



Special - Regular Meeting Agenda
City Council

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

Wednesday, October 24, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

WORKSHOP

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

Recommendation:

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PROCLAMATION

Proclaiming November 2018 as Morgan Hill Community Philanthropy Month
Pamela Meador

PRESENTATION

Morgan Hill Downtown Association Board Presentation of Contribution Check
for the Downtown Twinkle Lights

PUBLIC COMMENT

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

ADOPTION OF AGENDA

October 24, 2018

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. ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)

Recommendation:

Waive the reading, adopt Ordinance No. 2286, 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.

2. ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DR. AND MONTEREY ROAD

Recommendation:

Waive the reading, adopt Ordinance No. 2287, 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.

3. ADOPT ORDINANCE 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"

Recommendation:

Waive the reading, adopt Ordinance No. 2288, 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.

PUBLIC HEARING

4. ADOPT AN ORDINANCE REQUIRING SAFE STORAGE OF FIREARMS, REPORTING THEFT OR LOSS OF FIREARMS, AND PROHIBITING POSSESSION OF LARGE CAPACITY MAGAZINES

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance amending Chapter 9.04 titled "Weapons," to require the safe storage of firearms when not attended, to require the reporting of the theft or loss of firearms, and to prohibit the possession of large capacity magazines.

Estimated Time: 75 Minutes

5. ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

RECONVENE

CLOSED SESSION ANNOUNCEMENT

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 COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

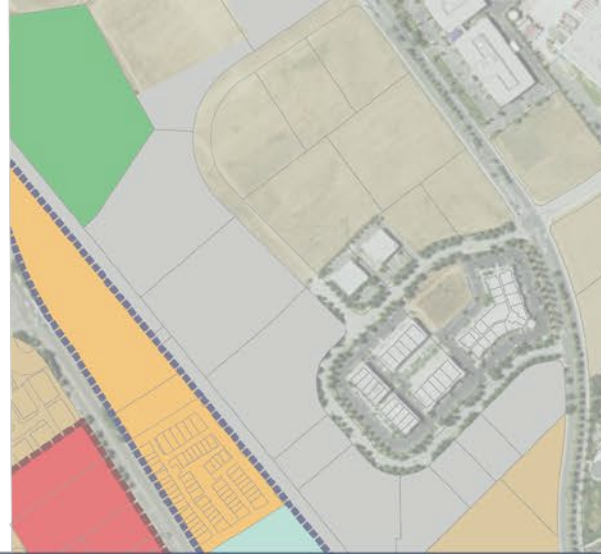
MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

RECOMMENDATION(S)

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

LINKS/ATTACHMENTS:

1. Workshop Presentation
2. Monterey Corridor Block-Level Master Plan
3. Letter from John Kent

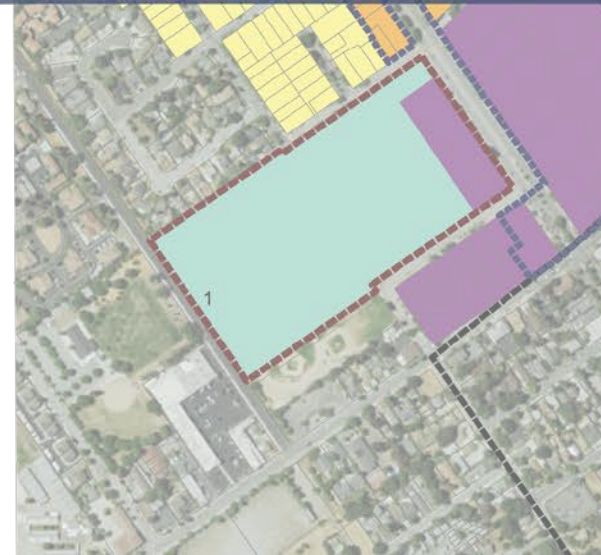
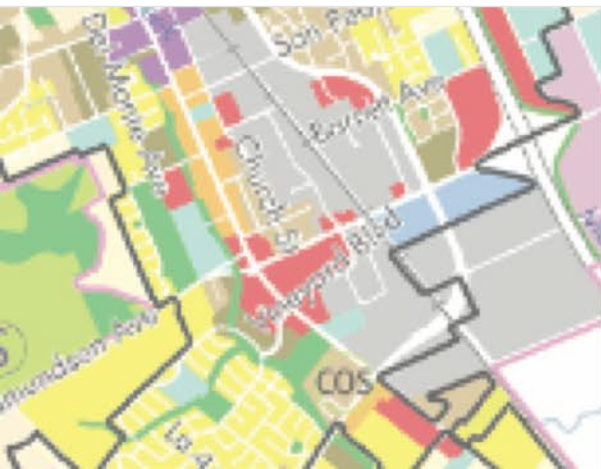
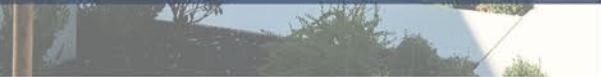


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CITY OF MORGAN HILL

Monterey Corridor Block Level Master Plan - Public Workshop

October 17, 2018



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Agenda

Overview & Background

Commercial Analysis

Draft Frontage Standards

Questions & Comments

Overview & Background

Introductions

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City of Morgan Hill

John Baty, Principal Planner

Lisa Wise Consulting, Inc.

Lisa Wise, AICP, President

Jen Daugherty, AICP, Senior
Associate

Spencer Johnson, CNU-A, Associate

Metrovation Brokerage and Consulting

Christine Firstenberg, Principal

Background

General Plan Update (2016)

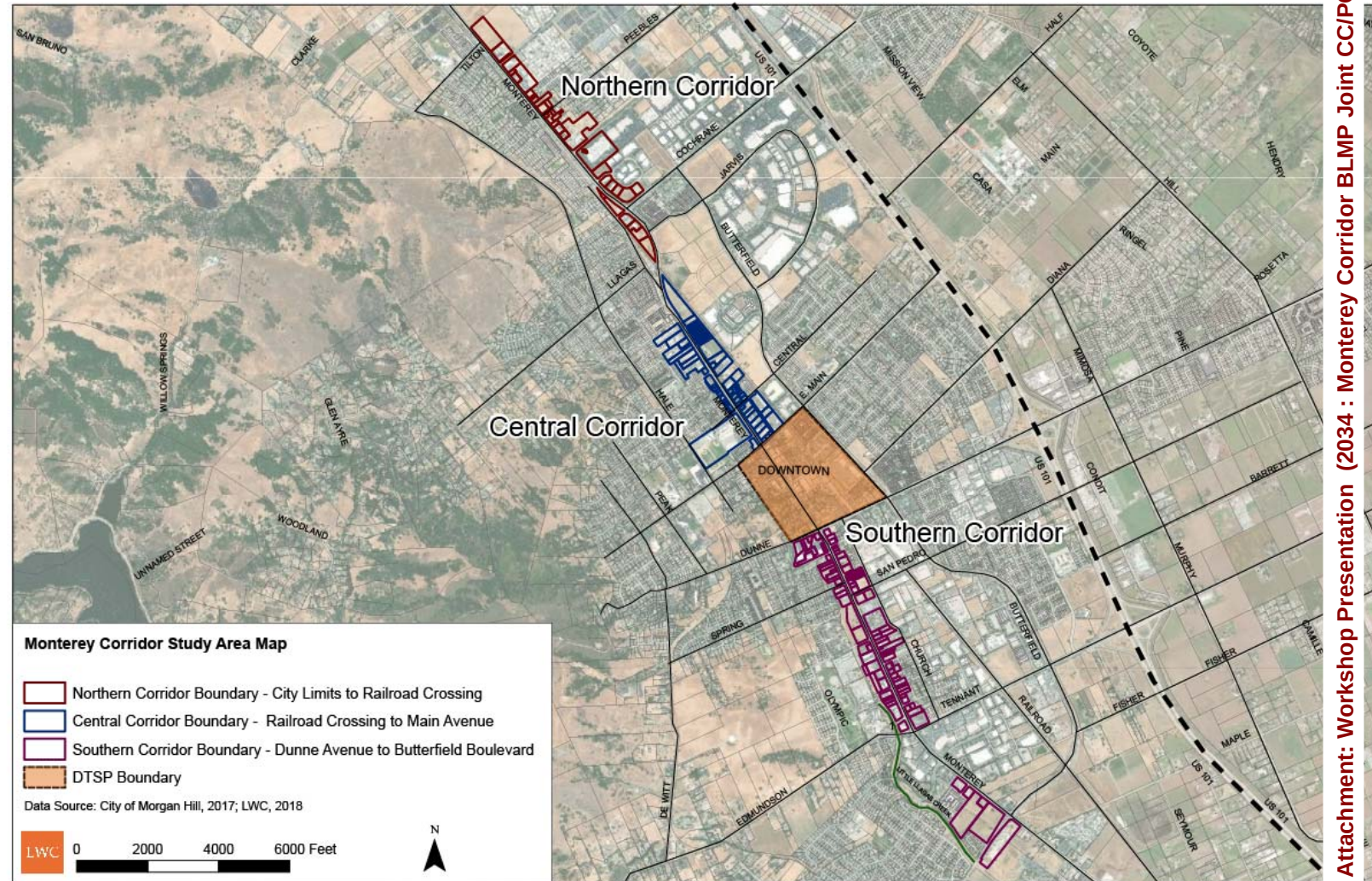
- Mixed Use Flex Land Use
- Monterey Corridor- Vibrant, walkable mixed-use

Zoning Code Update (2018)

- Mixed Use Flex (MU-F) Zone

Land Use and Market Analysis (2017-2018)

- Land Use Inventory
- Market Analysis
- Recommendations



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Land Use and Market Analysis

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Key Findings

- Retail
 - Current retail market stable, but...
- Office
 - Cool/stable office market
- Residential
 - Residential is most highly favored

Commercial Capacity

- 600,000 – 1.5 million sf of physical capacity
- 215,000 sf theoretical commercial market demand*
- * Based on a relatively stable future market



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Land Use and Market Analysis

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Conclusions

- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Building frontage standards
 - High-quality public space
- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Council Recommendation

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BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code
- Supplemental standards
 - Well-designed buildings (frontage standards)
 - Connectivity
 - Preserve retail-viable parcels

SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Include a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block Level Master Plan

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Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Commercial Analysis



BROKERAGE & CONSULTING

Block Level Master Plan for Monterey Rd. Morgan Hill, CA

Christine Firstenberg

Lic # 00973135

Retail Real Estate Resources, Principal
Metrovation Brokerage

Lic # 01780115

925-381-8666

christine@cfirstenberg.com

Executive Summary

As we read newspaper articles describing our current era as the age of the “Retail Apocalypse”, many cities are struggling with how to plan for retail in the future. Will it look like it does now with anchor and shop tenants, will it look more like industrial space with delivery cars in front, or will it exist at all?

In California, most cities receive a percentage of their general funds from sales taxes that occur within their city limits. With recent national legislation, online sales will start to generate sales tax to the cities where the person who paid for the items lives. Exactly how those sales taxes will be allocated is not completely known, but we understand that retail sales leakage numbers will show change.

While brick and mortar store locations will continue to diminish in total square footage, we will continue to see new online retail ventures expand and will continue to need retail for its experiential contribution to our lives. It is the only real estate category that can create a “sense of place” and community for a City.

Retail is one of the three categories within the industry categorization of commercial real estate. While all types of commercial (retail, office and industrial) real estate uses can contribute to the overall economic engines of a community, retail is the only category that we think of when desiring a “sense of place” in our communities. Much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial footprint.

We have seen cities in California, and other states, that believe “if you build it, they will come” when it comes to retail spaces. We have all seen the many examples of residential buildings where retail spaces were required on the ground floor by city zoning, and in many cases those spaces never get leased.

Because long term vacant spaces (vacant for years) can cause blight in communities, we want to be careful about requiring retail where it is not necessarily appropriate.

METR@VATION

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Executive Summary

How to determine which parcels of land should require retail or any of the commercial categories, and which parcels of land should not, is a question the City of Morgan Hill staff has pondered. Morgan Hill's staff are light years ahead of many other cities in that they not only asked the question, they assigned the task to be determined.

Retail thrives when there is an intensity of activity – either car or pedestrian. But that hive of activity must exist prior to the retail space being activated otherwise the retail can fail. Building retail spaces in clearly residential and or quiet, non-active areas, and assuming the space will get leased is like wishing on a star. Many planners believe you should create retail spaces to activate the streets, but that thinking is backwards. Because it isn't the retail spaces that activate the streets, it is what is in the retail spaces themselves. It is the retailer/small businesses. The retail/ small businesses that make their living off the sales volumes done out of retail spaces are important to the activity in a neighborhood or district. But if there is no neighborhood or district activity before the retailer opens, often a retailer's sales fall flat.

That is the challenge in determining where to locate for a retailer and building a retail base in a city...*how do you create the activity before a retailer opens if we depend upon a retailer to create the activity?*

That is why we use retail criteria to help retailers review the data from which to make a location decision. It is strongly suggested that all retailers use basic retail criteria to determine if a space or an area will ultimately be sustainable. And from a City's perspective, retail criteria needs to be met for retail spaces to get leased.

RETAIL CRITERIA:

Retail businesses do better at intersections (corners) - not mid-block- because at intersections, there are two roads converging with double the traffic (whether pedestrian or car) of a mid block location.

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Executive Summary

Retail typically requires **access**, an ability to have all turns, meaning you can get in and out of the property using left turns, not just right turns.

Retail needs to be seen by the customers, therefore **signage** is important, both storefront signage and any additional blade, or monument signs.

Retail needs to be **convenient**, so a customer can easily fit a visit to the retail store into their busy lives.

And finally, retail needs **parking**, yes parking, unless of course you have a tremendous pedestrian count like in downtown San Francisco.

This is the retail criteria used when we looked at intersections in Morgan Hill.

APPLICATION FOR MORGAN HILL:

As mentioned earlier, much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial (commercial) footprint also.

As we analyzed the corners and intersections along Monterey Rd. we used the more liberal “commercial” categorization, with which to consider the viability and sustainability of the corner. This category can include an office tenant like a building contractor, or a mortgage office, a realtor or travel agency, a CPA firm or lawyers office. Many typical office tenants like a more prominent corner location that provides signage.

Commercial categorization also includes industrial.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

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Industrial tenancies, often more service oriented, are more common in today's world as many start up retailers and businesses need the additional size for delivery preparation to compete with the fast paced delivery requirements retail customers currently demand. More traditional industrial tenants include auto parts, medical facilities, dental clinics and veterinarian shops.

Therefore a suggestion of commercial only zoning would allow all of the sub-categories of commercial listed earlier.

While some of the zoning along the Monterey Rd. corridor allows for "Mixed Use-Flex" we strongly suggest the City consider this zoning allow a horizontal mixture of uses versus only a vertical mixture of uses on the parcel.

Vertical mixed use has become a challenge to build in the Bay Area over the last few years due to the massive increase in construction costs. While vertical mixed use is often considered a quick way to densify an area, it can often have unintended consequences many of which can result in a parcel not being developed for many, many years, -- missing an economic cycle it otherwise would have enjoyed.

Lastly, in the retail real estate industry, we never say never, as retail is fluid and does not depends on a business owners decision on where to locate, but on the sales produced at a location.

Customers are what create the final success of a location for a retail business. And, as the saying goes, *"The customer is always right"*.

METR@VATION

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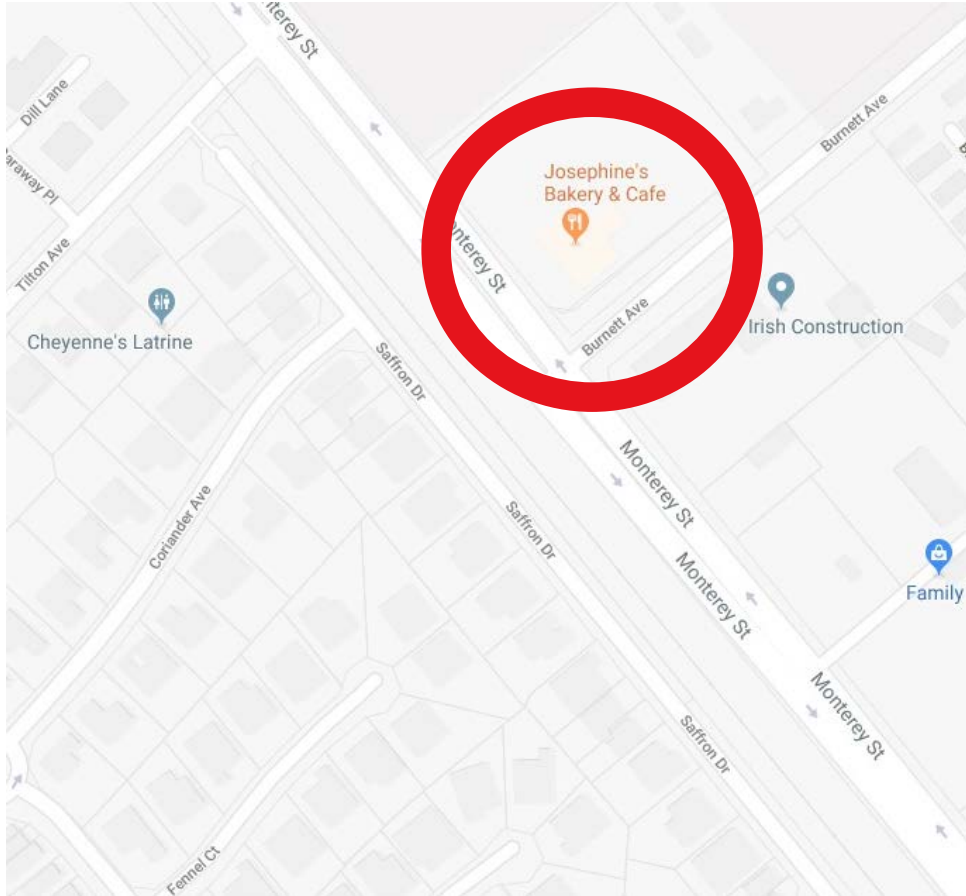
Packet Pg. 23

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.

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Burnett Ave. has a strong east/west presence making it a logical candidate to create a commercial and retail presence at the intersection with Monterey Rd. However, due to the rail line running north/south along the western edge of Monterey Road, the residential community west of the rail line will be blocked and despite Burnett Ave.'s future extension across Monterey Rd. connecting it to Tilton, the synergy to that corner is lost. There is no reason to add development restrictions on a site that will never have a 360-degree potential. Therefore, we do not support a requirement for commercial zoning on this corner.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

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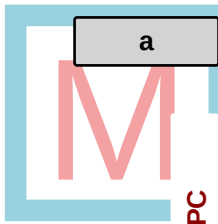
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Packet Pg. 24

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.

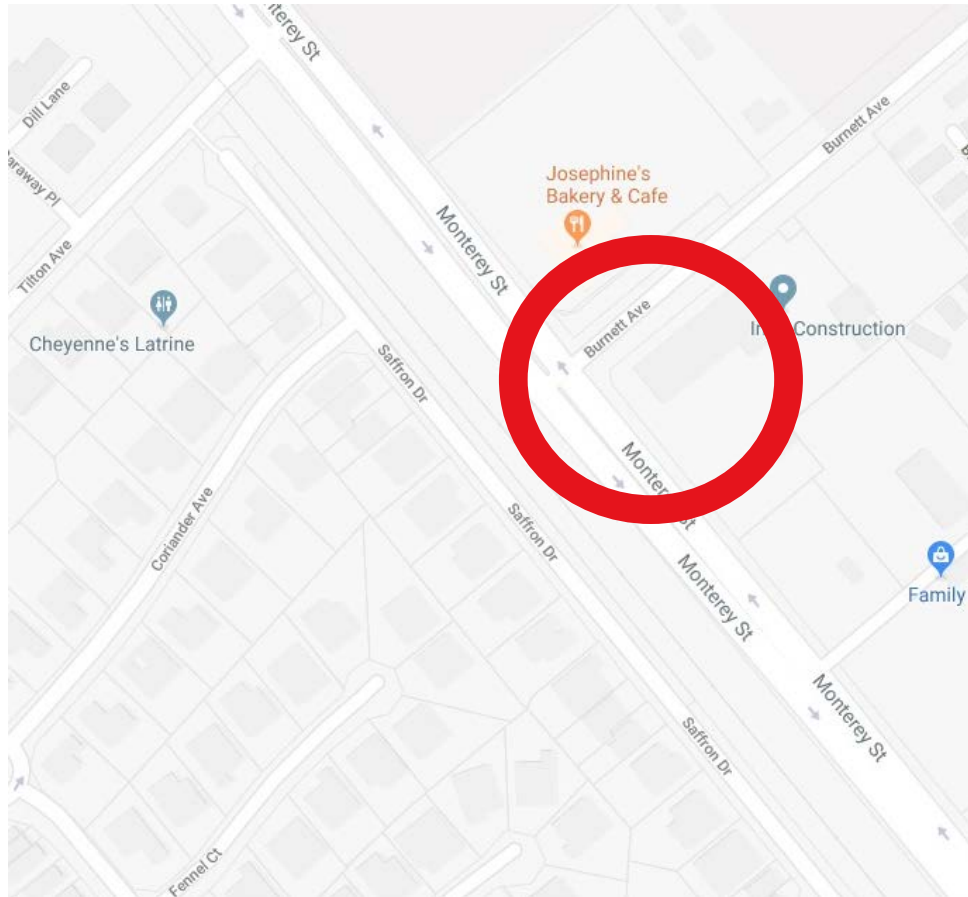


Block 2 –

Burnett Ave. to Peebles Ave.

SE Corner Burnett Ave. & Monterey Rd.

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Block 2's Northern Site is located at the terminus of Burnett Ave. at Monterey Rd. and is currently partially occupied by Irish Construction. The location of the rail line will prevent the possibility of generating any connectivity to uses or residential across the street. Block 2, site 1, will never achieve the kind of synergy that a commercial zoning requirement is looking to accomplish. Therefore, we do not recommend a requirement for commercial here. Instead, allow market forces to dictate the development of the site.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

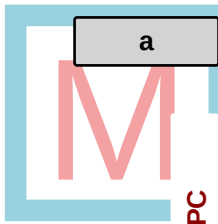
METR@VATION

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Block 2 –

Burnett Ave. to Peebles Ave.

SE Corner Burnett Ave. & Monterey Rd.

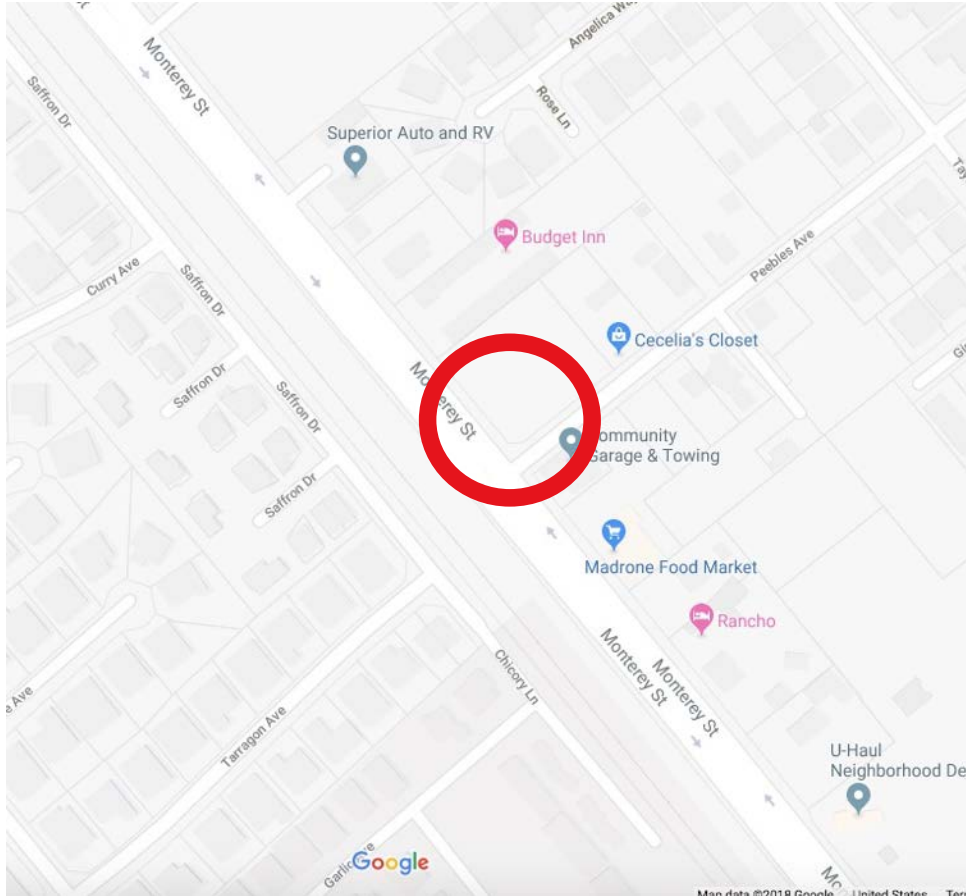


Block 2 –

Burnett Ave. to Peebles Ave.

NE Corner Peebles Ave. & Monterey Rd.

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Block 2's Southern Site has similar challenges as the Northern Site although it has single-family homes located directly behind the parcel creating a possible opportunity. Nearly all of the residential traffic patterns use Peebles Ave. as a main thoroughfare. Morning commuters in this neighborhood will use Peebles to drive out to Monterey Rd, go south on Monterey Rd, to Cochrane to get to the freeway.

Often, a small, (3000 sf building) multi-tenant retail building, works well at this type of corner due to the commercially restricted access of the surrounding residential neighborhood.



Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

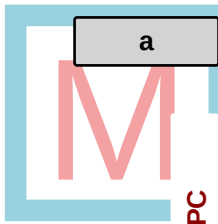
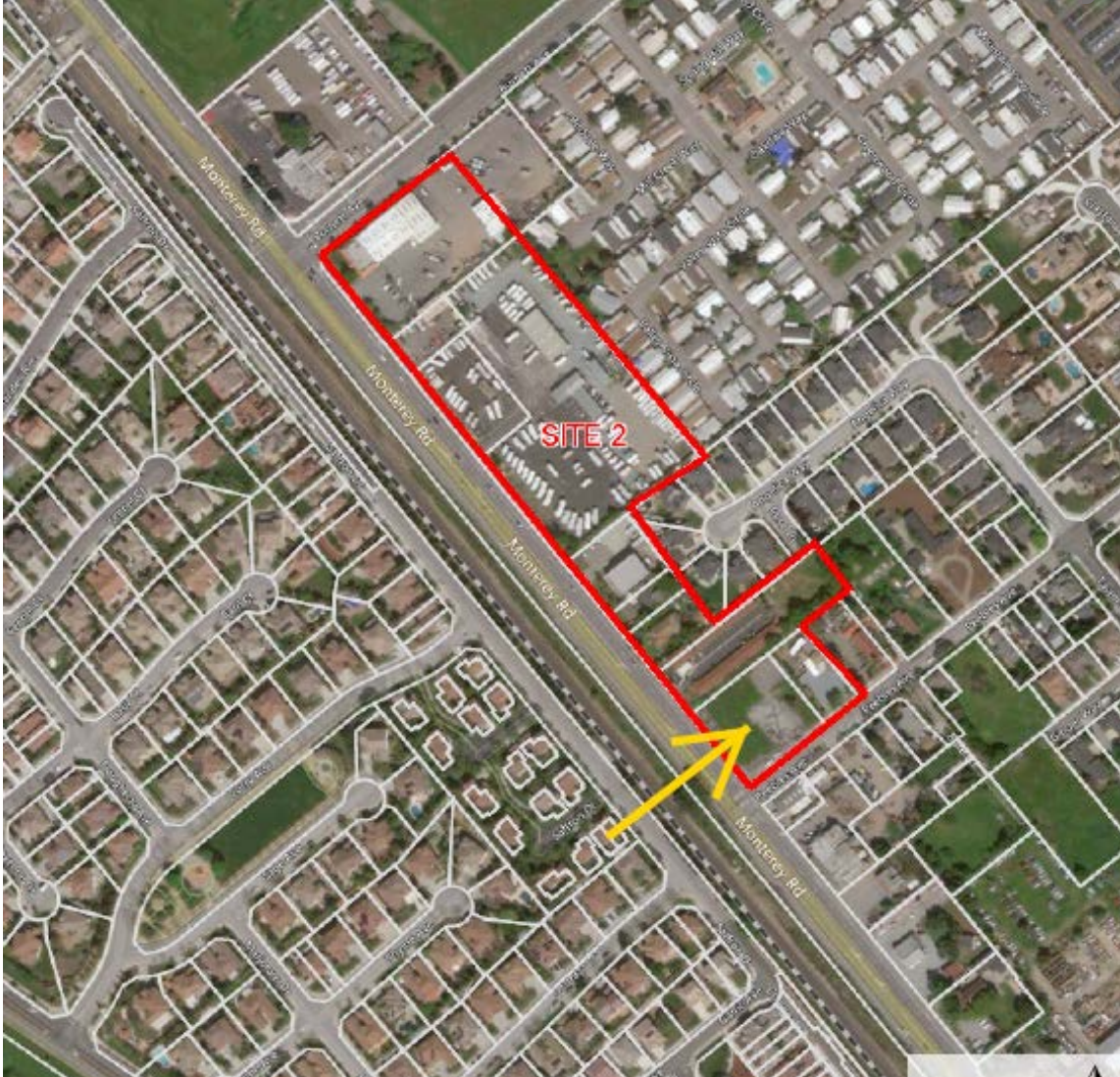
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Block 2 –

Burnett Ave. to Peebles Ave.

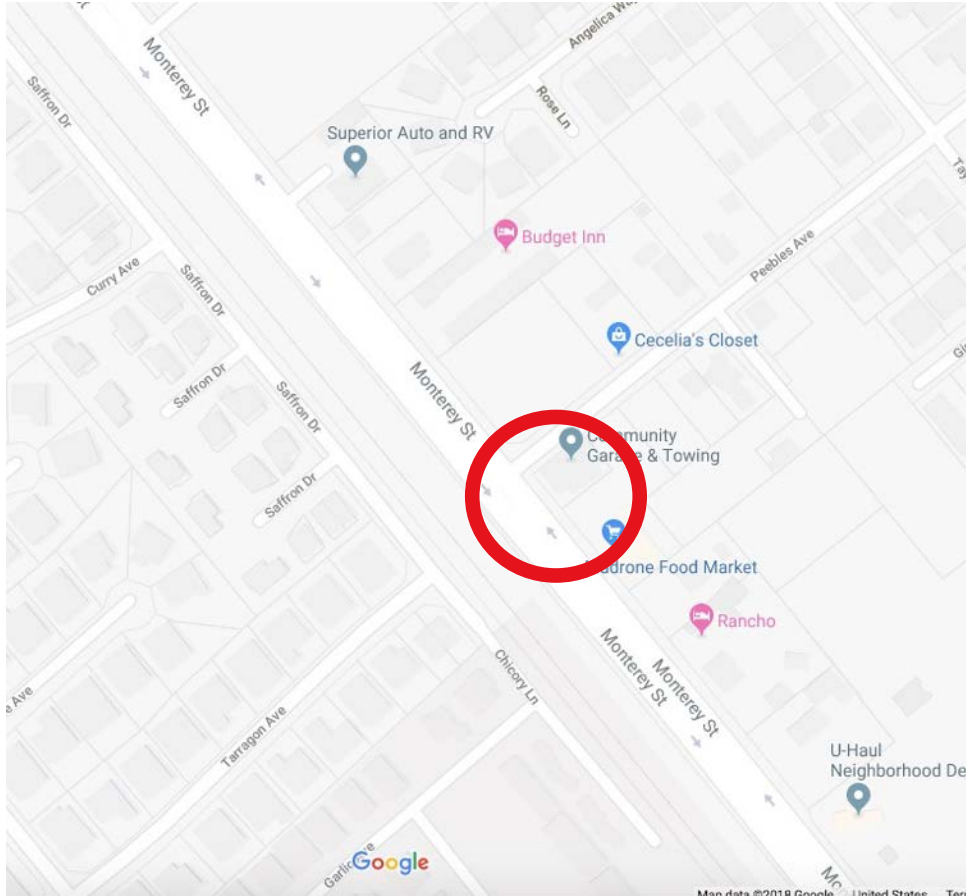
NE Corner Peebles Ave. & Monterey Rd.



Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.

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The SE corner is the “coming home” commercial corner. Thus, this site will not draw as high of interest as the NE site due to the proven consistency of a “*going to work*” commercial corner driving higher sales volumes than a “coming home” corner.

In addition, this parcel (the SE corner) is a relatively small parcel with only 7000 sq. ft. which would only allow a development of 1750 square feet of commercial space to be built (using retail parking codes). Even if this commercial square footage were at the bottom of a larger mixed-use project, the lack of retail immediately surrounding the site will make leasing a challenge. Therefore, we do not recommend requiring commercial on this site.



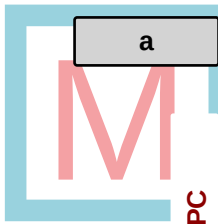
Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METR@VATION

BROKERAGE & CONSULTING

Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

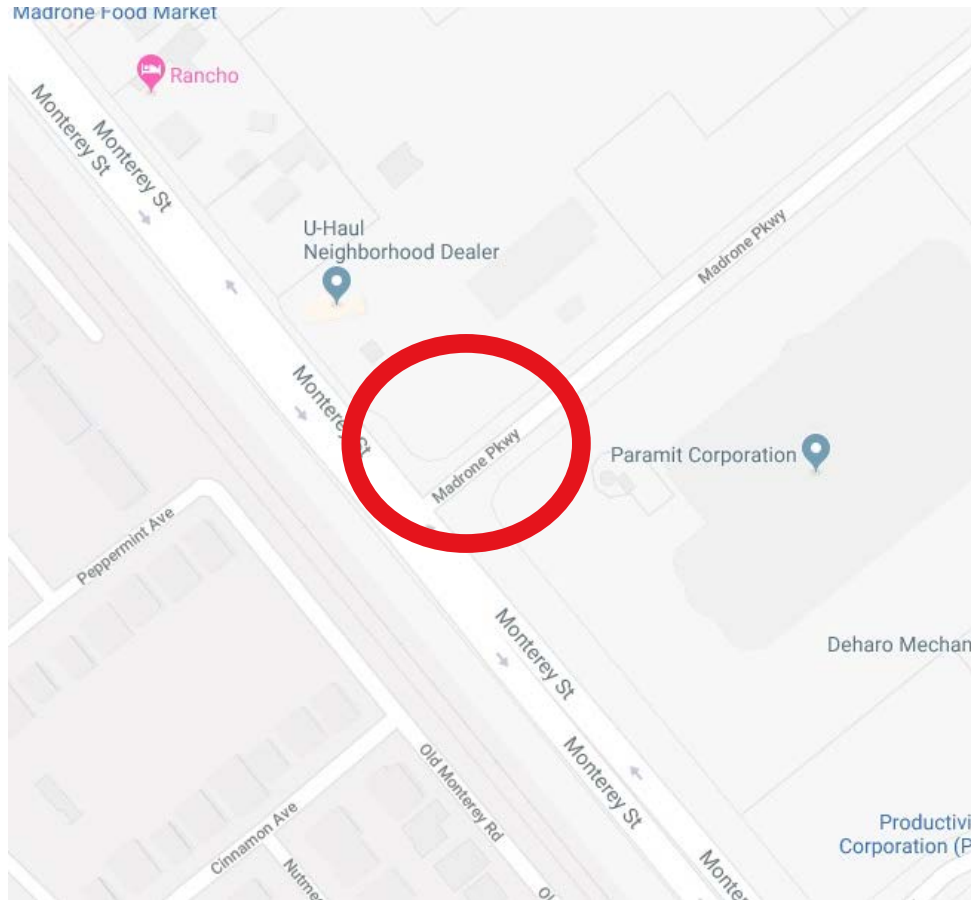
Google

Block 3 –

Peebles Ave. to Madrone Pkwy.

NE Corner Madrone Pkwy. & Monterey Rd.

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The NE corner of Madrone Pkwy. and Monterey Rd. is across the street (Madrone) from a new industrial and office development. This industrial and office park project creates opportunity for the NE corner – the proximity of businesses and the size of the NE parcel (7.53 acres) allows for a substantial, and sustainable, development to occur here.

We suggest the City require commercial development on this corner. Also, to promote the most effective traffic flow, we also suggest that no median be built that would prevent a left turn from Madrone Pkwy. on to Monterey Road.



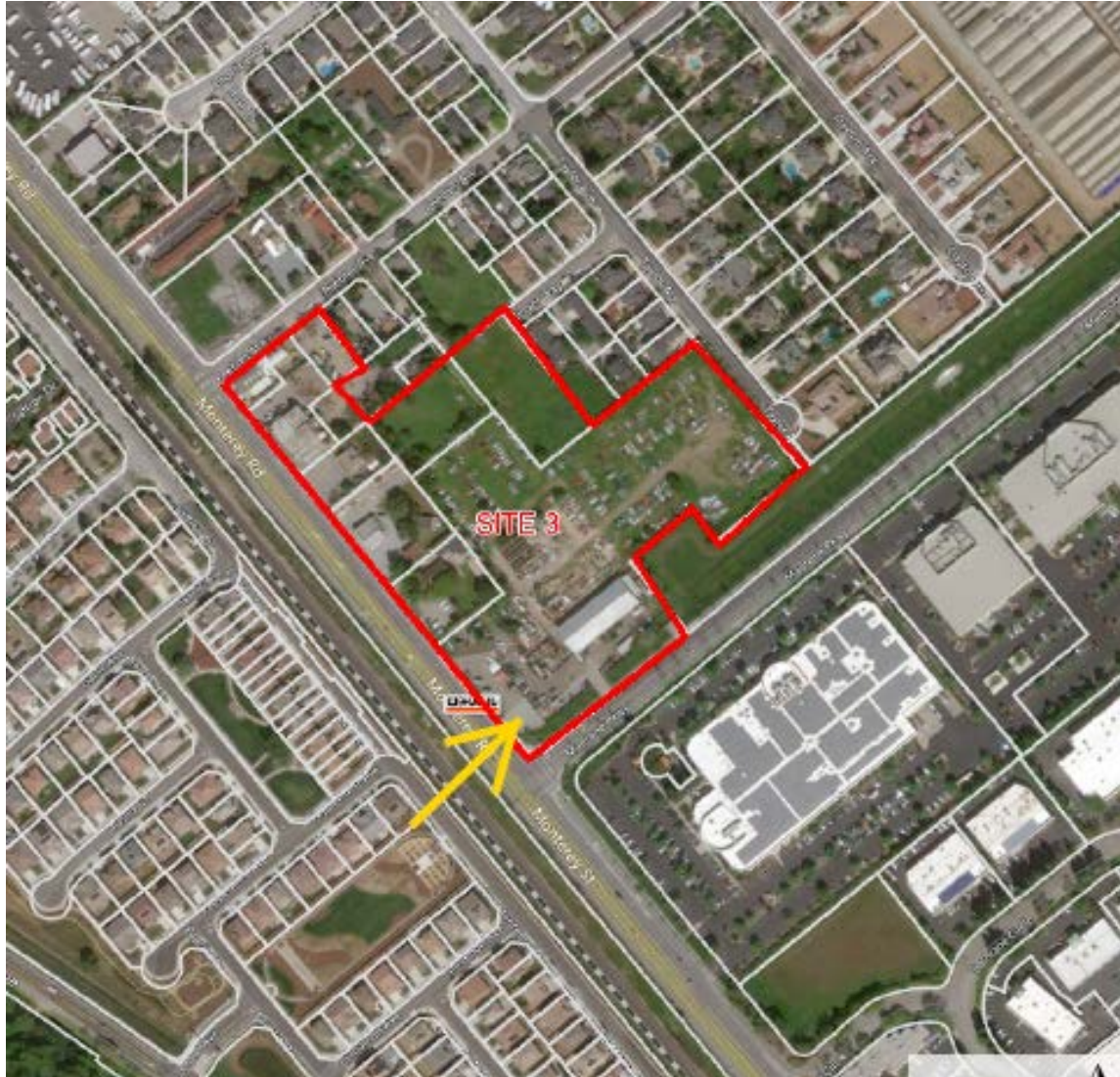
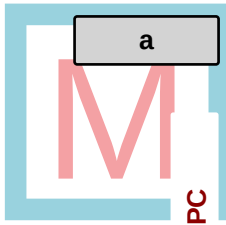
Conclusion: Commercial is sustainable and would benefit from proximity to the industrial park, therefore we suggest it be required.

METR@VATION

BROKERAGE & CONSULTING

Block 3 —

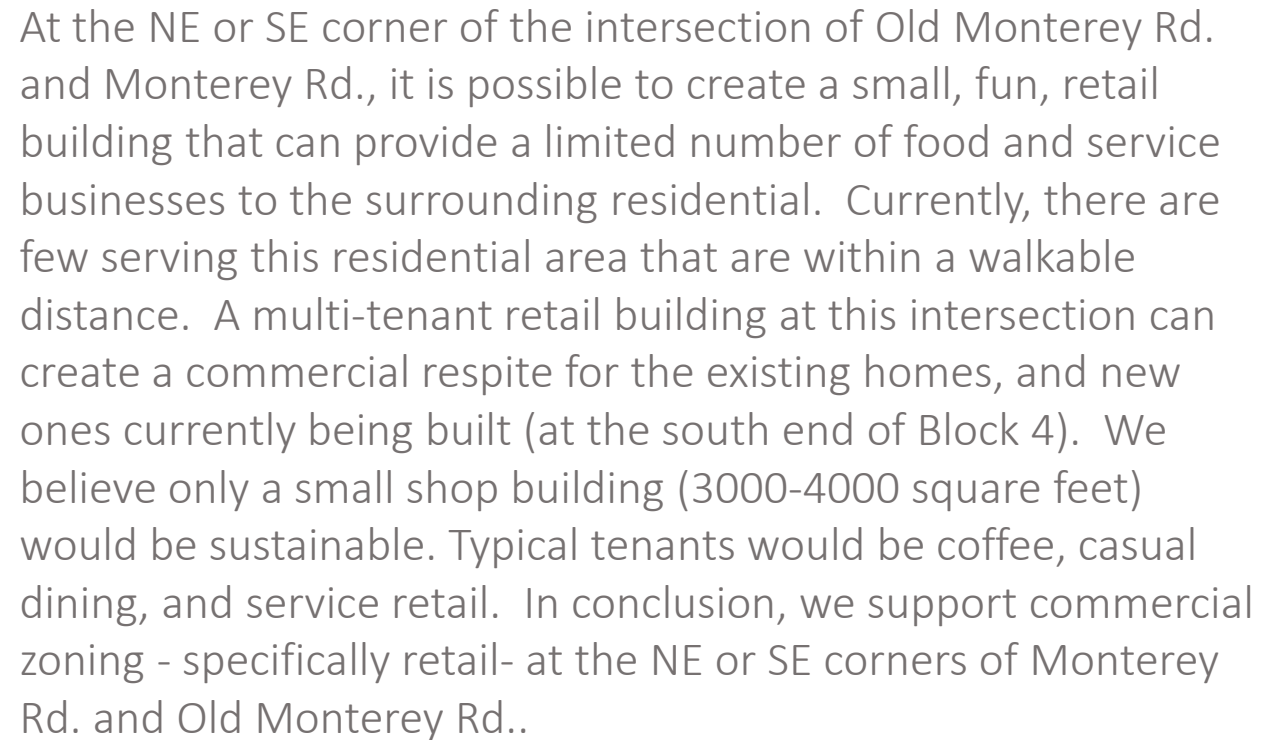
Peebles Ave. to Madrone Pkwy.
NE Corner Madrone Pkwy. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

a

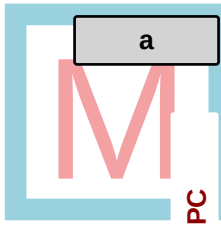
Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC



METR©VATION

Block 4 –

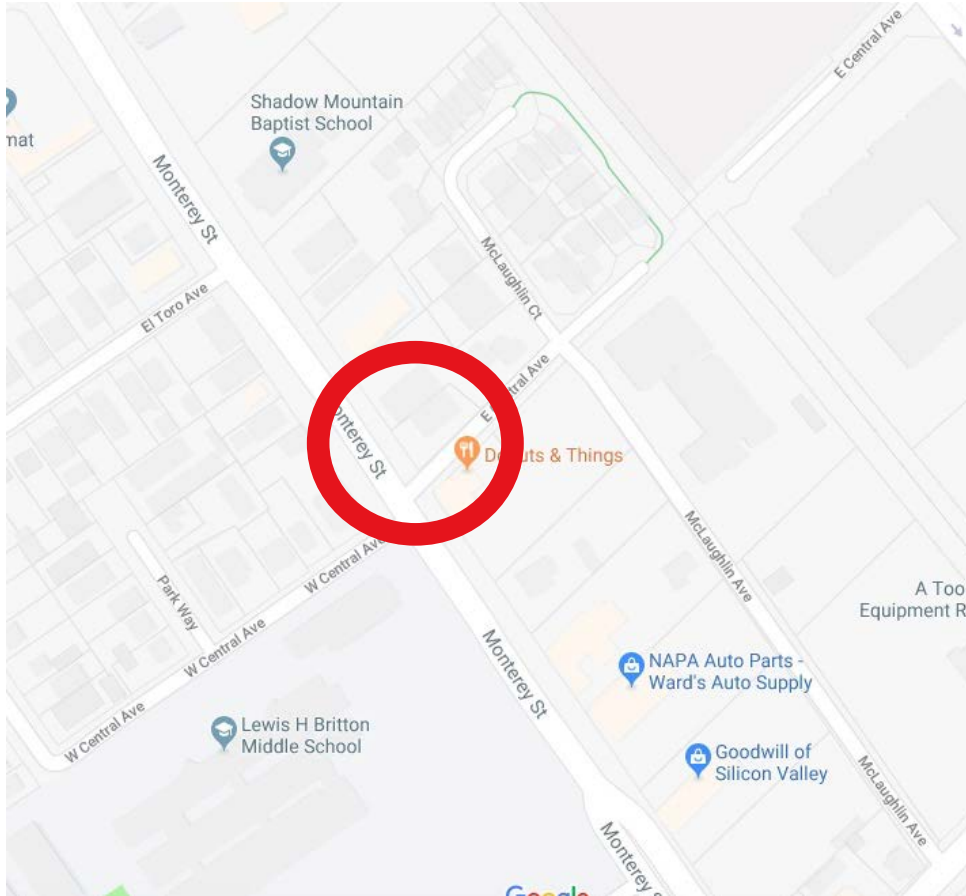
Railroad Overcrossings to Morgan Hill Community Adult School
NE & SE Corner Old Monterey Rd. (Extension) & Monterey Rd.



Block 5 –

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.

a



The entire east side of Block 5 has only two single-family residential units - other uses currently are multi-family or commercial. While it is difficult to change the zoning for a single family residential unit, we felt that commercial zoning was appropriate for the NEC of East Central and Monterey Rd., conditioned upon language being inserted into the Zoning Document that will allow the non-conforming use, additional leeway on structural repairs and modifications so that the zoning document does not cause financial issues (loans or refinance) or undue distress due to its non-conforming status.

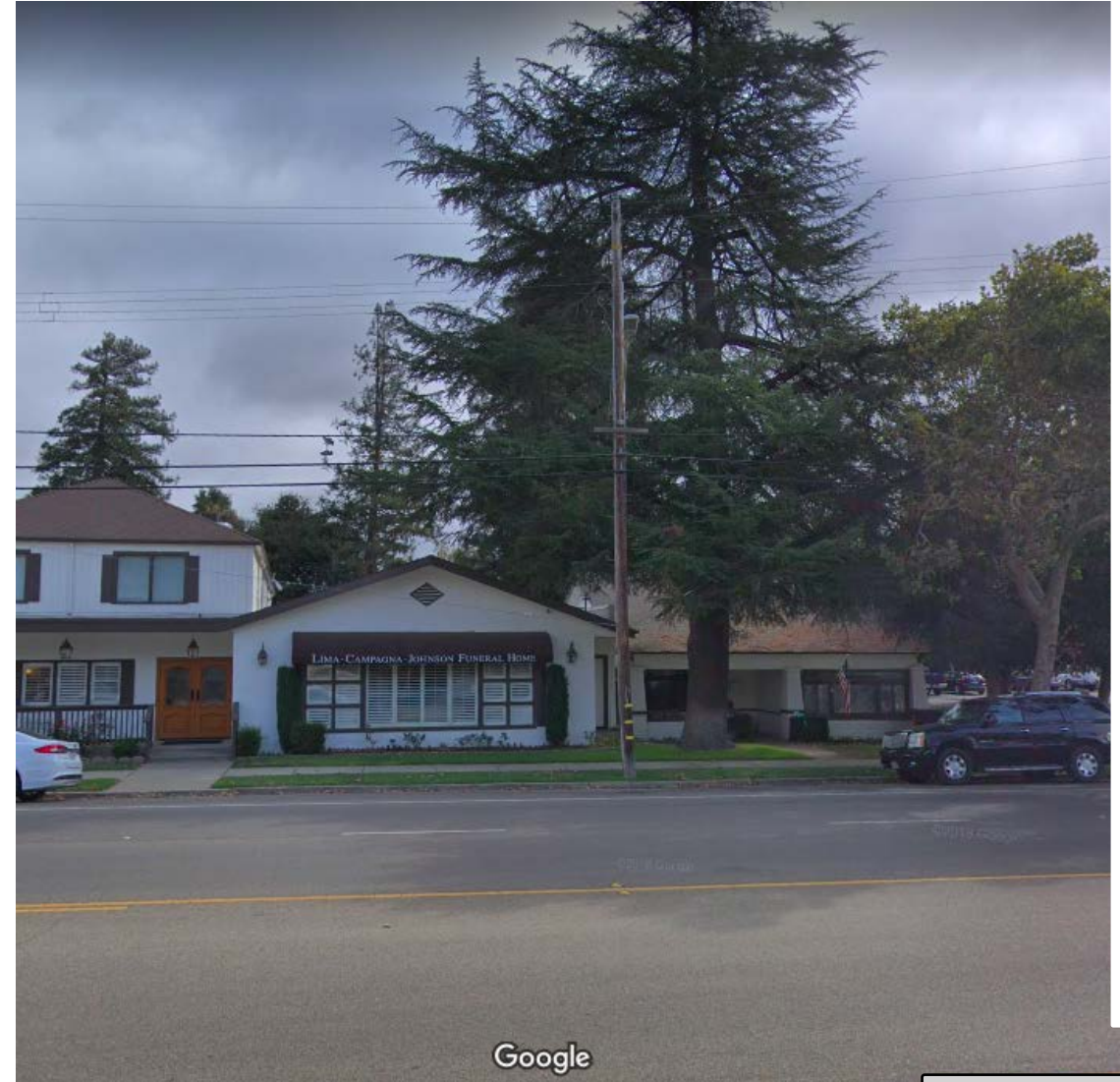
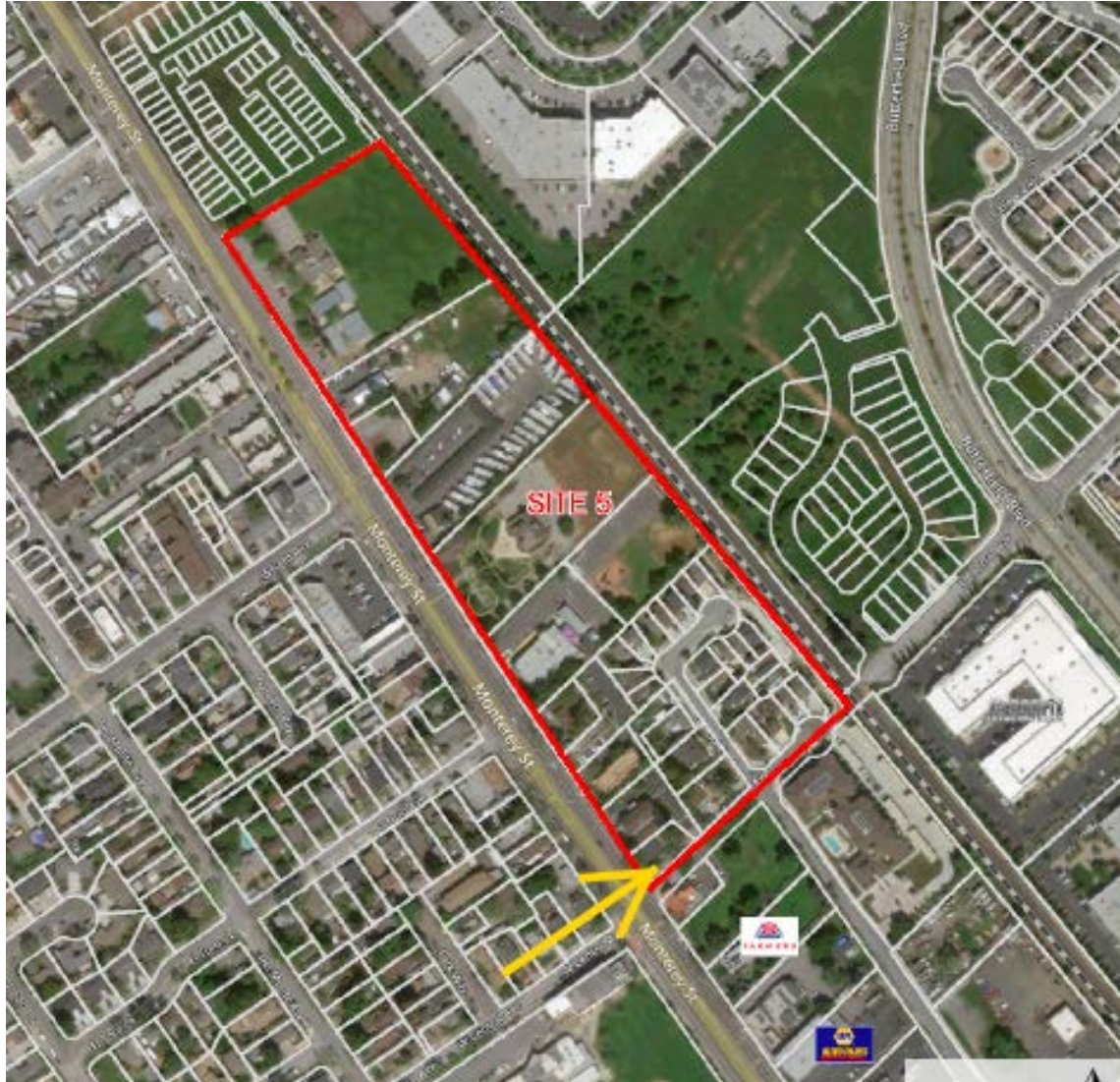
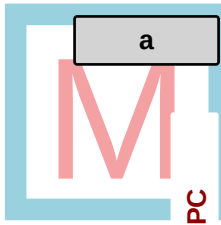
○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

BROKERAGE & CONSULTING

Block 5 —

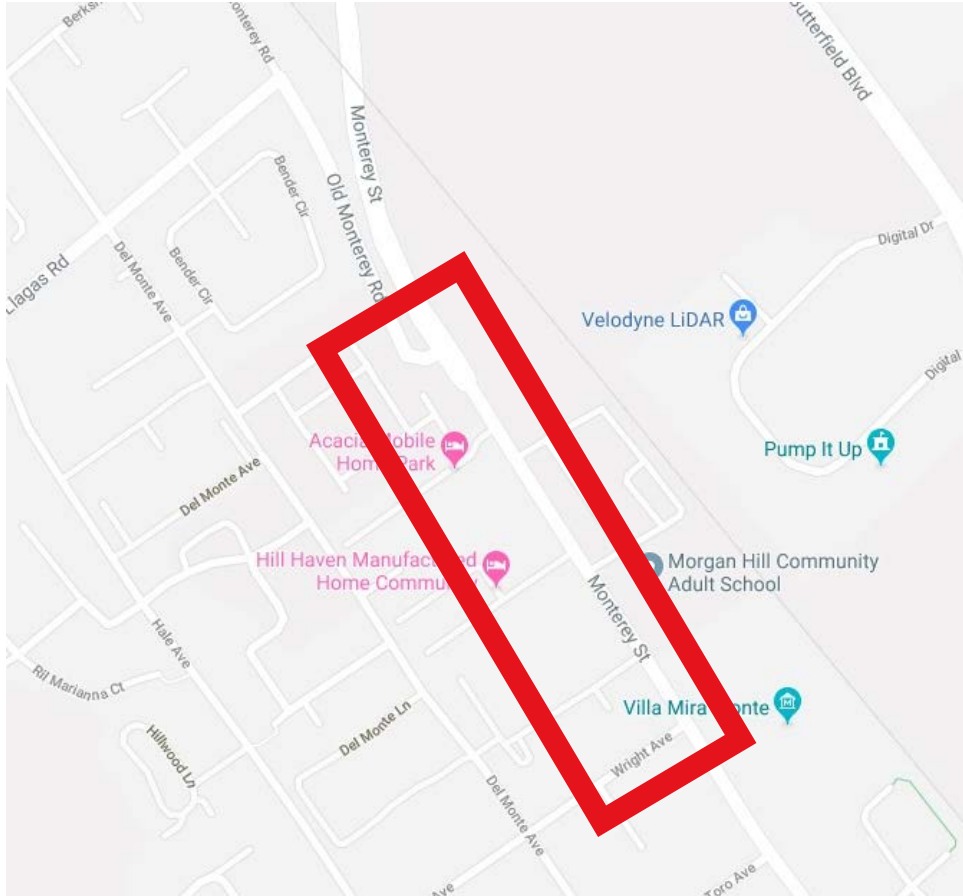
Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 6 – Old Monterey Rd. to Wright Ave.

a



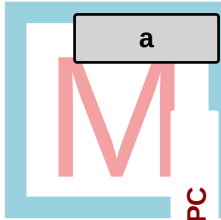
There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METR@VATION

BROKERAGE & CONSULTING

Packet Pg. 38

Block 6 – Old Monterey Rd. to Wright Ave.

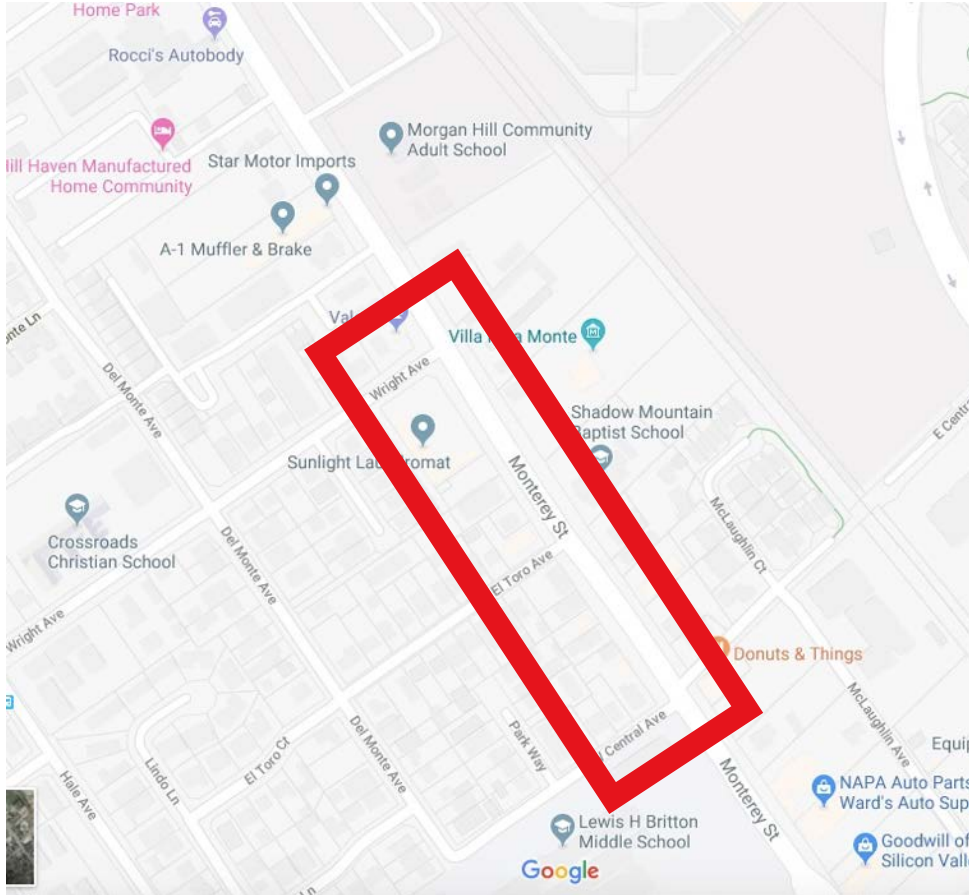


Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Google

Block 7 – Wright Ave. to W. Central Ave.

a



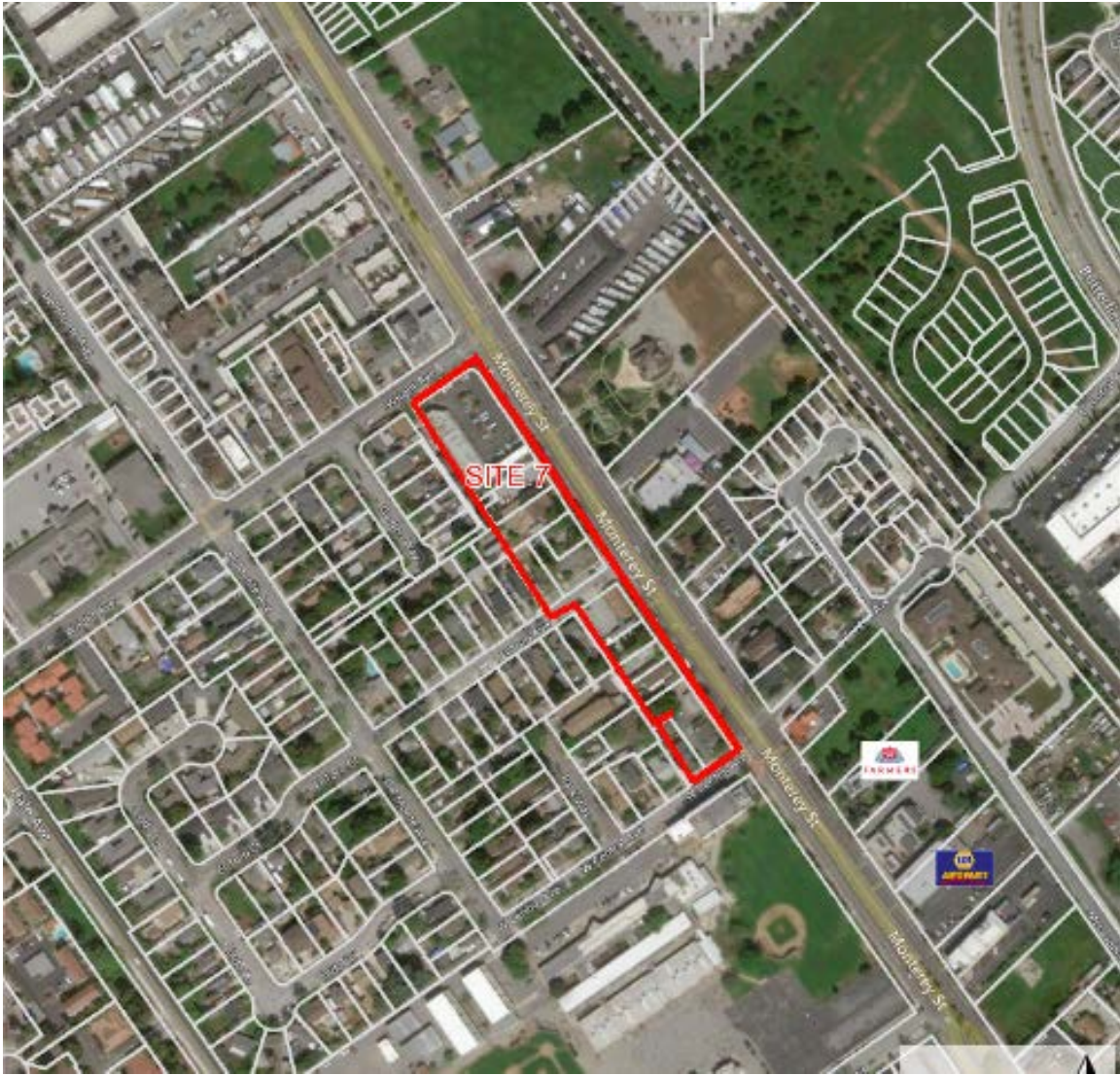
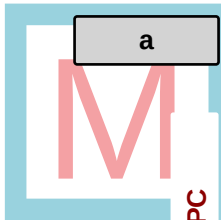
There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METR@VATION

BROKERAGE & CONSULTING

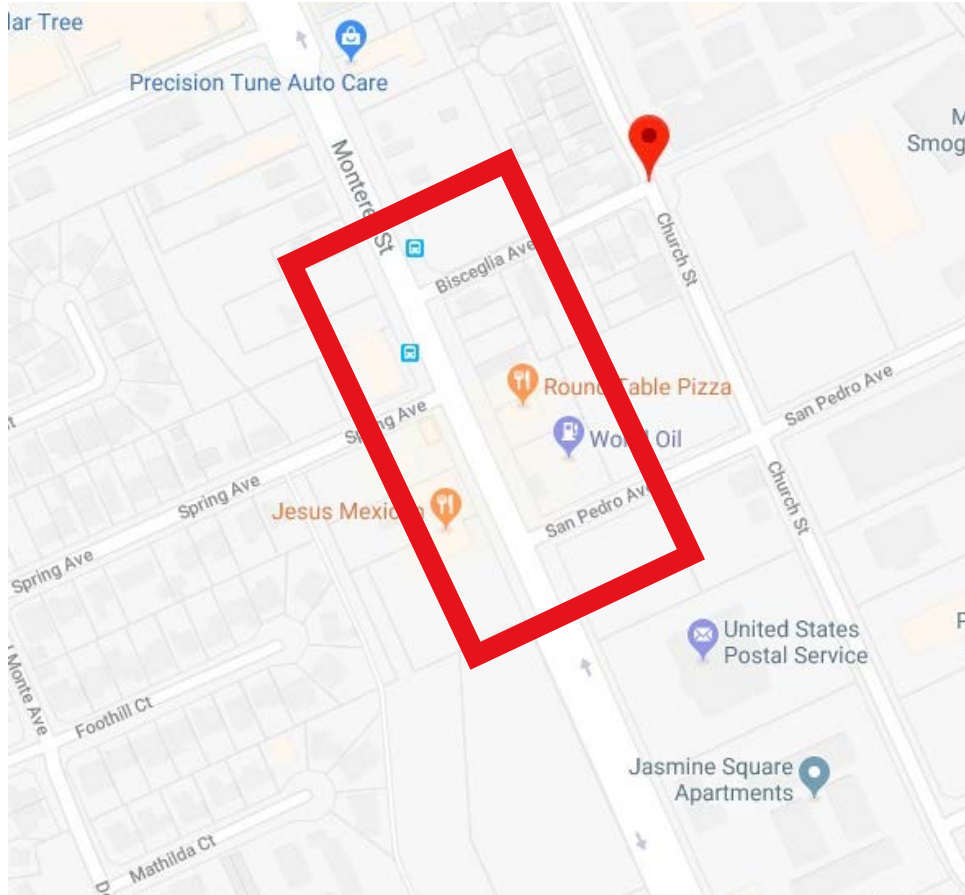
Packet Pg. 40

Block 7 – Wright Ave. to W. Central Ave.



