as determined by the City of Morgan Hill or its Administrator according to the BMR ownership housing guidelines.

2. Real Estate Agents. Real estate agents and brokerages involved in the purchase or sale of BMR properties must be approved by the Administrator and a vendor agreement will be put in place concerning BMR program compliance during the listing, purchase and escrow process.

3. Escrow Companies. An approved list of escrow officers and escrow companies will be maintained by the Administrator.

4. Contractors. For work on BMR properties that exceed certain dollar amounts, as outlined in the BMR ownership housing guidelines, an approved list of contractors will be maintained by the Administrator.

14.12.080 - Default, Foreclosure, and Loss of Unit.

A. Default. Upon declaration of a default by the City of any agreement between the City and the owner or if the owner or owner's proposed purchaser makes any misrepresentation in connection with receiving any benefits under the declaration of restrictions, the City or Administrator may apply to a court of competent jurisdiction for specific performance of this chapter, for an injunction prohibiting a proposed sale or transfer in violation of this chapter, for a declaration that a transfer in violation of this chapter is void or any such other relief at law or in equity as may be appropriate.

B. Option to Purchase. If a notice of default is recorded on a BMR unit by a third party secured creditor or a lien is filed against the BMR unit, or any breach of any provision of any agreement between the City and the owner, and the owner fails to correct it, an eligible buyer, or the Administrator on behalf of the City or the City itself, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR ownership housing guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the owner. All other resale provisions of the guidelines apply.

C. Loss of Unit. BMR units which have not been completed or sold to initial eligible buyers shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.

D. Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the owners' association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows.

1. Owner. To the owner, up to the net amount the owner would have received under the sale price in the BMR ownership housing guidelines if the City had purchased the unit on the date of the loss; and
2. City. To the City, any surplus remaining after payment to the owner.

14.12.090 - Annual report.

The Administrator shall provide an annual informational report to the City Council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR defaults and losses, if applicable.

14.12.100 - Enforcement.

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The City, or Administrator if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide

The purpose of the Below Market Rate (BMR) Ownership Program Participation Guide (Ownership Guide) is to describe the BMR Program policies and procedures to an existing BMR homeowner who is a Program participant. The Ownership Guide includes the following and is intended to be an overview for a Program participant who is occupying a BMR home. The Ownership Guide describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Transfers
- Vendors

The Ownership Guide is prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed and may serve as amendments to the Ownership Guidelines that will be published online and made available to the public.

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14.12.120 Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers

The purpose of the Below Market Rate (BMR) Ownership Program Application Guide (Application Guide) describes the BMR Program policies and procedures to a prospective BMR homeowner who is considering the BMR Program application process. The Application Guide includes the following and is intended to be an overview for a Program applicant who is considering applying for a BMR home.

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

The Application Guide may be prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the Application Guidelines that will be published online and made available to the public.

14.12.130 Below Market Rate (BMR) Program Development Standards

A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.

B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.

C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:

1. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
2. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate

units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.

D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

SECTION 3. Subsection D of Section 14.04.060 is repealed.

SECTION 4. Chapters 15.22 "Affordable Housing Fee" and Chapter 15.23 "Below Market Rate Program" of the Morgan Hill Municipal Code are hereby repealed in their entirety.

SECTION 5. The revised Below Market Rate (BMR) Program Development Standards are hereby adopted.

SECTION 6. The City Council hereby finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Guidelines for CEQA. The proposed In-Lieu Housing Fee and Below Market Rate Program Ordinance are covered by the general rule that CEQA applies to projects that 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. Adoption of this ordinance does not create changes in the physical environment and is therefore exempt pursuant to the exemption described above.

SECTION 7. 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 8. 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 or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 26TH DAY OF SEPTEMBER 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:

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AYES: COUNCIL MEMBERS:

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

APPROVED:

____
STEVE TATE, Mayor

ATTEST: **DATE:**

___________________________ ________________________
IRMA TORREZ, City Clerk

Effective Date:

ℵ CERTIFICATE OF THE CITY CLERK ℵ

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,~~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~~_ 2018.

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

Attachment: Ordinance 9_26_2018 [Revision 1] (1957 : Housing Program, In-Lieu Fees, BMR Program Workbooks, BMR Program Development

DATE:______________________

____
IRMA TORREZ, City Clerk

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Below Market Rate (BMR) Program Development Standards

A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood and providing guidance for the inclusion of materials and amenities within each unit.

B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.

C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:

   a. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.

   b. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.

D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

This provision has been added to provide Staff, Planning Commission, and the City Council with the flexibility to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project provides more community benefit than a standard dispersal. Example: A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits, County Measure A funds and other funding sources in order to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's Regional Housing Needs Allocation (RHNA) goals.

BMR units are subject to the following development standards:

1. Location. BMR units shall be distributed evenly throughout the project.

2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project;
3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project;
4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate
5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.
6. Minimum Interior standard finishes will be as follows
    a. All closets shall have doors
    b. Interior doors to be raised panel type or same as market rate
    c. Door hardware to be brass/chrome/brush nickel finish or equivalent
    d. Appliances shall be major brand name
    e. Microwave with an exhaust vent shall be installed over the range
    f. Kitchen counters shall be white ceramic tile ceramic tile; however, granite is preferred if it is standard in the market rate units
    g. Kitchen cabinets shall be stained wood with white melamine interiors
    h. If installation of an Air Conditioner is a standard feature for market rate units, then it is a standard for the BMR units.
    i. If a basic alarm system is a standard feature in the market rate units, then it is a standard for the BMR units.
    j. Carpet in bedrooms, hallways, family rooms
    k. Linoleum or tile entry, bathroom kitchens
    l. Laminate flooring may substitute for carpet or linoleum
    m. Electric garage door opener

7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the Residential Development Control System (RDCS). For example, for a project with 24 units, with a 15% BMR ownership housing commitment, at least one BMR unit shall be constructed before or concurrently with every 6th market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The Community Development Director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.

NEIGHBORHOOD HOUSING SERVICES SILICON VALLEY

Below Market Rate Program Manual

The City of Morgan Hill

2014 - 2015

Introduction

About the Manual

This manual contains the guidelines that establish the process for the City of Morgan Hill's affordable housing program, also known as the Below Market Rate (BMR) housing program. The purpose of this manual is to outline:

1. Program eligibility criteria
2. Application processes for prospective purchasers
3. The processes and procedures for owners that currently own in the program.

All interested applicants are encouraged to review the BMR program manual **prior** to application, to learn more about the benefits as well as the process for purchasing a BMR home through the City of Morgan Hill; to learn more about what to expect when applying to the program and during homeownership.

All applicants will receive a copy of the BMR program manual and a sample deed restriction package to review prior to the execution of any sales agreement.

The program manual may be updated from time to time to increase the program's effectiveness. Modification may require City Council approval.

In the event there is a conflict between the BMR deed restrictions and the BMR program manual, the recorded BMR deed restrictions will always prevail.

BMR Program Administration

The City of Morgan Hill's Housing Division in cooperation with Neighborhood Housing Services Silicon Valley (NHSSV) operates the Below Market Rate (BMR) housing program to provide affordable homeownership opportunities in the City of Morgan Hill. The City of Morgan Hill has contracted with NHSSV to act as the BMR Program administrator. The following are the services provided by NHSSV on behalf of the City of Morgan Hill

- Homebuyer education
- Homebuyer application evaluation and selection processing
- Mortgage counseling and financial servicing
- Facilitation of homebuyer/developer interaction
- Compliance monitoring
- Annual certifications
- Customer service activities
- Real estate sales (real estate agent for listing and selling new development and re-sale BMR homes)

Fair Housing Policy

Program participants must comply fully with all Federal, State, and local non-discrimination laws. Specifically, program participants and program administrators will not be permitted to discriminate against any prospective applicant based on race, color, sex, religion, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, or deny any family or individual the opportunity to participate in the City of Morgan Hill BMR program.

Privacy Rights

All eligibility applications are held in strict confidence and are not considered public records (H&SC Section 34332). Requests received by the City to release information involving a homebuyer or homeowner must be accompanied by a written release request from the homebuyer or homeowner and/or court order, unless disclosure is authorized under Federal or State law.

H&SC Section 33334.3 requires redevelopment agencies to compile, maintain and make available to the public on the internet, a database of existing new and substantially rehabilitated homes that are subject to income and BMR deed restrictions. The online database can be annually updated. With the dissolution of redevelopment agencies in 2012, successor agencies of redevelopment agencies are required to compile information.

NHSSV

Brokerage: Neighborhood Housing Services Silicon Valley
BRE# 01324196 & NMLS# 259971

Broker: Robyn Van Ekelenburg
BRE# 01336834 & NMLS# 334668

City of Morgan Hill's BMR Program History

Authority for the administration of the City of Morgan Hill's BMR program is found in provisions contained in the Residential Development Control System (RDCS) in the Municipal Code (Chapter 18.78) and further upheld in the policies adopted in the Housing Element of the Morgan Hill General Plan.

The Residential Development Control System (RDCS) was enacted by the residents of Morgan Hill in 1977 to regulate the growth of the major residential developments of five or more homes. Today more than 450 BMR units, individually owned, have been made available to the Morgan Hill community. These homes continue to be made available through re-sale, at affordable values, for up to 45 years, generating an on-going affordable resource for the City. With each new housing development in Morgan Hill, new affordable ownership opportunities are created adding to the City's total supply.

BMR Program Contact Information

Online:	www.NHSnow.org
Email:	HOO@nhssv.org
Phone:	408.579.6550
Address:	31 North Second Street #300 San Jose, CA 95113

Table of Contents

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Section 1: Introduction to the City of Morgan Hill's Below Market Rate Program

The purpose of the BMR program is to provide long-term affordable homeownership opportunities for low and moderate-income households in the City of Morgan Hill. BMR homes are sold for less than market value to low - moderate income and program eligible homebuyers. *See Section 2 for additional details on eligibility.*

Applicants that purchase a BMR home will be required to sign affordable housing documents (also known as resale agreements or BMR deed restrictions, as well as a deed of trust and a promissory note) to ensure homes remain affordable and homeowner occupied for the restricted term (generally 45 years). Homeowners can sell their home on the open market at the end of the restricted term.

The deed restrictions give the City of Morgan Hill (or its assigned program administrator NHSSV) the First Right of Refusal to purchase the BMR home for a restricted sales price if the homeowner should choose to sell during the term of the restriction. If the City of Morgan Hill opts to purchase the home, then they exercise what is known as the Option to Purchase. The City or administrator can also assign another program eligible buyer to purchase the BMR home.
The City is not obligated to exercise its Option to Purchase but the seller is obligated to give the City the option to do so.

Section 1.1: About NHSSV's Housing Department

NHSSV is a 501C3 nonprofit housing organization that serves as the BMR program administrator, as well as exclusive real estate brokerage for the City of Morgan Hill's affordable housing program.

NHSSV was incorporated in 1995 as a non-profit Community Development Organization by a group of local citizens with a mission "to promote community revitalization and economic stability by providing responsible homeownership and neighborhood services to low and moderate income families."

NHSSV is a member of the NeighborWorks America Network, a congressionally created and funded effort, and a national affiliation of 235 independent, community-based nonprofit organizations committed to community revitalization. NHSSV is a non-profit realty company and certified by the US Department of Treasury as a Community Development Financial Institution (CDFI). NHSSV is the only community-based non-profit organization in the Silicon Valley area that is approved as a direct seller and servicer by Fannie Mae.

NHSSV acts as the exclusive real estate agent for the City of Morgan Hill's BMR program. NHSSV's Housing Department contains a dedicated agent, who exclusively handles all BMR transactions. The brokerage will represent both the buyer and the seller as a dual agency in the BMR transaction and includes the following:

Contracts Administrator - supports internal staff and external partners to execute the sale and administration of BMR homes.

BMR Real Estate Coordinator - coordinates and communicates with multiple parties to close complex and multi-layered BMR transactions.

BMR Real Estate Agent – executes BMR sales including real estate, escrow and marketing activities associated with special projects and inventory. As needed, the BMR agent will hold open houses and events to market the property for sale.

BMR Processor - assists applicant BMR homebuyers and renters in the application and purchase process from orientation to move-in day and beyond.

BMR Underwriter - verifies BMR applicants meet each program and property's BMR qualifications and down payment assistance eligibility standards.

BMR Monitoring Specialist - monitors and reports on BMR homeowner deed restriction compliance.

Section 1.2: NHSSV's BMR Process Cycle

NHSSV administers the 9-step BMR Process Cycle assisting to place eligible homebuyers into homes. Each step is executed in sequential order to practice and fulfill BMR program guidelines:

Opportunity Created – NHSSV, the City and builders identify BMR homes for sale and confirm marketing responsibilities by signing a Developer Agreement and Affordable Housing Agreement; or when BMR program homeowners decide to sell, they must contact NHSSV and notify them of the intent to re-sell the home.

Structure – As in any purchase, the BMR seller must prepare the home for sale and NHSSV will determine the BMR financial program for the purchase. Staff will structure the income limits, program guidelines, deed restrictions, NHSSV approved BMR loan officers and down payment assistance.

Orientation – Applicants attend a Homebuyer Opportunities Orientation (HOO) to learn about program and mortgage qualifications and indicate interest in participation through the Self Evaluation Form.

Application –Applicants submit a BMR application with supporting documents and a mortgage pre-qualification from an NHSSV preferred lender.

Approval – NHSSV performs BMR program eligibility verification, household income certification and lender's credit approval to issue BMR approval. Applicants attend HUD homebuyer education class.

Property Selection – Approved applicants will select homes including size and type based on unit availability and their approval from NHSSV, which will include a review based on the financing available for the purchase and the applicants' loan pre-approval.

Contract – Approved applicants enter into a binding real estate sales contract. Deed restriction packages are prepared by NHSSV staff weeks prior to the anticipated closing. The documents will be executed by all parties and routed to the Title and Escrow Company by NHSSV staff.

Closing – This is a formal process whereby all the milestones of the purchase have been completed. These include: all loan documents are signed; funds to close are in escrow; resale restriction and deeds of trust are recorded; and the transfer of title from the seller to homebuyer occurs.

Ownership – Homebuyers become Homeowners!

Annual occupancy certification will be conducted by NHSSV staff. Homeowners are required to participate in this process, verifying that they continue to occupy the home.

Any homeowner who wishes to sell or refinance must contact NHSSV prior to doing so. **Properties are severely restricted from re-financing to access equity as resale values remain at affordable rates as a condition of purchase.**

Section 1.3: How the BMR Program Works

The City of Morgan Hill's BMR program is intended to provide affordable housing to residents who would otherwise have not qualify for purchasing a market-rate home in the City of Morgan Hill.

The BMR program is not intended to help applicants profit from property ownership. It is also not intended to allow homeowners to jeopardize (intentional or not) the City's investment in affordable housing.

BMR homeowners purchase a home for a lower sales price with BMR deed restrictions which in return:

- Gives the City/NHSSV the First Right of Refusal and Option to Purchase;
- Requires homeowners to remain current on their mortgage payments;
- Mandates BMR homeowners must maintain their BMR home as their primary residence;
- Limits re-sale value or price;
- Limits total loans on title;
- Limits refinance amounts;
- Limits liens placed on title;
- Mandates insurance requirements;
- Requires homeowners to follow City code and ordinances; and
- Requires transfers of title to be made in accordance with applicable deed restrictions

BMR Affordable Sales Prices

The City of Morgan Hill's BMR Program requires that homes sell at an Affordable Sales Price and remain affordable for a term of 45 years. Affordable Sales Prices are assigned prior to marketing the home and are based upon California Department of Housing and Community Development (HCD) established values in Santa Clara County . Affordable Sales Prices will not be revised during a purchase transaction.

The Affordable Sales Price is determined by a formula based on Area Median Income (AMI) and the Housing Affordability Index. The Affordable Sales Price is not related to the fair market value of the home; however, the Affordable Sales Price can never exceed fair market value of the home.

Area Median Income is the median household/family income for Santa Clara County, adjusted for actual household size, as determined annually HCD. The California Association of Realtors (C.A.R.) uses the Housing Affordability Index to measure the percentage of households that can afford to purchase the median priced home in California and specific regions.

Section 1.4: BMR Homeownership versus Market Rate Homeownership

The BMR homeownership path does not mirror the market rate homeownership experience.

Experiences uniquely related to BMR homeownership are:

- Interested applicants must apply to the BMR program and demonstrate they meet defined income and first-time homebuyer eligibility requirements;
- Homebuyers must sign a BMR deed restriction, deed of trust, and promissory note in order to purchase a home at a below market price;
- The deed restrictions and deed of trust are recorded against the home at the time of purchase; and
- The homeowner must meet occupancy and resale requirements defined in the deed restrictions and deed of trust. In general, these requirements are:

1. The homeowner must live in their BMR homes as their primary residence
2. A homeowner may not use the home as a rental
3. **The City of Morgan Hill retains First Right of Refusal** to purchase the property at time of resale from the owner or assign another qualified homebuyer. Failure to meet these requirements will result in default, potential loss of the home, and/or legal action.

Section 2: BMR Eligibility & Application Process

Section 2.1 BMR Program Eligibility Requirements

1. *First Time Homebuyer*
   Applicants must be a First Time Homebuyer. A First Time Homebuyer is defined as those:
   - Who have not owned a home (mobile homes excluded as defined by HCD) on title or mortgage loan in the last three years: or
   - Have owned a home in the last three years, but no longer own the home and are a widow, widower, divorced, or displaced homemaker as defined by HCD.

2. *Household Size & Income Limits*
   Low to moderate household income limits are adjusted by household size as determined by HCD. Visit www.hcd.ca.gov to view Santa Clara County income limits

3. *Homeownership Education*
   Applicants must attend an NHSSV Homebuyer Opportunities Orientation (HOO) & received a NHSSV approved 8 hour US Housing and Urban Development (HUD) Homebuyer Education Certificate prior to closing (preferably prior to entering into a contract).

4. *Financing Requirements*
   Applicants must be first mortgage approved by an NHSSV approved loan officer and meet homebuyer financing requirements as defined in Section 3.

Section 2.2: BMR Household Income versus Borrower's First Mortgage Income

Two types of income are used to determine applicant's ability to purchase a BMR home:

1. *BMR applicant projected household income* adjusted by family size is determined by NHSSV to establish program eligibility; and
2. *Borrower's first mortgage* income is determined by a loan officer to establish mortgage loan qualification.

BMR and first mortgage incomes are derived from using two separate methodologies:

BMR household income
- NHSSV projects household income for the next 12 months to calculate household BMR program eligibility

First mortgage borrower's income
- A loan officer averages the borrower's (person/people on the loan) income for loan qualification.

The BMR projected income versus the lender's averaged income can sometimes differ. This could potentially deem an applicant eligible for the BMR program, but ineligible for a first mortgage loan, or vice versa. In order to become approved for the program, applicants must meet the approval criteria for the BMR program and the loan.

Section 2.3: BMR Application Process & Processing Priorities

BMR homebuyers are offered an opportunity to purchase a BMR home upon program application and approval.

- *BMR Application Submission*
  In order to be eligible to purchase a BMR home, applicants must attend an orientation and submit a BMR application with supporting documentation to NHSSV's Housing Department (this is a different department than NHSSV's Lending Department). The application must include a mortgage pre-approval letter from an NHSSV preferred BMR loan officer.

  NHSSV will review the application for completeness and will notify the applicant of any missing information and/or additionally required documents. Incomplete applications may not be considered for eligibility. See Appendix B to learn more about the types of documents that may be requested from the applicant household to submit a complete application. Failure to provide requested information and/or documents during the application process in a timely manner can constitute cause for denial of eligibility.

- *BMR Application Processing Priorities*
  Applications will be processed (reviewed for completeness and underwritten/verified for eligibility) in the following order:

  1st Priority: BMR applications received for "First Come First Served" BMR properties. See Section 4.3 for additional details.

  2nd Priority: BMR applications received for BMR properties with upcoming application deadlines

  3rd Priority: BMR applications received for future available BMR properties

- *BMR Application Processing Milestones*
  BMR program applicants participate in a sequential seven-step process to move their applications from submission to approval. The BMR approval process can take as little as 10 working days or as long as 4 – 5 weeks or more depending on the applicant's access to supporting documentation and responsiveness to requests for information.

  Each of the seven milestones are:

  1st Milestone - Applicant submits application to NHSSV's front desk (in-person or sent via tracking system - USPS certified mail, FedEx, UPS, etc.)

  2nd Milestone - NHSSV screens application for processing priority and missing items

  3rd Milestone - NHSSV delivers a "Needs List" with additional documents needed from applicant to complete the application

  4th Milestone - Applicant submits requested deed restrictions to NHSSV

  5th Milestone - Applicant receives a "Submission Notice" from NHSSV that confirms their application is complete and under the BMR Underwriter's review for verification of program eligibility

  6th Milestone - BMR Underwriter reviews application and requests information as needed from the applicant

  7th Milestone - BMR Underwriter issues BMR program approval, suspense, or denial

- *Application Denial Appeal Process*
  The BMR Underwriter issues BMR denial letters with specific reasons for the denial.

  Should an applicant receive a BMR program denial letter, the applicant has 3 business days to appeal the denial by sending a certified letter to the BMR Underwriter with third party documentation verifying the inaccuracy of the denial letter issued to the applicant by NHSSV.

  For example: If the BMR Underwriter issues a denial to an applicant because a submitted child custody agreement doesn't allow the applicant to claim their dependent child as a BMR household member, and therefore the applicant exceeds the qualifying maximum household income adjusted by family size, then the applicant has 3 working days to submit a letter from the court/court order verifying the applicant meets required 50% physical custody of said child for program eligibility. See Appendix A for definition of BMR Household Member.

- Co-Applicants
  Every person who is on title must live in the BMR home, must be eligible, must participate in each step of the application and purchase process and must agree to comply with the program requirements.

Section 2.4: Property Selection Process

Currently, the City Council of Morgan Hill has temporarily suspended jurisdictional BMR homebuyer selection preference categories; however, NHSSV employs an internal homebuyer selection process via property application deadlines. If no applicant applies for a property by the indicated deadline, then the home becomes available on a "First Come First Served" basis. All homes will be initially offered for purchase via property application deadline.

- *Homebuyer Approval Process*
  Applicants can apply for homes by the indicated deadline that match their loan pre-approval amount from their bank with the home's assigned income limits (see below).

- *Application Tiers for Property Deadlines*
  There are 3 tiers of application rankings used to identify buyers who wish to select a property by the indicated application deadline.

Tier 1 – BMR pre-approved applicants

Tier 2 – BMR applicants in order of milestone that submitted their application but have yet received program approval.

Tier 3 – New BMR applicants who submit their application by the property's application deadline.

If no Tier 1 applicants apply for the home by the application deadline, then Tier 2 applicants will be entered into a lottery. If no Tier 2 applicants apply by the application deadline, then Tier 3 applicants will be entered into a lottery. If no Tier 3 applicants apply, then the home will become available on a "First Come First Served" basis.

- *Property Points*
  Tier 1 BMR pre-approved applicants are selected by total program accrual of BMR property points as explained below.

  Applicants receive one BMR property point each time they submit a qualified BMR Property Interest Form (one entry per homebuyer per property per application deadline). Pre-approved applicants will receive information about how to complete a Property Interest Form upon program pre-approval (Milestone 7).

  A drawing will be held if there are more than one homebuyer with the same amount of property points. If the selected homebuyer decides not to purchase the property, they lose their accrued "to date" property points.

- *Property Drawing Policy*
  When it is necessary for NHSSV to conduct a drawing to select a homebuyer, it is done so privately. In order to protect the privacy of homebuyers and the program's integrity, several NHSSV staff members and occasionally a representative from the City of Morgan Hill is present at the drawing and signs a drawing affidavit to confirm homebuyer selection fairness and transparency.

Section 2.5: BMR Program Affidavit

Purchasers must sign a program affidavit and take a test to solidify their understanding of the BMR program and deed restrictions prior to closing escrow.

Section 3: City of Morgan Hill BMR Financing Requirements

BMR applicants must obtain conventional, fully amortizing, fixed interest rate mortgages with a term of no more than 30 years. No interest only loans, negative amortization loans, balloon payment loans or variable interest rate loans are permitted as the affect the homeowners long-term ownership stability.

- Homebuyers must commit at least 3% of their own funds (cannot be financed) towards the purchase transaction;
- Homebuyers must also pay applicable closing costs; and
- Mortgage loans cannot exceed 100% of the sales price + 5% for closing costs

For the purpose of ensuring that risks to homebuyers and the City are minimized, applicants' proposed mortgage financing terms are subject to approval by NHSSV.

- *Preferred BMR Lending Teams*
  BMR applications will only be accepted with supporting documentation from a NHSSV preferred BMR loan officer with preferred operations teams.

  NHSSV maintains a preferred lender list. To be eligible to finance a BMR home, the lender must have been included on the NHSSV preferred lender list for at least sixty (60) days prior to the closing of the sale of the BMR home.

  BMR loan officers and their teams must have previously approved the BMR deed restrictions, recording requirements and all other City-required documents associated with the sale of BMR homes.