Block 8 – Bisceglia Ave. to San Pedro Ave.

a



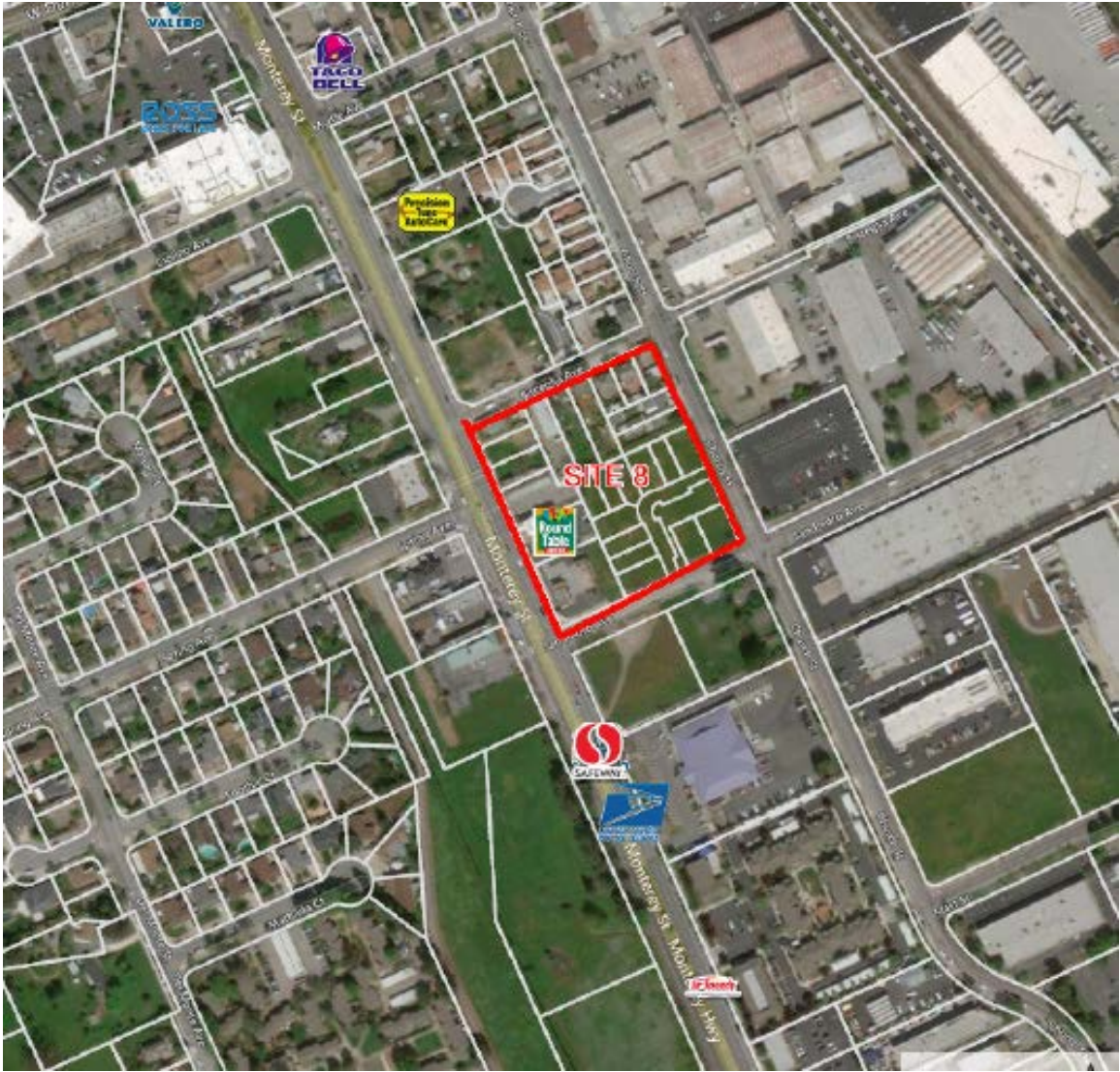
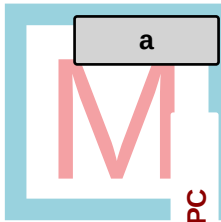
There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METR©VATION

BROKERAGE & CONSULTING

Packet Pg. 42

Block 8 – Bisceglia Ave. to San Pedro Ave.

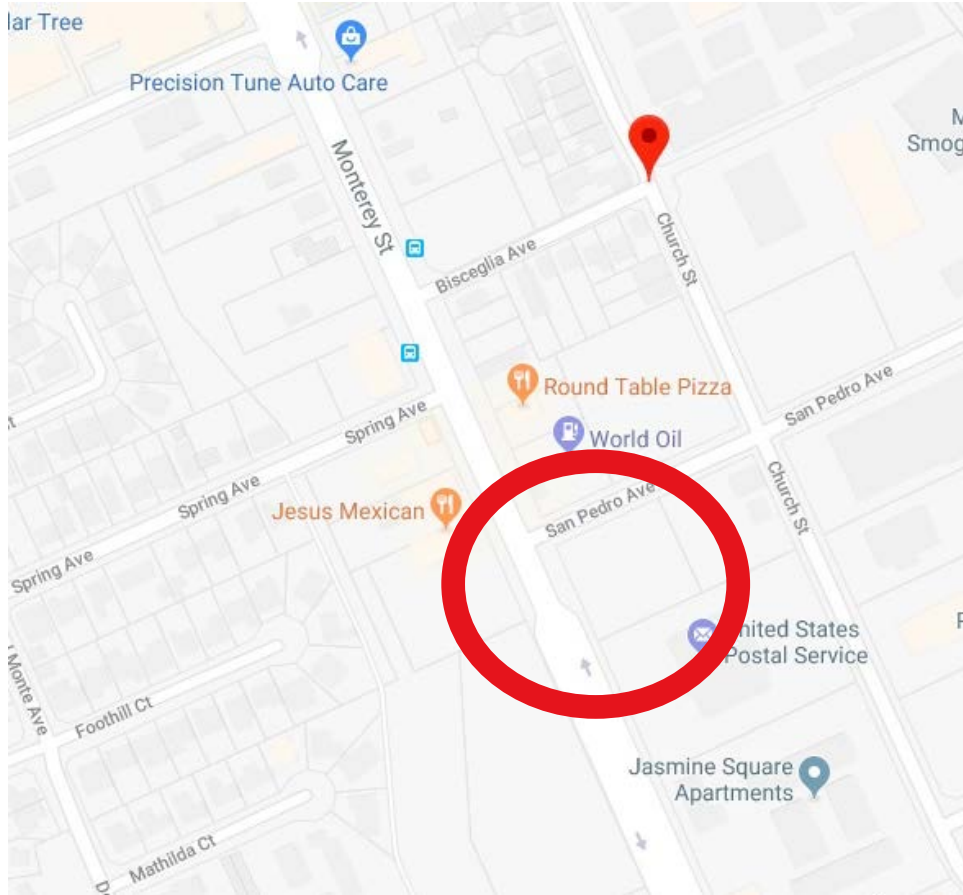


Block 9 –

San Pedro Ave. to Barrett Ave.

SE Corner San Pedro Ave. & Monterey Rd.

a



This area of south Morgan Hill already features a sustained commercial flavor and has the land available to accommodate additional commercial development. The vacant lot located on the SE corner of San Pedro Ave. and Monterey Rd. should be allowed to have commercial/retail development.



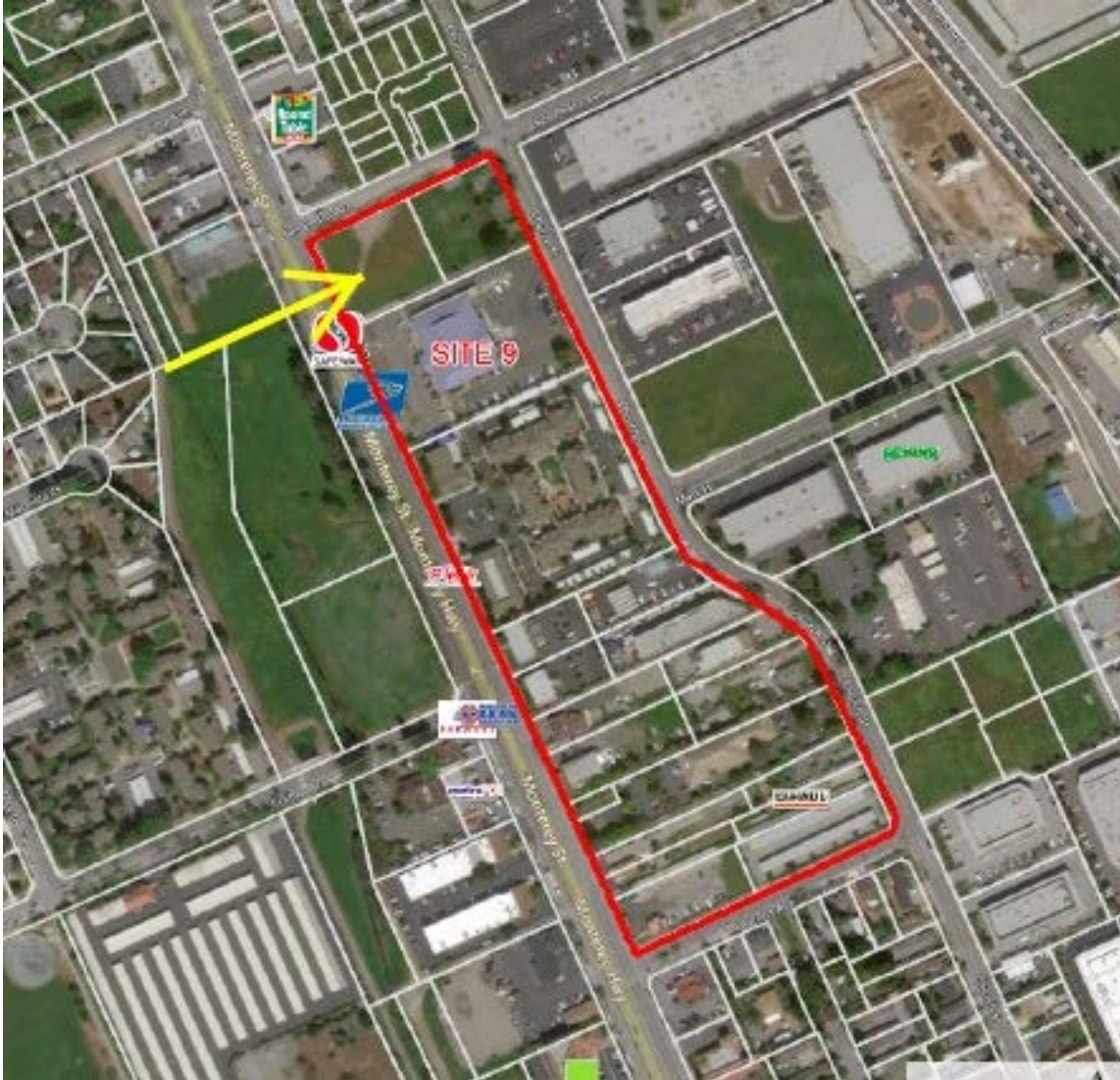
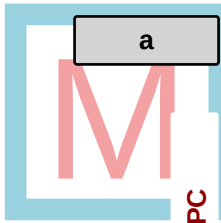
Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

BROKERAGE & CONSULTING

Block 9 —

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.

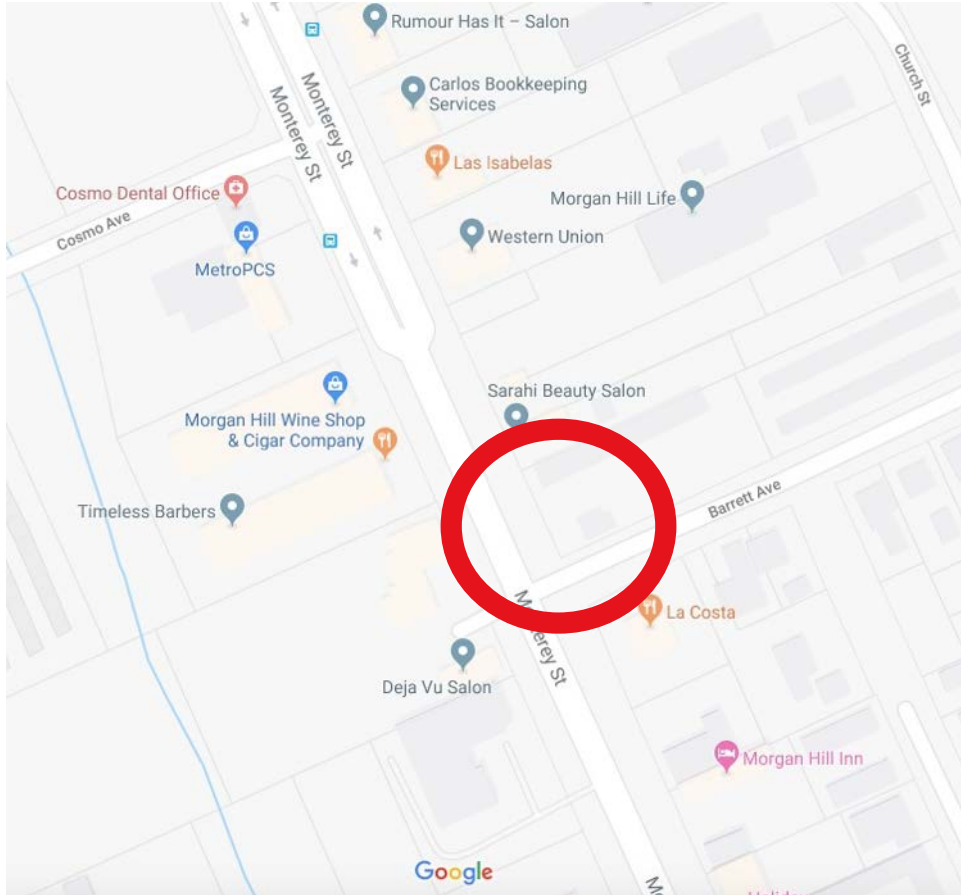


Block 9 –

San Pedro Ave. to Barrett Ave.

NE Corner Barrett Ave. & Monterey Rd.

a



The motel located at the NE corner of Barrett Ave. and Monterey Rd. appears to have significant deferred maintenance. While this property may provide affordable housing options for some citizens of Morgan Hill, it likely has areas not to code and detracts from the curb appeal of the block. Because it is under one ownership, along with the adjacent parcel to the north, it has increased opportunity for re-development. Therefore we suggest commercial for this parcel in any overlay zoning document.



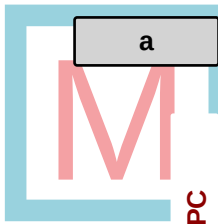
Conclusion: Commercial is viable and likely, therefore should be zoned as such. We suggest commercial only at this corner.

METROVATION

BROKERAGE & CONSULTING

Block 9 —

San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.

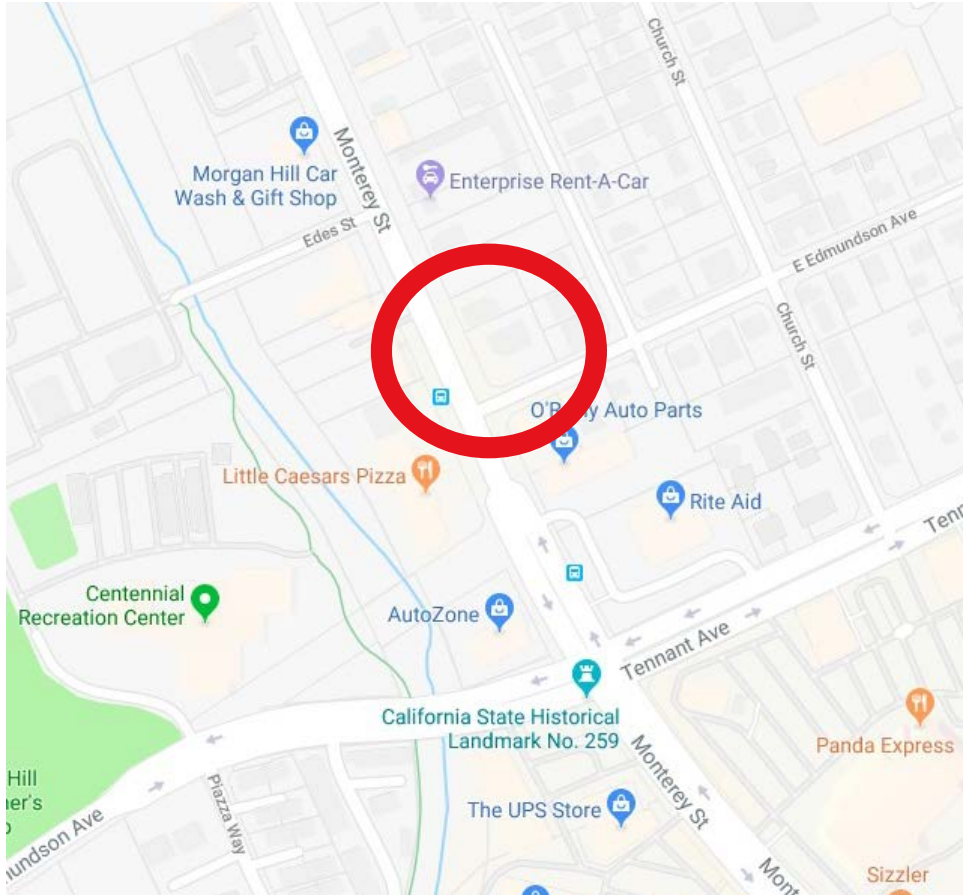


Block 10 –

Barrett Ave. to E. Edmundson Ave.

NE Corner E. Edmundson Ave. & Monterey Rd.

a



The NE corner of E. Edmundson Ave. and Monterey Rd. is an underutilized parcel currently occupied by an animal hospital. This area of Morgan Hill has a strong sense of commercial along Monterey Rd. The intersection is only a block away from the major intersection of Tennant and Monterey Rd. and has commercial uses adjacent on two sides and across the street. Intensifying the parcel is feasible and will make the best use of the property.

This does not necessarily mean changing the use. It is possible other veterinary hospital consortiums are looking to develop larger facilities that attract customers from a greater distance. A commercial use, as such, would be an upgrade from the current building and parcel condition. Therefore, we recommend requiring commercial on this parcel in the zoning document.



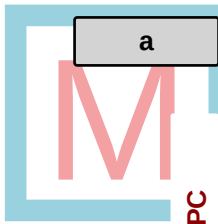
Conclusion: Commercial is viable at this corner. We suggest zoning commercial only for this parcel.

METR@VATION

BROKERAGE & CONSULTING

Block 10 –

Barrett Ave. to E. Edmundson Ave.
NE Corner E. Edmundson & Monterey Rd.

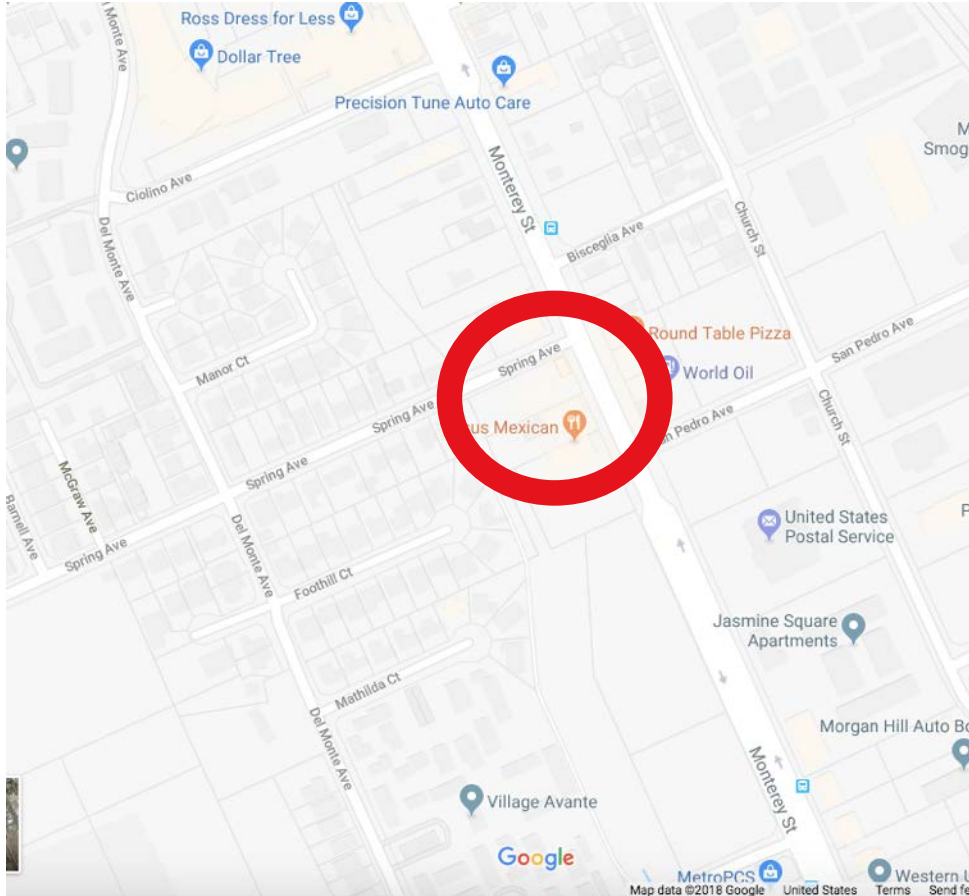


Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.

a



The hard corner at Spring Ave. and Monterey Rd. (SWC) can be looked at as an entrance to a potential new development along Block 11. Using an entrance from Spring St, and developing a block-long drive aisle, passengers would be able to access a variety of possible developments with buildings up on Monterey Rd, often, with parking conveniently located in the rear. A north/south drive aisle will serve to alleviate traffic from Monterey Rd., while still providing easy access to any potential new development.

Therefore, we recommend requiring commercial on the SW corner of Spring and Monterey.



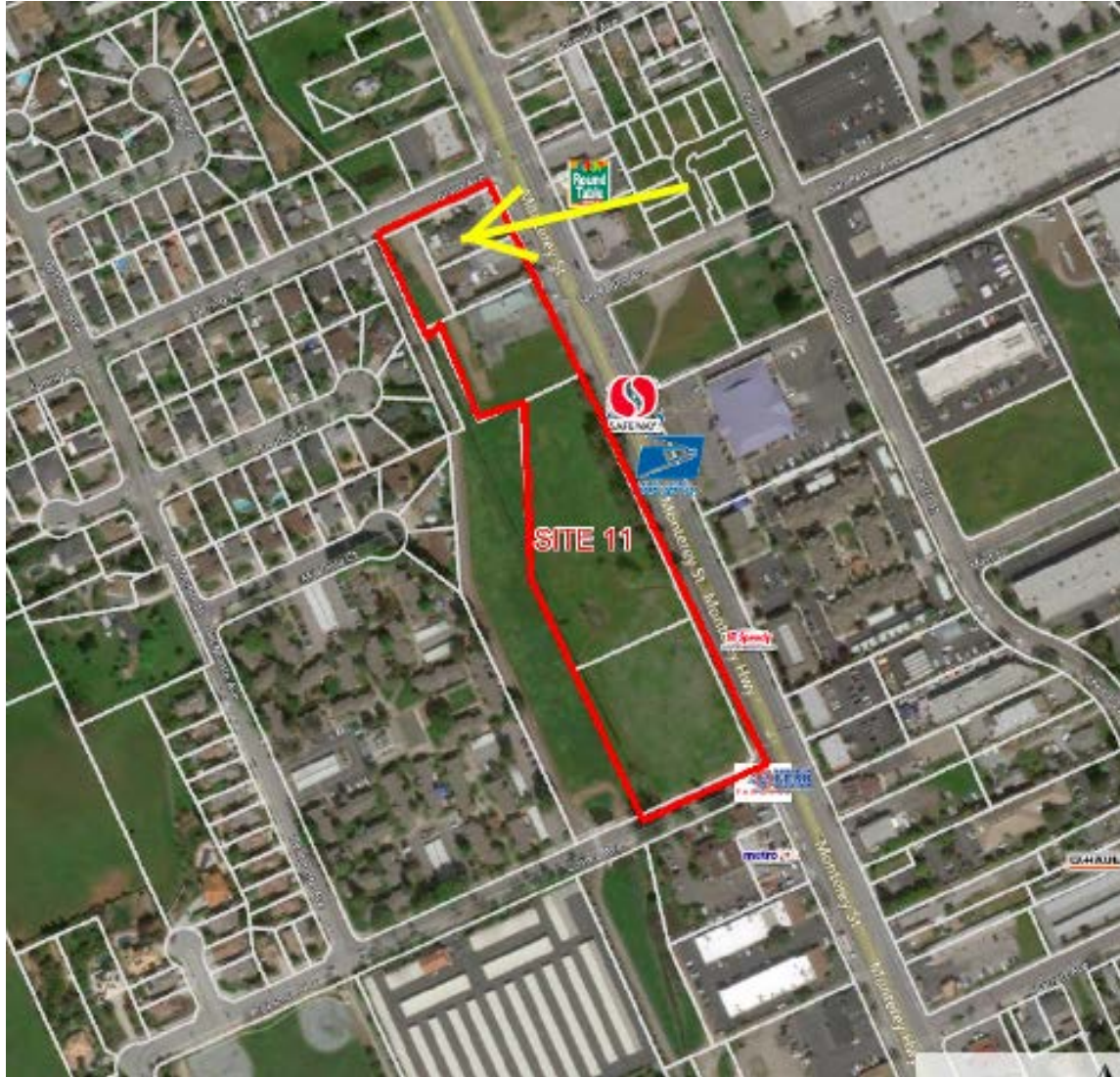
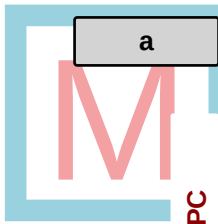
Conclusion: We suggest requiring commercial on the SW corner of Spring and Monterey.

METROVATION

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 11 –

South of Downtown – Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.

a



Similar to our comments above, the entire Block 11 is ripe for new development with the corners focused on local-serving commercial uses. We strongly advocate for preserving the corners to accommodate this type of use.

Block 11 is mostly vacant and can accommodate new development. While the market will not support retail on the entire property, any new development will want to create density and keep the commercial feel to the area.

Therefore, we recommend requiring commercial on the NW corner of Cosmo Ave. and Monterey Rd.



Conclusion: Commercial only zoning on the corner parcel is suggested.

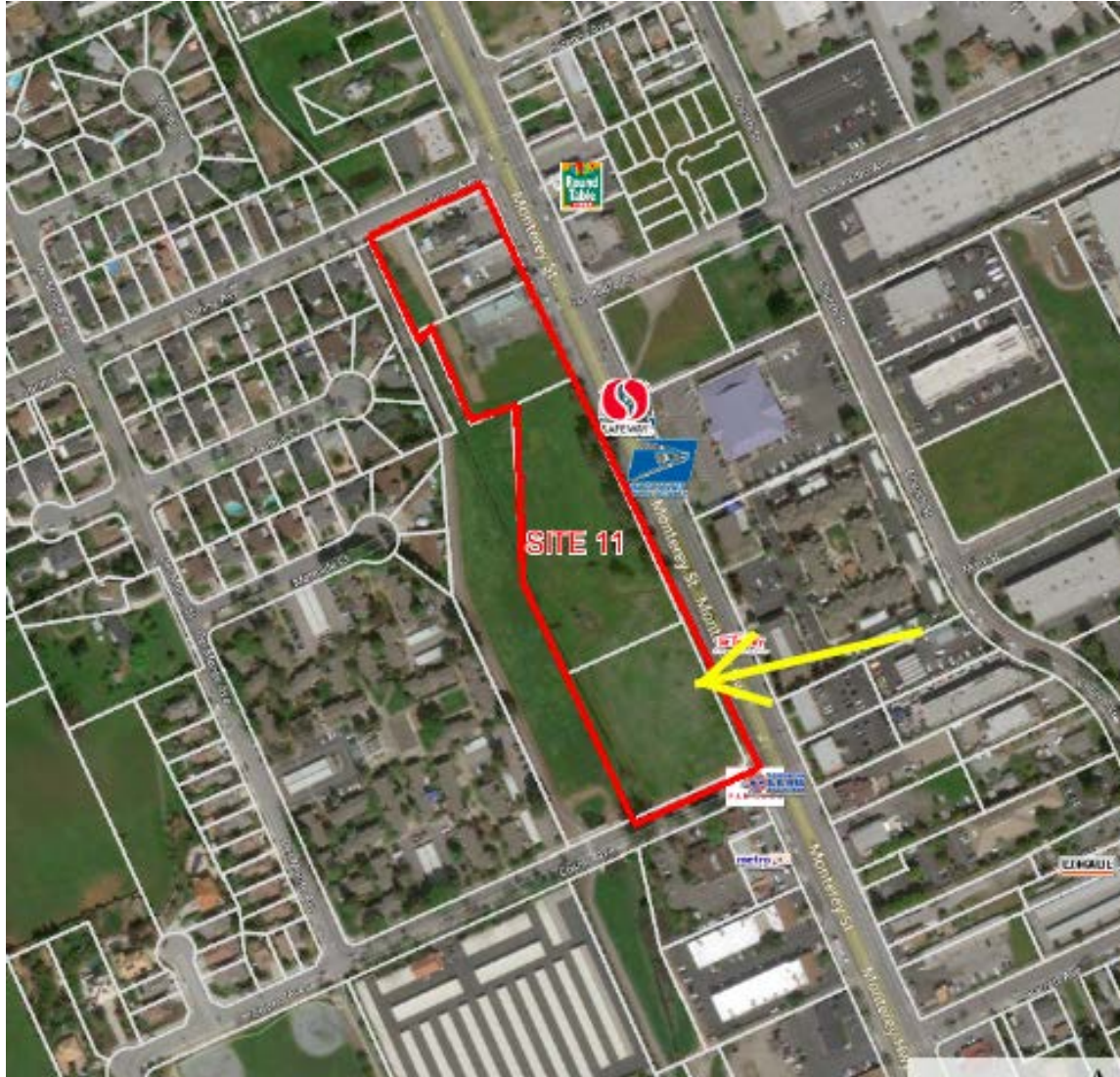
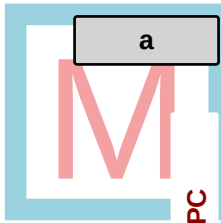
METR@VATION

BROKERAGE & CONSULTING

Packet Pg. 52

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.

a



Currently developed and leased to a variety of retail tenants, this corner will benefit from any development that occurs on the north side of Cosmo Ave.

We recommend requiring commercial on the SW corner Cosmo Ave. and Monterey Rd.



Conclusion: Commercial only zoning on the corner parcel is suggested.

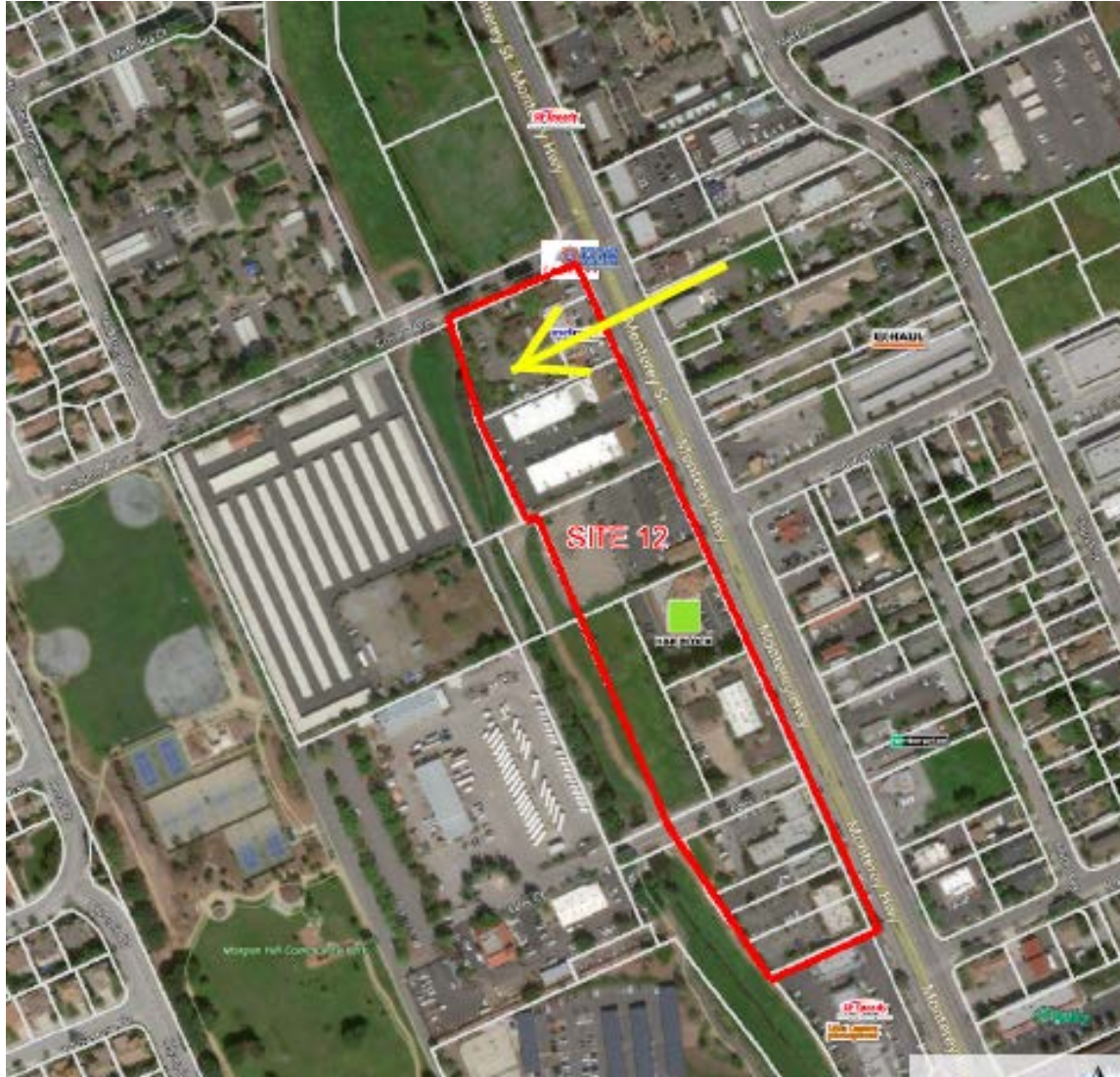
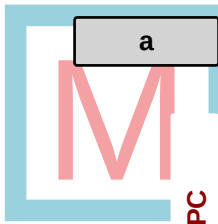
METROVATION

BROKERAGE & CONSULTING

Packet Pg. 54

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Draft Frontage Standards

What are Frontage Standards?

Frontage Standards are specific requirements for building frontages, which enable a more desirable built environment



Porch



Shopfront



Front Yard

Frontage Types

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Frontage Type Application

a

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Frontage Type Examples

5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min.
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



Draft

4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



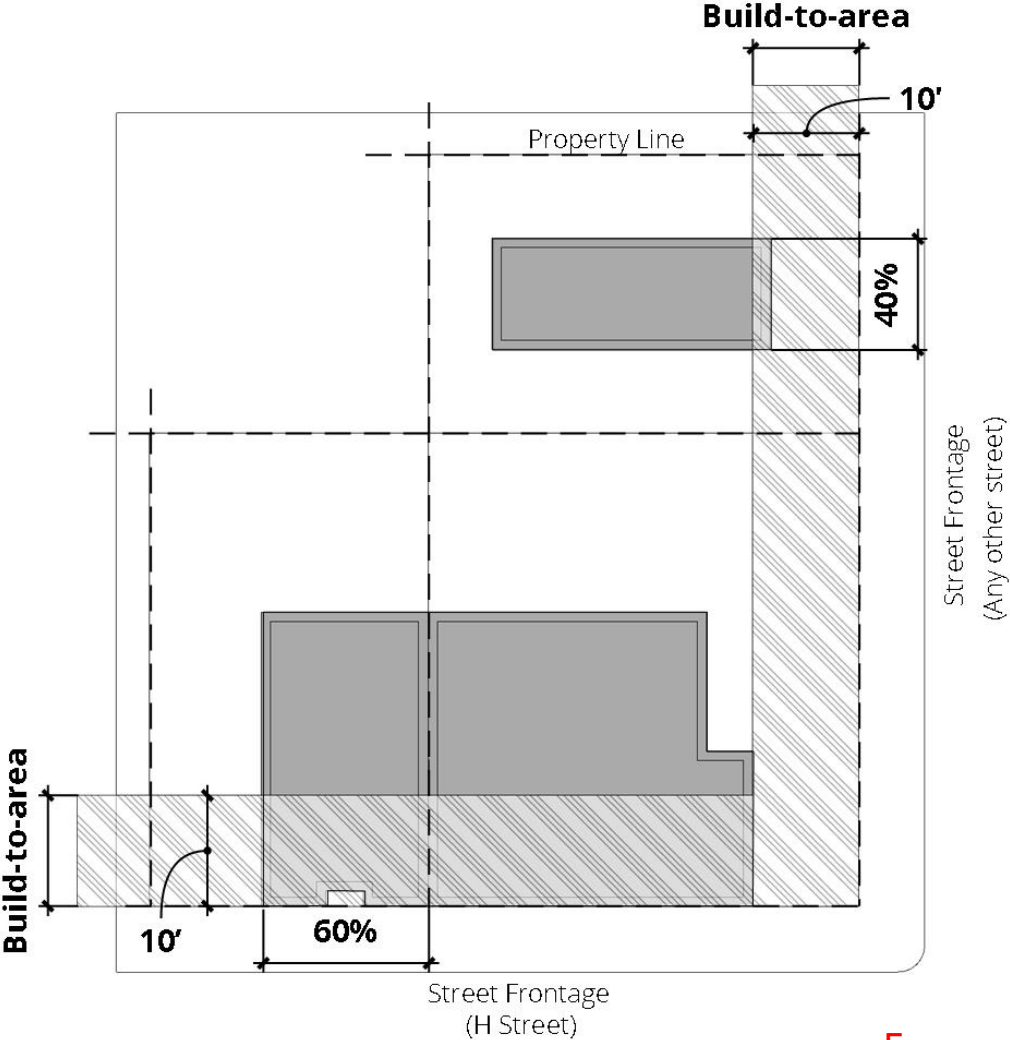
Draft

Supplemental Standards

a

Building Standards

- Maximum front setback
- 1st floor clear height for C Sub-Zone
- 1st floor building depth for C Sub-Zone
- Primary entrance oriented to the street
- Adaptive reuse



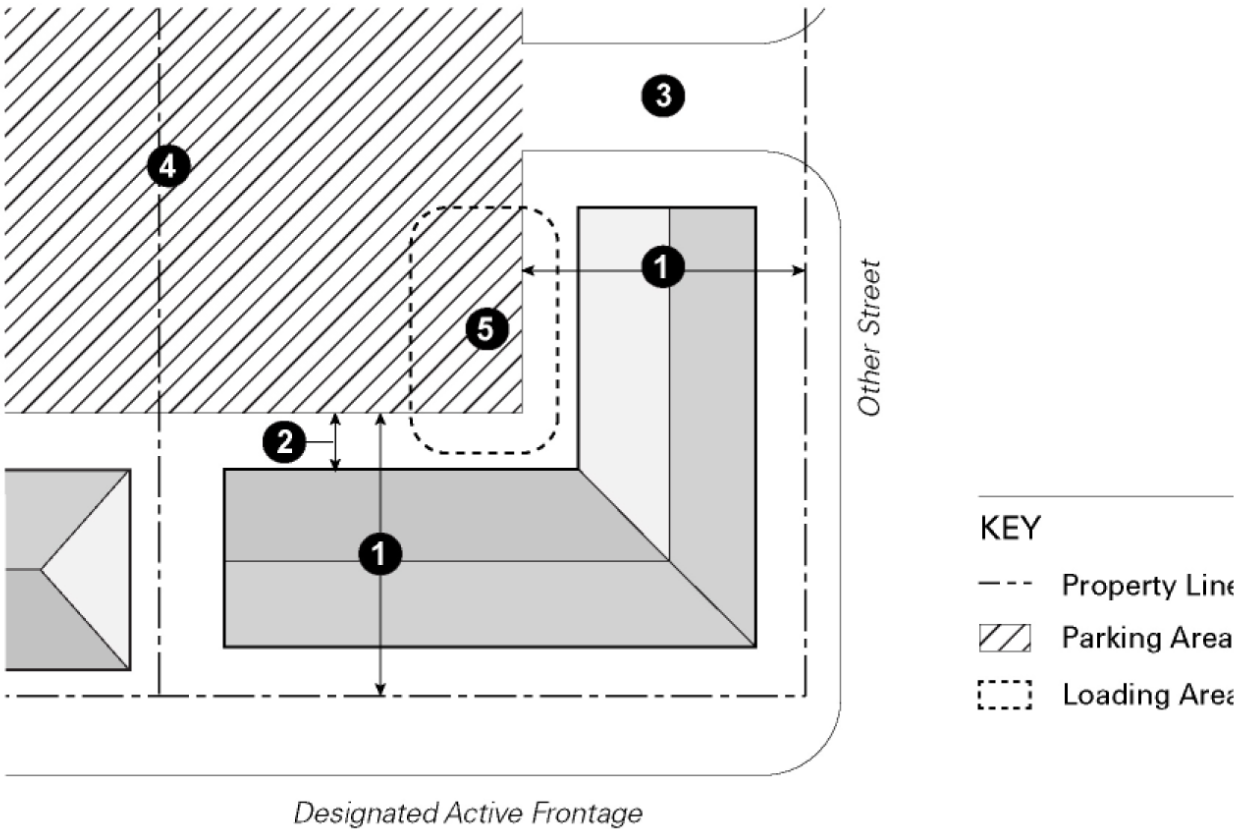
Example

Supplemental Standards

a

Connectivity/Site Standards

- Pedestrian and bicycle access/connection standards
- Maximum block length
- Parking behind buildings
- Open space/civic space requirement for large sites
- Street tree requirements



Example

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Questions & Comments

John Baty, Principal Planner

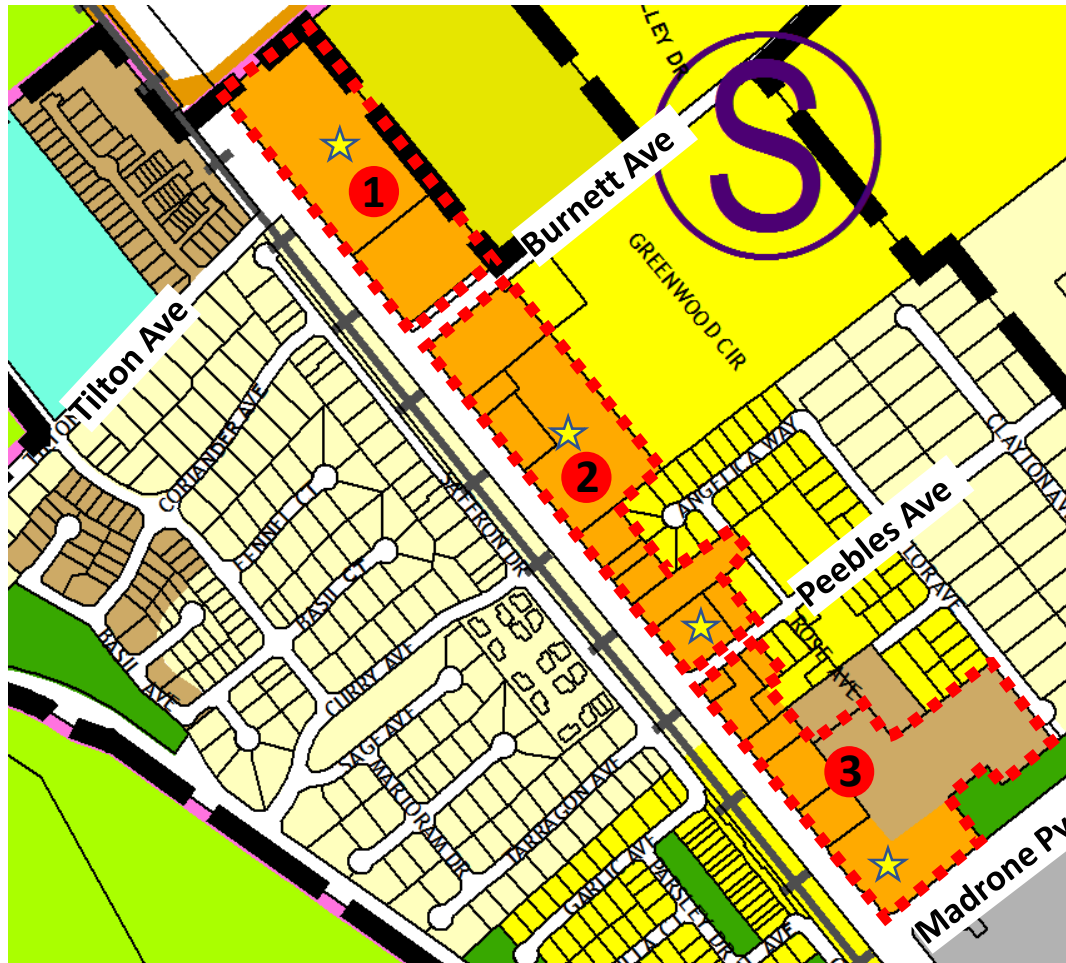
Phone: (408) 310-4635

Email: John.Baty@morganhill.ca.gov

Monterey Corridor Block-Level Master Plan Blocks

North: City Limits to Madrone Parkway

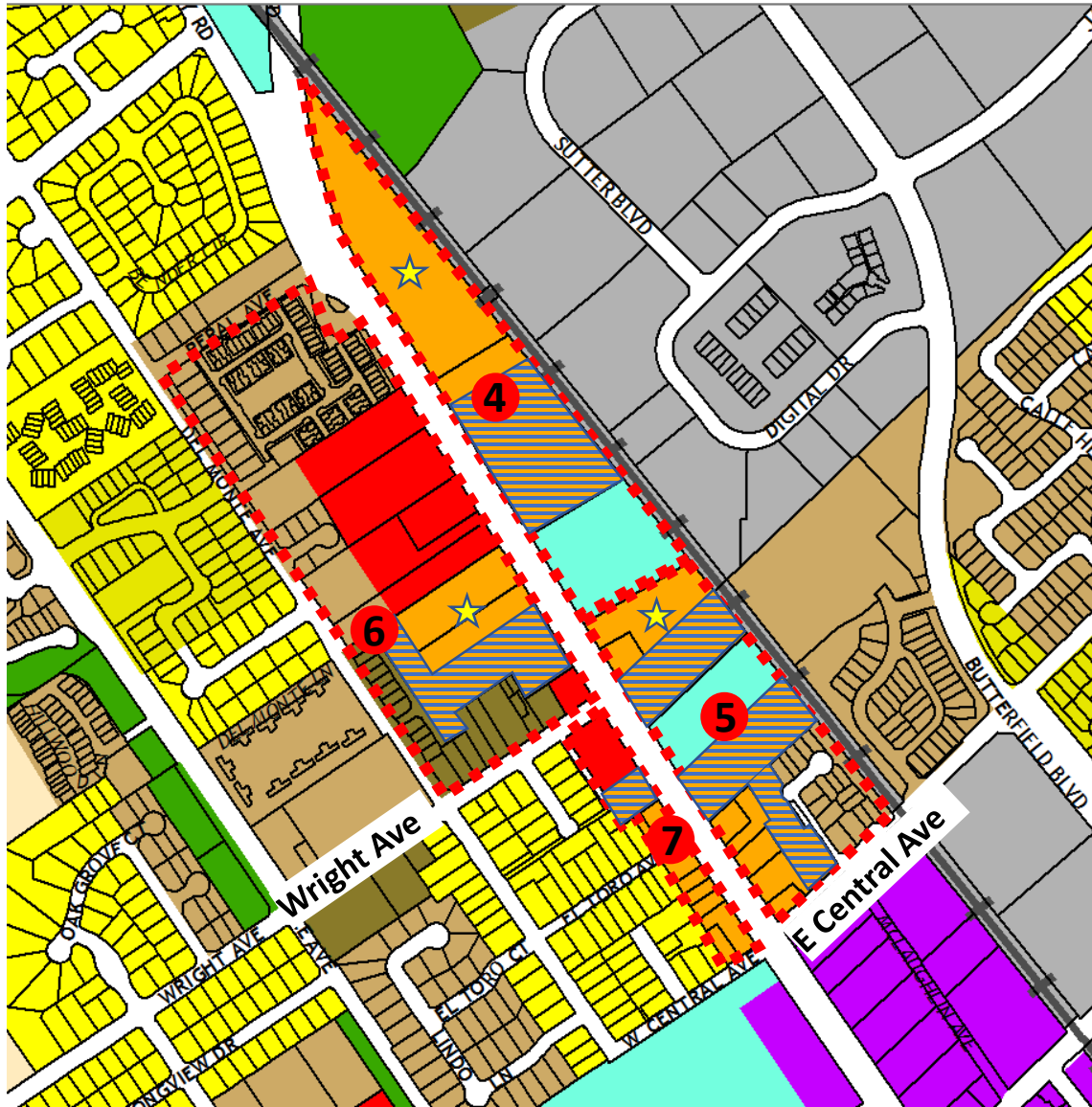
b



- Mixed Use Flex Site
- Block
- # Block Number
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- Vacant/Underutilized Opportunity Site

North of Downtown: RR Overcrossing to Central Avenue

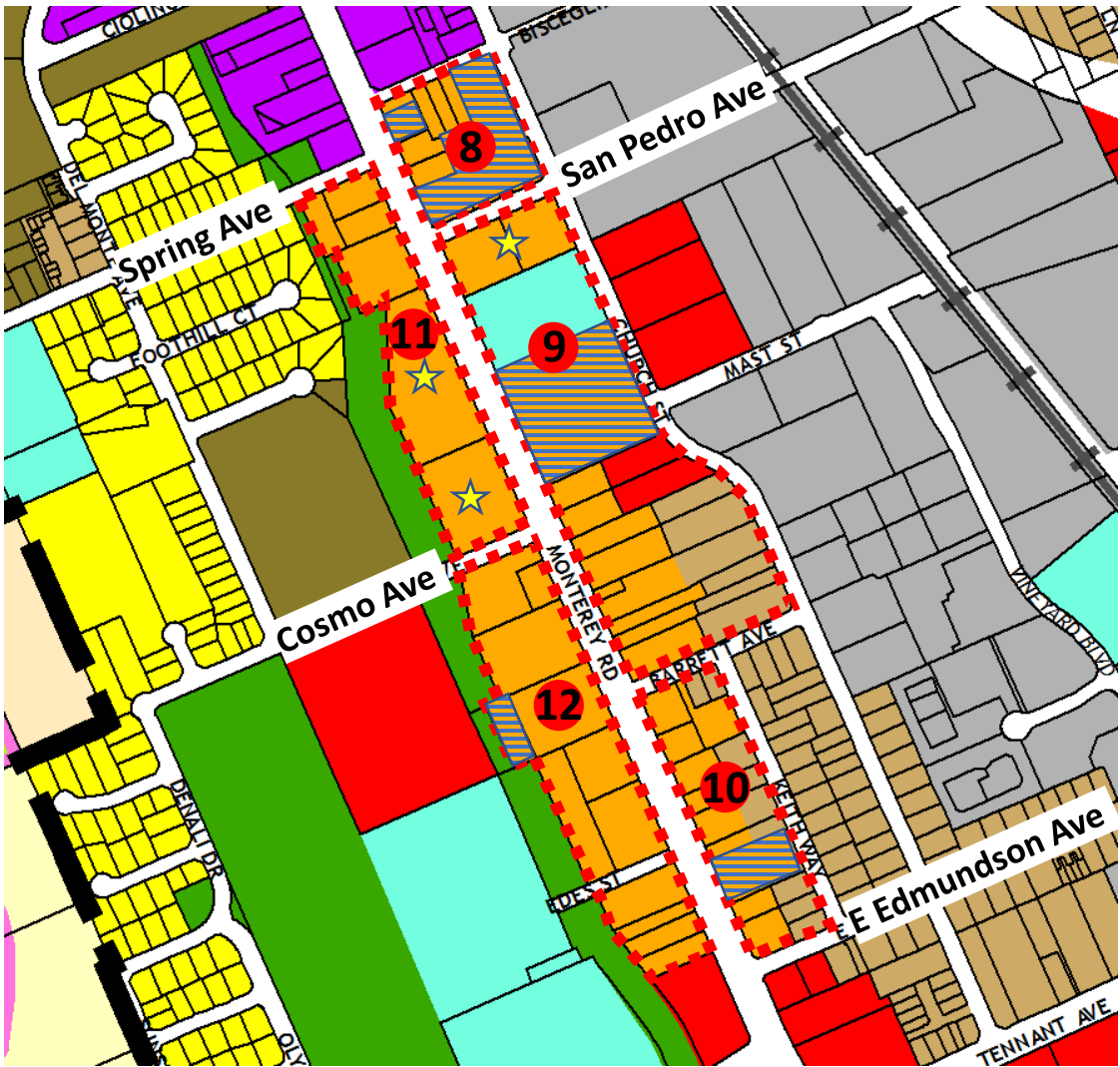
b



- Mixed Use Flex Site
- Block
- # Block Number
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- ★ Vacant/Underutilized Opportunity Site

South of Downtown: Bisceglia Avenue to Edmundson Avenue

b



Attachment: Monterey Corridor Block-Level Master Plan (2034 : Monterey Corridor BLMP

18.30.010 – XX Overlay Zone (Name TBD)

- A. Purpose of the XX Overlay Zone.** The XX overlay zone is intended to provide a vibrant and walkable urban environment with buildings of high visual quality that frame the street. The XX overlay zone serves as the block-level master plan for residential and mixed use developments in the Monterey Corridor consistent with the General Plan and Section 18.22.030.
- B. Applicability.** All new buildings and development in the XX overlay zone must comply with the standards and requirements in this Section.
- C. Conflict with Other Zoning Code Standards.** Where the XX overlay zone standards conflict with other standards in the Zoning Code, the XX overlay zone standards shall control.
- D. Sub-Zones.**
1. **Purpose and Intent.** Sub-zones of the XX overlay zone include specific standards depending on the appropriate neighborhood and corridor contexts of the area. The general intent of the sub-zones is to reinforce built form as described in the General Plan and create a pedestrian-friendly environment. The specific purpose of each sub-zone is described below.
 - a. **Neighborhood Sub-Zone.** The purpose of the Neighborhood (N) sub-zone is to reinforce and enable medium intensity residential form within a mixed use environment.
 - b. **Corridor Sub-Zone.** The purpose of the Corridor (C) sub-zone is to provide a thriving mix of uses with a focus on ground-level, active building frontages facing the right-of-way.
- E. Permitted Land Uses.** Placeholder TBD [do not allow residential uses in areas where commercial should be required per commercial analysis].
- F. Frontage Types Allowed.** Buildings must be designed with a frontage type(s) allowed in the sub-zone by Table XX.

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

G. Frontage Type Standards.

1. Forecourt.

- a. **Description.** The main façade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space could be used as an entry court or shared garden space for residential buildings, or as an additional shopping or restaurant seating area within retail and service use areas.
- b. **Standards.**

Size	
Width, Forecourt	20 ft. min.
Depth, Forecourt	20 ft. min.
Ratio, Width-to-Height of Forecourt	2:1 max.
Transparency, Ground Floor	70% min.
Transparency, Upper Floors	30% min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	



Credit: Google Earth

2. Front Yard.

- a. **Description.** The main façade of the building has a large landscaped area between the building and the right-of-way providing a separation from the street. The front yard is visually continuous with adjacent yards and supports a landscape in conjunction with other private frontages.

- b. **Standards.**

Size	
Width, Front Yard	12 ft. min.
Depth, Front Yard	10 ft. min.
Height, Fences or Walls ¹	3 ft. max.
Miscellaneous	
Must be used in conjunction with another allowed frontage type (e.g., porch).	
Must be landscaped up to the property line.	

¹ Fences or walls must comply with Chapter 18.52 (Fences and Walls).



3. Porch: Engaged.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.

b. **Standards.**

Size	
Width, Porch	50% min.; 80% max. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on two sides and have a roof.	



4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.
- b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



6. Stoop.

- a. **Description.** The main façade of the building is near the right-of-way and the elevated stoop engages the sidewalk. The stoop must be elevated above the sidewalk to ensure privacy within the building. The entrance is usually an exterior stair and landing.

b. **Standards.**

Size	
Width, Stoop	4 ft. min.; 8 ft. max.
Depth, Stoop	5 ft. min.; 8 ft. max.
Finish Level Above Sidewalk	2 ft. min.; 4 ft. max.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Stairs may be perpendicular or parallel to the building façade.	
Entry doors are encouraged to be covered or recessed.	
Gates are not allowed.	



7. Terrace.

- a. **Description.** The main façade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides a buffer for outdoor seating, private yards, or any other appropriate uses.

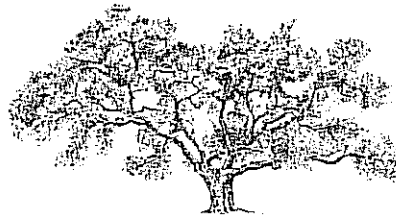
b. **Standards.**

Size	
Depth, Terrace	8 ft. min.
Length, Terrace	120 ft. max.
Finish Level Above Sidewalk	4 ft. max. ¹
Distance Between Stairs	25 ft. max.
Wall Setback From Right-of-Way	5 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	

¹ Finish level may be adjusted for base flood elevation considerations.



H. Supplemental Standards. Placeholder TBD [pedestrian and bicycle access/connectivity; maximum block length; maximum building setback; parking behind buildings; 1st floor clear height and building depth for C Sub-Zone; open space/civic spaces for large sites].



PACIFIC OAK PROPERTIES, INC.

October 16, 2018

Morgan Hill City Council

Dear Mayor and Council Members:

I have reviewed the Monterey Corridor Block Level Master Plan.

I found the analysis to be well done and I agree with the conclusions reached for the various parcels along Monterey Road.

I do not believe that the City should force or require much more additional retail along the Monterey corridor. It is more important to keep existing commercial/retail centers strong and vibrant.

Providing land use flexibility along the corridor is a good thing, and this approach should serve the City well as properties along the corridor are developed or re-developed.

Thank you for your consideration.

Sincerely,

John P. Kent
President

Attachment: Letter from John Kent (2034 : Monterey Corridor BLMP Joint CC/PC Workshop)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

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

ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48- ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2286, 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

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2286 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The project located at 1110 Llagas Avenue was awarded three residential allotments for Fiscal Year 2018-19. This Development Agreement solidifies the commitments that were pledged during the Residential Development Control System process.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill Community was informed about the project through public notification (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division Requirements.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 10, 2017, the Planning Commission adopted resolution No. 17-01, awarding the project three (3) FY2018-19 residential building allotments.

On June 6, 2018, the City Council adopted Ordinance No. 2277, approving a comprehensive update to Title 18 (Zoning), including an amendment to the City's Official Zoning Map. The update re-designated the project site from Residential Estate 40,000 square foot lots, to Residential Estate one-acre minimum lots, which provides consistency with the General Plan designation.

On September 25, 2018, the Planning Commission adopted resolution No. 18-24 unanimously recommending approval of the Development Agreement.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applications to cover cost services. These fees have been collected.

CEQA (California Environmental Quality Act):

An environmental assessment was prepared in conformance with the California Environmental Quality Act and determined the project Categorically Exempt pursuant to Section 15303, Class 3, relating to new construction of small structures, and Section 15315, Class 15, relating to Minor Land Divisions.

LINKS/ATTACHMENTS:

1. Ordinance 2286- Llagas-Strolata
2. Development Agreement DA2017-0008 Llagas - Strolata (Final)

ORDINANCE NO. 2286, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT DA2017- 0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)

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

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 3 building allotments for application RDCS2016-0011 Llagas-Silvas for FY 2018-2019; and

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code; and

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

SECTION 4. Said Development Agreement request was considered by the Planning Commission at its regular meeting of September 25, 2018 at which time the Planning Commission recommended City Council approval of Development Agreement application DA2017-0008: Llagas-Strolata (Silva); and

SECTION 5. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill and attached as Exhibit A. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 6. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide three single-family homes on minimum one-acre lots. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 7. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing

development project is a permitted use within the Residential Estate zoning district and is compatible with the surrounding residential neighborhoods.