  If an applicant chooses a lender not on the list, then they should email HOO@NHSSV.org to work with NHSSV to get that lender to approve the City-required documents associated with the sale of the BMR homes.

  In order for a loan officer and their operations team (loan processor & loan underwriter/operations manager) to be approved for placement on the preferred lender list, they are required to attend a lender orientation and provide written verification that all resale restriction documentation has been reviewed and approved by their legal and underwriting departments of the funding lender.

Section 4: BMR Policies & Procedures for Homeowners

BMR deed restrictions dictate policies and procedures specific to individual properties.

Some of the policies and procedures outlined in the deed restrictions that are specific to each individual BMR purchase are:

- Homeowner Occupancy Requirements & Annual Homeowner Occupation Certifications
- City Consent for Refinance Process
- Title Transfers (Including through marriage, divorce & inheritance)
- Selling Process & Procedures

Current BMR homeowners can contact NHSSV at HOO@NHSSV.org for a personalized deed restriction counseling session to discuss any questions regarding their property covenants.

Section 4.1: Homeowner Occupancy Requirements

BMR homeowners are required to live in their home as their primary residence.

NHSSV will routinely monitor homes for owner occupancy. It is a requirement of the program that homeowners are required to cooperate with NHSSV and the City to promptly provide information requested by the City when monitoring homeowner occupancy requirements.

Section 4.2: Deed Restriction Defaults

If homeowners are thought to be in default of the occupancy requirement, or any other such violation of their restriction, including first mortgage loan default, NHSSV will work with the homeowner to give them the opportunity to cure the default or the City/NHSSV could choose to exercise its Option to Purchase.

- *Homeowner Occupancy Default Referrals*
  NHSSV and the City will follow up on homeowner occupancy default referrals that are received by outside parties. Such follow up will be made providing that the referral contains at least one item of information that is independently verifiable.

- Notices of Default/Foreclosure
  The BMR program is not intended to allow homeowners to jeopardize (intentional or not) the City's investment in affordable housing. BMR homeowners must remain current on all their mortgage payments.

If a Notice of Default is recorded by a lender against on a home in the BMR program, then the homeowner will be in default of the covenants established in the restriction with the City. NHSSV or the City shall inform the owner of the action that needs to be taken to cure the default, as well as a date to remedy said default and may assist the owner to understand their options. The owner's failure to cure the default may result in the City's enforcement of its right to declare a default and exercise its Option to Purchase.

Section 4.3: Home Maintenance and Insurance Requirements

Most deed restrictions require BMR homeowners to maintain the home in good repair.

Failure by the owner to maintain their home can constitute a default under their deed restrictions and the City may then exercise remedies including exercising the Option to Purchase.

Owners are required to maintain a standard all risk property insurance policy equal to the replacement value of the home (adjust every five (5) years by appraisal, if required by the City), naming the City, and their employees, agents, officers, board members as additional insured.

Section 4.4: Military Leave & Vacated BMR Home Exemption

BMR homeowners who currently serve in the U.S. Armed Forces and are deployed out of state and cannot occupy their BMR home for more than 90 days but less than (3) years will be allowed to rent their BMR home.

BMR homeowner(s) on Military Leave will need to:

- Provide the City with a copy of their deployment orders;
- Follow NHSSV's direction on how to identify and approve a prospective tenant ;
- Sign an amendment to the BMR deed restrictions for rental due to military service with an expiration date which the City will record against said BMR home;
- The income level (as defined by HCD) of the prospective tenant will correspond to the home's BMR income category (as defined by the deed restrictions);
- Contract with a property management company during deployment.
- Will be required to re-occupy the BMR home within 90 days from the end of deployment and provide the City with a copy of any lease/ rental agreement. The lease/ rental agreement may not be for a term in excess of the period of time owner(s) will be deployed out of the area.
- If there is an active lease/ rental agreement between the owner and the tenant, then the owner must wait till the end of the lease agreement to move back in.
- However, upon a mutual agreement between the owner and the tenant, the lease may be terminated at any time. Should there be disagreement between the owner and tenant, the City will refer both owner and tenant to a landlord/ tenant arbitrate, such as

Project Sentinel for further assistance.

Section 4.5: Refinance & Subordination Requests

BMR homeowners may be allowed to refinance their home, provided it is done in accordance with the resale restriction guidelines. BMR refinance and subordination applicants must obtain conventional, fully amortizing, fixed interest rate mortgages with a term of no more than 30 years. No interest only loans, negative amortization loans, balloon payment loans or variable interest rate loans will be allowed. ***No refinance may exceed the restricted re-sale value of the home.***

The City/NHSSV may agree to subordinate the deed restrictions and may require that affordability restrictions be re-recorded if the proposed financing complies with the requirements imposed by the City of Morgan Hill BMR program.

Requests to subordinate the City's BMR deed restrictions must be made to NHSSV (HOO@NHSSV.org) by homeowners. NHSSV will review and approve or deny refinance/subordination requests.

NHSSV approval of subordination requests are subject to the determination that the homeowner is in compliance with program requirements and that the mortgage conforms to the established requirements.

It is important to note that all non-traditional mortgage loan products will not be permitted as part of any refinance. This includes ARM's of any period of time and non-amortizing loans. Therefore, only fully amortized 15-30 year loans will be allowed as part of any refinance and/or subordination approval.

In accordance with a City Council resolution, a subordination request fee will be imposed. The fee must be paid upon subordination application submission to NHSSV.

- *BMR Mortgage Refinance Amount*
  Homeowners must review their deed restrictions to understand their maximum refinance amount. BMR homes can be refinanced up to 95% of their resale value.

  In most cases, the maximum refinance amount is valued at the percentage change in CPI Index between the date the BMR deed restrictions were recorded and the refinance date. In other cases, the refinance amount is valued with the percentage change in the Area Median Income (AMI) between the date the BMR deed restrictions were recorded and refinance date.

  NHSSV will initially asses current BMR value at subordination application and the valuation is valid for six months. BMR valuation for refinance purposes will only be assessed once every six months.

BMR Mortgage Refinancing Requirements
A BMR home that is 100% financed and the owner requests a refinance to substantially reduce the housing payment will be permitted ($200 per month or more).

- *Second Mortgages*
  Second mortgages or lines of equity, except for the Housing Trust Silicon Valley's BMR Re-hab Loan Program, are not allowed under the BMR program.

  For more information about the Housing Trust Silicon Valley's BMR Re-hab Loan Program, please visit their website at www.HTSV.org

- *BMR Homeowner Refinance Reminders*

- Call NHSSV for information and support before talking to a lender about refinancing
- Refinancing is only allowed with prior approval from NHSSV
- Don't lock your interest rate before receiving NHSSV's refinance approval
- Refinance with cash out require a hardship letter for City approval
- The refinance approval process can take up to 3 weeks or more to process
- DO NOT sign loan documents without receiving NHSSV's approval letter; and
- Homeowners may refinance up to 95% of the current BMR value (in accordance with the formula listed in the Resale Agreement)

Section 4.6: Title Transfers - Including Through Inheritance

Homeowners must review their BMR deed restrictions in order to determine if and how their homes' title can transfer.

Homeowners are not permitted to transfer title to anyone unless NHSSV has provided written approval to do so.

In most cases, title transfers can only occur between a husband and wife at marriage or divorce.

Deed restrictions dictate who can inherit the BMR home.

Homeowners with questions should contact NHSSV's Housing Department at HOO@NHSSV.org.

Section 4.7: BMR Capital Improvements & Resale Prices

The value of "capital" improvements on a depreciating scale may be added to the resale price of the home at the time of sale only.

Capital improvements are those that enhance the value of the property (verified by an appraisal) and cannot be removed at time of sale without damage to the premises.

BMR homeowners need to aware that in order for capital improvements to be calculated into the resale value of the home they must:

- Show receipts for items to receive credit (must not be handwritten)
- Understand that capital improvements will not be equaled on a dollar to dollar expenditure
- Provide proof of all required building permits including final inspection
- Show City/NHSSV approval was obtained prior to improvement for which they want credit

Section 4.8: Reselling a BMR Home

BMR homeowners who wish to sell their home before the end of the term of the re-sale restriction are subject to the City's First Right of Refusal and must sell to another BMR program approved buyer.

BMR homes may only be placed on the open market if the deed restrictions have expired.

- *Re-Sale Process*
  Each individual property's BMR deed restriction outlines the BMR resale process. Sellers must comply with all terms and conditions that determine resale process indicated in the home's recorded BMR deed restrictions.

  The first action is usually to notify NHSSV or the City of the intent to sell the BMR home. The "Owner's Notice of Intent to Transfer" must be sent to NHSSV by certified mail with a return receipt requested. Notices are considered effective as of the date received.

  Resale prices are assigned prior to marketing the home and are valid upon initial listing agreement through close of escrow. Re-sale prices will not be reassigned within a current transaction.

- *Real Estate/BMR Transaction Representation*
  NHSSV acts as the exclusive real estate agent for the City of Morgan Hill BMR Program. NHSSV's BMR Real Estate Agent represents BMR buyers and sellers during the BMR transaction process.

- *Real Estate/BMR Transaction Fee*
  Real Estate commission fees are the responsibility of the seller.

- *BMR Resale Price*
  Homeowners must review their deed restrictions to understand their resale price.

  In most cases, resale price is valued at the percentage change in CPI Index between the date the BMR Deed restrictions were recorded and the resale date. In other cases, resale price is valued with the percentage change in the Area Median Income (AMI) between the date the BMR deed restrictions were recorded and resale date.

- *Seller's Responsibilities*
  The seller must review their deed restrictions and follow the procedures indicated in the document to resell their home.

  Seller must make home marketable as needed (This may include carpet cleaning and painting, etc.)

  In accordance with California real estate laws, seller will disclose all aspects of the material facts that could affect a buyer's decision to purchase including but not limited to Homeowners Association (HOA) dues, Mello Roos Assessment District Fees, structural issues, etc.

- *Homeowners of Previously Owned (Resale) BMR Homes*
  Homebuyers for BMR homes that are being resold back into the program will be chosen in the same manner the initial homebuyers were selected.

Appendix A: BMR Program Eligibility Underwriting Guidelines

Household Size

BMR income limits (determined by HCD) are adjusted by household size.

One of the first steps in determining program eligibility is determining the size of a household.

All household members who are not applicants or co-applicants, must be legal dependents and listed as a current dependent of the applicant or co-applicant on federal tax returns.

Household members are required to demonstrate one full year of current joint residency. Acceptable verification of joint residency may be in the form of the following: joint bank accounts or other shared financial history, leases or other evidence of cohabitation, or credit reports showing evidence of joint residency.

Unborn children, foster children, or children who are being pursued for legal custody or adoption cannot be used when determining household size.

- *Shared Custody*
  Children living in the home under shared custody agreements must reside in the house at least 50% of the year to be counted.

- *Divorced Household Members*
  Divorced or legally separated household members must provide a copy of the divorce decree or legal separation documents signed by a court officer and filed with the Court. Otherwise separated married household members must demonstrate at least one year of complete financial and residential separation at time of application for the couple to be considered separate for purposes of determining eligibility. If this cannot be demonstrated, the couple must submit the application as co-applicants.

BMR Household Income

The Morgan Hill BMR program requires that the combined gross income ("Gross income" means all income as defined in California Code of Regulations (CCR) Title 25, Section 6914.) for all household members (as determined by BMR household size) eighteen or older must be included in the determination of income.

- *Projecting Applicant Income*
  BMR programs require that, for the purpose of determining eligibility, NHSSV must project annual income. NHSSV must assume that today's circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary. BMR annual income is the gross amount of income of all household members that is anticipated to be received during the upcoming 12 months..

  At first glance, the income information may seem very basic. NHSSV assesses all the facts underlying the income information collected. We review the basics of how employees are paid - hourly, weekly, monthly, and with or without overtime or bonuses or if on commission. It is important to clarify whether overtime is sporadic or predictable component of an employee's income.

  An annual salary is counted as annual income regardless of the payment schedule. For example, if a teacher's annual salary is $30,000, this is the annual income regardless if the teacher is paid over a 9 or 12 month period.

- *Business Income*
  Net income from a business owned in part or full by a BMR homebuyer will be considered when determining income eligibility.

  Net income is defined as business receipts or sales less expenses plus depreciation that are essential to the operation of the business.

  To estimate current net business income, NHSSV will require the three most recent Federal tax returns. At the discretion of the BMR Underwriter, one full year of business and personal checking, savings, and other investment account statements for all business owners/partners may be requested.

  Applicants must also itemize business expenses that were applied to determine net business income. NHSSV will analyze all tax returns, year-to-date profit and loss statements, account statements, and income/expense forecasts when determining net business income.

  NHSSV reserves the right to request an audited profit and loss statement certified by a licensed Certified Public Accountant at the expense of the applicant and/or co-applicant.

- *Asset Income*
  We also examine all other types of income that come into the household, including asset income.

  When an applicant household has net assets in excess of $5,000, gross income shall include the greater of:

  Actual amount of income, if any, derived from all the net household assets
  Or
  2.5% (passbook rate) of the value of all such assets.

  Household assets are defined as liquid savings accounts, individual retirement, keogh, self-employed SEP accounts and stocks, bonds, and other forms of capital investments. Employer retirement accounts, furniture, or automobiles are excluded.

  Applicants' assets shall only be considered in the transaction for the determination of income eligibility calculation. If assets are less than $5,000, they are not counted in the income eligibility calculation. If assets are $5,000 or above, the income derived from the assets is counted in the income eligibility calculation.

- *Supporting Documentation*
  The BMR program requires that NHSSV determines income eligibility of BMR applicants by examining supporting documentation submitted with application.

  NHSSV will always use third-party verification to provide independent verification of information.

  Third-party employment verifications (Verification of Employment of "VOE") should state whether or not overtime and any other additional income (e.g. bonuses, commissions, cash tips) will continue.

Appendix B – BMR Application Checklist

The following materials may be requested from the applicant(s) and their household members by NHSSV during the application process to determine program eligibility and qualification.

Mortgage pre-approval letter from a NHSSV approved BMR Loan Officer stating the terms of the home loan for which you can qualify. Loan must be for a 30-year fixed loan and include the loan amount, homebuyer' name and address, purchase amount (if known), rate, and expiration date – include full loan amount on FHA & PMI amount	Determines homebuyer mortgage qualification
BMR Application Affidavit (signed by all household members 18 years old and older)	Confirms all adult household members understand the BMR application process & BMR program
Borrower Certification and Authorization (signed by all household members 18 years old and older)	Confirms all adult household members understand how the information in their application will be used to determine eligibility
Attendance at NHSSV BMR Orientation – Homebuyer Opportunities Orientation "HOO"	Verifies applicants completed the required Orientation
Verification of Employment for all adult household members	Third Party Income Verification
Borrower's (person on the loan) credit report	Confirms first time homebuyer status
Federal Tax Returns & W-2's	Analyzes First Time Homebuyer eligibility, household income confirmation, household size confirmation and reviews assets and confirms address
Paycheck Stubs	Assists in determining household earned income and frequency
Proof of Additional Income such as unemployment or other sources (For All Adult Household Members 18 Years Old & Older)	Assists in determining household income and frequency
Alimony or Child Support Documentation – if applicable	Assists in determining household income and frequency
Year-to-Date Profit & Loss Statement (self-employed borrowers)	Analyzes self-employment income
Bank Statements: Checking, Savings, Retirement, Investment, Etc. (For All Adult Household Members 18 Years Old & Older)	Assesses information about assets, deposits, transfers, and payments for BMR income qualification and lending requirements

CA IDs for Adult Household Members 18 Years Old & Older)(front and back) **Copies of Social Security Cards** (For All Household Members) , **Birth certificates** or copy of valid US passport (For All Household Members 17 years old and younger) **Copies of H-1 Visa or Green card** (front and back) (For All Adult Household Members 18 Years Old & Older)	Helps to establish household identity and current address
Divorce Decree or Separation Agreement	Verifies household income, assets and debts
Custody Orders	Verifies custody arrangement for household size
8 Hour Homebuyer Education Certificate - - Email David Kausek for registration info at: dkausek@nhssv.org	Confirms program eligibility
Other Requested Documentation	NHSSV may request additional documentation as necessary to confirm BMR program and first mortgage eligibility and qualification.

Appendix C: Frequently Asked Questions about Program Eligibility

Question: Are mobile homeowners eligible to apply?
Answer: Yes. Those who own mobile homes are not considered home owners under the BMR program and are eligible to participate if they meet eligibility criteria.

Question: Can non-U.S. citizens apply?
Answer: Although proof of U.S. citizenship is not required to apply for the BMR program, non-permanent residents will need to obtain information from their lender on requirements for non-permanent residents to obtain financing.

Question: How much of down payment do I need?
Answer: The BMR program requires a minimum down payment of 3%. The lender may determine an amount above the program's requirement of 3%.
Be aware: this 3% does not include nonrecurring closing costs.

CITY OF MORGAN HILL

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City of Morgan Hill Below Market Rate (BMR) OWNERSHIP Program Participation Guide

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

1.INTRODUCTION

Buying, owning, and selling an Affordable Below Market Rate (BMR) Ownership Unit differs in many ways from buying, owning, and selling a market rate. It is important that the buyers and sellers of BMR Ownership Units understand the rules and procedures of the Program fully.

HouseKeys is the City of Morgan Hill's Affordable Housing Program Administrator. This Program Guide includes the guidelines, policies, and procedures that comprise the affordable homeownership program for below market rate (BMR) homes.

The Program Guide and other relevant information (e.g., Ordinance procedures and income limits) will be amended and updated from time to time, so long as such rules, policies and procedures do not violate any affordable housing laws. All proposed changes are subject to approval by the City Council prior to implementation.

Updates to this Program Guide and other relevant information will be posted on the HouseKeys Website

Please contact the City or HouseKeys regarding any conflicts between this Program Guide, the Developer's Affordable Housing Agreement, the owner's BMR Agreement, and/or the City's recorded documents.

Please contact HouseKeys with any questions or concerns regarding this document or any other question regarding the City's affordable housing program:

Online: http://www.housekeys.org
Email: programs@housekeys.org
Phone: 1-877-460-KEYS (5397)
Address: 17575 Peak Avenue, Morgan Hill, CA 95037

ALL GUIDELINES ARE SUBJECT TO CHANGE

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

HOUSEKEYS HOUSEHOLD PROGRAM DASHBOARD

Information Profiles	**Location Information Center**	**Tools & Calculator**
This is where all the information about you and your household members is stored. This is the information that will be used to complete your program applications and participate in program activities.	The Country, State, Metro Area, County, City and Neighborhood you live in matters a lot. We provide you with location-related information that is relevant to your program eligibility and the application process.	There are lots of calculations involved in an Affordable Homeownership Program. From calculating the income category of your household, to determining your maximum restricted resale price, it's important to understand the math behind these programs.
Education Center	**Program Marketplace**	**Program File Cabinet**
We provide learning tools for you to get the information you need to feel comfortable navigating this complex process.	The program marketplace is where you can shop for ownership, rental, and financing opportunities.	As you start to apply for and participate in program activities, your file cabinet is where you'll track progress, exchange information, and communicate with program administrators.

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

ESTABLISHING AN ACCOUNT IN THE HOUSEKEYS SYSTEM

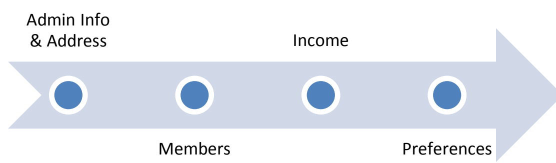
FLOW CHART	ACTION OR MILESTONE	NOTES
1. Sign Up	Start out by using our easy to provide registration form. This collects very basic information from you to establish a User Account.	Complete Sign Up Form

	Last Name, First Name
	Number of People in Household
	Estimated Total Household Income
	Zip Code
	Email Address
	Password

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

2. Complete Registration Wizard



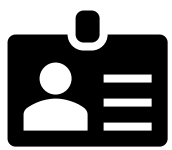
Add to your initial information by drilling down with the details about your address, demographics, household members, income profiles and identify the program criteria that may give you an advantage over other applicants.

Completion of the Wizard will provide you a summary that will let you know your household's income category based on your address.

Once complete, you'll have access to the features of the HouseKeys Platform

Profile	**Location**	**Tools & Planning**
Education Center	**Market Place**	**File Cabinet**

3. Request a Participation I.D.



The Participation I.D. allows the Program Provider and Administrator to match you up with the one of the units in the Program Inventory. It also helps us to track Service Request and Transactions.

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

4. **Open Service Requests**	 **Whether you want to remodel your home, refinance your mortgage, or sell – it all starts with opening a Service Request so that the Administrator can gather the information needed to help you**	

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

2.BACKGROUND

The Residential Development Control System (RDCS) is Morgan Hill's voter-approved growth management system that limits the total amount and 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.

In November of 2016 the voters approved the current version of the RDCS, known as Measure S. This updated RDCS establishes a maximum population limit of 58,200 in 2035 and a maximum of 215 allotments available each year. The updated RDCS continues the requirement that a residential development project compete for allotments each year, predicated upon the City awarding allotments to projects based on established scoring criteria. Affordable Housing is one criterion that is established in the scoring criteria to facilitate and encourage the development of Below Market Rate (BMR) affordable units.

Historically, the City has obtained affordable BMR units as a result of the RDCS competition. The City has since adopted an Inclusionary Housing Ordinance (IHO) No. 2278 on July 25, 2018, increasing the affordability requirements and establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices. The City continues to strive to meet its Affordable Housing Goals.

The Below Market Rate Program or BMR Program provides for the provision of housing units to meet the City's need for low and moderate income housing. The BMR Program assists the City in achieving the goals set forth in the housing element of the general plan.

CITY OF MORGAN HILL

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

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An Affordable Housing Agreement between the City and the housing developer contains provisions, conditions, requirements, restrictions and/or terms required by State law for the affordable housing units. A resale restriction, covenant, deed of trust and/or other documents shall be signed by the homeowner(s) and recorded against each affordable owner-occupied unit for a term of forty-five years and shall be renewed at the change of each title for a period of forty-five years. The resale restriction, and any change in the form of any such documents which materially alters any policy in the documents, shall be approved by the city manager or his or her designee prior to being executed with respect to any residential project. Under the BMR Program, certain residential units are available at an affordable ownership cost for qualified households, whose combined income does not exceed low or moderate income limits. Affordable cost can generally be understood as an average monthly housing cost which does not exceed a specified percentage of area median income limits for the County of Santa Clara. Unlike previous versions of the RDCS, the specific competition criteria are contained in this Competition Manual, not in the RDCS Ordinance itself.

The RDCS Ordinance contains rules and requirements that may only be modified by the voters as well as content that may be modified by the City Council without voter approval. The RDCS Competition Manual contains the criteria and standards that the City of Morgan Hill uses to award residential allotments to projects. These criteria and standards are consistent with the RDCS ballot measure approved by the voters in 2016, the RDCS Ordinance in Division IV of the Morgan Hill Development Code, and with the growth management goals and policies in the General Plan.

In addition to RDCS and Measure S, the City Council adopted a “BMR Program” Housing Ordinance on June 15, 2016, reaffirming the intent of the BMR Program and Administrator’s role. The BMR Ordinance, coupled with the BMR resolution adopted on May 18, 2016 provides the authority and the process for continued implementation of this program. The purpose of the Ordinance was to further formalize the BMR Program, and succinctly codify the following:

- City Manager Authority to respond to Program needs, to approve BMR Program Guidelines and BMR agreements and letters
- Reaffirm the Program Purpose and Intent
- Administrator Role, Duties and Acquisition Authority
- Enforcement of Occupancy and Sale Requirements, Enforcement of Rules Restricting

Owner's ability to sell and finance to ensure that the affordability of the BMR home is preserved, and as BMR homes become available for sale the opportunity is provided to income qualified households

The City has contracted responsibility for administration of the BMR Program and monitoring compliance with the Policies to the Administrator pursuant to a Consultant Agreement. The Administrator has prepared a BMR Ownership Program Guide which further describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Transfers
- Vendors

The Ordinance, the Council approved Policies, any applicable Resolutions, and the Program Guide, each as may be amended from time to time, are collectively referred to as the "Program Documents".

City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

3.PROGRAM PARTICIPATION

The purpose of the Below Market Rate (BMR) program is to provide long-term affordable homeownership opportunities for low and moderate-income households in the City of Morgan Hill. Households that purchase a BMR home will be required to sign affordable housing documents to ensure the home remains affordable, and the homeowner occupies the home, for the entire restricted term (generally 45 years). Homeowners can sell their home at a market rate price at the end of the restricted term (46th year).

Between the time the BMR home is purchased and the 46th year is reached, there may be a series of requests and communications between the homeowner, the City, and the Administrator. These requests and communications can involve compliance certifications, requests to refinance a mortgage, remodeling the home, or initiating a property sale. The rules governing these, and other issues of concern, are outlined in the Resale Restriction Agreements that contain definitions and covenants that determine compliance. Over the past 40 years, the City of Morgan Hill has amassed a Program Portfolio of over 80 development projects containing over 550 BMR Units, each with its own unique agreement.