SECTION 8. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 9. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act (CEQA) and city's procedures adopted pursuant thereto. The City Council further 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 and therefore finds the project Categorically Exempt pursuant to Class 3, Section 15303 relating to New Construction of Small Structures, and Class 15, Section 15315 relating to Minor Land Divisions, of the CEQA and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. 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 14. 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 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 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

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2286, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2286- Liagas-Strolata (2029 : Adopt Ordinance 2286- Liagas Strolata)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

STROLATA PROPERTIES, LLC

REGARDING

**THE RDCS2016-0011 LLAGAS- STROLATA (SILVA) RESIDENTIAL
DEVELOPMENT PROJECT**

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 STROLATA PROPERTIES, LLC
 REGARDING THE
 LLAGAS- STROLATA (SILVA) RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Strolata Properties, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **Allotments Approved Pursuant to RDCS Applications: RDCS2016-0011**, and conditions attached to the award of such allotments;

2. **Environmental Impact Assessment EA2017-0016**; and

E. On January 10, 2017, the Morgan Hill Planning Commission awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

F. On September 25, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that its provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 *et seq.*
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.
- (10) **"Project"** means the development containing **three residential building allotments for Fiscal year 2018-2019 containing three single-family homes on property identified by Assessor Parcel Number 773-32-013**, as more particularly described in the RDCS2016-0011as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 4.2 gross acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Existing Approvals.
- (3) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDSCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDSCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other

agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such

employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments (“**Commitments**”) voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under 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.

(c) The Developer’s RDCS application – RDCS2016-0011 - and approval actions on January 10, 2017 (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as “**Construction Codes**”) in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive

payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of

receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer may request, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director, and approved by the City Attorney, and signed by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a

prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party

Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an

interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any

improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security

with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Strolata Properties, LLC
1999 South Bascom Avenue, Suite 700
Campbell, CA 95008
Tel: (408)848-0300
Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Paul Latala, Strolata Properties L

s/ _____

member

Name/Title [print]

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

Adopted By Ordinance Number _____
by action of City Council on _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY ON WHICH

PROJECT IS BE LOCATED

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP PORTION OF LOT 46 OF THE MORGAN HILL RANCH MAP NO. 3, BOOK G OF MAPS, PAGES 20 AND 21", WHICH MAP WAS FILED FOR CALIFORNIA ON NOVEMBER 10, 1972 IN BOOK 312 OF MAPS, AT PAGE 1.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO THAT PORTION OF SABINI COURT, AS SHOWN UPON THAT CERTAIN PARCEL MAP ABOVE REFERRED TO.

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO A STRIP OF LAND 16.50 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE MOST WESTERLY CORNER OF SAID WALKER PARCEL IN THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHWEST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 984.39 FEET TO THE MOST SOUTHERLY CORNER OF SAID WALKER PARCEL.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY CREATED APPURTENANT TO PARCEL ONE ABOVE IN THE DEED FROM ROBERT M. WELCH, RECORDED MAY 7, 1898, BOOK 210 OF DEEDS, PAGE 55, OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHWEST LINE OF SAID LOT 46 SOUTH 49° 45' WEST 73.92 FEET.

PARCEL THREE:

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY CREATED IN THE DEED TO PETER SABINI, RECORDED JANUARY 16, 1934, BOOK 674 OFFICIAL RECORDS, PAGE 73, FOR INGRESS AND EGRESS OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 16 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIED AS FOLLOWS:

BEGINNING ON THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 30 FEET.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 30 FEET WIDE, THE NORTHEAST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE SOUTHEAST LINE OF BOOK 674 OFFICIAL RECORDS, PAGE 73, SAID POINT ALSO BEING SOUTH 40° 15' EAST 16 FEET FROM THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID NORTHEAST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 17.00 FEET TO THE TERMINUS OF THIS EASEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT CREATED IN THE DEED TO CLASSINA SABINI, RECORDED JANUARY 1, 1972, BOOK 9859 OFFICIAL RECORDS, PAGE 372 FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST 103.92 FEET FROM THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE, AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 412.53 FEET.

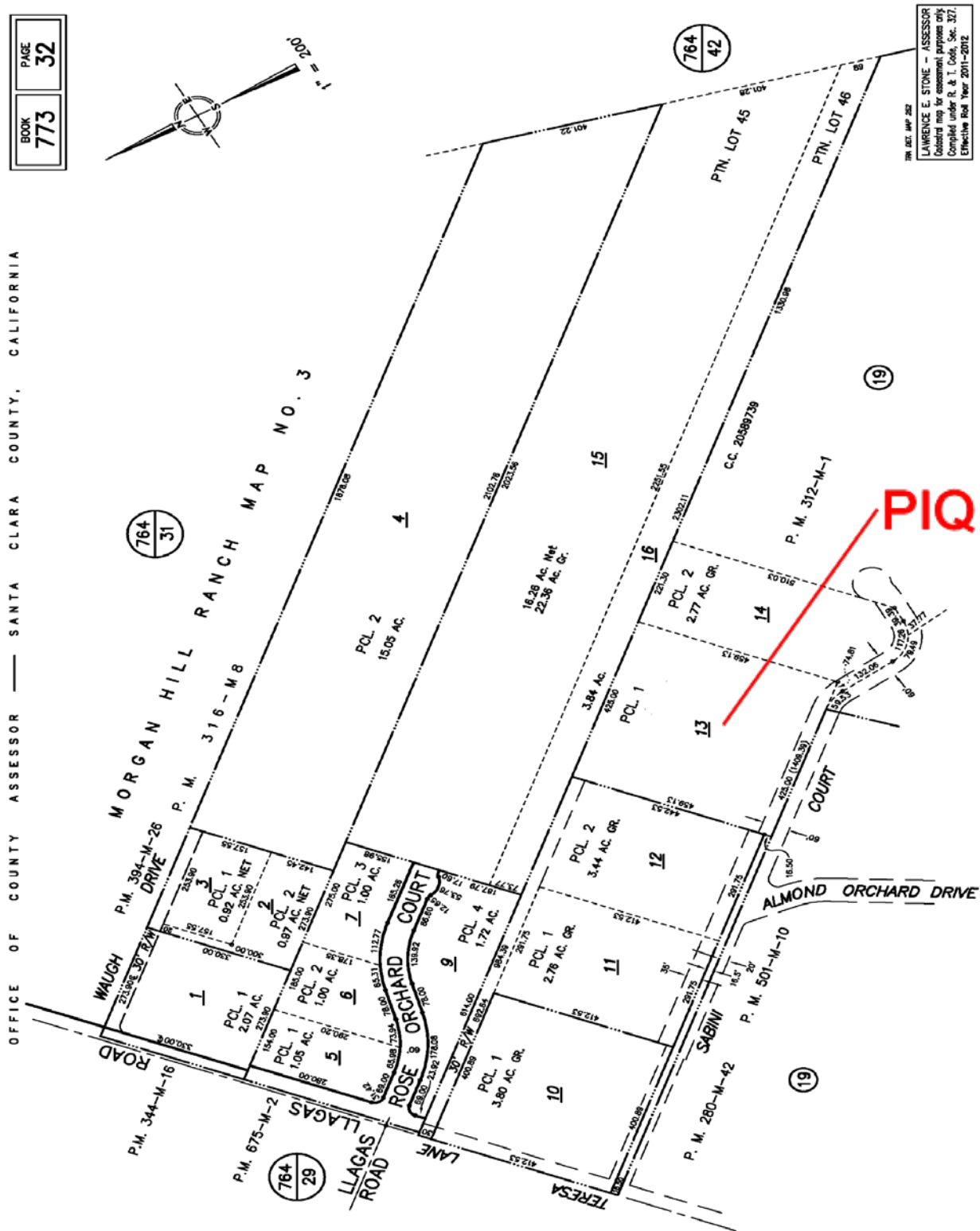
PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A 16.5 FOOT STRIP OF LAND THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, RECORDED SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, AT PAGE 20, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 2 AS SHOWN ON THE "PARCEL MAP" RECORDED MARCH 29, 1971 IN BOOK 280 OF MAPS, AT PAGE 42, SANTA CLARA COUNTY RECORDS; THENCE NORTH 40° 15' EAST ALONG THE SOUTHWESTERLY LINE OF PARCEL 2 AND PARCEL 1 OF SAID PARCEL MAP, 984.39 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 1, AND THE TERMINATION POINT OF THE SOUTHWESTERLY LINE OF SAID 16.5 FOOT EASEMENT.

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA



This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS2016-0011: LLAGAS – SILVAS: Request for three residential building allotments for Fiscal Year 218-2019. The proposed development contains three single-family homes with remainder lot. The property, identified by Assessor Parcel Number 773-32-013, is located on Llagas Road at Sabini Court (Yancey and Lorinda Silvas, Applicant).

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

EXHIBIT C

RDCS2016-0011: Request for three residential building allotments for Fiscal Year 2018 – 2019.

SPECIFIC RESTRICTIONS AND REQUIREMENTS

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988	Prior to issuance of building permit.	\$ 4,950 per unit
B.4	Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within ¾ miles of the project site or to a middle school or high school up to \$4,950 per unit. Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department.	Prior to issuance of offsite improvement plans	\$4,950 per unit
	Open Space			
B.4.b	TDC for projects (>25 units)	Property owner or designee commits to double TDC's	Prior to building permit final	Double TDC fee per unit, applicable rate

EXHIBIT C

-1-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
				applies at time of payment
B.4.c				
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines	Property owner or designee agrees to fill in 1 water line, 1 sewer line, 1 stormdrain, and 1 fire. The Project requires gridding/looping of water to increase pressure/redundancy of existing and proposed water extension, by extending water line to tie into the dead-end water stub of Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required waterline easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans.	Prior to Site Review Approval	N/A
B.5	Project Master Plan design	There are two swales traversing the property that could potentially affect the design of the parcels and home sites. A geologist has stipulated that there is no defined bed or channel or defined top of bank. The property owner or designee will complete a wetland delineation for the project.	Prior to Site Review Approval	N/A

EXHIBIT C

-2-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		In Addition, project circulation will require: A. An Emergency Vehicle Access (EVA) easement for Fire and Police access for secondary ingress and egress to subdivision and neighboring lots. EVA easement shall loop back to Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required EVA easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. B. Sabini Court shall be improved to a 2/3 rural street standard. The required right of way shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. Sabini Court alignment can be shifted to utilized existing easement to widen Sabini Court to the needed 2/3 standard.		

EXHIBIT C

-3-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Facilities			
B.1.	Standard design requirement for public facilities	Project will meet standard requirements for design and construction of public facilities	Prior to Improvement Plan approval	N/A
B.2.b	Drainage concept consistent with City's storm drain system	Project drainage concept will be consistent with City's Storm Drain system, Drainage Master plan, and local area storm drain system	Prior to Improvement Plan approval	N/A
B.2.c	Storm drain lines constructed within paved area of the street	Project will provide public storm drain line to convey water within the public streets from curb to curb	Prior to Improvement Plan approval	N/A
B.2.f	Excess public improvements	The project will provide public facility, off-site storm drainage improvements, or pedestrian improvements from a City-approved list or impairments on or adjacent to project in excess of standard requirements, e.g. sewer, traffic control at \$4,400 per unit.	Prior to Improvement Plan approval	\$4,400 per unit
B.2.g	Contribution to RDCS Capital Improvements fund	The project will contribute \$1,100 per unit to the RDCS Capital Improvements program fund.	Prior to Improvement Plan approval	\$1,100 per unit
	Parks and Paths			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1	Park in-lieu fee (<50 units)	The property owner or designee shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Parcel Map Approval	See Chapter 17.28. for fee calculation
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide a minimum of ¼ miles of Class II bikes lanes and coordinate with the City of Morgan Hill to determine the location.	Prior to issuance of Offsite Improvements	N/A
B.7	Additional park fees (in-lieu fee) for projects (>50 units)	In addition to standard park fees, the property owner or designee shall pay the lesser of either eighteen time the in-lieu park fee or \$6,600 per unit.	Prior to Parcel Map Approval	Eighteen times the in-lieu park fees or \$6,600 per unit. Whichever is less.
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	The project shall provide one secondary unit for one of the lots.	Prior to Site Review Approval	N/A
B.2.a	Standard Housing Fee	The property owner or designee shall pay the standard housing fee.	Prior to building permit final	\$12,000
B.2.b	Double Housing Fee	The property owner or designee shall pay double the standard housing fee in addition to B.2.a. above.	Prior to building permit final	\$24,000
	Quality of Construction Standards			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	OSB/Plywood wrap	The project will include the installation of OSB/Plywood wrap	Prior to Building permit issuance	N/A
B.1.b	Foundations	The project will utilize alternate materials in the concrete mix such as fly ash, slag, silica fume or rice hull to achieve a 20% reeducation of cement.	Prior to Building permit issuance	N/A
B.1.c	Wallboard	The project will include the installation of light weight wallboard for all walls excluding code requirement for fire walls	Prior to Building permit issuance	N/A
B.1.d	Electrical raceway	The project will include installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Prior to Building permit issuance	N/A
B.1.f	90% high efficiency fan forced heating	The project will include the installation of 90% high efficiency fan forced heating	Prior to Building permit issuance	N/A
B.1.g	Zoned heating and air conditioning	The project will include the installation of zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Prior to Building permit issuance	N/A

EXHIBIT C

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.h	Multiple efficiency improvements	The project will include: 1) the installation of listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls, 2) installation of high efficiency energy star water heater with energy factor of 0.70, 3) the installation of ultra high efficiency or dual flush toilet, and 4) installation of rain sensor monitor on irrigation system.	Prior to Building permit issuance	N/A
	Safety and Security			
B.1.a	Fire proof safe	Project will include a fire proof safe in every unit.	Prior to building permit final	N/A
B.1.b	First aid kit	Project will include a first aid kit with poison control document in the kitchen of each unit	Prior to building permit final	N/A
B.1.c	Fire protection device	Exterior finishes will comply with Chapter 7A of the California Building Code.	Prior to building permit final	N/A
B.1.d	Outdoor lighting	The project includes the installation of lighted address numbers on each building an illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A

EXHIBIT C

-7-

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.f	Illuminated address numbers	The project includes the installation of lighted address numbers on each building and illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A
B.1.k	Illuminated pathways/walkways	The project includes the installation of illuminated front yard walkways with a minimum of 1-foot candle and motion sensor/controlled lighting in the rear yard of each unit.	Prior to building permit final	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Project utilizes the design principles of CPTED of natural surveillance, territorial reinforcement for each single-family home.	Prior to building permit final	N/A
B.3	Lockable hardware	Project includes installation of lockable hardware on all side yard and patio gates	Prior to building permit final	N/A
B.4	Central Monitoring	Project includes intrusion, fire alarm, and heat detector systems monitored by a central station. Property owner or designee will include a year monitoring contract with each unit purchased.	Prior to building permit final	N/A
	Livable Communities			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.7	Maximizes privacy	Building elevations require the windows to be off set for privacy and alternate outdoor patios.	Prior to Site Review approval	N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

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

ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DR. AND MONTEREY ROAD

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2287, 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

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2287 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The ordinance approves a Development Agreement for 389 rental units on a 19.5 acre parcel. Twenty percent of the units (20%) will be restricted to very-low income households. The initial rents for the remaining units will be affordable to moderate income renters.

COMMUNITY ENGAGEMENT: Not Applicable

This action is mandated by state law and a judgment of the Santa Clara County Superior Court. Future action will be taken to educate the community about changes to state housing law and its implications for maintaining paced growth in Morgan Hill.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council adopted a resolution changing the General Plan designation for the project site from Industrial to Multi-Family Medium.

On September 2, 2015, the Council held a public hearing on an ordinance amending the zoning designation for the site to be consistent with the General Plan. The ordinance was adopted on October 7, 2015.

On November 10, 2015, the Planning Commission adopted resolution No. 15-66, adopting final scores for the 2015 RDCS competition. The project did not receive a passing score. The City Council adopted resolution No. 15-310 on December 16, 2015 denying an appeal of the project scores. The project did not qualify for allotments.

On January 10, 2017, the Planning Commission adopted resolution No. 17-01 awarding the project 10 residential building allotments. The City Council adopted resolution 17-017 denying appeals by two other projects and reaffirmed the distribution by the Planning Commission.

On May 22, 2018, the Planning Commission adopted resolution No. 18-13, which awarded the project 71 residential allotments, but denied the project's request for multiyear allotments.

On June 20, 2018, the City Council adopted a resolution denying an appeal of the Planning Commission's decision not to award multi-year allotments to the project.

FISCAL AND RESOURCE IMPACT:

As required by the Development Agreement, the developer will remit all impact and development processing fees payable to the City.

CEQA (California Environmental Quality Act):

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014.

A project level Initial Study/Consistency Checklist demonstrating consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074) was prepared.

LINKS/ATTACHMENTS:

1. Ordinance 2287- MWest

ORDINANCE NO. 2287, NEW SERIES**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT FOR A 389
UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5
ACRES AT JARVIS DR. AND MONTEREY ROAD**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AND ENACT AS FOLLOWS:**

SECTION 1: California Government Code sections 65864 through 65869.5 authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 2: The City Council of the City of Morgan Hill finds that, on the basis of the whole record before it, including the Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum, the Morgan Hill 2035 General Plan Environmental Impact Report, and the project-level Initial Study/Consistency Checklist prepared for the project, that there is no substantial evidence that the project will have a significant effect on the environment, and that the environmental documents described herein represent the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Agency.

SECTION 3: ADOPTION OF A DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement attached to this Ordinance as Exhibit A.

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 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 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 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

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2287, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

 IRMA TORREZ, City Clerk

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

EXHIBIT A

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

**MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY
INVESTMENTS**

REGARDING

BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

Effective Date: _____

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS
REGARDING
BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the CITY OF MORGAN HILL, a California municipal corporation, (hereinafter "**City**"), and MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS a Delaware limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its MHMC (Chapter 18.116 ¹*et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer is the fee owner of the approximately 19.5-acre property as more particularly described in Exhibit A (the "**Property**").

C. The Developer proposes to plan, develop, construct, operate and maintain a high quality 389-unit multi-family residential apartment project on the Property, and to make twenty percent (20%) of the units affordable and income restricted to Very Low Income Households earning fifty percent (50%) of the Area Median Income ("**VLI Units**"), and as the project is further defined below ("**Project**").

¹ On June 6, 2018, the City adopted a comprehensive zoning code update, which resulted in a renumbering of all code sections in Title 18 of the Municipal Code. All references are to the revised code section numbers.

D. The Project will be the first market rate project in the City to provide 20% VLI Units, and will help the City meet its Regional Housing Needs Allocation requirements pursuant to California Government Code Section 65584 (“**RHNA**”) for VLI Units, an income category in which the City is currently deficient under State Housing Law.

E. The City and Developer have entered that certain unrecorded Settlement Agreement between the City and Developer dated September 17, 2018 (“**Settlement Agreement**”), including a Stipulated Judgment (Case #18CV333676) dated September 17, 2018 (“**Stipulated Judgment**”) related to the City’s violation of Section 65589.5(d) of the California Government Code (the “**Housing Accountability Act**”), whereby MHMC Chapter 18.156 (“**Residential Development Control System**”, or “**RDCS**”) is without legal and/or equitable force and effect as applied to the Project. Pursuant to the Settlement Agreement and Stipulated Judgment, this Agreement serves to: (1) confirm that RDCS has no Legal Effect (as defined below) on the Project; and (2) implement the other terms of the Settlement Agreement and Stipulated Judgment, including securing for the City, in a permanent and enforceable manner, the Developer’s public benefits and voluntary commitments with respect to the Project. These public benefits and voluntary commitments include but are not limited to (and as further and more precisely defined below): (i) providing 20% VLI Units; (ii) the extension of Sutter Road and related utilities from Butterfield Boulevard to Digital Drive to help catalyze industrial development on the adjacent property; (iii) the construction of an approximately 3.2 acre park and a system of trails and pathways that will be publicly accessible, but privately owned and maintained; and (iv) a sidewalk along the Butterfield Boulevard frontage to provide a safe route for pedestrians and school children.

F. And, in light of the commitment to provide 20% VLI Units to help the City meet its RHNA requirements under State Housing Law, this Agreement also confirms, consistent with the Settlement Agreement, the City’s commitments to: (1) expedite and streamline the remaining entitlements to allow for the construction and occupancy of the Project; (2) cooperate and take all actions necessary to assist the Developer to obtain 20-50 Financing (as defined below) for the 20% VLI Units, (3) approve and authorize all actions necessary to remove and terminate that certain temporary overflow stormwater limitation on Lot 26 (“**Stormwater Detention Note**”) as noted on Sheet 2 of that certain Parcel Map recorded in the Official Records of Santa Clara County on September 27, 2000 as Instrument No. 15404436 (“**2000 Parcel Map**”); and (4) to the extent consistent with law, approve and authorize all actions necessary to permit stormwater from the Project to use the City’s detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map.

G. As of the Effective Date of this Agreement, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively “**Existing Approvals**”), including without limitation, all of the following:

1. Environmental Impact Report for Butterfield-MWest General Plan Amendment Project and Addendum (GPA-14-04) (SCH #2014072009 (“**GPA EIR**”) and

Environmental Assessment for Butterfield Village Multi-Family Residential Project Development Agreement (File No. 2021: MWest Development Agreement) (“**Development Agreement EA**”)

2. Butterfield-MWest General Plan Amendment (GPA-14-04) (“**GPA**”)
3. 2016 Morgan Hill General Plan (“**General Plan**”)
4. Butterfield-MWest Zoning Amendment (File No. ZA-15-12) (“**Rezoning**”)

On January 18, 2018, the City confirmed by letter (Application No. RDCS2017-0013) that the Project conforms to the General Plan and City’s zoning code (the Project has also been referred to by the City as the “Cochrane-MWest Project.”)

H. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City’s Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On October 17, 2018, following duly noticed and conducted public hearings before the Planning Commission and City Council with respect to the Project, the Morgan Hill City Council (“**City Council**”) introduced Ordinance No. 2287, New Series (“**Ordinance**”) affirming CEQA compliance under the GPA EIR and Rezoning EA, finding that the provisions are consistent with the General Plan, finding the provisions are consistent with the Settlement Agreement and Stipulated Judgment, approving this Agreement, and directing this Agreement’s execution by City. The City adopted the Ordinance on October 24, 2018, and the Ordinance became effective thirty (30) days later. The “**Effective Date**” in this Agreement shall be the date that the Ordinance became effective, and shall be inserted by the City Clerk shall be inserted on the cover sheet prior to recordation.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

“**20-50 Financing**” shall public financing from any or all of the following sources: (i) private activity tax exempt bond financing (tax-exempt through a volume cap allocation from the California Debt Limit Allocation Committee), (ii) LIHTCs available under Section 42 of the Code and allocated through the TCAC, (iii) any property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise

permitted by the California Board of Equalization, and (iv) any other tax credits and/or other special financing programs that are available to projects that provide at least 20% VLI Units.

“20-50 Financing Requirements” shall mean any and all terms, conditions, obligations, restrictions, requirements necessary for the Developer to apply for, obtain and comply with the 20-50 Financing for the Project.

“2000 Parcel Map” shall have that meaning set forth in Recital F.

“Actual Household Size” means the actual number of persons in the applicable household, as determined by TCAC.

“Administrative Amendment” shall have that meaning set forth in Section 3.05.

“Adjusted for Family Size Appropriate to the Unit” shall be determined consistent with Section 42(g)(2) of the IRC (or successor provision) if applicable.

“Affordable Rent” means the amounts, and fees charged by Developer for occupancy of a VLI Unit by a tenant and required to be paid by such tenant for such VLI Unit on a non-optional basis as determined by Section 42(g)(2)(A) of the Code. For avoidance of doubt, the schedules of Affordable Rent published by TCAC shall be conclusively presumed to be the correct Affordable Rent for the VLI Units.

“Applicable Law” shall have that meaning set forth in Section 2.01(a) of this Agreement.

“Area Median Income” or “AMI” means the median income for Santa Clara County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by TCAC.

“CDLAC” means the California Debt Limit Allocation Committee and any successor agency or authority.

“Central Park” or “Butterfield Park” shall mean that approximately 3.2-acre park as generally consistent with Exhibit B that shall be a privately-owned, privately maintained park subject to public access during standard operating hours and subject to reasonable and uniformly-applied rules and regulations on use and conduct.

“Central Park Construction Costs” shall have that meaning set forth in Section 2.04(c) of this Agreement.

“City Commitments” shall have that meaning set forth in Section 2.04(b) of this Agreement.

“City’s Authorized Representative” means the City Manager of the City of Morgan Hill or his or her designee.

“CSCDA” means the California Statewide Communities Development Authority.

“Construction Codes” shall have that meaning set forth in Section 2.05 of this Agreement.

“Design Review” shall mean approval of architectural, site and landscape approval for the Project prior to construction pursuant to Chapter 18.74 of the MHMC.

“Developer Commitments” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“Development Factors” shall have that meaning set forth in Section 2.06(a) of this Agreement.

“Director” shall mean the Director of Community Development, and his or her designee.

“District” shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 *et seq.*, the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

“Effective Date” shall be as set forth in Section 1.01 of this Agreement.

“Existing Approvals” shall have that meaning set forth in Recital G of the Recitals of this Agreement.

“Existing City Laws” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, green building standards, and other City land use regulations in force and effect on the Effective Date of this Agreement, with the exception of RDCS which is expressly hereby excluded from the definition of Existing City Laws for the purposes of this Agreement.

“General Plan” shall have that meaning set forth in Recital G.

“GPA” shall have that meaning set forth in Recital G.

“GPA EIR” shall have that meaning set forth in Recital G.

“**Gross Income**” shall have the meaning set forth in Section 42 of the IRC, as such section may be revised from time to time.

“**Housing Accountability Act**” shall mean California Government Code have the meaning set forth in Recital E.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to MHMC Chapter 3.56 and California Government Code Section 66001 *et seq.*

“**IRC**” means the Internal Revenue Code of 1986, as amended.

“**IRS**” means the Internal Revenue Service.

“**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

“**LIHTCs**” means low-income housing tax credits.

“**Ministerial Permits**” shall mean grading permits, building permits, fire permits, improvement plans and improvement agreement, certificates of occupancy, and any other “over-the-counter” permits and approvals required under the MHMC for the construction and occupancy of the Project, consistent with this Agreement, including Existing Approvals, Applicable Law, Construction Codes, Design Review and the Subdivision Document.

“**MHMC**” shall mean the Morgan Hill Municipal Code.

“**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes Legal Effect after the Effective Date of this Agreement, and that applies City wide.

“**Official Records**” means the Official Records of the Santa Clara County Recorder.

“**Park Impact Fees**” shall mean those development impact fees related to park and recreational facilities pursuant to MHMC Section 3.56.030(A)(5).

“**Project**” means a high quality 389-unit multi-family residential apartment project, including 20% VLI Units as set forth in Section 2.04(b) of this Agreement, and related

infrastructure, circulation, parking, landscaping, park and open space as conceptually described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property."

"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

"Property" shall mean that certain real property consisting of approximately 19.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.

"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the MHMC.

"Required City Entitlements" shall have that set forth in Section 2.04(b)(1) of this Agreement.

"Rent Restricted" means the rent restrictions under Section 42(g)(2)(A) of the IRC.

"Rezoning" shall have that meaning set forth in Recital G.

"Rezoning EA" shall have that meaning set forth in Recital G.

"RHNA" shall have that meaning set forth in Recital D.

"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.

"Settlement Agreement" shall have that meaning set forth in Recital E.

"Severe Economic Recession" means a decline in the monetary value of all finished goods and services produced in the United States ("US"), as measured by initial quarterly estimates of US Gross Domestic Product ("GDP") published by the US Department of Commerce Bureau of Economic Analysis (and not BEA's subsequent monthly revisions), lasting more than four (4) consecutive quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

"Stipulated Judgment" shall have that meaning set forth in Recital E.

"Subdivision Document" means, pursuant to the California Subdivision Map Act and this Agreement, a lot merger or lot line adjustment necessary and appropriate to make the Property suitable for the construction, operation, ownership and financing of the Project.

"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are

sought by Developer, and that are granted by City after the City Council adopts the Ordinance pursuant to Section 3.01.

“**Substitution of Developer Commitments**” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“**Sutter Road Extension**” shall have the meaning set forth on in Section 2.04(a)(4) of this Agreement.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**TEFRA**” means the Tax Equity and Fiscal Responsibility Act of 1982.

“**Temporary On-Site Stormwater Detention Note**” shall have the meaning set forth in Recital F.

“**Term**” shall have that meaning set forth in Section 1.03 of this Agreement.

“**VLI**” means Very Low Income.

“**VLI Unit**” means a dwelling unit that is Rent Restricted for occupancy at an Affordable Rent by Eligible Households which shall be dispersed throughout the Project, with the exception of the for rent townhome-style units, in compliance with Section 42 of the Code and requirements of the 20-50 Financing, including but not limited to TCAC and CDLAC.

“**Very Low Income Household**” is a household whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size, as determined by TCAC.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the MHMC.

1.03 Term.

(a) The term (“**Term**”) of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the issuance of a certificate of occupancy for all units in the Project or (2) ten (10) years plus one day after the Effective Date; provided however that if the Developer constructs the Project, Developer’s obligations pursuant to Sections 2.03 and 2.04 of this Agreement shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement, and provided further that the City’s obligations under Section 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with any 20-50 Financing Requirements until such time as the 20-50 Financing is no longer outstanding or subject to recapture.

(b) If any “**Third-Party Challenge**” (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment (“**Litigation Tolling**”). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, “**Applicable Law**” shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Stipulated Judgment
- (3) Settlement Agreement
- (4) Existing Approvals.
- (5) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (6) The “Existing City Laws” that are not in conflict with this Agreement and the Project Approvals.

- (7) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law, but only to the extent and as provided in this Agreement.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Existing Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of Impact Fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts,

Community Facilities Districts, Assessment Districts, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by Developer, in its reasonable discretion, pursuant and subject to this Agreement and all appropriate and applicable City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees, but only to the extent such Impact Fees exist and in the amounts in Legal Effect as of the Effective Date, and shall pay such Impact Fees when they become due and payable as provided for in the City's Municipal Code, and to the extent possible Impact Fees will be designated to such capital expenditure related to Project infrastructure.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer or City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

(d) Approval of the Financing Mechanisms. The City and the Developer agree that the construction of public improvements (including but not limited to the Sutter Road Extension and other infrastructure, open space and circulation to serve the Project) may be financed by a District or Districts which could encompass the Property, and, to the extent other property owners outside the Property are interested or benefit and are made part of such District in accordance with all applicable law, such other lands. If the Developer requests formation of a District, the Developer will be deemed to have consented to formation of such District(s), to the

assessments or taxes ratably allocated to the Property by the District(s), and to having the Property included within the District(s). The Developer agrees to cooperate in the City's formation of the District or Districts and in the performance by the District(s) of its responsibilities. The City and Developer agree that, unless the City and the Developer agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after the issuance of building permits for such parcels. City, as the legislative body of any District, shall proceed with all good faith to consider at a noticed public meeting of the legislative body, the adoption of a resolution of intention and a rate and method of apportionment or an engineer's report, establishing a special tax or assessment to be levied semi-annually on property within the District(s), subject to the provisions of subsections (a) and (b) below. City, as legislative body of the District(s), shall thereafter, in accordance with the appropriate legislation for the Financing Mechanism, consider a resolution of formation for the adoption of such District(s) and shall further hold all elections of the qualified voters thereof in connection with the establishment of a District(s) and the approval of such special tax or assessment. City, as legislative body of the District, further agrees to simultaneously consider (or at such time as California law shall otherwise require) the adoption of a resolution of issuance of bonds secured by such special tax or assessment in an amount as is necessary to finance the Improvements and the Impact Fees that may be required in connection with the development of the Project; provided, however, that the amount of such bonds shall be dictated by prudent underwriting standards, as may be required by an underwriter selected by the City. In all respects, City agrees to use its good faith efforts to implement such requests, and Owner shall rely on such good faith efforts in connection with the consideration provided hereunder by Owner. City shall also use its good faith efforts to enter into joint facilities financing agreements with other eligible recipients of District proceeds. For the purposes of clarity, the term "Financing Mechanism" as used in this Section 2.03(d) shall not include the 20-50 Financing which is considered separate and essential to support the VLI Units and is not subject to City approval and is instead subject to Section 2.04(b)(2) of this Agreement.

(A) General Parameters for Approval of Financing Mechanisms.

1. Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism. City staff shall meet with the Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

2. Any Financing Mechanism may provide for the reimbursement to Developer of any advances by Developer for any costs incurred in Section (a)1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for

reimbursement. Prior to the filing by Developer of a petition to request that the City institute proceedings to create a District, City and Developer shall enter into a deposit and reimbursement agreement, mutually acceptable to both City and Developer that provides for the deposit by Developer of funds sufficient to commence proceedings to form any Financing Mechanism and the reimbursement of such amounts from the available bond or assessment proceeds.

(B) Financing Parameters for Approval of Financing Mechanisms.

1. Any Financing Mechanism shall be secured solely by assessments or special taxes levied within the respective District, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing contemplated by this Section. Notwithstanding anything to the contrary in this Agreement, nothing herein would preclude the City from pursuing other financing alternatives as is necessary to finance infrastructure, public facilities, including but not limited to the Improvements and/or Impact Fees, if it would be in the best interest of the City.

2. The payment of reasonable initial and annual administrative costs of the City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology and the City's general fund shall not be called upon to provide for initial or any annual administrative costs related to the Financing Mechanism.

2.04 Developer and City Commitments and Obligations.

(a) Developer Commitments and Obligations

(1) Developer Commitments. The Developer's public benefit commitments for the Project set forth in Exhibit C ("**Developer Commitments**") are voluntarily proposed and agreed to by Developer in return for benefits derived from this Agreement, including but not limited to the City Commitments in Section 2.04(b). These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition, except as expressly provided in this Agreement. The Developer Commitments set forth in Exhibit C shall be enforceable by the City through this Agreement. In the event of any conflict between Exhibit C and the text of this Agreement, the text of this Agreement shall control. In the event of any conflict between Exhibit B and Exhibit C, Exhibit C shall control. Substitution of Developer Commitments or adjustments in implementation timing may be approved by the Director of Community Development if such substitution or

implementation timing adjustment would not degrade the quality of the Project, materially lower the value of the Developer Commitments, or would subject the Project to further environmental review under CEQA (“**Substitution of Developer Commitments**”). Any approved Substitution of Developer Commitments shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(2) Affordable Housing. Twenty percent (20%) of the residential units in the Project shall be Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Very Low Income Households. The Developer shall submit a plan for the location of the VLI Units with the application for Design Review. Developer reserves the right to determine the specific location of the VLI Units provided the location is allowed under the 20-50 Financing. Subject and subordinate to any conflicting 20-50 Financing Requirements (including any required regulatory agreement), the Developer shall enter into a recorded covenant to ensure the VLI Units remain Rent Restricted for at a minimum of fifty-five (55) years prior to the first certificate of occupancy for the Project. The parties acknowledge and agree that the Project and this Section 2.04(a)(2) shall be subject to modification and subordination, if, and to the extent necessary, to meet 20-50 Financing Requirements for the Project, and the City and Developer shall document any such modification through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(3) Central Park. As a multi-family apartment development, the Project is not subject to MHMC Section 17.28. The City confirms it has no desire or intention to take fee title, or to accept operational or maintenance obligations to the Central Park or any other park or open space proposed as part of the Project. The Central Park be designed and constructed generally consistent with the location and amenities (subject to reasonable modification and substitution) shown conceptually Exhibit B, and shall not be (unless voluntarily proposed by Developer) required to meet the City “Public Park Standards.” The City also confirms that the Central Park, as proposed as a private park subject to public access, is consistent with the General Plan and applicable zoning, and the only City approvals necessary for the construction and operation of the Central Park are (i) Design Review and Ministerial Permits. As described in more detail on Exhibit B and Exhibit C, the Developer has voluntarily committed to design, construct and operate the Central Park with the Project and to complete the Central Park prior to the final certificate of occupancy for the Project. Developer shall submit a good faith cost estimate for all design and construction costs associated with the Central Park (including engineering and design costs, land preparation, improvements, equipment, fixtures and finishes, and City fees) (“**Central Park Construction Cost**”) to the City prior to issuance of the first building permit for any residential units in the Project, for review and approval by the City Engineer, in his or her reasonable discretion which shall not be unreasonably withheld or delayed (“**City Engineer Approval**”). If the Central Park Construction Cost is estimated to exceed the amount of Park Impact Fees due from the Project, the Developer shall not pay Park Impact Fees. If the costs are estimated to be less than the Park Impact Fees, the Developer shall pay, when due, only the difference. At the completion of the Central Park (final inspection), the Developer shall submit a reasonable accounting of the actual Central Park Construction Cost for City Engineer Approval, and if the Central Park Construction Cost exceeds the Park Impact Fees for the Project, the Developer shall

not owe any Park Impact Fees for the Project. If the final Central Park Construction Cost is less than the Park Impact Fees for the Project, the Developer shall pay the difference (minus any amount paid previously). If the Developer paid any Park Impact Fees and the actual Central Park Construction Costs exceed the Park Impact Fees, the City shall promptly reimburse the excess to Developer. This Section does not obligate the City to reimburse the Developer for any amount the Central Park Construction Costs exceed the Park Impact Fees.

(4) Sutter Road Extension. In order to help attract users and accelerate new investment on the adjacent industrial property, at the time set forth below, the Developer shall dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, as conceptually shown on Exhibit B ("**Sutter Road Extension**"), with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for development of the Central Park. Developer shall submit revisions to the approved November 30, 2001 "Plans for the Improvement of Sutter Place" to reflect the realignment and current standards per the attached Industrial standard 48-feet (curb-to-curb). Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer. Developer and City acknowledge that, as shown on Exhibit B, all but approximately 670 lineal feet of the Sutter Road Extension is anticipated to be required to provide adequate circulation and a secondary access and connection for the Project to Butterfield Boulevard. However, in order to expedite development and make the adjacent industrial property "business ready," Developer commits to and shall commence construction (and complete in 270 days) of the entire length of the Sutter Road Extension from Butterfield Boulevard to Digital Drive once Developer receives building permits for 165 residential units in the Project.

(b) City Commitments

(1) Required Entitlements and Expedited Processing. The City hereby confirms that the only entitlements required for construction and occupancy of the Project are: (1) CEQA compliance, (2) Design Review, (3) a Subdivision Document, and (4) Ministerial Permits ("**Required City Entitlements**"). Pursuant to Section 3.01, the City shall use reasonable and good faith efforts to expedite the Required City Entitlements to allow for the construction and occupancy of the Project.

(2) 20-50 Financing Assistance. In addition to any Financing Mechanisms under Section 2.03(d), the City shall cooperate and take all actions necessary (and when necessary) to assist the Developer to obtain 20-50 Financing and to meet any 20-50 Financing Requirements, including, but not limited to: (i) acting as the local reviewing agency in support of the applications for any bond financing, (ii) approval to use CSCDA, or other joint powers authority selected by the Developer, as the bond issuer and cooperation with their bond counsel

(iii) holding a TEFRA hearing as required by the IRS, and (iv) cooperation with any reasonable requirements of Developer and its lenders with respect to bond financing and the investors with respect to LIHTCs, including refinancing or refunding any previously obtained bond financing, and (v) providing reasonable assistance to the Developer in obtaining a property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise permitted by the California Board of Equalization. The City acknowledges that timing is of the essence to obtain 20-50 Financing.

(3) Termination of City's Use of Property for Temporary Overflow Stormwater Detention Purposes. To allow for development of the Project, the City hereby approves the removal and termination of the Temporary On-Site Detention Note on the 2000 Parcel Map restricting use of Lot 26 for temporary overflow stormwater detention purposes, and hereby authorizes the City Engineer and City Attorney to take all actions necessary to remove the notation for title purposes within sixty (60) days of the Effective Date; and

(4) City Detention Basin. The Developer shall have the right to, consistent with all Applicable Law and Construction Codes, direct stormwater from the Project to the City's detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map for stormwater water quality treatment and detention (storage) purposes.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) The parties acknowledge that Developer cannot at this time predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the duration of city processing and permitting, the availability of 20-50 Financing, market orientation and demand, interest rates, absorption, completion and other similar factors (the "**Development Factors**"). Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that the Developer shall have the right to develop its Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. In the event that a New City Law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City,

such New City Law shall not apply to the Project or any portion thereof. The Parties acknowledge a mutual desire to have the Project develop as quickly as the Development Factors permit.

(b) Securing Building Permits and Beginning Construction. Developer is required to obtain the Required City Entitlements. However, any Subsequent Approval initiated by Developer which substantially changes the permitted uses or substantially increases the height and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

(c) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire Project.

2.07 Intentionally Deleted.

2.08 Overcapacity, Oversizing.

(a) To the extent consistent with this Agreement, City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement, including but not limited to the 20-50 Financing. City shall not apply any New City Law that would adversely affect the financial feasibility of the Project that is subject to 20-50 Financing. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development, including but not limited to, RDCS as in effect as of the Effective Date or as may be later amended from time to time.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(5) Conflict with any aspect of the 20-50 Financing or 20-50 Financing Requirements.

(6) Institute or apply rent or income restrictions other than the Rent Restrictions as to the Project, as such Rent Restrictions may be increased from time to time as provided by TCAC or under the standards of HUD; and

(7) Determine rents with respect to the VLI Units in a fashion that is inconsistent with Section 42 of the IRC or the rules or regulations of TCAC.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply

the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regards to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations pursuant to Section 2.03 and 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is consistent with or authorized by this Agreement, including all Applicable Law and Construction Codes. This Agreement provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regards to the Project Approvals that legally require the exercise of discretion by City, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by this Agreement, including all Applicable Law and Construction Codes. Therefore, so long as the Developer is in good faith compliance with this Agreement, and in the spirit of the mutual benefit of delivering the VLI Units, the City shall prioritize processing of applications related to the Project (including but not limited to public and private improvement plan review and scheduling inspections) and shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Project, including the following actions:

(i) Required City Entitlements; Design Review. Developer shall apply for and obtain all Required City Entitlements prior to construction and occupancy, as applicable. So long as the proposed Project, or portion thereof subject to a formal application, meets the Existing Approvals, Applicable Law, Construction Codes and is in conformance with CEQA, City shall expedite review and approval of all Required City Entitlements. The Design Review process for the Project shall be in accordance with the administrative portion only of Chapter 18.108.040 of the Morgan Hill Municipal Code, subject to normal appeal rights of the Developer under Chapter 18.108.

(ii) General Processing; Third Party Consultants. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance this Agreement. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate

with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits needed for development of the Project or any other on or offsite improvements. The City acknowledges that time is of the essence with respect to these actions, particularly as they relate to obtaining and complying with the 20-50 Financing.

(iii) CEQA. City has prepared and certified the GPA EIR, Addendum and Development Agreement EA and has imposed mitigation measures as conditions of approval prior to the execution of this Agreement. This Agreement does not limit City's duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

(iv) Standard of Review. All Required City Entitlements shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

(A) Submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement; and

(B) The application is complete and all fees due related to such application are paid; and

(C) The application demonstrates that Developer has complied with this Agreement, the Existing Approvals, Applicable Law (including CEQA), and Construction Codes.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially

deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Intentionally Deleted.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification qualifies as an Administrative Amendment subject to Section 3.05; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law.

3.05 Administrative Amendment

(a) If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law ("**Administrative Amendment**"), the City Manager or his designee may approve the proposed Administrative Amendment without notice and public hearing. Any Administrative Amendment must be made in writing signed by the City Manager (and approved by the City Attorney in his or her reasonable discretion) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the Administrative Amendment shall be recorded with the Santa Clara county recorder.

(b) An Administrative Amendment shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the Permitted Uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings allowed under the Existing Approvals, (5) provisions for reservation or dedication of land for public purposes, or (6) material changes in the Project allowed under the Existing Approvals (which does not include minor adjustments to the site plan, orientation and location of buildings, floor plans, architecture, landscaping, circulation, etc.); or

(ii) Any material amendment or modification or eliminations of the Developer Commitments set forth in Article 2.04(a) of this Agreement, any reduction in fees, or any reduction or elimination of any Project Mitigations hereunder, except that, upon the written request of, and payment of the established fee by, Developer, a Substitution of Commitments.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). A Default by the City under this Agreement shall be a default under the Settlement Agreement. Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to a party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that neither party shall be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Annual Review.

(a) Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date. Except as affected by the terms hereof, the terms of MHMC Section 18.116.060 shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

(b) Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("**Compliance Letter**") to the City Manager with copies to the Community Development Director and the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the

Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and Morgan Hill Municipal Code Section 18.116.060.

(c) City's Finding of Compliance. Within sixty (60) days after receipt of the Compliance Letter, the City Manager shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the City Manager finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the City Manager shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review ("**Compliance Certificate**"). Developer may record the Compliance Certificate with the Santa Clara County Recorder's Office.

(d) City's Finding of Non-Compliance. If the City Manager finds the Developer has not complied in good faith with the terms and conditions of this Agreement during the year under review, the City Manager shall specify in writing to the Developer the respects in which the Developer has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. Within ten (10) days of receipt of the notice of noncompliance the Developer may, at its option and in its sole discretion, file a written appeal to the City Council. If the Developer files an appeal, the City Council shall, expeditiously, hold a duly noticed public hearing on the matter. If, after such hearing, the Council finds and determines based on substantial evidence that Developer has complied in good faith, then the City Manager shall issue a Compliance Certificate pursuant to Section 8.03. If, however, the City Council determines based on substantial evidence that Developer has not complied in good faith, the City Manager shall give written notice thereof to Developer terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance, and such notice shall serve as a Notice of Default under Section 4.04. If after receipt of a notice of non-compliance, Developer fails to cure the noncompliance within a reasonable period of time as established by the City Manager, in his or her discretion, may (a) grant additional time for compliance by Developer, or (b) refer the Agreement to the City Council to modify this Agreement to the extent necessary to remedy or mitigate the noncompliance or terminate this Agreement.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, Severe Economic Recession, or litigation (including without limitation litigation contesting the validity, or seeking the

enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge, City shall control all aspects of the defense and City shall pay City's own attorneys' fees and costs (including related court costs) and shall pay any and all third-party fees and costs arising out of such Third-Party Challenge.

(c) Developer shall accept City's Tender, and Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed form of assignment agreement shall be subject to the written consent of City Attorney, which consent shall not be unreasonably withheld, delayed or conditioned. If the City does not respond to a request for approval of the form of assignment within fifteen (15) days such form shall be deemed approved by the City and no signature of the City shall be required. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall

specify the portion of the Project or Property and the rights assigned and obligations assumed. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney. Notwithstanding the above, Developer shall have the absolute right to assign the VLI Units to a separate legal entity to obtain, implement or refinance the 20-50 Financing upon normal and customary terms.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project, including in connection with any solar or renewable energy or conservation improvement financings or encumbrances. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee and each party investing in the LIHTCs (collectively, the "**Affordable Finance Notice Parties**") shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided each such Affordable Finance Notice Party has informed City of its address for notices. Each Affordable Finance Notice Party shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Affordable Finance Notice Party in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Affordable Finance Notice Party's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Affordable Finance Notice Party relief from the automatic stay. Each Affordable Finance Notice Party shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Affordable Finance Notice Party who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs, including interest, as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have

been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the insurance policies required in Exhibit D. These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in Exhibit D, attached hereto and incorporated by this reference.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271

If to Developer: MWest PropCo XXIII LLC d/b/a DivcoWest Silicon
Valley Investments
Attn: Ryan McDaniel

3351 Olcott Street
 Santa Clara, CA 95054
 Tel: (408) 450-3823

With a Copy To: Holland & Knight, LLP
 50 California St., Suite 2800
 San Francisco, CA 94111
 Attn: Tamsen Plume
 Tel: (415) 743 -6941

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

- Exhibit A Legal Description Property.*
- Exhibit B Description of Project.*
- Exhibit C Developer Commitments.*
- Exhibit D Insurance Requirements*

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL, CALIFORNIA
a California municipal corporation

APPROVED AS TO FORM:

DONALD A. LARKIN
City Attorney

CHRISTINA TURNER
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

ATTEST:

IRMA TORREZ
City Clerk

“CITY”

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

DEVELOPER:

Mwest PropCo XXIII LLC, a Delaware limited liability company, d/b/a, DivcoWest Silicon Valley Investments

By:	_____
	Signature of Person executing the Agreement on behalf of Developer
Name:	_____
	Steve Novick
Title:	_____
	Authorized Signatory
Local Address:	_____
	575 Market Street, 35 th Floor

	San Francisco, CA 94015

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY**

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being all of "Lot 26" as shown on the Parcel Map filed September 27, 2000 in Book 732 of Maps, at Pages 16 through 19, Records of Santa Clara County, California, and all of "Parcel 4" as shown on the Parcel Map for Lot Line Adjustment filed June 22, 2017 in Book 904 of Maps, at Pages 47 and 48, Records of Santa Clara County, California.

Containing 19.505 acres, more or less.
END OF DESCRIPTION.

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT B**DESCRIPTION OF PROJECT**

Divco West SVI Measure S Application 2017 Butterfield Village dated January 4, 2018 prepared by TCA Architects and RJA Ruggeri-Jensen-Azar and Alma Du Soleir on file with the City under File No. , expressly excluding any reference to RDCS except as may be helpful for informational reference.

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT B

EXHIBIT C**DEVELOPER COMMITMENTS****EXHIBIT C****Developer Commitments**

The following chart describes the Developer Commitments for the Project, including the applicable reference in the MHMC, a description, timing of implementation or payment. These commitments are in addition to any Project Mitigation (CEQA), Impact Fees, or other requirements pursuant to federal or state laws, or applicable provisions of the MHMC consistent with this Agreement (See Section 2.03 of the Agreement).

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
1.	Schools		
	Student Transportation Improvements	Project commits to construct off-site improvements valued at (and not to exceed) \$1,000/unit, including sidewalks along the industrial frontage of Butterfield Blvd (west side), along Jarvis Drive (south side) and the Sutter Road Extension (Digital Drive to the Project's proposed Main Street) where shown on the attached Exhibit B. Any remaining funds will be contributed to City's Safe Access to Schools Fund.	Prior to final certificate of occupancy.
2.	Location		
a	Water distribution lines	Local water distribution lines are of sufficient size to serve the Project. The Project does not require replacing existing local water distribution lines with large diameter pipes. New water mains to serve the site do not need to be installed. In-tract extension to occur along Sutter. The 12 inch water lines in Jarvis Drive and Butterfield Blvd provide adequate capacity to serve the site. However, the project is installing a new main in the Sutter Road Extension to contribute	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		toward the City's grid system, which will also serve the adjacent industrial project.	
b	Wastewater collection	The existing wastewater collection system is sufficient to serve the Project. The Project does not require extending or replacing existing sewer pipes or lift stations outside of the Project Site. In-tract extension to occur along Sutter. An existing 10" sanitary sewer line in Jarvis Drive and a 20" sanitary sewer line in Butterfield Blvd provide adequate capacity to serve the project. In addition, the Project is voluntarily providing off-site sewer service in the new Sutter Road Extension to serve the adjacent industrial.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the Project. A 24" storm drain line in Jarvis Drive and a 54" storm drain line in Butterfield Blvd serve the site. In addition, the project site lies adjacent to a regional detention basin that will accommodate stormwater flows from the proposed development.	As needed to serve the Project, but no later than prior to final certificate of occupancy.
3.	Affordable Housing		
	Development of Affordable Units	The Project will make 20% of units affordable to Very Low Income Households as defined by State Housing and Urban Development (HUD) Guidelines. Affordable units will be distributed throughout the site and proportionally amongst unit types.	See Section 2.04(b) of the Agreement.
4.	Housing Diversity		
a	Diversity of Housing Types	The project includes a diversity of 2 housing types: multi-family units, and single family attached townhomes. Both	Design Review; subject to 20-50 Financing Requirements.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		housing types will represent at least 10% of the project.	
b	Variation in Housing Size	The project includes one and two-bedroom apartments. Please see sheet A-1.0 in the Schematic Design package in Exhibit B for full breakdown.	Design Review; subject to 20-50 Financing Requirements.
c	Small Units	A minimum of 50% of units in the Project are less than 1,000 SF. See also Sheet A-1.0 of Exhibit B for a description of unit size and distribution.	Design Review; subject to 20-50 Financing Requirements.
d	Housing Stock Diversity	The project is 100% multi-family rental.	Design Review.
5.	Parks and Open Space		
a	Excess Park Land	The Project shall provide 5.82 acres of dedicated open space area which is more than 50% in excess of the requirement of 3.42 acres (389 @.0088 ac/unit). The project is providing a total of 114,093 sf (2.62 acres) within the residential acreage and a total of 139,000 sf (3.2 acres) for Central (aka Butterfield) Park, for a total of 5.82 acres, which exceeds the requirement under local ordinance by more than 50%. The Project will construct the park improvements, and the Park will be privately owned and maintained, but open to the public via a permanent public access easement.	See Section 2.04(b) of the Agreement.
b	On-Site Recreational Amenities	The Project shall provide a pool, a restroom area, 4 tot lots with at least three age appropriate activities, a clubhouse with kitchen, a jacuzzi and children's pool, and an exercise room. The project includes the following Tier 3 and 4 amenities: Junior Olympic Swimming Pool, Restroom, 4 Tot Lots/Playgrounds, Exercise Room,	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		Clubhouse w/kitchen, Jacuzzi/children's pool. See Sheet R-2.0 of the Schematic Design package in <u>Exhibit B</u> for details. Note Central Park (aka Butterfield Park) amenities are NOT included in this calculation.	
c	Amenities for Age Group	The Project will provide amenities for all ages: Children - 2 tot lots, children's wading pool. Teens - 2 flex playgrounds & outdoor spaces for socializing. Adults - indoor gym, fire pit, bbq/picnic areas. Seniors - senior par course & walking paths. All ages - swimming pool, club room, picnic sites, trails. See Sheets R-2.0 and R-2.1 of the Schematic Design package in Exhibit B for details.	Design Review; prior to final certificate of occupancy
d	Public Gathering Places	Central Park (aka Butterfield Park) will be a high value public gathering space located in a high-density mixed use residential/industrial area with a pedestrian network and easy access to public streets, visible and open to the public, and containing multiple seating areas and sheltered areas for year-round use. The Project will invest a minimum of \$2,000 per unit in park and open space improvements.	Design Review; prior to final certificate of occupancy.
e	Open Space Design	Project will include outdoor rooms; open space of sufficient size; well defined open space edges; visibility; adjacent units; and landscape. See Sheets R-5 and R-6 of the Schematic Design package in Exhibit B for details. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
6.	Environmental Protection		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Indoor Water Use	The Project commits to exceed minimum requirements for indoor water efficiency and conservation by no less than 10% per the California Green Building Standards Code (CalGreen) in place as of the date of the Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of the Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
b	No Natural Turf Outside Common Areas	The Project contains no natural turf outside common areas used for active play.	Design Review.
c	Exceeds Outdoor Water Efficiency 20%	The Project commits to exceed outdoor water efficiency standards by 20% per the California Green Building Standards Code (CalGreen) in place as of the date of Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
d	Subsurface Irrigation	The Project commits to install subsurface irrigation for all private natural turf areas within the Project (not including Central (aka Butterfield) Park).	Design Review; prior to final certificate of occupancy.
e	Sustainable Site and Building Design	The project commits to score 16 BIG points above the minimum 70 points required by the City of MH Municipal Code as of the date of execution of this Development Agreement, for a total of 86 BIG points.	Design Review; prior to final certificate of occupancy.
7.	Transportation		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Off-Site Street and Parking Improvements or Fund Contribution	The Project will provide for the dedication and improvements to the off-site industrial serving portion of the Sutter Extension from Main Street to Digital Drive (a total of 670 LF). This portion is not required to serve the residential project. Project commitment equivalent to \$2,000/unit.	See Section 2.04(a)(4) of the Agreement.
b	Transportation Demand Management (rental projects)	The Project will provide the following TDM measures for the life of the project: (1) Move in package will include one month free car share membership for each unit, (2) one on-site cargo bicycle available for resident's use, and (3) establishment of and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information, or (4) other suitable alternate measures acceptable to the City.	Design Review; prior to final certificate of occupancy.
c	Aligns and connects streets	"Main Street" will align with the opposing Jarvis entrance to Madrone Plaza and connect to the new Sutter Extension to be constructed by the Project.	Design Review.
d	Extends Streets	The southern extension of Sutter Road from the Project's private Main Street to Digital Drive will be considered out of tract improvements. The Project will extend streets to the adjoining undeveloped industrial land to provide access in the event of its future development. The Project will dedicate/construct the Sutter Extension, which will provide access to the adjacent industrial land via Butterfield Blvd.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
e	Off-street bicycle and pedestrian connections	The Monterey/Sutter Greenways & Central Park (aka Butterfield Park) trails will be open to the public and secured by	Design Review; as necessary to serve the project, but in no

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		permanent public access easement, providing off-street pedestrian/bike connections to/from Central Park (aka Butterfield Park, the industrial park, & retail on Monterey. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the public.	event prior to final certificate of occupancy.
f	Complete Streets	Sutter and Main are multi-modal complete streets meeting the needs of multiple users with vehicular, pedestrian and bicycle access, as well as ADA compliant access & crossings.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
g	Enhanced bicycle and pedestrian improvements	Treated pavement is provided at all primary pedestrian street crossings. Curb neck downs are provided at pedestrian crossings within Main St. Each unit including a garage with secure bike storage.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
h	Direct pedestrian connections	The project provides direct pedestrian access (trails, sidewalks, crosswalks) from units to common open space, recreational facilities and to the adjacent Central (aka Butterfield) Park.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
i	Neighborhood traffic management techniques	The project includes traffic calming measures to enhance safety. Main St. includes medians, neck-downs, bulbouts & enhanced paving materials at significant entries/crossings.	Design Review; prior to final certificate of occupancy.
j	Electric Vehicle Charging Stations	The applicant commits to install all connections and equipment necessary for 4 charging stations to be ready to use by residents and visitors upon project completion.	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
8.	Municipal Infrastructure		
a	Water Infrastructure	The Project commits to construct off-site water improvements in the Sutter Ext (Digital Drive to Main Street) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
b	Wastewater Infrastructure	The Project commits to construct off-site waste water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site storm water improvements	The Project commits to construct off-site storm water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
d	Installs broadband conduit in public right-of-way	The project will install broadband conduit in the public right-of way, along the project frontages, as necessary to serve the Project. The project does not front on Monterey Road.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
e	Installs broadband conduit to home/buildings	The Project will install broadband conduit from the public ROW and/or from internal streets as necessary to provide service to each occupied building in the project.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
f	Pre-installs indoor conduit	The Project will pre-install indoor conduit, wiring and other necessary infrastructure to allow broadband service to each unit.	Design Review; as necessary to serve the project, but in no event prior to final

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
			certificate of occupancy.
9.	Project Quality		
a	Front Porches	All first floor units will have a front porch with minimum dimensions of 6' x 5' with exterior entries included. (Sheets A-5.0 through A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
b	Balconies Facing Street or Courtyard	All upper floor units facing a street or common interior courtyard include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
c	Balconies Facing Alleys	All upper floor units facing an alley, parking area or drive aisle include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
d	Façade Articulation and Finishes	Elevations feature façade articulation & finishes that break up blank walls thru use of awnings, metal iron work, pot shelves, balcony rails, rafter tails, columns & finials. Sheets A-4.0-A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
e	360-degree Architecture	All buildings have four-sided architecture (Sheet A-4.4 in Exhibit B)The Project has demonstrated	Design Review

EXHIBIT C

-9-

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
f	Corner Treatments	The project includes enhanced corner treatments to support a welcoming and visually interesting public realm. (Sheets A-3.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
g	Colors and Materials	The project incorporates a mix of colors and materials compatible with the style and creates visual interest. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
h	Multi-family Ground Level Entrances	All ground-floor units have private exterior entries (Sheets A-5.0 through A-5.5, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
i	Residential-Scale Design Elements- Attached Projects	Several building details are provided per this narrative (Sheet A-4.0 through A-4.4) in Exhibit B. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
j	Variation in Building Height	Building heights vary between one, two- and three-story elevations. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
k	Variation in Building Placement	The project incorporates variation in building front setbacks to minimize monotony and create visual interest (Sheet A-2.0 and Sheet R-3.0) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
l	Roof Line Variation	Elevation roof lines vary between 1 -3 stories. Some roof lines pop above the 3rd floor eave line. Design employs Hip, gable and shed roofs to articulate the roof line. (Sheets A-4.0 thru A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
m	Height and Project Edge-Attached Projects	2.5 story towns are located on perimeter streets to match exist. homes. Interior buildings step up to 3 stories. Edges/massing are articulated by dropped edges or raised towers. (Sheets A-2.0 - 4.0 thru A-4.4, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
n	Adjacent Building Types-Attached Projects	The project places 2.5 story townhomes along the perimeter street edges that are consistent with the surrounding architecture. (Sheet R-3.0 and Sheets A-2.0, and A-4.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
o	Landscaping-Parkway Design	An additional 50% in planting strip width is provided within public and private	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		street sections. Main Street --the central spine of the community-- includes a planted central median. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
p	Landscaping-Visual Relief	Planting and paving materials are used to minimize appearance of building bulk and to highlight pedestrian routes, encouraging pedestrian circulation throughout. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
q	Exterior Lighting	Exterior lighting on the building will be architecturally integrated with the building design, style, color and material.	Design Review
r	Entrance Pathways	All units have direct pedestrian pathways from public sidewalks. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
s	Public/Private Transitions	The project will include 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. As shown in the schematic drawings submitted January 4, 2018 in Exhibit B the townhomes create some transition with raised stoops leading to front porches, and the stacked flats provide some transition with low walls enclosing patios/unit entries. (See Sheets A-2.0 and A-5.0 thru A-5.5 in Exhibit B).	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The project will demonstrate compliance through Design Review.	
t	Mechanical Equipment	Mechanical equipment located within roof wells on stacked flats not visible from street or adjacent buildings; in townhomes located on grade at side of buildings and screened from view with landscaping and low fences. (Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
u	Garage Door Orientation	Garage doors do not face forward toward the main streets; they are located to the sides or rear of the buildings. (See sheet R-3.0 and Sheets A-5.0 thru A-5.5 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
v	Parking-Attached Projects	Parking lots are carefully situated behind buildings so that parking is not located/visible between a building and a public sidewalk or street. (Sheet A-2.0 and Sheet R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
w	Screening	Any parking visible from public streets behind buildings will be screened with landscaping and some low walls as shown on the site plan, building plans or elevations. (Sheets A-2.0 and A-4.0 in Exhibit B)	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
x	Landscaping-Attached Projects	Planting is strategically located throughout the project to minimize visibility of parking. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
y	Pavement Design	Special zones, such as entry gateways, pedestrian crosswalks, speed tables and roundabouts are proposed to be paved with special color and/or textured unit pavers.	Design Review

END OF CHART

EXHIBIT D

INSURANCE REQUIREMENTS

Developer is required to procure and provide proof of the insurance coverage required by this Agreement in the form of certificates and endorsements. The required insurance must cover the activities of Developer and its subcontractors relating to or arising from the performance of work associated with the Agreement, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Agreement terminates.

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. If Developer fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Developer’s expense. Developer further understands that the City reserves the reasonable right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Developer, at any time as deemed necessary to protect the interests of the City.

A. Upon execution of Agreement:

(a) Policies and Limits. The following insurance policies and limits are required:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s (including its agents, representatives, officers, employees, invitees, volunteers, and contractors) activity, use and maintenance of the property 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.

(b) Required Endorsements. Developer shall provide proof of the following endorsement to the General Liability policy:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

B. Ten (10) days prior to start of any construction within the Project:

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s or its Subcontractor’s acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.