It is important that any current or prospective BMR homeowner review each Agreement in its entirety to make sure that they understand the conditions and restrictions that they will be expected to adhere to during the Agreement term.

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4.RESALE PRICE DETERMINATION

Each resale restriction agreement has a price determination method that outlines how the resale price is calculated if the City were to exercise its option to purchase the unit, assign its option to a designee or eligible buyer, or instruct the Administrator to facilitate a resale to an eligible purchaser. Each Owner must use the price determination method contained in their agreements unless otherwise instructed by the City. There are five primary ways that resale prices are determined

#	Price Determination Method	Description
1	*Indexed Price Based on Consumer Price Index	Throughout the year, the U.S. Department of Labor's Bureau of Labor Statistics publishes a Consumer Price Index for metropolitan areas throughout the United States. This determination method allows for a resale price that is based on the increase in the Housing Component of the Consumer Price Index based on the month and year of purchase.
2	Indexed Price Based on Area Median Income	Each year, the State of California Department of Housing and Community Development publishes the statewide income limits. This determination method allows for a resale price that is based on an increase in the applicable Median Income based on the year of purchase.
3	Equity Share Agreement	Some Agreements have an Equity Share Provision that is based on the initial subsidy provided by the City or Agency when the BMR Unit was purchased.
4	Forgivable Loan	Agreements that have a promissory note with a forgivable amount of principal and interest in the final years of the agreement term that reduces by a certain percentage each year until there is no balance remaining. This enables the Owner to sell for full price if they remain in the home for the entire term
5	Shared Appreciation	Agreements that require a percentage of the Fair Market Value to be paid to the City as a Share Appreciation Payment. The remaining amount is paid to the City as a Share Appreciation Payment. The remaining amount is paid to the Owner.

***The current price determination method used in resale restriction agreements is the Indexed Price Based on Consumer Price Index.**

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Below Market Rate (BMR) Ownership

5.SALE PROCEEDS AND OWNER'S MINIMUM RETURN ON DOWN PAYMENT

Depending on the Price Determination Method used, the Fair Market Value of the home, and any liens and/or encumbrances recorded (including any interest or fees owed at time of sale), there will be a portion of the sale proceeds that are due to the Owner and a portion of the sale proceeds that are due to the City. The City's portion is considered Program Equity or Public Equity. Provided that the City determines that enough sale proceeds are available and due to the Program, the City can ensure that the Owner receives his or her initial down payment plus an annual return based on the number of years that they occupied the unit. The City can use any one of the price determination methods above or assign a fixed percentage to the minimum return calculation.

For example, if an Owner made a down payment contribution of $20,000 to purchase a BMR home that they went to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a $14,000 ($2,000 x 7 years) return on their initial down payment for a total of $34,000. The City could also base the increase on any of the price determination methods above.

6.AGREEMENT COMPLIANCE AT THE POINT OF SALE OR REFINANCE

All BMR Homeowners must be in good standing with the program at the point that they would like to sell their home or refinance home. If there are outstanding compliance findings, the City reserves the right to reject a request to sell or refinance.

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Below Market Rate (BMR) Ownership

7.OWNERSHIP AND ESTATE PLANNING

New purchasers of BMR Units may not purchase the BMR Unit through a trust of any kind, including but not limited to living trusts. Existing BMR Owners may not transfer ownership of their BMR Units to trusts of any kind, including living trusts.

Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term.

Note: The City is exploring ways to add language to the Participation Guide that addresses Transfers upon death of the Owner. Payable-on-Death (POD) Accounts and Transfer-on-Death (TOD) Deeds are two methodologies that are being explored to provide a path for BMR Owners to designate beneficiaries and avoid having a BMR Unit become part of a probate case.

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City of Morgan Hill Program Participation Guide

Below Market Rate (BMR) Ownership

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8.COMPLIANCE & ANNUAL CERTIFICATION

All BMR homeowners will be re-certified once a year for compliance with their signed and recorded deed restrictions on the property, including but not limited to occupancy, current title, and liens. Homeowners are to provide the program Administrator all documents listed on the program checklist for a full re-certification review.

ANNUAL RE-CERTIFICATIONS	• The Owner will receive an annual notification via US mail for the annual certification process. This notification will include a questionnaire and request for supporting documents (most current utility bill, mortgage statement, and Insurance Declaration's Page). The owner will have 30 days to comply. • If an owner does not comply with the requirements or documentation within 30 days of the recertification notice being sent, a 2nd notice will be sent to comply within 30 days.
CERTIFICATION PROCESS	Once all documents are received, HouseKeys will: • Ensure that there are no inconsistencies between the application file and compliance file that indicate that misinformation or fraud was committed during the application process • Determine if the property is owner occupied and not rented. • Review all liens against the property to ensure the property is not over encumbered. • Review all transfers of title on the property. • Review default of any loans, taxes, or Homeowners Association dues. • Determine if the property is adequately insured and if secondary liens (i.e. down payment assistance loans, city loans or state loans) are referenced on the Insurance Declaration's page.
CERTIFICATE OF COMPLIANCE	• The BMR homeowner will receive a certificate of compliance if the review is approved and in compliance with the above requirements.
ENFORCEMENT	• If the homeowner does not comply after the 2nd notice, the City/Administrator will file a Notice of Default and the homeowner will be notified. • If the homeowner is out of compliance on any of the above requirements, the City/Administrator will give the homeowner 60 days to comply. • Violation of the deed restrictions will cause a Notice of Default to be filed within 60-90 days.

	• The Notice of Default will be recorded against the property if the homeowner is in violation of the deed restrictions. • The City/Administrator will inform the BMR homeowner of any action that needs to be taken to cure the violation. • The City/Administrator will provide the BMR homeowner with assistance to understand their options. • If the owner fails to cure the violation, the City/Administrator will exercise its Option to Purchase the BMR home from the homeowner at the restricted resale price. • **The City/Administrator reserves the option to apply to a court of competent jurisdiction if it deems legal action appropriate**

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Below Market Rate (BMR) Ownership

9.REFINANCE & SUBORDINATIONS REQUESTS

The table below and on the following page outlines the process for refinancing existing City loans or the Deeds of Trust recorded along with the resale restriction agreement.

SUBORDINATION REQUIREMENTS	• BMR homebuyers may be allowed to refinance up to 95% of the Maximum Restricted Sale Price described in the signed deed restriction, or the remaining balance of the loan amount, whichever is less. • combine loan to value (CLTV) for rate & term only • Accrued interest on any subordinate financing will be considered in the CLTV. • HouseKeys will calculate the maximum restricted sale price according to the resale restriction agreement. • The refinance amount cannot exceed the maximum restricted sale price. • If the remaining balance of the original first loan is more than 95% of the maximum restricted sale price, the original loan will need to be paid down. • 80% cash out of the restricted value • No cash out is allowed if there are any City loans. • Pay off of purchase money mortgages are not considered cash out. • Pay off of equity lines or junior financing that are not purchase money loans are considered cash out. • Homeowners cannot add or change names to title without approval of the City/Administrator. Any request to change names on title shall be submitted to the City with supporting documents. • If the requested change is due to marriage, the person being added will need to be on the first mortgage and addendums will need to be signed by that person. • If the requested change is due to divorce, addendums to the subordinate financing and deed restrictions will need to be signed by that person. • A Performance Deed of Trust is required to protect the deed restrictions and will be recorded against the property.

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Below Market Rate (BMR) Ownership

MORTGAGE REQUIREMENTS	• Impound account (taxes & insurance) are required in new mortgage payment • First mortgage loan terms of 30, 20 or 15-year fixed rate fully amortized • Equity lines, lines of credit (HELOCs), etc. or any junior loans are not allowed • Adjustable rate, interest only, negative amortization or balloon payments loans are not allowed • Required to use a loan officer on Administrator approved lender list • Rate and term refinance up to $1,500 maximum cash out • Recurring closing cost will not be allowed to be financed • Non-recurring closing cost will be allowed to be financed as long as the new loan amount does not exceed 90% of the restricted value • Please note: Government-insured loans (e.g. FHA, VA) have historically not allowed their lenders to lend to BMR Buyers and Owners • Escrow will be required to be opened with a Title company in Santa Clara County
REQUEST TO REFINANCE PROCESS (Steps 1 and 2)	• Complete the BMR Homeowners Inquiry Form on the **www.housekeys.org** website. • HouseKeys will calculate the maximum restricted sale price within 10 days of receiving a complete application. However, if more information is needed, the process will be delayed until HouseKeys receives the requested information. • HouseKeys will send out the maximum restricted sale price of the BMR home (valid for 6 months) along with the second step of the process. • Homeowners shall then complete the forms in the 2nd step of the process, including but not limited to submission of signed forms, supporting documents from the check list and the subordination fee.
REQUEST TO REFINANCE - REQUIRED DOCUMENTS	**Applicant Documents** • Signed BMR refinance application • Current mortgage statements with all balances • Current Federal Tax returns • 2 months consecutive paystubs • 2 months current bank statements • Copy of Driver's License and Social Security Card

	• Subordination fee **<u>Lender Documents</u>** • Borrower's authorization • Credit report • 1008 (transmittal) • 1003 (application) • DU (desktop underwriting) • Preliminary Report • Appraisal • Approval letter **<u>Escrow Company Documents</u>** • Estimated Closing statement • Payoff demands
REQUEST TO REFINANCE - UNDERWRITING	Once all documents are received, HouseKeys will: • Determine if the refinance is in compliance with the deed restrictions and not over encumbered to restricted value. • Determine if the borrower is in a better financial situation with the new refinance terms. • Determine whether all requirements have been met. • Review any additional liens on the property. • Determine whether all existing loans, HOA dues and taxes are current. If not current, the application will be rejected. • Once approved, subordination documents and escrow instructions will be drawn then routed to the City for signatures.

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Below Market Rate (BMR) Ownership

10.CAPITAL IMPROVEMENTS AND SPECIAL ASSESSMENTS

BMR Units may begin claiming capital improvements toward their Maximum Resale Price that are made no sooner than 7 years after the BMR Unit was first occupied.

Once the BMR Unit becomes eligible for capital improvements credit, BMR Owners may begin submitting documentation of completed work. City or Administrator will review all capital improvement claims and categorize them into three distinct categories:

1. Eligible Capital Improvements	Major structural system upgrades, new additions to the BMR Unit and improvements related to increasing the health, safety and energy efficiency of the property. Improvements that meet these criteria will be given 100% credit
2. Eligible Replacement and Repair	Eligible Replacement and Repair includes in-kind replacement of existing amenities, repairs and general maintenance that keeps the property in good working condition. Costs that meet these criteria will be given 50% credit for repairs
3. Ineligible Costs	Cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures. Homeowners may undertake these projects at their discretion, however they will not be given capital improvements credit.

Procedure for Submitting Capital Improvements

BMR Owners must submit capital improvements to Administrator for review within 6-months of the completion of the project. In order to document the improvements, each BMR Owner must submit the following documentation: (1) A list of the capital improvements with a description on a form provided by Administrator: (2) The receipt and invoice for each eligible improvement; (3) Proof of payment, such as a cancelled check, bank account statement or credit card bill; (4) A copy of site or building permits, if required; and (5) Contractor's license number for Projects exceeding $500. Upon receipt of a complete capital improvements claim, Administrator staff may arrange a site visit to inspect the completed Project.

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Once the improvements have been verified, Administrator will send a written response to approve or deny the submitted capital improvements within 60 days of original receipt. This information will be placed in the property file at the City for use when the property is being sold.

Special Assessments Homeowner's Association initiated special assessments are considered capital improvements and will be added to the resale price of the home at the full amount of the special assessment paid by the BMR Owner. In order to receive credit for special assessments, homeowners must submit the following documentation within 6-months of payment: (1) An invoice for the special assessment; and (2) Proof of payment, such as a cancelled check, bank account statement or credit card bill.

Capital Improvements Cap

At the time of sale, City will cap all eligible capital improvements at 10% of the resale price. This is to preserve the affordability of the BMR unit.

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Below Market Rate (BMR) Ownership

11.TRANSFERS

The table below, and on the following page, outlines the process for transferring or changing ownership of the BMR home.

OWNERSHIP CHANGES	• Homeowners must review their BMR deed restrictions in order to determine it title can be transferred.
	• Outside of divorce, marriage or name change, the new owner will need to be eligible and qualified for the BMR program.
	• Written approval from the City/Administrator is required.
	• Changes are not permitted if the homeowner has violated any of their Deed Restrictions.
	• Any request to remove, add, or otherwise change ownership of the BMR home shall be accompanied by the following documents:
	  • Divorce: Copy of court order
	  • Name change: Copy of legal documents
	  • Marriage: Copy of Marriage Certificate
	  • New ownership: All required documents per HouseKeys
	• Trusts are not allowed.
	• Inheritance is not permitted, unless otherwise allowed per the deed restrictions.

RE-SALES	• The homeowner shall complete a ticket (request) on the HouseKeys website to begin the process for potential resale.
	• Once all required documents have been received, HouseKeys will:
	  • Review the deed restrictions along with any liens recorded on the property.
	  • Assignment of Option is required if owners wants to continue with sale
	  • Complete an initial walk-through of the property, to determine the amount of work needed to sell the BMR home.
	  • Schedule inspections of the property (contractors, appraiser, vendors, etc.)
	  • Obtain a preliminary quote from vendors.

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	• Review quotes and schedule a walk-through of the property with the City. • Adjust contractor/vendor bids, if needed, and obtain a final quote for property improvements. • Obtain approval of the quote from the City. • Calculate the Maximum Restricted Sale Price per the deed restrictions, accounting for all required and approved improvements to the property. • Create the listing agreement or purchase agreement if needed. • Prepare the property for resale through the Lottery/Opportunity Drawing process. • All real estate/transaction fees are the responsibility of the seller. • The owner shall sign the Property Pricing form and Opportunity documents.

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12.VENDORS

All vendors listed below shall be approved by City or Administrator. The table below outlines the minimum requirements for any vendor associated with resale of the property:

CONTRACTORS	• Contractors shall have a valid California Contractor License. Please note that anyone who contracts for or bids on a job that totals $500 or more (labor and materials) must hold a license.
LENDER/LOAN OFFICERS	• Loan Officers shall have previously attended HouseKeys loan officer orientation class. • The Lender's legal department shall approve all BMR documents prior to resale.
TITLE COMPANY	• The Title Company shall be based in Northern California and preferably in the County of Santa Clara.
APPRAISER	• Appraisers shall have a valid California State Certification or California State License that has not expired.

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OWNERSHIP
Program Application Guide

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Below Market Rate (BMR) Ownership

1.INTRODUCTION

Buying, owning, and selling an Affordable Below Market Rate (BMR) Ownership Unit differs in many ways from buying, owning, and selling a market rate. It is important that the buyers and sellers of BMR Ownership Units understand the rules and procedures of the Program fully.

HouseKeys is the City of Morgan Hill's Affordable Housing Program Administrator. This Program Guide includes the guidelines, policies, and procedures that comprise the affordable homeownership program for below market rate (BMR) homes.

The Program Guide and other relevant information (e.g., Ordinance procedures and income limits) will be amended and updated from time to time, so long as such rules, policies and procedures do not violate any affordable housing laws. All proposed changes are subject to approval by the City Council prior to implementation.

Updates to this Program Guide and other relevant information will be posted on the HouseKeys Website

Please contact the City or HouseKeys regarding any conflicts between this Program Guide, the Developer's Affordable Housing Agreement, the owner's BMR Agreement, and/or the City's recorded documents.

Please contact HouseKeys with any questions or concerns regarding this document or any other question regarding the City's affordable housing program:

Online:http://www.housekeys.org
Email: programs@housekeys.org
Phone: 1-877-460-KEYS (5397)
Address: 17575 Peak Avenue, Morgan Hill, CA 95037

ALL GUIDELINES ARE SUBJECT TO CHANGE.

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Below Market Rate (BMR) Ownership

2.HOUSEKEYS HOUSEHOLD PROGRAM DASHBOARD [CHART 1]

Information Profiles	Location Information Center	Tools & Calculator
Information Profiles are used to gather important facts that determine your eligibility and qualification. These profiles will be used to complete your program applications and participate in program activities.	The Country, State, Metro Area, County, City and Neighborhood you live in matters a lot. We provide you with location-related information that is relevant to your program eligibility and the application process.	There are lots of calculations involved in an Affordable Homeownership Program. From calculating the income category of your household, to determining your maximum restricted resale price, it's important to understand the math behind these programs.
Education Center	**Program Marketplace**	**Program File Cabinet**
We provide learning tools for you to get the information you need to feel comfortable navigating this complex process.	The program marketplace is where you can shop for ownership, rental, and financing opportunities.	As you start to apply for and participate in program activities, your file cabinet is where you'll track progress, exchange information, and communicate with program administrators.

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Below Market Rate (BMR) Ownership

3.ESTABLISHING AN ACCOUNT IN THE HOUSEKEYS SYSTEM [CHART 2]

<table>
<tr><th>FLOW CHART</th><th>ACTION OR MILESTONE</th><th>NOTES</th></tr>
<tr>
<td>1. Sign Up</td>
<td>Start out by using our simple registration form. This collects very basic information from you to establish a User Account.
<table>
<tr><td></td><td>Last Name, First Name</td></tr>
<tr><td></td><td>Number of People in Household</td></tr>
<tr><td></td><td>Estimated Total Household Income</td></tr>
<tr><td></td><td>Zip Code</td></tr>
<tr><td></td><td>Email Address</td></tr>
<tr><td></td><td>Password</td></tr>
</table>
</td>
<td>Complete Sign Up Form</td>
</tr>
</table>

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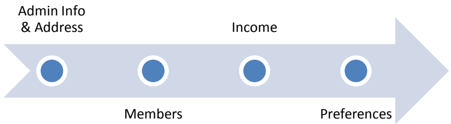
Below Market Rate (BMR) Ownership

<table>
<tr>
<td>2. Complete Registration Wizard</td>
<td>

Add to your initial information by drilling down with the details about your address, household members, income profiles, and identify the potential preference criteria that may rank your application higher than others.</td>
<td>Completion of the Wizard will provide you a summary that will let you know your household's income category based on your address.

Once complete, you'll have access to the features of the HouseKeys Platform
<table>
<tr><td>Profile</td><td>Location</td><td>Tools & Planning</td></tr>
<tr><td>Education Center</td><td>Market Place</td><td>File Cabinet</td></tr>
</table></td>
</tr>
<tr>
<td>3. Browse the Marketplace</td>
<td>
The Marketplace allows you to shop for Opportunities provided by Ownership, Rental and Finance Programs.</td>
<td>Browse the Marketplace, find a program that interests you. Make sure to read the Program Profile and get an understanding for how it works, the intent, the rules and the process.</td>
</tr>
</table>

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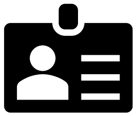
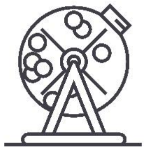
4. **Request an Application I.D.**	 **The Application I.D. allows the Program Provider and Administrator to identify your household as a prospective applicant household. It also puts you on the notification list to receive information and updates.**	
5. **Find an Opportunity and Enter an Opportunity Drawing**	 **Each Opportunity is placed into an Opportunity Drawing that allows us to facilitate multi-applicant interest. Application I.D.s are prioritized through a Lottery Process where I.D.s are blindly chosen by an Official of the City or Administrator.**	

City of Morgan Hill Program Guide
Below Market Rate (BMR) Ownership

4.PROGRAM BACKGROUND

The Residential Development Control System (RDCS) is Morgan Hill's voter-approved growth management system that limits the total amount and 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.

In November of 2016 the voters approved the current version of the RDCS, known as Measure S. This updated RDCS establishes a maximum population limit of 58,200 in 2035 and a maximum of 215 allotments available each year. The updated RDCS continues the requirement that a residential development project compete for allotments each year, predicated upon the City awarding allotments to projects based on established scoring criteria. Affordable Housing is one criterion that is established in the scoring criteria to facilitate and encourage the development of Below Market Rate (BMR) affordable units.

Historically, the City has obtained affordable BMR units as a result of the RDCS competition. The City has since adopted an Inclusionary Housing Ordinance (IHO) No. 2278 on July 25, 2018, increasing the affordability requirements and establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices. The City continues to strive to meet its Affordable Housing Goals.

The Below Market Rate Program or BMR Program provides for the provision of housing units to meet the City's need for low and moderate income housing. The BMR Program assists the City in achieving the goals set forth in the housing element of the general plan. An Affordable Housing Agreement between the City and the housing developer contains provisions, conditions, requirements, restrictions and/or terms required by State law for the affordable housing units. A resale restriction, covenant, deed of trust and/or other documents shall be signed by the homeowner(s) and recorded against each affordable owner-occupied unit for a term of forty-five years and shall be renewed at the change of each title for a period of forty-five years. The resale restriction, and any change in the form of any such documents which materially alters any policy in the documents, shall be approved by the city manager or his or her designee prior to being executed with respect to any residential project.

Under the BMR Program, certain residential units are available at an affordable ownership cost for qualified households, whose combined income does not exceed low or moderate income limits. Affordable cost can generally be understood as an average monthly housing cost which does not exceed a specified percentage of area median income limits for the County of Santa Clara. Unlike previous versions of the RDCS, the specific competition criteria is contained in this Competition Manual, not in the RDCS Ordinance itself.

The RDCS Ordinance contains rules and requirements that may only be modified by the voters as well as content that may be modified by the City Council without voter approval. The RDCS Competition Manual contains the criteria and standards that the City of Morgan Hill uses to award residential allotments to projects. These criteria and standards are consistent with the RDCS ballot measure approved by the voters in 2016, the RDCS Ordinance in Division IV of the Morgan Hill Development Code, and with the growth management goals and policies in the General Plan.

In addition to RDCS and Measure S, the City Council adopted a “BMR Program” Housing Ordinance on June 15, 2016 on, reaffirming the intent of the BMR Program and Administrator’s role. The BMR Ordinance, coupled with the BMR resolution adopted on May 18, 2016 provides the authority and the process for continued implementation of this program. The purpose of the Ordinance was to further formalize the BMR Program, and succinctly codify the following:

- City Manager Authority to respond to Program needs, to approve BMR Program Guidelines and BMR agreements and letters
- Reaffirm the Program Purpose and Intent
- Administrator Role, Duties and Acquisition Authority
- Enforcement of Occupancy and Sale Requirements, Enforcement of Rules Restricting

Owner's ability to sell and finance to ensure that the affordability of the BMR home is preserved, and as BMR homes become available for sale the opportunity is provided to income qualified households

The City has contracted responsibility for administration of the BMR Program and monitoring compliance with the Policies to the Administrator pursuant to a Consultant Agreement. The Administrator has prepared a BMR Ownership Program Application Guide which further describes the policies and procedures for a prospective BMR homeowner who is considering the BMR Program Application Process, including:

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

The Ordinance, the Council approved Policies, any applicable Resolutions, and the Program Guide, each as may be amended from time to time, are collectively referred to as the "Program Documents".

5. THE PROGRAM OPPORTUNITY

The purpose of the Below Market Rate (BMR) program is to provide long-term affordable homeownership opportunities for low and moderate-income households in the City of Morgan Hill. Households that purchase a BMR home will be required to sign affordable housing documents (described on page 6) to ensure the home remains affordable, and the homeowner occupies the home, for the entire restricted term (generally 45 years). Homeowners can sell their home at a market rate price at the end of the restricted term (46th year).

As agreed to in the affordable housing documents, a homeowner may choose to sell the BMR home during the term of the restriction. The City of Morgan Hill (or Administrator) will either purchase the BMR home for the Maximum Restricted Resale Price or assign the BMR home to another eligible buyer for purchase.

The City is not obligated to exercise its Option to Purchase but the seller is obligated to give the City the option to do so.

6. APPLICATION PROCESS AND APPLICANT SELECTION / OPPORTUNITY DRAWINGS

Home purchase Opportunities, either for new construction or resale homes, are marketed through an Opportunity Drawing. Applicant Households enter an Opportunity Drawing using their Application ID number. When an Opportunity becomes available, HouseKeys will use the methods outlined below to determine the order in which Application IDs and files will be ranked and organized for review. It is the applicant Household's responsibility to follow all instructions in each Opportunity Drawing, based on the method used. Each Opportunity Drawing announcement will include the Application ID selection method, file submission instructions, and one or more deadlines that the applicant Household must meet.

In all instances, the live in / work in Morgan Hill preference (described on page X) will be used and verified by HouseKeys during the application process. Applicant Households that do not meet the stated preference criteria will be notified and assigned a ranking below that of the applicant Households that meet the Preference Standards. If none of the Application ID holders meeting Preference Standards are approved, then non-Preference Application ID will have their files requested and processed.

In some cases, the Opportunity Drawing will remain open until the unit(s) is/are sold. Anyone who enters their Application ID into an Opportunity Drawing after the first deadline will be added to the end of the list using the time and date stamp of their Opportunity Drawing entry.