(2) Workers’ Compensation Insurance and Employer’s Liability: Developer shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Developer is self-insured, Developer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Developer shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Developer does not own automobiles, then Developer 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 Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Developer’s work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Developer shall procure and maintain Pollution Liability covering the Developer'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 Developer under Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Developer shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

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

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Developer must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

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

C. Certificates. Developer shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Developer's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of

premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

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

ADOPT ORDINANCE 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”

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2288, 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

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2288 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The Housing Ordinance includes various housing policies. It will require new Housing In-Lieu fees to be implemented per habitable square foot of the residential building area of market-rate housing. The In-Lieu Housing Fee for For-Sale Ownership Residential Projects outside of Downtown for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents (\$19.70). 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). 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). The In-Lieu Housing Fee for “Rental” Residential Projects within the Downtown for which there is a 10% Inclusionary Housing Requirement is fourteen dollars and fifty cents (\$14.50). These 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.

The Below Market Rate (BMR) Ownership Program Participation Guide provides the guidelines and polices for existing BMR homeowners including but not limited to, the process for reselling a BMR, compliance, ownership, and estate planning. The Program Application Guide is available to describe the BMR opportunity and the application process to potential homebuyers.

The Affordable Housing BMR Development Standards establish criteria and requirements that the City will use to ensure that affordable residential units (rental and ownership), are planned and designed to guide the implementation and construction of the units, to ensure quality homes.

In conclusion, the Ordinance facilitates 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. Chapter 15.23 titled “Below Market Rate Program” of the Morgan Hill Municipal Code is repealed from Title 15 and added 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. Section 14.12.130 incorporates the Development Standards by reference.

COMMUNITY ENGAGEMENT: Inform, Consult

A notice of the public hearing scheduled on October 17, 2018 was placed in the Morgan Hill Times on September 28, 2018.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City’s 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. The BMR Ordinance was adopted on June 15, 2016. Most recently it was presented to the Planning Commission on September 25, 2018.

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.

On September 25, 2018 the Planning Commission received an update on the proposed housing fees and development standards.

On September 26, 2018, the City Council held a Housing workshop to discuss the proposed Housing Ordinance and received a supplemental report correcting one of the fees.

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 2288

ORDINANCE NO. 2288 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 October 17, 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 (“RDSCS”) that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDSCS 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 RDSCS 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 RDSCS 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 \$14.50 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 ("RDSCS") 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 fourteen dollars and fifty cents (\$14.50) 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 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 = $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$2,206,400$.
 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 = $\$13.20 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,478,400$.
 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 = $\$29.00 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$3,248,000$.
 4. 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 = $\$14.50 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,624,000$.
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, $56 \text{ units} \times 15\% = 8.4$. 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: $56 \text{ units} \times 2,000 \text{ square feet} \times \$19.70 \text{ per SF} = \text{an implicit in-lieu fee of } \$2,206,400$. 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
14.12.020	Definitions
14.12.030	Applicability
14.12.040	Duties of Program Administrator
14.12.050	Occupancy and Sale Restrictions
14.12.060	Affordable Housing Agreement
14.12.070	Approved Program Participants and Vendors
14.12.080	Default, Foreclosure, and Loss of Unit
14.12.090	Annual Report
14.12.100	Enforcement
14.12.110	Below Market Rate (BMR) Ownership Program Participation Guide
14.12.120	Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers
14.12.130	Below Market Rate (BMR) Program Development Standards

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDSCS"), 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 ("RDSCS"). All projects subject to RDSCS 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.

14.12.050 - 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. 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 and Household Information Profiles
- 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
- Ownership Changes, Re-Sales, and Approved 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, Online Web Portal, Establishing an Account
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria and Preference Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria and Title Requirements
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation
- Below Market Rate Pricing and City's Option to Purchase

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 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER, 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

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2288, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2288 (2031 : Adopt Ordinance 2288- Housing Ordinance)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

ADOPT AN ORDINANCE REQUIRING SAFE STORAGE OF FIREARMS, REPORTING THEFT OR LOSS OF FIREARMS, AND PROHIBITING POSSESSION OF LARGE CAPACITY MAGAZINES

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance amending Chapter 9.04 titled "Weapons," to require the safe storage of firearms when not attended, to require the reporting of the theft or loss of firearms, and to prohibit the possession of large capacity magazines.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

POLICY CONSIDERATIONS:

1. Should Morgan Hill residents be required to report the theft or loss of a firearm to the Morgan Hill Police Department?
2. Should the City adopt an ordinance requiring the safe storage of firearms when they are not in use?
3. Should the City prohibit the possession of large capacity magazines?
4. Should the City explore opportunities to sponsor gun safety programs or classes?
5. Should the existing City ordinance be amended to remove or relax restrictions on the discharge of weapons in Morgan Hill?

REPORT NARRATIVE:

Background:

At its May 16, 2018 meeting, the City Council directed the City Attorney to prepare ordinances for City Council consideration that:

1. Require Morgan Hill residents to report the theft or loss of a firearm to the Morgan Hill Police Department;
2. Require the safe storage of firearms when they are not in use;

3. Prohibit the possession of large capacity magazines; and/or
4. Require a City permit to conduct retail firearm and/or ammunition sales.

In addition, the Council requested the formation of an ad hoc Council subcommittee, consisting of Council Members Constantine and Spring, to hear the concerns and suggestions of the community, and to consider those concerns and suggestions in crafting policy.

The ad hoc subcommittee met one time on May 8, 2018. About 15 community members attended the meeting. Most of the attendees were gun owners who were opposed to the proposed changes to the Municipal Code. Several people raised concerns about the way the Sunnyvale ordinance is being enforced, and some of the potential implications of the safe-storage ordinance. Specifically, attendees felt that a requirement that firearms be safely stored “except when carried on his or her person or in his or her immediate possession” would encourage gun owners to carry their firearms with them when answering the door or in other circumstances in which carrying a firearm may be unnecessarily dangerous. Changes have been made to the draft ordinance based on these comments.

As an alternative to the proposed ordinance changes, several attendees advocated for more firearms education in the community, and suggested programs geared towards educating youth about firearms safety.

Several community members spoke in favor of the proposed ordinance.

In addition to the ad hoc subcommittee meeting, the City held a well-advertised community forum on September 25, 2018. The community forum was attended by several City teammates, including Council Member Constantine, but only five community members attended. Two of the community members advocated for stronger measures to prevent gun violence. One community member expressed reservations about potential restrictions on gun ownership but did not have specific comments on the proposed ordinance.

Following the community meeting, a redline draft ordinance was made available on the City website. We received numerous comments on the ordinance. However, the overwhelming majority of comments were about the City’s existing prohibition on the discharge of weapons within City limits. While not part of the current proposal, we will address the comments on the existing ordinance below. In addition, there were a few suggestions for improving the proposed draft that we have incorporated. Attachment 7 to this report is a compilation of written correspondence received prior to publication of the report.

Attachment 1 to this report is the revised proposed ordinance that we recommend for adoption.

Reporting theft or loss of firearms:

In 2011, the Association of Bay Area Governments (ABAG), issued a report titled “A High Price to Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County.” (Attachment 2). The Report outlines several suggestions for improving local firearms regulations. Based on the Report, the ABAG Executive Board approved model ordinances and took action to encourage all member jurisdictions, including the City of Morgan Hill, to adopt the model ordinances. One of the model ordinances recommended by ABAG is a “Model Ordinance Requiring Reporting of Lost or Stolen Firearms. (Attachment 3 is a link to the model ordinances).

Laws requiring gun owners to report the loss or theft of a firearm serve several purposes. Reasons for requiring theft reporting include:

- When a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.
- When a person who legally owned a gun becomes prohibited from gun ownership, it is important that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen.
- Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner.
- The danger that lost or stolen firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons.

Under California law, “every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.” Pen. Code, § 25250

The proposed ordinance both clarifies and expands on the Penal Code requirements. Under the Penal Code a person must report the theft or loss of a firearm to “a local law enforcement agency.” There are multiple local law enforcement agencies that operate in Morgan Hill, so we believe it is important to clarify that the appropriate local law enforcement agency in Morgan Hill is the Morgan Hill Police Department.

The proposed ordinance also requires the reporting to occur within 48 hours of discovery of the loss or theft, rather than the five days provided in California law. Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation. The 48-hour reporting period also provides an

opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes. Other local ordinances, such as San Jose's, require reporting within 24 hours.

The proposed ordinance follows ABAG's recommendations. However, rather than copying the language of the model ordinance, we based our proposal on the ordinance adopted by the City of Sunnyvale. Sunnyvale's language has been in place for several years without any significant issues, and we believe it is easier to understand and enforce than the model ordinance language.

Safe Storage of Firearms:

The provisions of the proposed ordinance requiring the safe storage of firearms are intended both to discourage the theft of firearms and to prevent accidents and suicides.

According to a 2018 report in the *Journal of Urban Health*, more than half a million firearms are lost or stolen from private residences each year. (See Azrael, D., Cohen, J., Salhi, C. et al J Urban Health (2018) 95: 295 <https://doi.org/10.1007/s11524-018-0261-7>). Safe storage laws help prevent theft of firearms left unattended in people's homes.

In addition, safe storage laws can help prevent accidental injury and suicide. The office of County Supervisor Cindy Chavez has put together a white-paper that compiles available research regarding suicide by firearms in Santa Clara County. (Attachment 4). According to the available research:

- Suicide accounts for more than half of all firearm deaths in the US (61% in 2014) and in California. Firearm suicide rates have been consistently higher than firearm homicide rates since before the 1990s.
- In Santa Clara County, most suicides are by adult men. Men are more likely to use firearms as the means for suicide. Firearm usage is lethal 95% of the time.
- Firearms are the second most commonly used means for suicide in Santa Clara County (after asphyxiation), and the most common means used by adults over 45.
- At least one-third of handguns are stored, loaded, and unlocked, and most kids know where guns are kept in their house—even if parents think otherwise.
- A National Violent Injury Statistics System (NVISS) investigation studied firearm suicides among youths ages 17 and under occurring over a two-year period in four states and two counties found that 82% used a firearm belonging to a family member, usually a parent. When storage status was noted, about two-thirds of the firearms had been stored unlocked.

Project ChildSafe, a program of the National Shooting Sports Foundation, identifies the safe storage of firearms as the number one way to help prevent firearms accidents. Project ChildSafe's recommendations for safely storing firearms can be found on their [website](#).

In drafting our proposed ordinance, we looked at ordinances recently enacted in Sunnyvale and in San Jose. Sunnyvale's ordinance requires firearms to be locked unless they are carried on the owner's person, or within his or her immediate control and possession. San Jose's ordinance requires firearms to be locked up when the owner is away from home.

In our community discussions, some residents expressed concern that Sunnyvale's ordinance is overly restrictive and might encourage people to carry their weapons more frequently, leading to more accidents. San Jose's ordinance is less restrictive but may not be as effective in curbing access to firearms by minors and others who should not have access to firearms.

To ensure effectiveness, we recommend following Sunnyvale's model. However, rather than requiring safe storage when a firearm is not within the owner's immediate control and possession, the proposed draft requires safe storage any time the firearm is unattended, which is slightly less restrictive and would allow a gun owner to leave a firearm unlocked while he or she is in the general vicinity.

In addition to the concerns addressed above, at least one member of the community expressed a concern that the ordinance uses the state definition of the term "firearm," which includes antique and antique-reproduction firearms. According to the resident who raised this issue, antique firearms are unlikely to be used in a crime or suicide attempt and cannot be accidentally discharged. If Council shares this concern, the definition of the term "firearm", for purposes of the safe storage provisions, could be amended to exempt certain antique firearms. Crafting a limited exemption applicable to the proposed ordinance would require additional research. If so directed, we would bring back exemption language at a future meeting.

Large Capacity Magazines:

The ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the magazine, a spring forces a cartridge (ammunition, generally containing a bullet, a propellant, and an ignition device) into position to be fed into the weapon's chamber.

Magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. In some cases, large capacity magazines can hold up to 100 rounds of ammunition.

Large capacity magazines are frequently used in mass shootings, including those in San Bernardino, CA; Sutherland Springs, TX; Las Vegas, NV; Orlando, FL; Sandy Hook, CT; and Aurora, CO. When assault weapons and high capacity magazines are used in a mass shooting, the number of people shot goes up by 135% and the number of people killed goes up by 57%. (See attachment 5.)

Since January 1, 2000, Penal Code section 12020(a)(2) prohibits the manufacture,

importation into the state, keeping for sale, offering, or exposing for sale, giving, or lending large capacity magazines. However, California law does not prohibit the *possession* of large capacity magazines. Anyone who legally purchased a large capacity magazine in California before January 1, 2000 is allowed to keep and use that magazine.

Since 2000, several California cities, including Sunnyvale, Richmond, San Francisco, and Los Angeles have enacted local ordinances prohibiting the possession of large capacity magazines within city limits. Sunnyvale's ban on large capacity magazines survived legal challenge. (See the case of *Fyock v. Sunnyvale*, (2015) 779 F.3d 991).

In 2016, California voters approved a statewide ban on large capacity magazines (Proposition 63). However, enforcement of the ban is currently on hold following a preliminary injunction by the United States District Court for the Southern District of California. (See *Duncan v. Becerra* (2017) 265 F.Supp.3d 1106). In distinguishing the Sunnyvale ban from the statewide ban, the Southern District Court relied on a number of factors, including Sunnyvale's low crime rate, the increased risk of a stray bullet penetrating walls or wounding bystanders, and the ability of law enforcement to quickly respond to an emergency. The Court compared these factors to other areas, where the population is far more remote and police response times are likely to be much longer and the risk of a bullet striking a bystander or penetrating a neighboring structure is remote.

Like Sunnyvale, Morgan Hill has a low rate of violent crime and the Morgan Hill Police Department is able to quickly respond to any location within the City. Further, while Morgan Hill has more open space than Sunnyvale, Morgan Hill is an urban community with population densities that are high compared to remote counties.

Of the changes in the proposed ordinance, the ban on large capacity magazines has generated the most concern. One attendee at the ad hoc subcommittee meeting raised a concern that requiring him to surrender his legally purchased magazines is an illegal taking. Others expressed a general concern that they would go from being law abiding citizens to criminals overnight. While we do not agree that the proposed ordinance would enact a taking, the concerns expressed by responsible gun owners are valid.

One resident recommended changing subsection 9.04.050(C)(8) of the draft ordinance to exempt all large capacity magazines that were included with a firearm that was purchased prior to January 1, 2000, and the person possesses the large capacity magazine solely for use with that firearm. If Council agrees with this change, that recommendation can be made as part of a motion approving the ordinance.

Proposed Deletions:

The proposed ordinance would delete some language in the section numbered 9.04.020. The reason for removing this language is that the ordinance requirements are entirely duplicative of state law as it existed when the ordinance was adopted in 1995. State law has since been strengthened to impose more stringent requirements for the

safe storage of firearms by retailers, so those ordinance provisions are no longer necessary or enforceable.

Permit Requirements for Retail Firearm and/or Ammunition Sales:

This proposed ordinance does not include permit requirements for retail firearm or ammunition sales. While the issues and concerns of retailers may overlap with those of firearms owners, most of the concerns expressed by the public are related to the three proposals contained in the current draft. Permit requirements for retailers also require a different legal and policy analysis. We plan to work separately with our current firearms retailers to bring back a proposed ordinance next month.

Existing City Prohibitions on the Discharge of Firearms and other Weapons:

As noted above, the overwhelming majority of e-mail comments the Council has received relate to the City's existing code. Since 1970, the City of Morgan Hill has required a permit to discharge weapons within the City limits. (See attachment 6).

Morgan Hill's requirements are not unique. Jurisdictions around the country have adopted similar permit requirements, including fourteen of the fifteen cities and towns in Santa Clara County. While two of the city ordinances in Santa Clara County are specific to projectiles shot from guns, twelve regulate the discharge of "missiles."

Many of the commenters expressed concern that the ordinance requires a permit for the use of innocuous items like children's toys and construction equipment. This interpretation is based on a very broad definition of the term "missile," which is not supported by case law or the context of the code provisions.

The term "missile" is used by many jurisdictions, including the State of California, to refer specifically to projectiles that are used as weapons. While there are very few court cases that define the term missile, in a recent decision, the Ninth Circuit Court of Appeals discussed the meaning of the term as used in statute:

"Dictionaries generally provide two separate definitions of missile: one broad and generic definition including all things thrown as weapons and one definition that aligns with our modern usage of the term missile to describe a sophisticated piece of weaponry . . . For example, the Oxford Dictionary defines a missile as: (1) "an object which is forcibly propelled at a target, either by hand or from a mechanical weapon," or (2) "a weapon that is self-propelled or directed by remote control, carrying conventional or nuclear explosive."

U.S. v. Flores (9th Cir. 2013) 729 F.3d 910, 914–915. Both of these definitions define the term missile as a form of weapon. Further, in the context of a chapter titled "Weapons," it is clear that the term missile refers to projectiles that are or are projected from weapons.

The term “weapon” is commonly understood to refer to a thing that is designed or used to cause bodily harm or damage. As such, the ordinance only restricts the use of instruments that project objects that are designed or used to cause bodily harm. It would not apply to children’s toys or other innocuous objects.

COMMUNITY ENGAGEMENT: Consult

As discussed above, City staff engaged in extensive outreach and took community comments into consideration when drafting the proposed ordinance.

ALTERNATIVE ACTIONS:

The Council could direct the City Attorney to return with a revised ordinance that includes only some of the proposed additions.

The Council could direct the City Attorney to prepare an ordinance amending the existing prohibition on the discharge of weapons without a permit.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 7, 2018, the City Council adopted a resolution condemning recent mass shootings and advocating for local, state, and federal measures to reduce gun violence.

On March 19, 2018, the City Council directed the City Attorney to draft ordinances requiring gun owners to report the loss or theft of a firearm; requiring the safe storage of firearms; prohibiting the possession of large capacity magazines; and requiring a local permit to conduct retail firearm and/or ammunition sales.

On May 16, 2018, the City Attorney provided an update to Council on the proposed ordinances. At that meeting, Staff was directed to conduct further outreach to the community, including a meeting with an ad hoc committee of the Council. Those community outreach efforts are discussed above.

FISCAL AND RESOURCE IMPACT:

Some staff time will be required for additional outreach and education. All staff time, including enforcement, will be incorporated into existing work-plans.

CEQA (California Environmental Quality Act):

The proposals set forth in this report are exempt from CEQA under Guideline §15061(b) because the actions as proposed will have no significant effect on the environment.

LINKS/ATTACHMENTS:

1. Firearms Ordinance
2. Youth Gun Violence Report 2011
3. ABAG Model Ordinances (weblink)
4. FINAL Firearm Suicides Paper_Sup. Chavez Aug18
5. Article: How High is Our Capacity for Carnage (weblink)
6. Ordinance No. 290
7. Public Comment on Gun Violence Ordinance

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 9.04 (“WEAPONS”) OF TITLE 9
 (“PUBLIC PEACE, MORALS AND WELFARE”) OF THE
MORGAN HILL MUNICIPAL CODE TO REQUIRE SAFE
FIREARMS STORAGE, REQUIRE THE REPORTING OF
FIREARMS THEFT, AND PROHIBIT LARGE CAPACITY
MAGAZINES**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AND ENACT AS FOLLOWS:**

SECTION 1: Chapter 9.04 (“Weapons”) of Title 9 (“Public Peace, Morals and Welfare”) is hereby amended to read as follows:

“9.04.010 - Discharge—Permit required—Fee.

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.

B. Subject to review by and as specifically directed by the council, the chief of police shall be the sole judge as to the desirability or necessity of such permit, which must be, in his judgment, necessary for the protection of the applicant or his property, or in the furtherance of the public welfare, and which necessity cannot be reasonably abated by other means.

C. Applicants for such permit shall provide the following:

1. An application in writing which states the purpose of such permit, the nature of the problem to be abated which necessitates the protection of the applicant, his property or the furtherance of the public welfare, and lists all other means which have been unsuccessfully employed to abate the problem;
2. Proof of liability insurance in the amount of one million dollars per occurrence, obtained by the applicant and naming the city as additional insured, in a form and with companies approved by the city;
3. A certificate of agreement holding the city harmless for any action by applicant under this chapter, in a form prescribed by the city.

D. Upon approval, such permit may be issued upon payment of a fee of twenty-five dollars and shall be upon conditions and limitations and for such a length of time as the chief of police may determine.

9.04.020 —~~Storage of firearms by Licensed dealers—Posting of regulations.~~

A. Pursuant to California Penal Code Section 12071(b)(14), any time a licensed dealer of firearms is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

1. Store the firearm in a secure facility that is part of, or that constitutes, the licensee's business premises;
2. Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearms from the premises;
3. Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

B. Subsection A of this section shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

1. The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.
2. The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

C. Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of subsection A of this section if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

D. As used in this section, a "secure facility" means a building that meets all of the following specifications:

1. All perimeter doorways shall meet one of the following:

~~a. A windowless steel security door equipped with a deadbolt and a doorknob lock;~~

~~b. A windowed metal door that is equipped with a deadbolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door;~~

~~c. A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.~~

~~2. All windows are covered with steel bars.~~

~~3. Heating, ventilating, air conditioning, and service openings are secured with steel bars, metal grating or an alarm system.~~

~~4. Any metal grates have spaces no larger than six inches wide measured in any direction.~~

~~5. Any metal screens have spaces no larger than six inches wide measured in any direction.~~

~~6. All steel bars shall be no further than six inches apart.~~

~~E. As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.~~

~~F. Any person or business establishment engaged in the business of offering for sale any instrument or device described in [Section 9.04.010](#) of this chapter shall have posted in a conspicuous place in the place of sale, a copy of this chapter and shall deliver a copy of this chapter to any purchaser of such instrument or device.~~

9.04.030. Duty to report theft or loss of firearms.

Any person who owns or possesses a firearm (as defined in [Penal Code](#) Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or (2) the theft or loss of the firearm occurs in the city of Morgan Hill.

9.04.040. Safe storage of firearms.

No person shall leave a firearm (as defined in [Penal Code](#) Section 16520 or as amended) unattended in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

9.04.050. Possession of large-capacity ammunition magazines prohibited.

A. No person may possess a large-capacity magazine in the city of Morgan Hill whether assembled or disassembled. For purposes of this section, "large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- 1. A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or*
- 2. A .22 caliber tubular ammunition feeding device; or*
- 3. A tubular magazine that is contained in a lever-action firearm.*

B. Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- 1. Remove the large-capacity magazine from the city of Morgan Hill; or*
- 2. Surrender the large-capacity magazine to the Morgan Hill Police Department for destruction; or*
- 3. Lawfully sell or transfer the large-capacity magazine in accordance with [Penal Code](#) Section 12020.*

C. This section shall not apply to the following:

- 1. Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;*
- 2. Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;*
- 3. A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;*
- 4. Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of*

his or her employment for purposes that pertain to the entity's armored vehicle business;

5. *Any person who has been issued a license or permit by the California Department of Justice pursuant to [Penal Code](#) Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large-capacity magazine is in accordance with that license or permit;*

6. *A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;*

7. *Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;*

8. *Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.*

9. *Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California [Penal Code](#).*

~~9.04.030~~ 9.04.060- Confiscation—Authority—Conditions.

Any instrument, device or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the chief of police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy-two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was taken is not convicted of a violation of this chapter, then the device or instrument shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions as the chief deems desirable for the public welfare.

~~9.04.040~~ 9.04.070- Violation.

It is unlawful for any person to violate or cause or permit the violation of the provisions of any section of this chapter.

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

SECTION 3. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §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 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 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

Attachment: Firearms Ordinance (1993 : Gun Violence Ordinance)

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

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

DATE: _____

IRMA TORREZ, City Clerk



A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

SEPTEMBER 2011



Attachment: Youth Gun Violence Report 2011 (1993 : Gun Violence Ordinance)

INTRODUCTION FROM SUPERVISOR ROSE JACOBS GIBSON

Dear Friends:

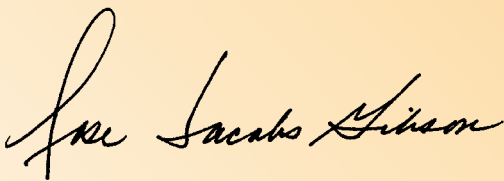
Safe streets and parks, schools free of violence, and communities where our children prosper are goals we all share. Yet each year, more than 20,000 children and young adults in the United States are killed or injured by guns in their own neighborhoods. Here in the Bay Area, youth firearm violence, often perpetrated by gang members, is on the rise, threatening the safety and security we all deserve. From the physical, economic, and social costs for the community to the psychological effects experienced by children and their families, firearm violence touches every segment of our society.

As a member of the San Mateo County Board of Supervisors, I have worked closely with law enforcement and community leaders to improve the safety of our residents through the establishment of programs like Operation Ceasefire and the East Palo Alto Crime Reduction Task Force. During my tenure as Association of Bay Area Government's (ABAG) President, we established a Youth Gun Violence Task Force charged with developing common sense approaches to keep guns out of the hands of young people and to curb youth firearm violence. During my twenty years in public service, I have come to understand that addressing youth gun violence through law enforcement efforts and community-driven prevention programs is the only way to ensure that all children in our community, regardless of their race or socio-economic background, have the opportunity to reach their full potential.

In 2010, the Silicon Valley Community Foundation provided funding to ABAG's Youth Gun Violence Task Force to conduct a youth firearm violence research project. This publication is the outcome of the concerted efforts of many government agencies, community-based organizations, and my office. I hope you find it compelling and that it inspires you to work with me to enhance our efforts to curb youth firearm violence locally and in the greater Bay Area.

My goal continues to be turning this eloquent sentiment recently expressed by a parent in one of our focus groups into reality: "How beautiful it would be, if instead of seeing a wall of graffiti, we saw a young person changed. Look, he's studying now, or going to church, or working. How great that would be..."

Sincerely,



Rose Jacobs Gibson
Supervisor
San Mateo County Board of Supervisors

San Mateo County governments and communities are committed to reducing and preventing youth firearm violence.^{1, 2, 3} In an effort to measure the true human and financial impact of youth firearm violence in San Mateo County, the county has analyzed crime, health, and cost data. With the help of community partners, the county also conducted qualitative interviews, focus groups, and surveys of residents and law enforcement in communities with pronounced rates of youth firearm violence, which include Daly City, East Palo Alto, Redwood City, and San Mateo. (See *Appendix for detailed methodology*.) This report summarizes this analysis, providing a reference for policymakers and service providers, as well as a benchmark that may be used to assess the effectiveness of future prevention efforts. The most compelling findings from our research are as follows:

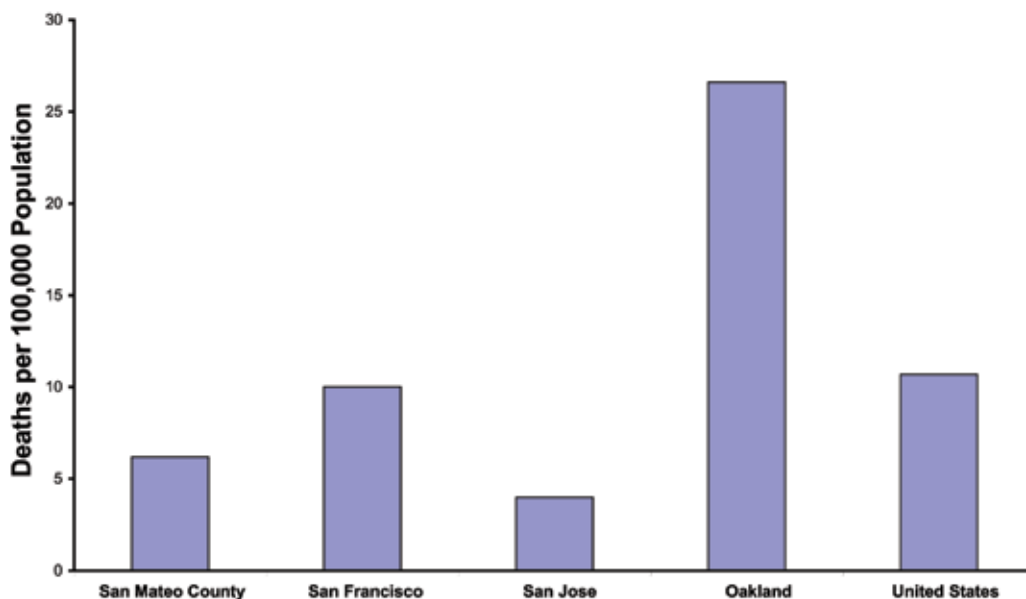
- The firearm violence mortality rate in San Mateo County is 42 percent lower than the United States, 39 percent lower than neighboring San Francisco, but 55 percent higher than San Jose.
- African American males aged 15 to 24 years are up to 18 times more likely than the overall county population and 3.5 times more likely than other San Mateo County youth to be shot and killed. The rate of non-fatal injuries among Latinos aged 15 to 24 years is 14 percent higher than that of other San Mateo County youth.
- The cities of East Palo Alto, Daly City, South San Francisco, and Redwood City comprise 38 percent of the total San Mateo County population, but disproportionately account for 57 percent of non-fatal firearm injuries and 74 percent of fatal firearm injuries.

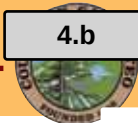
- Nonfatal and fatal injuries of San Mateo County youth from 2005-2009 will cost society an estimated \$234 million in medical care, criminal proceedings, future lost wages, disability benefits, and lost quality of life
- Eighty-one percent of adults and 56 percent of youth incarcerated* for firearm crime in San Mateo County had been previously arrested.
- Nine out of 18 (50 percent) juveniles incarcerated* and 31 of 75 (41 percent) adults incarcerated* for firearm crime are gang-affiliated.
- The County Gang Intelligence Unit reports that gangs actively recruit disadvantaged San Mateo County youth, as young as 11 years of age, in schools and afterschool programs.
- San Mateo County local governments spend an estimated \$57,000-\$856,000 per crime—depending on crime severity—investigating, prosecuting, defending, punishing, and preventing youth firearm crime.

*These figures are based on the jail and juvenile hall population for a single day in 2011. It is conceivable that these figures vary considering the transient nature of the jail population.

Countywide statistics do not tell the whole story about youth firearm crime and violence. The firearm violence mortality rate in San Mateo County is 6.2 deaths per 100,000 residents per year, 42 percent lower than the United States, 39 percent lower than San Francisco, but 55 percent higher than San Jose (*Figure 1*).

Figure 1: Rate of Violent Firearm Mortality in San Mateo County, the United States and Other Bay Area Cities 2005 - 2009

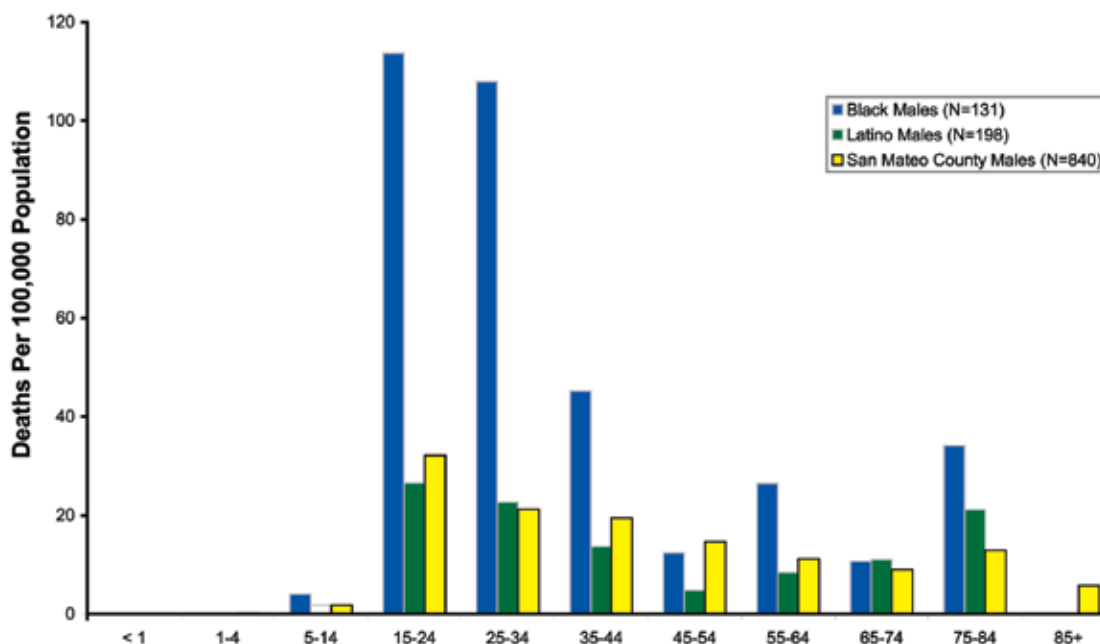




However, the countywide statistic masks the fact that certain communities and demographic groups within the county suffer a disproportionate impact from firearm crime and violence. For example, young African American males aged 15 to 24 years

are up to 18 times more likely to be shot and killed than the overall county population and up to 3.5 times more likely than other San Mateo County youth to be shot and killed (*Figure 2*).

Figure 2: Mortality Due to Firearms Among Black and Latino Males
Cumulative Unadjusted Data, San Mateo County 1990 - 2009 (N = 329)

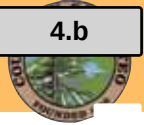


Firearm violence in San Mateo County is concentrated in the four cities of East Palo Alto, Daly City, Redwood City, and South San Francisco. Combined, these cities account for 74 percent

of fatal injuries and 57 percent of non-fatal firearm injuries, but only 38 percent of the total San Mateo County population (*Table 1*).

Table 1: Percentage of Fatal and Non-Fatal Firearm Injury and Mortality and Total San Mateo County Population by City 2005-2009

City	Percent of SMC Firearm Homicides	Percent of SMC Non-Fatal Firearm Injuries	Percent of SMC Population	Ratio of Percent of Homicides to Percent of SMC Population
Daly City	21.2%	6.7%	14.2%	1.5
East Palo Alto	25.8%	21.0 %	4.7%	5.5
Redwood City	15.2%	18.1 %	10.4%	1.5
South San Francisco	12.1%	11.0%	8.7%	1.4
All other SMC cities	25.8%	43.2%	62.0%	0.4



Incarceration and recidivism for firearm crime is also high and concentrated in select communities and demographics.

A snapshot of the 75 adults held at the county's correctional facilities for any firearm crime (ranging from possession to homicide) on a single day in 2011 reveals that 45 percent were Latino, 28 percent were African American, and 96 percent were male. Of the 18 inmates held at the juvenile facility for firearm crime on a single day in 2011, 67 percent were Latino, 22 percent were African American, and 94 percent were male. Both adults and youth charged with firearm crimes had a high recidivism rate; 81 percent of incarcerated adults had been arrested before, as compared with 56 percent for youth. Seventy-eight percent of the 18 incarcerated juveniles were from the three communities of East Palo Alto, San Mateo, and the North Fair Oaks neighborhood of Redwood City. While the City of San Mateo has relatively low rates of fatal and non-fatal firearm injuries, it has high rates of incarceration for juveniles engaging in firearm crime.

Members of communities with pronounced rates of youth firearm violence live in an environment of fear, distrust, and diminished opportunities.

Youth firearm violence was perceived to occur in the context of a community environment that is unstable, unpredictable, and chaotic. The characteristics of an unsafe community that respondents mentioned included economic deprivation, vandalism and graffiti, drug dealing, frequent interpersonal and family conflict, and gang activity. Unsafe communities were described as "lonesome" places where neighbors don't know one another or watch out for one another. Youth may lack family support as well as educational and employment opportunities, causing service providers to lament that "in this population, kids don't see themselves after high school." When faced with a lack of optimism about the future, youth may become involved in gangs and criminal activity, leading a focus group participant to comment, "If youth don't value their own lives, how can we expect them to value ours?"

Youth firearm violence is driven by gang activity. Based on information provided by law enforcement and corrections personnel, as well as by community members, it is reasonable to conclude that gang activity is the main driver of youth firearm violence in San Mateo County. On a single day in 2011, 50 percent of juvenile inmates and 41 percent of adult inmates incarcerated and charged with a firearm crime in San Mateo County had a known gang affiliation. While gang members commit crimes in nearly all municipalities of the county and often cross city and county lines, in San Mateo County they are concentrated in the following cities: East Palo Alto, Daly City, Menlo Park, Millbrae, South San Francisco, Redwood City, San Mateo, San Bruno, Half Moon Bay, and in unincorporated areas such as the North Fair Oaks neighborhood of Redwood City. Gang culture glamorizes the use of firearms and encourages youth to gain respect and status through violence and criminal activity. Gang members "take their pictures with their guns and

text it to friends or post it on Facebook," where "kids as young as 14 years old are shown holding their guns with their 'rag and colors'." (Service Provider)

GANGS TARGET VULNERABLE YOUTH

Even youth who are reluctant to become involved with a gang may be forced to do so. According to Gang Intelligence Unit (GIU) officers, youth are often approached by gang members at school or at afterschool programs. "Youth as young as 11 years old are approached by their school friends to join the gang. Many of these youth come from broken homes; are being raised by a single parent, live in poverty, or face other family issues. Gangs capitalize on this lack of stability by offering the at-risk youth a place or group to belong. Recruiters further entice kids by offering them a chance to earn money and respect on the streets. Otherwise, gangs coerce youth. Refusing to join a gang could result in bullying, intimidation, embarrassing the youth in front of peers at school, or being accused of association with rival gangs, which can have drastic consequences." (GIU Officer).

Reprisals and revenge create a cycle of violence. A service provider described how the typical cycle of violence plays out: "If someone is playing around with the idea of being in a gang and their friend gets shot, all of a sudden it becomes easier for them to retaliate and do harm to someone else...When the shooting happened in South San Francisco, that's something I heard a lot about at Juvenile Hall. Affected youth were declaring that 'we're going to load up on guns, our neighborhood needs more guns'." Youth described being given firearms by gang members, or even family members, and being asked to take part in reprisals. One young woman recounted a story of resisting pressure to take part in revenge and telling her grandmother, "No, it ain't happening" when she was handed a gun and asked to avenge her cousin's death. Bullying may also be a contributing factor to retaliatory violence in some cases; unfortunately "there is a lack of communication and awareness [about bullying] on the part of parents and staff at school," according to service providers. A pattern of retaliation against "snitching" may be a factor in the reluctance to report firearm crimes; both parents and youth reported that fears of reprisal may keep them from informing law enforcement about firearm crimes in their communities.



Youth firearm violence negatively impacts quality of life in multiple ways.

The majority of youth and parents from affected communities who participated in surveys and focus groups believed that they or a loved one could be a victim of firearm violence in the near future. Similarly, 67 percent of youth and 57 percent of parents reported that youth firearm violence was a “very significant” or “somewhat significant” problem in their lives. Youth and parents described their sadness at losing friends and relatives to youth firearm violence, as well as being fearful when shootings happened near their homes. Others reported apathy, helplessness, and desensitization that can occur as a result of frequent exposure to violence. For example, one youth stated, “I’m immune to it now. I’ve gotten used to it. I’ve seen people die, friends die, brothers die, cousins die,” while another noted that firearm violence is “normal” in his community.

Fear of violence leads both youth and adults to lead their lives differently, especially with respect to outside play and walking around their neighborhoods. Sixty-three percent of youth and 38 percent of parents surveyed reported avoiding areas of their neighborhoods they would otherwise pass through, while parents participating in focus groups reported staying in at night and not allowing their children to walk to school or to play in local parks. The majority of youth and parents surveyed felt that youth firearm violence was an important factor in deciding where to live, though parents reported that economic considerations may force them to live in neighborhoods they consider to be unsafe.

Firearm violence has massive hidden financial costs that are difficult to measure. Researchers have attempted to estimate total costs for fatal and non-fatal injuries in the United States. These total costs include not only criminal proceedings, lost productivity and medical care, but also the suffering and decreased quality of life experienced by victims. Such dollar estimates are necessarily inexact, but nonetheless

can be useful for decision-makers as they weigh the cumulative costs of violence against the costs of preventive measures. Values are assigned to parameters such as suffering and decreased quality of life by using benchmarks such as “pain and suffering” jury damage awards and workers’ compensation payments, as well as “Willingness to Pay” methodology.⁴



Based on these methods, each fatal injury costs society an estimated \$6.4 million (range \$3.4 to \$9.1 million), and each non-fatal injury costs society an estimated \$46,000. Using the parameters, the cost of the 36 fatal and 133 non-fatal firearm injuries to youth in San Mateo County from 2005-2009 will total \$234 million over time.

We all pay for youth firearm crime. Although youth firearm violence is concentrated in a small number of San Mateo County communities, the cost of youth firearm crime is shared by all county residents. Local government institutions spend vast public funds responding to, investigating, prosecuting, defending, preventing, and punishing youth firearm crime. Because of the concentrated nature of youth firearm violence, affected police departments must also recruit and train additional officers to investigate gangs and interact with youth. *Table 2* describes these costs and programs.

EASE OF ACCESS TO FIREARMS

Sixty-three percent of youth surveyed felt it was “very easy” or “somewhat easy” to get access to firearms, and the majority of participants in a youth focus group felt that they could get a gun “with one phone call.” Youth most commonly obtained guns by stealing, by illegally purchasing them from an individual on the black market, or “from their homes.” Respondents reported that firearms could be purchased for “as little as \$80 to \$300—depending on the size of the gun.” An intergenerational pattern of gang involvement or criminal activity may lead to youth having access to guns from family members, and being able to borrow or informally barter for guns. Respondents pointed out that getting a gun is “as easy as access to drugs.” This climate of ready gun availability led a service provider to observe that “it seems harder for adults to get legal access to guns than for kids to get illegal access.” This surprising information regarding the ease of youth access to guns is supported by data from the 2007 California Healthy Kids Survey, in which 4.8 percent of San Mateo County 7th, 9th, and 11th graders reported having brought a gun to school, a rate similar to that for the Bay Area overall (5 percent).



Table 2

Estimated Costs to Local Police Departments to Prevent and Respond to Youth Firearm Crime in 2010

Police Department (n = total youth firearm crime investigations 2010)	Crime Investigation	Crime Prevention	Miscellaneous Overhead	Average Total Cost per Youth Firearm Crime Investigation ⁵
Daly City (n = 22)	\$117,900	\$435,801	\$88,425	36,935 (\$1,283- \$72,430)
East Palo Alto (n = 76)	\$6,556,200 ²	6	7	\$86,265
Redwood City (n = 23) ⁸	---	---	---	---
San Mateo (n = 17)	\$108,536	\$1,356,000	—	\$86,149

When police department estimates are combined with those from other County agencies, San Mateo County taxpayers spend from \$57,117 to \$856,323 for their County and City governments to respond to one youth firearm crime (*Table 3*).

Incarceration represents a significant proportion of these costs because the average length of detention from pre-trial through completion of sentence for a firearm crime is 297 days for adults (at \$172 per day) and 610 days for juveniles (at \$428 per day).

Table 3

Estimated Range of Costs for one Firearm Crime to San Mateo County Taxpayers for Local Government Law Enforcement Response to Youth Firearm Crime in 2010

San Mateo County Local Government Agency	Juvenile	Adult
Youth Services Center Costs to detain a youth from pretrial to sentence for firearm crime (610 days)	\$261,080	NA
San Mateo County Jail Costs to detain an adult from pretrial to sentence (297 days)	NA	\$51,084
San Mateo County Coroner (homicide cases only) Transportation of the deceased, morgue, autopsy, etc	\$7,500	\$7,500
San Mateo County Superior Court* Costs to try suspects of firearm crime	(\$98-\$1,478)	(\$750-\$5,456)
San Mateo County District Attorney Legal costs to prosecute firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
San Mateo County Private Defender Services Legal costs to defend firearm crime	(\$2,000-\$250,000)	(\$2,000-\$250,000)
Local Police Department (Response and Investigation, see Table 3)	(\$1,283-\$86,265)	(\$1,283-\$86,265)
Estimated cost range of one firearm crime based on severity (i.e. illegal firearm possession to homicide)	(\$266,461-\$856,323)	(\$57,117-\$650,305)

*Court costs are averages weighted by stage of court proceeding of firearm crime prosecuted by the District Attorney from 2009-July 2011 combined with cost estimates from the Superior Court.

These costs encompass the range of firearm crime severity from illegal possession to murder. Costs for State prison incarceration

are not included here, nor are costs averted because suspect posted bail. The District Attorney provided a range of legal prosecution costs; since we were unable to obtain cost estimates from the Chief of the County Private Defender Program, we assumed defense costs to be comparable to those of the prosecution.

As we have seen, youth firearm violence impacts safety and quality of life, and causes incalculable human suffering. Taxpayers bear the expense for incarceration, court costs, and law enforcement, and society as a whole is burdened by the hidden costs of the death and disability of gun violence victims. Furthermore, the existing law enforcement response mechanisms emphasize extraordinarily costly punitive measures, rather than preventive or rehabilitative ones. Cost effectiveness studies show that the fiscal benefits of youth violence prevention programs are significant, but not generally realized for 15 years or more.⁹ The benefits of prevention are real, but are often delayed and are impossible to link to an individual. While not optimal, fiscal pressures tend to influence policymakers to devote resources to immediate needs instead of a more systematic perspective, which includes wisely investing in critically necessary prevention programs.

Effective strategies to reduce youth violence include programs targeted at young children, their parents, the community, and school environment, and more intensive services for youth who have already committed crimes. In general, research shows that the most effective interventions focus on young children and their families, or youth who have already exhibited criminal behavior. For example, violent and delinquent youth have been found to benefit the most from programs that provide a wide array of support, such as skills and behavioral training, and family therapy. The following proposed solutions represent “best practices” drawn from our experience in San Mateo County and from success stories across the nation, as well as the opinions and recommendations of community members who participated in this study. These solutions should be included in, and strongly connected with, any funding decisions related to public safety.

Breaking the cycle of violence among vulnerable youth:

Violence prevention interventions must be a part of a comprehensive effort to create a supportive family and community environment for all children and youth. In addition, however, intensive interventions, both preventive and rehabilitative, specifically directed at youth who are at-risk or already involved in criminal activity, are critical to saving lives and preventing firearm crime. Youth directly affected by firearm violence have the highest risk of becoming perpetrators. In the words of one service provider, the community needs to be there “as a support for those affected, because they are the ones that are more likely to take revenge.” CeaseFire Chicago¹⁰ utilizes prevention, intervention and community mobilization tactics to reduce street violence. The program offers at-risk individuals GED programs, anger management counseling, drug and alcohol treatment, and assistance with finding work and childcare. CeaseFire also hires “violence interrupters” as outreach workers to mediate conflict between gangs. After a shooting, they offer nonviolent conflict resolution alternatives to halt the cycle of retaliatory violence. As a direct result of the program, shootings decreased 16 to 28 percent in four of

the seven targeted areas. The decrease was “immediate and permanent” in three areas and “gradual and permanent” in a area.

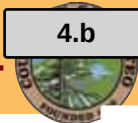
This violence interruption program is very similar to the current activities of the Gang Intelligence Unit and Operation Ceasefire in San Mateo County. The San Mateo County Gang Intelligence Unit (GIU) consists of members of the Sheriff’s Office, San Mateo County Probation, and assigned detectives from the local municipalities. GIU’s primary responsibility is collecting and analyzing information and then distributing the developed intelligence to law enforcement agencies in and around San Mateo County, as well as patrolling the streets of all twenty municipalities in the county several days a week to counter gang activity. The GIU is highly effective in countering gang activity. In 2010, the GIU arrested more than 434 individuals engaging in gang activity. To maintain its success, San Mateo County must craft a sustainable funding plan to ensure that the Sheriff’s Department, which funds the GIU, has the resources it needs to continue its support of GIU’s critical effort in curbing youth firearm violence.



Operation Ceasefire was established by the East Palo Alto Police Department in partnership with numerous law enforcement, government, community-based and faith organizations to implement a violence and drug market reduction strategy. Operation Ceasefire partners with law enforcement and the community to sit down with gang-affiliated individuals and offer them services that provide alternatives to their destructive behavior, and use strategic enforcement programs to hold accountable those who fail to take advantage of the services and continue to victimize the community. Operation Ceasefire is currently based in the City of East Palo Alto. To further enhance the program’s success, San Mateo County should explore Ceasefire’s methods to determine which are most effective and how to best apply them to reduce youth firearm violence in other cities in San Mateo County.

Law enforcement and communities working together

Law enforcement serves as the community’s primary response against armed violence, but can be most effective in the context of a community collaboration. A successful example of this collaboration in San Mateo County is the Violence Prevention Network that brings local police and the Sheriff together with



parents and students in the school setting. Some youth may be more open to addressing issues of violence at school, “because that’s where kids feel safe, and that’s where kids will speak up.” In general, more frequent positive interactions between youth and police in a setting where the power imbalance is reduced help youth become more comfortable with law enforcement and more open to their presence. Law enforcement can take on primary prevention of violence as a critical function. Another critical strategy to break the cycle of violence is law enforcement support to protect youth who make a good faith effort to leave gangs. San Mateo County law enforcement leadership should consider establishing debriefing units to help gang-affiliated youth safely leave gangs. In exchange for providing information about the gang, a youth would receive protection, skill-building, and educational services. The potential benefits of such a program could outweigh the financial costs over time; not only could it make the County’s streets safer, it would provide opportunities for the most at-risk youth to turn away from a life of violence. One young person transformed could result in multiple lives saved. Trust and cooperation generated by programs like these will increase the effectiveness of enforcement efforts in the larger community.

Youth empowerment in the community and educational context:

By valuing youth perspectives, prioritizing youth issues, and incorporating youth voices, communities will be able to reduce youth firearm violence more effectively. Empowering at-risk youth means helping them gain confidence, life skills, and hope for the future. This empowerment can come from active involvement in community service, afterschool programs, sports, creative activities (art, music, theater), dealing assertively with technological aggression (on-line bullying), and job skills training or part-time jobs. By providing youth with more options that promote the constructive use of time, communities keep youth off the streets, let youth know that the community cares, and give youth the opportunity to explore and discover their talents. In addition, many parents and service providers who participated in this study expressed a wish for more mentorship programs led by successful male role models, who originate from low-income communities. These male leaders, “who will fight for our kids,” serve as true-to-life examples that economic background does not necessarily dictate one’s future.

Not surprisingly, research shows that staying in school reduces the risk of violent behavior. The “School Transitional Environment Program” (STEP)¹¹ was developed at the University of Illinois to help schools create a supportive environment that promotes academic achievement and reduces behavioral problems and truancy. Students transitioning to middle school or high school are placed in small cohorts that remain together over time, and teachers partner with families to follow-up on school absences and behavior problems. Participants in the STEP program generally have fewer absences from school, lower drop-out rates, lower rates of delinquency, higher

SELF-CONTROL AND PROBLEM-SOLVING SKILLS CRITICAL FOR YOUTH

A strong emotional and behavioral foundation can help youth successfully avoid violence. In general, parents and schools can work together from early childhood to establish boundaries, rules, and expectations for children. Conflict resolution and communication skills in youth are paramount. Two successful programs for younger children at use in communities nationwide show the power of emotional awareness and problem-solving skills in promoting positive behaviors and discouraging violence. “Promoting Alternative Thinking Strategies” is aimed at elementary school kids through fifth grade. It trains children in self-expression, self-control, and interpersonal problem-solving skills. The program has yielded positive effects on risk factors associated with violence, including aggressive behavior, anxiety and depression, and conduct problems. The “I Can Problem Solve” program teaches interpersonal problem-solving skills to children of nursery school age through sixth grade. Studies have demonstrated that improvements in impulsivity and conflict resolution were sustained 3 to 4 years after the end of the program. This program has been generally most effective for at-risk children living in poor, urban areas. For youth who have already suffered the harsh effects of violence, there needs to be an increased and systematic use of alternative dispute resolution processes. Such methods include mediation among youth offenders, victims, and others impacted by violence in the community.

grade-point averages, more positive feelings about school, and a better self-image.

Asset building among parents and community members:

Educating parents, youth and community members is essential to curbing youth firearm violence. Several service providers participating in this study suggested that the County educate community members about how easy it is for youth to get guns. This increased awareness may lead community members to play a more active role in advocating for strategies

that prevent unlawful youth access to guns. Parents and service providers could also be taught how to look for signs of negative peer influence or gang affiliation. "Right now, parents are concerned about drug use or the way their children dress, and who they hang out with, but they're failing to make the link between the types of influences that can lead to gun use." (Service Provider) Holding community information sessions concerning recognition of these early signs could help parents and service providers better respond to at-risk youth. In addition, parents need to be made aware of the media's influence on children and youth. Subtle messages presented to youth through music and television too frequently promote and glorify guns and violence. Educating parents to assess the media their children come in contact with in order to decrease exposure to violent content could help lessen the appeal of guns and violence.

Just as an unsafe community environment promotes youth involvement in gangs and violence, a positive community environment will promote positive choices and behaviors. Supporting and empowering youth to make mature decisions is a complex task, which requires active contributions from families, schools, neighbors, community organizations, local

government, and law enforcement. More than ever, youth need caring adults to establish rules and boundaries and provide opportunities for education, employment, and health social outlets. By giving at-risk youth the support and guidance they need, we can help them lead violence-free lives and give them the confidence and skills to build successful futures.

Listed are the model ordinances and resolutions for cities and counties to pursue.

- Model Ordinance Regulating Firearms Dealers and Ammunition Sellers
- Model Ordinance Requiring Reporting of Lost or Stolen Firearms
- Model Ordinance Prohibiting the Possession of Large Capacity Ammunition Magazines
- Model Resolution Encouraging Law Enforcement to Send Letters to Prospective Handgun Purchasers
- Model Resolution Encouraging Law Enforcement to Obtain and Utilize Department of Justice Information About Prohibited Armed Persons

To view the full electronic version of this publication, please visit:

www.co.sanmateo.ca.us/rosejacobs-gibson and click "Youth Gun Violence publication"

or visit:

<http://www.abag.ca.gov/model-ordinances/>



ACKNOWLEDGEMENTS

This report could not have been accomplished without the significant partnership, support, and efforts of the following individuals:

Sheriff Greg Munks, San Mateo County
 District Attorney Stephen M. Wagstaffe, San Mateo County
 Coroner Robert Foucrault, San Mateo County
 Chief Probation Officer Stuart Forrest, San Mateo County
 Chief Manuel Martinez Jr., City of Daly City Police Department
 Chief Ron Davis, City of East Palo Alto Police Department
 Interim Police Chief Chris Cesena, City of Redwood City Police Department
 Chief Susan E. Manheimer, City of San Mateo Police Department
 John Digiacinto, Chief Private Defender, San Mateo County
 Chief Deputy County Counsel Lee Thompson, San Mateo County
 Chief Deputy Coroner Jerry Cohn, San Mateo County
 Assistant Sheriff Tricia Sanchez, San Mateo County Sheriff's Office
 Deputy Chief Probation Officer Christy Morrill, San Mateo County Probation Department
 Deputy Chief Roy Brasil, San Mateo County Probation Department
 Captain Eric Wollman, City of Daly City Police Department
 Lieutenant Timothy Reid, San Mateo County Sheriff's Office
 Lieutenant Pat Molloy, Support Services, City of San Mateo Police Department
 Ed Hernandez, Investigations Captain, City of Redwood City Police Department
 Federico Rocha, Captain of Criminal Investigations Division Violence Interdiction Team, City of East Palo Alto Police Department
 Sergeant Leo Capovilla, Supervisor, Gang Intelligence & Investigation Unit
 Sergeant Ashley Osborne, City of Redwood City Police Department
 Tim Gatto, Gang Intelligence Unit, San Mateo County Probation Department
 Raul Quezada, Classification Unit, San Mateo County Probation Department
 Doug Davis, Sheriff Liaison, Gang Intelligence & Investigation Unit
 Gabe Huerta, Detective, Gang Intelligence & Investigation Unit
 Joseph J. Leonor, Detective – Deputy Probation Officer, Gang Intelligence & Investigation Unit
 Jaime Draper, Detective, Gang Intelligence & Investigation Unit
 Scott F. Grosso, Detective, Gang Intelligence & Investigation Unit
 Rodina Catalano, Deputy Court Executive Officer, Superior Court of California
 Elizabeth Lam, Community Service Officer, City of East Palo Alto Police Department
 Lisette Escobar, San Mateo County Sheriff's Office
 Patricia Jones, Assistant Executive Director, ABAG
 Vicki Rutherford, Communications Assistant, ABAG
 Association of Bay Area Governments (ABAG) Youth Gun Violence Task Force
 Michelle Vilchez, Executive Director, Peninsula Conflict Resolution Center (PCRC)
 Alicia Santamaria, Principal, Adelante Coaching and Consulting
 Teresa Chin, Human Services Manager
 Miguel Andrade Jr., Human Services Specialist III
 Miriam Torres, Migrant Education Program Specialist, Sequoia Union HS District
 Michael Jones, Director of Programs, Boys and Girls Club, East Palo Alto
 Crispin Delgado, Management Analyst, San Mateo County Health System
 Luis Aroche, Manager of Violence Prevention Programs, PRC

Special thanks to those who worked on the report in partnership with the Office of Supervisor Rose Jacobs Gibson

Dr. Scott Morrow, San Mateo County Health Officer
 Brad Jacobson, Epidemiologist, San Mateo County Health System
 Dr. Cora Hoover, Preventive Medicine Resident, California State Department of Public Health/San Mateo County Health System
 Maryam Headd, Epidemiologist, San Mateo County Health System
 Amy Quan, Santa Clara Law School
 Jennifer Bunn, Stanford Law School

APPENDIX: METHODS

Qualitative methods

Peninsula Conflict Resolution Center (PCRC), a community-based organization that provides problem solving expertise in San Mateo County through mediation, violence prevention, and family engagement, was contracted by the Office of Supervisor Rose Jacobs Gibson and the Association of Bay Area Governments to collect community input for this project. PCRC and the Office of Supervisor Rose Jacobs Gibson recruited a demographically diverse convenience sample of participants from local schools, service organizations, and other sites within the communities most affected by youth firearm violence. Surveys were completed by 84 youth, 275 parents, and 115 service providers, faith-based leaders, and law enforcement representatives. In addition, 37 youth, 23 parents, and 9 service providers participated in focus groups and 20 youth, parents, and service providers were interviewed individually or in small groups by PCRC staff. Gang Intelligence Unit personnel were interviewed by San Mateo County staff. Focus group summaries, video and audio interviews, and free text survey responses were analyzed for common themes and concerns. A convenience sample methodology is acceptable in this setting, because the goals of this qualitative analysis were to obtain a deeper understanding of the causes, motivations, and lived experiences underlying observed behaviors and outcomes.

Quantitative methods

Multiple data sources and analytic methods were used for the quantitative portion of this analysis. Countywide emergency room discharge data were obtained from the Office of Statewide Health Planning and Development and analyzed to determine the number of firearm injuries over the last 5 years, as well as the demographics of those affected. Firearm death statistics were obtained from death certificates. Demographic and other information such as gang affiliation and recidivism was obtained for inmates incarcerated for firearm crimes at the county's two detention facilities for single "snapshot" days. Local police departments supplied counts of firearm-related arrests, as well as operating budgets and (in the case of one department) costs of responding to individual firearm crimes. The District Attorney, Private Defender, County Superior Court, and County Coroner also contributed cost information. In addition, methodologies for calculating global societal costs for injuries and deaths were obtained from scholarly literature and applied to the San Mateo County youth firearm injury and death counts.

Police Department Notes

Four local police departments provided data on the number and costs of their youth firearm crime response and prevention activities in 2010. These responses attempt to account for all of the officers, detectives, specialized crime investigation and prevention units, school resource officers, and other staff involved in youth firearm crime investigations. Although these data are informal and not standardized, they are the best available considering the few resources available for their collection. Please see the appendix for further police department details.

Daly City Police Department: The Daly City Police Department was able to time survey and calculate the investigation, prevention-program, overhead, and employee benefit costs for the 22 youth firearm crime investigations in Daly City in 2010. The range of costs reflects the severity (i.e. from illegal possession to murder) of crime and the number of personnel hours involved in each. The Daly City prevention costs are lower than the other police department estimates because they only account for the time youth crime prevention staff spent working on the specific youth firearm crime investigations. Prevention programs include the Crime Suppression Unit and School Resource Officer, both of whom are involved in every youth firearm crime investigation.

East Palo Alto Police Department: The East Palo Alto Police Department estimates that as much as 60 percent of its total operating budget is spent on the law enforcement response, investigation and prevention of youth firearm crime.

As many of these enforcement intervention and prevention programs are interrelated, it is difficult to attribute exact costs to each component. Among the numerous firearm prevention and enforcement programs, the Police Department has identified Project Ceasefire (see pages 9-10) as one with significant promise.

Redwood City Police Department: The Redwood City Police Department has worked actively in youth firearm crime prevention. The Department's Juvenile Unit and Street Crime Suppression Team and School Resource Officer have been active in educating schools, at-risk youth and their parents about gangs and have incorporate preventing firearm violence in their presentations.

San Mateo City Police Department: The San Mateo City Police Department's Youth Service Bureau coordinates prevention and enforcement of youth crime. Through this agency, school resource officers, the Police Activities Leagues, the Juvenile detective, and schools work to identify at-risk youth who are candidates for diversion from the juvenile justice system. Through this program, youth are referred to activities in or after school designed to foster his or her positive development and relationships with law enforcement.



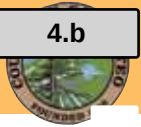
**Selected Demographics of Youth Service Provider Respondents to the
San Mateo County Youth Firearm Violence Impact Survey 2011
(n = 115)**

Race Ethnicity	Percent
Asian and Pacific Islander	2.6
African American	8.7
Latino	24.3
Native American	0.9
Other	18.3
White	45.2
Household Income	Percent
\$10,000-\$29,999	4.3
\$30,000-\$59,999	18.3
\$60,000-\$79,999	14.8
\$80,000-\$99,999	17.4
\$100,000 +	45.2

**Selected Demographics of Parent Respondents to the San Mateo
County Youth Firearm Violence Impact Survey 2011
(n = 275)**

Race Ethnicity	Percent
Asian and Pacific Islander	5.5
African American	2.9
Latino	46.5
Native American	1.5
Other	5.5
White	38.2

Household Income	Percent
0-\$9,999	13.5
\$10,000-\$19,999	9.5
\$20,000-\$29,999	10.5
\$30,000-\$59,999	13.1
\$60,000-\$79,999	9.8
\$80,000 +	43.6



Selected Demographics of East Palo Alto and Redwood City Youth Respondents to the San Mateo County Youth Firearm Violence Impact Survey 2011 (n = 85)	
Race Ethnicity	Percent
Asian and Pacific Islander	3.6
African American	3.6
Latino	89.3
Other	2.4
White	1.2
Household Income	Percent
0-\$9,999	23.8
\$10,000-\$19,999	20.2
\$20,000-\$29,999	29.8
\$30,000-\$59,999	13.1
\$60,000-\$79,999	8.3
\$80,000 +	4.8

¹ "Youth" is defined as youth and young adults from ages 12 - 25 years of age.

² The terms "Firearm" and "Gun" are used interchangeably in this report.

³ "Youth firearm violence" is defined as violence involving a firearm in which the perpetrator and/or the victim is a youth.

⁴ U.S. Department of Transportation Office of the Assistant Secretary for Transportation Policy. (2007) Treatment of the Economic Value of a Statistical Life in Departmental Analysis (Accessed July 5, 2011 from <http://ostpxweb.dot.gov/policy/reports/080205.htm>). Washington DC: Peter Belenky

⁵ Average was calculated by dividing the estimated crime investigation, prevention, and overhead costs spent on youth firearm crime by the number of youth violent crimes investigated, except in Daly City. For Daly City, the average cost was weighted based on the frequency and severity of firearm crime investigated.

⁶ Because crime investigation, enforcement, and prevention programs in the East Palo Alto Police Department are significantly integrated, each program's cost contribution to a youth firearm crime investigation could not be separated.

⁷ Ibid

⁸ See appendix for Redwood City information.

⁹ Greenwood, Peter W., Karyn Model, C. Peter Rydell and James Chiesa. *Diverting Children from a Life of Crime: Measuring Costs and Benefits*. Santa Monica, CA: RAND Corporation, 1998. http://www.rand.org/pubs/monograph_reports/MR699-1.