Only one (1) Opportunity Drawing entry per applicant Household is allowed at the same time. If an applicant Household has entered more than one drawing, the lowest ranked submission will be chosen. Applicant Households can opt-out of any drawing if the "opt out form" is submitted before an applicant Household enters another drawing.

Ranking and file request numbers are issued to set the processing order. Each Opportunity Drawing has its own ranking and file request numbers. A new ranking and file request number will be issued every time an applicant Household participates in a new Opportunity Drawing (if their name is selected during the Opportunity Drawing). Ranking, file request, and Application ID numbers are not transferable.

6A. APPLICATION FILE HANDLING

Changing an Application after Submission

No Application changes shall be allowed after an application is submitted and after an application deadline has passed unless the change is (1) the removal of an applicant, (2) the addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of an adoption or new guardianship; (3) an update of income qualification, such as a new job or a job that has ended; or (4) correction of technical errors, such as current phone number or other non-qualifying information.

Application Review Period

An application for a BMR Unit must be reviewed and approved for income qualification within one hundred and twenty (120) days prior to the Close of Escrow of a BMR Unit

Request for Application Reconsideration

An Applicant requesting reconsideration of a denial or disqualified application shall submit new information or documentation contesting the disqualification to Administrator within 3 business days from the date of the denial or disqualification letter and Administrator shall respond by the end of the seven (7) business day period from the date of the request date. In the case of such request, and when such a unit is available, the Administrator shall make a good-faith effort to maintain one appropriately sized BMR Unit for the disqualified Household for seven (7) business days from the date of the issuance of the disqualification letter but need not hold the applicant's preferred BMR Unit.

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6B. APPLICATION PROCESS

The application process is summarized in the table below and on the following page:

ORIENTATION	• All applicants, co-applicants, married couples, domestic partners, and any person that can or will be on the title of the home, must complete the Home Buyer Orientation before being eligible to participate in an Opportunity Drawing.
APPLICATION ID	• The information you provide will be screened. If it is determined that you are authorized to continue the application process, you will receive an Application ID Number. • Manually issued Application ID Numbers can take approximately 12-14 business days. • Automatically issued Application ID Numbers are issued within 24 hours • An Application ID does not mean you are eligible or approved for the program. It provides the applicant Household with the ability to enter Opportunity Drawings.
MORTGAGE APPLICATION & APPROVAL PACKAGE	• Contact a Loan Officer that has been approved by HouseKeys to lend on BMR Restricted Properties. • Obtain a completed Uniform Residential Loan Application • Obtain a completed Uniform Underwriting and Transmittal Summary • Obtain a Mortgage Pre-Approval Letter, on Mortgage Company Letterhead, with Loan Officer Name, Email, and National Multistate Licensing System (NMLS) identification number
PROGRAM APPLICATION PACKAGE COMPLETION	• Complete the BMR application, Exhibits, Disclosures and BMR Forms with current information to the best of your ability. This information shall be updated with current balances and numbers upon request by HouseKeys. • Gather, organize and package all items listed on the HouseKeys BMR Document Checklist.

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6B. APPLICATION PROCESS (CONTINUED)

PROGRAM APPLICATION PACKAGE SUBMISSION	• The Opportunity Drawing terms will indicate when, where, and how the Program Application Package needs to be submitted. • Submit a **complete** Program Application Package, including exhibits and the supporting documents listed on the document check list, to HouseKeys by the deadline stated in the Opportunity Drawing Notification. • Make sure to include the Mortgage Application & Approval Package (see above) • Documentation needs to be dated within 30 days of submission. • Applicants/Co-applicants, and or household members who submit inaccurate information, altered documentation, or false documentation or certifications, will be disqualified.
REVIEW	• The application package will be reviewed, and if complete, will be submitted to the underwriter for review • If the application is incomplete or the applicant is ineligible, an adverse action notice will be sent out with the reason for the rejection. The appeal process is explained below. • Program Application Packages submitted after the Opportunity Drawing deadline will be declined and HouseKeys will move on to the next Application ID holder.
APPEAL PROCESS	• If the applicant does not agree with the Processor or Underwriter decision, the applicant Household will have 3 business days to appeal. The applicant Household will need to submit clear and sufficient documentation, along with an appeal form that details why they feel the decision is inaccurate, within the timeframe given. • HouseKeys Management will review the Appeal and all documentation. • HouseKeys will contact the applicant of the status of the appeal approximately 15 business days from the date the complete Appeal Package was submitted. • HouseKeys is unable to hold properties for households in the application or appeal process. HouseKeys will move on to the next Application ID holder.

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6C. APPLICANT SELECTION / OPPORTUNITY DRAWING METHODS:

OPPORTUNITY DRAWINGS	• Follow the instructions and review the terms in each Opportunity Drawing Notification • Applicants can only apply for one Opportunity Drawing at any one time. • Incomplete or outdated applications will not be considered. • If there is another Opportunity Drawing available at the same time, the applicant can opt out of one Opportunity Drawing to enter another, if it is done before the Opportunity Drawing submission deadline. If a household applies for two opportunities at the same time, and obtains two priority numbers, the applicant will be assigned the lower priority number.
METHOD 1: **LOTTERY SELECTION AND ASSIGNMENT**	All applicant Households that enter their Application ID numbers into an Opportunity Drawing by the deadline will receive an Application ID ranking. If a Lottery is held, Application IDs will be chosen at random and assigned an Unfiltered Ranking number based on the order in which they were drawn. Each Application ID on the Unfiltered Ranking list will be re-ordered to account for the Live/Work Preference and a new ranking list Filtered by Live/Work Preference will be created. The Unfiltered Ranking number becomes the tie breaker between households with the same preference category. **Please note:** Applicant Households who do not meet the Occupancy Standard will be assigned a lower priority number, regardless of lottery placement, or other eligibility criteria (e.g., FTHB).
METHOD 2: **FORM SUBMITTAL DATE TIE-BREAKER**	All applicant Households that enter their Application ID numbers into an Opportunity Drawing by the deadline will receive an Application ID ranking. The Unfiltered Ranking in this method, is based on the time and date stamp that their entry form was completed. As with Method 1, the Unfiltered Ranking number list is re-ordered based on Live/Work Preference and the Unfiltered Ranking number is used as the tie breaker between households with the same preference category. **Please Note:** Applicant Households that don't meet the Occupancy Standard will be ranked last

7.THE APPLICATION FILE STRUCTURE & APPLICATION CRITERIA

Program Eligibility and Qualification Criteria

The primary role of a Program Administrator is to determine the eligibility and qualification of applicant Households. A Program Processor serves the role of gathering the documents needed to evaluate the application and a Program Underwriter reviews the application to determine if it meets program requirements.

It is important to understand that there is a lot of information needed to determine whether an application meets all the program requirements. The application criteria used to determine whether an applicant Household will be approved fall into one of two categories:

- **Program Eligibility Criteria:** These are standards that define the characteristics of the target households who are best served by the program and help the program provider meet its intended goals. These standards often follow legal definitions and published documentation requirements. Underwriters evaluate Program Eligibility Criteria to determine if households "check eligibility boxes" that include, but are not limited to, residence address, employment address, household size requirements, total household income requirements, and whether an applicant meets the legal standard to be defined as a first-time homebuyer. Program Underwriters need to consider program eligibility for up to three years before the application date and up to a year after the estimated close of escrow date[1].

- **Program Qualification Criteria:** Once it is determined that an applicant is eligible for the program, the Program Underwriter must also make sure that the home purchase is affordable for the applicant and that they are mortgage and home-purchase ready. In addition to requiring applicants attend first-time homebuyer classes, an underwriter will evaluate the application to ensure successful and sustainable homeownership.

[1] "Up to three years" speaks to the First-Time Homebuyer Status that is typically verified using 3 years of tax returns. Since Total Household Income is projected forward, it's important to understand that the Program Underwriter is considering income circumstances going forward one year.

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8.EDUCATION, TITLE AND MORTGAGE REQUIREMENTS

First-Time Homebuyer Education Workshop Requirement

All adult applicants age 18 and older must attend and complete a first-time homebuyer education workshop and receive a certificate of completion from a HUD and Administrator-approved First-Time Homebuyer Education Provider before going into contract on a BMR Unit. A copy of the certificate of completion is required and certificates will be accepted for up to two years after completion.

Title Requirements

All adult Household members must appear as an owner or co-owner on the BMR Unit title, must co-sign for any purchase loan, and sign all affordable housing documents (as defined on page 2) for the BMR Unit with the following exceptions:

1. Legal dependents of titleholders as claimed on the most recent federal income tax return or legal minor children of titleholders. Spouses or Domestic Partners are not considered dependents;
2. Household members younger than age 24 who are the child of a titleholder who will reside in the BMR Unit as their primary residence, regardless of being named as a dependent on the federal tax form of a titleholder; and
3. Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation of the reason for a loan denial, including a copy of applicant's credit report.

Mortgage Loan Requirements

The applicant Household must obtain a loan pre-approval from an Administrator-approved Lender to enter an Opportunity Drawing. Applicant Household must have acceptable payment-to-income ratios and show enough liquid assets (e.g. cash) to successfully close on the proposed home purchase. Any down payment assistance or closing cost assistance that will be used will need to have a written pre-approval from the program provider as well.

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9.ELIGIBILITY AND PREFERENCE CRITERIA FOR OWNERSHIP OF BMR UNITS

The City has established a priority system for allocating the limited number of affordable ownership units. Priority shall be given to income eligible residents who live in Morgan Hill or employees of companies located within the City limits.

The preference system will be used to establish a ranking of applicants. An eligible household will be ranked according to where they live or work. While an applicant who lives or works within the city limits will have priority over an applicant who does not, residency/employment status is not a requirement for the program, and all individuals and households may apply. Households comprised of applicants who do not reside or work in Morgan Hill may occupy a BMR unit if there are no eligible Morgan Hill residents or local employees on the eligibility list for occupancy.

8A. BMR PREFERENCE CRITERIA [CHART 3]	
Priority: Live in Morgan Hill	Must have lived in Morgan Hill for at least 6-months*
Priority: Work in Morgan Hill	Must work at a business located in Morgan Hill at least 20-hours per week for at least 6-months* *This category includes employees of the Morgan Hill School District even though their physical office or school building may be located outside of City limits.

*Eligibility will be evaluated at the time of Opportunity Drawing submission and verified again prior to occupancy

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9B. OCCUPANCY STANDARDS FOR BMR UNITS

Applicant/Co-Applicants must occupy the property as their principal residence. This means that the Applicant/Co-Applicants must use the property as their primary place of residence and the property must be owner-occupied upon purchase for the life of the deed restrictions. Use of the property for additional ownership purposes, including temporary leases, sub-leasing or room rentals are not allowed under the program and will trigger immediate action.

To ensure that the City's limited BMR homes are used efficiently, a household must be of a size equal to the number of bedrooms in the BMR unit. Pursuant to fair housing laws, the maximum occupancy allowed in a BMR unit is two people per bedroom, plus one additional person. The table below shows the minimum and maximum household size based on the number of bedrooms. In some cases, an exception to the minimum standard may be made where no other qualified buyers can be approved within 30-days of holding the lottery.

The City's BMR Administrator will verify household occupancy once per year for the life of the 45-year BMR Agreement between the City and the homeowner(s).

BMR OCCUPANCY STANDARDS [CHART 4]

Number of Bedrooms	Minimum Household Size	Maximum Household Size
One	1	3
Two	2	5
Three	3	7
Four	4	9
Five	5	11

9C. INCOME ELIGIBILITY CRITERIA

Eligibility income limits are based on household size (number of persons in the household) and a percentage of the Santa Clara County Area Median Income[2] (AMI) published by the California Department of Housing and Community Development (HCD). In Morgan Hill, the very low-income limit is 50% of AMI, low income limit is 80% of AMI, and moderate income is 120% of AMI. Income limits are updated annually and published on the HCD website as well as the City of Morgan Hill website and should be used to determine which income level your household falls under.

Income earned from assets, such as dividends, interest, rental income, business income, etc., is included in the household's annual income pursuant to the Code of Federal Regulations, Title 24, Part 5 income inclusions (§ 5.609). Income calculation is also guided by California Code of Regulations, Title 25, Chapter 6.5 Program Operations, Gross Income (§ 6914). To qualify for the City of Morgan Hill BMR Program, your household's combined gross annual income cannot exceed the maximum income limit for your household size, as established by the HCD. All household members ages 18 or older must have their income verified. Household members that do not work or will not have any income in the next 12 months must complete a zero-income affidavit.

Note: The income categories for a particular development may vary in accordance with the affordable Housing Agreement.

Commented [j1]: The Code of Federal Regulations – Ti Housing & Community Development, **Subtitle A**: Office of Secretary..., **Part 5**: General HUD Program Requirements, **Subchapter F**: Section 8 and Public Housing..., **Section 5.60** Annual Income

[2] Area Median Income (AMI) means that half of all household incomes in the county are above AMI and half of household incomes are below AMI.

9D. ASSET LIMITATION CRITERIA

In addition to meeting the income limit, there are restrictions on the amount of assets that a household may have to be eligible for the City of Morgan Hill's BMR Program. For households applying to be an owner of a BMR unit, the limit is 50% of household AMI plus the down-payment up to 20% of the BMR price, post-closing (after the close of escrow). So for example, the asset limitation for a 4-person household purchasing a 3-bedroom moderate income home with a 20% down payment would be approximately $185,000 where AMI is $150,000 and the BMR price is $550,000[3].

ASSET LIMITATION EXAMPLE [CHART 5]		
Asset limit = 50% of household AMI plus the down-payment up to 20% of the BMR price		
Maximum Household Income	Example Purchase Price	**Example Asset Limit**
$150,000	$550,000	**$185,000**
50% = $75,000	20% = $110,000	**$75,000 + $110,000**

The City will review household income and assets for all owner-occupants, temporary occupants, and other occupants, regardless of such household member's interest in purchasing or occupying a BMR home. To determine total household assets, HouseKeys will review the household's total assets according to monthly financial statements and/or other valuations. Up to a three-month average will be calculated just prior to Program application to determine eligibility and avoid applicant "asset dumping" (asset liquidation or transfer to other parties). Assets held in IRS-recognized retirement accounts (401-k's, IRA's, etc.) are not included for the purpose of determining whether an Applicant meets the Program asset limits. However, retirement and insurance payments will be used to determine gross household income.

There is a minimum loan amount of 60% of the purchase price. So, for example, with a Sales Price of $550,000 the first loan amount cannot be lower than $330,000. All-cash purchase escrows will not be allowed.

[3] Numbers are rounded for simplicity. 20% *of* the 550,000 BMR Home Purchase Price = $110,000; 50% *of* the $150,000 Example for Median Income = $75,000; *$110,000 + $75,000 = $185,000 in total liquid assets allowed as projected to be remaining after close of escrow*.

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9E. FIRST-TIME HOME BUYER (FTHB) CRITERIA

To be eligible for the City of Morgan Hill's BMR homeownership program, all household members on Title must be a first-time homebuyer, except as provided below. A first-time home buyer (FTHB) is an individual who has NOT had an ownership interest in a home in the three years immediately preceding their application date, except as follows:

(1) A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family; or

(2) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or

Notwithstanding the forgoing, the following interests shall not by themselves, disqualify an applicant from falling within the definition of first time home buyer:

- Applicants who own a mobile home are not considered home owners under the BMR program and are eligible to participate. However, if the mobile home unit is not sold and is retained by the homeowner, the property will be included in asset income calculations along with any rental income.
- Ownership in timeshares.
- Beneficiary of a trust for which the trustor/trustee is still living.
- Ownership of shares in a limited equity co-op.

9E. FIRST-TIME HOME BUYER (FTHB) CRITERIA (CONTINUED)

To verify FTHB status, HouseKeys will review 3 years of federal tax returns to confirm that the applicant has not claimed any of the tax deductions associated with homeownership (e.g. deductions of mortgage interest or property tax payments). If not legally obligated to file, the applicant must complete a Jurat explaining the reason along with supporting documents. HouseKeys will also review a credit report for mortgage loans and perform title searches to confirm the applicant is not an owner of record on any existing properties for at least 3 years. The applicant must not be on title for any housing unit at all, whether they live in the unit or not. Other documentation may be requested to determine first time homebuyer status.

10. HOUSEKEYS HOUSEHOLD INFORMATION PROFILES

As Program Administrator, HouseKeys prepares applicant Households for the process through orientation classes that introduce the Program and help applicant Households build an application packet using **Household Information Profiles**.

HouseKeys breaks the application packet into 10 **Household Information Profiles** to help applicants organize their application files and prepare for the application process.

INFORMATION PROFILES [CHART 6]			
#	**Information Profile Name**	**Description**	**Purpose**
1	**Location Profile**	**Where you live and where you work**	**The address where you live, and work is an important factor in determining your eligibility. The county you presently live in, or may be moving to, is often used to determine how to categorize your household.**
2	**Member Profile**	**The people who live in your housing unit**	**The number of people in your household determines your household size and household size is used to determine income category.**
3	**Income Profile**	**Documenting the total income of all household members.**	**Income documentation is required by all household members who are 18 years of age or older**
4	**Expense Profile**	**Documenting monthly expense obligations**	**It's important to ensure that your total monthly expenses show that you can afford the new home purchase and total housing payment**
5	**Asset Profile**	**Down Payment and other Assets**	**You need to document your down payment and the remaining assets that you'll have after the home purchase is finalized. Please note that Assets are included in income calculations using the income shown on statements or calculations used by the Program Underwriter.**

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10. Household Information Profiles (continued)

6	Liability Profile	Your Debt	Your debt adds to monthly expenses and the maximum mortgage debt that you can afford is an important qualification factor
7	Credit Profile	Your Credit Score	All three credit bureaus (Equifax, Experian, and TransUnion) are evaluated to ensure you meet minimum credit requirements
8	Public Record Profile	Collections, Liens, Bankruptcies and Foreclosures	These are evaluated to determine whether or not there is any risk that the finalization of the new home purchase will alert creditors to attach liens to the property
9	Demographics Profile	Applicant Characteristics	Demographic information is critical to ensure fair housing compliance and to track how Program Providers are meeting their housing goals.
10	Program Preference Profile	Program Factors that determine Applicant Priority	While all applicants may apply for a housing program, applicants that live and work where the program is located are prioritized.

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11. APPLICATION CRITERIA – ENTERING HOUSEHOLD INFORMATION INTO THE PROGRAM APPLICATION

11A. Household Size, Location & Member Identification

The Household Location and Member Profiles capture the basic information used by the Program Underwriter to determine who is part of the household and which members will become the title-holding homeowners.

Information Profile	Criteria	Criteria Description
Location Profile	**Verification of Residence Location**	• At least one member of the applicant Household must provide the following proof of residency o One utility bill with a Morgan Hill address dated within 45 days preceding the application date for the BMR Unit. Utility bills can include gas, electric, garbage, or water; or: o Current paystubs with Morgan Hill address; or o A current, formal lease with a Morgan Hill address
Location Profile	**Verification of Employment Location**	• Administrator shall verify that a person works in Morgan Hill by reviewing an applicant's paystubs. If an applicant's employer is not based in Morgan Hill, or if a person's paystubs do not reflect a Morgan Hill work address, the applicant must supply a letter from the employer stating that the person works primarily in Morgan Hill and demonstrates that at least 75% of their working hours are in Morgan Hill
Member Profile	**IDENTIFICATION**	• All applicants will need to provide positive identification including a copy of valid driver's license and a copy of a valid social security card.

Member Profile	**HOUSEHOLD SIZE**	• Any household members not living in the same household at the time of application will need to be a co-applicant for the first mortgage loan and on title to form a household • Tax returns and current addresses will be used to determine household size • All applicants, co-applicants, married couples, partners, domestic partners etc. that are on title will have to occupy the property for 45 years per the signed deed restrictions

11B. Income Inclusion and Exclusion

The Federal and State government both have rules that determine how Gross Income is calculated and what income types are included and excluded from the Gross Income total.

Information Profile	Application Criteria	Application Criteria Description
Income Profile	**INCOME INCLUSIONS**	• The gross amount, before any payroll deduction, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services • The net income from the operation of a business or profession (for this purpose, expenditure for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business). • Interest, dividends and other net income of any kind from real or personal property. • Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as outlined in "exclusions" section)

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		• Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on a passbook savings rate, up to 10%. The current passbook savings rate used by the Administrator is **3.2%.** • Periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; **See full inclusion list on the Program Website**
Income Profile	**INCOME EXCLUSIONS**	**The following is an abbreviated list of items that are excluded from income:** • Casual, sporadic or irregular gifts • Amounts which are specifically for or in reimbursement of the cost of medical expenses • Lump-sum additions to family assets such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses • Foster child care payments • The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged the eligible household **See full exclusion list on the Program Website**

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Income Review Procedures

Income maximums are based on “gross” income derived from all sources as detailed in Internal Revenue Code (26 USC Section 61), whether or not exempt from federal income tax. Administrator projects future income based on the gross income on each applicant’s past income. In addition to other items deemed necessary to make this income determination, the Administrator may request up to 4 of the most recent year-to-date pay statements and the previous year’s final pay statement. Administrator must review income documentation for all Household members 18 years and older, regardless of dependency status. Applicants without income will need to sign a Zero-Income Affidavit provided by the Administrator. Unemployment benefits are considered income.

For employed applicants, annual income is generally derived by dividing the year-to-date gross income by the current pay period count and then by annualizing an estimated pay period amount by the total pay period count over one year (12 months). Please note that a Verbal and Written Verification of Employment may be required to be completed by the Employer issuing the pay statements.

#	How Often Paid	How to Determine Annual Income
1	Paid Annually	Annual Gross Pay
2	Paid Monthly	Use monthly gross payment x 12
3	Paid Twice Monthly	Twice monthly gross pay x 2 pay periods x 12
4	Paid Biweekly	Biweekly gross pay x 26 pay periods
5	Paid Weekly	Weekly gross pay x 52 pay periods
6	Paid Hourly	Hourly gross pay x average # of hours per week x 52 weeks
7	Government Employees with Annual Award Letters	Income may be derived by referring to the Annual Award Letter

Variable Income (Tips, Overtime, Bonuses, etc.)

Tips, Overtime, Bonus, and other "variable income amounts" (amounts that change with each pay period) will be annualized separately from the base income outlined on the chart above. All income will be annualized and totaled unless the applicant can provide documentation from the employer. The employer must be available to complete a verbal verification of employment with the Administrator. In cases, where the variable income item is a one-time occurrence, the amount will be removed from the annualized calculation of income and added in a one-time total to determine the annual income.

Example: An applicant earns $60,000 per year based on base monthly pay statements of $5,000 ($5,000 x 12). In addition to the base income show, the applicant received a $2,500 one-time bonus in the first quarter of the year.

If annualized, the $2,500 quarterly bonus would total $10,000 and the total income would be **$70,000** ($60,000 base + $10,000 annualized bonus income).

If proper documentation shows that the $2,500 is a one-time payment, and Administrator is able to verify and validate this information, the $2,500 would be added to the $60,000 base. The alternative total income would be **$62,500** ($60,000 base + $2,500 one-time bonus).

Seasonal Workers

Administration will not annualize current income for seasonal workers who provide a Verification of Employment from their employer (s) verifying that the work does not occur year-round

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Self-Employed Income

All self-employed applicants must submit a notarized Self-Employed Affidavit provided by Administrator. If self-employed for 2 or more years, Administrator will use verifiable (verified using Form 4506-T) federal income tax returns and average the net income on the 2 years of tax returns to determine the projected annual income. If self-employed less than 2 years, Administrator will annualize the submitted Profit & Loss Statement.

Calculating Income from Cash Income

In the case of an applicant who is paid cash for employment, Administrator will require a Verification of Employment from the applicant's employer to confirm annual income and IRS Tax Verification Form 4506-T to confirm that no taxes were paid.

Unemployed Applicants

Unemployed applicants who are receiving no income at all should submit a Zero-Income Affidavit as provided by Administrator in place of income statements. Applicants receiving unemployment benefits do not need to complete the Zero-Income Affidavit as unemployment benefits are considered income.

Income from Commercial Property or Land Owned

The net income from any commercial property or land owned by any applicant shall be counted toward the annual Household income.

Commented [JN2]: A City may choose to disallow app who do not have documentable income, but it will need to noted here.

Additional Notes on Income Calculation

If applicant has recently changed positions with employer, determine the effect of the change on the applicant's eligibility and opportunity to receive bonus or overtime pay in the future

If applicant who has historically been employed on a part-time basis indicates that he or she will now be working full time (or vice versa), obtain written confirmation from borrower's employer

A verbal verification of employment (VOE) may be required for each employer

11C. Determining Mortgage and Home Purchase Readiness

Affordable homeownership programming requires that applicant Households who meet the basic requirements for being considered eligible, must also prove that the home purchase fits within their household budget and that they are able to successfully obtain mortgage financing.