¹⁰ <http://www.nij.gov/journals/264/ceasefire.htm>

¹¹ <http://www.aypf.org/publications/compendium/C1S18.pdf>

¹² <http://www.surgeongeneral.gov/library/youthviolence/>

¹³ Ibid

This project has been made possible in part by a grant from
Silicon Valley Community Foundation.

YOUTH GUN VIOLENCE • SEPTEMBER 2011



Suicide by Firearms in Santa Clara County:

Rates and Solutions

Tiffany Shiu and Diego Martinez

District Two Fellowship and Internship Program

Office of Supervisor Cindy Chavez

Summer 2018

Attachment: FINAL Firearm Suicides Paper_Sup. Chavez Aug18 (1993 : Gun Violence Ordinance)

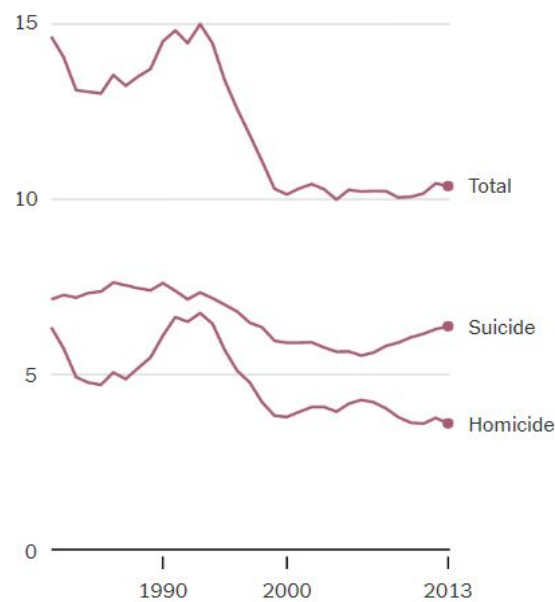
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Introduction

Often times when Americans think about firearm deaths, they focus on mass shootings. However, suicide accounted for 61% of all firearm fatalities in the U.S. in 2014.¹ Firearm suicide rates have been consistently higher than firearm homicide rates, and firearm suicide rates have been increasing since 2006 (Figure 1). Unfortunately, suicide is more stigmatized and less discussed than homicide, which makes this issue more important than ever.

Figure 1: Gun Deaths in the U.S. per 100,000 people ²



Death rates are age-adjusted. Some categories of gun deaths, such as those from accidents, are not shown.

¹ Grinberg, E. (2017, February 18). Gun violence not a mental health issue, experts say, pointing to 'anger,' suicides. Retrieved August 3, 2018, from <https://www.reviewjournal.com/life/health/gun-violence-not-a-mental-health-issue-experts-say-pointing-to-anger-suicides/>

² National Center for Health Statistics. (2017, March 17). Retrieved August 4, 2018, from <https://www.cdc.gov/nchs/fastats/suicide.htm>

One of the intended outcomes of this research was to fully understand the affected population: gender, ethnicities, age groups and cities of the firearm suicide decedents nationally and in Santa Clara County. Suicide by firearm is not merely a mental health or gun safety issue, but rather a combination of the two. The findings and the recommendations of this research are focused on how to reduce access to lethal means and how to give people with suicidal ideations the resources they need.

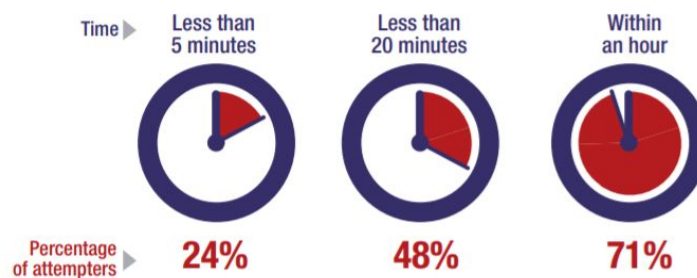
Literature Review

National Statistics on Suicide Rates

Suicides are the second-most common cause of death for Americans between 15 and 34 years old.³ For all ages, it is the 10th most common cause of death.⁴ Firearms are the most common method of suicide, accounting for 51% of all suicides in 2016.⁵ Among American females, 32.1% of suicide deaths were by firearm and among American males, 56.6% of suicide deaths were by firearm in 2015.⁶

Often, suicide attempts occur shortly after people decide to end their lives (Figure 2). For instance, an investigation by the New Hampshire Medical Examiner's death investigation reports that among the 144 firearm suicides that occurred over a two-year period (ending June 30, 2009), nearly one in ten were committed with a gun that was purchased or rented within a week of the suicide (usually within hours).⁷ The figure is likely an underestimate since two-thirds of the reports made no mention of when the gun was obtained.⁸

Figure 2: Time Elapsed between Decision and Suicide Attempt⁹



³ Suicide. (n.d.). Retrieved July 26, 2018, from <https://www.nimh.nih.gov/health/statistics/suicide.shtml>

⁴ National Center for Health Statistics. (2017, March 17). Retrieved July 26, 2018, from <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>

⁵ Suicide Statistics. (n.d.). Retrieved August 5, 2018, from <https://afsp.org/about-suicide/suicide-statistics/>

⁶ Suicide. (n.d.). Retrieved August 5, 2018, from <https://www.nimh.nih.gov/health/statistics/suicide.shtml>

⁷ Training in Suicide Prevention, Intervention and Postvention. (n.d.). Retrieved August 6, 2018, from <http://www.theconnectprogram.org/>

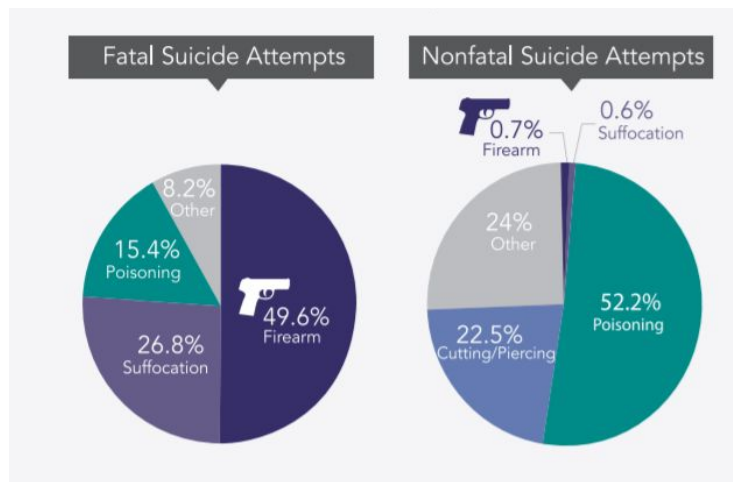
⁸ Ibid.

⁹ The Truth About Suicide & Guns. (n.d.). *Brady Campaign*. Retrieved August 4, 2018.

One of the most lethal means of suicide is the use of a firearm. Firearm usage is 95% fatal and is only exceeded by stepping in front of a train which is 98.5% lethal.¹⁰ Unfortunately, those who attempt to kill themselves with a firearm rarely get a second chance as with other methods (Figure 3). Having a gun readily available in the home makes the likelihood of death significantly more likely. A growing body of research suggest that having guns in the home prior to the decision to commit suicide contributes to increased suicide risk beyond other risk factors such as substance abuse, a history of self-harm, hopelessness or depression.

11

Figure 3: Fatal and Nonfatal Suicide Attempts by Method (2015)¹²



When suicide attempts do fail, very few go on to die by suicide using an alternative method. If they do attempt suicide again, they will most likely use a less lethal method since firearm is one of the most lethal methods of suicide. A review of 90 studies of long term outcomes for people who survived a suicide attempt found that 89-95% did not go on to die by suicide, even when followed over a period of 9 years or more. Some 20-25% did make another nonfatal attempt;

¹⁰ Lethality of Suicide Methods. (2017, January 06). Retrieved July 26, 2018, from <https://www.hsph.harvard.edu/means-matter/means-matter/case-fatality/>

¹¹ Grinberg, E. (2017, February 18). Gun violence not a mental health issue, experts say, pointing to 'anger,' suicides. Retrieved August 3, 2018, from <https://www.reviewjournal.com/life/health/gun-violence-not-a-mental-health-issue-experts-say-pointing-to-anger-suicides/>

¹² The Truth About Suicide & Guns. (n.d.). *Brady Campaign*. Retrieved August 4, 2018.

roughly 70% made no further fatal or nonfatal attempts. This is because acute suicidal feelings often lessen with time, changes in life circumstances, treatment or other support.¹³

¹³ Owens, D. (2002). Fatal and Non-Fatal Repetition of Self-Harm. *British Journal of Psychiatry*. Retrieved July 26, 2018.

Analyzing Santa Clara County Firearm Suicides

Fifty nine percent of firearm deaths are suicides in Santa Clara County from 2007-2016.¹⁴ Firearm is the second most common method of suicide after hanging, and approximately 32% of suicide deaths are by firearms in the county in 2015.¹⁵

In 2016, the Center for Disease and Control (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) conducted an investigation on youth suicide in the county. The purpose of this investigation was to utilize existing data to develop specific prevention and control recommendations on youth suicide prevention that can be used on the school, city, and county levels.¹⁶ The investigation looked at trends in fatal and non-fatal behaviors among youth occurring from 2008 through 2015 in the county. It examined whether media coverage of youth suicides met safe reporting guidelines, compared youth suicide prevention policies, activities and protocols used in the community to evidence-based and national recommendations and made recommendations on youth suicide prevention strategies.¹⁷ Some of the outcomes include:

- “Since 2003, the crude suicide rate for youth, ages 10–24, that died in California and were residents of Santa Clara County has remained stable, with no significant differences over time.
- The suicide rate for 10–24 year olds in Santa Clara County was 5.4 per 100,000, combining data from 2003 to 2014. This is similar to the California suicide rate of 5.3 per 100,000. The suicide rate for youth nationwide was higher than the county and state rates.
- A total of 229 suicide deaths occurred in 10–24 year olds residing in Santa Clara County from 2003 to 2015
 - Two-third of these were ages 20–24 (66%)
 - Three quarters were males (75%)

¹⁴ Fact Sheets. (n.d.). Retrieved July 26, 2018, from <https://www.sccgov.org/sites/phd/hi/hd/Pages/fact-sheets.aspx>

¹⁵ Ibid.

¹⁶ Epi-Aid on Youth Suicide in Santa Clara County. (n.d.). Retrieved July 24, 2018, from <https://www.sccgov.org/sites/phd/hi/hd/epi-aid/Pages/epi-aid.aspx>

¹⁷ Ibid.

- Nearly 2 in 5 were White, non-Hispanic (39%) followed by 27% Asian/Pacific Islander, 27% Hispanic and 4% African American.
- Findings shows that almost all youth deaths by suicide had factors that preceded the suicide. These factors include, for example, a recent crisis or a current mental health problem.
- In student surveys from 2005 to 2014, the percentage of high school students who reported that they had thoughts of suicide in the past 12 months ranged from 15% to 19% in Santa Clara County.
- From 2009 to 2015, Bay Area media reporting departed from the accepted safe suicide reporting guidelines. Common problems with reporting included describing the method of suicide and location of the injury or death in the story.”¹⁸

The Santa Clara County Office of the Medical Examiner/Coroner compiled a comprehensive database of firearm deaths from 2014-2017 in the county. This database includes the decedent’s name, age, gender, ethnicity, death location, zip code, location of death, date of death, cause of death, other significant conditions contributing to the cause of death, how the injury occurred, the manner of death, and the make, model and barrel length of firearm (if known) of the decedent (Appendix A). This information enabled analysis of the issues at the local level. Information regarding employment, income, mental and whether the firearm was obtained legally or illegally is not available to the public. However, generally, suicide victims are employed and come from all economic backgrounds.¹⁹ In fact, higher income individuals are more likely to commit suicide rather than people of a lower economic class.²⁰ For men, divorced individuals are more likely to take their own lives rather than married individuals.²¹ Among women, marital status

¹⁸ Ibid., p 10.

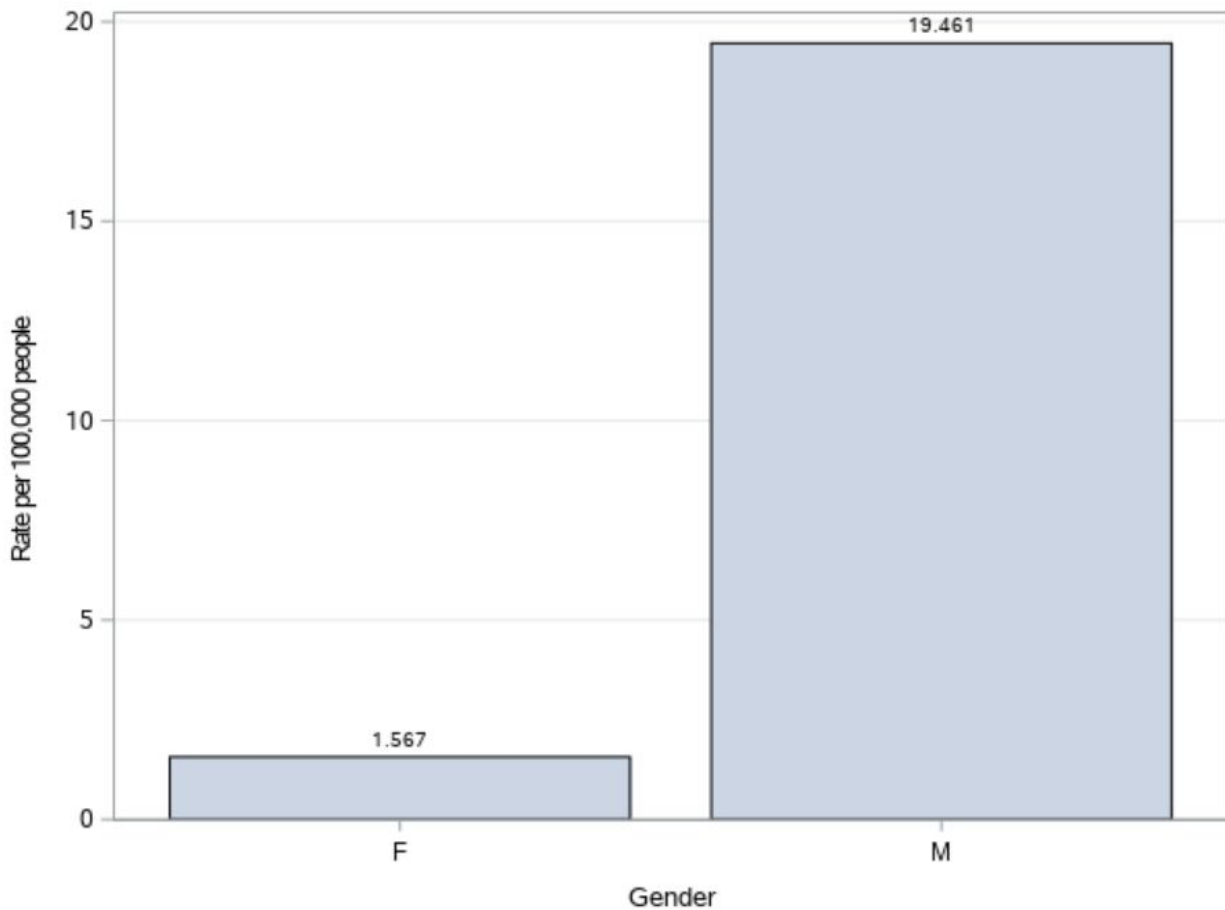
¹⁹ Rehkopf, D. H., & Buka, S. L. (2006, February). The association between suicide and the socio-economic characteristics of geographical areas: A systematic review. Retrieved July 31, 2018, from <https://www.ncbi.nlm.nih.gov/pubmed/16420711>

²⁰ J. S. (2012, November 08). Why Suicides Are More Common in Richer Neighborhoods. Retrieved July 26, 2018, from <http://business.time.com/2012/11/08/why-suicides-are-more-common-in-richer-neighborhoods/>

²¹ Kposowa, A. (2000, April). Retrieved July 31, 2018, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1731658/>

does not affect the risk of suicide. Firearms used in suicides are mostly obtained legally.²² The trends found in the county correlate with the national trends.

Figure 4: Santa Clara County Firearm Suicide Death Rates by Gender
(2014-2017)²³



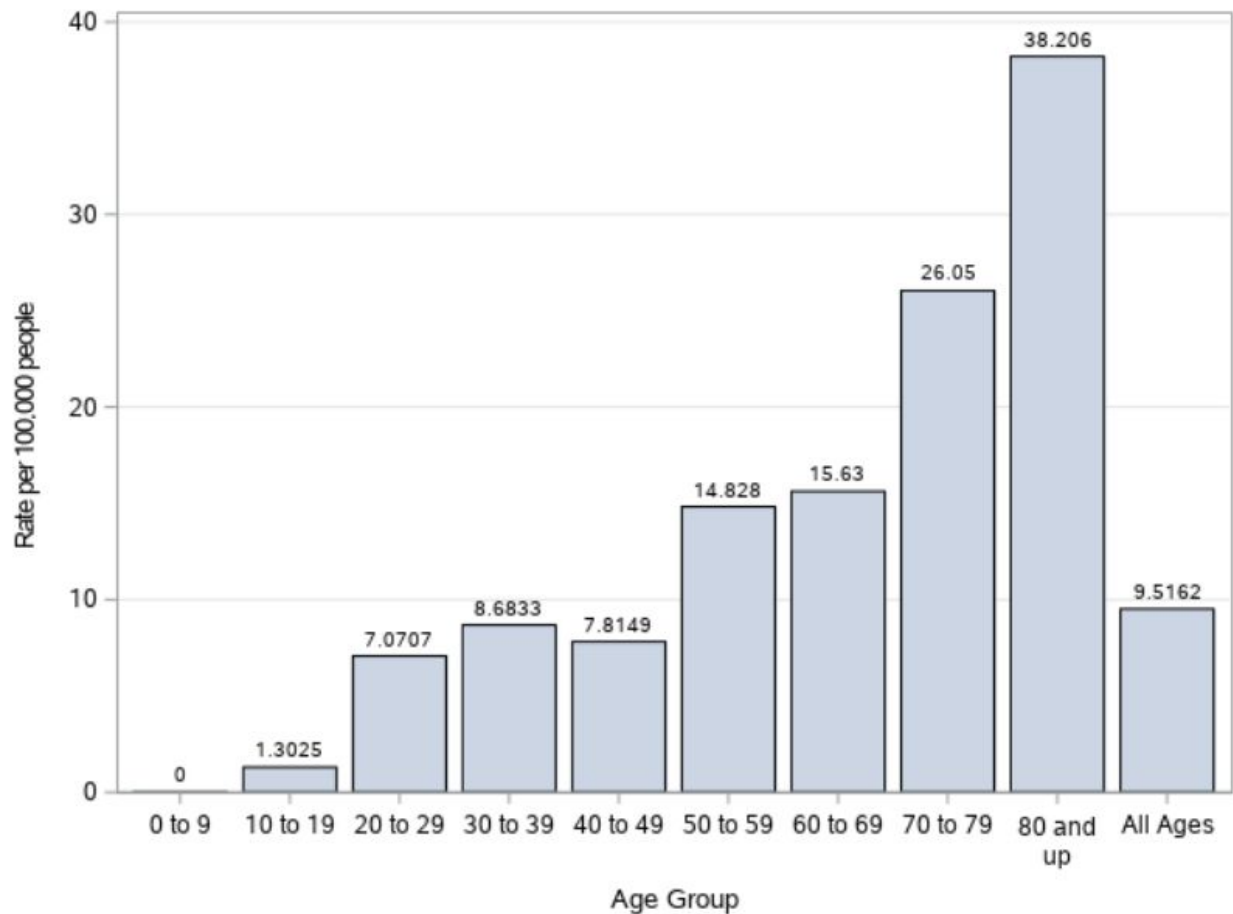
In this four year period there were 179 firearm suicides - 13 female and 166 male. As Figure 4 indicates, there was a female firearm suicide rate of 1.567 per 100,000 County residents and a male firearm suicide rate of 19.461 per 100,000 County residents. Both nationally and in the County, suicide by gun is particularly common among men, and in women, it is the second most prevalent method after

²² Guns & Suicide. (2016, December 01). Retrieved from https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/

²³ Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

poisoning.²⁴ Male firearm suicides are much more common than female firearm suicides due to the use of more lethal means.

Figure 5: Santa Clara County Firearm Suicide Death Rates by Age
(2014-2017)²⁵



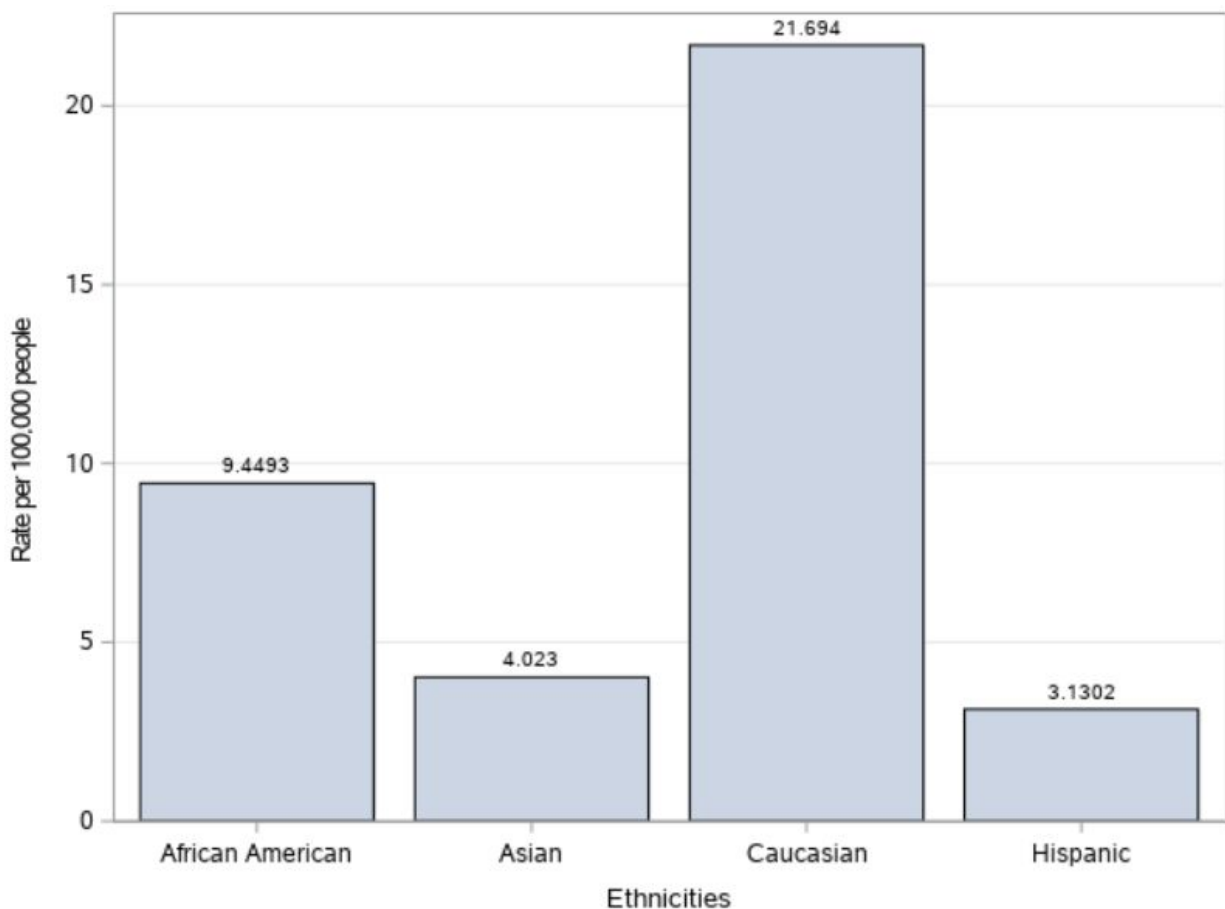
From Figure 5, the firearm suicide rate for the 80 and up age group was the highest: 38.206 per 100,000 County residents. The firearm suicide rates per 100,000 County residents were also high for ages 70 to 79, 60 to 69 and 50 to 59. Even though there appears to be a considerable difference between the rate for the 70 to 79 and the 80 and up age groups, this difference is not statistically

²⁴ Brady Campaign to Prevent Gun Violence. (n.d.). Retrieved July 26, 2018, from <http://www.bradycampaign.org/the-truth-about-suicide-guns>

²⁵ Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

significant. However, there is a statistically significant difference between the 80 and up age group and 60 to 69 age group, and the 80 and up and 50 to 59 age groups. Nationally, firearm suicide rates also increase significantly with age and are highest among adults 70 and older.²⁶

Figure 6: Santa Clara County Firearm Suicide Death Rates by Ethnicity (2014-2017)²⁷



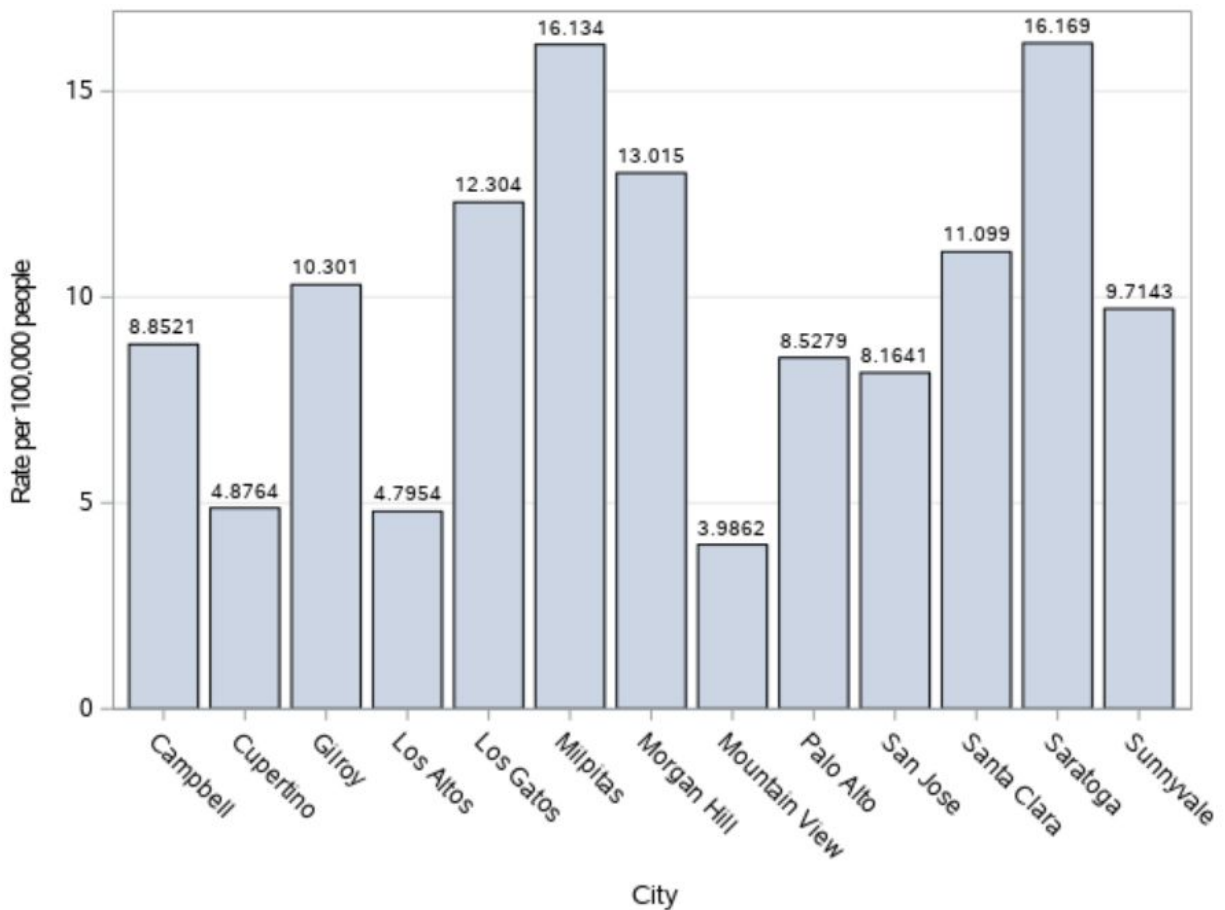
From Figure 6, the firearm suicide death rates for Caucasians was highest: 21.694 per 100,000 County residents. Although there appears to be a large difference between the firearm suicide rates of Caucasians and African Americans, this difference is not statistically significant. However, there is a significant difference between the Caucasian and Asian firearm suicide rates. Nationally,

²⁶ Ibid., p 12.

²⁷ Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

white men make up 79% of all firearm suicide victims in the U.S. while people of color account for less than 8% of firearm suicide victims.²⁸

Figure 7: Santa Clara County Firearm Suicide Death Rates by City
(2014-2017)²⁹



As demonstrated by Figure 7, the firearm suicide death rates in Milpitas and Saratoga were highest: approximately 16 per 100,000 County residents. There only appears to be a significant difference between the firearm suicide rates of Milpitas and Mountain View. Nationally, states with high levels of firearm ownership tend to have high levels of suicide. For example, the five states with the highest rates of

²⁸ Brady Campaign to Prevent Gun Violence. (n.d.). Retrieved July 26, 2018, from <http://www.bradiycampaign.org/the-truth-about-suicide-guns>

²⁹ Santa Clara County Office of the Medical Examiner/Coroner and SAS University Edition

firearm suicide (Alaska, Wyoming, Montana, Idaho, Oklahoma) all have adult firearm ownership rates 12 to 30% higher than the national average (32.6%).

Suicide Risk Factors

Suicide is a complex phenomenon. There are always multiple risk factors that converge in a person's life that create a culmination of acute risk. The behavioral threat assessment is used as a tool to identify and intervene with individuals who have communicated threats of violence or engaged in behavior that clearly indicates planning or preparation to commit a suicide.

The current method for predicting the level of suicide risk is not effective according to two meta-analyses of the last forty years of suicide risk research. In the first paper, author Matthew Large and his group in Australia looked at the last 40 years of suicide risk assessment research. They found that 95% of patients will not die by suicide at all and that 50% of patient suicide came from the lower risk categories.³⁰ They also found that predicting suicide by combining multiple risk factors was not much better than using a single risk factor.³¹

The second paper was a meta-analysis of suicide risk factors and risk assessment scales in people who had already harmed themselves. In this analysis, the four strongest risk factors were previous episodes of self-harm, suicidal intent, physical health problems and male gender. These risk factors are so common that they are of no help in assessing suicide risk. According to the National Institute of Mental Health, complex and deep-rooted problems such as depression and other mental disorders, drug and alcohol abuse, family violence, and a family history of suicide often shadow victims.³²

Many studies have indicated that states with higher gun ownership rates also tend to have higher firearm suicide rates. A 2008 study by Miller and David Hemenway, authors of the book *Private Guns, Public Health*, found that rates of firearms suicides in states with the highest rates of gun ownership are 3.7 times

³⁰ Murray, D. (2017, March 28). Suicide Risk Assessment Doesn't Work. Retrieved from <https://www.scientificamerican.com/article/suicide-risk-assessment-doesnt-work>

³¹ Ibid.

³² Guns & Suicide. (2016, December 01). Retrieved from https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/

higher for men and 7.9 times higher for women, compared with states with the lowest gun ownership, though the rates of non-firearm suicides are about the same.

³³ Another study by the Harvard School of Public Health (HSPH) was conducted of all 50 U.S. states. Based on survey of American households conducted in 2002, HSPH Assistant Professor of Health Policy and Management Matthew Miller, Research Associate Deborah Azrael and colleagues at the School's Injury Control Research Center (ICRC) found that in states where gun were prevalent as in Wyoming, where 63 percent of households reported owning guns and rates of suicide were higher.³⁴ The inverse was also true: where gun ownership was less common, suicide rates were also lower.³⁵

³³ Ibid.

³⁴ E. (2017, July). *Data behind Extreme Risk Protective Order Policies: A look at Connecticut's Risk-Warrant Law*. Retrieved August 3, 2018.

³⁵ Ibid.

California Gun Safety and Gun Violence Prevention Laws

California has some of the strictest gun safety policies in the United States. According to Gifford's Law Center, California:

- “Requires all gun sales to be processed through a licensed dealer, requiring a background check;
- Requires gun dealers to obtain a state license;
- Bans most assault weapons and .50 caliber rifles, and restricts the sale, transfer, manufacture, and possession of large capacity ammunition magazines;
- Requires all firearms purchasers to obtain a Firearm Safety Certificate, after passing a written test;
- Regulates gun shows in a comprehensive manner;
- Limits purchases of new handguns to one per person per month;
- Prohibits the sale of unsafe handguns that do not incorporate mandatory design safety elements;
- Imposes a ten-day waiting period prior to the sale or transfer of a firearm;
- Maintains permanent records of firearm sales;
- Gives local law enforcement discretion to deny a license to carry a concealed weapon; and
- Gives local governments authority to regulate firearms and ammunition, although the state legislature has expressly removed this authority in certain areas.”³⁶

In addition to the policies above, in California, purchase or possession of firearms is prohibited for people who have been admitted to a mental health facility, are receiving patient treatment, and have been determined to be a danger to self or others by the attending health professional.³⁷

³⁶ California. (n.d.). Retrieved July 24, 2018, from <http://lawcenter.giffords.org/gun-laws/state-law/california/>

³⁷ Ibid.

In 2014, California established a Gun Violence Restraining Order (GVRO) law which allows family members to petition a court to temporarily remove firearms from a loved one who is found to pose a clear danger to the public or their own safety. There are three types of gun violence restraining orders. There is the temporary emergency order, which is for an immediate threat, and it is only for law enforcement.³⁸ Next, there is the temporary ex parte, which is a formal application made in court by law enforcement or family/housemates.³⁹ Lastly, there is the order after notice/hearing which is a one year order after a full hearing.⁴⁰ In California, a GVRO can be sought by spouses, parents, grandparents, siblings, children, stepparents, stepchildren, domestic partners or roommates and other household members who have lived with the individual of the petition within the last six months.

The Temporary Emergency GVRO last 21 days and may be requested by law enforcement at any time of day through a verbal or written request to a local Superior Court judicial officer. The officer must show through testimony or documented evidence that there is “reasonable cause” that the subject poses a danger to themselves or others. Once the GVRO is served, the subject must immediately surrender all firearms and ammunition in his or her possession.

The Temporary Ex Parte Order lasts up to 21 days and is available to law enforcement, immediate family members or a household member. The petition may only be filed during normal court hours, and it is filed with the Superior Court clerk in the county in which the subject resides. A judicial officer must find that the subject poses “a significant danger in the near future” of injury to self or others by having a firearm in his or her possession. The subject must relinquish all firearms to the officer, but if not the subject would then have 24 hours to turn their firearms and ammunition in to a local law enforcement agency. A hearing will be scheduled within 21 days from the date on the order and it will give the subject an opportunity to respond.

³⁸ Gun Violence Restraining Orders. (n.d.). Retrieved July 26, 2018, from <http://www.courts.ca.gov/33961.htm>

³⁹ Ibid.

⁴⁰ Ibid.

A One Year GVRO may be obtained after the subject is served a notice of the ex parte order to determine if a one-year GVRO is necessary. During the hearing the restraining party has the opportunity to respond to the order and the court will review the same types of evidence it used when considering the ex parte order. The court may also review testimony from the petitioner and any witnesses which they produce. A one-year GVRO may be renewed up to three months before it expires.⁴¹

⁴¹ How to Get a GVRO. (n.d.). Retrieved August 5, 2018, from <https://speakforsafety.org/obtain-a-gvro-family-household/>

Local Suicide Prevention Programs and Efforts

Santa Clara County Office of the Medical Examiner/Coroner shared that after a person takes his or her life, immediate family members receive a brochure with the suicide and crisis hotline and places to go to for support including the Bill Wilson Center and Kara Grief Support. A family history of suicide is a significant suicide risk factor.⁴² Therefore, it is essential that family members receive the services and support they need after a loved one dies by suicide.

One of the services provided by the Bill Wilson Center is the Center for Living with Dying, which provides emotional support to people dealing with grief and loss. The Center provides crisis intervention services as well as educational programs on grief and loss.⁴³ The Bill Wilson Center also provides mental health services for youth and their families. The Transition Age Youth Mental Health Services provides support for youth and young adults ages 16-24 residing in Santa Clara County who must have either MediCal insurance or no insurance at all to qualify. The Youth and Family Mental Health Services provides support for individuals up to age 21 and their families who have MediCal insurance as their primary insurance provider. There is also a 24-hour Young Adult Support Hotline that connects youth to mental health specialists who can respond in person. Kara Grief Support provides grief therapy for children, adolescents, adults, couples and families. In addition, Kara offers on-site crisis support services to schools, community organizations and businesses to help process their grief when a death has occurred.⁴⁴

The Suicide Prevention Program also oversees the Santa Clara County Suicide & Crisis Hotline, which is available 24 hours and 7 days a week in both English and Spanish. Approximately 60 to 70% of calls from this hotline were female. This county hotline is also certified nationally, which means that if a Santa

⁴² Violence Prevention. (2017, October 03). Retrieved July 20, 2018, from <https://www.cdc.gov/violenceprevention/suicide/riskprotectivefactors.html>

⁴³ Bill Wilson Center : Services : All Services : Centre for Living with Dying. (n.d.). Retrieved July 20, 2018, from <http://www.billwilsoncenter.org/services/all/living.html>

⁴⁴ Crisis Response. (n.d.). Retrieved July 20, 2018, from <https://kara-grief.org/services/crisis-response/>

Clara County resident calls the national hotline, his or her call will get rerouted back to the county hotline. The hotline is currently working to implement a crisis text line.

In addition to the resources for family members of descendants of suicide, there are numerous resources available to individuals who are contemplating suicide. For example, the Santa Clara County Suicide Prevention Program, which trains Suicide and Crisis Hotline volunteers, holds trainings to help those in crisis, conducts public education and awareness campaigns, works with schools and promotes safe and effective reporting on suicide.⁴⁵ One training that the program holds is the Question Persuade Refer (QPR) Online Suicide Prevention Training. This is a free online training available to anyone above the age of 18 who lives or works in Santa Clara County. QPR training teaches users about the warning signs of suicide, how to ask the suicide question, how to persuade someone in crisis to seek help, and how to refer them to resources. In addition to the online training, there is also the QPR Gatekeeper Training Class, which provides in person trainings of the same material. Other trainings include the QPRT Online Suicide Risk Assessment and Management Training for professionals responsible for the care and safety of patients at risk for suicidal behaviors, safeTALK Alertness Training for anyone over the age of 15 to become a suicide-alert helper, Suicide to Hope Training for participants working with people previously at risk and currently safe from suicide, Youth Mental Health First Aid Training designed for adults who regularly interact with youth and the Adult Mental Health First Aid Training.⁴⁶ Recently, the Suicide Prevention Program carried out a 10-month sports radio campaign encouraging adult men across the Bay Area to access mental health support. The Suicide Prevention Program is very passionate about preventing suicide in our community and to lead the way for other counties. They are focused on targeting community institutions such as churches and schools to build resilience and increase community support. They understand the difficulties of

⁴⁵ Suicide Prevention & Crisis. (n.d.). Retrieved July 22, 2018, from <https://www.sccgov.org/sites/bhd/services/sp/pages/spc.aspx>

⁴⁶ Trainings. (n.d.). Retrieved July 22, 2018, from <https://www.sccgov.org/sites/bhd/Services/SP/Pages/SP-Trainings.aspx>

reducing access to lethal means at the city level, but they believe that providing data would convince advocates. The program is currently focused on training the local media to use safe terminology when covering suicide, which includes not using words such as “committing” because that would imply that suicide is a crime and therefore increase the stigma around mental health. Also, graphic descriptions, pictures or videos can lead to copycat suicides, which means people study the methods others have committed suicide and imitate that process.

NAMI (National Alliance on Mental Illness) Santa Clara County works to support, educate and advocate for the mentally ill and their families, and also to promote research, reduce stigma surrounding mental health, and to improve services by working with mental health professionals and families.⁴⁷ Some of its education programs include the Family-to-Family Education Program designed for families living with mental illness, NAMI Basics Program for parents and caregivers of minors with mental illness, Peer-to-Peer Program focusing on recovery, Provider Education Program for those whose job revolves around working with the mentally ill or their loved ones and the Peer PALS Program where a trained mentor is paired with someone needing support. NAMI also has support groups for individuals concerned about their loved ones. The staff members we talked to expressed the need to publicize the county hotline more. In the past, NAMI had a partnership with buses that would promote the hotline. However, it is costly to have these types of partnerships. The staff members indicated the need to emphasize gun safety not gun control in order to prevent controversy. They also informed us about the suicide prevention plans of five cities. NAMI staff were able to provide feedback on the suicide prevention hotline. The services that this organization offers are support, education and awareness.

The Santa Clara County Suicide Prevention Strategic Plan was adopted by the Board of Supervisors on August 24, 2010. The primary objective of this plan is to increase public awareness of suicide as a public health problem, promote policies and programs that prevent suicide at local, state, and federal level, and

⁴⁷ About NAMI Santa Clara. (n.d.). Retrieved July 22, 2018, from <http://www.namisantaclara.org/about-nami/>

within different organizations, advocate for changes in legislation and policy and advocate prevention funding.⁴⁸

Cities Palo Alto, Milpitas, Mountain View, Los Gatos, and Morgan Hill also have suicide prevention policies. The Palo Alto Suicide Prevention Policy, established on September 22, 2010, seeks to advance current strategies and best practices as designated by the Suicide Prevention Resource Center, a national agency promoting the national suicide prevention plan, and the California Suicide Prevention Plan. This policy promotes the planning, implementing and evaluating of suicide prevention and intervention strategies and encouraging mental health care. The Palo Alto policy will include training to identify those at risk and how to report suicide threats to the appropriate authorities. This policy seeks to advance current strategies, including parent education, youth outreach, mental health support of students, means reduction, youth mental health screenings, and grief support. The City Manager has a responsibility to establish a crisis intervention plan and procedures to ensure public safety and appropriate communications when a suicide occurs or an attempt is made in Palo Alto. The City Manager will also explore how this policy relates to the city's Emergency Crisis Plan.

The Milpitas Suicide Prevention Policy, adopted on June 19, 2018, advances the current strategies and best practices of the Santa Clara County Behavioral Health Services, National Council for Behavioral Health, NAMI, and World Health Organization. This policy will also educate employees and residents to better understand the causes of suicide, learn the appropriate methods for identifying those at risk and how to report threats of suicide or those showing signs of suicide to the appropriate family members or professional authorities. This policy will extend the strategies of public education, community outreach, mental health screenings, grief support, Mental Health First Aid classes, media response criteria, crisis response plan, mental health and suicide prevention resources. This policy will seek to develop and implement effective and relevant educational programs that promote health emotional and social

⁴⁸ Policy. (n.d.). Retrieved July 26, 2018, from <https://www.sccgov.org/sites/bhd/Services/SP/Pages/SP-Policy.aspx>

development of residents that also addresses the understanding of coping skills, problem-solving skills and resilience as a means of suicide prevention. This policy calls for the development and implementation of a Crisis and Community Communication Plan to ensure public safety as well as the reporting of a suicide or attempted suicide to both the community and the media in a responsible way.

The Mountain View Suicide Prevention Policy, adopted December 7, 2010, provides for employee education, suicide prevention community education, and collaboration with schools and other local and regional organizations to prevent suicide. The anticipated outcomes of this policy include: training city staff to better understand the causes of suicide and learn appropriate methods for identifying those at risk and preventing suicide, promotion of suicide prevention and education concerning available mental health resources, collaboration to advance similar work promoted by local schools and other local and regional organizations, collaboration with Santa Clara County Mental Health Department, and standardizing public information sharing to align with suicide prevention recommended best practices.

The Los Gatos Suicide Prevention Policy, adopted on August 18, 2015, calls for employee education, and for all residents, institutions, businesses to work toward preventing suicides and creating a healthier and safer community.

The Morgan Hill Suicide Prevention Policy indicates that its city staff will work with Morgan Hill Unified School District employees and residents to gain a better understanding about the causes of suicide and to learn appropriate methods for identifying and preventing suicide. This will include training in identifying those at risk and how to report suicide threats to the appropriate familial and professional authorities. This policy advances current evidence-based strategies for public education, community outreach, mental health support, means restriction, mental health screenings, grief support safe messaging trainings with media, developing suicide crisis response plans, and periodic review of relevant data. Currently there is work to get policies from Gilroy, San Jose, and Sunnyvale.

Local Gun Safety Programs and Efforts

Within the Public Health Department, there is a Violence Prevention Program that initiated the East San Jose PEACE (Prevention Efforts Advance Community Equity) Partnership. This program consists of a group of residents and organizations working to prevent and address violence and trauma through comprehensive violence prevention efforts throughout three zip codes (95116, 95122, and 95127).⁴⁹ The goals of the program include decreasing violence and trauma that affects youth, families and the community, advancing relationships and influence equitable economic opportunities and investments. Currently, the PEACE partnership is working on gun safety and violence prevention.

On February 27, 2018 the Board of Supervisors voted 5-0 for a summit addressing gun violence proposed by Supervisor Cortese. The summit was held on April 28, 2018. The issues that were discussed included more extensive background checks for gun buyers, creating safer school campuses and addressing concerns about guns in the possession of people with mental health issues without stigmatizing those individuals. In this summit, firearm suicides were part of the discussion. However, the summit primarily revolved around de-stigmatizing the mentally ill.

On March 6, 2018 the Board of Supervisors voted 5-0 to ban the possession or sale of firearms on county property, including the fairgrounds, which typically hosts two gun shows a year, proposed by Supervisor Yeager.

⁴⁹ Santa Clara County Community Summit on Firearms and Safety Booklet

Methodology

Our research consisted mainly of data analysis, interviews, and online research. We used a data analysis software to examine the demographics of the county firearm suicide decedents. From this, we were able to better understand the demographics of the people who are most vulnerable to firearm suicides.

Our project covers two main issues: reducing access to firearms for individuals thinking of suicide and providing these individuals the resources they need. As a result, we conversed with staff members from various viewpoints. We talked to staff from the Office of the Medical Examiner/Coroner to understand the demographics of the individuals who committed suicide in the county and what occurs after a firearm suicide. We then spoke to the County Suicide Prevention Program and NAMI staff because these two programs are both focused on providing support to the mentally ill. We were able to identify the county resources that are available to the mentally ill. Furthermore, we talked to staff from the District Attorney's Office so we would get a legal perspective of gun safety. Lastly, we talked to staff from the Public Health Department to understand gun safety from a public health perspective.

During each conversation, we asked the interviewees what policies they would like to see implemented in our county. Based on the feedback and input, we then conducted our own research and followed up with additional questions.

Findings

Absence of County Gun Safe Storage Policy

Researchers have found that at least one-third of handguns are stored, loaded and unlocked and that most children know where their parents keep their guns—even if their parents think otherwise.⁵⁰ In a study by Baxley and Miller, among gun-owning parents who reported that their children had never handled their firearms at home, 22% of the children, questioned separately, said that they had. In addition, firearm suicides among youth ages 17 and under commonly involves using the firearms of family members, usually their parents. In 2010, 40% of youth between 15 and 19 years old who had committed suicide did so with a gun.⁵¹

Furthermore, a National Violent Injury Statistics System (NVISS) investigation studied firearm suicides among youths ages 17 and under occurring over a two-year period in four states and two counties found that 82% used a firearm belonging to a family member, usually a parent.⁵² When storage status was noted, about two-thirds of the firearms had been stored unlocked. Among the remaining cases in which the firearms had been locked, the youth knew the combination or where the key was kept or broke into the cabinet.

Therefore, a firearm safe storage policy in the County is essential. This policy may help decrease the amount of youth firearm deaths. Current state law does not include any provisions requiring firearms be stored in the home in a manner that might deter or prevent theft. So far, only San Jose, Sunnyvale and San Francisco have safe storage policies.

⁵⁰ Giffords Law Center's Annual Gun Law Scorecard. (n.d.). Retrieved August 5, 2018, from <http://lawcenter.giffords.org/scorecard/>

⁵¹ Ibid.

⁵² Youth Access to Firearms. (2013, January 09). Retrieved from <https://www.hsph.harvard.edu/means-matter/means-matter/youth-access/>

The San Jose ordinance requires gun owners to store firearms in a locked container or disabled with a trigger lock in their homes upon leaving their residences.

Ordinance no. 3027-13 from the city of Sunnyvale indicates that Sunnyvale has a slightly different version of a safe storage policy. Sunnyvale requires the firearm to be locked up or disabled with a trigger lock when not carried on the owner's person or in his or her immediate control and possession.

San Francisco's safe storage policy requires handguns to be either stored in a locked container or secured with a trigger lock when they are not carried by the owner. The National Rifle Association and individual plaintiffs sued in federal court to overturn San Francisco's safe storage law on Second Amendment grounds. The ordinance was upheld by both the district court and Ninth Circuit Court of Appeals because it does not prohibit a person from carrying an unlocked/loaded gun, and the safely stored gun can be accessed from a safe or enabled within a few seconds, therefore not placing a burden on the Second Amendment rights.

Out of these three safe storage policies, San Jose's policy seems to be the most reasonable. It can be difficult for the courts to determine whether a firearm is in the owner's "immediate control and possession," which is a part of Sunnyvale's policy. San Francisco's policy may increase the number of residents wearing weapons on their person when inside their homes, which poses a concern for the safety of police officers, firefighters, and others who might respond to the home during a public safety or medical emergency as well as other situations. Encouraging firearms owners to carry presumably loaded weapons on their persons at all times is likely to increase risks to county staff as well as neighboring residents and family members.⁵³

⁵³ San Jose Safe Firearm Safe Storage Ordinance

Importance of Public Outreach in Gun Stores

In 2011, the New Hampshire Firearm Safety Coalition (NHFSC) distributed posters and brochures to 67 retail gun shops in the state. In 2009 former gun shop owner Ralph Demicco was informed by NHFSC that three people in a space of six days purchased a gun and took their lives in his store. Therefore, Demicco decided to help with the Gun Shop Project. Demicco interviewed and asked gun shop owners if they were willing to participate in a program to hang posters in their shops and give out suicide awareness cards. The goal was to encourage customers to become alert to signs of crisis in friends or household members. About half (48%) of all New Hampshire gun shops are displaying suicide prevention materials, either brochures, posters, hotline cards or all three.⁵⁴

Similarly, Vermont has a gun shop project that partners with the VT Department of Mental Health, the VT Suicide Prevention Center, a program of the Center for Health and Learning, the VT Suicide Prevention Coalition, leading organizations in the firearm owners' community, the Vermont Federation of Sportsmen Clubs, Inc., and Gun Owners of Vermont. They distribute materials to gun shops and ranges. Nearly half of all Vermont households have at least one gun.

Currently, Santa Clara County does not have a gun shop project where gun shops would be required to have posters and brochures about GVROs and resources available for people with suicidal ideations. The County Behavioral Health Department does distribute brochures and posters in local gun shops with these types of information. However, the Behavioral Health Department is having difficulty reaching many gun stores due to the lack of staff members in charge of distributing these resources, and so far they have reached out to five gun shops.

⁵⁴ Training in Suicide Prevention, Intervention and Postvention. (n.d.). Retrieved August 6, 2018, from <http://www.theconnectprogram.org/>

Insufficient Awareness of GVROs

This year, the Santa Clara County District Attorney's Office began a campaign to increase the use of Gun Violence Restraining Orders (GVROs) in the County and beyond. Because the California GVRO law is new, there is very little data in California that tracks the correlation between GVROs and reduction in gun violence. However, there is data for Connecticut's risk-warrant law.

In the first 14 years of Connecticut's risk-warrant law (1999-2013) there were 762 risk-warrants issued, with an increasing frequency after the 2007 Virginia Tech shooting.⁵⁵ Police found firearms in 99% of cases and removed an average of seven guns per subject.⁵⁶ Research shows for every 10-20 risk-warrant issued, one life is saved.⁵⁷

Fewer than 200 gun restraining orders were issued statewide and only 11 were issued in Santa Clara County throughout 2016 and 2017 (Figure 8). More people need to be aware of gun violence restraining orders because these can save lives. Even though GVROs were issued in the County, efficient tracking systems are not in place to determine if the GVROs are effective and if there is more that needs to be done to make them more effective and save lives.

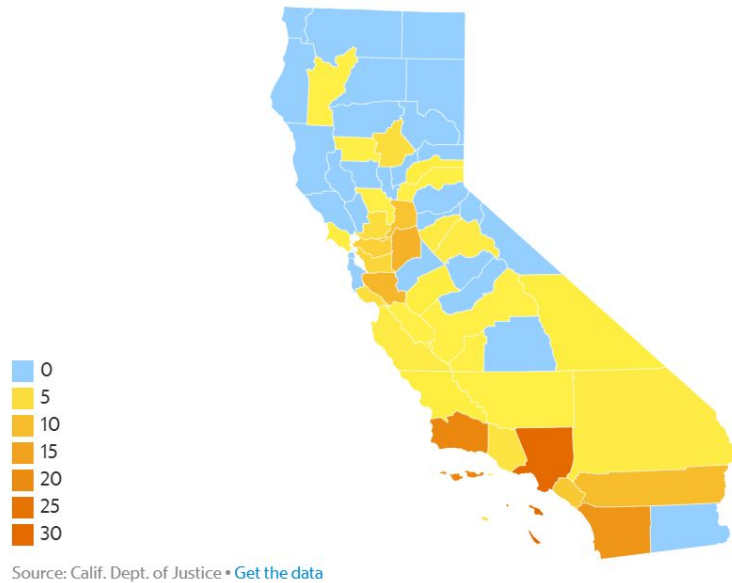
⁵⁵ Ibid., p 26.

⁵⁶ Ibid.

⁵⁷ Ibid.

Figure 8: Gun Violence Restraining Orders Issued in 2016 and 2017 ⁵⁸

Gun violence restraining orders were issued in 32 counties in the first two years of their existence in California. Number issued by county in 2016 and 2017:



⁵⁸ Koseff, A. (n.d.). 'Best tool' to prevent gun violence is rarely used in California. Retrieved August 5, 2018, from <https://www.sacbee.com/latest-news/article206994229.html>

Policy Recommendations

County of Santa Clara Board of Supervisors should consider adopting a firearm safe storage policy. Adopting a countywide safe storage policy would result in minimal added workload to officers since a violation of this ordinance would not be known unless law enforcement was called to a home on a report of a burglary, or officers recover a firearm after it has been used in a crime, or the firearm is owned by someone other than the owner and it becomes clear that the firearm had been stolen or lost. Santa Clara County Board of Supervisors can adopt a firearm safe storage policy similar to that of San Jose. Implementing a countywide safe storage policy can decrease the number of firearm theft, therefore decreasing the likelihood of children, teenagers, individuals who suffer from mental health issues, and persons subject to gun violence restraining orders from accessing firearms and ending their lives. Although implementing a countywide safe storage policy would only affect the people living in unincorporated areas, this policy can serve as a model to cities who do not already have a safe storage policy in place. Santa Clara County can even partner up with cities currently without safe storage policies to establish greater influence.

Santa Clara County should implement a Gun Shop Project, requiring gun shops to have posters and brochures to gun stores. These posters and brochures would provide websites, phone numbers such as the county suicide hotline, places to go to for people who are contemplating suicide and information on how to obtain a Gun Violence Restraining Order. People who go to a gun shop purchasing a gun with the intention of taking their lives may not know what resources are available to them, and the posters and brochures can inform them of the County resources.

Santa Clara County should enhance targeted outreach to populations more vulnerable to suicide. Since most of the people who end their lives are older Caucasian males, Santa Clara County can provide brochures or posters about Gun Violence Restraining Orders or provide trainings to help people observe warning

signs in senior facilities. This way, senior facility residents will be prepared to intervene if their friends, who may be around the same age, show signs of suicide.

Santa Clara County should study the effects of GVROs in the county.

The County of Santa Clara should collect data on whether a GVRO was obtained, the type of GVRO, how long it was in place, and if it was effective. From this data, the County would be able to determine whether GVROs were effective in preventing suicides and if additional efforts need to be employed to make the GVROs more effective.

Conclusion

Firearm suicide is a serious issue within Santa Clara County, occurring across all ethnic, economic, social and age boundaries. Because suicide often occurs on impulse and firearm is a very lethal method of suicide, many firearm suicide attempters do not receive a second chance at life. Suicide should never be the only option for an individual, and more must be done to reduce access to lethal means and raise awareness about the resources available. Implementing a county wide safe storage policy, placing brochures or posters with resources in gun shops and senior facilities and providing trainings in gun shops may help curb this problem.

Acknowledgements

In the ten weeks of research, we would like to thank all the county staff and partners who participated in our interviews and readily provided us with additional information. We would like to especially thank Supervisor Cindy Chavez for providing us with this wonderful opportunity to conduct and share our work. Below are specific individuals who aided our research:

- Supervisor Cindy Chavez
- Maja Marjanovic
- Rosa Vega
- Mego Lien
- Marisa McKeown
- Kathy Forward
- Victor Ojakian
- Analilia Garcia

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ORDINANCE NO. 290, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL, ADDING CHAPTER 7 TO TITLE IV OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, WHICH CHAPTER REGULATES THE POSSESSION AND USE OF WEAPONS, AND PROVIDES PENALTIES FOR VIOLATIONS THEREOF.

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

SECTION A. ADDING A NEW CHAPTER REGULATING THE POSSESSION AND USE OF WEAPONS.

The following provisions hereby are enacted as new law and added as Chapter 7 of Title IV of the Municipal Code of the City of Morgan Hill and shall be numbered and read as follows:

Section 1 Unlawful to Discharge Guns and Other Devices

No person shall discharge in the City any instrument or device of any kind, character or description which throws, discharges, propels or hurls bullets or missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, or explosive force, without first having applied for and obtained a written permit therefor from the Chief of Police. Subject to review by and as specifically directed by the Council, the Chief of Police shall be the sole judge as to the desirability or necessity for issuing such permit which must be, in his judgment, for the protection of the applicant or in furtherance of the public welfare. The Chief of Police may also issue permits to hunt in sparsely populated areas within the City, when he is satisfied that in so doing it will not, in any way, endanger persons, animals or buildings and improvements. Such permits shall be issued upon payment of a fee of One Dollar (\$1.00) and shall be upon such conditions and for such length of time as the Chief of Police may determine.

Section 2 Notice of Sale of Weapons

Any person or business establishment engaged in the business of offering for sale any instrument or device described in Section 1 of this Chapter shall have posted in a conspicuous place in the place of sale a copy of this Chapter and shall deliver a copy of this Chapter to any purchaser of such instrument or device.

Section 3 Confiscation and Penalties

IV-7-3.01

Any instrument, device or article used or possessed in violation of the provisions of this Chapter is hereby declared to be a public nuisance and may be confiscated and possessed by a police officer of the City and turned over to the Chief of Police under the conditions set forth in this Section. If no complaint for violation of this Chapter is filed with-

any conditions. If there is a conviction and 60 days have expired since the date of conviction, the same may be destroyed by the Chief of Police or returned to the person from whom it was taken upon such conditions as the Chief deems reasonable for the public welfare.

IV-7-3.02

Any person violating or causing or permitting to be violated the provisions of any section of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$500.00 or by imprisonment in the County jail not exceeding six months or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and be punishable as such hereunder.

Section 4 Severability

Each of the Sections, Clauses and other provisions of this Chapter is hereby declared to be severable, and if any provisions shall be declared to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter which shall remain in full force and effect.

This Ordinance was re-introduced for first reading at a meeting of the City Council of the City of Morgan Hill held on the second day of December, 1970. It was finally adopted at a meeting of said City Council held on the 16th day of December, 1970, and said Ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCILMEN: Castle, Days, Galvan, Leonetti & Yinger

NOES: COUNCILMEN: None

ABSENT COUNCILMEN: None APPROVED:

ATTEST



Mayor of the City of Morgan Hill



M. W. SOARES, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MADGE W. SOARES, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 290, New Series, of the City Council of the City

Michelle Bigelow

From: MICHAEL BROOKMAN <mfbrookman@prodigy.net>
Sent: Tuesday, October 2, 2018 9:53 AM
To: Maureen Tobin
Subject: Draft Anti Gun Ordinance

Hi, Maureen! Ordinance looks good, except that this will include Nerf guns, air soft guns, paintball guns, bows and arrows, crossbows. It might sound ridiculous, but the wording could be interpreted to include squirt guns like Super Soakers. It certainly includes automatic pitching and tennis ball machines! Was it the council's intention to be this vague? I can see it leading to reasonable challenge in court. I don't want to sound nitpicking, but this is codified law and should be more meticulous. My two cents worth. Thanks! Michael Brookman
408.666.3231

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Ben C <ben.c109@yahoo.com>
Sent: Tuesday, October 2, 2018 1:12 PM
To: Maureen Tobin
Subject: Draft Anti Gun Violence Ordinance

Dear Ms. Tobin and all city council members,

These new proposed ordinances, although sound good, that's just it that's all they do is sound good. If you're solely just trying to make a statement against gun violence, mission accomplished. These are all current laws of the state of California. How they stop or decrease "gun violence" is yet to be seen. Why waste time having meetings and sending emails about these already current laws imposed on us that do no good. Maybe instead we should be talking about how we will stop an active shooter situation at our children's schools. Are proper measures being put into place to protect the future generations? Banning guns and certain ammo amounts in magazines doesn't help but only makes us more susceptible to being attacked and becoming victims ourselves. How about community outreach for the troubled youth that are committing these atrocities. Or gun safety programs because as they say an armed society is a polite society. We are the only ones that can put a stop to violence and sometimes violence needs to be implemented to stop violence. But before we reach that point if we can all come together as a community and embrace the outcast the troubled or violent person and rehabilitate them into our community where they have a place and a purpose then and only then will we truly know peace. So in closing statement new laws that are currently in place really don't help progress. Instead let us be the forefront of something more innovative that will be a demonstration of ideas new and old coming together for the benefit of all.

Sincerely
Ben Corpuz

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: John Hogan <jwhogan@charter.net>
Sent: Tuesday, October 2, 2018 10:40 AM
To: Maureen Tobin
Subject: Draft Gun Violence Ordinance

Dear Ms. Tobin,

I would like to respectfully voice my disagreement with the proposed ordinance. I do not think there is a pressing gun violence issue within Morgan Hill and this ordinance appears to be a solution in search of a problem.

The discharge permit fee, especially the requirement for 1 million dollars of insurance, is an onerous requirement that will prevent citizens from lawfully discharging firearms on their property. For example, sometimes citizens with property damage due to wild pigs or other animals will get a depredation permit from the sheriff. This ordinance will prevent any property owner from reducing crop or property damage.

The ban of 30 round magazines was already covered by Proposition 63 from 2016. This ordinance only opens up Morgan Hill to expensive litigation as it has been proven in multiple courts of law that local municipalities cannot supersede state or federal law. Most likely this ordinance cannot stand on its own after Morgan Hill has wasted money in courts.

California already has some of the strictest gun purchase and ownership requirements in the United States. There is nothing that this ordinance will do to reduce crime in Morgan Hill. The only people who will follow it are those law-abiding citizens who would not commit a crime anyway. This does nothing to deter those with criminal intent or the mentally deranged.

A better ordinance would give concerned citizens the opportunity to report people who may be a threat to public safety. There could be a temporary restraining order on the possession of guns until a thorough investigation can be conducted. This is common sense reform and could have prevented a number of shootings including the Parkland shooting.

I hope that the city council can reject this ordinance and instead focus on fixing pressing issues for Morgan Hill.

Thank you for reading my letter.

John Hogan
jwhogan@charter.net

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Ginger Burrell <ginger@rkg.com>
Sent: Tuesday, October 2, 2018 10:39 AM
To: Maureen Tobin
Subject: Feedback on Draft Firearms Ordinance

Ms. Tobin,

Thank you for the opportunity to comment on Morgan Hill's Draft Firearms Ordinance. I am glad to see the many protections included in the Ordinance, but I am wondering why the storage of firearms by licensed dealers was removed? These seem like common sense requirements and seem fair to expect of a dealer if they wish to do business in our city. In my opinion the Storage of Firearms provision should be restored.

Thank you.

~Ginger Burrell

17380 Pineau Court
Morgan Hill, CA 95037

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: JOHN KRACHT <krachtjohn@yahoo.com>
Sent: Tuesday, October 2, 2018 11:54 AM
To: Maureen Tobin
Subject: Firearms Ord.

Maureen,

What **municipal** statistics justify this adjustment? It really appears to be a kneejerk reaction to the national news cycles about the Vegas shooting a year ago. There are lots of state and county laws and regulations. If you are going to add more and more restrictions you should be able to cite the **local** misconduct, by case number preferably, that would support such a belt-tightening. Or is this some sort of 'resistance ' protest of the Trump administration?

John Kracht
16460 Rustling Oak Court

[Sent from Yahoo Mail for iPad](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Angela White <awhite@apr.com>
Sent: Tuesday, October 2, 2018 11:32 AM
To: Maureen Tobin
Subject: Gun Control Ordinance

Hello Ms. Tobin,

I will start with: I am not a gun owner myself personally, nor anyone in my family owns a gun to my knowledge.

I have concerns with this Gun Violence Ordinance on several issues.

9.04.010

A. This measure is not about gun violence, this includes words like propel, hurl, missiles, means of elastic force, air pressure, vacuum etc. I object to the scope of restriction as this comes across as very controlling of items that are not considered guns. This addresses penalties for those that experiment with elastic power and other scientific means and has no place in a gun violence ordinance. This is not common sense; this is public restrictive and I am not in favor of more restrictions of individuals rights because in this wacky leftist world I can see this being used against regular citizens. If you are trying to stop someone using a multi magazine weapon, then lets stay on target. This is far too broad and I am concerned that government authority overreach will be used against regular citizens just doing their thing.

C. Proof of Liability of \$1M is excessive. Once again, an overreach of government power.

9.04.050

This doesn't make sense. First, someone who is a criminal is not going to let you know they have large capacity magazines. It's just not going to happen. Any criminal, as evidenced with other cities that have strict gun control, does not follow laws to begin with. If the government discovers these large capacity magazines you are giving them 90 days to get rid of them.

Who is writing these ridiculous laws? Criminals do crimes, criminals do not follow laws. None of these items in the Gun Violence Ordinance will stop any of those illicit crimes.

I am not a gun owner. My 6 adult children do not own guns nor do they want to. A criminal is not going to follow your laws. Why not spend money on serving the psychological needs of children in middle school and high school instead of chasing superfluous laws. There is no evidence anywhere that enacting stricter gun control stops crime.

I am against you spending money and efforts in enacting laws that do nothing.

Sincerely,

Angela White

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Angela White, SRES

Alain Pinel Realtors Saratoga

408.821.6492

email: awhite@apr.com

website: www.apr.com/awhite

CalBRE# 01023792

When forwarding documents provided by others "I HAVE NOT AND WILL NOT VERIFY OR INVESTIGATE ANY INFORMATION SUPPLIED BY OTHERS".

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Jim <jim@jnkrause.com>
Sent: Tuesday, October 2, 2018 12:40 PM
To: Maureen Tobin
Cc: jim@jnkrause.com
Subject: gun control ordinance

Importance: High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: ken klamm <klamm869@gmail.com>
Sent: Tuesday, October 2, 2018 10:03 AM
To: Maureen Tobin
Subject: Gun Control

I think we can all agree the gun laws are subject to interpretation that is a long standing problem with an argument that is going nowhere.

Instead of fighting it, I suggest embracing guns and instead have a trained professional in gun safety teach how to use, disarm, and responsibility of guns to our children in schools.

I have 3 children in 3 different schools in Morgan Hill and heard about a voluntary class being taught in Michigan and it was so demanding they had to open multiple classes for students and parents a like to attend.

Sincerely

Ken Klamm
317.440.5985
klamm869@gmail.com

Michelle Bigelow

From: Anna Chase <gochaseanna@yahoo.com>
Sent: Tuesday, October 2, 2018 3:13 PM
To: Maureen Tobin
Subject: Gun law

So do I have this right ? A law abiding citizen like myself needs a permit and a million dollar insurance to have a gun in my home to protect my family and home? What about the criminals??? I doubt if they are going to get a permit to come in and harm my family and property!!!!!! This is ridiculous UnAmerican Anna Chase

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Allen Picchi <allenpicchi@msn.com>
Sent: Tuesday, October 2, 2018 12:44 PM
To: Maureen Tobin
Subject: Gun Violence Ordinance

To Whom It Concerns,

What specifically, are you trying to achieve with this ordinance update. What problem are you trying to solve...

I am not in favor, nor do I support the text surrounding Section 9.04.050 Section B, regarding high capacity magazines that are in peoples' possession prior to the passing of California gun laws. Specifically, I would like to see the removal of #1&2 text.

Additionally, I would like to see text surrounding forfeiture and prosecution of those in possession of theses magazines removed from the ordinance, regardless of whether smaller capacity magazines are available or not.

I am also not in favor of expecting residences who obtain a permit to also obtain liability insurance.

Allen Picchi

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Leah Quenelle <lquenelle@hotmail.com>
Sent: Tuesday, October 2, 2018 2:31 PM
To: Maureen Tobin
Subject: gun Violence ordinance

Hello Ms. Tobin,

I was just wondering why the precautions regarding the storage of guns at a gun dealership were struck from the ordinance? Were they deemed redundant? I always wonder about that issue when I go by Lokey Firearms!

Thanks for your time and for being open to public comment.

Leah Quenelle

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: pierce@twinforces.com
Sent: Tuesday, October 2, 2018 12:09 PM
To: Maureen Tobin
Subject: IF common-sense were common...

We wouldn't need lawyers. The road to hell is paved with good intentions, and this nonsense of an ordinance has just made me a die hard opponent of this measure, despite the fact that I'm not a gun owner myself, just an engineer that dislikes stupid.

Ok, so 9.04.010 is going to make rubber bands and paint ball guns illegal because it's so broad. Oh and nail guns. Good luck getting your roof fixed. Plus I suppose you would have to preemptively get the permit and pay your \$25 before discharging your rubber band, I'll get right on that. Oh and the chief of police has to review each permit? well that's one way to boost those "Coffee with a Cop" things.

9.04.040 would basically make the gun inaccessible for home defense, i.e. you can't keep it in your dresser drawer.

The large capacity magazine ban is either redundant to the state ban, or unconstitutional depending on how the court decides, since the injunction against the state ban is in place, seems stupid to try to do it again at the municipal level.

Oh, and the cops can confiscate my rubber bands at any time?

I'm not a gun owner, but nonsense like this makes me think I should buy a bunch of them and move to Montana...

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Andy Francke <afrancke@gmail.com>
Sent: Tuesday, October 2, 2018 3:29 PM
To: Maureen Tobin
Subject: Input on Draft Anti-Gun Violence Ordinance

At a high level, I disagree with all of the actions the city council wishes to take. Philosophically, the idea that "we must do something - so anything will do" is a terrible place from which to legislate, and it's to the detriment of the City (following the State's example) that it wastes its own and the public's time on measures that are already adequately addressed elsewhere in the law.

California law *already requires* individuals to report thefts to local law enforcement. This law may evolve over time. Let's not waste the city's time on trying to keep up with that - and if that law is deemed improper by some court, why then let's not expose the city to litigating the same matter. There is no evidence that Morgan Hill is a hotbed of straw purchasing activity that would warrant special local handling of this matter.

California *already makes it a crime* to leave guns in an operable state where children can access them. "Locked container" as used in state regulations is not a safe or other child-proof system - it can be as broad as a bag with a padlock on it (which children could easily cut through with scissors). Morgan Hill does not need an independent set of regulations in this area.

"Large capacity" magazine possession *is already banned* by the state. There is no need to re-ban them - unless it is a purely symbolic gesture (I don't believe you are proposing to go door-to-door collecting them, and historically such bans have not resulted in anything but modest turn-in rates). Mostly this is about the ability to confiscate magazines when found in the possession of someone the police are already investigating for some other crime, and I would suggest the police already do a great job of hanging onto nearly anything they want that they've collected at a crime scene.

Finally there's the issue of exemptions for "peace officers." Why would we exempt the police from "safe" storage requirements or gun theft reporting? Police have children in their households, too, and one might argue are at more risk for loss given their names and addresses are public information.

There are many other things the City might occupy itself with - re-legislating (and at the risk of litigating in future) that which has already been established at the state level makes nobody in Morgan Hill safer, and isn't that what the point of this work was to be about?

Andy Francke
 Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Kirk Borovick <kirk_borovick@yahoo.com>
Sent: Tuesday, October 2, 2018 10:52 AM
To: Maureen Tobin
Subject: Anti Gun Violence Ordinance

Am I reading this correctly that based on this ordinance that is not going to be illegal to fire a BB Gun or a bow an arrow without a permit and in order to get a permit I need a million dollars insurance policy per person on the premises.

Do I have this correct?

Please let me know when I also need to turn in my kitchen knives.

Please let me know how to partition against this. I believe in common sense gun laws like the 30 day wait period. I don't believe not letting my kid target practice with a BB gun or a bow and arrow is common sense but fear based laws.

Thanks for your time.

Kirk Borovick
kirk_borovick@yahoo.com

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Chris McKie <chris@safersecond.org>
Sent: Tuesday, October 2, 2018 10:11 AM
To: Maureen Tobin
Subject: Anti Gun Violence Ordinance Support

Hi Maureen. I am the Executive Director of a new nonprofit, A Safer Second, whose mission is to support Second Amendment tenets balanced by much needed common sense initiatives that improve public safety and aid law enforcement.

Currently I'm in Washington D.C., but I live in Morgan Hill, and am very pleased to see the city move forward on an anti gun violence ordinance.

After reading the draft, which I like, especially the portion prohibiting large magazines, I'd like to see if there has been any interest or support in adding a section that also bans bump stocks - a modification that turns a gun into a machine gun like weapon of mass murder?

I will be back in Morgan Hill on Friday, Oct 5th and would be more than happy to help in any way to see this ordinance pass. If there is anything our organization can do, please let me know.

Sincerely,
Chris McKie

Chris@SaferSecond.org
www.SaferSecond.org
408-630-9843

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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Bill Moher <bmoher@sbcglobal.net>
Sent: Tuesday, October 2, 2018 3:26 PM
To: Maureen Tobin
Subject: Anti Gun Violence Ordinance

Maureen,

This proposed ordinance sounds a lot like the proverb "The road to hell is paved with good intentions."

The motivation for this ordinance is good and well intended. It would make Morgan Hill a caring, good city. However, what is the budget cost of feeling good? Who will enforce this ordinance, the Police Department and how will it be accomplished? Also has the budget cost of defending this ordinance been evaluated? It will surely be challenged in the courts up to and including the federal court system.

Were the city council to pass this ordinance, however written, I feel the individual Council members could feel the heat, so to speak, at the polls at the next election.

My suggestion if the City intends to move forward on this issue would be to place this issue on the ballot during a general election with pre-election "for" and "against" statements communicated for voter review.

Consider that Morgan Hill has had an ordinance for some time prohibiting the placement of basketball and other sports equipment on city streets for personnel and driving safety purposes. While the Police Department can visibly observe sports equipment from police vehicles, this ordinance for all intent and purposes is enforced only when individual residents complains to the City.

My point is don't pass an ordinance you don't intend to fully enforce and/or cannot afford from a City budget standpoint to enforce.

Bill Moher

1635 Martinez Way
Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: robertbobwolford@aol.com
Sent: Tuesday, October 2, 2018 11:48 AM
To: Maureen Tobin
Subject: Anti-Gun Violence ordinance

I have read the purposed ordinance, and I didn't see any consequences, fines, jail time, or teeth in the ordinance to punish an offender.

If your thinking is that people will willingly go along with this ordinance without any penalty for disobedience, you are delusional.

Only law abiding citizens will obey this ordinance. Criminals will ignore this. That's why they are called criminals. Only stop and frisk will partially find criminals carrying weapons. This however, is not politically correct. So, we will pay the consequences.

Without any penalty or consequence, criminals will be repeat offenders.

This appears to be a "feel good" ordinance so the city council members and other city officials can say, " see, we are doing something", continue to vote for me.

Thank you for the opportunity to express myself.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Darcy Foster <fosterd@mhusd.org>
Sent: Tuesday, October 2, 2018 11:11 AM
To: Maureen Tobin
Subject: Anti-Gun Violence

I support the draft ordinance to curtail potential threats through tighter provisions of the law. (Yes, I even read the whole thing!)

Darcy Foster
Spanish & World History Teacher fosterd@mhusd.org

Advisor to clubs: Key Club International; Reach Out and She's the First

CFT Safe & Non-Violent Schools Committee

Live Oak High School: **A California Gold Ribbon School**

1505 E. Main Street
Morgan Hill, CA 95037
1.408.201.6100 x 40238

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Daniel Carlile <daniellcarlile@yahoo.com>
Sent: Tuesday, October 2, 2018 10:48 AM
To: Maureen Tobin
Subject: Anti-gun

I am in favor of anti-gun laws!!!

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: D. Muirhead <doug.muirhead@stanfordalumni.org>
Sent: Tuesday, October 2, 2018 11:48 AM
To: Maureen Tobin
Cc: Rene Spring
Subject: comment on draft projectile ordinance

This ordinance claims to deal with
 FIREARMS STORAGE, REQUIRE THE REPORTING OF
 FIREARMS THEFT, AND PROHIBIT LARGE CAPACITY MAGAZINES

It is actually government overreach, lacks due process protections, and denies a valid application through unreasonable requirements.

1) Government overreach

[Text] 9.04.010 - Discharge--Permit required--Fee.

A. ... any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge ...

[comment]

While ostensibly dealing with "firearms", this also includes devices that I played with as a child and as an adult: peashooter, slingshot, BB gun, and crossbow.

2) Lacks due process protections

[Text] 9.04.010 - Discharge--Permit required--Fee.

B. Subject to review by and as specifically directed by the council, the chief of police shall be the sole judge as to the desirability or necessity of such permit ...

[comment]

I see an arbitrary decision by an appointed City official with no documentation and no appeals process.

3) Denies a valid application through unreasonable requirements [Text] 9.04.010 - Discharge--Permit required--Fee.

C. Applicants for such permit shall provide the following:

2. Proof of liability insurance in the amount of one million dollars per occurrence

[comment] Justify that \$1M is not just another hurdle used to deny a valid application.

4) Wrong year

SECTION 3. Effective Date;

[text] 2017

[comment] 2018

City clerk certification

[text] 2016

[comment] 2018

Michelle Bigelow

From: Art Cohen <alouis7@gmail.com>
Sent: Tuesday, October 2, 2018 2:54 PM
To: Maureen Tobin
Subject: re: Draft Anti Gun Violence Ordinance

Hi Maureen:

I'm writing to let you know that I support the Anti Gun Violence Ordinance being proposed.

Regards,

-Art

1090 W. Dunne. Ave.

Morgan Hill, CA 95037

--

This message including its enclosures contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not the addressee, or the person responsible for delivering it to the addressee, you are hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message and its enclosures immediately thereafter. Thank you.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: afroumis <afroumis@aol.com>
Sent: Tuesday, October 2, 2018 12:57 PM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

I am strongly in favor of anti violence initiatives but also support the right to bear arms, as the constitution advocates. Being a Vietnam veteran, I support our rights to defend ourselves. There is no place for gun violence and senseless attacks. As long as criminals have guns, I want the ability to defend my family and loved ones!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: City of Morgan Hill <maureen.tobin@morganhill.ca.gov>
Date: 10/2/18 9:31 AM (GMT-08:00)
To: afroumis@aol.com
Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance



Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part of the draft ordinance from the beginning, the ~~strikeout~~ is what is proposed to be deleted and language in the italics is what is currently proposed to be added.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

Company Name | Phone | Address | Website



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Michelle Bigelow

From: fam.grzan@charter.net
Sent: Tuesday, October 2, 2018 12:48 PM
To: Maureen Tobin
Subject: RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

I do not find the Ordinance sufficient. It is vague and ambiguous.

Section

"9.04.010 - Discharge—Permit required—Fee. A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.

1. The term fire arm is not mentioned
2. Too ambiguous
 - a. The term discharge is not defined, and used twice with two different meanings in the same sentence.
 - b. According to this even a "nerf gun" would require a permit.
 - c. According to this even a "play bow and arrow" would require a permit.
 - d. A spit ball blown out of a straw would require a permit
 - e. A home made sling shot would require a permit?
 - f. What is a licensed shooting range? Who licensed?
3. It is only the Police Chief who can approve or can it be a designated official
4. How long does the police chief have to approve. Weeks, months, years?
5. What is the public's recourse if the chef does not approve or approve in a timely manner
6. Chief may approve a lifetime?
7. The permit is not subject to renewal?
8. Where is fire arm defined? Why is it not listed in section 9.04.010?
9. Why a million dollars per occurrence?
10. If my hand held potato discharge device is lost or stolen, I do not have to report it as it is not a fire arm?

Anything other than a firearm that can cause harm does not have to reported if lost or stolen.

Mark Grzan
 680 Alamo Drive
 Morgan Hill, CA 95037
 408.778.7816
fam.grzan@charter.net

From: City of Morgan Hill <maureen@mhcrc.ccsend.com> **On Behalf Of** City of Morgan Hill

Sent: Tuesday, October 2, 2018 9:31 AM

To: fam.grzan@charter.net

Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance



Provide Your Input on the Draft Anti Gun Violence Ordinance

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Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

-

Company Name | Phone | Address | Website

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

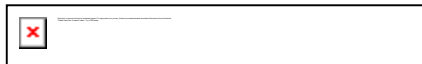


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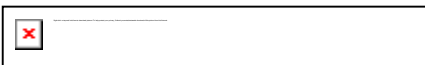
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: John Weberg <grizzlyau@gmail.com>
Sent: Tuesday, October 2, 2018 12:24 PM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

This is an absolute idiotic ban - this will not stop any criminal from doing what they are going to do - The only people you are hurting is the community - Cities such as Chicago which have the toughest gun laws in the country have the most gun violence. this is not the answer. Enforce our current gun laws, especially the ones dealing with mental instability and get the medical community to do what they are supposed to in working with the FBI and the current back ground checking to ensure that these people do not have access to the guns. The Criminals are not going to abide by this. This is just another attack on our right to bear arms.

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



Provide Your Input on the Draft Anti Gun Violence Ordinance

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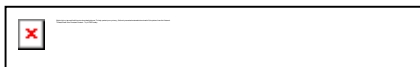


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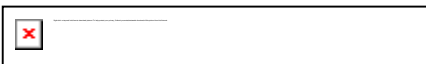
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Jim Sergi <jimsergi@gmail.com>
Sent: Tuesday, October 2, 2018 12:04 PM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Stupid

On Tue, Oct 2, 2018, 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

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Company Name | Phone | Address | Website



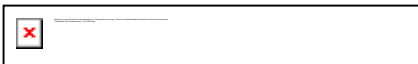
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Michelle Bigelow

From: Aragon, Lisa <Lisa.Aragon@anritsu.com>
Sent: Tuesday, October 2, 2018 11:59 AM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hi Maureen,
 I'd like to submit a feedback to the proposed ordinance.

I appreciate the effort the City of Morgan Hill is attempting to help ensure a safe environment. However, I think the actions in this ordinance are somewhat misdirected. I believe an Ordinance as stated in the Title 9 "Public Peace, Morals and Welfare". Should have more specific actions towards People and their abuse (or lack of) Morals and Welfare of others. Nothing in this ordinance related to holding the public responsible for their poor choices, bad behaviors, lack or morals that affect the welfare of the community. I think there is room for improvement.

If I understand the "Discharge Permit" section, a permit for purposely discharging a firearm would be required. How does this work in conjunction with the Santa Clara County Concealed Carry Weapons (CCW) Permit? If someone has a CCW, then it seems they should already have the proper documentation/permit to discharge. Is this statement indicating that anyone with CCW Permit also has to obtain a Morgan Hill Discharge Permit? The county permit for CCW should overrule and be the only permit necessary. Can this be clarified and if necessary, a statement to the exception be added. Exception statement being "E. Exception provided to Santa Clara Country Issued Concealed Carry Weapons (CCW) Permit holders". Otherwise, it's redundant and just added bureaucracy.

In addition, I'm not clear what the intended purpose of the section is – to keep farmers from shooting coyotes? To keep bad-guys from shooting a hand-gun during New Year's celebration? An ordinance like this is not going to have bad-guys obtain permits, but it will require the good-guys (people who need to discharge under normal circumstances) to get permits. This seems to be bureaucracy for bureaucracy sake.

Why does the City need the Ordinance on banning large-capacity ammunition magazines when it is already a State Law?

Senate Bill 1446, is one of several gun-related bills passed by the California Legislature and signed into law by Gov. Jerry Brown in 2016.

While lawmakers in 1999 prohibited the sale, manufacture or importation of high-capacity ammunition magazines – but let those who owned them before that point keep them – SB 1446 forced gun-owners with "grandfathered" magazines to turn them in for destruction by July 1, 2017, or face legal consequences. In November 2016, voters also passed the corresponding Proposition 63, which requires anyone who owns a large-capacity magazine to do one of three things: move it out of state, sell it to a licensed firearms dealer, or surrender it to a law enforcement agency to be destroyed. It seems like if there is a State Law, an Ordinance is not needed.

Thank you.

Kind Regards,

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

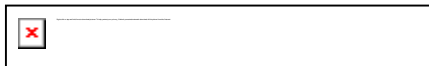
Lisa Aragon

From: City of Morgan Hill [mailto:maureen@mhcrc.ccsend.com] **On Behalf Of** City of Morgan Hill

Sent: Tuesday, October 2, 2018 9:31 AM

To: Aragon, Lisa <Lisa.Aragon@anritsu.com>

Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance



Provide Your Input on the Draft Anti Gun Violence Ordinance

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Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

-

Company Name | Phone | Address | Website



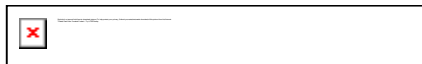
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Michelle Bigelow

From: B. Kakunda <bkakunda@yahoo.com>
Sent: Tuesday, October 2, 2018 1:51 PM
To: Maureen Tobin; Bassam Khoury; Andrew Kakunda
Subject: Input on the Draft Anti Gun Violence Ordinance

Hi Maureen,

The following are my comments on the subject.

Although I have no need to have a pellet gun, sling shot, or anything like that I feel that the draft ordinance goes too far. For someone who has a problem with pests in his own backyard and wants to use any of these devices I think he should be free to do so without having to get a permit from the police and be required to have \$1000,000 of insurance per occurrence and pay a \$25 fee.

If someone uses a pellet gun for example and breaks his neighbor's window, there are laws that already remedy this and he will be financially responsible.

I am all for reasonable gun control but this measure goes too far!

Bishara Kakunda

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michael Dean <mcdean123@gmail.com>
Sent: Tuesday, October 2, 2018 11:20 AM
To: Maureen Tobin
Subject: Potential issues with anti gun violence ordinance

Hi Maureen,

Looking through the draft of the anti gun violence ordinance I see some issues that you may not be aware of.

9.04.010 (A) as worded makes Nerf guns and other toy dart guns illegal to use in the city.

9.04.010 (B) will open the door for criminal liability for a CA resident from another county who has a CCW issued from their county and visiting Morgan Hill if they discharge their firearm in self defense.

9.04.010 (C) (1) May not survive a court challenge. Is it Constitutionally permissive to require a person to carry insurance in order to exercise a protected right (2nd Amendment)?

9.04.050 is currently covered under state law (Proposition 63). Be advised that the Federal 9th Circuit Court of Appeals has applied a preliminary injunction to the magazine restriction portion of Prop. 63.

I would assume that any firearm regulations created by Morgan Hill will probably be challenged in court by a variety of pro-gun groups (NRA, CRPA, 2A Foundation, FPC, etc.). If the Supreme Court becomes more conservative under President Trump (and I assume it will), then restrictions placed on the 2nd Amendment via local law may be found unconstitutional by the Supreme Court and the law nulled. California has statutes providing the loser should pay the winner's attorneys' fees in some cases and Morgan Hill may end up having to pay a large amount of money in accrued legal fees.

You and the city's legal team should also ensure that no parts of the ordinance run afoul of State preemption.

I hope you find my response helpful.

-Michael Dean

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Guy Krevet <gkrevet@msn.com>
Sent: Tuesday, October 2, 2018 10:24 AM
To: Maureen Tobin
Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance

Good morning Ms. Tobin,

Am I understanding that slingshot, BB guns and pellet guns would need a written permit from the Police Chief?
I would appreciate your reply.

Regards,
Guy Krevet

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Barbara Shehan <barbshehan@gmail.com>
Sent: Tuesday, October 2, 2018 3:36 PM
To: Maureen Tobin
Subject: Providing My Input on the Draft Anti Gun Violence Ordinance

Dear Mrs Tobin-

There is much that I could say about these proposed Ordinances, none of which is positive or in favor of these proposed changes. Not only are they redundant to what is already law in the state, but they further extend the governments reach in to my home. These ordinances will continue to tighten the leash on law abiding citizens such as myself and the majority of the Morgan Hill population. I disagree with these changes wholeheartedly.

Regards,
Barbara Shehan
408.315.2334

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Sal Lucido <slucido@assurx.com>
Sent: Tuesday, October 2, 2018 10:51 AM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello Maureen,

Thank you for the notice.

There is an interesting loophole in the section that states: "No person shall leave a firearm (as defined in Penal Code Section 16520 or as amended) unattended in any residence owned or controlled by that person..."

This implies that they MAY leave the firearm unattended without securing or storing it properly - in a location that is NOT owned or controlled by that person.

Thanks Again - Sal

From: City of Morgan Hill <maureen@mhcrc.ccsend.com> on behalf of City of Morgan Hill
 <maureen.tobin@morganhill.ca.gov>
Sent: Tuesday, October 2, 2018 9:31 AM
To: Sal Lucido
Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance



Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

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Comments can be submitted directly to [Maureen Tobin](#) through Friday, October 5, 2018.

-

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Michelle Bigelow

From: kangkeren@charter.net
Sent: Tuesday, October 2, 2018 10:46 AM
To: Maureen Tobin
Subject: RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Maureen,
 A few thoughts.

It seems that the existing text (9.04.010) says that anyone lawfully possessing a firearm and who discharges it to defend himself or herself or family from home invaders or others (while within the City limits) and does so without a permit will violate the ordinance. To avoid violation, one would have to seek a permit in advance, (the permit being to "discharge" the weapon, not to possess it), but the criteria for applying (such as requiring that the problem necessitating the firearm discharge be stated and what other means have been unsuccessfully employed to abate the problem) seem difficult to meet (unless one is being threatened directly by another, for example).

It seems that getting a permit because of a desire to have a firearm for purposes of self-defense, in the unlikely event it is needed, (because, for example, of a breakin by an escaped convict, or someone less than mentally stable, etc.) would be hard to obtain. The "problem" for a person who simply wanted a firearm to protect his or her home or person, is no more than the real, albeit unlikely, possibility of being confronted by dangerous, threatening individuals; and other than locks on doors and possible alarm systems (which might not be helpful in all situations), how does one suggest what might have been done to "abate" such a problem?

On what basis would someone who applied on such a basis be denied a permit? Would all such applicants be granted permits unless otherwise shown to be mentally or emotionally unstable, or had a criminal record, or a restraining order against them?

Is there a Constitutional issue here?

Should there be a caveat here; such as: "A. No person shall discharge in the city, outside of 1) a licensed shooting range OR 2) IN LAWFUL SELF-DEFENSE, DEFENSE OF OTHERS, OR DEFENSE OF HOME, any instrument or device ..."

As for new text, 9.04.040 (Safe Storage of Firearms), I am unsure of what "unattended" means? Does that mean the firearm is not being held in someone's hands? or that no person who is aware of the firearm is in the house with it? Is the provision intended to reduce the incidence of accidental discharges? or is it intended for something else? Depending on how "unattended" is interpreted, it could be helpful in preventing accidental discharges by someone who shouldn't be handling the firearm (e.g. a child) - of course, there can always be accidental discharges by someone "attending" the firearm (including by dancing FBI agents if recent events are any indication.) The provision wouldn't seem to be effective at preventing thefts of firearms if that is at all its intended purpose.

Ken Cochran

From: "City of Morgan Hill"
To: kangkeren@charter.net
Cc:
Sent: Tuesday October 2 2018 11:45:35AM
Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)



Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

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Comments can be submitted directly to [Maureen Tobin](#) through Friday, October 5, 2018.

-

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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Tracy Hutcheson <tracyhut@gmail.com>
Sent: Tuesday, October 2, 2018 10:42 AM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hi Maureen, thank you for sharing. I have a couple questions/comments.

Section 9.04.020. Storage of firearms by licensed dealers

I'm curious why this section is proposed to be mostly deleted? Most of the text that is to be deleted reads as a preventive safety measure. Seems like a reasonable up front way to prevent weapons from being stolen from a licensed vendor's establishment. Is the spirit of this section covered in another way somewhere else?

9.04.030. Duty to report theft or loss of firearms

This section is a proposed new add which is good. However, when you remove the safe storage section 9.04.020 and add section 030 it looks like a fix after the fact once a firearm is stolen. This 030 section without the 020 section reads like a purely reactive response once a firearm was stolen potentially due to lax storage (which is preventable). Unless the spirit of the storage section is captured in another way I would suggest that the 9.04.020 preventive safety measure be included (i.e., not deleted). I'm sure it's my lack of knowledge but I'm curious and would like to understand the reasoning for removal of section 9.04.020.

Section 9.04.050 C7

What is considered a reasonable amount of time to transport a found large capacity magazine? I would think that specifying something like a matter of hours may be too restrictive but maybe there should be language in there that says something like "reasonably necessary to deliver to law enforcement **not to exceed 2 days.**"

9.04.050

C7. Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

thanks Maureen,
 Tracy Hutcheson

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



**Provide Your Input on the
 Draft Anti Gun Violence Ordinance**

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

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Comments can be submitted directly to [Maureen Tobin](#) through Friday, October 5, 2018.

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Michelle Bigelow

From: Kevin S <kevinsmall@gmail.com>
Sent: Tuesday, October 2, 2018 9:47 AM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello,

Will there be a community meeting to discuss this proposal and changes?

Please let me know.

Thank you,
 Kevin

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



Provide Your Input on the Draft Anti Gun Violence Ordinance

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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

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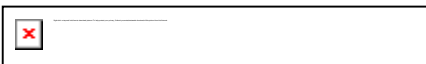
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: David Smith <dsmithcdc@gmail.com>
Sent: Tuesday, October 2, 2018 1:39 PM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

How many criminals do you think will abide by this ordinance?

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



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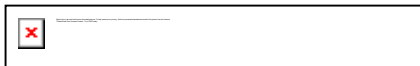
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Michelle Bigelow

From: Dr. Robert Kessler <drrobertkessler@yahoo.com>
Sent: Tuesday, October 2, 2018 10:29 AM
To: Maureen Tobin
Subject: weapons amendment.

To whom it may concern;

I received a city generated e-mail inviting comment with regard to an upcoming amendment on firearms in the city of Morgan Hill. My response is as follows:

In reading the proposal it seems clear that there are good intentions in mind for welfare and safety. However, I see the net effect as simply keeping a law abiding citizen from freedoms of firearm possession. This proposal becomes an avenue to limit the ability for someone to lawfully own very viable and available equipment. It is too controlling for grown law abiding citizens. This amendment will only limit normal people for whom the law is not needed. Those who would create issues will not respect the law.

Gun owners would obviously report stolen equipment. Its not a leap to assume if someone will steal a gun they will also either use or sell to someone who would use a gun illegally. Registration would fall back to the gun owner- a big problem. Also, I'll bet if someone buys a gun legally and therefore registers the gun they are already law abiding and would handle the responsibility of reporting stolen equipment on ethical and moral grounds; again, the problem is not with law abiding citizens...

Storage of firearms is already protocolled and part of gun ownership so here again- why this law?

I simply see this amendment as an at best feel good attempt to make a difference. At worst I see it as a step toward draconian control.

I do not fear a neighbor with guns, big magazines etc any more than I fear a neighbor that has a sports car that will do 150 MPH, or a neighbor that has a car and a house with a kegerator for beer parties etc. Responsible adults are responsible adults, not babies who dont know any better and need to be controlled by an elected official that thinks they know better... but dont get me started...

There is a time and place for good governance- this one would not work though.

Thank you for the opportunity to respond.

Respectfully,

Robert

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Tom Guinane <guinane@gmail.com>
Sent: Tuesday, October 2, 2018 10:57 AM
To: Maureen Tobin
Subject: "Weapons" is not clearly defined in this ordinance

Hi Maureen,

The text in the ordinance states "*No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.*"

I am not exactly sure what that means. 'Missile' is defined as 'an object that is forcibly propelled at a target, either by hand or from a mechanical weapon.' This is very vague. 'Missile of any kind' could include BB rifles, pellet guns, slingshots, Nerf guns, water balloon cannons, and other toys that propel objects.

Is there a way to reword the ordinance so it captures the intent of requiring permits for 'firearms and other dangerous weapons' and could not be interpreted to include toys?

Maybe a sample list of what would be included in this ordinance and what would not might help.

Thanks.

--

Cheers,
Tom Guinane

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Kurt Hoffman <fishklr@verizon.net>
Sent: Tuesday, October 2, 2018 7:21 PM
To: Maureen Tobin
Subject: Anti gun violence act

This is not an anti gun violence act it is an anti gun ownership act!

I oppose every portion of this act because it will do nothing, I repeat nothing to address the issue.

If you look at the statistics what little gun violence we have in Morgan Hill is committed by persons who are not lawfully possessing a gun in the first place!

You are attacking only lawful owners of firearms. If you want to stem gun violence I suggest you look at eliminating drug use and homelessness, but you will not because those are hard, and attacking lawful gun owners is easy.

At the very least admit that your goal is to confiscate all firearms, and disarm the entire population!

Kurt Hoffman

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: John Luce <jluce@outlook.com>
Sent: Wednesday, October 3, 2018 6:42 AM
To: Maureen Tobin
Subject: Draft City of Morgan Hill Anti Gun Violence Ordinance

Wow I have seen some really horrible written laws but this takes the cake. So you want to make it so expensive and hard for honest people to protect them selves. Basically if someone is breaking into my house or trying to hurt my family, I have to have a million dollar insurance policy and get a permit from the Sheriff. Can you tell does this person need to have a insurance policy incase he causes any damage on my property? You really need to look at this "Ordinance" and realize that punishing honest people will only make crime go up. That will drive honest hard working people from your town. You will never stop crime but let's not make it easier. I know you probably will not read this but just needed to say how bad your "Common Sense Gun Law" will be.

Regards,

John Luce

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Richard Howell Jr. <rich_howell@yahoo.com>
Sent: Tuesday, October 2, 2018 4:27 PM
To: Maureen Tobin
Subject: Draft Proposal against Gun Violence

This proposal is a violation of my 2nd Amendment rights. People who commit crimes do not follow laws. All you are doing is limiting the rights of law abiding citizens as guaranteed them by the U.S. Constitution / Bill of Rights. Additionally we have NEVER had an issue with gun violence in this City...there is ZERO precedent for any of this. Anyone supporting this will be voted out.

Again...if someone wants to commit an act of violence; they DO NOT CARE HOW MANY/WHICH LAWS THEY ARE BREAKING. Gun laws only affect people who follow the law...and those people are not seeking to harm anyone; myself included.

Please stop trying to take away my rights and the rights of others.

Thank You,

Rich Howell
Morgan Hill resident since 1985.

[Sent from Yahoo Mail on Android](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Jason Shehan <jason_shehan@att.net>
Sent: Tuesday, October 2, 2018 8:56 PM
To: Maureen Tobin
Subject: Firearm Ordinance comment

Hi Maureen, I would like to voice my opinion in opposition to the Firearms Ordinance that the City of Morgan Hill is planning to put into place. I moved to Morgan Hill almost 5 years ago, mainly to get out of the big city feel that San Jose has become. I grew up in San Jose and had lived there my entire life minus the years I was in San Luis Obispo for college. I bought a house in MH with my wife and we have 2 young children. I am so happy with the move and thoroughly enjoy the smaller town atmosphere and the closer to "country living" vibe that this town brings. More specifically, I wanted to get away from San Jose and the far left policies that were being shoved down the throats of every citizen that lived there, no matter what my views were. I feel that Morgan Hill doesn't represent the same big city mindset, and this new ordinance is a step in the direction of implementing government will against law abiding citizens.

Nowhere in this draft ordinance does it make mention or prove that any of these laws will prevent firearm crime. It in fact, will only cause an increase in firearm crime for those who choose to break the law, and who are recurring criminals. I am a gun owner and a supporter of the 2nd Amendment, yes the same 2nd Amendment that is my right as an American citizen, which the state of California has already infringed upon. I'm not sure what your background in law, and moreso with firearms and firearm ownership is, or the background of the rest of the City Council, but nearly every bullet item mentioned is already state law.

- 1) Its already illegal to discharge a firearm within city limits, but now you want homeowners to apply for a permit in order to protect ourselves within our own homes, and purchase proof of liability insurance to do this?
- 2) It is already written into law that a gun owner is required to report loss or theft of a registered firearm
- 3) It is already required that firearms be stored properly, and did you know that you are not allowed to legally purchase a gun without providing the make and model of the gun safe that you already own?
- 4) it is already now illegal to possess a high capacity magazine

Do you and the council members realize that you are only punishing and putting limitations on law abiding gun owners? Those who wish to commit crimes with firearms are doing so through illegal back alley purchases where they can have an unregistered firearm so that they cannot be traced back to the owner, and those criminals who commit violent crimes with firearms will not and historically do not by definition, follow the law. Do you really think that a criminal will turn in their high capacity magazines, and purchase liability insurance before they strong arm rob the next person at gunpoint?

Please stop with this madness and quit trying to force these laws that only punish those law abiding citizens who have followed all legal methods of purchasing their firearms for sport (yes, we do not intend to harm other people when our guns are purchased). You can rest assured that those who have firearms in their homes keep them locked up safely and securely, and if the need arises to protect our home and our family in the middle of the night as someone is breaking in and plans to do harm, the last thing that we will consider is the fact that we forgot to purchase proof of liability.

Thank you,
 Jason Shehan

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Dr.Jerome Sarmiento <jsarmd@yahoo.com>
Sent: Wednesday, October 3, 2018 4:14 AM
To: Maureen Tobin
Subject: Gun Violence

Hello,

I would like to give my input regarding this matter. Historically gun violence in the US involves unhappy and mentally unstable gun owners or relatives who have access to guns & they have in majority done this violence in school campus-employing security guards and reducing the salary of school superintendents who obviously are not in the campus during disturbances. The guards should be armed; well trained and should also be courteous To students, parents, teachers and school employees. ID cards should be worn upon entry into schools. Security cameras with alarm systems when a perpetrator is identified and lock down procedures are underway. A safe lockdown area impenetrable to weapons of mass destruction is best

Thank you

Jerome

[Sent from Yahoo Mail for iPhone](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: B Thomas Stewart <toms711@yahoo.com>
Sent: Tuesday, October 2, 2018 9:32 PM
To: Maureen Tobin
Subject: proposed gun ordinance

Most of the proposed gun ordinance looks good, however I think the gun storage regulations should still be retained.

Tom Stewart
4087791067

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Gregory Bailey <gbailey@airtronics.com>
Sent: Wednesday, October 3, 2018 8:56 AM
To: Maureen Tobin
Subject: Anti Gun Violence Ordinance

Hi Maureen,

Other than not seeing anything about concealed or open carry in the permit section, I don't understand the provision on page 5 section 9 giving retired officers an exclusion when they are in fact retired by definition. Should not these weapons only be maintained at the police station for police use, even if for some reason an officer is recalled? Once an officer is retired, are they not then a private citizen? Even active/reserve officers large capacity magazines should be at the station or in their police vehicles, not at their private residence. If the need for such magazines is required, are they not in that assault vehicle that SWAT team has and are they not the only ones who would be authorized/trained in their use. While officers do respond from home, are not those actions coordinated? While I fully agree that officers should be able to defend themselves, these items should be looked at a little more closely.

Regards,
Greg Bailey

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Rjbenich <rjbenich@yahoo.com>
Sent: Wednesday, October 3, 2018 8:37 AM
To: Maureen Tobin
Subject: Draft Anti Gun Violence Ordinance

Hello Maureen. My comments regarding this draft ordinance are as follows:

1. It is too restrictive with respect to BB guns and pellet guns.
2. It is unreasonable to have to get a permit for a BB gun or pellet gun.
3. It is unreasonable to have to have a BB gun or pellet gun locked up.
4. It is unreasonable to have to have a trigger guard on a BB gun or pellet gun.
5. It is unreasonable to have to report the theft of a BB gun or pellet gun.
6. This ordinance is well written for guns that shoot cartridges of .22 Cal. or larger.

Robert Benich

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Danielle DeRome <drderome@yahoo.es>
Sent: Wednesday, October 3, 2018 11:04 AM
To: Maureen Tobin
Subject: Draft gun violence legislation

Dear Maureen,

Thank you for providing citizens the opportunity to review and comment on the draft gun violence legislation being considered by the City of Morgan Hill.

Are the parts that have been lined out being eliminated because they are already included in legislation that covers Morgan Hill?

A concern that comes to mind includes the legality of producing, selling/sharing, possession, and use of 3D printed guns.

Another concern is the potential presence of guns in our schools, in particular via the proposal/suggestion by Sec. DeVos et al. to arm teachers.

Perhaps my imagination is jumping the gun, so to speak, but I wonder if our City gun legislation should address such matters now so they cannot become an issue in the future.

Again, thank you very much for the opportunity to be a part of this important discussion.

Sincerely,
Danielle DeRome
164 Sanchez Drive
Morgan Hill, CA 95037
(408) 623-1205
drderome@yahoo.es

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: mbhave@aol.com
Sent: Wednesday, October 3, 2018 11:09 AM
To: Maureen Tobin
Subject: Gun ordinance.

Hi Maureen,

I reviewed the proposed gun ordinance. I don't believe there is any reason for the City of Morgan Hill to jump into the middle of this issue. State law covers most of the proposals. Morgan Hills proposal is more restrictive and not necessary in my opinion. No one is going to turn in magazines they have lawfully owned, as per the ordinance thus, making them criminals in the eyes of the City of Morgan Hill.

Sent from my Verizon 4G LTE Smartphone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Johnny Colino <jcolino@kw.com>
Sent: Thursday, October 4, 2018 9:25 AM
To: Maureen Tobin
Subject: Draft Anti Gun Violence Ordinance [edit]

Hi Maureen,

Section 9.04.010 A Requires a statement that the **only exception would strictly be within the structure of ones own home for the express and exclusive purpose of self defense where significant and obvious threat to ones life or significant risk of injury at the hand of another is eminent.**

Without that, there would be a significant and obvious gap in this ordinance which would prevent one from defending themselves during home invasion, attempted murder, rape and other violent crimes. While I support the remaining sections of the proposed ordinance, I fear that with this clause this ordinance would be deemed unconstitutional by many.

I welcome your thoughts on this.

**Thanks,
Johnny Colino**

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Danielle DeRome <drderome@yahoo.es>
Sent: Wednesday, October 3, 2018 11:04 AM
To: Maureen Tobin
Subject: Draft gun violence legislation

Dear Maureen,

Thank you for providing citizens the opportunity to review and comment on the draft gun violence legislation being considered by the City of Morgan Hill.

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164 Sanchez Drive
Morgan Hill, CA 95037
(408) 623-1205
drderome@yahoo.es

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Nancy Benich <nebenich@yahoo.com>
Sent: Wednesday, October 3, 2018 1:19 PM
To: Maureen Tobin
Subject: Gun Law

Dear Maureen,
I like the gun law except do not include pellet guns or BB guns - too restrictive!
Nancy Benich

Sent from my iPhone

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Elle Simon <ellesimon.consulting@gmail.com>
Sent: Wednesday, October 3, 2018 6:26 PM
To: Maureen Tobin
Subject: Please ask the Council to consider changing the Draft Anti-Gun Ordinance as follows:

9.04.040 Safe storage of firearms

Line 3 ...container, (delete "or"; add "and") the firearm is disabled...

Thank you.

--

Elle Simon
Resident of Morgan Hill since November 29, 2017
Mailing Address: Post Office Box 2102; 95038
Residence: 505 Barrett Ave. #228; 95037

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: richnmitz@charter.net
Sent: Wednesday, October 3, 2018 5:10 PM
To: Maureen Tobin
Subject: Proposed Gun Violence Ordinance

Dear Maureen,

I am strongly opposed to the subject draft.

My opposition is based on:

1. Read literally the "Discharge" paragraph prevents my young grandchildren from firing toy "nerf" guns without authorization from the police chief. It also prevents me from using my air rifle from defending my garden from rats (a ridiculous invasion into my privacy)!
2. Anyone driven to harm others with violence will pay no attention to such an ordinance.
3. Its just more red tape and cost burden on normal law abiding citizens as myself (and the police department too).

I don't know when our political leaders will learn that moral failings are rooted deeper and are more complicated than what might be provided by a "silly" ordinance such as this.

Richard Loutensock

2997 Holiday Ct

Morgan Hill

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Guy Krevet <gkrevet@msn.com>
Sent: Wednesday, October 3, 2018 1:38 PM
To: Maureen Tobin
Subject: RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Good afternoon Ms. Tobin,

Thank you for the reply.

Comments on Morgan Hill proposed Weapons Ordinance.

9.04.010 Discharge – Permit required Fee. - This section **Title 9 - PUBLIC PEACE, MORALS, AND WELFARE** already exist but needs to be modified per my previous email. It should be for discharging a firearm.

9.04.030 Duty to report theft or loss of firearms - California has an established law to cover this. It's five days, Morgan Hill wants two days. **Leave it five days**

9.04.040 Safe storage of firearms - California has an established law to cover this. It's the same.

9.04.050 Possession of large capacity ammunition magazines prohibited. California has an established law to cover this, but Morgan Hill wants to collect large capacity magazines prior to January 1, 2000. **Follow the same law as California.**

By Morgan Hill making a slight modification to the present California gun laws, it introduces conflict to the citizenship since people will have the natural tendencies to check the California website and not the Morgan Hill for gun laws. It certainly was my case when I started to look at the proposal and discovered that Morgan Hill had a separate ordinance. The other reason to use the California existing laws is that it would eliminate any legal challenges to the City.

In my opinion, the City has good intention but the proposed ordinance with the slight modifications will not have any impact to prevent gun violence in Morgan Hill. I would recommend just adding the present California gun Laws to the Morgan Hill ordinance.

Regards,

Guy Krevet

From: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>
Sent: Wednesday, October 3, 2018 11:55 AM
To: Guy Krevet <gkrevet@msn.com>
Subject: RE: Provide Your Input on the Draft Anti Gun Violence Ordinance

Hello Mr. Krevet.

Thank you for your input.

That is certainly not the intent of the language in the draft ordinance, but it seems to be causing this interpretation. I have forwarded your comments to the City Attorney, Police Chief and the City Council.
 Have a good day.

Maureen Tobin
 Communications and Engagement Manager
[Engage With Us!](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

City of Morgan Hill

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

P: 408.310.4706 **C:** 408.406.4076maureen.tobin@morganhill.ca.govmorgan-hill.ca.gov | [facebook](#) | [twitter](#)

From: Guy Krevet <gkrevet@msn.com>**Sent:** Tuesday, October 2, 2018 10:24 AM**To:** Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>**Subject:** Provide Your Input on the Draft Anti Gun Violence Ordinance

Good morning Ms. Tobin,

Am I understanding that slingshot, BB guns and pellet guns would need a written permit from the Police Chief?
I would appreciate your reply.

Regards,
Guy Krevet

Sent from [Mail](#) for Windows 10

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: JOHN KRACHT <krachtjohn@yahoo.com>
Sent: Tuesday, October 2, 2018 11:54 AM
To: Maureen Tobin
Subject: Firearms Ord.

Maureen,

What **municipal** statistics justify this adjustment? It really appears to be a kneejerk reaction to the national news cycles about the Vegas shooting a year ago. There are lots of state and county laws and regulations. If you are going to add more and more restrictions you should be able to cite the **local** misconduct, by case number preferably, that would support such a belt-tightening. Or is this some sort of 'resistance ' protest of the Trump administration?

John Kracht
16460 Rustling Oak Court

[Sent from Yahoo Mail for iPad](#)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Jim <jim@jnkrause.com>
Sent: Tuesday, October 2, 2018 12:40 PM
To: Maureen Tobin
Cc: jim@jnkrause.com
Subject: gun control ordinance

Importance: High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Allen Picchi <allenpicchi@msn.com>
Sent: Tuesday, October 2, 2018 12:44 PM
To: Maureen Tobin
Subject: Gun Violence Ordinance

To Whom It Concerns,

What specifically, are you trying to achieve with this ordinance update. What problem are you trying to solve...

I am not in favor, nor do I support the text surrounding Section 9.04.050 Section B, regarding high capacity magazines that are in peoples' possession prior to the passing of California gun laws. Specifically, I would like to see the removal of #1&2 text.

Additionally, I would like to see text surrounding forfeiture and prosecution of those in possession of theses magazines removed from the ordinance, regardless of whether smaller capacity magazines are available or not.

I am also not in favor of expecting residences who obtain a permit to also obtain liability insurance.

Allen Picchi

Sent from [Mail](#) for Windows 10

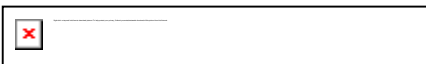
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: David Smith <dsmithcdc@gmail.com>
Sent: Tuesday, October 2, 2018 1:39 PM
To: Maureen Tobin
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance

How many criminals do you think will abide by this ordinance?

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



Provide Your Input on the Draft Anti Gun Violence Ordinance

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part of the draft ordinance from the beginning, the strikeout is what is proposed to be deleted and language in the italics is what is currently proposed to be added.

Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

Company Name | Phone | Address | Website



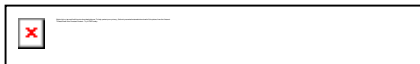
Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

City of Morgan Hill | [17575 Peak Avenue, Morgan Hill, CA 95037](#)

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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



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Michelle Bigelow

From: Oz M <joswaldomendoza@gmail.com>
Sent: Thursday, October 4, 2018 9:18 AM
To: Maureen Tobin
Subject: Anti Gun Violence Ordinance

Mrs. Maureen Tobin,

I wanted to share my thoughts on the Anti Gun Violence Ordinance.

I just found out about this Ordinance through family that the city is planning on further restricting citizen's right to use any type of weapon to be discharged within city limits.

I am oppose to such ordinance due to the fact this Ordinance will remove due process to law abiding citizen's rights. Also, what happens if someone discharges a weapon of any kind accidentally. This would make any citizen a criminal immediately. No due process is applied.

This Ordinance is the type of things that abusive government does to protect it self from citizens and makes government law enforcers no better than Socialist guards.

They can take away any citizen's right to free use of any weapon to defend them selves from lethal aggression.

I recommend that if such ordinances are to be in effect it will extend to all citizen's in the city. Including law enforcement.

How could I trust government that does not trust me to have any right whatsoever to defend my family from threat until I have a permit from government to do so.

The other night, I called in a event, I heard what sounded like gun discharge going on at night. The 911 operator had not receive any other reports of such sounds reported and or could hear them. How can I get permission to defend my self when authorities or emergency responders are unaware of such events going on in the city.

How long should I wait until I get a permit to defend my self from possible threat.

What insurance carrier would give me coverage to be able to defend my self based upon your permission to do so.

Just the fact that I have to ask permission to protect my self does not make me safe in my own community.

Based on you Ordinance, I and by extension, my family, has to get permission to use pellet guns in my backyard. I have to get permission to teach/learn Bow and arrow in my backyard. I have to get a permit to discharge rocks with a sling shot. I have to get a permit to practice with any weapon described. That is not OK to me.

The fact that I have to be submit to the Chief of Police for review to get approval or agreement to discharge a weapon makes me thing that I no longer have the right to protect my self unless permission is given.

Should I be concern of retaliation from the Police and City for my shared thoughts?

In closing, the fact that the city is considering such draconian strand on my rights to defend my self has started discussion to find another place to live among my family.

We would like to not have to move but the fact that we are considering it should give you some pause for review of your Ordinance.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Sincerely,

A Morgan Hill citizen of seven years

Jose Mendoza

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: City of Morgan Hill Anti-Gun Violence Ordinance
Date: Tuesday, October 9, 2018 9:07:57 AM

From: Brian Faircloth <clawsbo@attglobal.net>
Sent: Monday, October 8, 2018 3:15 AM
To: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>
Subject: City of Morgan Hill Anti-Gun Violence Ordinance

Maureen, I have looked over the draft of the subject ordinance. What immediately comes to mind is that the ordinance is void of any substance that would deter any gun violence in Morgan Hill. What the ordinance does contain are provisions that seem to be an attack on gun ownership in Morgan Hill. In fact, the ordinance should be named 'anti-gun ownership'. It has been proven time and time again that having more gun laws has no effect on gun violence. If the City of Morgan Hill wants to reduce or eliminate gun violence in Morgan Hill, the focus should be on gun crimes and not on gun ownership. When I attended the initial meeting to discuss the draft ordinance it was obvious that the attendees representing the city had no intention on discussing the purpose or what gun violence problem needed to be addressed. In short, the ordinance as written is a political statement against guns and gun ownership, not a good faith effort to actually address gun violence.

My belief is that if you want to reduce gun crimes you write an ordinance to go after the perpetrators of the gun crimes, not write an ordinance that has the potential to make gun owners the criminals.

My recommendation to the City of Morgan Hill is that they write an ordinance that contains repercussions for committing ANY crime in Morgan Hill that includes a use of a gun. Specifically, if a perpetrator of a crime uses a gun they will be subject to a mandatory minimum sentence of 10 years in jail. If someone is injured in the crime the mandatory minimum sentence is 15 years. If someone is killed in the crime the mandatory minimum sentence is 30 years.

As a side note I want to leave you with this: Thousands of people are injured and killed every year as a result of car thefts and I do not ever recall the car owner being arrested for the crime because their garage was not locked or their car had too much horsepower.

If the City of Morgan Hill wants to have honest, open, and non-biased discussions in the future, I am willing to participate.

I thank you for your assistance.

Brian Faircloth

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Comments on

Draft Ordinance language to require safe firearms storage, require the reporting of firearms theft, and prohibit large capacity magazines.

First of all I disagree with the characterization of the notifying email that the council is in consideration of “common sense” measures. That is code by politicians that we are going to do what we damn well please without regard to any real standard of common sense. It is soothing rhetoric on their part to believe that they act on the moral high ground. I reject any notion that this language fulfills that in spirit and in the actual reading.

This ordinance will not prevent gun violence in Morgan Hill as that the law cannot influence the behavior of criminals who do not obey laws in the first place. The predominance of gun violence is done by people already prepared to break the law. This law is intended only to affect law abiding citizens who believe that law should be followed. This law potentially makes law abiding citizens into criminals and is based on coercion that can only lead to more problems.

Concerns:

1. The Ordinance is inappropriately named. It excludes two key provisions of the ordinance in the title. The ordinance requires a discharge permit and the ordinance has provisions for confiscation of guns. Neither of these appear in the title. If the public sees the title they will likely not understand the consequences of the ordinance. In fact, the California Rifle and Pistol Association listed the title of the ordinance with the current title in their action reports for September. This was done prior to the language of the ordinance being available to them. Those two provisions should be included in the title of the Ordinance to be totally transparent about intent.
2. The ordinance goes well beyond what Council said was their intent. The brief description of the board’s actions of March 7, 2018 indicates gun violence and measures to prevent gun violence. As mentioned this will not curb gun violence as I already said. In addition, the language of the ordinance goes way beyond guns. As written it the language includes other projectile devices. So again the title and the intent of this ordinance is clearly disingenuous.
3. The language of the ordinance excludes the right of an individual to provide for their own self-defense. This ordinance takes away that basic individual right to a great extent. Presumably because of your belief that police will fulfil that role. The ordinance states, “the chief of police shall be the sole judge as to the desirability or necessity of such permit, which must be, in his judgement, necessary for the protection of the applicant or his property. This is an incredible statement when considering that the Supreme Court has ruled that police do not have an obligation to protect people and the fact that government enjoys sovereign immunity for decisions made.

Additionally the ordinance adds more broad language to the permit process used by the police chief for approval, “in the furtherance of the public welfare, and with necessity cannot be reasonably abated by other means. What does, “public welfare” mean. The police chief could use this to deny any permit. It also replaces the judgement of the individual for a second guessing police chief. What does “reasonably” mean? Something done by a reasonably person?

I consider myself a reasonable person and lots in the ordinance does not seem reasonable to me.

Police enjoy a very broad expanse for judgment in situations where they are threatened. This ordinance likely conflicts with other law that grants individuals discretion in self-defense. Yet the police chief can use the permit process to deny an important component of an individual's options for self-defense. If the decision that is made results in an individual dying because of the inability to exercise all options for self-defense the City or the police chief cannot be held accountable.

4. Applicants for such permit shall provide the following:

An application in writing which states the purpose of such permit, nature of the problem to be abated which necessitates the protection of the applicant, his property or the furtherance of the public welfare, and lists all other means which have been unsuccessfully employed to abate the problem. **(Note: that as PC as most politicians are today using only "his" could be considered sexist on a number of levels. Perhaps the drafters did not believe women have property. Perhaps the drafters only consider it is a man's role to protect property. Perhaps it is a reflection of the misogynist nature of the drafters. At any rate that should be correct with at least his/her.)**

This language on the surface and in the simple reading is not common sense. In fact, it defies common sense. An application to discharge a weapon for self-defense applied for with details of need is almost impossible. I am sure that any law abiding citizen will never want to be have to discharge their weapon for self-defense. It would be hard to hypothetically state "the nature of the problem to be abated". All property owners have the potential of needing to protect their property. How are all the potentials for that stated and to the satisfaction of the Police Chief. Again what does, "public welfare", mean? As an individual it is impossible to decipher for that meaning. As for the "necessity...reasonably abated by other means", for something that has not occurred is impossible. Doesn't the phrasing lead to the conception of something like serious injury or death being proof that, "other means...unsuccessfully employed to abate the problem", seems somewhat not common sense because what would be the point then.

The insurance provisions also seem problematic. The \$1,000,000 is likely not the biggest problem. The actual use of guns in various ways that create some sort of liability is very small to the total amount of guns in circulation. That would make the actuarial payout very low. Criminal activity and suicides would be excluded from insurance payouts under normal insurance underwriting. So potential actuarial payouts would be very low. However, the ordinance uses language that might impede normal insurance underwriting standards. The insurance must be "in the form and with approved companies". The city then might reject normal and reasonable exclusions forcing companies to include all risks thus increasing the cost of the insurance. In addition the power of the city to act with approved insurance companies leaves great discretion with the city to limit carriers and thus increase costs. I believe it is not the intent of the city to cover liability or reduce gun violence. I believe the city's intent is simply to increase the cost of gun ownership.

The language provisions on the additional insured provisions and the hold harmless agreements may prove to be more difficult. It is all controlled by the form the city wants. Have those forms

been worked out. Is the city going to negotiate on the forms with insurers or is this going to be up to the applicant. This could be a sticky wicket for the applicant for something like that might have to go back and forth between legal departments, city and insurance companies. No one knows how long that will take. None of that seems reasonable or common sense to me. It leaves many people in a very uncertain place while no permits can be granted without those forms.

The \$25 fee. This might be reasonable, but the pattern for city fees is an ever growing amount to cover costs. No doubt the police chief is going to have greater costs in implementing this ordinance. That will require more and more fees and the city will easily justify an ever increasing fee to cover fees. What some would consider a modest fee at this time will quickly grow to something much higher. The chief can simply make the period every two weeks and with additional unspecified "conditions and limitations" based on the language. All under the guise of "common sense", but not what I would consider reasonable.

Finally, remember none of this will apply to the criminal wanting to do harm to law abiding citizens. They simply will not follow the law and it will put law abiding citizens in harm's way since the police have no constitutional obligation or legal accountability to protect property or persons. Criminals will be able to pick and choose their opportunities knowing their lowered risk for being accountable both practically and legally.

5. The sections under duty to report theft, Safe storage of firearms, and possession of large-capacity ammunition magazines prohibited are going to be implementation nightmares and costly for the Police. It creates a potential due diligence requirement on the police. That could lead to intrusive police activity for code enforcement.

Starting with those that applied for a discharge permit the police would, in my opinion, now be responsible for code enforcement. They could decide to go to gun owners on the permit list and now make home visits to verify insurance, safes, gun inventories, etc. Hold harmless agreements do not protect entities against negligence. In the remote likelihood that something occurred and the city did not do due diligence with a permit holder that might be considered negligent then the city might not avoid accountability based on hold harmless agreements. That possibility will require more processes related to code enforcement that will be more and more coercive. There is no way this will not eventually occur based on the language of the ordinance. The exemptions in the large capacity clip prohibition will likely lead to unequal implementation.

6. Finally the confiscation provisions. They have been left out of the title. As I said that is a serious breach of transparency. There is already a problem with property seizures in the system because of a clear conflict of interest for cities and police in regard to value of property seized. This ordinance will possibly just add to that problem that tends to undermine the confidence of some citizens.

The language in the section is vague: Any instrument, device, or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the Chief of Police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was

taken is not convicted of a violation of this chapter, then the device or instruments shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions as the chief deems desirable for public welfare.

This is a most confusing section. How does do the police confiscate the device with no complaint? What does the first part of the section mean? Is this due process? Does the second part mean that the Chief of Police has discretion in regard to a complaint filed for violation of this chapter, to determine no violation occurred, so he "may" return the weapon from whose possession it was taken as he deems desirable for the public welfare. Again what does public welfare mean? What about moving the complaint to court, how would this reconcile with evidence needed for court? If a conviction was achieved is sixty days absolute or is that changed by appeal? It also says "may" be destroyed at the discretion of the police chief, would that be the discretion of the judge. Would not the judge also determine to return the weapon over the discretion of the police chief in regard to a conviction? If it is the discretion of the police chief what will be done with the gun if not destroyed or returned? As I said this section is very confusing.

In closing because I have taken more time with this than I wanted to, I will complete my final thoughts. I was unaware of prior meetings on this mostly because we all have busy lives. I would have gladly given this input at that time. However with today's political climate I am sure that would have made me a target, as this input likely will also make me a target. That may not be considered an unreasonable concern by some, but I think it is a reasonable concern to me. As I said this ordinance does not meet my standard for either common sense or reasonableness. I am entitled to this opinion. I also believe that based on the way politics work the powers that be have already decided what they will do with this ordinance and it is likely it will not become anymore common sense or reasonable.

It will likely take additional actions like court to modify the direction. I will be encouraging organizations interested in this topic to pursue additional actions. I give these thoughts to you in good faith as my honest constructive criticism and some dry humor. I hope to be pleasantly surprised to not be some sort of target for some in this effort to enforce more rules that I do not believe will be helpful, but I will not hold my breath. I thank you in advance for considering my thoughts.

Mike Brusa

Mbrusa7676@gmail.com

From: [Michael Duval](#)
To: [Maureen Tobin](#)
Cc: [Michael Duval](#)
Subject: RE: Provide Your Input on the Draft Anti Gun Violence Ordinance
Date: Friday, October 5, 2018 3:29:08 PM

M.H. City Council,

As a resident of Morgan Hill and having grown up in this town along with other generations of my family I am concerned with the safety of all residents.

But as a citizen of the United States of America I am upset with the constant useless knee jerk legislation that does nothing for which it is written. Bills and Ordinance's that end up eroding my rights, just to make the uninformed public Feel safe and politicians trying to protect their positions look sympathetic.

We cannot legislate against Evil people, evil people will do awful things by any means whether or not there's a law. And a person with issues that are due to mental capacity or trauma need to be dealt with directly through mental health programs.

Deal with the real issues, criminals, mental health services, gangs, Kids programs, the breakdown of the family unit, education.

And stop creating Soft Targets by restricting the rights of the law abiding public to protect and defend them self's and their families.