Income Profile & **Expense Profile**	**HOUSING PAYMENT TO INCOME RATIO**	• To qualify, an applicant's total housing payment, including principal & interest, taxes, insurance, and association dues cannot exceed 40% of the income for Below Market (BMR) home. For example, if your annual income is $90,000 your maximum monthly house payment cannot exceed $3,000 or $36,000 per year **(40% of $90,000 = $36,000 divided by 12 = $3,000).** • Additional debts will also be taken into consideration and cannot exceed 45% of income. • Non-borrowing applicant's debt will be added to ratios

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Expense Profile	**RENT HISTORY**	• Applicants/co-applicants will need to show the last 6 months of rent history • HouseKeys will review the current rent vs. the new housing payment for affordability. Any circumstance where the new housing payment exceeds 150% of current rent will be considered a "Payment Shock" risk. For example, if your current rent is \$1,000 per month, then any housing payment exceeding \$1,500 per month would be considered a potential payment shock risk (\$1,000 x 150% = \$1,500). • If Payment Shock risk exists, the underwriter may make an exception if compensating factors are present in the file (e.g. post-close reserves)
Asset Profile	**DOWN PAYMENT**	• The minimum down payment for the BMR program is 3% of the purchase price with first mortgage loan amount equal to 97% of the purchase price. • The minimum 3% of the purchase price must come from the applicant's own funds, and be present in the applicant's account for at least 6 months • A gift can be used for any down payment amount more than 3% of the purchase price • Note: In some cases, mortgage financing programs may require 5% of the purchase price in order to be approved
Liability Profile & **Credit Profile**	**CREDIT REPORT AND CREDIT SCORES**	• A credit report is required for all applicants and non-borrowing applicants • The credit report must include information from all three credit bureaus (Experian, TransUnion, Equifax) and use a mortgage-risk model (used by licensed mortgage lenders) • The lowest median (middle) score is used • The minimum credit score is 620

		• An applicant or co-applicant with an unsatisfactory credit report will be denied. • We will be reviewing the Credit Report to identify all of the account balances and monthly payments • The monthly payments on your credit report will be used to determine the total debt ratio (total debt and household payments divided by monthly income) • As stated above, the total debt ratio cannot exceed 45% of monthly income

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11D. Public Record and Default Risk

In addition to determining home purchase readiness, the Program Underwriter must also determine the risk of the property being lost to foreclosure or the risk of a lien being attached to the property that can adversely affect the resale process or excess sale proceeds.

Public Record Profile	**PUBLIC RECORD SEARCH (DETERMINED USING A STATEMENT OF IDENTITY FORM)**	• An applicant or Co-applicant may apply for consideration under the following circumstances:
		  • Chapter 13 bankruptcy – after 2 years from discharge or 4 years from dismissal.
		  • Chapter 7 – after 4 years from discharge
		  • Short Sale/Deed in Lieu - after 4 years
		  • Foreclosure - after 7 years
		• All applicants, co-applicants, and non-borrowing spouse cannot have liens outstanding at the time of the home purchase
		• All liens, including IRS liens, or any past due money owed to the IRS, shall be required to be paid off prior to being issued a program approval.

City of Morgan Hill Program Guide
Below Market Rate (BMR) Ownership

12. TRANSACTION AND DOCUMENT HANDLING

File Stacking (List of Documents Needed for Each Stage of the Transaction)

If application is approved, and the applicant Household is cleared to move forward with the purchase, the applicant's lender must supply the following documentation to the Administrator (**Financing File Stacking Order**):

1. Lender Checklist (listing all the loan documents)
2. Loan Application with final figures and lending terms (currently known as a 1003)
3. Uniform Underwriting and Transmittal Summary (currently known as 1008)
4. Mortgage Loan Commitment Letter
5. Loan Estimate

Routing documents to the City for signatures can take 10 to 14 business days. Before any transaction documentation can be sent to the City for signature, the following documents will need to be in the Administrator's file (**Pre-Close Stacking Order**):

1. Estimated Settlement Statement – Seller (Re-Sale and Acquisition Transactions Only)
2. Estimated Settlement Statement – Buyer
3. Estimated Settlement Statement – Master
4. Copy of 1st Lender Note & Deed of Trust
5. Copy of 1st Lender Escrow Instructions
6. 1st Lender Request for Notice of Default
7. Copy of any Subordinate Lender Notes and Deeds of Trust
8. Copy of any Subordinate Lender Escrow Instructions
9. Subordinate Lender Request for Notice of Default

After closing, the Title Company must provide the following to the Administrator (**Post-Close Stacking Order**)

1. Executed BMR Agreements Docs, Notes and Deeds of Trust
2. Recorded Agreement
3. Recorded Request for Notice of Default
4. Final Settlement Statement – Seller (Re-Sale and Acquisition Transactions Only)
5. Final Settlement Statement – Buyer
6. Final Settlement Statement – Master
7. Alta Policy

Length of Escrow and Fall-Out Risk

The typical escrow period for a BMR Unit sale is 90 days. This period can stretch out longer if the property is under construction and there are delays. Applicant Households must be prepared for a long escrow period and to continually keep their file updated to comply with the one hundred twenty-day (120-Day) application review period. Households must be eligible and qualified through to close of escrow. Unfortunately, a change in the application file during the escrow period can cause the applicant Household to become disqualified and lose out on the purchase opportunity.

13. REASONABLE ACCOMMODATION AND EXCEPTION REQUESTS

Accommodations in Program rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person, or a household with a disabled member, equal opportunity to apply for a BMR home. The requested accommodation must be reasonably related to the particular disability of the household member, and must be necessary in order to provide the household with equal access to housing.

Households or individual applicants unable to produce any particular document required in the application form for legitimate reasons beyond their control (natural disaster, military service, refugee status, domestic violence, witness protection program, disability etc.) may request an exception for that particular document.

Upon such request, Administrator may request a reasonably equivalent alternative document, and/or any additional supporting documentation deemed necessary by the Program Processor and Program Underwriter to verify eligibility of the Applicant/Co-Applicant and/or their entire Household.

Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure, with a brief description of the exception(s) needed due to the Applicant's disability. The City and Administrator will consider the requested exception and will provide a letter response within 14 calendar days, stating if the requested exception can be granted in full or part and the reason for such decision. The Administrator may approve or deny such request. If denied, Applicants may submit an appeal of such denial to the City.

Table A
Summary of Per Square Foot In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements[1]
Morgan Hill

Size of BMRs Relative to Market Rate Units	Outside of Downtown 15% On-Site; 10% @81% and 5% @110% - Table 13 of RDCS Manual	Downtown 10% On-Site; 6% @81% and 4%@110% Table 17 of RDCS Manual	20% On-site @120% AMI	20% On-site @110% AMI	15% On-Site @80% AMI	20% On-site @80% AMI
Equal in Size to Market Rate Units	$32.30	$22.50	$30.80	$35.20	$35.60	$47.80
80% of Size of Market Rate Units	$22.40	$15.20	$18.20	$22.50	$25.70	$35.10
75% of Size of Market Rate Units	$19.70	$13.20				
72% of Size of Market Rate Units (Avg. condition of analyzed projects)	$18.20	$12.00	$12.80	$17.00	$21.40	$29.60

[1]Following projects were analylzed: Madrone Plaza, Tilton, Loden Place, Stonebridge, Terra Mia-Mission Ranch, Paseo Seville and Esperanza

Table B
Summary of Per Square Foot In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements
Morgan Hill

Size of BMRs Relative to Market Rate Units	Outside of Downtown 15% On-Site; 6% EL; 6% VL; 3% Low Table 15 of RDCS Manual	Downtown 10% On-Site; 8% VL; 2% Low Table 18 of RDCS Manual
75% of Size of Market Rate Units	$29.00	$11.00

From: D. Muirhead
To: Michelle Bigelow; Angie Gonzalez
Subject: City Council Meeting September 26, 2018 [Consent] Item #3: Library Expansion
Date: Tuesday, September 25, 2018 11:00:45 AM

Comments for the Public Record submitted by
Doug Muirhead, a resident of Morgan Hill, for:
Morgan Hill City Council
Meeting September 26, 2018
[Consent] Item #3: ARCHITECTS FOR THE LIBRARY EXPANSION PROJECT

Dear Morgan Hill City Council,

If you are true to your Ongoing Priority of Maintaining Fiscal Responsibility, you will have an independent evaluation of how your design team came up with an engineer's estimate of $2,800,000 but the apparent low bid from Kent Construction was $3,666,499.

A 30% underestimate is extreme. And it matters because of the investment in time and enthusiasm by City and Library staff and Commissioners and the engagement and anticipation by our residents were rendered moot by the City Council rejecting all bids on August 22 due to insufficient funds allocated for the project.

I see you rewarding the architectural firm with an additional $20,305 to fix a problem that they largely created in the first place. You can prove me wrong with a third-party review.

For extra credit, please stop using the misleading euphemism du jour of "value engineering" when your intent is to reduce the project scope and benefits in order to spend less money.

Thank you for your consideration,
Doug Muirhead, Morgan Hill

RECOMMENDATION(S)
1. Approve Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/ redesign and construction support services for the Library Expansion Project increasing the fee by $20,305 for a total not to exceed amount of $467,430

sv@home

Item # 09
AGENDA DATE: 09/26/18
SUPPLEMENT # 1

TRANSMITTED VIA EMAIL

September 26, 2018

Honorable Mayor Tate and Members of the City Council
Morgan Hill City Hall
17575 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Tate, Mayor Pro Tempore Constantine, and Councilmembers Carr, Jachimowicz, Robinett, and Spring:

RE: Item 9: In-lieu Housing Fee

SV@Home works to increase housing opportunities in Santa Clara County for people who live on our streets to those who work for our leading employers. Our membership represents a broad range of interests, from leading employers who drive the Bay Area economy, to labor and service organizations, to local government agencies, to nonprofit and for-profit developers who provide housing and services to those most in need.

On behalf of our members, we write today to thank the City for moving forward with an Inclusionary Housing Ordinance (IHO) that increases affordable housing opportunities for Morgan Hill residents. The City of Morgan Hill has already made great progress towards the development of affordable homes, with one out of every eight homes in the City with long-term affordable deed restrictions.

To guide cities in the development of IHO ordinances, we have prepared the attached set of best practices that ensure that inclusionary housing requirements are feasible for developers, while also supporting established affordable housing goals. These best practices recognize that not all developments are the same, and that by offering alternative compliance measures it creates flexibility for developers and the City to respond in ways that can lead to more overall affordability.

One alternative compliance measure is an in-lieu fee option. The recommended fees are comparable to fees established by neighboring jurisdictions, and **we are supportive of the staff's recommended fee levels.**

Thank you for the opportunity to provide our input.

Sincerely,

Pilar Lorenzana
Deputy Director

Attachment: SV@Home Inclusionary Housing Ordinance Best Practices

350 W. Julian Street, Building 5, San José, CA 95110
408.780.2261 • www.svathome.org • info@siliconvalleyathome.org

Inclusionary Housing in Santa Clara County:

Aligning Local Policies toward a Countywide Affordable Housing Strategy (July 2018)

Inclusionary Housing: An Introduction

Inclusionary housing policies require or encourage developers to set aside a certain percentage of housing units in newly constructed or rehabilitated projects for low- and moderate-income residents. By creating mixed-income developments, people from different socio-economic backgrounds are given the opportunity to access the same services and amenities, furthering equity and inclusion, and addressing federal fair housing obligations.

For a number of years, inclusionary housing was only legal for for-sale housing in California due to the Palmer Sixth Street Properties v Los Angeles court case. This changed effective January 1, 2018 when new law created by AB 1505 went into effect. AB 1505 expressly supersedes the *Palmer* decision by authorizing the legislative body of any city or county to adopt ordinances requiring that, as a condition of developing rental housing units, the development include a certain percentage of rental units affordable to moderate- income, lower-income, very low-income, or extremely low-income households.

In February 2016, the US Supreme Court declined to review a challenge brought by the California Building Industry Association, which questioned the validity of local inclusionary ordinances for for-sale housing. This decision removed any questions over the ability for local government to adopt and implement inclusionary ordinances for for-sale housing.

Legal and Legislative Requirements

AB 1505 authorizes communities to adopt rental inclusionary requirements by *ordinance.* An ordinance should be adopted to implement inclusionary requirements contained in general plans, housing elements, or other policy documents.

Existing rental inclusionary ordinances that were not amended after *Palmer* can be implemented after January 1, 2018 as long as they include provisions for alternative means of compliance.

No nexus study is required to justify a rental inclusionary requirement. In the 2015 California Supreme Court decision *California Building Industry Ass'n v. City of San Jose (CBIA),* it determined that inclusionary requirements were “land use provisions similar to rent and price controls and met constitutional requirements so long as not ‘confiscatory’ and designed to further the public health, safety, and welfare.”[1]

If a rental inclusionary ordinance was adopted prior to September 15, 2017, no economic feasibility study is required to justify a rental inclusionary requirement, regardless of the required set-aside percentage. If the ordinance was adopted or amended after September 15, 2017 to require affordable rental housing, a feasibility study would not be required if the set-aside percentage required is 15 percent or less. However, if the ordinance requires a higher inclusionary requirement, or if affordability

[1] Goldfarb and Lipman

restrictions are deeper (targeting extremely low- income or very low-income households), a jurisdiction may choose to prepare a feasibility study.

The State Department of Housing and Community Development has the authority to require that an economic feasibility study be provided for any inclusionary ordinance that was adopted after September 15, 2017 if the ordinance requires that more than 15% of the homes be affordable, but only in two circumstances: (1) if the jurisdiction has failed to meet at least 75% of its RHNA need in the above moderate income category for five or more years, or (2) if the jurisdiction has not submitted its annual housing element report for two consecutive years. If HCD should find that the study is insufficient, the jurisdiction would only be able to require 15% affordability until it could prove through an economic feasibility study that additional affordability was feasible.

CASA-- the Committee to House the Bay Area-- is currently considering potential inclusionary housing requirements for the 9-County Bay Area. Recommendations from CASA are not expected until late 2018 or early 2019.

SV@Home's Recommendations:

Local jurisdictions must make many choices when designing an inclusionary housing ordinance. As these choices are made, it is important to ensure that the inclusionary requirements are both feasible for developers and support achievement of affordable housing goals. To the extent that all 16 Santa Clara County jurisdictions adopt similar requirements, it will provide more certainty to the development community working in the South Bay.

SV@Home encourages all Santa Clara County jurisdictions to consider SV@Home's recommendations as a way to align local policy goals with a broader countywide inclusionary housing strategy.

Criterion	Recommendation	Rationale
Set-Aside Percentage	Adopt a minimum 15% onsite inclusionary housing onsite requirement for both for-sale and rental housing. If an Alternative Compliance Option is selected (see below) then this percentage should be increased to a minimum of 20%	Creating a consistent 15% requirement across the county provides predictability for developers as well as a level playing field for cities. The cities of Campbell, Cupertino, Palo Alto, Santa Clara, and San Jose have set 15% affordability as their inclusionary requirement. The recommended set-aside percentage is increased to 20% to incentivize the development of integrated on-site affordable units.
Project Size Threshold	Apply the inclusionary requirements to projects of ten or more units. Do not apply to ADUs. For projects that are smaller than ten units, require that developers pay a fee if the units exceed 1,200 square feet. The fee can increase for larger units.	It is important to offer "missing middle" opportunities, and requiring inclusionary percentages for smaller developments can discourage developers from pursuing small infill development like row houses, stacked flats, duplexes and fourplexes which tend to be more naturally affordable, and therefore affordable to teachers, nurses, construction workers, and others. At the same time, it is recognized that some developments that are small are offered at luxury prices and not naturally affordable. Santa Cruz and San Mateo Counties have

Criterion	Recommendation	Rationale
		adopted inclusionary ordinances that tier fees according to unit size. No fees should apply to ADUs, a building type that should be encouraged with fewer fees, not new and additional fees.
Income Restrictions—Rental	Average 80% of Area Median Income (AMI)	This allows a developer to provide units for a variety of income levels.
Income Restrictions—Owner	Average 120% of Area Median Income (AMI)	This allows a developer to provide units for a variety of income levels.
Term of Affordability -- Rental	Place affordability restrictions on rental homes for a minimum of 55 years	This ensures that the homes are available for an extended period, and is consistent with other State and federal affordable housing programs.
Term of Affordability -- Owner	Place affordability restrictions on for sale homes for a minimum of 45 years	This ensures that the homes are available for an extended period, and is consistent with other State and federal affordable housing programs. (Note: these restrictions can be removed upon an equity share sale)
Resale Restrictions—Owner	Implement an equity share provision that allows the original buyer of an affordable unit to sell the unit at market rate and share in the equity appreciation	This allows homeowners to acquire equity, making it possible for them to purchase a new home when they need to move. It also allows the local agency to re-invest its share in a new first-time homebuyer family who can purchase a new home anywhere in the jurisdiction.
Home Amenities	Affordable homes are indistinguishable from market rate homes and are integrated into the development	This is a best practice that ensures that lower- and moderate-income households have access to the same amenities as market-rate households.
Alternative Compliance Options	Provide a variety of alternative options for compliance: - Build Onsite - Offsite construction - Credit trading/transfer - Housing Preservation credits - In lieu fee - Land dedication - Acquisition/Rehabilitation - Combination	Recognizes that not all developments are the same, and provides both the developer and the City with flexibility to respond, particularly when a different option would result in more affordability. Additionally, in some circumstances, payment of an in-lieu fee or another compliance option may be preferable, as in the case of a multi-million dollar home subdivision. According to AB 1505, all rental inclusionary ordinances must include alternative means of compliance, however jurisdictions have broad discretion over the alternative means provided.

Criterion	Recommendation	Rationale
Incentives	Provide a robust suite of incentives to developers that should include: - Density bonus - Reduction in parking spaces - Changes to setbacks, height requirements, and other zoning variances - Expedited review - Fee or tax exemptions - Financial support	Provides developers the opportunity to achieve cost savings that can offset the cost of providing the affordable units.
Timeframe and Grandfathering	While an ordinance should go into effect in 30 days, provide an adequate timeframe for the market to adjust when adopting new inclusionary requirements. Our recommendation is to grandfather those projects that Establish requirements that ensure that any project that is grandfathered continues to move forward through the development process.	This is a best practice that recognizes that the development process is long, and that many developers have invested time and resources into projects that are already in the development pipeline. Requiring that the developments that receive grandfather status meet key requirements for progress ensures that those requesting an exemption are verifiably in the development process.
Incentives	Adopt incentives that offset the cost to the developer of providing the affordable units. This can include reduced parking, reduction in fees, reduced setbacks, increased height, and fast track permitting.	Recognizes that there is a cost to providing the inclusionary units.

CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT
MEETING DATE: September 26, 2018

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

HOUSING PROGRAM ORDINANCE, IN-LIEU FEES, BELOW MARKET RATE (BMR) WORKBOOKS, BMR PROGRAM DEVELOPMENT STANDARDS

RECOMMENDATION(S)

1. Receive Revised In-lieu Housing Fee in the Housing Report regarding ordinance that:

   A. Adds Chapter 14.08 to institute a Housing in-lieu fee of $19.70 per square foot for ownership residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, $13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, $29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and **$14.50** per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
   B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Program Application Guide;
   C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
   D. Adds Below Market Rate (BMR) Program Development Standards.

OR

2. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

This supplement is an update to the Housing In-Lieu Fees recommended in the Housing Ordinance, contained in the staff report No. 9, Entitled "Housing Program, In-Lieu Fees, Below Market Rate (BMR) Program Workbooks, BMR Program Development Standards." Keyser Marston and Associates (KMA) has corrected an error in one of the fees that was originally stated in the KMA table. A new table (Attachment No. 1) has been provided titled *"Table A Summary of per Square Foot In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-Site BMR Requirements Morgan Hill," and "Table B Summary of Per Square Foot In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-Site BMR Requirements Morgan Hill."* The only change is to the $11.00 rental fee.

The fee for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement was previously stated as **$11.00** and has been updated to **$14.50** per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement. The other fees have remained the same as previously stated in the staff report.

Additionally, the new KMA summary provides fees that are equivalent to 15 and 20 percent to accommodate applicants who elect to obtain more points through the Residential Development Control System (RDCS) by contributing additional funds equivalent to 15% (5% above a 10% Downtown commitment) and 20% (5% above their 15% commitment.)

Staff will re-notice the proposed Housing In-Lieu Fees and return to Council in October with the proposed Housing Ordinance. Based on KMA's most recent updated analysis, the Housing Team is recommending the following Housing In-Lieu fees:

The proposed In-Lieu Housing Fee for "Ownership" Residential Projects consisting of two (2) or more dwelling units outside of Downtown is nineteen dollars and seventy cents **($19.70**) per habitable square foot of the residential building area of market-rate housing, where there is a 15% Inclusionary Housing Requirement at the moderate-income level, 10% of units at 81% AMI and 5% of units at 110 % AMI. The 20 percent fee is $27.10.

The proposed In-Lieu Housing Fee for "Ownership" Residential Projects consisting of two (2) or more dwelling units within the Downtown is thirteen dollars and twenty cents **($13.20)** per habitable square foot of the residential building area of market-rate housing, where there is a 10% Inclusionary Housing Requirement at moderate income level, 6% of units at 81% AMI and 4% of units at 110% AMI. The 15 percent fee is $19.20.

The proposed In-Lieu Housing Fee for "Rental" Residential Projects consisting of two (2) or more dwelling units outside of Downtown is twenty-nine dollars **($29.00)** per habitable square foot of the residential building area of market-rate housing, where there is a 15% Inclusionary Housing Requirement at the extremely low (6%), very low (6%), and low income (3%) level. The 20 percent fee is $42.00.

The proposed In-Lieu Housing Fee for "Rental" Residential Projects consisting of two (2) or more dwelling units within the Downtown is fourteen dollars and fifty cents **($14.50)** per habitable square foot of the residential building area of market-rate housing, where there is a 10% Inclusionary Housing Requirement at the very low (8%), and low income (2%) level. The 15 percent fee is $21.00.

Revised Example of Calculation of Proposed (Rental - Within Downtown) In-Lieu Housing Fee Amount $**14.50**: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $14.50 X 56 units X 2,000 square feet = $1,624,000.00. or $29,000 per unit.

LINKS/ATTACHMENTS:
1. Updated KMA Summary of Fees
2. Revised Ordinance
3. Housing Presentation FINAL 9_26_2018

Table A
Summary of Per Square Foot In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements[1]
Morgan Hill

Size of BMRs Relative to Market Rate Units	Outside of Downtown 15% On-Site; 10% @81% and 5% @110% - Table 13 of RDCS Manual	Downtown 10% On-Site; 6% @81% and 4%@110% Table 17 of RDCS Manual	Outside of Downtown 20% On-site; 13% @ 81% and 7% @ 110% Table 12 of RDCS	Downtown 15% On-Site; 9% @ 81% and 6% @ 110% Table 12 of RDCS Manual
Equal in Size to Market Rate Units	$32.30	$22.50	$43.30	$31.60
80% of Size of Market Rate Units	$22.40	$15.20	$30.60	$21.80
75% of Size of Market Rate Units	$19.70	$13.20	$27.10	$19.20
72% of Size of Market Rate Units (Avg. condition of analyzed projects)	$18.20	$12.00	$25.10	$17.70

[1]Following projects were analylzed: Madrone Plaza, Tilton, Loden Place, Stonebridge, Terra Mia-Mission Ranch, Paseo Seville and Esperanza

Table B
Summary of Per Square Foot In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements Morgan Hill

Size of BMRs Relative to Market Rate Units	Outside of Downtown 15% On-Site; 6% EL; 6% VL; 3% Low Table 15 of RDCS Manual	Downtown 10% On-Site; 8% VL; 2% Low Table 18 of RDCS Manual	Outside of Downtown 20% On-site; 8% EL; 8% VL; 4% Low Table 12 of RDCS Mnl	Downtown 15% On-Site; 12% VL; 3% Low Table 12 of RDCS Manual
75% of Size of Market Rate Units	$29.00	$14.50	$42.00	$21.00

ORDINANCE NO. _______ NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"

WHEREAS, this proposed Ordinance was considered by the City Council of the City of Morgan Hill at its regular meeting of September 26, 2018; and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials submitted as a part of public hearing, have been considered in the review process; and

WHEREAS, to increase the supply of affordable housing in Morgan Hill, the City of Morgan Hill has both a 15% (outside of downtown) and a 10% (within downtown) Inclusionary Housing Ordinance, and the Residential Development Control System ("RDCS") that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDCS competition obtain points to satisfy the affordable housing requirement to build a percentage of their project as Below Market Rate (BMR) units or in some cases they pay the In-Lieu Housing Fee in lieu of building affordable housing on-site; and

WHEREAS, since 1977, the City has amassed one of the largest BMR property portfolios per capita in the State and established a BMR Program that provides ownership and rental opportunities and affordability to very low, low and moderate-income households; and

WHEREAS, the City retained Keyser Marston and Associates (KMA) to conduct an analysis of the impact of the City's Inclusionary Housing Ordinance and the RDCS BMR requirements, and to:

1. Estimate the financial cost to developers of providing on-site BMR ownership and rental units equivalent to the percentages adopted in the Inclusionary Housing Ordinance ;
2. Provide a comparison of the cost of providing on-site BMR units to the RDCS program's in-lieu fee and, if appropriate, recommend changes to the in-lieu fee amount so that it more closely approximates the cost of providing on-site units in today's market; and

WHEREAS, KMA recommended an ownership housing in-lieu fee of $19.70 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and $13.20 per square foot for ownership projects in the downtown where there is a 10% Inclusionary Housing Requirement. The recommended fees for Rental projects are $29.00 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and $14~~1~~.~~0~~50 per square foot for projects in the downtown where there is a 10% Inclusionary Housing Requirement. This would replace the previously adopted $12.92 per square foot of the total project's livable space; 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 In-Lieu 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 City Council adopted an Inclusionary Housing Ordinance No. 2278 on July 25, 2018, establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.08 of Title 14 is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.08 – IN-LIEU HOUSING FEES

14.08.010 Findings and Purpose.
14.08.020 Fee Established.
14.08.030 Applicability

14.08.010 Findings and Purpose.

1. Need for in-lieu housing fees. The City Council has determined, based on the City's General plan including the housing element, and existing statutes and regulations of the State of California, that the In-Lieu Housing Fee is needed in order to finance the preservation of the existing Below Market Rate Portfolio, the administration of the Housing Program, future affordable housing programs and new projects.

2. Consistency with City General, Specific and Master Plans. In establishing the In-Lieu Housing Fee, the City Council finds that it is consistent with the City's General plan, including the housing element and applicable specific plans and master plans.
3. The City of Morgan Hill Residential Development Control System ("RDCS") awards competing developments points for construction of very low, low-income and moderate-income housing or for the contribution of In-Lieu Housing Fees to the Housing In-Lieu Fee Fund.
4. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios per capita in the State and established a BMR Program that provides ownership opportunities and affordability to very low, low-income and moderate-income households.
5. In-Lieu Housing Fees provide for the cost of administering the City's Housing Program, maintaining the BMR portfolio, as well as the creation and preservation of affordable units, as funding is available.

14.08.020 – Fee Established.

1. There is created an In-Lieu Housing Fee for new residential development for Residential Projects that are required or which volunteer to pay an In-Lieu Housing Fee.
2. For-Sale Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents ($19.70) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDCS) by contributing additional funds equivalent to 20% (5% above the 15% commitment), the in-lieu fee is twenty seven dollars and ten cents ($27.10).
3. For-Sale Residential Projects Within Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents ($13.20) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDCS) by contributing additional funds equivalent to 15% (5% above the 10% Downtown commitment), the in-lieu fee is nineteen dollars and twenty cents ($19.20).
4. Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is twenty nine dollars ($29.00) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDCS) by contributing additional funds equivalent to 20% (5% above the 15% commitment), the in-lieu fee is forty two dollars ($42.00).
5. Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is ~~eleven~~ fourteen dollars and fifty cents ($14~~1~~.~~0~~50) per habitable square foot of the residential building area of market-rate housing. For applicants who elect to obtain more points through the Residential Development Control System (RDCS) by contributing

additional funds equivalent to 15% (5% above the 10% Downtown commitment), the in-lieu fee is twenty one dollars ($21.00).

6. Basis for calculation of the In-Lieu Housing Fee. The City approves, adopts and incorporates the summary report from Keyser Marston Associates (KMA), entitled "Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill" dated ~~August 23~~September 25, 2018. This establishes the value of the In-Lieu Housing Fee, which is determined to be a fair and effective fee to maintain the BMR Program.

14.08.30 Applicability

1. The In-Lieu Housing Fees are established for Residential Projects and will be incorporated into development agreements entered into after the effective date of this ordinance.
2. All collected In-Lieu Housing Fees shall be used to finance the administration and implementation of affordable housing programs and projects within the City of Morgan Hill in support of the goals and objectives established in the City of Morgan Hill housing element.
3. The In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.
4. The In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.
5. Example Calculations of In-Lieu Housing Fee:
   1. Amount, $19.70: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $19.70 X 56 units X 2,000 square feet = $2,206,400.
   2. Amount, $13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $13.20 X 56 units X 2,000 square feet = $1,478,400.
   3. Amount, $29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $29.00 X 56 units X 2,000 square feet = $3,248,000.
   4. Amount, $1~~1~~4.5~~0~~0: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $14~~1~~.~~0~~50 X 56 units X 2,000 square feet = $1,624,000~~1,232,000~~.
6. The In-Lieu Housing Fee must be provided to the Housing Division in proportion to the market rate units being delivered prior to Housing Division signing off for occupancy.
7. Whenever application of the Inclusionary Housing Requirements results in a fractional number of required Inclusionary Units of .49 or less, the Applicant may elect to pay the In-Lieu Housing Fee instead of developing the Inclusionary Unit.
8. Example Calculation of Fractional In-Lieu Housing Fee: the fractional BMR threshold is .5 to encourage the construction of new BMR units. The program applies the fractional fee to fractional requirements less than 0.5 of a unit. Project has 56 total units; average size of market rate units is 2,000 square feet. To receive maximum RDCS points the 56-total unit

project has committed to a 15% affordable commitment, 56 units x 15% = 8.4. This equates to 8 on-site BMR units and a fractional fee payment due for the ".4" units. First, calculate the implicit in-lieu fee: 56 units X 2,000 square feet X $19.70 per SF = an implicit in-lieu fee of $2,206,400. From that implicit in-lieu fee, calculate the per BMR unit cost: $2,206,400. / 8.4= $262,666. per BMR unit cost. The fractional payment owed for this project.

SECTION 2. Chapter 14.12 Below Market Rate Program of Title 14 (Housing) is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.12 – Below Market Rate Program

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly.
2. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the state and established a BMR program that provides ownership opportunities and affordability to low-income and moderate-income households.
3. The excess sales proceeds value in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR property owner ("owner") and is a vehicle that can be used to renovate older units, build new units and help pay for program administration.
4. The City recognizes that the declaration of restrictions, which secures the excess sale proceeds, is a covenant that runs with the land by and between the BMR property owner

and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially.

5. A program and program guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment.

6. In order to respond to program needs, the City Manager or his or her designee should be empowered to approve BMR program guidelines and BMR agreements.

7. In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside Administrator. The City is empowered to delegate the day-to-day management of the program to a third-party Administrator.

8. Either in-house or third party administration is vital to ensure program integrity and continued affordability of below market rate properties.

9. In response to the dissolution of the City's redevelopment agency, schedules have been put in place to pay for the costs of services funded by former redevelopment agency funds.

14.12.020 - Definitions.

When used in this chapter, these terms mean the following:

1. "Adjacent lots" means parcels with boundary lines that touch at any point. "Adjacent lots" includes parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.

2. "Administrator" means below market rate program Administrator which may either be the City itself or a third party Administrator acting as an agent for the City in connection with all aspects of the operation of the City's below market rate program pursuant to an agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.

3. "Area median income (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).

4. "BMR assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.

5. "Assumed household size" means, for the purpose of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.

6. "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.

7. "CC&Rs" means, covenants, conditions and restrictions containing a covenant that runs with the land existing in favor of the City where a development project contains at least one BMR unit.

8. "Covenant that runs with the land" means the BMR property interest held by the City of Morgan Hill as a result of the recorded declaration of restrictions that restrict the right of use of enjoyment by the BMR owner-occupant.

9. "Decision-making body" means the Planning Commission or City Council, whichever is authorized to make a final decision on the project application for land use approvals.

10. "Excess sale proceeds" means the difference between the fair market value of a BMR property and the maximum restricted resale price.

11. "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy, a BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.

12. "Fee schedule" means the schedule of fees, adopted by City Council resolution and published annually, that outlines charges to program participants, including, but not limited to applicants, owner-occupants, housing professionals and developers.

13. "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR ownership housing guidelines.

14. "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, owners' association dues, and owner's insurance.

15. "Low income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.

16. "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.

17. "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate income household for state-assisted housing programs.

18. "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.

19. "Property" means properties contained with the below market rate program portfolio subject to occupancy and sale restrictions.

20. "Very low income household" means a household with a gross annual household income that does not exceed fifty percent 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 lower income households.

14.12.030 - Applicability.

A. Residential Development Control System ("RDCS"). All projects subject to RDCS that provide units to meet the City's need for low and moderate income and elderly housing and the extent to which such units meet the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.

B. BMR Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. The BMR ownership housing guidelines shall be approved by the City Manager or the City Manager's designee, and approved by the City Council from time to time.

C. BMR Program Letters. BMR program letters may be issued by the Administrator to update procedures and guidelines not yet incorporated into the BMR ownership housing guidelines. These letters shall be approved by the City Manager or designee and serve as amendments to the guidelines that will be published online and made available to the public including guidelines for refinances, purpose and hardship review.

D. BMR Agreements. Declaration of restrictions and affordable housing agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.

14.12.040 - Duties of Program Administrator.

The City may either handle in-house or contract responsibility for administration of the BMR ownership housing program and monitoring compliance with the requirements to a program Administrator pursuant to an agreement executed between the City and the Administrator.

The Administrator shall perform the following services, among others:

1. Maintain and update the BMR ownership housing guidelines and BMR program letters;
2. Conduct ongoing homebuyer education training programs, including preparation of program materials;
3. Screen and select qualified buyers according to BMR ownership housing guidelines and maintain qualified owner eligibility list;
4. Assist in seeking and arranging mortgage financing for purchase of the below market units;
5. Administer programs for monitoring compliance with terms and conditions of the occupancy and sale restrictions;
6. Administer BMR ownership housing guidelines concerning sale and resale of the below market units at a restricted price, including exercise of the City's option to buy the below market units upon assignment of such option, and assist in resale of the unit to eligible purchasers or families; and

7. In cases of default, administer the process of taking possession of the BMR property as appropriate, and completing the acquisition, rehabilitation and resale to an eligible buyer.

14.123.050 - Occupancy and Sale Restrictions.

Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner, Administrator, and the City shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration establishes a valid and enforceable covenant that runs with the land in favor of the City and is binding to the heirs, assigns and successors in interest of the property owner.

1. Timing of Sale. At completion of each BMR unit, the Administrator will be contacted to coordinate the sale of the property to an eligible buyer. The seller shall accept the first valid offer from a buyer deemed eligible by the Administrator, and shall cooperate to close escrow within the timeframe outlined in the affordable housing agreement.
2. Term of Restrictions. BMR units shall be reserved for lower and moderate income households subject to guidelines of the RDCS and shall be subject to the occupancy and sale restrictions for a specified period of time. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term shall begin upon resale and shall be secured by a new declaration of restrictions.
3. Maximum Sales Price. The Administrator shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR ownership housing guidelines as approved by the City Manager. The maximum BMR unit sale prices shall not exceed a price affordable to households at the applicable income level, based on a predetermined housing cost, specified with a maximum percentage of monthly gross household income for the unit's assumed household size. The percentage of AMI used shall be published annually by the Administrator.
4. Sale Requirements. The following requirements shall be met in any sale and resale of a BMR unit after the issuance of a building permit and during the term of restrictions:
    a. The seller shall notify the Administrator of the intent to sell before offering the unit for sale, contacting a real estate agent or listing the property on any listing service
    b. The Administrator shall respond to the seller with the sales procedure and maximum sale price
    c. The Administrator shall follow the process outlined in the BMR Ownership housing guidelines to locate and deliver an eligible buyer to complete the home purchase
    d. The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR ownership housing guidelines; and
    e. Closing costs and title insurance fees shall be paid or according to the BMR ownership housing guidelines.
5. Eligible Buyers. The Administrator shall determine the eligibility of prospective buyers of BMR units. It is prohibited for any person to willfully make a false or misleading representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:

6. Income Limits. The prospective buyer's combined household income and assets shall not exceed specific household income limits, as further defined in the BMR ownership housing guidelines;

7. Conflict of interest. The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:

   a. Any Administrator, City official or employee who administers or has policy-making authority over City housing programs;

   b. The developer of the unit; or

   c. The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, Administrator employees, City employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and

8. Additional Criteria. The Administrator may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR ownership housing guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.

9. Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:

   a. BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the Administrator; and

   b. The Administrator may allow the temporary rental of a BMR unit upon a finding of hardship beyond the control of the owner and after a full review of the hardship documentation.

10. Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the Administrator. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of the BMR ownership housing guidelines of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing.

11. Additional Refinancing Criteria. The Administrator may establish other refinancing criteria in the course of seeking financing to change the rate and/or term of a mortgage, consolidate purchase money lines or cash out a portion of the excess sale proceeds that would be due to the owner upon sale.

14.12.060 - Affordable Housing Agreement.

A. Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record an affordable housing agreement (agreement) with the Administrator and City outlining the details of the below market rate unit commitment as outlined in the "specific restrictions and requirements (including RDCS requirements)" of the development agreement.

B. Agreement Provisions. The agreement shall include, at a minimum, the following provisions:

1. Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;
2. Binding of Project Site. The obligation for the entire project site to fulfill the for the project under this chapter;
3. Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;
4. Transaction Processing Fee. For each BMR unit, the developer shall pay a BMR transaction processing fee to the City according to the most current fee schedule approved by the City. The City may provide this fee to the Administrator as an offset to charges incurred. This fee is not a real estate commission or real estate broker commission. This fee shall be listed as an "additional settlement charge" fee paid by the seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "other costs" paid by the seller in the new closing disclosure as determined by the TILA-REPA Integrated Disclosure rule.
5. Project Covenants, Conditions and Restrictions. A provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the owners' association dues or assessments payable by any BMR unit. The provision must also acknowledge the covenant that runs with the land in favor of the City where the development project contains at least one BMR unit. This provision shall create a right of judicial enforcement by the City or the owner of any affected BMR unit.
6. Enforcement. A provision that shall require the property owner to pay the City rent for a BMR unit from the date of any unauthorized use of the unit, and for the City's recovery of reasonable attorney's fees and costs to pursue legal action in enforcing this agreement.
7. Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the Administrator. Upon approval, a new agreement containing the amendments shall be executed and recorded.

14.12.070 - Approved Program Participants and Vendors.

The City and Administrator shall maintain a list of approved program participants and vendors to protect the integrity of the BMR program, BMR properties contained within the portfolio, and excess sale proceeds. The approval requirements and process will be included in the BMR ownership housing guidelines. The program participant list will include, but will not be limited to:

1. Mortgage Lenders. Due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the Administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing. In no event shall a deed of trust securing any loan to a BMR Owner be valid or enforceable as to any recorded interest, resale agreement or option of the City of Morgan Hill unless the following conditions are satisfied:

a. The City of Morgan Hill or its Administrator has first approved the loan;

b. The loan is in accordance with the BMR ownership housing guidelines and any and all recorded deed restrictions;

c. The City of Morgan Hill or its Administrator has expressly subordinated its recorded restrictions to the specific deed of trust; and

d. Prior to making any loan to a BMR property owner for the purchase of a BMR unit intended to be secured by a deed of trust against the BMR unit, a lender shall disclose to the City of Morgan Hill or its Administrator the following information:

i. The borrower's loan application describing the loan terms; and

ii. Provide an acknowledgement in writing that that the total encumbrance does not exceed the maximum restricted resale value for the BMR unit as determined by the City of Morgan Hill or its Administrator according to the BMR ownership housing guidelines.

2. Real Estate Agents. Real estate agents and brokerages involved in the purchase or sale of BMR properties must be approved by the Administrator and a vendor agreement will be put in place concerning BMR program compliance during the listing, purchase and escrow process.

3. Escrow Companies. An approved list of escrow officers and escrow companies will be maintained by the Administrator.

4. Contractors. For work on BMR properties that exceed certain dollar amounts, as outlined in the BMR ownership housing guidelines, an approved list of contractors will be maintained by the Administrator.

14.12.080 - Default, Foreclosure, and Loss of Unit.

A. Default. Upon declaration of a default by the City of any agreement between the City and the owner or if the owner or owner's proposed purchaser makes any misrepresentation in connection with receiving any benefits under the declaration of restrictions, the City or Administrator may apply to a court of competent jurisdiction for specific performance of this chapter, for an injunction prohibiting a proposed sale or transfer in violation of this chapter, for a declaration that a transfer in violation of this chapter is void or any such other relief at law or in equity as may be appropriate.

B. Option to Purchase. If a notice of default is recorded on a BMR unit by a third party secured creditor or a lien is filed against the BMR unit, or any breach of any provision of any agreement between the City and the owner, and the owner fails to correct it, an eligible buyer, or the Administrator on behalf of the City or the City itself, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR ownership housing guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the owner. All other resale provisions of the guidelines apply.

C. Loss of Unit. BMR units which have not been completed or sold to initial eligible buyers shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.

D. Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the owners' association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows.

1. Owner. To the owner, up to the net amount the owner would have received under the sale price in the BMR ownership housing guidelines if the City had purchased the unit on the date of the loss; and

2. City. To the City, any surplus remaining after payment to the owner.

14.12.090 - Annual report.

The Administrator shall provide an annual informational report to the City Council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR defaults and losses, if applicable.

14.12.100 - Enforcement.

The City, or Administrator if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide

The purpose of the Below Market Rate (BMR) Ownership Program Participation Guide (Ownership Guide) is to describe the BMR Program policies and procedures to an existing BMR homeowner who is a Program participant. The Ownership Guide includes the following and is intended to be an overview for a Program participant who is occupying a BMR home. The Ownership Guide describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination
- Sale proceeds and owner’s minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Transfers
- Vendors

The Ownership Guide is prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed and may serve as amendments to the Ownership Guidelines that will be published online and made available to the public.

14.12.120 Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers

The purpose of the Below Market Rate (BMR) Ownership Program Application Guide (Application Guide) describes the BMR Program policies and procedures to a prospective BMR homeowner who is considering the BMR Program application process. The Application Guide includes the following and is intended to be an overview for a Program applicant who is considering applying for a BMR home.

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

The Application Guide may be prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the Application Guidelines that will be published online and made available to the public.

14.12.130 Below Market Rate (BMR) Program Development Standards

A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.

B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.

C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:

1. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
2. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.

D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

SECTION 3. Subsection D of Section 14.04.060 is repealed.

SECTION 4. Chapters 15.22 "Affordable Housing Fee" and Chapter 15.23 "Below Market Rate Program" of the Morgan Hill Municipal Code are hereby repealed in their entirety.

SECTION 5. The revised Below Market Rate (BMR) Program Development Standards are hereby adopted.

SECTION 6. The City Council hereby finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Guidelines for CEQA. The proposed In-Lieu Housing Fee and Below Market Rate Program Ordinance are covered by the general rule that CEQA applies to projects that 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. Adoption of this ordinance does not create changes in the physical environment and is therefore exempt pursuant to the exemption described above.

SECTION 7. 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 8. 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 or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 26TH DAY OF SEPTEMBER 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:

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AYES: **COUNCIL MEMBERS:**

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

APPROVED:

____

STEVE TATE, Mayor

ATTEST: **DATE:**

________________________ ____________________

IRMA TORREZ, City Clerk

Effective Date:

ℵ CERTIFICATE OF THE CITY CLERK ℵ

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,~~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~~_ 2018.

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

DATE:______________________ ____________________________

IRMA TORREZ, City Clerk

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CITY OF MORGAN HILL

Housing Program Ordinance

HOUSING ORDINANCE

1. **ADD CHAPTER 14.08 "IN-LIEU HOUSING FEE"**
2. **ADD CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" (BMR)**
3. **INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE**
4. **INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE**
5. **INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS**
6. **REPEAL CHAPTERS 15.22 "AFFORDABLE HOUSING FEE"**
7. **REPEAL 15.23 "BELOW MARKET RATE PROGRAM"**

IN-LIEU HOUSING FEES

CITY OF MORGAN HILL

- **$19.70** per square foot (ownership projects outside of downtown) where there is a 15% Inclusionary Housing Requirement (IHO)
- **$13.20** per square foot (ownership projects in the downtown) where there is a 10% IHO
- **$29.00** per square foot (rental projects outside of downtown) where there is a 15% IHO
- **$14.50** per square foot (rental projects in the downtown) where there is a 10% IHO

Example Calculation of $19.70 Proposed In-Lieu Housing Fee

- Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $19.70 X 56 units X 2,000 square feet = $2,206,400, or $39,400 per unit.

BMR PROGRAM PARTICIPATION GUIDE

- Program participation guidelines
- Resale price determination
- **Sale proceeds and owner’s minimum return on down payment**
- Agreement compliance at the point of sale or refinance
- **Ownership and estate planning**
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements
- Transfers
- Vendors

BMR PROGRAM APPLICATION GUIDE

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

BMR DEVELOPMENT STANDARDS

- Designed to guide the implementation and construction of the BMR units and guidance for the inclusion of materials and amenities within each unit

- Intended to apply to projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project

- Standards would not typically apply to publicly financed 100 percent affordable housing projects

BMR DEVELOPMENT STANDARDS (Continued…)

CITY OF MORGAN HILL

- A provision has been added to provide the **flexibility** to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project results in a greater number of affordable units and/or broadens affordability levels to help the City achieve Regional Housing Needs Allocation (RHNA) Goals

- **Example:** A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits and other sources to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's RHNA goals

- The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council)

REORGANIZING MUNICIPAL CHAPTERS

CITY OF MORGAN HILL

- Repeal Chapter 15.22 “Affordable Housing Fee” (to be replaced by New Chapter 14.08 New “In-Lieu Housing Fee”)

- Repeal Chapter 15.23 “Below Market Rate Program” (to be replaced by New Chapter 14.12 Below Market Rate Program)

SUMMARY

- ADD CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO ESTABLISH NEW HOUSING IN-LIEU FEES
- ADD CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” (BMR)
- INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE
- INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE
- INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS
- REPEAL CHAPTERS 15.22 “AFFORDABLE HOUSING FEE”
- REPEAL 15.23 “BELOW MARKET RATE PROGRAM”

BMR Program Review

Minimum Return for BMR Buyers & Estate Planning Guidance

A HouseKeys Presentation

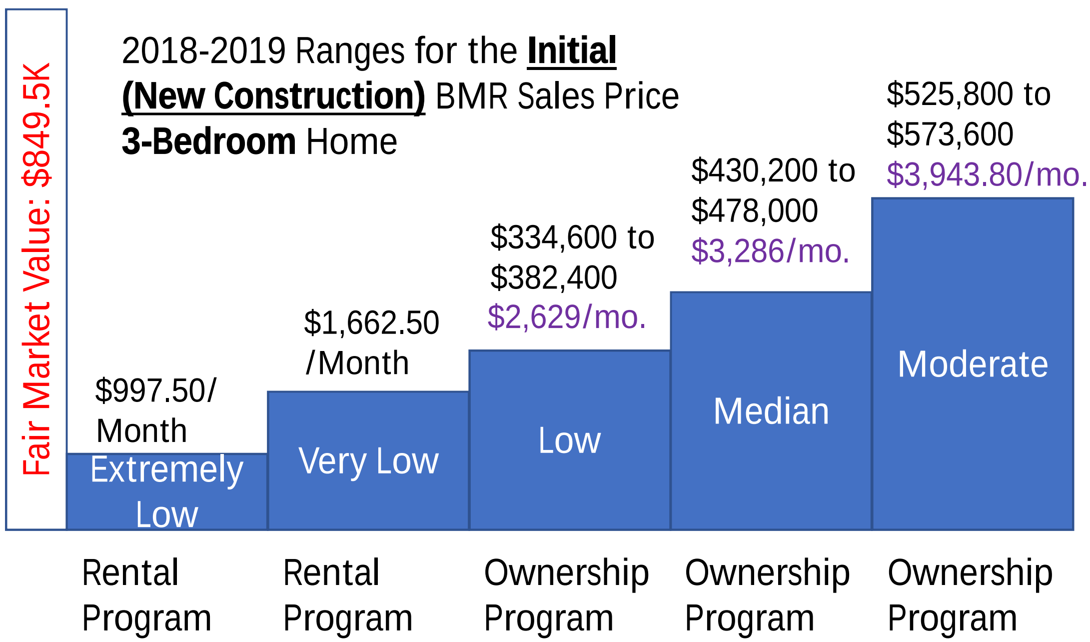
Challenge 1: Minimum Return on Down Payment

Understanding the Numbers Behind the Policy

Pricing Overview: 3-Bedroom

Santa Clara County Income Category 2018	*4-Person Household
Moderate	150,250
Median	125,200
Low	94,450
Very Low	66,500
Extremely Low	39,900

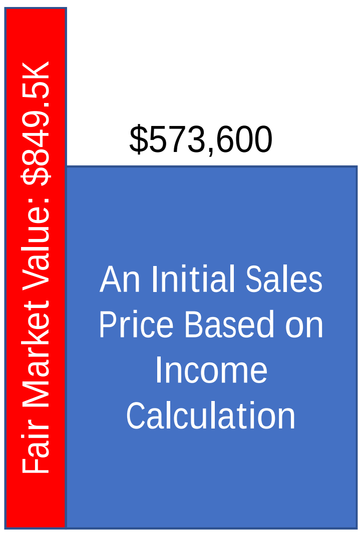
*The State sets the standard of bedroom count + 1 to match Household Size to Affordable Unit Pricing



In August 2018, out of 50 Morgan Hill 3-Bedrooms Listed, the following statistics were found:

- Median Price = $849,500
- Average Price = $946,489.84
- Lowest Priced Property = $425,000
- Highest Price Property = $2,300,000
- **94% of the Listings were over $700,000**
- 58% of the Listings were over $800,000
- 38% of the Listings were over $900,000

Initial Sale Prices are based on an Affordability Calculation (30% to 35% of Household Income) based on the Applicable County Income Category as reported by the State of California each year.