Sincerely,
 Mike Duval

From: City of Morgan Hill <maureen@mhcrc.ccsend.com> **On Behalf Of** City of Morgan Hill
Sent: Tuesday, October 2, 2018 9:31 AM
To: Michael Duval <mduval@micro-mechanics.com>
Subject: Provide Your Input on the Draft Anti Gun Violence Ordinance



Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Provide Your Input on the Draft Anti Gun Violence Ordinance

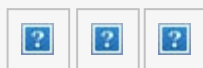
At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

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Comments can be submitted directly to [Maureen Tobin](#) through Friday, October 5, 2018.

Company Name | Phone | Address | Website

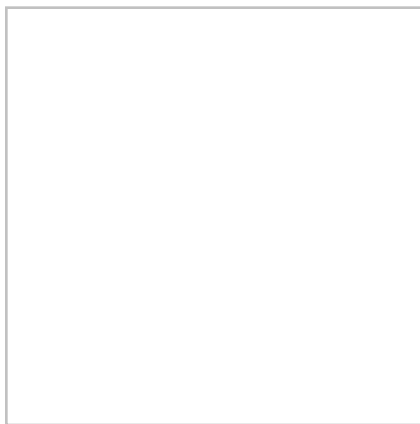


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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



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From: [jim](#)
To: [Maureen Tobin](#)
Subject: RE: gun control ordinance
Date: Friday, October 5, 2018 3:07:09 PM

Thank you for sending this report.

I must admit I am very disappointed at Parkland being the reason for this ordinance. That is a not a good reason. There were way to many other weaknesses in that event and it wasn't guns. You can forward this to Mr. CARR and tell him Jim is disappointed in his reasoning.

Thanks. Maureen

Jim Krause

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>

Date: 10/5/18 2:56 PM (GMT-07:00)

To: Jim <jim@jnkrause.com>

Subject: RE: gun control ordinance

Hi Jim,

It was great to see you at Kiwanis.

Thank you for your input.

At the February 21, 2018 City Council meeting, Council Members Spring and Carr issued statements of support for the Parkland community and Council Member Carr further asked the City Attorney to prepare a resolution condemning gun violence and calling for specific actions to prevent further senseless deaths. A copy of the staff report and the resolution can be found at the following link: http://morganhillca.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=None&MeetingID=1720&MediaPosition=3273.490&ID=1667&CssClass=

After adopting the resolution the Council further directed staff to update the current ordinance to agree with the resolution. That is what is prompting this.

Your input has been forwarded to the City Council, the City Attorney and the Police Chief.

Have a great weekend ahead!

Maureen Tobin

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Communications and Engagement Manager

[Engage With Us!](#)

City of Morgan Hill

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

P: 408.310.4706 **C:** 408.406.4076

maureen.tobin@morganhill.ca.gov

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From: Jim <jim@jnkrause.com>

Sent: Tuesday, October 2, 2018 12:40 PM

To: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>

Cc: jim@jnkrause.com

Subject: gun control ordinance

Importance: High

Hi Maureen.

Question, does Morgan Hill have a gun problem that requires this ordinance?. If so, what are the statistics?

I can understand an ordinance if we have a known problem, but I am unaware of one at this point. Also, how do you defend yourself if the weapon is locked up?

Looking forward to your response.

Thanks,

Jim Krause

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

From: [Dave Truslow](#)
To: [Maureen Tobin](#)
Cc: [Donald Larkin](#); [Christina Turner](#); [Rene Spring](#); [Rich Constantine](#)
Subject: Re: Draft Firearms Ordinance
Date: Friday, October 5, 2018 4:45:41 PM

It's important to acknowledge worthwhile endeavors and contributions even when one may disagree with outcomes. I very much appreciate the participation of Morgan Hill employees and elected officials.

NetNet: The storage and loss reporting provisions don't appear to seriously jeopardize personal safety. But sadly none of the 3 items improve public safety.

As per our voice mail exchange, I'm unable to determine violation consequences. San Jose imposes up to a \$1,000 fine and/or up to 6 months in jail for a safe storage violation. Saratoga's pending safe storage ordinance imposes a \$150 fine. Both Saratoga and San Jose law enforcement assert a violation would be extremely difficult ("highly unlikely") to detect. I seem recall a survey that over 99% of lawful gun owners promptly report loss anyway. I believe insurance provisions also require it. Failure to promptly report could jeopardize insurance coverage.

I visited MHPD this afternoon to obtain a permit per the current code. My interpretation is that one needs a permit to shoot children's toys such as a Nerf gun, spud gun, or soda straw spitball blowgun. I don't find exceptions for emergency signaling, theatrical performances, t-shirt cannons, athletic event starter pistols or other pragmatic and safe uses. MHPD staff was baffled (I handed over a copy of the ordinance) when I asked for a permit application. I was directed to contact City Hall staff. Drove over and the City Clerk referred me back to MHPD. She contacted Chief Swing's admin and requested that I send an email request. I very much appreciate the extra effort.

It would appear that the City of Morgan Hill has significant improvement opportunities in the administration of the current ordinance. My sense is that the current one reiterated in the draft serves as a source of ridicule and contempt - not to improve public safety.

But my major heartburn is what's NOT in the proposal versus what's in it. Morgan Hill has an opportunity to propose meaningful measures to improve public safety. Many, such as promoting Laura's Law for Santa Clara County, have no financial impact to the city. I'll be following up on the list of 25 recommendations that I previously submitted.

Best,
 -dave truslow
 M: 408-828-1520

On Sep 26, 2018, at 12:32 PM, Maureen Tobin
 <Maureen.Tobin@morganhill.ca.gov> wrote:

Good afternoon.

You are receiving this email because you participated in one of our recent community

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

meetings to provide input on the draft Firearms Ordinance.

Attached please find the current draft version which includes input from the first meeting. The regular type is existing, the strikeout is what is proposed to be deleted, and the italics is what is proposed to be added.

Please feel free to provide further comment through October 5th.

We appreciate your interest and participation on this important topic.

Maureen Tobin

Communications and Engagement Manager

[Engage With Us!](#)

City of Morgan Hill

City Manager's Office

17575 Peak Avenue, Morgan Hill, CA 95037

P: [408.310.4706](tel:408.310.4706) **C:** [408.406.4076](tel:408.406.4076)

maureen.tobin@morganhill.ca.gov

morgan-hill.ca.gov | [facebook](#) | [twitter](#)

<Draft Firearms Ordinance.docx>

Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

The City of Morgan Hill (CMH) will be considering a gun control ordinance to modify Title 9 (Public Peace, Morals, and Welfare) of the municipal code. The original ordinance was enacted in 1970. Attached is the current ordinance with highlights.

In May, 2018, the Violation section (9.04.040) was stricken. It previously provided for a fine of up to \$1,000 and 6 months in jail. *There now appears to be no violation penalty other than confiscation by police.* Repeated inquiries to the City Manager's office have not identified any.

Interestingly, the penalties were eliminated after new gun control regulations were requested by the city council as a result of the Feb 14th Parkland FL shooting.

The attached Title 9 draft ordinance was submitted for comment to be addressed by Council in late October. Key aspects are:

1. Preserves 9.04.10 Discharge Permit language

Other than at a licensed shooting range, a \$25 permit is required to discharge an "instrument" and:

- a. \$1,000,000 liability insurance naming city as additional insured.
- b. Issued by chief of police. The chief has sole discretion over issuance.
- c. As defined, "instrument" includes a Nerf gun, rubber band slingshot, soda straw blow gun, ball toss dog toy, emergency signaling device, theatrical prop, paintball, Airsoft, compressed air rocket toy, party popper, corked carbonated beverages, radio controlled aircraft, nail gun tool, and similar benign devices.
- d. Presumably subjects violators to citizens arrest (PC 837) and as supported by the Supreme Court's "breach of peace" ruling in the 2001 *Atwater v. Lago Vista* case.
- e. MHPD counter staff were baffled when a discharge permit application was requested and the current ordinance was provided to them. Staff were unable to provide the permit application or provide any guidance other than to contact city hall.
- f. The ordinance renders activities such as historical reenactments, celebrations (e.g., July 4th and Veterans Day), and theatrical performances as violations unless a \$1,000,000 insurance policy and MHPD permit is obtained. Evidently, no discharge permits have been issued for these events.

2. 9.04.020 Posting of Regulations

- a. Sellers of such benign objects, in addition to those that sell firearms and BB guns, are required to post "in a conspicuous place in the place of sale, a copy of this chapter and shall deliver a copy of this chapter to any purchaser of such instrument or device."
- b. Dave Lokey (Lokey Firearms) asserts Morgan Hill officials fail to enforce, inform him, or otherwise provide guidance in the 6+ years of operating a gun store in Morgan Hill. No others have been identified where the City of Morgan Hill has notified sellers or otherwise enforced this provision.

Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

- c. The ordinance effectively prohibits school JROTC air rifle programs. Such ranges are exempted from licensing since no explosive propellant is used. It would appear that a \$1,000,000 insurance policy and permit is required for each student.

3. Adds 9.04.030 Duty to Report

Crime victims are revictimized by this provision. Stolen guns must be reported to MHPD within 48 hours of loss or when the crime victim should have reasonably known of loss (however that is determined).

CA law provides for a 5 day reporting window. Federal law requires gun dealers to report within 48 hours of loss discovery. and omits the 'should have reasonably known' provision.

- a. ATF reports the average recovery time exceeds 11 years. Only about 11% are recovered.
- b. 1.9% of stolen gun were used in crime based on a 5 year study (Memphis, TN).
- c. Lawful gun owners promptly report loss: 99% according to one study. Most insurance policies require prompt notification.
- d. GAO concludes that none of the mandatory reporting windows has improved recovery or reduced recovery time.

The provision clarifies where to report (MHPD) – CA law specifies 'local law enforcement', but otherwise serves no useful purpose. It suggests that MHPD is not promptly notified by other law enforcement if reported elsewhere, but no supporting facts have been provided.

4. Adds 9.04.050 "Prohibition of Large Capacity [sic] Magazines

- a. Terminology: standard capacity for the popular Glock G17 9mm handgun is 17 rounds. Glock defines *large capacity* as greater than 17 rounds for a G17. CA limits magazine sales to 10 rounds.
- b. Owners must remove magazines larger than 10 rounds from Morgan Hill, surrender to MHPD, or sell / transfer within 90 days of the ordinance's effective date. Exempts law enforcement, military, gunsmiths, forensic personnel, those licensed by CA, and several other protected classes when operating within the scope of their duties.
- c. The 9th Circuit blocked enforcement of CA's magazine capacity restriction (*Duncan v. Becerra*) in July, 2018. Presumably this would likewise apply to Morgan Hill.
- d. There is no rational basis to limit magazine capacity nor is it practical to detect:

Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

- Redundant given CA magazine capacity law.
- Parkland, FL shooter Nikolas Cruz used 10 round magazines “because larger ones were too big for my backpack”.
- At the May 2018 Firearms Summit organized by Supervisor Dave Cortese, several gun owners asserted their tactical reload time (swapping magazines) is well under 2 seconds. Like Mr. Cruz, one can simply carry more magazines to maintain a volume of fire.
- As mentioned at the input meeting attended by MHPD Chief Swing, city attorney Larkin, and council members Constantine and Spring, many magazines are easily converted from 10 round to larger capacities using a small screwdriver. The outward appearance doesn’t change, nor is readily detectible unless each is loaded to capacity.

5. Adds 9.04.040 “Safe Storage”

- a. Requires firearms (as defined in CA PC 16520) to be stored in a locked container or disabled with a CA approved firearms safety device when “unattended”. “Unattended” is not defined nor is an operational definition clear.

Does this mean the firearm is “not supervised or looked after” (dictionary definition)? The firearms owner lacks line of sight visibility to the firearm? In the immediate vicinity? Not under custody and control (which could also violate current CA law)? Must be carried on the owner? The residence is unoccupied (e.g., firearms must be secured before stepping outside to sweep the porch)? Beyond the curtilage (i.e., firearms must be secured beyond the immediate vicinity of the residence)? Or something else?

CA (PC 25100-32015) law uses the phrase “custody and control” – not “unattended”. The distinction is between the proposed ordinance language and existing CA law is unclear.

- b. The proposal would include cannons, display antiques, and bespoke firearms. There is no practical means to secure some residential cannons under the ordinance.

As mentioned at the input meeting, cable and trigger locks do not fit and would damage many antique firearms. Some firearms cannot be secured without rendering them unsuitable for self-protection. There does not appear to be a practical means to comply with the proposed language in some instances.

- d. Authorities claim “The average burglar takes less than a minute to break into your home and overall 8 to 12 minutes to get out again.” Tests confirm that only a few seconds are required to kick-in a typical residential door.

Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

Under ideal conditions, the average time to free a cable locked semi-automatic handgun by experienced owners was measured at 86 seconds. Additional time is needed to insert a loaded magazine and 'make ready' for self-defense.

Unless "safe storage" allows rapid, unencumbered access, the provision prevents residential self-defense. Vulnerable elderly and physically impaired residents are at greater risk.

f. The ordinance unfairly targets only residential property – not commercial or other property.

g. From a practical standpoint, the storage ordinance is virtually unenforceable per testimony by SJPD Chief Garcia before the San Jose city council.

h. The RAND Corporation found that Child Access Prevention laws "reduce all firearms self-injuries (including suicide) among young people [ages 14-20]." "Evidence for the effect of child-access prevention laws on mass shootings is inconclusive." "Evidence for the effect of child-access prevention laws on violent crimes generally and on specific violent crimes is inconclusive." The proposed ordinance is not limited to households with those under 18 (per CA law), but to all households.

6. Adds 9.04.070 Confiscation

a. Fails to require that MHPD provide written notice of time-frames and procedures to recover confiscated property as courts have required elsewhere.

b. Fails to compensate owner for loss of property.

c. Unclear if consistent with 4th Amendment case law and therefore putting CMH at litigation risk.

7. Maintains 9.06 – Imitation Weapons

It shall be unlawful for any person to possess or display an imitation firearm on public property, in the public right of way, or in an area viewable from public property or the public right of way unless authorized in writing by the chief of police. An imitation firearm means a replica of a firearm that is so substantially similar in visual characteristics to an existing firearm as to lead a reasonable person to believe that the replica is a firearm that could be operational.

a. Fails to state that authorization shall not be unreasonably withheld.

b. Gratuitous since CA PC 20150-20180 delineates lawful use.

Analysis of Morgan Hill Municipal Code Chapter 9.04 Draft Proposal

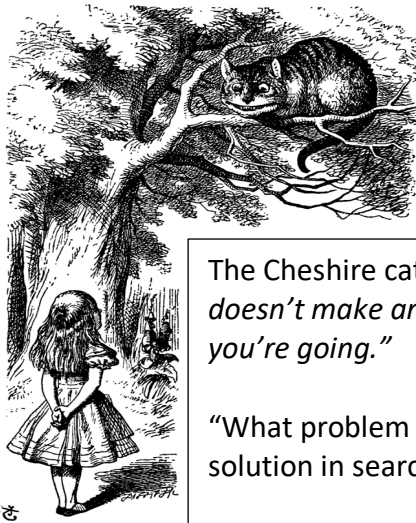
SUMMARY

As MHPD Chief Swing asked at the input meeting, “What problem are we try to solve?”

- Other than “safe storage” in households with minor children, the alleged public safety benefit is purely speculative and unsubstantiated.
- The proposed ordinance omits an operational definition of “unattended” firearm. It prohibits self-defense and reduces public safety if firearms are to be in locked containers at all times. It burdens MHPD with vague, unenforceable ordinances while current ordinances are unenforced.
- The City of Morgan Hill does not appear to enforce or notify gun stores and others of the posting and literature distribution requirement that was enacted in 1970.
- MHPD was baffled and unable to provide a discharge permit when requested. This provision has been in the municipal code since at least 2004; perhaps since 1970.
- The scope of unpermitted and thus prohibited “instruments” is breathtaking. No reasonable person would expect that a \$1,000,000 insurance policy and \$25 permit is required to use a nail gun, a harmless toy, or participate in a historical reenactment or patriotic celebration. But as written, the ordinance includes such devices and activities.
- CA’s preemption laws would seem to apply to several provisions.

The most glaring criticism is the failure to propose effective and sensible measures. There is a failed opportunity to clarify and rationalize the municipal code. Sensible and proven public safety improvement measures have not been included - see attached list of 25.

Many pose no regulatory or financial burden on the city. Others may incur minor costs, but the startup and recurring costs can be offset by grants and donations. Unlike the draft proposal, strong evidence supports their consideration.



The Cheshire cat’s observation to Alice is an appropriate conclusion. “*It doesn’t make any difference how you get there if you don’t know where you’re going.*”

“What problem are we trying to solve?”* The proposed ordinance is a solution in search of a problem.

* MHPD Chief Swing

Firearms Public Safety Proposals v1-2-7

(draft for discussion purposes – v1.2.7 – 8/30/18. Dave Truslow, E: dtruslow@sonic.net)

Consider ‘what works’ proposals that address:

- Education
- Detection
- Prevention
- Correction
- Casualty minimization

Where to focus: School shootings? Suicides? Terrorist shootings? Gang shootings? Gun theft? Other? As MHPD chief Swing asked at the input meeting, “What problem are we trying to solve?”

Management By Objectives: what timeframe to observe improvement, where, and how much?

Cost / benefit: what are the parameters? Example: Stanford has been reported to use \$9 million to estimate the value of life for patients awaiting transplants. What parameters should be used for risk assessment and threat mitigation? How do we know how much to invest and what’s sufficient?

No	Suggestion	Considerations
1	Identify Armed Prohibited Persons just as we do for registered sex offenders. Once determined to no longer possess firearms, then names should be promptly removed from the APP list.	Have legislature make APP list public. Use PD / SO to clear those on APP list. Unlike sex offenders, the APP list is confidential and only available to law enforcement. The most recent CA DOJ figures claim over 10,000 state residents on APP list. Very slow clearance rate by state. CA recidivism rate: 52%.
2	Ensure enforcement of court-ordered firearms possession bans from SCC Superior Court or other jurisdictions.	No enforcement or confirmation per claims at March 6 th Board of Supervisors meeting.
3	Audit reporting by LEO, mental health treatment, and other SCC communities consistent with ATF 4473 form.	Fed & CA DOJs claim inconsistent reporting allows gun purchases that should be prohibited. Guns used in Charleston, SC and Sutherland Springs shootings could not have been legally purchased had correct reporting procedures been followed.
4	Support proposals to make firearms theft a felony.	Join with other SCC cities to urge CA legislature to reinstate gun theft as a felony. Currently any theft less than \$950 is a misdemeanor. Virtually all gun-related violent crime involves firearms costing less than \$950. Misdemeanor offenders are not subject to deportation, nor reported to ICE under sanctuary policies.

4	Have LEO participate in free Project Child Safe gun lock giveaway program.	Helps to increase public awareness for safe storage and theft reduction.
5	Conduct public education program for safe storage.	Compliance increased from about 11% to about 65% when education was incorporated into a safe storage program. <u>No harm reduction benefit found in meta-analysis</u> (Epidemiological Reviews, Jan 2016)
6	Offer discount coupons for lockable gun storage containers.	Perhaps funded from buy-back auctions. GAO (2017) study cites “safe storage” compliance went from 5% to 65% when equipment provided.
7	Support community crime prevention education programs such Refuse to Be A Victim program.	Grants are available for instructional material. Instructors may donate their time. Partner with LEO.
8	Ensure the free Eddy Eagle gun or equivalent safety program is encouraged for young children.	Grants are available for instructional material. Instructors may donate their time. Partner with LEO.
9	Schools to have their safety programs reviewed and assessed.	Available from the free School Shield program. Grants are available to implement recommendations. Partner with LEO. SJPD conducts assessment for San Jose Unified School District. NB. Some “active shooter” recommendations conflict with ‘best practices’ recommendations and can result in higher casualties.
10	Investigate arming school resource officers.	Abundant evidence that rapid armed responses save lives. SJPD provides armed school officers in contract with SJUSD.
11	Offer active shooter assessments and training to churches, temples, and other venues with sizeable attendance.	Several organizations offer free active shooter training.
12	Deploy education and means for gun and ammunition disposal.	Partner with LEO. Studies show gun buy-back programs don’t reduce crime, but important to make disposal convenient. NB. SJPD accepts ‘no questions asked’ gun and ammo disposal. SCC SO has offered an annual program, but disposal not otherwise available.
13	Audit LEO firearms evidence inventory & procedures and compliance with new state vehicular transport law.	Mercury News reported Bay Area LEO as a primary source of lost guns – 944 based on an incomplete study. Many guns stolen from law enforcement vehicles.

14	Provide gun lockers for LEO private vehicles such as implemented for SCC sheriff officers.	Many guns stolen from LEO private vehicles. Important for armed off-duty officers to be able to promptly respond to crime. To avoid 'gift of public funds', organize charitable donations. \$35,000 raised to equip SCC SO private vehicles with gun lockers.
15	Review LEO firearms training, qualification procedures & preparedness for consistency with 'best practices' and 'worse case' scenarios.	NYPD reports less than 1 of 5 shots hit target resulting in 'spray and pray' accusations and liability for collateral damage. Note: Informal survey of 8 SCC LEO: not one knew their tactical reload time. Average gun fight distance: FBI says 10', PMA study says 20'.
14	Review adequacy and effectiveness of mutual aid agreements with adjacent LEOs.	Numerous problems identified in Parkland FL and elsewhere including incompatible communication equipment.
15	Review benefit of various untapped LEO grants.	Free training ammo is available for LEO.
16	Evidenced-based programs and data collection	Craft and emphasize initiatives that work. Support and adjust based on scientific management (monitoring and goal setting).
17	Implement criminal and civil penalties for school officials that fail to report as required under CA Education Code 48902 or Penal Code 245. Verify school district policies and procedures to mandate reporting in conformance with CA Education Code of reporting misdemeanors and felonies to law enforcement.	Currently no consequences for failure to report. School shootings often preceded by "red flag" misdemeanor or felony acts that go unreported.
18	Enact Laura's Law in SCC to treat the dangerous mentally ill. Implement behavioral health screening and reporting requirements.	CA's Education Code does not require screening or mental health assessment. Health care providers have no duty to report individuals likely to harm themselves or others. Many homicides, including SJPD officer Johnson's could have been prevented (see SCC DA's report) had health care professionals acted. SCC Behavioral Health Board could not identify published risk criteria for assessing harm to self or others. Approximately 2/3rds (61%) of all gun deaths are suicides.
19	Monitor social media.	Shootings often preceded by "red flag" social media messages. LEO monitors sex trafficking. Unclear about suicide or homicide risk monitoring.

20	Verify hospital & EMS procedures for response to mass shooting.	Does not appear to be documented in County emergency procedures. Identification and travel time to Level 1 trauma treatment?
21	Increase awareness and publish statistics for effectiveness of restraining orders.	CDC domestic violence report (July 2017). Studies indicate up to 80% of restraining orders are violated.
22	Issue CCWs	Saves substantially more lives than many other proposals. SCC Sheriff virtually never issues. Other LEO can issue. Domestic violence claims lives of unprotected . See CDC report (July 2017) and J. Am Acad Psychiatry Law 38:376–85, 2010. FBI Active Shooter report (2016-17) cites advantages: <i>“Armed and unarmed citizens engaged the shooter in 10 [of 50] incidents. They safely and successfully ended the shootings in eight of these incidents. Their selfless actions likely saved many lives.”</i> NB: In 6 incidents, armed citizens stopped additional casualties per FBI.
23	Important for law enforcement to be able to promptly respond to crime.	CA law prohibits armed response by off-duty officers to school incidents. Need to change state law.
24	Outreach to seniors and family members for selling or transferring unwanted firearms owned by those with low cognizant abilities or terminally ill. Review effectiveness of suicide prevention and physician assisted suicide programs.	Encourage disarming those with low cognizant abilities. This seems a primary factor in the officer-involved-shooting of an armed 86 year old in Saratoga Suicide is responsible for about 2/3 rd of gun deaths. Seniors (65+) rate is 34% higher than average.
25	Determine and assess public safety critical response capability.	What threat level and response level should public safety (PD/FD) achieve? What standards?

Legend: LEO – Law Enforcement Organization; PD/FD – police department / fire department;
SCC – Santa Clara County; SO – sheriffs office

From: [Donald Harley](#)
To: [Maureen Tobin](#)
Cc: [MICHAEL BROOKMAN](#)
Subject: Comments on Draft Anti Gun Violence Ordinance
Date: Friday, October 5, 2018 6:49:26 PM

Hello Maureen,

Thank you for the opportunity to review this document. My comments for the Draft Anti Gun Violence Ordinance pertain to the entire ordinance, not just the changes made for this draft, because I had not had an opportunity to review any previous versions of the Draft. As such I will get right to the point and focus on my most serious concerns.

9.04.010-A The scope of the ordinance as provided in the first paragraph is overly broad. Specifically, it identifies as applicable to the ordinance "...any instrument or device of any kind, character, or description which discharges, propels or hurls bullets, or missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the Chief of Police". This identification would cover a wide variety of devices that are not (and should not) illegal to own or use in the state of California. Some examples of toys that would fit this identification would include dart guns that shoot suction cup darts designed to stick to a target, Nerf guns that shoot harmless soft projectiles, paint guns that shoot harmless capsules of paint, and other harmless toys. More concerning, some construction tools would also fit the above identification, including nail guns, staple guns and paint sprayers. Common household items such as staplers and aerosol sprayers and squirt guns could even be construed to fit the description. It should be obvious that the scope identification in the ordinance is overly broad.

Also, many low power weapons are commonly available and are typically not illegal to use on a person's own property, including BB guns, pellet guns and bows and arrows. These potentially harmful items may be appropriate for regulation under circumstances that could inadvertently injure unsuspecting persons not on the private property where the items are being used by the owner of the property. For example, it should not be a violation to kill a poisonous snake using these items on your own property.

Finally, it should not be any kind of violation to use any legally owned weapon, including even firearms, for self defense within your own home. You should not need a license to save your own life or that of your family within your own residence. As such, there should be some exclusions in the ordinance that recognize that it is not illegal to use a firearm (shoot it legally) and even cause injury to your attacker under circumstances defined in existing law.

9.04.010-C.2 This paragraph could be considered an example of class discrimination. One million dollars of liability insurance would be very expensive for a low income family and should not be required for many, if not most of the items covered under 9.04.010-A above.

9.04.050-C.9 This paragraph appears to be, in part, redundant with CCW permit law which should identify when a CCW permit is needed to carry a firearm, and exclusions, if any, for retired peace officers. This paragraph should read "Any retired peace officer". If a retired officer is already required by law to have a CCW permit to carry a firearm, then if he doesn't have the CCW permit then he is by definition breaking a more severe law than this ordinance if he shoots his gun in a manner that violates that law. I suggest that you think seriously about whether it is a good idea in these times to discourage a retired peace officer from carrying a gun when he/she could be the only means to take down an active shooter in public.

From: [Tony Wilson](#)
To: [Maureen Tobin](#)
Subject: Comment of dissaproval
Date: Saturday, October 6, 2018 8:53:28 AM

Maureen,

I have read the proposed draft to The City of Morgan Hill Title 9 and find it to be in conflict with the The Constitution of The United States.

The questions I will ask:

- 1) How exactly will these amendments and bans stop gun violence?
- 2) What information was used by the City Council to determine no more than 10 rounds of ammunition would ever be needed for a citizen in self defense of ones life?
- 3) What is the legal penalty for a law abiding citizen in violation of this ordinance?

I have forwarded a copy of this Draft to the NRA, and legal counsel for the CRPA for review.

As a law abiding citizen of The City of Morgan Hill, I wish to voice my opposition to these amendments!

Respectfully,

Tony Wilson
(408) 710-1114

Sent from my iPhone

From: [Brenden](#)
To: [Maureen Tobin](#)
Subject: Anti-Gun Violence Comments
Date: Friday, October 5, 2018 4:35:41 PM

Hi Maureen, here are my comments on the "Anti Gun Violence Ordinance".

My name is Brenden Azevedo and have been a Morgan Hill resident on and off for close to 15 years. For all intents and purposes I grew up on this community. I was a police cadet for the city for one year, shortly afterwards I moved to Idaho where I was correctional officer for close to four years and a parole agent for two. I have a bachelors degree in Criminal Justice.

The language included in "9.04.010" would require a permit for children to shoot B.B. Guns or air soft rifles in the backyards of their own homes. Do we really need citizens to have to get a permit in order to kill a rat on their property with an air gun? Does the city also want a permit for children to shoot model rockets into the sky? I don't see a necessity for this law. If the city is concerned with damage being caused by such activities it can be handled through California's laws on destruction of property or when you hurt another person. A permit process would simply add to an increase burden on police. I imagine that overall compliance with such an ordinance would be low to begin with, as would the priority of it during a police call for service. There are simply more important things to be concerned about that take up police time.

9.04.040

State law already requires that all firearms when purchased from a federal license gun dealer either are accompanied by a lock OR that the purchaser has access to a firearm safe for safe storing of the firearm. It is already against state law for others to have access to one's firearms outside of their immediate presence and it is also against the law for children to be able to have access as well. This ordinance would make it illegal for a gun owner to keep a gun on the nightstand and to then return it to the safe prior to leaving for work. Punishment should be reserved for those who steal firearms and those that leave them accessible to children.

9.04.050 and 9.04.060

"New" high capacity magazines have been illegal to purchase, import, etc since January 1st, 2000. I don't recall there being a large crime spree in Morgan Hill being committed that involved "high capacity magazines" and I don't see magazines that have been in the possession of Morgan Hill residents for 18 years are now suddenly deemed unsafe. If these magazines are unsafe for the regular citizens of the city to possess then surely they are just as dangerous to members of our police force. Does a confiscated magazine no longer become a public nuisance when in police hands?

We already have laws (felonies I might add) for people using firearms in the commission of a crime. We don't need to confiscate magazines that have been in the possession of Morgan Hill residents to remain safe. Magazines are simply pieces of spring and metal or plastic. We should be concerned with the reasons people use guns and combating actual crime, not what can be easily made with a CAD drawing and a trip to Home Depot.

Furthermore, there is currently an injunction against the State of California in the 9th Circuit

(Duncan v. Becerra) stopping the State California from banning High Capacity Magazines.
See <http://www.sandiegouniontribune.com/news/courts/sd-me-magazine-ruling-20180717-story.html>

The city can send me a personal check instead of being added to the litigation process which would be the inevitable result if this ordinance is passed.

Thank you,

Brenden

From: [Tom Rigo](#)
To: [Maureen Tobin](#)
Subject: Re: Provide Your Input on the Draft Anti Gun Violence Ordinance
Date: Friday, October 5, 2018 1:07:40 PM

Hi Maureen,

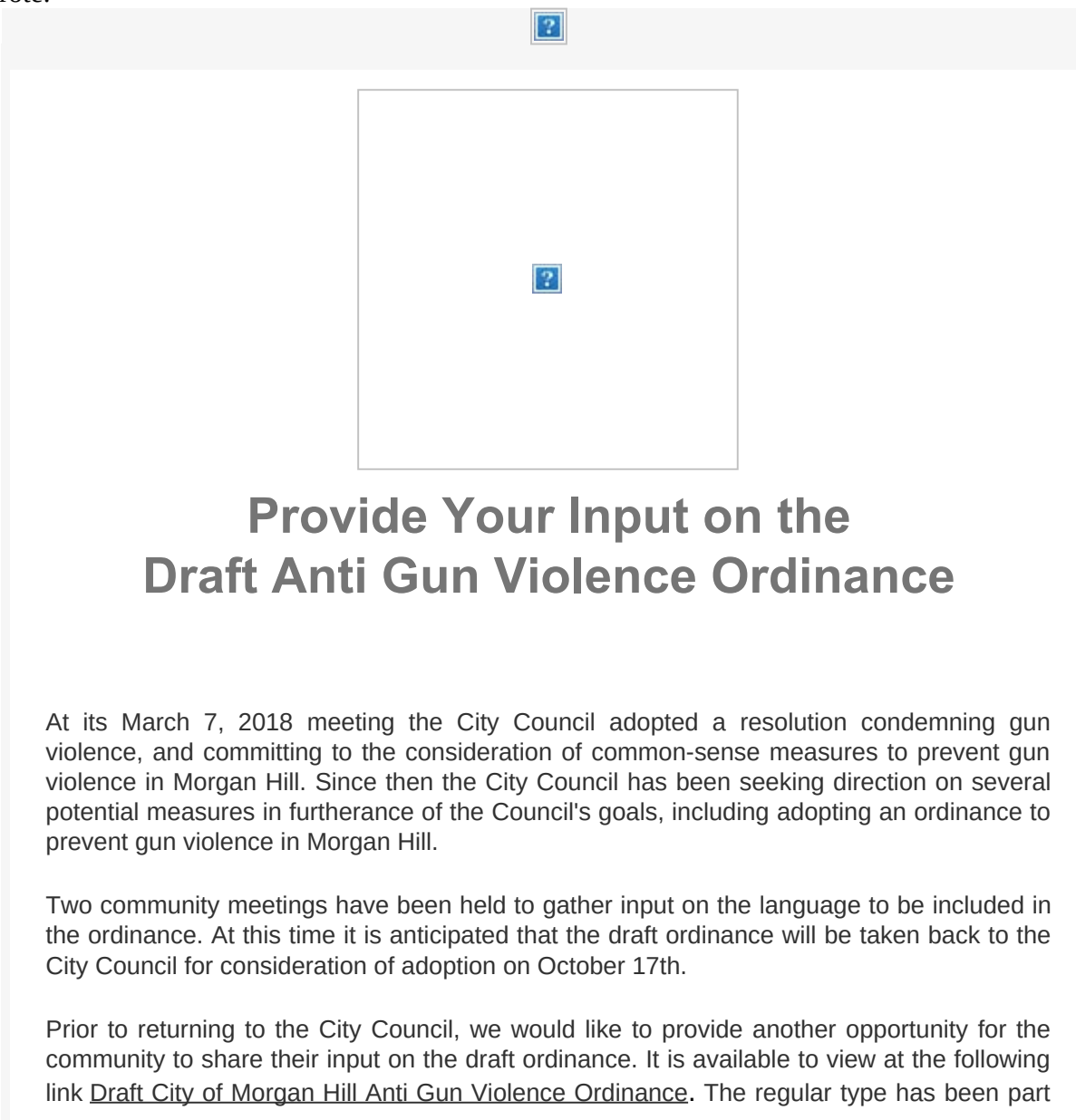
Here are my comments on the draft ordinance.

Paragraph 9.04.010

1. Paragraph A - Strike reference to air pressure from line 4.
2. Add paragraph E to add exclusion for protection of personal property.

thanks Tom Rigo

On Tue, Oct 2, 2018 at 9:31 AM City of Morgan Hill <maureen.tobin@morganhill.ca.gov> wrote:



The screenshot shows a web form for providing input on a draft ordinance. At the top, there is a header bar with a question mark icon. Below this is a large rectangular box, also containing a question mark icon, likely for a title or subject line. The main heading reads "Provide Your Input on the Draft Anti Gun Violence Ordinance". The body text states that the City Council adopted a resolution condemning gun violence on March 7, 2018, and is seeking direction on further measures. It mentions two community meetings and that the draft ordinance will be taken back to the City Council for consideration on October 17th. Finally, it offers another opportunity for community input and provides a link to the draft ordinance.

**Provide Your Input on the
Draft Anti Gun Violence Ordinance**

At its March 7, 2018 meeting the City Council adopted a resolution condemning gun violence, and committing to the consideration of common-sense measures to prevent gun violence in Morgan Hill. Since then the City Council has been seeking direction on several potential measures in furtherance of the Council's goals, including adopting an ordinance to prevent gun violence in Morgan Hill.

Two community meetings have been held to gather input on the language to be included in the ordinance. At this time it is anticipated that the draft ordinance will be taken back to the City Council for consideration of adoption on October 17th.

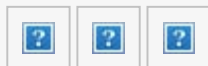
Prior to returning to the City Council, we would like to provide another opportunity for the community to share their input on the draft ordinance. It is available to view at the following link [Draft City of Morgan Hill Anti Gun Violence Ordinance](#). The regular type has been part

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

of the draft ordinance from the beginning, the ~~strikeout~~ is what is proposed to be deleted and language in the *italics* is what is currently proposed to be added.

Comments can be submitted directly to Maureen Tobin through Friday, October 5, 2018.

Company Name | Phone | Address | Website

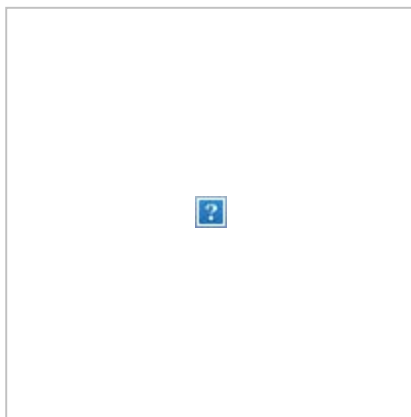


City of Morgan Hill | 17575 Peak Avenue, Morgan Hill, CA 95037

[Unsubscribe rigotp15@gmail.com](mailto:Unsubscribe_rigotp15@gmail.com)

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Sent by maureen.tobin@morganhill.ca.gov in collaboration with



Try it free today

From: [Rene Spring](#)
To: [Christina Turner](#); [Donald Larkin](#); [Maureen Tobin](#)
Subject: Fwd: Anti Gun Violence Ordinance
Date: Friday, October 5, 2018 8:26:48 AM

Sent from my iPhone

Begin forwarded message:

From: Oz M <joswaldomendoza@gmail.com>
Date: October 4, 2018 at 8:02:40 PM PDT
To: rene.spring@morganhill.ca.gov
Subject: Anti Gun Violence Ordinance

Hello Mr. Spring,

I wanted to share that I do not approve of the Council and or Major considering the Anti Gun Violence Ordinance.

The Ordinance is very Intrusive to people's rights to defend themselves. It is also misleading as to what the City Police and laws do or can do to restrict self defense rights for law abiding citizens.

Laws are not for criminals, criminals don't care about laws; they are to restrict its citizens.

This Ordinance will make you a felon if you accidentally discharge a sling shot, pellet gun, bow, or gun.

I don't want to live in a city that can make my son a felon for playing in their yard.

Our country and State allows us the right to arm ourselves and protect our life and family from life attacks.

This Ordinance takes away any and all of those rights based on "Common Sense" and turns them into a permission driven local society. I believe this to be very totalitarian. It turns all law abiding citizen's into victims waiting to happen.

I have been in places with similar laws before, they were run by socialist and in countries South of here.

I urge you to vote against this "Common Sense" Anti Gun Ordinance.

Thank you,

Jose Mendoza

I live in the Capriano neighborhood

I would give you my address but I am a little afraid of the local government stand.

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Proposed "ORDINANCES TO PREVENT GUN VIOLENCE"
Date: Monday, October 15, 2018 11:00:29 AM

From: Jerry Jeska <vjeska@aol.com>
Sent: Friday, October 12, 2018 1:06 AM
To: Steve Tate <Steve.Tate@morganhill.ca.gov>; Caitlin Jachimowicz <Caitlin.Jachimowicz@Morgan-Hill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Subject: Proposed "ORDINANCES TO PREVENT GUN VIOLENCE"

Dear Morgan Hill City Council Member:

RE. -- "PROVIDE DIRECTION TO STAFF REGARDING ORDINANCES TO PREVENT GUN VIOLENCE" Direct the City Attorney to draft, for Council consideration, ordinances:
 1. Creating a duty to report the theft or loss of firearms 2. Requiring the safe storage of firearms when not in use 3. Prohibiting the possession of large capacity magazines 4. Requiring a permit to conduct retail firearms sales

Why must an owner be required to keep relic and antique replica firearms locked up? If your concern is that burglars have access to them, in particular to commit crimes, rest assured that such firearms are almost useless for that purpose. Criminals want modern, particularly semiautomatic, handguns, not WWI and WWII vintage, bolt-action rifles, which many of your constituents collect. Criminal elements have no use for pre-twentieth-century firearms such as muzzle-loading rifles or Civil War cap & ball pistols, be they originals or replicas. Such pieces will not operate with modern ammunition and are often single shot weapons. Very few members of our twenty-first-century society would even know how to load some of them. I admit a bit of exaggeration when I suggest that the last murder committed with a WWII vintage rifle was committed from a famous book depository in Dallas, TX in Nov. of 1963.

Not only would this "safe storage" provision not deter theft of relics and antique replicas, it would fail to prevent suicides (by far the most common cause of firearm deaths). The adult male of a household, who statistics tell us commit the preponderance of suicides, would usually be the family member in possession of a safe combination or lock's key. The measures considered would prevent absolutely no suicides.

Please recognize that many of these relics and replicas are used as display pieces, the appearance of ruined by trigger locks. On muzzle-loading rifles and shotguns, the entire trigger guard can be removed with a common screwdriver, trigger lock included. (Please inspect the attached photo of items I built from kits to see how simply the trigger guard can be removed to take off a trigger lock. Also note how use of a trigger lock would compromise the appearance of a display.) Some late nineteenth-century revolvers do not even have trigger guards to hold the lock. Indeed, anything not welded can be disassembled. Moreover trigger locks can be removed from any firearm via use of an electric drill or other tools.

Theft of long guns and their subsequent use for criminal activity is not a problem and the city should not require that long guns, in be locked up. According to reports by former state Attorney General (now US Senator) Kamala Harris, long guns are used in only about 3% of gun crimes.

<https://www.oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-15.pdf>

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/firearms-report-14.pdf>

Do realize that gun owners do not like being stolen from, particularly if the item is a family heirloom. Hence they commonly take reasonable precautions of their own volition—burglar alarms and locks and safes of their own volition and discretion. Rather than infringe upon a resident's constitutional rights, the city should look at the several alternate proposals offered by Mr. Dave Truslow. One is to make use of the Child-Safe program offering free locks, something the city has not availed itself of. Another is to work with other governmental agencies to establish firearm theft a felony, as opposed to a misdemeanor unless the value is over \$900. Please review the suggestions I understand Mr. Truslow has offered

Also please consider that, if someone commits a home invasion, unlocking a firearm or retrieving it from a safe takes time, critical time. The key to a locked box or trigger lock cannot be left with the firearm or there is no point in locking the firearm, except for legal compliance. Awakened drowsy from sleep further delays access to the firearm needed for safety's sake.

Does Morgan Hill even have a problem with firearms being stolen and used for criminal purposes? Certainly not antiquated or replica relics. Why require a permit to sell relics and replicas?

Theft of any legally owned firearms will be divulged in a police report submitted even if only to secure insurance compensation. The state has already mandated a time limit in reporting. The proposal is redundant.

In summation, the city should not require the locking of antiquated firearms or long guns. Such items would not be a target for criminals and would be useless to them. Locking firearms would not prevent suicides, the preponderance of firearm deaths. While compromising a resident's safety and constitutional rights, doing so would serve no purpose. Each resident/family should be able to assess his/her own personal situation and make the appropriate decisions for familial safety, not the city. Neither should the city require licensing for the sale of constitutionally protected firearms or mandate a time stipulation on reporting firearm theft. The city should give due consideration to the alternate proposals suggested by Mr. Dave Truslow, proposals which would enhance firearms safety in Morgan Hill.



Be assured I appreciate your time and attention.

Regards,

Jerry P. Jeska
MA, history





Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:04 AM
To: Michelle Bigelow
Subject: FW: Gun Ordinance

From: Joe Koppi <jtbone80@icloud.com>
Date: October 14, 2018 at 1:26:12 PM PDT
To: rene.spring@morganhill.ca.gov
Subject: Gun Ordinance

Dear Mr. Spring

I am writing to you to voice my opposition to the gun control ordinance up for a vote by your council Oct 24th.

There is already a law on the books in California, forbidding the discharge of a firearm within 150 yards of an occupied residence. This law alone covers nearly all of residential Morgan Hill. The exception of course, is in cases of self-defense against home invasions. The Supreme Court has made it clear, the 2nd amendment gives an individual the right to defend life and property with a firearm.

This ordinance goes way too far. It requires, even to discharge a gas-powered device (like a BB gun, Nerf Gun, Paintball gun or spring-operated airsoft pellet gun), an expensive liability insurance policy which only the rich can afford. It also requires you ask from "The State" (in this case the chief of police) for permission to safely and responsibly do, what the US Constitution already gives you the right to do.

This is another case of government overreach. Converting our rights and responsibilities into "privileges". It is effectively a "Ban" on all guns and anything even "looking like" a gun. Please vote "No" on this ordinance, and let's come up with gun laws thoughts and will keep them in mind. Your last line sums up my goal pretty well, ...let's come up with gun laws that actually keep guns from criminals. (I would add: and children and the mentally ill.)

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:04 AM
To: Michelle Bigelow
Subject: FW: Gun Control Ordinance

From: Matt Wendt <matthewwendt@msn.com>
Date: October 12, 2018 at 2:41:39 PM PDT
To: rene.spring@morganhill.ca.gov, caitlin.jachimowicz@morganhill.ca.gov, steve.tate@morganhill.ca.gov,
Rich.Constantine@morganhill.ca.gov, larry.carr@morganhill.ca.gov
Subject: Gun Control Ordinance

Mayor and Councilmembers,

I am writing to voice my objection to the proposed gun control ordinance on the agenda for the upcoming meeting.

While I share your concern for our residents' safety, gun control laws in CA are already one of the most restrictive in the nation. I haven't had a chance to do any legal research to see if this proposed ordinance even looks constitutional, but it reads like it is all-encompassing and is too subjective for me. More importantly, I believe this is a federal and state law issue.

Please do the right thing and vote against this proposed ordinance.

Matt Wendt

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:03 AM
To: Michelle Bigelow
Subject: FW: Gun Control ordinance Oct 24th

From: "David Beasley" <dbeasley@beasleydirect.com>
Date: October 12, 2018 at 11:02:49 AM PDT
To: <rene.spring@morganhill.ca.gov>
Subject: Gun Control ordinance Oct 24th

Dear Mr. Spring,

I am writing to you to voice my opposition to the gun control ordinance up for a vote by your council Oct 24th.

There is already a law on the books in California, forbidding the discharge of a firearm within 150 yards of an occupied residence. This alaw alone covers nearly all of residential Morgan Hill. The exception of course, is in cases of self-defense against home invasions. The Supreme Court has made it clear, the 2nd amendment gives an individual the right to defend life and property with a firearm.

This ordinance goes way too far. It requires, even to discharge a gas-powered device (like a BB gun, Nerf Gun, Paintball gun or spring-operated airsoft pellet gun), an expensive liability insurance policy which only the rich can afford. It also requires you ask from "The State" (in this case the chief of police) for permission to safely and responsibly do, what the US Constitution already gives you the right to do.

This is another case of government overreach. Converting our rights and responsibilities into "privileges". It is effectively a "Ban" on all guns and anything even "looking like" a gun. Please vote "No" on this ordinance, and let's come up with gun laws that actually keep guns from criminals.

Sincerely,

David Beasley
 Morgan Hill Resident

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 10:58 AM
To: Michelle Bigelow
Subject: FW: Proposed Morgan Hill Gun ordinance

From: Mark Hinkle <mark@garlic.com>
Sent: Wednesday, October 10, 2018 7:30 PM
To: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>
Subject: Proposed Morgan Hill Gun ordinance

Maureen Tobin,

RE: posting on NextDoor regarding proposed MH gun ordinance(s)

I live outside the city limits of Morgan Hill, but have a MH address.

Chicago is one of the most restrictive cities in which to own a gun and they have rampant gun deaths.

Gun laws restrict law abiding citizens, not criminals intent on rape, burglaries, or murder.

If the city of Morgan Hill were really serious about reducing crime, they'd emulate the city of Kennesaw, Georgia:

From WikiPedia: Kennesaw is noted for its unique firearms legislation in response to Morton Grove, Illinois' law mandating gun prohibition.

In 1982 the city passed an ordinance [Sec 34-21]:[21]

(a) In order to provide for the emergency management of the city, and further in order to provide for and protect the safety, security and general welfare of the city and its inhabitants, every head of household residing in the city limits is required to maintain a firearm, together with ammunition therefore.

(b) Exempt from the effect of this section are those heads of households who suffer a physical or mental disability which would prohibit them from using such a firearm. Further exempt from the effect of this section are those heads of households who are paupers or who conscientiously oppose maintaining firearms as a result of beliefs or religious doctrine, or persons convicted of a felony.

The results of this ordinance: a dramatic drop in crime!

FYI.....Mark Hinkle, 408-779-7922

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"It does not take a majority to prevail, but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men." - Samuel Adams



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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 10:59 AM
To: Michelle Bigelow
Subject: FW: Proposed gun ordinance language (9.04.010 A) would apply to common construction tools, toys and more

From: John Horner <jthorner@verizon.net>
Sent: Saturday, October 13, 2018 9:07 AM
To: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Proposed gun ordinance language (9.04.010 A) would apply to common construction tools, toys and more

Hello Maureen,

I'm just now getting to reading the text of the proposed ordinance and as such have missed the October 5, 2018 deadline. I am writing in my personal capacity and as a business owner.

This language seems overly broad:

“No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.”

As written it would apply to the air powered nail guns commonly used in construction. There are probably thousands of these tools in Morgan Hill and probably hundreds of them in use on any given day. As a practical matter there is really no way the chief of police is going to be able to review and issue permits for them.

It would also apply to common toys such as “Nerf” guns, rubber band guns, water pistols and homemade spit ball shooters made with a straw and piece of paper. Popular and harmless children’s toys like Stomp Rockets (which use air pressure to launch of foam rubber toy rocket) would seem to be included as well. Industrial sand blasters, pressure washers and certain other machinery would also likely fall under the proposed definition. As such, the broad definition catches many types of devices and uses far beyond the common understanding of what a weapon is.

I sincerely hope the ordinance will not be enacted as drafted.

Thank you,
 John Horner

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:03 AM
To: Michelle Bigelow
Subject: FW: Morgan Hill Gun Control Ordinance

From: Chuck Dunn <dunnc@garlic.com>
Date: October 12, 2018 at 10:46:07 AM PDT
To: <rene.spring@morganhill.ca.gov>
Subject: **Morgan Hill Gun Control Ordinance**

My wife and I have been Morgan Hill residents over 25 years. As registered voter, who voted for you, we felt it appropriate to let you know that we are against the proposed gun control ordinance and ask that you vote against the measure.

We don't own any guns but have read the California Firearm Safety Certificate Study Guide and taken a hand gun safety class so we are knowledgeable about gun safety and the current California laws governing gun ownership and safety.

We don't believe that the Morgan Hill Gun Control Ordinance will have any measureable effect. It will not prevent bad people from doing bad things. The ordinance will add work / expense to the Council, Mayor and police chief and additional burden to the good citizens who choose to comply with the ordinance, all for no benefit.

Thank you for your time and assistance on this matter.

Charles and Mary Dunn
 1740 Diana Ave,
 Morgan Hill CA 95037



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Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:05 AM
To: Michelle Bigelow
Subject: FW: Gun laws in Morgan Hill

From: Trudy Parks <trudyp95037@gmail.com>
Date: October 12, 2018 at 2:54:57 PM PDT
To: rene.spring@morganhill.ca.gov
Subject: Gun laws in Morgan Hill

This is going too far. We already have many strict gun laws in place in California. The citizens of Morgan Hill should vote on this. The council should not make this decision.

Trudy Parks

Sent from my iPad

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

Michelle Bigelow

From: Michelle Bigelow
Sent: Monday, October 15, 2018 11:05 AM
To: Michelle Bigelow
Subject: FW: Gun Control Ordinance

From: Creagh Downing <creaghdowning58@gmail.com>
Date: October 12, 2018 at 12:35:55 PM PDT
To: rene.spring@morganhill.ca.gov
Subject: Gun Control Ordinance

Dear council member Spring,

I oppose this gun control ordinance.

Thanks,

Charles Downing
15395 La Arboleda Way, MH 95037
347-349-0908

Attachment: Public Comment on Gun Violence Ordinance (1993 : Gun Violence Ordinance)

From: [Donald Larkin](#)
To: [Michelle Bigelow](#)
Subject: FW: Gun Control Ordinance
Date: Friday, October 19, 2018 3:43:31 PM

Begin forwarded message:

From: Michael Burchfield <mikeb@westhills.org>
Date: October 19, 2018 at 12:23:56 AM PDT
To: steve.tate@morganhill.ca.gov, rich.constantine@morganhill.ca.gov,
larry.carr@morganhill.ca.gov, rene.spring@morganhill.ca.gov,
caitlin.jachimowicz@morganhill.ca.gov
Subject: Gun Control Ordinance

Dear Mayor Tate and City Council Members Mr. Constantine, Mr. Carr, Mr. Spring, and Mrs. Jachimowicz,

I am emailing you to communicate my concern regarding the gun control measure scheduled for discussion and vote by you, the city council, on October 24, 2018. I urge you NOT to approve this measure as it is written. Having read the ordinance (on line at <https://www.morgan-hill.ca.gov/DocumentCenter/View/23695/Draft-Firearms-Ordinance>), it is clear that it is so general in scope that even toys will be illegal within the city limits, unless an application is submitted to the chief of police for approval of said instrument; and I seriously doubt that you desire to be down as the city council who passed such a ridiculous ordinance.

Why do I call this a ridiculous ordinance? By way of example, the first section of the ordinance reads:

The **SECTION 1:** Chapter 9.04 ("Weapons") of Title 9 ("Public Peace, Morals and Welfare") is hereby amended to read as follows:

"9.04.010 - Discharge—Permit required—Fee.

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police."

If I am interpreting this statement correctly, things such as nerf guns, nerf bow and arrows, slingshots or toy bow and arrows which shoot wooden arrows with rubber tips will be illegal to discharge within the Morgan Hill city limits without a permit from the police chief and a liability insurance policy. Put another way, if my grandson were to receive a TOY such as this mentioned above for his birthday, which utilizes compressed air or a strong under tension to propel a soft styrofoam or wooden projectile 'any distance', his doing so will constitute a violation of said ordinance, if done so without a permit.

Frankly, I cannot understand WHY an ordinance as broad as this is even up for consideration. Isn't it true that it is ALREADY illegal to discharge firearms within the city

limits? Aren't the setting off of explosive devices (called fireworks) already illegal within the city limits? Isn't it true that the use of air soft guns within the city limits is already illegal? Isn't it true that the discharge of paintball guns are illegal within the city limits unless used on designated fields of play?

If my assumptions regarding firearms, air soft guns and paintball guns are wrong, it seems this ordinance should specify that such instruments are what, specifically, are in view with in this ordinance. If my assumptions are correct, then why does Morgan Hill need this ordinance at all?

This seems like a 'feel good' ordinance which may gain certain members of the council favor in the eyes of some sub-group or other within the city, but which will do NO GOOD in protecting the citizenry of our good city any further than the ordinances already in place and enforced by the Morgan Hill Police Department. PLEASE, do NOT vote this ordinance into affect as written.

Thank you for your kind consideration; and thank you for your service to our community,

Michael Burchfield
825 Encino Drive
Morgan Hill, Ca, 95037



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

Background/Purpose

On November 5, 2014, the City Council adopted Resolution No. 7051 establishing the Sports Recreation and Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development.

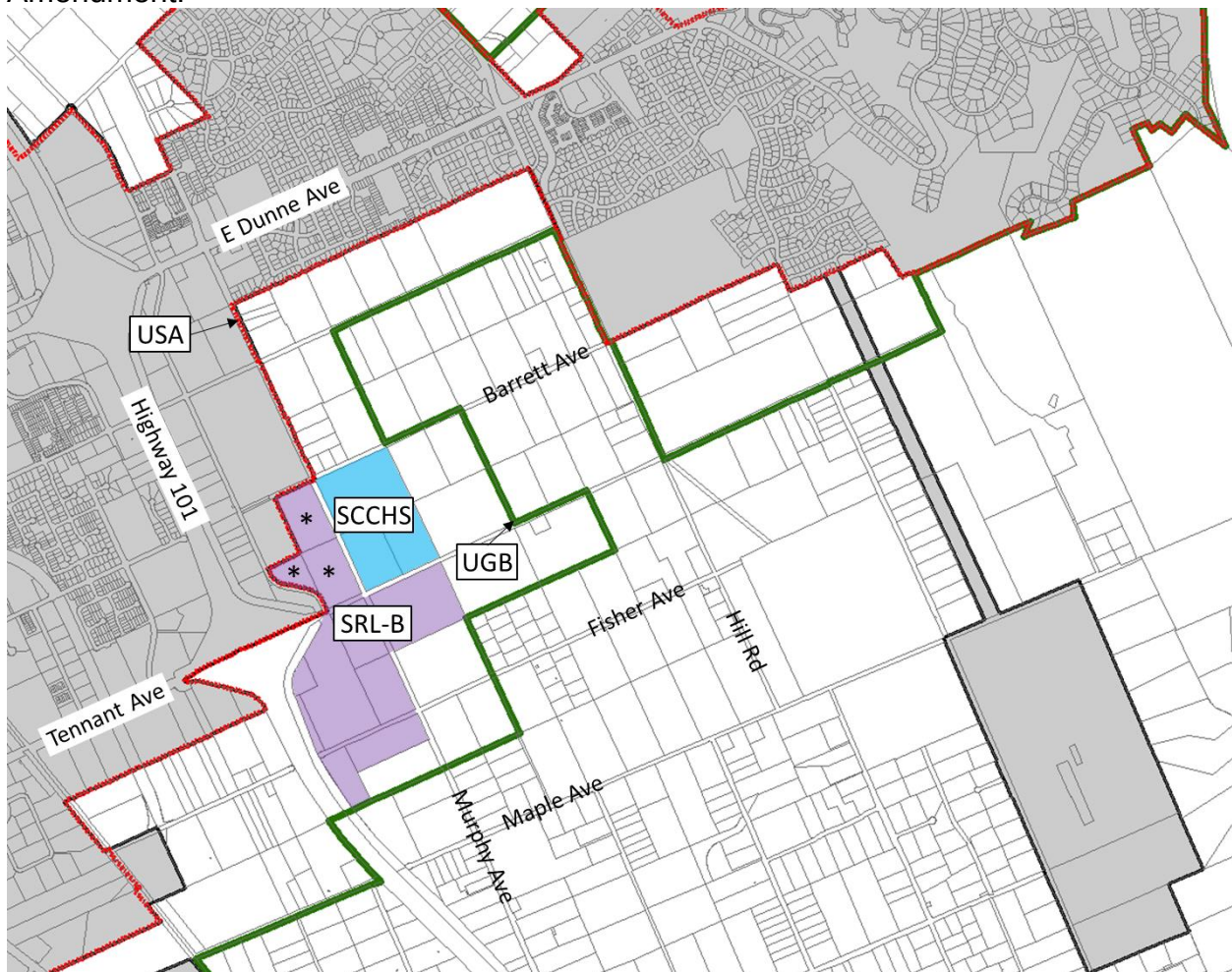
On August 5, 2015, the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B). These parcels, shown on the map below, remain pre-zoned SRL-B in anticipation of potential future annexation.

On September 5, 2018, during their review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the Council prior to November 7, 2018 with a new pre-zoning for Council consideration to replace the existing SRL-B pre-zoning on parcels (APNs:

817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses.

Rather than create a new zoning district (text amendment) and apply that new zoning district to the three specific parcels described above and shown on the map below (map amendment), staff recommends modifying the uses allowed in the existing SRL-B Zoning District (text amendment) that would then be applicable to all properties that are pre-zoned SRL-B. All properties, including the three specific parcels, that are pre-zoned SRL-B are currently located in the same general area (on both sides of Tennant Avenue east of Highway 101).

As described in the prior commission actions section below, at their October 9, 2018 meeting, the Planning Commission did not recommend approval of the proposed Zoning Amendment.



* = APNs 817-13-008, -011, and -037 / UGB = Urban Growth Boundary / USA = Urban Service Area

Project Description

The proposed Zoning Amendment consists of modifications to the uses allowed in the existing SRL-B Zoning District as shown in Exhibit A to the attached Draft Ordinance.

The following commercial uses would no longer be allowable:

- Drive-through establishments
- Gas and service stations
- Hotels and motels
- Restaurants
- Retail that is sports-themed or sports/recreation-serving
- Day spas, barbershops, and hair salons
- Health and fitness clubs and indoor recreation centers oriented to local residents
- Indoor swimming pools

The SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the County prior to August 1, 2014 remains a permitted use.

Analysis

The City may approve Zoning Amendments only after finding that the proposed amendment is: consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and is internally consistent with other applicable provisions of the Zoning Code.

The amendment is consistent with the City of Morgan Hill's General Plan in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses that are allowed within the SRL General Plan Land Use designation. The proposed change would not create any non-conforming uses on the parcels within the existing zoning district.

The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City.

The proposed changes to the uses allowed within the SRL-B District do not affect internal consistency with other provisions of the Zoning Code.

COMMUNITY ENGAGEMENT: Inform

Notice of this hearing and the prior Planning Commission hearing was published in the newspaper and mailed notices were sent to potentially affected property owners.

ALTERNATIVE ACTIONS:

Direct staff to return with a Zoning Text Amendment to establish a new SRL Sports Recreation and Leisure Sub-zone (e.g., SRL-C) and a Zoning Map Amendment to apply that pre-zoning to APNs 817-13-008, -011, and -037. Like the existing SRL-B District, the SRL-C District would allow a range of lower intensity sports, recreation, leisure, agricultural and natural resources uses, but would not allow certain intensive commercial uses including: drive-through establishments; gas and service stations; hotels and motels; restaurants; retail that is sports-themed or sports/recreation serving;

day spas, barbershops, and hair salons; health and fitness clubs and indoor recreation centers oriented to local residents; and, indoor swimming pools.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The proposed Zoning Amendment was considered by the Planning Commission at their regular meeting held on October 9, 2018. The Planning Commission, on a 5-2 vote, did not recommend City Council approval of the proposed Zoning Amendment with the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant (SEQ) should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district (or a Planned Development (PD) Combining District) that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area

FISCAL AND RESOURCE IMPACT:

Not applicable.

CEQA (California Environmental Quality Act):

An Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164.