In today's market, the Fair Market Value is much higher than the BMR Price. Supporting a Minimum Return policy is easy to do under these market conditions.

Maximum Restricted Resale Prices are typically based on indexes. These include:

- Consumer Price Index
- Area Median Income
- OR Fair Market Value (whichever is lower)

There are circumstances where the Fair Market Value (FMV) can drop below the calculation-based price of a home. Our newest Agreement template takes the **lower** of FMV or Calculation-Based Price

A. AMI-Based Resale Price Movement in Incomes

Area Median Income (AMI)
for Santa Clara County

Year	Median Income	Change $	Change%	Notes
2018	125,200	11,900	10.5%	
2017	113,300	6,200	5.8%	
2016	107,100	800		
2015	106,300	800		
2003 - 2014	At or Below 105,500	103,500 (2010) 103,600 (2011)		

The Homeowners who purchased with a Resale Calculation that is based on the increase in County Median Incomes are the homeowners most in need of the policy change that allows for a minimum return.

2018 Resale Price: $474,700 $74,700 Gain

2017 Resale Price: $429,600 $29,600 Gain

2016 Resale Price: $406,100 $6,100 Gain

2003-2014 Resale Price: $400,000 $0 Gain

2003-2014 Purchase Price: $400,000

B. CPI-Based Resale Price Movement in Cost of Living

San Francisco Metro Consumer Price Index (CPI) or Cost of Living

Year	Index	Change $	Change%	Notes
2018	337.98	13.6	4.2%	
2017	324.38	15.07	4.9%	
2016	309.31	16.53	5.6%	
2015	292.78	15.27	5.5%	
2003 - 2014	Increase from 222.20 to 277.51	24.89% Increase		

2018 Resale Price: $608,425 $208,425 Gain

2017 Resale Price: $583,942 $183,942 Gain

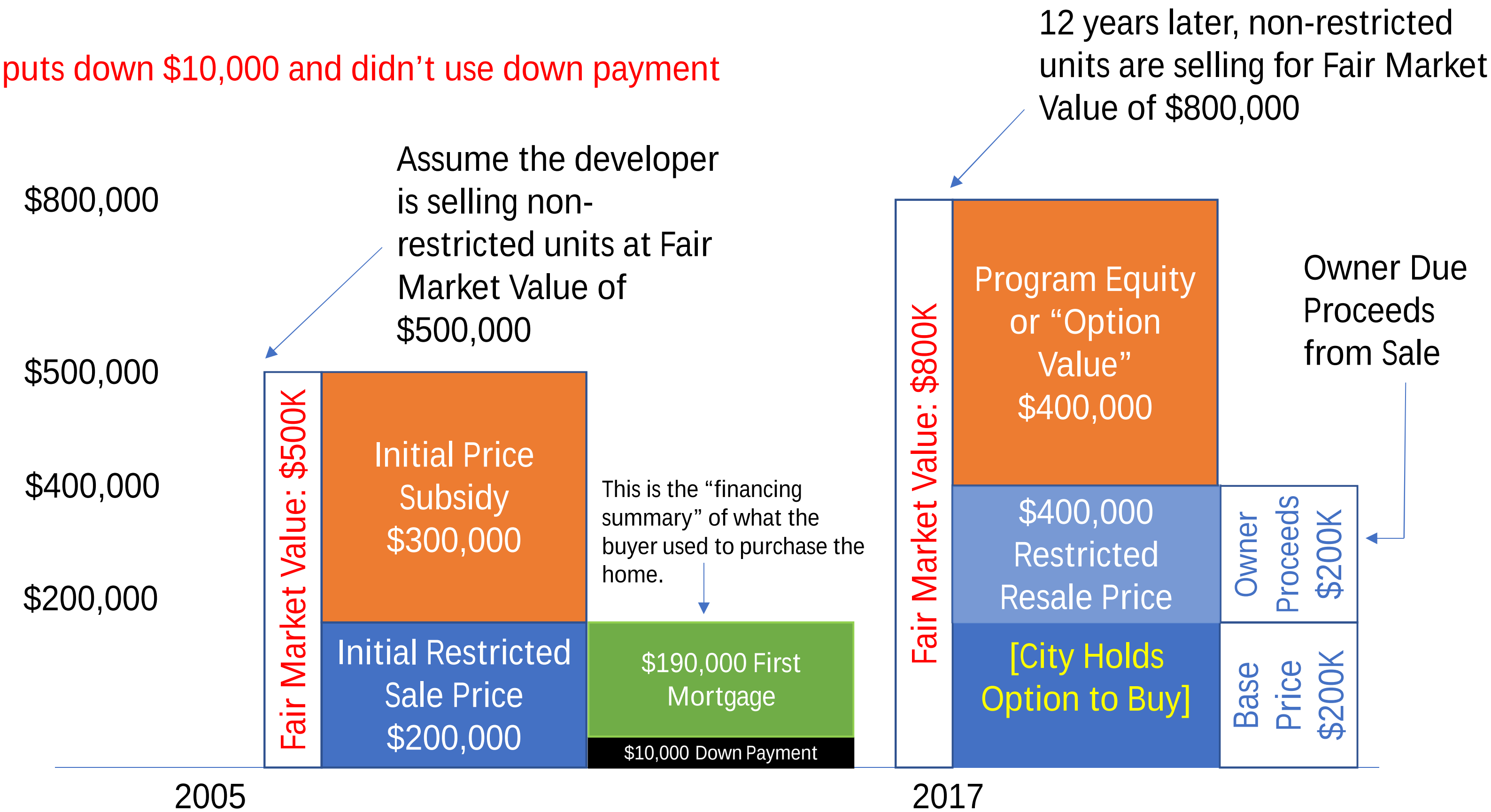
2016 Resale Price: $556,814 $156,814 Gain

2003-2014 Resale Price: $515,600 $115,600 Gain

2003-2014 Purchase Price: $400,000

The Homeowners who purchased with a Resale Calculation that is based on Consumer Price Index (CPI) or "Cost of Living" typically have enough built up "equity" or Owner Due Proceeds to pay off the down payment assistance. This assumes they hold onto the home long enough to benefit from the index movements.

Scenario 1: Buyer puts down $10,000 and didn't use down payment assistance



City Holds Option to Buy this BMR at the Restricted Resale Price of $400,000 even though the Fair Market Value is $800,000 (Option Value = $400,000)

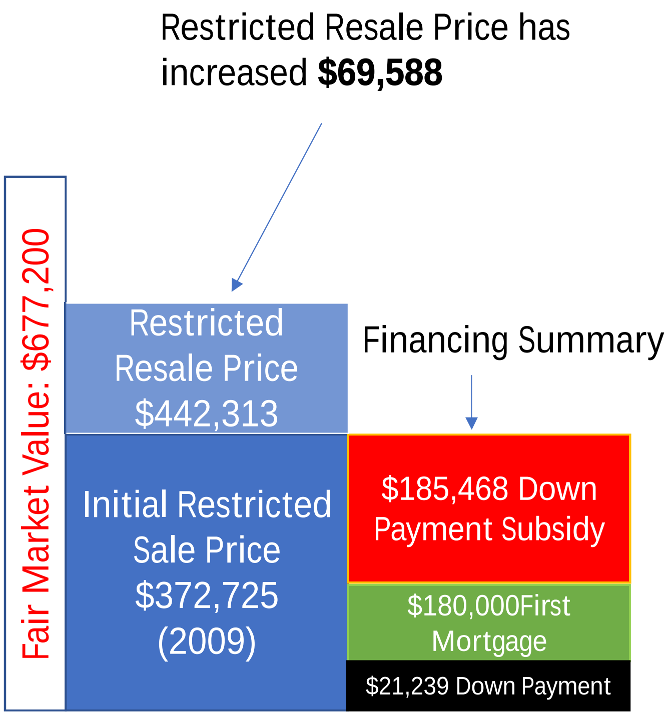
Scenario 2: Buyer puts down $20,000 and uses $150,000 in Down Payment Assistance

City Holds Option to Buy this BMR at the Restricted Resale Price of $450,000 even though the Fair Market Value is $800,000 (Option Value = $350,000)

This down payment subsidy is accruing **$4,500** per year and after 12 years totals **$54,000**

This scenario puts the Owner **$4,000** in the red.

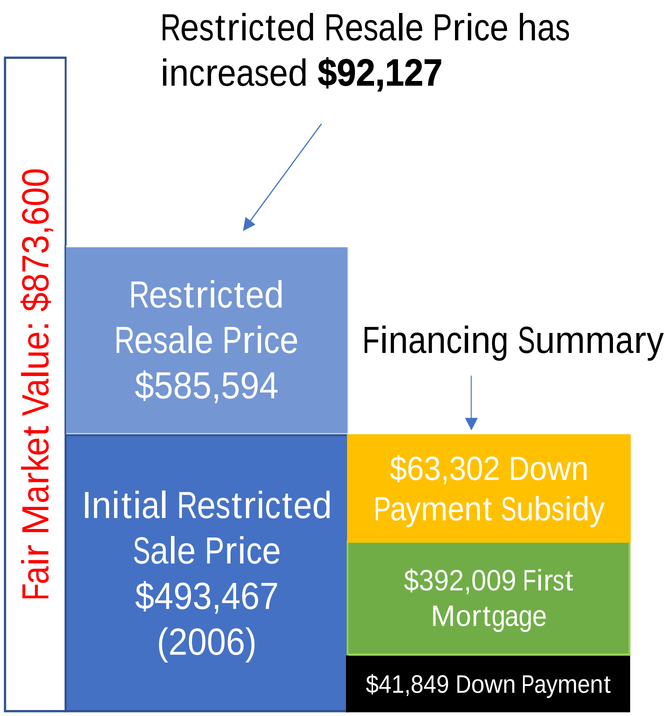
AMI-BASED RESALE PRICE WITH $186,468 IN DOWN PAYMENT ASSISTANCE



Subsidy	Annual Interest
1. $70,000 RDA	$2,100
2. $30,000 BEGIN	$900
3. $40,000 Santa Clara County HOME	$1,200
4. $27,800 South County CalHOME	$834
5. $11,168 CAlHFA ChDAP	$377.59
6. $6,500 Housing Trust SV	$211.25
$185,468	**$5,622.84 / year**

Owner has accrued at least **$50,605.56 in interest payments**

MADRONE PLAZA EXAMPLE



Subsidy	Annual Interest
1. $27,000 South County Housing	$1,080
2. $15,000 CalHFA Purchase Assistance	$1,050
3. $14,802 CalHFA ChDA	$444.06
4. $6,500 Housing Trust SV	$0
$63,302	**$2,574.06/ year**

Owner has accrued at least **$30,888.72 in interest payments**

CPI-BASED RESALE PRICE WITH $63,302 IN DOWN PAYMENT ASSISTANCE

VIALE EXAMPLE

RECAP NOTE: CPI-BASED RESALE PRICES HAVE HISTORICALLY PUT OWNERS IN A BETTER POSITION TO PAY OFF ACCRUED INTEREST

BMR MINIMUM RETURN

- **Challenge:** BMR homeowners may not reap much benefit at the time of sale if they are to use the calculation in their agreement, using an increase based on the consumer price index (CPI) **or** the area median income (AMI)

- **Why?** The Madrone Development and others built by South County Housing provided a significant amount of down payment and closing cost assistance to fill the gap between the maximum purchase money mortgage loan (first mortgage) and the sale price. The new homebuyer bought at a market rate price

- Received substantial downpayment from various entities, Multi layered financing, deferred interest, plus personal down payment sources, all of which often served as the gap

MINIMUM RETURN ON DOWN PAYMENT

CITY OF MORGAN HILL

- Recommendation to permit the BMR homeowner to receive their initial out of pocket down payment plus an annual return based on the number of years that they occupied the unit

- **Example:** If an Owner made a down payment contribution of $20,000 to purchase a BMR home that they want to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a $14,000 ($2,000 x 7 years) return on their initial down payment for a total of $34,000.

Challenge 2: Estate Planning

Restricting the Use of Trusts and Using Designated Beneficiaries

OWNERSHIP AND ESTATE PLANNING

City of Morgan Hill

The City is exploring ways to address Transfers upon death of the Owner

Payable-on-Death (POD) Accounts and **Transfer-on-Death (TOD)** Deeds are two methodologies that are being explored to provide a path for BMR Owners to **designate beneficiaries** and avoid having a BMR Unit become part of a probate case.

Staff will return to Council to provide an overview of BMR ownership estate planning and trusts after consulting with legal counsel.

New buyers of BMR's may NOT purchase the BMR Unit through a trust, including but not limited to living trusts.

Existing BMR Owners may NOT transfer ownership of their BMR Units to trusts of any kind, including living trusts.

Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term

$19.70 is equal to 75% of the size of the Market Rate (MR) Unit.

$32.30 is equal in size to MR unit

$22.40 is equal to 80% of the size of the MR unit

$18.20 is equal to 72% of Size of MR unit

$13.20 is equal to 75% of the size of the Market Rate (MR) Unit.

$22.50 is equal in size to MR unit

$15.20 is equal to 80% of the size of the MR unit

$12.00 is equal to 72% of the size of MR unit

$29.00 is equal to 75% of the size of the Market Rate Unit

$14.50 is equal to 75% of the size of the Market Rate Unit

PUBLIC COMMENT
AGENDA DATE: 09/26/18
SUPPLEMENT # 1

E-mail: TransLaw@PacBell.Net

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All Council - Members

Joseph P. Thompson
Attorney at Law

952 School St. #376
Napa, CA 94559

TEL: 408/848-5506

Subject: PUBLIC COMMENT: NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PRIVATE RETREAT, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE "MOBILITY PARTNERSHIP"---Fw: [transport-policy] Re: Cost of highways "NOT" covered by gas taxes?

From: Joseph Patrick Thompson (translaw@pacbell.net)

To: info@sanbenitocog.org; sbcsuper@supervisor.co.san-benito.ca.us; senator.cannella@senate.ca.gov; sanbenitochapter@yahoo.com; jim.gillio@hollister.ca.gov; bholtzclaw@newsvmedia.com; mary@sanbenitocog.org; sallybettencourt@gmail.com; ignaciovelazquez@hotmail.com; mgr42@charter.net; cityclerk@hollister.ca.gov; allcouncilmembers@ci.gilroy.ca.us; gary@custom-1.com; ehoward1965@gmail.com; president@gilroyedc.org; steve.tate@morganhill.ca.gov; onemorejones@yahoo.com; carl@reformcalifornia.org; askmike@garlic.com;

Date: Saturday, September 15, 2018 12:12 PM

The unelected, unaccountable, non-transparent Directors at the SBCCOG (and other transit agencies) should support repeal of the SB-1 gas/diesel taxes if they
believe in sound, sustainable transport policy. Their present policy, called the "transit first policy," includes a double-standard: one for motorists, one for transit riders.
Motorists pay about 102% of their costs, including highway construction and maintenance. Transit riders are paying only about 1% of the fully amortized costs of
their boondoggle rides. The other 99% of the cost of public sector transit are diverted from gas/diesel taxes by boondogglers at the transit agencies so that they
can keep the bankrupt boondoggles running. If we privatized transit, we'd have more transport for less taxes. We'd also have fewer traffic accidents, injuries and
deaths. In reality, the unelected Directors at the transit agencies sacrifice the safety of motorists to reward the wasters at the transit agencies. Caveat viator.

Joseph Thompson

Joseph P. Thompson, Esq.
Past-Chair, Legislation Committee, Transportation Lawyers Assn.
Post-Doctoral Student, Transportation Law & Policy, Norman Y. Mineta International Institute for Surface Transportation Policy Studies, SJSU;
Transportation Research Board, Georgetown U.; and Library of Congress
Charter Member, SBCCOG Citizens Transit Task Force
Charter Member, SBCCOG Citizens Rail Advisory Committee
(408) 848-5506
e-Mail: TransLaw@PacBell.Net

cc: Editor - Please publish this Guest Editorial in all three newspapers. jpt

On Saturday, September 15, 2018 11:26 AM, "Randal O'Toole rot@ti.org [transport-policy]" <transport-policy@yahoogroups.com> wrote:

Phil,

In general, state highways (including interstates, which are owned by the states) pay for themselves, while local roads do not. The main reason some roads don't pay for themselves is that politicians are afraid to ask users to pay their fair share. If U.S. car and light truck owners paid the full cost of driving, it would add about a penny or two per vehicle mile. In contrast, if U.S. transit riders were asked to pay the full cost of transit, it would add nearly a dollar per passenger mile.

The argument in this report is self-defeating. "Highways don't pay for themselves out of gas taxes, so let's take even more money from gas taxes to spend on other forms of transportation that lose even more money." How is that going to help roads pay for themselves?

The report says that "Highway boosters have exploited the myth of self-sufficiency to argue that fuel tax revenue should only fund highway and bridge projects." I don't think so; the argument is that transportation users should pay for what they use, not pay for what other people use.

Randal
Cato Institute
26344 SW Metolius Meadows Drive
Camp Sherman, Oregon 97730
541-595-1460
541-588-0518 cell
http://ti.org/antiplanner

Posted by: Randal O'Toole <rot@ti.org>

Reply via web post • Reply to sender • Reply to group • Start a New Topic • Messages in this topic (2)

THE TRANSPORT POLICY DISCUSSION GROUP

Sponsored by The Public Purpose

http://www.publicpurpose.com

CITY OF MORGAN HILL

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, September 26, 2018 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

(Mayor Pro Tem Constantine)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Minutes Clerk Gonzalez)

WORKSHOP

The purpose of this workshop is to discuss a Below Market Rate (BMR) Ownership Program Participation Guide and a Below Market Rate Program Application Guide, including Ownership and Estate Planning and BMR Owners' Minimum Return on Down payment. Guides are attached in Other Business Item #9. (60 Minutes)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PROCLAMATIONS

Proclaiming September 30, 2018 as Lewy Body Dementia Awareness Day
In honor of Susan Berghoff

Proclaiming the month of September 2018 as National Hispanic Heritage Month

PUBLIC COMMENT

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

PUBLIC COMMENT RECEIVED

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. ACCEPT DONATION FROM CHIALA FAMILY FOR INCLUSIVE PLAYGROUND

Recommendation:

1. Accept a donation of $23,000 from the Chiala Family for construction of an inclusive playground at Community Park; and
2. Authorize the City Manager to execute and administer a donation agreement.

2. AWARD 2018-2019 PARKING LOT AND PATH SEAL COAT PROJECT

Recommendation:

1. Award contract to Silicon Valley Paving, Inc. in the amount of $63,466.10;
2. Authorize the expenditure of contingency funds not to exceed $6,346.61; and
3. Authorize City Manager to execute and administer that certain construction contract with Silicon Valley Paving, Inc.

3. **APPROVE THIRD AMENDMENT TO SERVICE AGREEMENT WITH WESTON MILES ARCHITECTS FOR THE LIBRARY EXPANSION PROJECT**

Recommendation:

1. Approve Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project increasing the fee by $20,305 for a total not to exceed amount of $467,430; and
2. Authorize the City Manager to execute the Third Amendment to the Service Agreement for Design Professionals with Weston Miles Architects for value engineering/redesign and construction support services for the Library Expansion Project.

4. **TERMINATE IMPROVEMENT AGREEMENT WITH NUEVA VISTA, LLC FOR PSYNERGY PROGRAMS CAMPUS AT 18225 HALE AVE**

Recommendation:

Terminate Improvement Agreement with Nueva Vista, LLC.

5. **ADOPT ORDINANCE APPROVING AN AMENDMENT TO A PLANNED DEVELOPMENT MASTER PLAN FOR "EVERGREEN VILLAGE" TO BE LOCATED ON A 20 ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF BUTTERFIELD BOULEVARD AND COCHRANE ROAD (APN'S 726-25-035 AND 726-32-021)**

Recommendation:

Waive the reading, adopt Ordinance No. 2279, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. **ADOPT ORDINANCE APPROVING REVISIONS TO SECTION III- COMPETITION CRITERIA, STANDARDS AND POINTS OF A COMPETITION MANUAL (FILE NO. ZA2018-0003) FOR THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS)**

Recommendation:

Waive the reading, adopt Ordinance No. 2280, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. **ADOPT ORDINANCE ADDING A NEW CHAPTER 12.24 (NEWSRACK CONSOLIDATION) TO TITLE 12 (STREETS SIDEWALKS AND PUBLIC PLACES) TO THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL**

Recommendation:

Waive the reading, adopt Ordinance No. 2281, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

8. APPROVE THE SEPTEMBER 5, 2018 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

9. ADOPT HOUSING PROGRAM, ORDINANCE ADDING A NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO TITLE 14 (HOUSING) ESTABLISHING IN-LIEU FEES AND ADDING CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND INCORPORATES BELOW MARKET RATE PROGRAM DEVELOPMENT STANDARDS, AND REPEALING CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND 15.23 “BELOW MARKET RATE PROGRAM”

Recommendation:

1. Open/Close Public Hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce ordinance that:
    A. Adds Chapter 14.08 to institute a Housing in-lieu fee of $19.70 per square foot for residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, $13.20 per square foot for ownership projects in the Downtown where there is a 10% Inclusionary Housing Requirement, $29.00 per square foot for rental residential development outside of Downtown where there is a 15% Inclusionary Housing Requirement, and $11.00 per square foot for rental projects in the Downtown where there is a 10% Inclusionary Housing Requirement;
    B. Adds Chapter 14.12 Below Market Rate Program, incorporating a Below Market Rate Ownership Program Participation Guide and a Below Market Rate Progam Application Guide;
    C. Repeals Chapter 15.22 Affordable Housing Fee and Chapter 15.23 Below Market Rate Program from Title 15, placing both in Title 14; and
    D. Adds Below Market Rate (BMR) Program Development Standards.

OR

4. Provide feedback on draft ordinance and direct staff to bring a revised ordinance to a future meeting.

Estimated Time: 30 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.

CITY OF MORGAN HILL

Housing Program Ordinance

HOUSING ORDINANCE

1. ADD CHAPTER 14.08 “IN-LIEU HOUSING FEE”
2. ADD CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” (BMR)
3. INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE
4. INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE
5. INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS
6. REPEAL CHAPTERS 15.22 “AFFORDABLE HOUSING FEE”
7. REPEAL 15.23 “BELOW MARKET RATE PROGRAM”

IN-LIEU HOUSING FEES

CITY OF MORGAN HILL

- **$19.70** per square foot (ownership projects outside of downtown) where there is a 15% Inclusionary Housing Requirement (IHO)
- **$13.20** per square foot (ownership projects in the downtown) where there is a 10% IHO
- **$29.00** per square foot (rental projects outside of downtown) where there is a 15% IHO
- **$14.50** per square foot (rental projects in the downtown) where there is a 10% IHO

Example Calculation of $19.70 Proposed In-Lieu Housing Fee

- Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $19.70 X 56 units X 2,000 square feet = $2,206,400, or $39,400 per unit.

BMR PROGRAM PARTICIPATION GUIDE

CITY OF MORGAN HILL

- Program participation guidelines
- Resale price determination
- **Sale proceeds and owner’s minimum return on down payment**
- Agreement compliance at the point of sale or refinance
- **Ownership and estate planning**
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements
- Transfers
- Vendors

BMR PROGRAM APPLICATION GUIDE

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation and Exception Requests

BMR DEVELOPMENT STANDARDS

CITY OF MORGAN HILL

- Designed to guide the implementation and construction of the BMR units and guidance for the inclusion of materials and amenities within each unit

- Intended to apply to projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project

- Standards would not typically apply to publicly financed 100 percent affordable housing projects

BMR DEVELOPMENT STANDARDS (Continued…)

CITY OF MORGAN HILL

- A provision has been added to provide the **flexibility** to approve other reasonable options as long as the required finding of consistency with Housing Element policies can be made and the project results in a greater number of affordable units and/or broadens affordability levels to help the City achieve Regional Housing Needs Allocation (RHNA) Goals

- **Example:** A market rate builder partners with a non-profit developer to create a separate parcel for a stand-alone affordable housing development that can be financed with Tax Credits and other sources to provide more units than the inclusionary requirement and with a deeper range of income affordability to meet the City's RHNA goals

- The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council)

REORGANIZING MUNICIPAL CHAPTERS

CITY OF MORGAN HILL

- Repeal Chapter 15.22 “Affordable Housing Fee” (to be replaced by New Chapter 14.08 New “In-Lieu Housing Fee”)

- Repeal Chapter 15.23 “Below Market Rate Program” (to be replaced by New Chapter 14.12 Below Market Rate Program)

SUMMARY

- ADD CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO ESTABLISH NEW HOUSING IN-LIEU FEES
- ADD CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” (BMR)
- INCORPORATE A BMR OWNERSHIP PROGRAM PARTICIPATION GUIDE
- INCORPORATE A BMR OWNERSHIP PROGRAM APPLICATION GUIDE
- INCORPORATE BMR PROGRAM DEVELOPMENT STANDARDS
- REPEAL CHAPTERS 15.22 “AFFORDABLE HOUSING FEE”
- REPEAL 15.23 “BELOW MARKET RATE PROGRAM”

BMR Program Review

Minimum Return for BMR Buyers & Estate Planning Guidance

A HouseKeys Presentation

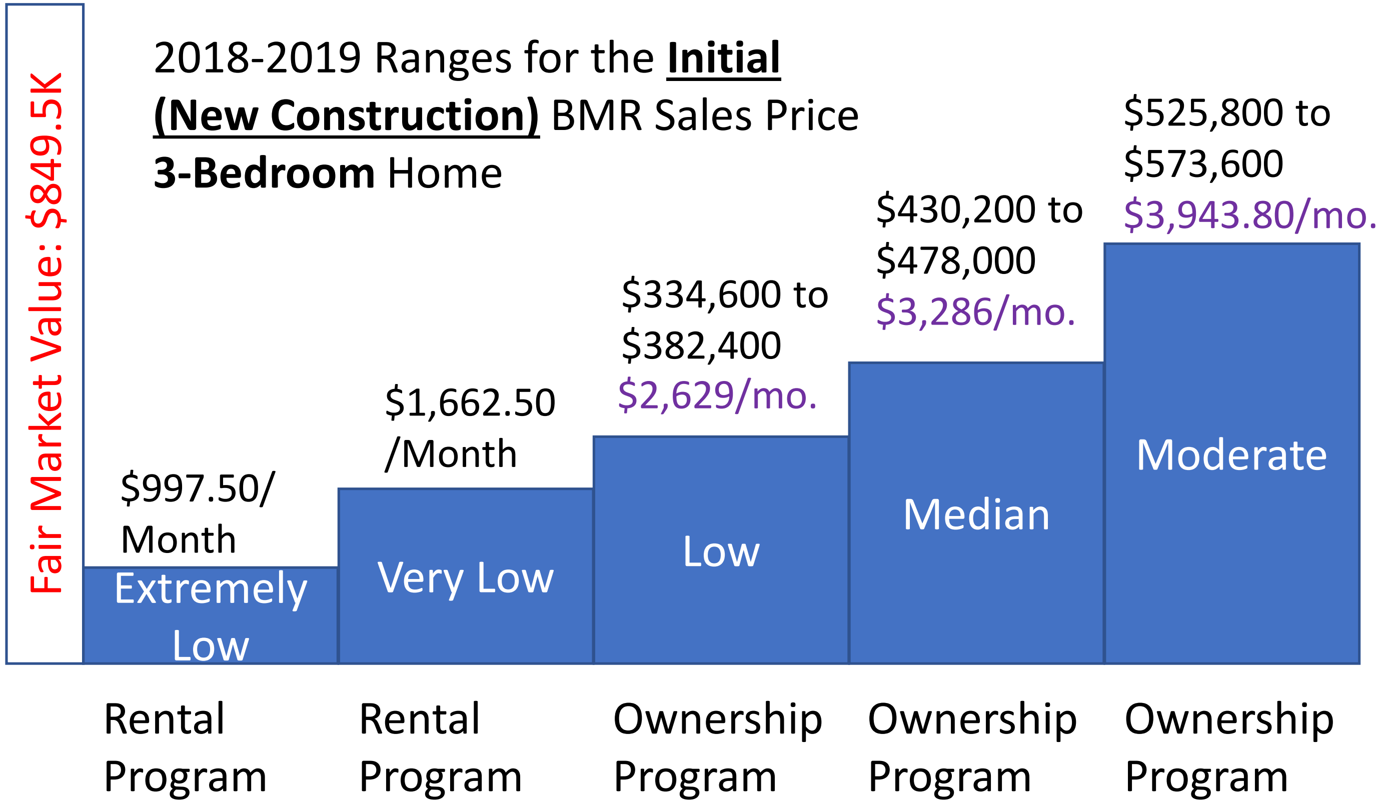
Challenge 1: Minimum Return on Down Payment

Understanding the Numbers Behind the Policy

Pricing Overview: 3-Bedroom

Santa Clara County Income Category 2018	*4-Person Household
Moderate	150,250
Median	125,200
Low	94,450
Very Low	66,500
Extremely Low	39,900

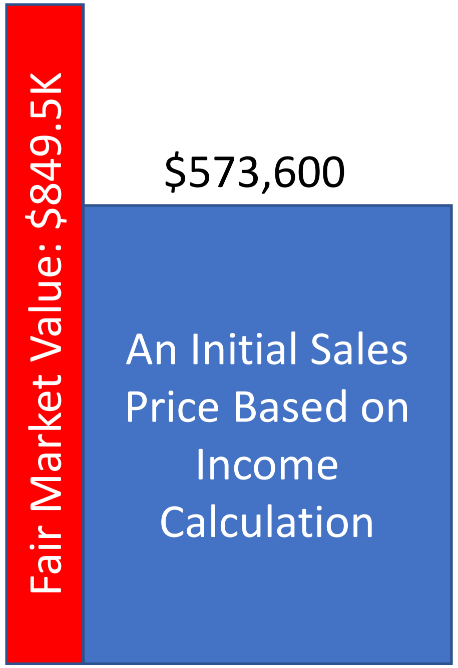
*The State sets the standard of bedroom count + 1 to match Household Size to Affordable Unit Pricing



In August 2018, out of 50 Morgan Hill 3-Bedrooms Listed, the following statistics were found:

- Median Price = $849,500
- Average Price = $946,489.84
- Lowest Priced Property = $425,000
- Highest Price Property = $2,300,000
- **94% of the Listings were over $700,000**
- 58% of the Listings were over $800,000
- 38% of the Listings were over $900,000

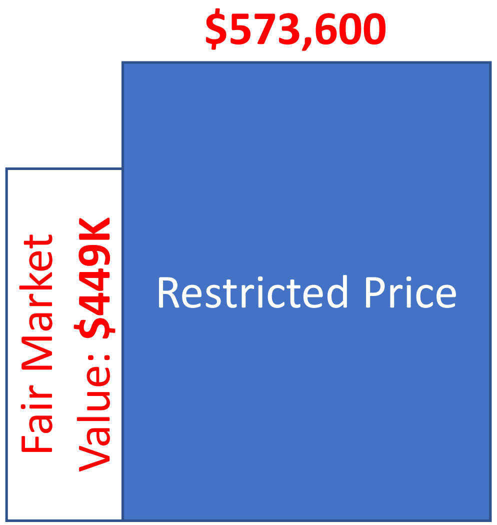
Initial Sale Prices are based on an Affordability Calculation (30% to 35% of Household Income) based on the Applicable County Income Category as reported by the State of California each year.



In today's market, the Fair Market Value is much higher than the BMR Price. Supporting a Minimum Return policy is easy to do under these market conditions.

Maximum Restricted Resale Prices are typically based on indexes. These include:

- Consumer Price Index
- Area Median Income
- OR Fair Market Value (whichever is lower)



There are circumstances where the Fair Market Value (FMV) can drop below the calculation-based price of a home. Our newest Agreement template takes the **lower** of FMV or Calculation-Based Price

Area Median Income (AMI) for Santa Clara County

Year	Median Income	Change $	Change%	Notes
2018	125,200	11,900	10.5%	
2017	113,300	6,200	5.8%	
2016	107,100	800		
2015	106,300	800		
2003 - 2014	At or Below 105,500	103,500 (2010) 103,600 (2011)		

A. AMI-Based Resale Price Movement in Incomes

The Homeowners who purchased with a Resale Calculation that is based on the increase in County Median Incomes are the homeowners most in need of the policy change that allows for a minimum return.

2018 Resale Price: $474,700 $74,700 Gain

2017 Resale Price: $429,600 $29,600 Gain

2016 Resale Price: $406,100 $6,100 Gain

2003-2014 Resale Price: $400,000 $0 Gain

2003-2014 Purchase Price: $400,000

B. CPI-Based Resale Price Movement in Cost of Living

San Francisco Metro Consumer Price Index (CPI) or Cost of Living

Year	Index	Change $	Change%	Notes
2018	337.98	13.6	4.2%	
2017	324.38	15.07	4.9%	
2016	309.31	16.53	5.6%	
2015	292.78	15.27	5.5%	
2003 - 2014	Increase from 222.20 to 277.51	24.89% Increase		

2018 Resale Price: $608,425 $208,425 Gain

2017 Resale Price: $583,942 $183,942 Gain

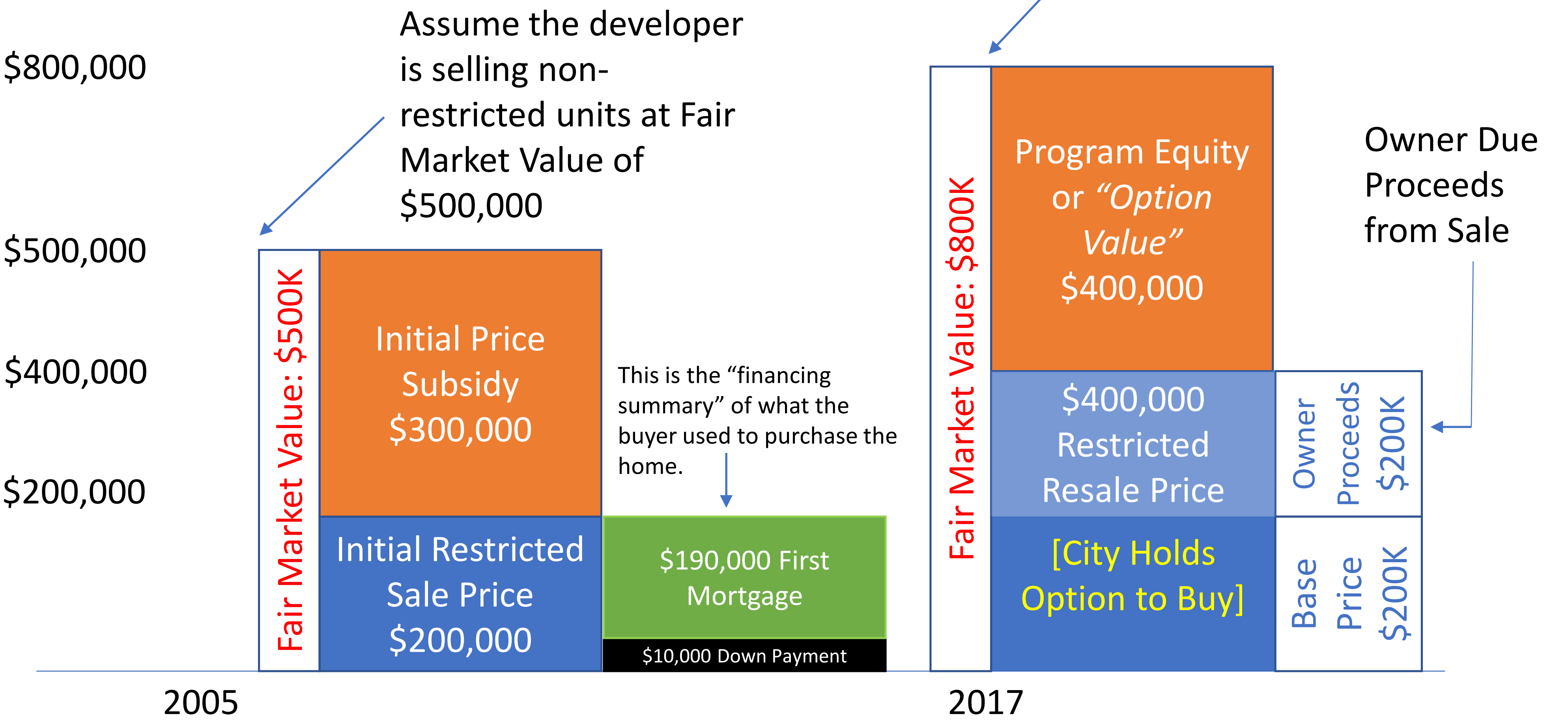
2016 Resale Price: $556,814 $156,814 Gain

2003-2014 Resale Price: $515,600 $115,600 Gain

2003-2014 Purchase Price: $400,000

The Homeowners who purchased with a Resale Calculation that is based on Consumer Price Index (CPI) or "Cost of Living" typically have enough built up "equity" or Owner Due Proceeds to pay off the down payment assistance. This assumes they hold onto the home long enough to benefit from the index movements.

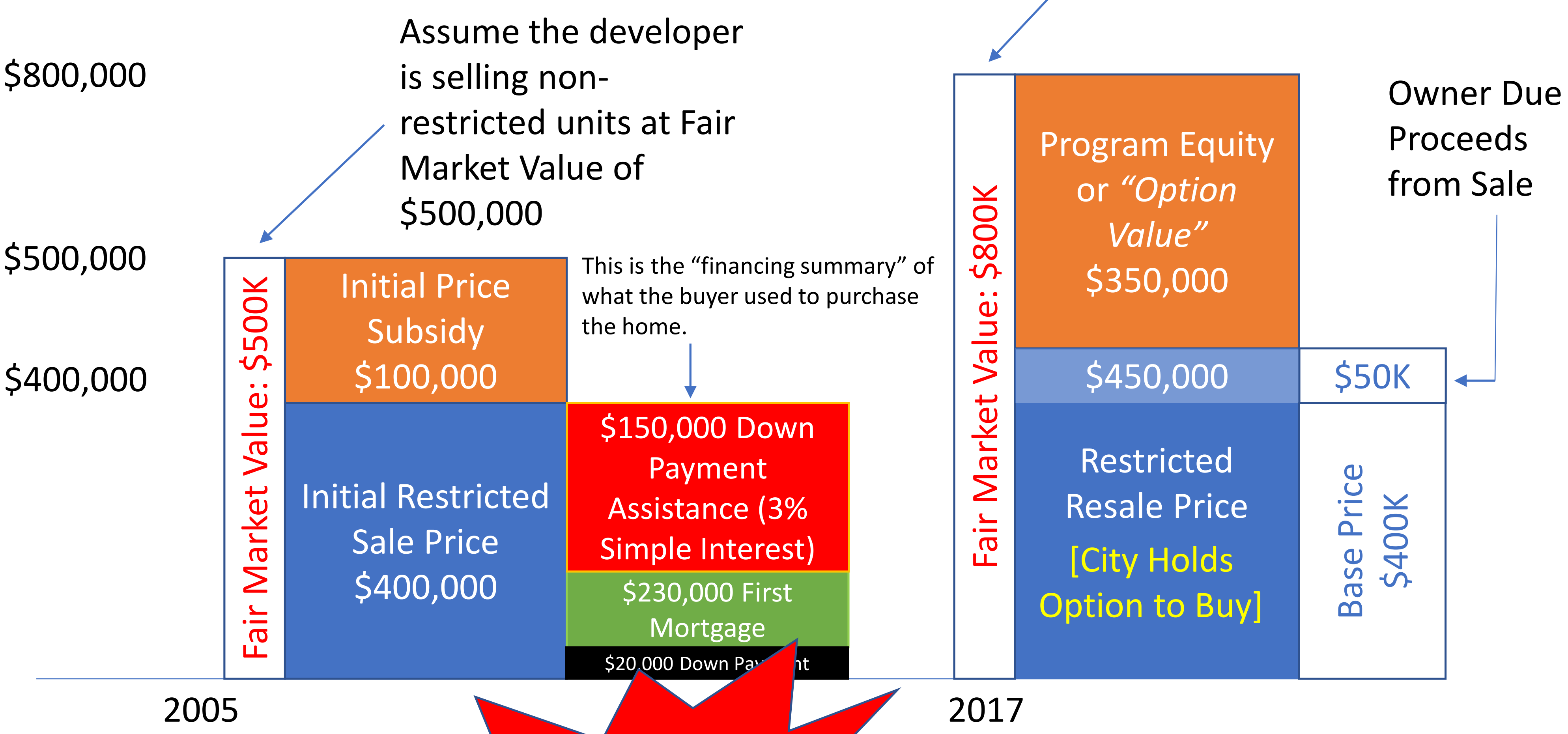
Scenario 1: Buyer puts down $10,000 and didn't use down payment assistance



City Holds Option to Buy this BMR at the Restricted Resale Price of $400,000 even though the Fair Market Value is $800,000 (Option Value = $400,000)

Scenario 2: Buyer puts down $20,000 and uses $150,000 in Down Payment Assistance

12 years later, non-restricted units are selling for Fair Market Value of $800,000



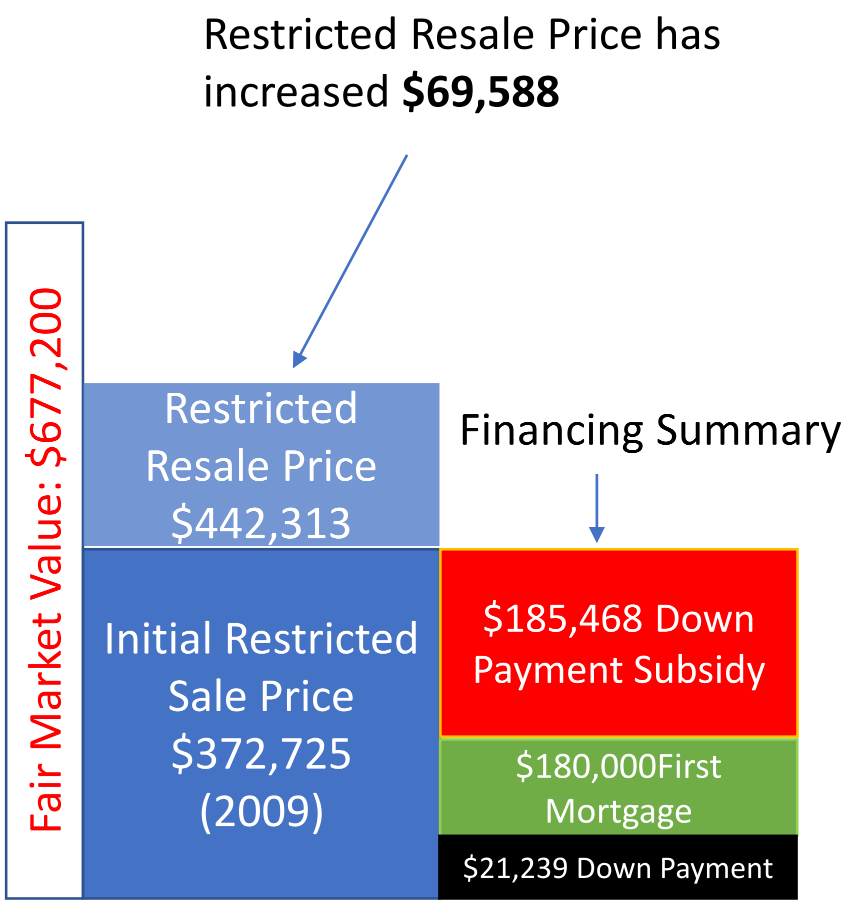
$150,000 in Down Payment Assistance

City Holds Option to Buy this BMR at the Restricted Resale Price of $450,000 even though the Fair Market Value is $800,000 (Option Value = $350,000)

This down payment subsidy is accruing **$4,500** per year and after 12 years totals **$54,000**

This scenario puts the Owner **$4,000** in the red.

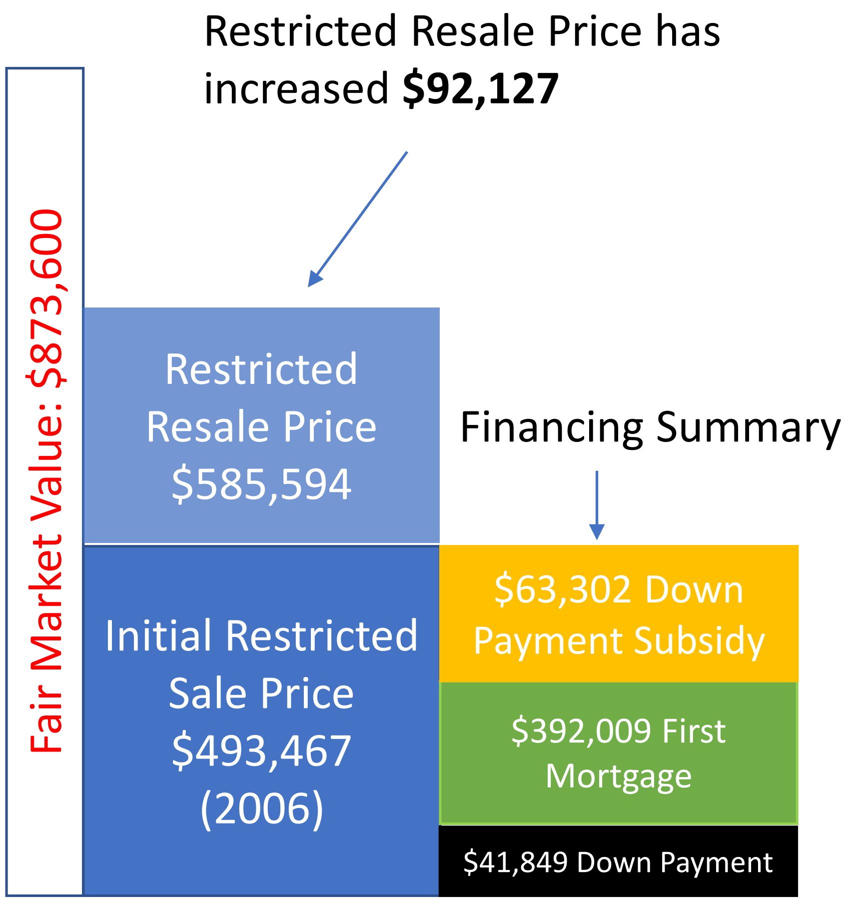
AMI-BASED RESALE PRICE WITH $186,468 IN DOWN PAYMENT ASSISTANCE



Subsidy	Annual Interest
1. $70,000 RDA	$2,100
2. $30,000 BEGIN	$900
3. $40,000 Santa Clara County HOME	$1,200
4. $27,800 South County CalHOME	$834
5. $11,168 CAlHFA ChDAP	$377.59
6. $6,500 Housing Trust SV	$211.25
$185,468	**$5,622.84 / year**

Owner has accrued at least **$50,605.56 in interest payments**

MADRONE PLAZA EXAMPLE



Subsidy	Annual Interest
1. $27,000 South County Housing	$1,080
2. $15,000 CalHFA Purchase Assistance	$1,050
3. $14,802 CalHFA ChDA	$444.06
4. $6,500 Housing Trust SV	$0
$63,302	**$2,574.06/ year**

Owner has accrued at least **$30,888.72 in interest payments**

CPI-BASED RESALE PRICE WITH $63,302 IN DOWN PAYMENT ASSISTANCE

RECAP NOTE: CPI-BASED RESALE PRICES HAVE HISTORICALLY PUT OWNERS IN A BETTER POSITION TO PAY OFF ACCRUED INTEREST

VIALE EXAMPLE

BMR MINIMUM RETURN

- **Challenge:** BMR homeowners may not reap much benefit at the time of sale if they are to use the calculation in their agreement, using an increase based on the consumer price index (CPI) **or** the area median income (AMI)

- **Why?** The Madrone Development and others built by South County Housing provided a significant amount of down payment and closing cost assistance to fill the gap between the maximum purchase money mortgage loan (first mortgage) and the sale price. The new homebuyer bought at a market rate price

- Received substantial downpayment from various entities, Multi layered financing, deferred interest, plus personal down payment sources, all of which often served as the gap

MINIMUM RETURN ON DOWN PAYMENT

City of Morgan Hill

- Recommendation to permit the BMR homeowner to receive their <u>initial out of pocket down payment</u> plus an <u>annual return</u> based on the number of years that they occupied the unit

- **Example:** If an Owner made a down payment contribution of $20,000 to purchase a BMR home that they want to sell 7 years later, the City could use a 10% rate of return for every year that the Owner has occupied the unit. This would mean that the owner would receive a $14,000 ($2,000 x 7 years) return on their initial down payment for a total of $34,000.

Challenge 2: Estate Planning

Restricting the Use of Trusts and Using Designated Beneficiaries

OWNERSHIP AND ESTATE PLANNING

The City is exploring ways to address Transfers upon death of the Owner

Payable-on-Death (POD) Accounts and **Transfer-on-Death (TOD)** Deeds are two methodologies that are being explored to provide a path for BMR Owners to **designate beneficiaries** and avoid having a BMR Unit become part of a probate case.

Staff will return to Council to provide an overview of BMR ownership estate planning and trusts after consulting with legal counsel.

New buyers of BMR's may NOT purchase the BMR Unit through a trust, including but not limited to living trusts.

Existing BMR Owners may NOT transfer ownership of their BMR Units to trusts of any kind, including living trusts.

Owners of BMR Units should keep in mind that the Estate of the Owner is entitled to the Owner due proceeds upon any transfer that takes place during the Agreement term

CITY OF MORGAN HILL