LINKS/ATTACHMENTS:

1. DRAFT Ordinance
2. Exhibit A - Chapter 18.28 Public Open Space Recreation

ORDINANCE NO. XXXX, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING AN AMENDMENT TO TITLE 18, DIVISION I
ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER
18.28 - OPEN SPACE, PUBLIC, AND RECREATION
ZONING DISTRICTS TO MODIFY THE USES ALLOWED
IN THE SRL-B - SPORTS RECREATION AND LEISURE
SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL
MUNICIPAL CODE (FILE NO. ZA2018-0005: CITY OF
MORGAN HILL)**

WHEREAS, on November 5, 2014 the City Council adopted Resolution No. 7051 establishing the Sports Recreation and Leisure General Plan Land Use designation, which allows a wide range of private commercial, retail, and public/quasi-public sports-recreation leisure themed uses and supports local agriculture and sustainable economic development; and

WHEREAS, on August 5, 2015 the City Council adopted Ordinance No. 2153ns, which established the Sports Recreation and Leisure (SRL) Zoning District and at the same hearing adopted Ordinance Nos. 2155ns, 2157ns, and 2158ns that pre-zoned several parcels to the SRL Sub-zone B Zoning District (SRL-B); and

WHEREAS, these parcels remain pre-zoned SRL-B in anticipation of potential future annexation; and

WHEREAS, on September 5, 2018, during their review of an Urban Service Area (USA) expansion request for the South County Catholic High School (SCCHS) that includes three SRL-B pre-zoned parcels to the west of the proposed High School site, the City Council directed staff to return to the Council prior to November 7, 2018 with a new pre-zoning for Council consideration to replace the existing SRL-B pre-zoning on parcels (APNs: 817-13-008, -011, and -037) such that the new zoning would not allow housing, hotels, or commercial uses; and

WHEREAS, rather than create a new zoning district and apply that new zoning district to three specific existing SRL-B pre-zoned parcels, staff advised that the desired modifications to the uses allowed in the existing SRL-B Zoning District be applicable to all properties currently pre-zoned SRL-B, which all exist in the same general area as the three specific parcels; and

WHEREAS, with the proposed modifications to the SRL-B district as shown in Table 18.28-2 in Exhibit A – Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts, the following commercial uses would no longer be allowable: drive-through establishments, gas and service stations, hotels and motels, restaurants, retail that is sports-themed or sports/recreation-serving, day spas, barbershops, hair salons, health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools; and

WHEREAS, the SRL-B district will continue to not allow new residential land uses with the exception that one single-family detached dwelling on a legal lot of record established in the

County prior to August 1, 2014 remains a permitted use; and

WHEREAS, an Addendum to the Environmental Impact Report (EIR) for the City of Morgan Hill's Morgan Hill 2035 Project certified on July 27, 2016 (State Clearinghouse No. 2015022074), was prepared for the Zoning Code Update adopted on June 6, 2018 and serves as the environmental review for the proposed Zoning Code Text Amendment. The Addendum for the Zoning Code Update was prepared pursuant to the provisions of the State of California Environmental Quality Act (CEQA) Guidelines Section 15164; and

WHEREAS, the City may approve Zoning Amendments only after finding that the proposed amendment is consistent with the General Plan; will not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and, is internally consistent with other applicable provisions of the Zoning Code; and

WHEREAS, the Zoning Code Text Amendment complies with the City's Morgan Hill 2035 General Plan as required by Government Code Section 65860, in that the amended SRL-B Zoning District would continue to allow a range of sports, recreation, leisure, agriculture, and natural resource uses allowed within the SRL General Plan Land Use designation; and

WHEREAS, the proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, in that the uses that would no longer be allowable in the SRL-B Zoning District would continue to be allowable elsewhere in the City; and

WHEREAS, the Zoning Amendment, was considered by the Planning Commission at their regular meeting of October 9, 2018 at which time the Planning Commission on a 5-2 vote did not recommend City Council approval of application ZA2018-0005: City of Morgan Hill for the following reasons:

- a. One Commissioner suggested that any kind of Zoning Amendment (text or map) that affects or involves unincorporated properties in the Southeast Quadrant should wait for Santa Clara County LAFCOs decision on the City's recent USA Amendment request and that any such Zoning Amendment include additional community outreach to discuss allowable uses.
- b. Several Commissioners noted that they could support a Zoning Map and Text Amendment that was specific to the three SRL-B pre-zoned parcels (APNs: 817-13-008, -011, and -037) that were included in the City's recent USA Amendment request. That Amendment would create a new zoning district or a Planned Development (PD) Combining District that would be applied only to the three parcels and would allow the uses currently allowed in the SRL-B Zoning District, but not allow hotels and certain other commercial uses. Commissioners generally supported allowing health and fitness clubs and indoor recreation centers oriented to local residents, and indoor swimming pools as well as restaurants that are ancillary to other allowed sports, recreation and leisure uses. A concern was raised that too many uses were proposed to be eliminated that enhance sports and leisure activities and doing so could have a negative impact on the City's economic development interests.
- c. The Commission also discussed the possibility of re-pre-zoning the three SRL-B pre-

zoned parcels to the SRL-A Zoning District instead of creating a new zoning district or PD, noting that the SRL-A district could achieve City Council's objectives, in that this district supports lower intensity uses. However, Commissioners expressed concern with this option as it would eliminate several uses that the Commission believed would be appropriate for this area.; 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; and

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

SECTION 1. The Zoning Amendment is consistent with the Morgan Hill 2035 General Plan.

SECTION 2. The Zoning Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

SECTION 3 The Zoning Amendment will be internally consistent with other applicable provisions of the Zoning Code as provided in Section 18.114.060.

SECTION 4. The City Council has considered the Addendum to the Morgan Hill 2035 Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA).

SECTION 5. The City Council hereby amends Title 18 – Zoning, Division I Zoning Code, Part 2 Zoning Districts, Chapter 18.28 – Open Space, Public, and Recreation Zoning Districts to modify the uses allowed in the SRL-B – Sports Recreation and Leisure Sub-zone B Zoning District, of the Morgan Hill Municipal Code (File No. ZA2018-0005: City of Morgan Hill) as shown in the attached Exhibit A, incorporated herein by reference.

SECTION 6. 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 7. 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 MEETING OF THE CITY COUNCIL HELD ON THE 24th DAY OF OCTOBER 2018, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE XXTH DAY OF NOVEMBER 2018, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

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

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective ~~December~~November XX, 2018

⌘ CERTIFICATION ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. XXXX, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the XXth day of November 2018.

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

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Chapter 18.28 – OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS

Sections:

18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

18.28.020 – Land Use Regulations

18.28.030 – Development Standards

18.28.010 – Purpose of the Open Space, Public, and Recreation Zoning Districts

- A. Open Space.** The purpose of the Open Space (OS) zoning district is to preserve and enhance open space lands as a limited and valuable resource in Morgan Hill. The OS zoning district is intended to permit limited but reasonable use of open space lands while reducing exposure to geologic hazards, to preserve agricultural land, and to preserve the topographic features that contribute to Morgan Hill's unique identity.
- B. Public Facilities.** The purpose of the Public Facilities (PF) zoning district is to provide a location for schools, governmental offices, parks and recreational facilities, fire and police stations, utilities, and other public and quasi-public facilities to serve the community.
- C. Sports Recreation and Leisure (SRL).** The purpose of the SRL zoning district is to provide a location for a variety of private ~~commercial, retail,~~ and public or quasi-public land sports, recreation, and leisure uses to serve the community. The SRL zoning district includes two sub-zones:
 - 1. The SRL-A sub-zone which supports lower intensity sports, recreation, and leisure uses that are compatible with nearby agricultural and open space activities; and
 - 2. The SRL-B sub-zone which supports lower and medium intensity sports, recreation, and leisure uses.

18.28.020 –Land Use Regulations

A. Open Space and Public Facility Zones.

- 1. **Permitted Land Uses – General.** Table 18.28-1 identifies land uses permitted in the Open Space (OS) and Public Facilities (PF) zoning districts.

TABLE 18.28-1: PERMITTED LAND USES IN THE OPEN SPACE AND PUBLIC FACILITIES ZONING DISTRICTS

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required - Use not allowed	Zoning District		Additional Regulations
	OS	PF	
Residential Uses			
Accessory Dwelling Units	P	-	Chapter 18.84
Agricultural Labor Accommodations	C	-	
Single-Family Detached Dwellings	P	-	
Public and Quasi-Public Uses		-	
Cemeteries	C	C	
Colleges and Trade Schools	-	C	
Community Assembly	-	C	
Cultural Institutions	-	P [1]	
Day Care Centers	-	C	
Emergency Shelters	-	P	
Government Offices	-	P	
Home Day Care, Small	P	-	
Hospitals	-	P	
Instructional Services	-	P [1]	
Parks and Recreational Facilities	P	P [1]	
Public Safety Facilities	C	P	
Schools, Public	-	P	
Schools, Private	-	C	
Commercial Uses			
Animal-Related Commercial Uses			
Animal Boarding	C	-	
Equestrian Centers	C	-	
Farmer's Markets	C	C	
Plant Nurseries	C [2]	-	
Transportation, Communication, and Utility Uses		-	
Parking Structures and Facilities	-	P [1]	
Utilities, Major	-	C	
Wireless Communications Facilities	See Chapter 18.96		
Agriculture and Natural Resource Uses			
Crop Cultivation	P	-	
Animal Raising and Production, Intensive	C	-	

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	OS	PF	
Animal Raising and Production, Limited	P	-	
Wildlife Refuges	P	-	
Other Uses			
Accessory Uses	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] A Conditional Use Permit is required if not owned or operated by a governmental agency.

[2] Sales are limited to horticultural products grown on site.

B. Design Permit for Residential Uses in the OS Zone. In addition to projects requiring Design Permits pursuant to 18.108.040 (Design Permits), the construction of new residential uses requires a Design Permit to verify conformance with Section 18.28.030.B (Performance Standards in OS Zone) and all other applicable requirements.

C. Sports Recreation and Leisure Zones. Table 18.28-2 identifies land uses permitted in the SRL-A and SRL-B sub-zones.

TABLE 18.28-2: PERMITTED LAND USES IN THE SPORTS RECREATION LEISURE ZONING DISTRICT

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
Residential Uses			
Single-family detached dwellings	P [1]	P [1]	
All other new residential land uses	-	-	
Commercial Uses			
Drive-through establishments	-	C [6]	
Gas and service stations	-	C	
Hotel and motels	-	C	
Restaurants	-	C	
Retail that is sports-themed or sports/recreation-serving	-	C	
Sports, Recreation, and Leisure Uses			
Adventure sports facilities	P	P	
Arts and crafts studios	P	P	
Batting cages	P	P	
Bowling alleys	-	-	

Key P Permitted use C Conditional Use Permit required – Use not allowed	Zoning District		Additional Regulations
	SRL-A	SRL-B	
Campgrounds	-	-	
Casinos, card clubs, and gambling facilities	-	-	
Cinemas and movie theaters	-	-	
Day spas, barbershops, and hair salons	C [2]	C [2]	
Equestrian centers	P	P	
Golf courses	P [3]	P [3]	
Health and fitness clubs and indoor recreation centers oriented to local residents	C [4]	C [4]	
<u>Indoor sports centers</u>	<u>P</u>	<u>-</u>	
Indoor or outdoor Outdoor sports centers	P	P	
Outdoor race tracks for cars, go-karts, or similar use;	-	-	
Pool and billiards halls	-	-	
Recreational vehicle parks	-	-	
Sports Fields	P	P	
Stadiums	-	-	
<u>Swimming pools, indoor</u>	<u>P [5]</u>	<u>-</u>	
Swimming pools, indoor and outdoor	P [5]	P [5]	
Agriculture and Natural Resource Uses			
Crop cultivation	P	P	
Farmer’s market	P	P	
Sales of agricultural products grown on site	P	P	
Wineries	P	P	
Transportation, Communication, and Utility Uses			
Wireless communications facilities	See Chapter 18.96		
Other Uses			
Accessory Uses and Structures	See Chapter 18.44		
Home Occupations	See Section 18.92.060		
Temporary Uses	See Section 18.92.150		

Notes:

[1] Permitted only on a legal lot of record established in the unincorporated area prior to August 1, 2014.

[2] May be permitted with a Conditional Use Permit if ancillary to hotel or motel use.

[3] Golf courses in excess of three holes are prohibited.

[4] Fitness and exercise facilities ancillary to a primary destination-oriented sports/recreation/leisure use are allowed with a Conditional Use Permit.

[5] Permitted if ancillary to hotel or motel use.

~~[6] No more than two drive-through establishments are permitted in the SRL-B zone.~~

D. Additional Permits. In addition to permits identified in Tables ~~18.28-1~~ 18.28-1 and 18.28-2, development projects in the open space, public, and recreation zoning districts may

also require a Design Permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60. (Historic Resources).

- E. Hillside Combining District.** Development on site with an average slope of 10 percent or greater are subject to the requirements of Section 18.30.040 (Hillside Combining District).

18.28.030 Development Standards

- A. General.** Table 18.28-3 identifies development standards that apply in the public, open space, and recreation zoning districts.

TABLE 18.28-3: PUBLIC, OPEN SPACE, AND RECREATION DEVELOPMENT STANDARDS

	OS	PF	SRL-A	SRL-B	Additional Standards
Site Requirements					
Lot Area, Minimum	5 acres	None	1 acre	1 acre	
Lot Width, Minimum	100 feet		100 ft.	100 ft.	
Lot Depth, Minimum	None		150 ft.	150 ft.	
Impervious Coverage, Maximum	10% [1]	As required by review authority	None	None	
Building Coverage, Maximum	5% [2]		30%	50%	
Structure Requirements					
Setbacks, Minimum					18.56.030
Front	50 ft.	As required by review authority	30 ft.	20 ft.	
Rear	50 ft.		50 ft.	15 ft.	
Interior Side	50 ft.		20 ft.	15 ft.	
Street Side	25 ft.		30 ft.	20 ft.	
Height, Maximum	2 stories or 25 ft.		35 ft.	35 ft.	18.56.020

Notes:

[1] Planning Commission may allow greater impervious surface with a Conditional Use Permit.

[2] 30 percent for those existing lots less than 5 acres.

- B. Performance Standards in OS Zoning District.** The following standards apply to all development and land uses in the OS zoning district.

1. **Stormwater Runoff.** In addition to requirements in Chapter 18.140 (Post Construction Stormwater Pollution Prevention), development shall comply with the following standards:
 - a. Permanent vegetation and improvements capable of carrying stormwater runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area.

- b. Sediment basins, including debris basins, desilting basins and silt traps, shall be installed and maintained to reserve sediment from runoff waters of land undergoing development.
- 2. **Public Services and Infrastructure.** Construction of dwellings for which Conditional Use Permits are required are permitted only if the proposed dwelling units are served by public sewers, public water, , and ingress/egress that comply with minimum fire department standards. The City may grant exceptions to the public sewer and public water requirements for:
 - a. Areas that were annexed into the city outside the urban service area with approved private water and septic systems; and
 - b. Secondary dwellings where a private septic tank disposal system has been approved for the primary dwelling on the same parcel of land.
- C. **Outdoor Storage in the PF Zone.** Areas used for outdoor storage in the PF zoning district shall meet the minimum design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

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CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

RECOMMENDATION(S)

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

LINKS/ATTACHMENTS:

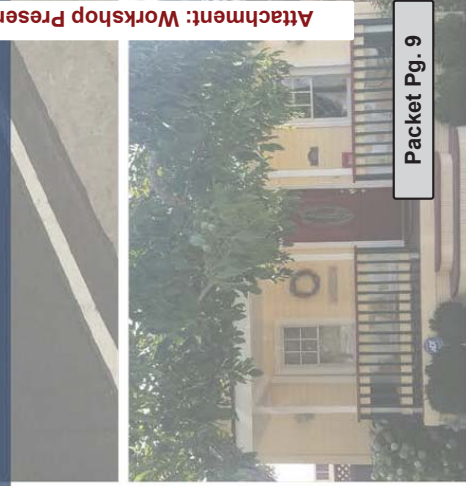
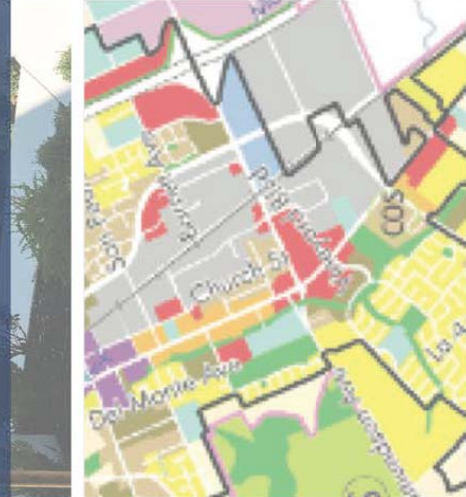
1. Workshop Presentation
2. Monterey Corridor Block-Level Master Plan
3. Letter from John Kent



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CITY OF MORGAN HILL

Monterey Corridor Block Level Master Plan - Public Workshop
October 17, 2018



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMF Joint CC/PC)

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Agenda

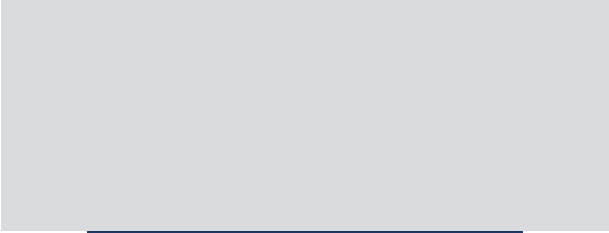
Overview & Background

Commercial Analysis

Draft Frontage Standards

Questions & Comments





Overview & Background



Introductions

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City of Morgan Hill

John Baty, Principal Planner

Lisa Wise Consulting, Inc.

Lisa Wise, AICP, President

Jen Daugherty, AICP, Senior Associate

Spencer Johnson, CNU-A, Associate

Metrovation Brokerage and Consulting

Christine Firstenberg, Principal



Background

General Plan Update (2016)

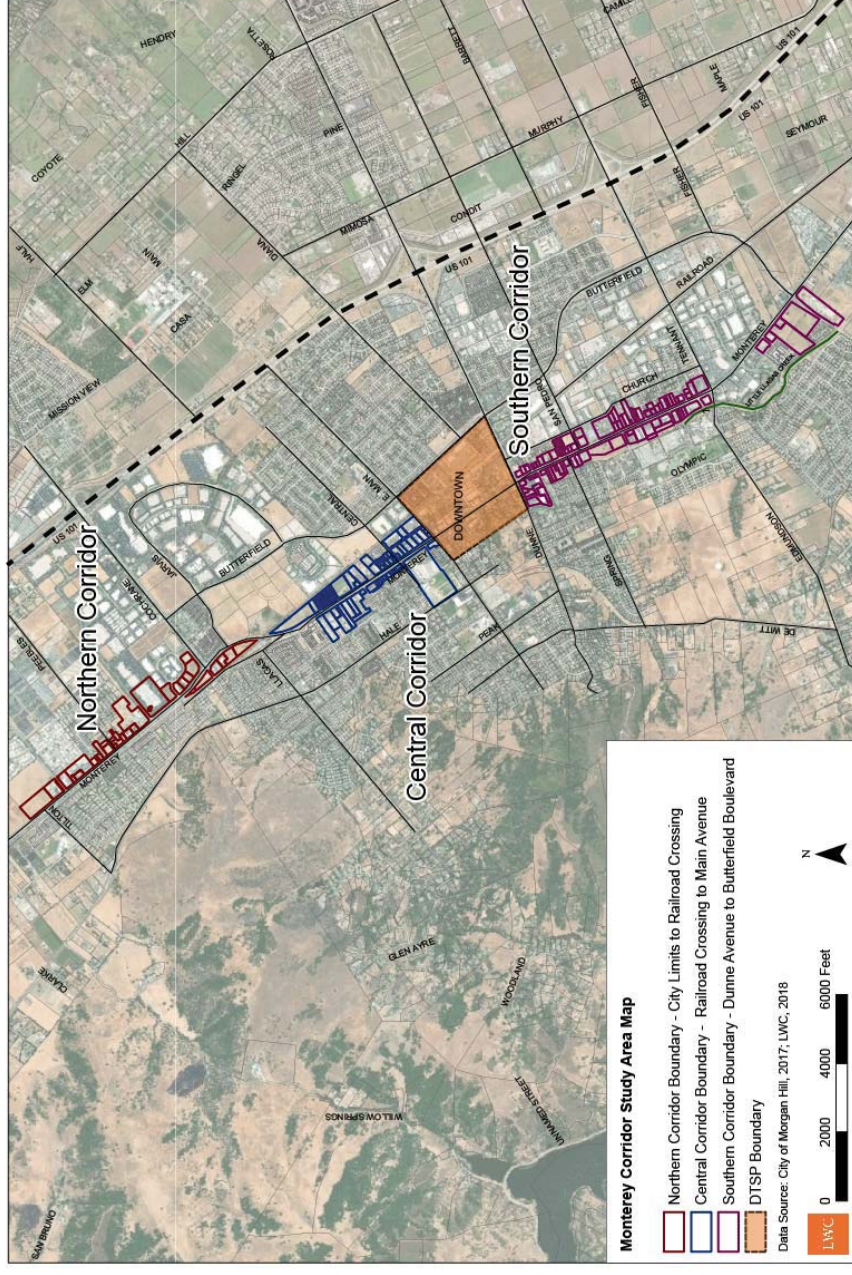
- Mixed Use Flex Land Use
- Monterey Corridor- Vibrant, walkable mixed-use

Zoning Code Update (2018)

- Mixed Use Flex (MU-F) Zone

Land Use and Market Analysis (2017-2018)

- Land Use Inventory
- Market Analysis
- Recommendations



Land Use and Market Analysis

a

Key Findings

- Retail
 - Current retail market stable, but...
- Office
 - Cool/stable office market
- Residential
 - Residential is most highly favored

Commercial Capacity

- 600,000 – 1.5 million sf of physical capacity
 - 215,000 sf theoretical commercial market demand*
- * Based on a relatively stable future market



LWC

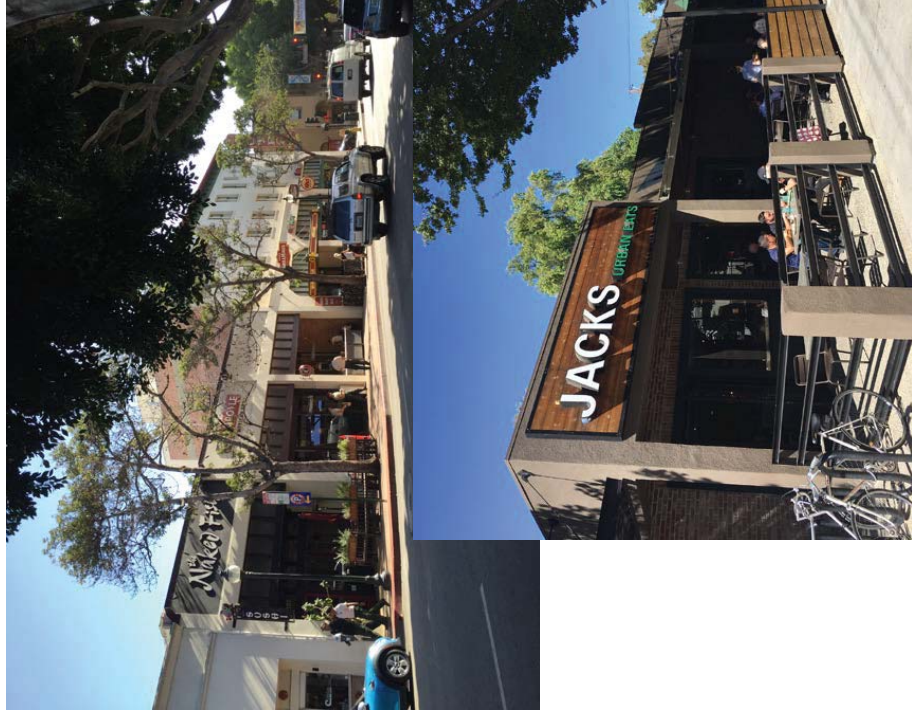


Land Use and Market Analysis

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Conclusions

- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Building frontage standards
 - High-quality public space
- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMF Joint CC/PC



LWC

Council Recommendation

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BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code
- Supplemental standards
 - Well-designed buildings (frontage standards)
 - Connectivity
 - Preserve retail-viable parcels



LWC

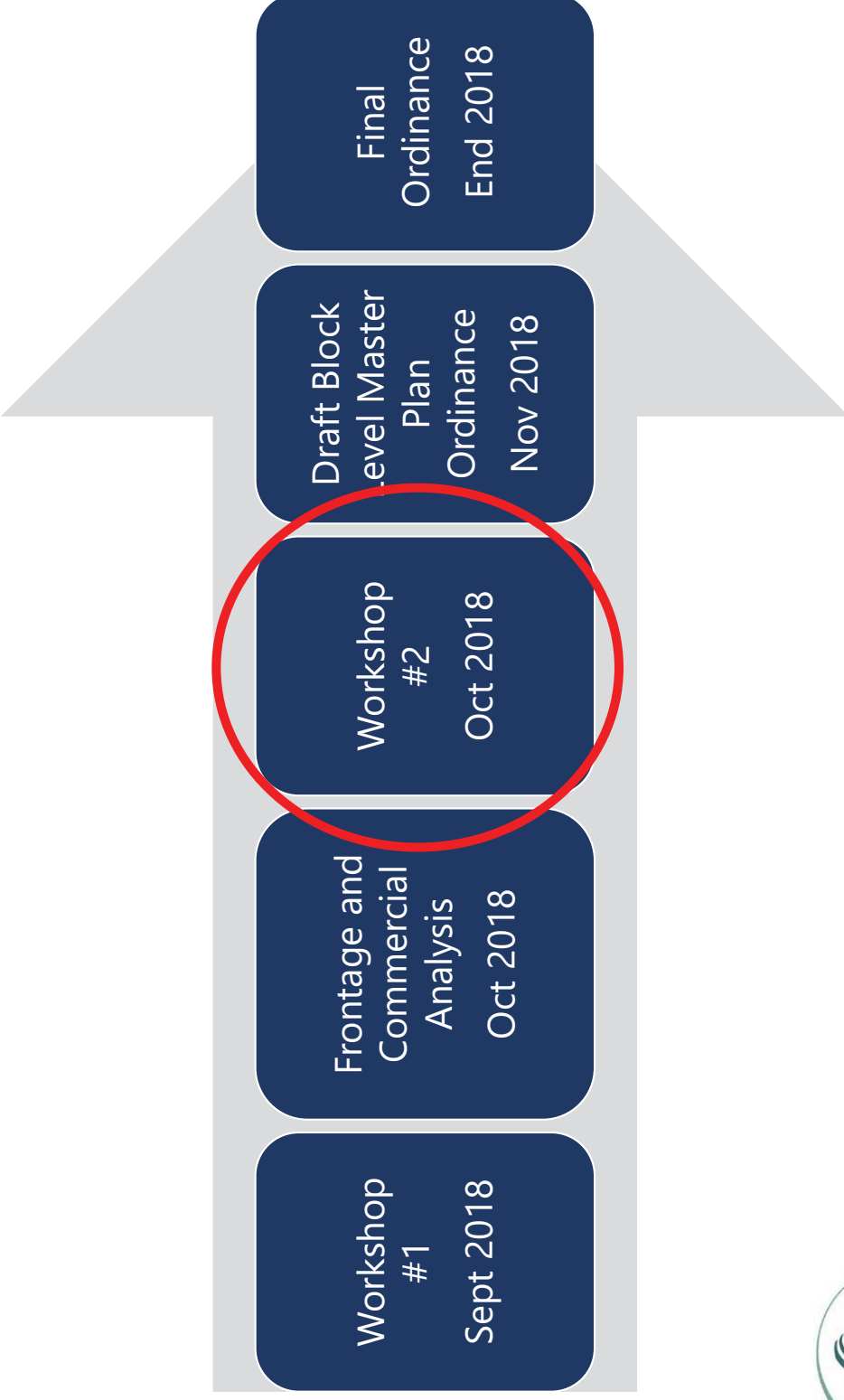
SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Include a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Block Level Master Plan

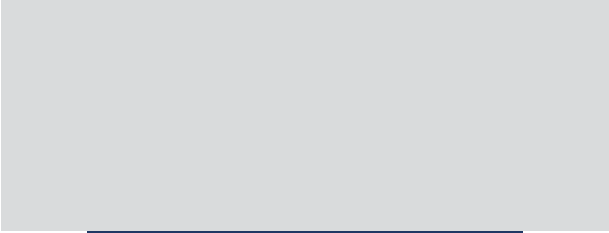
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Attachment: Workshop Presentation (2034 : Monterey Corridor BLMF Joint CG/PC



LWC



Commercial Analysis



METROVATION

BROKERAGE & CONSULTING

Block Level Master Plan for Monterey Rd.
Morgan Hill, CA

Christine Firstenberg
Lic # 00973135
Retail Real Estate Resources, Principal
Metrovation Brokerage
Lic # 01780115
925-381-8666
christine@cfirstenberg.com

Executive Summary

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As we read newspaper articles describing our current era as the age of the “Retail Apocalypse”, many cities are struggling with how to plan for retail in the future. Will it look like it does now with anchor and shop tenants, will it look more like industrial space with delivery cars in front, or will it exist at all?

In California, most cities receive a percentage of their general funds from sales taxes that occur within their city limits. With recent national legislation, online sales will start to generate sales tax to the cities where the person who paid for the items lives. Exactly how those sales taxes will be allocated is not completely known, but we understand that retail sales leakage numbers will show change.

While brick and mortar store locations will continue to diminish in total square footage, we will continue to see new online retail ventures expand and will continue to need retail for its experiential contribution to our lives. It is the only real estate category that can create a “sense of place” and community for a City.

Retail is one of the three categories within the industry categorization of commercial real estate. While all types of commercial (retail, office and industrial) real estate uses can contribute to the overall economic engines of a community, retail is the only category that we think of when desiring a “sense of place” in our communities. Much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial footprint.

We have seen cities in California, and other states, that believe “if you build it, they will come” when it comes to retail spaces. We have all seen the many examples of residential buildings where retail spaces were required on the ground floor by city zoning, and in many cases those spaces never get leased.

Because long term vacant spaces (vacant for years) can cause blight in communities, we want to be careful about requiring retail where it is not necessarily appropriate.

METROVATION

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BROKERAGE & CONSULTING

Executive Summary

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How to determine which parcels of land should require retail or any of the commercial categories, and which parcels of land should not, is a question the City of Morgan Hill staff has pondered. Morgan Hill's staff are light years ahead of many other cities in that they not only asked the question, they assigned the task to be determined.

Retail thrives when there is an intensity of activity – either car or pedestrian. But that hive of activity must exist prior to the retail space being activated otherwise the retail can fail. Building retail spaces in clearly residential and or quiet, non-active areas, and assuming the space will get leased is like wishing on a star. Many planners believe you should create retail spaces to activate the streets, but that thinking is backwards. Because it isn't the retail spaces that activate the streets, it is what is in the retail spaces themselves. It is the retailer/small businesses. The retail/ small businesses that make their living off the sales volumes done out of retail spaces are important to the activity in a neighborhood or district. But if there is no neighborhood or district activity before the retailer opens, often a retailer's sales fall flat.

That is the challenge in determining where to locate for a retailer and building a retail base in a city...*how do you create the activity before a retailer opens if we depend upon a retailer to create the activity?*

That is why we use retail criteria to help retailers review the data from which to make a location decision. It is strongly suggested that all retailers use basic retail criteria to determine if a space or an area will ultimately be sustainable. And from a City's perspective, retail criteria needs to be met for retail spaces to get leased.

RETAIL CRITERIA:

Retail businesses do better at intersections (corners) - not mid-block- because at intersections, there are two roads converging with double the traffic (whether pedestrian or car) of a mid block location.

METROVATION

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BROKERAGE & CONSULTING

Executive Summary

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Retail typically requires **access**, an ability to have all turns, meaning you can get in and out of the property using left turns, not just right turns.

Retail needs to be seen by the customers, therefore **signage** is important, both storefront signage and any additional blade, or monument signs.

Retail needs to be **convenient**, so a customer can easily fit a visit to the retail store into their busy lives.

And finally, retail needs **parking**, yes parking, unless of course you have a tremendous pedestrian count like in downtown San Francisco.

This is the retail criteria used when we looked at intersections in Morgan Hill.

APPLICATION FOR MORGAN HILL:

As mentioned earlier, much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial (commercial) footprint also.

As we analyzed the corners and intersections along Monterey Rd. we used the more liberal “commercial” categorization, with which to consider the viability and sustainability of the corner. This category can include an office tenant like a building contractor, or a mortgage office, a realtor or travel agency, a CPA firm or lawyers office. Many typical office tenants like a more prominent corner location that provides signage.

Commercial categorization also includes industrial.

METROVATION

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BROKERAGE & CONSULTING

Executive Summary

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Industrial tenancies, often more service oriented, are more common in today's world as many start up retailers and businesses need the additional size for delivery preparation to compete with the fast paced delivery requirements retail customers currently demand. More traditional industrial tenants include auto parts, medical facilities, dental clinics and veterinarian shops.

Therefore a suggestion of commercial only zoning would allow all of the sub-categories of commercial listed earlier.

While some of the zoning along the Monterey Rd. corridor allows for "Mixed Use-Flex" we strongly suggest the City consider this zoning allow a horizontal mixture of uses versus only a vertical mixture of uses on the parcel.

Vertical mixed use has become a challenge to build in the Bay Area over the last few years due to the massive increase in construction costs. While vertical mixed use is often considered a quick way to densify an area, it can often have unintended consequences many of which can result in a parcel not being developed for many, many years, -- missing an economic cycle it otherwise would have enjoyed.

Lastly, in the retail real estate industry, we never say never, as retail is fluid and does not depends on a business owners decision on where to locate, but on the sales produced at a location.

Customers are what create the final success of a location for a retail business. And, as the saying goes, *"The customer is always right"*.

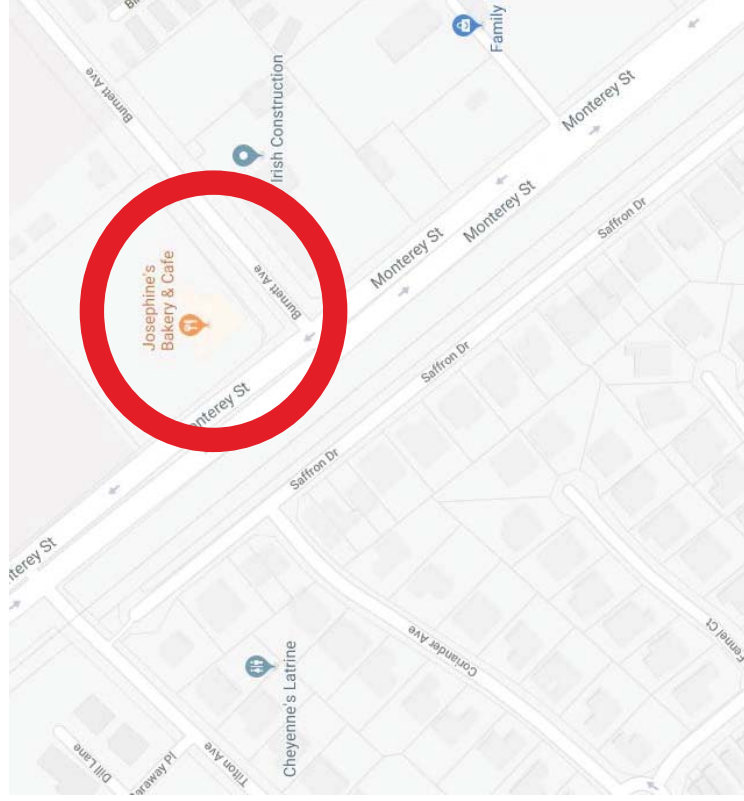
METROVATION

Packet Pg. 23

BROKERAGE & CONSULTING

Block 1 – City Limits to Burnett Ave. NE Corner Burnett Ave. & Monterey Rd.

a



Burnett Ave. has a strong east/west presence making it a logical candidate to create a commercial and retail presence at the intersection with Monterey Rd. However, due to the rail line running north/south along the western edge of Monterey Road, the residential community west of the rail line will be blocked and despite Burnett Ave.'s future extension across Monterey Rd. connecting it to Tilton, the synergy to that corner is lost. There is no reason to add development restrictions on a site that will never have a 360-degree potential. Therefore, we do not support a requirement for commercial zoning on this corner.

Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

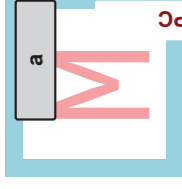
METROVATION

Packet Pg. 24

BROKERAGE & CONSULTING

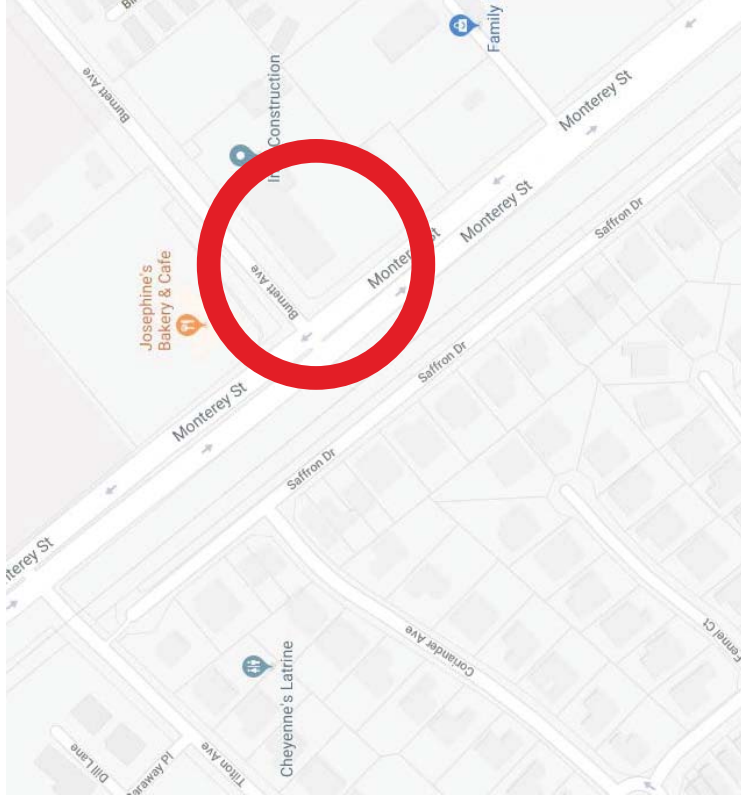
Block 1 —

City Limits to Burnett Ave.
NE Corner Burnett Ave. & Monterey Rd.



Block 2 – Burnett Ave. to Peebles Ave. SE Corner Burnett Ave. & Monterey Rd.

a

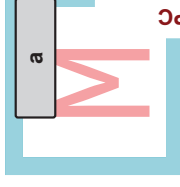
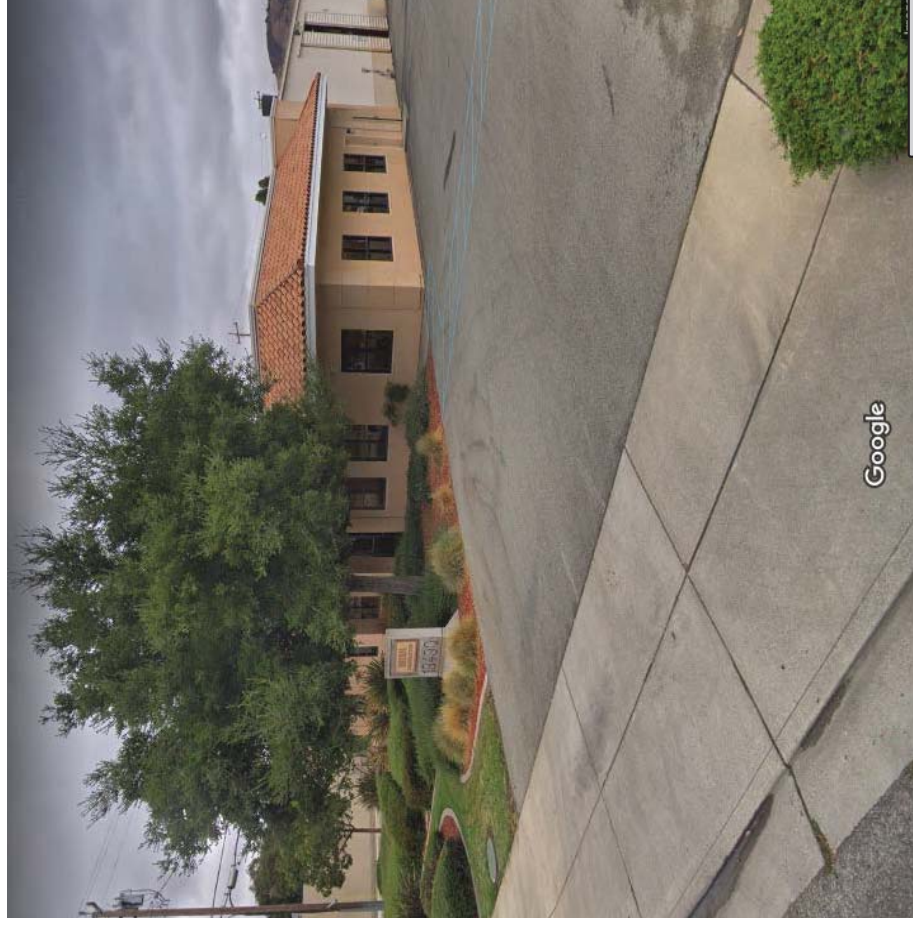


Block 2's Northern Site is located at the terminus of Burnett Ave. at Monterey Rd. and is currently partially occupied by Irish Construction. The location of the rail line will prevent the possibility of generating any connectivity to uses or residential across the street. Block 2, site 1, will never achieve the kind of synergy that a commercial zoning requirement is looking to accomplish. Therefore, we do not recommend a requirement for commercial here. Instead, allow market forces to dictate the development of the site.

○ Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

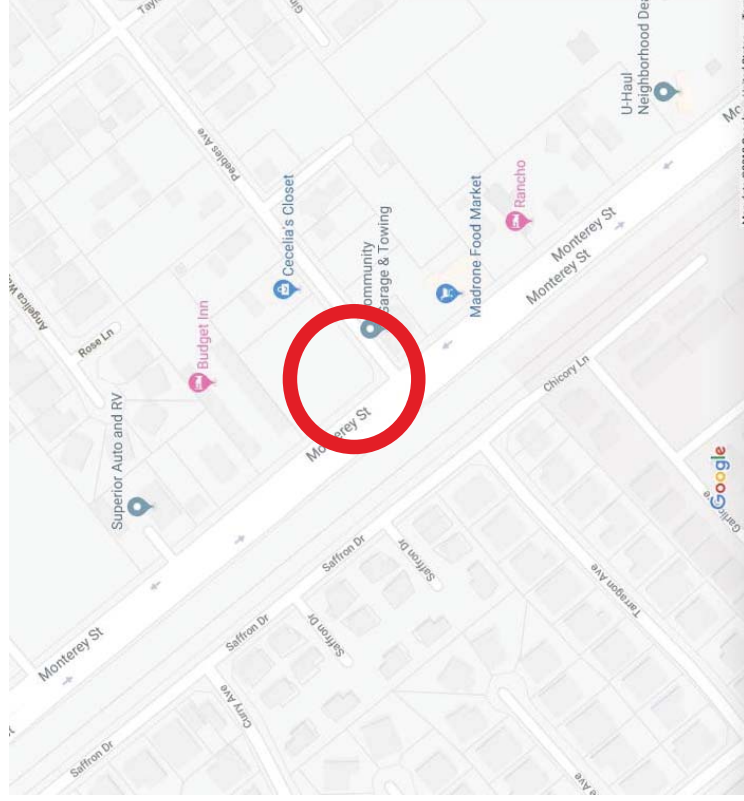
METROVATION

Block 2 — Burnett Ave. to Peebles Ave. SE Corner Burnett Ave. & Monterey Rd.



Block 2 – Burnett Ave. to Peebles Ave. NE Corner Peebles Ave. & Monterey Rd.

a



Block 2's Southern Site has similar challenges as the Northern Site although it has single-family homes located directly behind the parcel creating a possible opportunity. Nearly all of the residential traffic patterns use Peebles Ave. as a main thoroughfare. Morning commuters in this neighborhood will use Peebles to drive out to Monterey Rd, go south on Monterey Rd, to Cochrane to get to the freeway.

Often, a small, (3000 sf building) multi-tenant retail building, works well at this type of corner due to the commercially restricted access of the surrounding residential neighborhood.

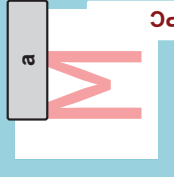
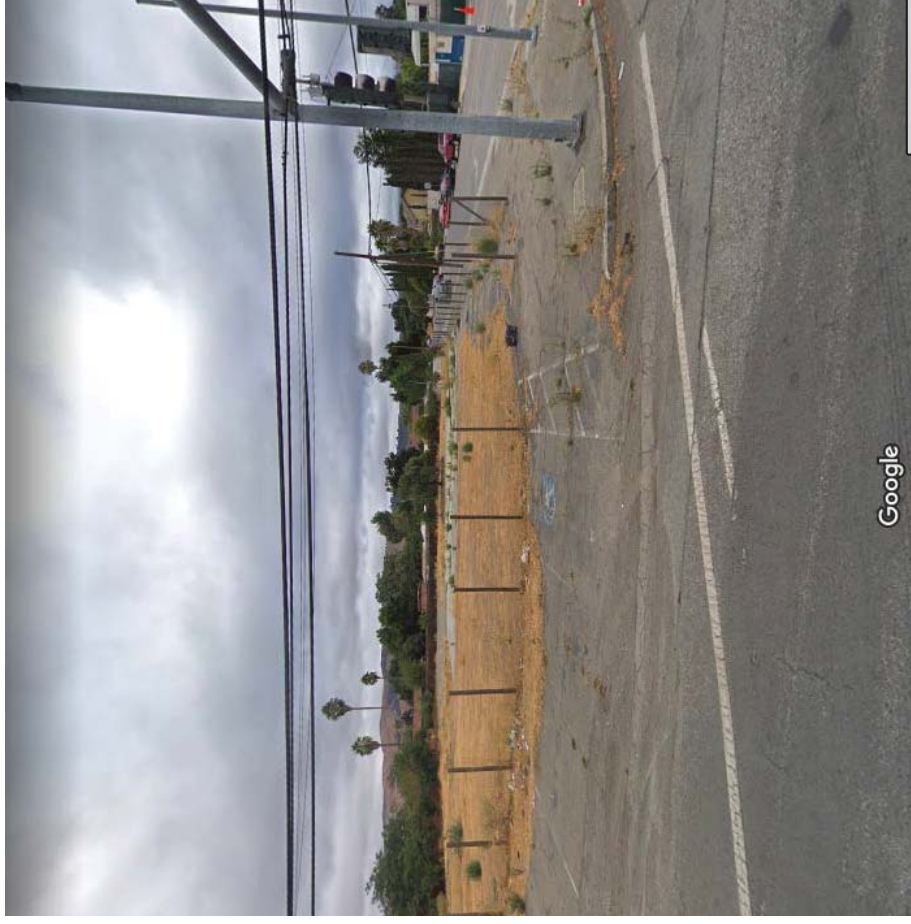


Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

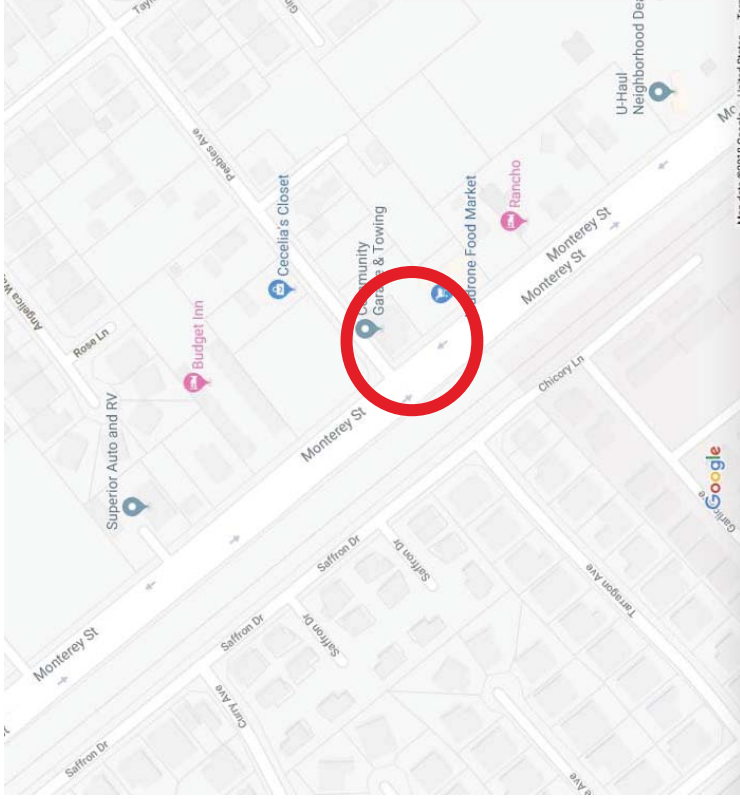
Block 2 —

Burnett Ave. to Peebles Ave.
NE Corner Peebles Ave. & Monterey Rd.



Block 3 – Peebles Ave. to Madrone Pkwy. SE Corner Peebles Ave. & Monterey Rd.

a



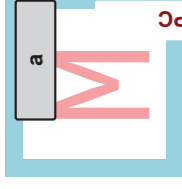
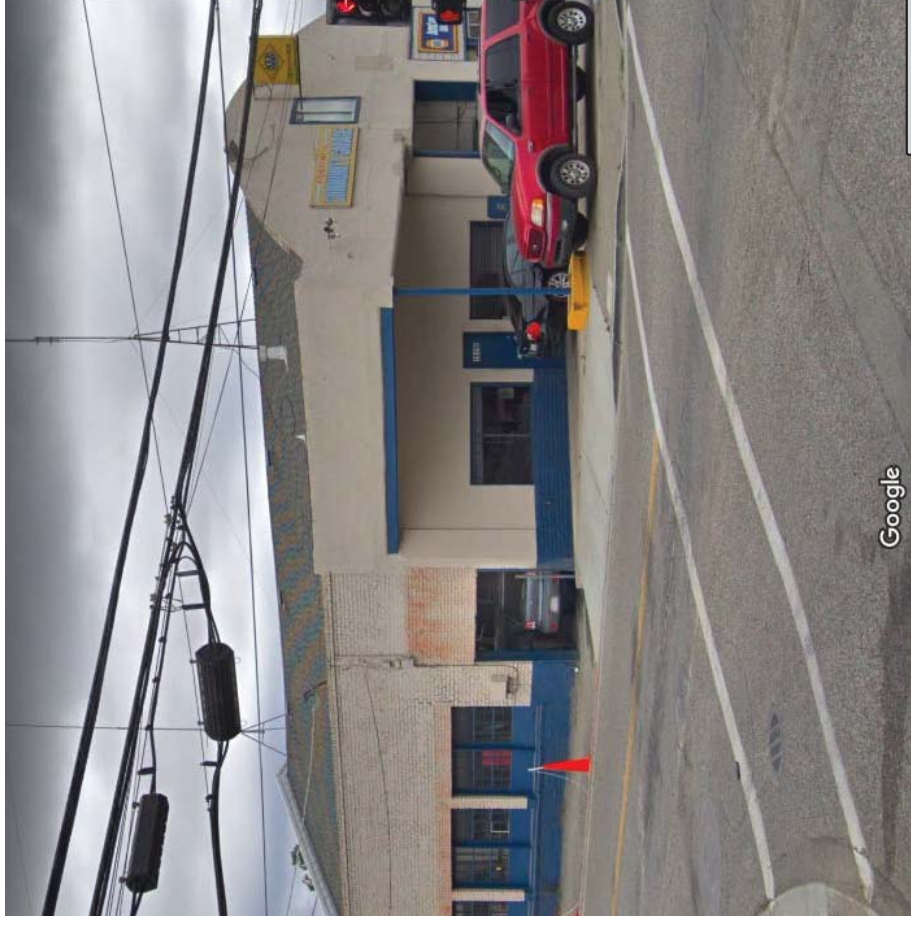
The SE corner is the “coming home” commercial corner. Thus, this site will not draw as high of interest as the NE site due to the proven consistency of a “*going to work*” commercial corner driving higher sales volumes than a “coming home” corner.

In addition, this parcel (the SE corner) is a relatively small parcel with only 7000 sq. ft. which would only allow a development of 1750 square feet of commercial space to be built (using retail parking codes). Even if this commercial square footage were at the bottom of a larger mixed-use project, the lack of retail immediately surrounding the site will make leasing a challenge. Therefore, we do not recommend requiring commercial on this site.

Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

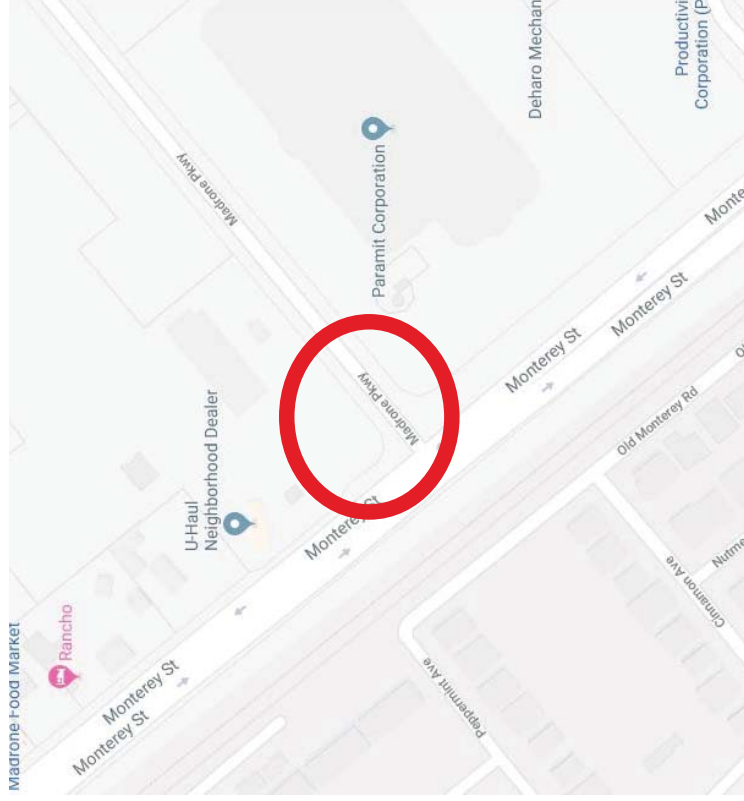
METROVATION

Block 3 — Peebles Ave. to Madrone Pkwy. SE Corner Peebles Ave. & Monterey Rd.



Block 3 – Peebles Ave. to Madrone Pkwy. NE Corner Madrone Pkwy. & Monterey Rd.

a



The NE corner of Madrone Pkwy. and Monterey Rd. is across the street (Madrone) from a new industrial and office development. This industrial and office park project creates opportunity for the NE corner – the proximity of businesses and the size of the NE parcel (7.53 acres) allows for a substantial, and sustainable, development to occur here.

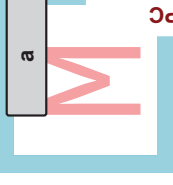
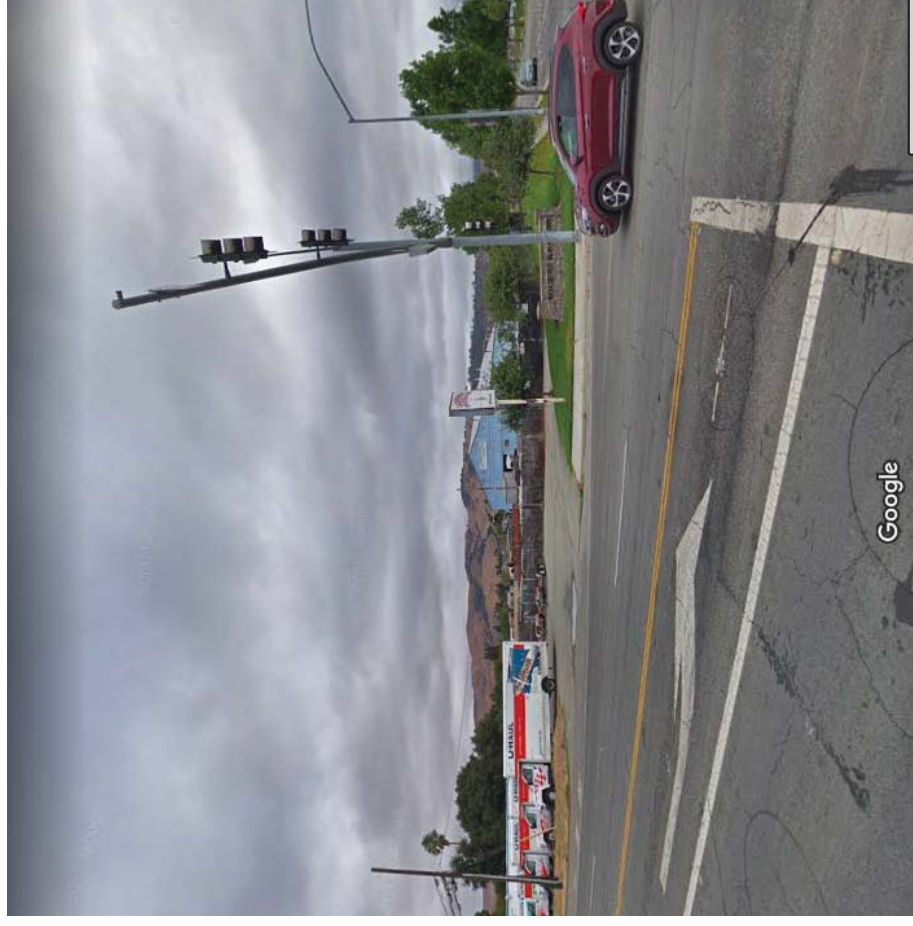
We suggest the City require commercial development on this corner. Also, to promote the most effective traffic flow, we also suggest that no median be built that would prevent a left turn from Madrone Pkwy. on to Monterey Road.

Conclusion: Commercial is sustainable and would benefit from proximity to the industrial park, therefore we suggest it be required.



METROVATION

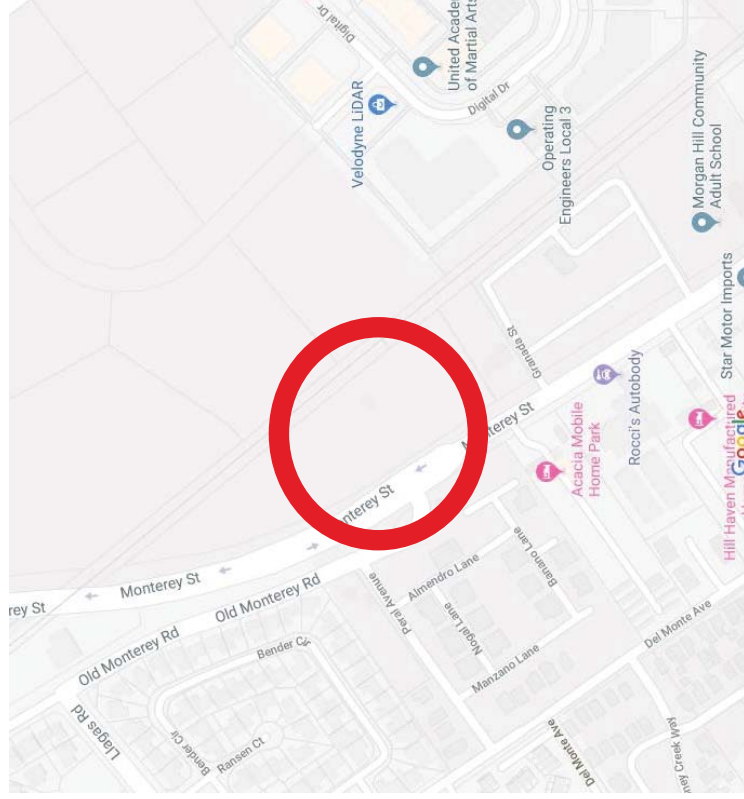
Block 3 — Peebles Ave. to Madrone Pkwy. NE Corner Madrone Pkwy. & Monterey Rd.



Block 4 –

Railroad Overcrossings to Morgan Hill Community Adult School NE & SE Corners Old Monterey Rd. (Extension) & Monterey Rd.

a



At the NE or SE corner of the intersection of Old Monterey Rd. and Monterey Rd., it is possible to create a small, fun, retail building that can provide a limited number of food and service businesses to the surrounding residential. Currently, there are few serving this residential area that are within a walkable distance. A multi-tenant retail building at this intersection can create a commercial respite for the existing homes, and new ones currently being built (at the south end of Block 4). We believe only a small shop building (3000-4000 square feet) would be sustainable. Typical tenants would be coffee, casual dining, and service retail. In conclusion, we support commercial zoning - specifically retail- at the NE or SE corners of Monterey Rd. and Old Monterey Rd..

○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

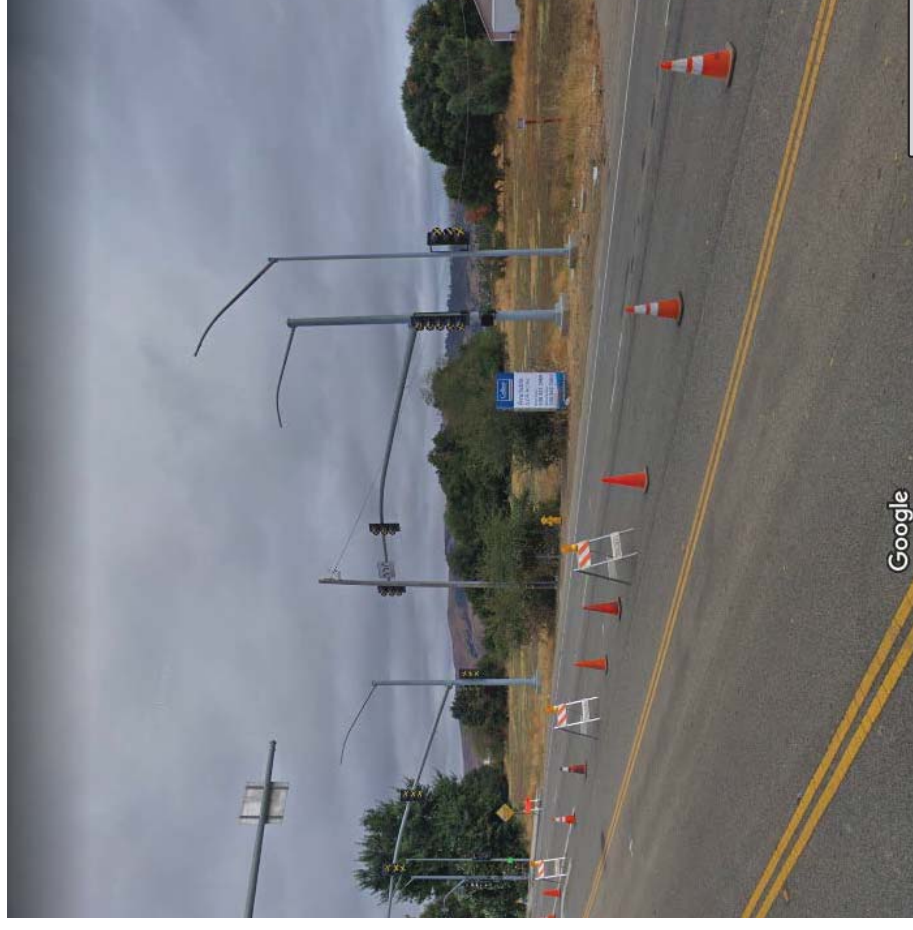
METROVATION

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BROKERAGE & CONSULTING

Block 4 –

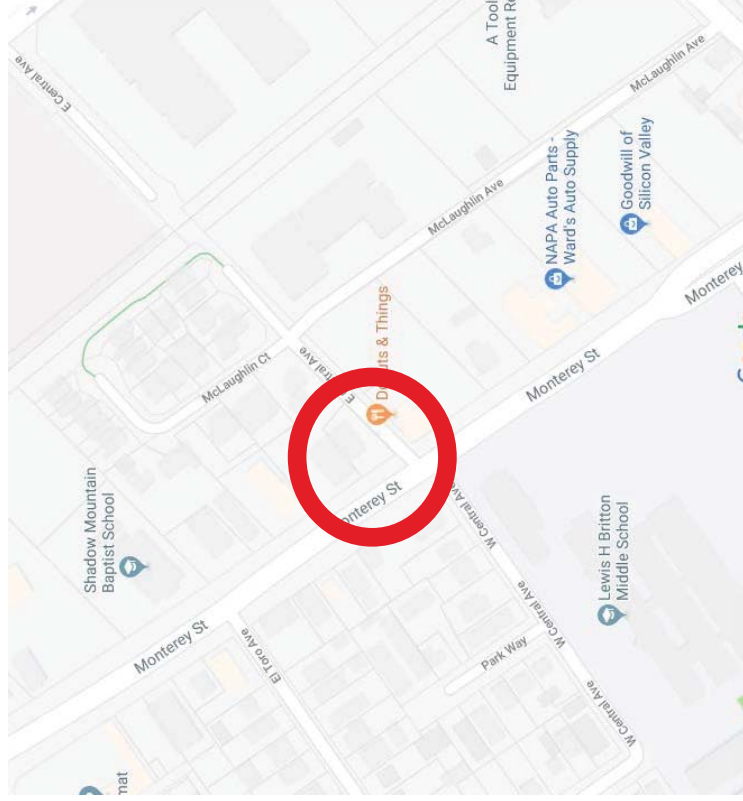
Railroad Overcrossings to Morgan Hill Community Adult School
NE & SE Corner Old Monterey Rd. (Extension) & Monterey Rd.



Google

Block 5 – Morgan Hill Community Adult School to East Central Ave. NE Corner East Central & Monterey Rd.

a



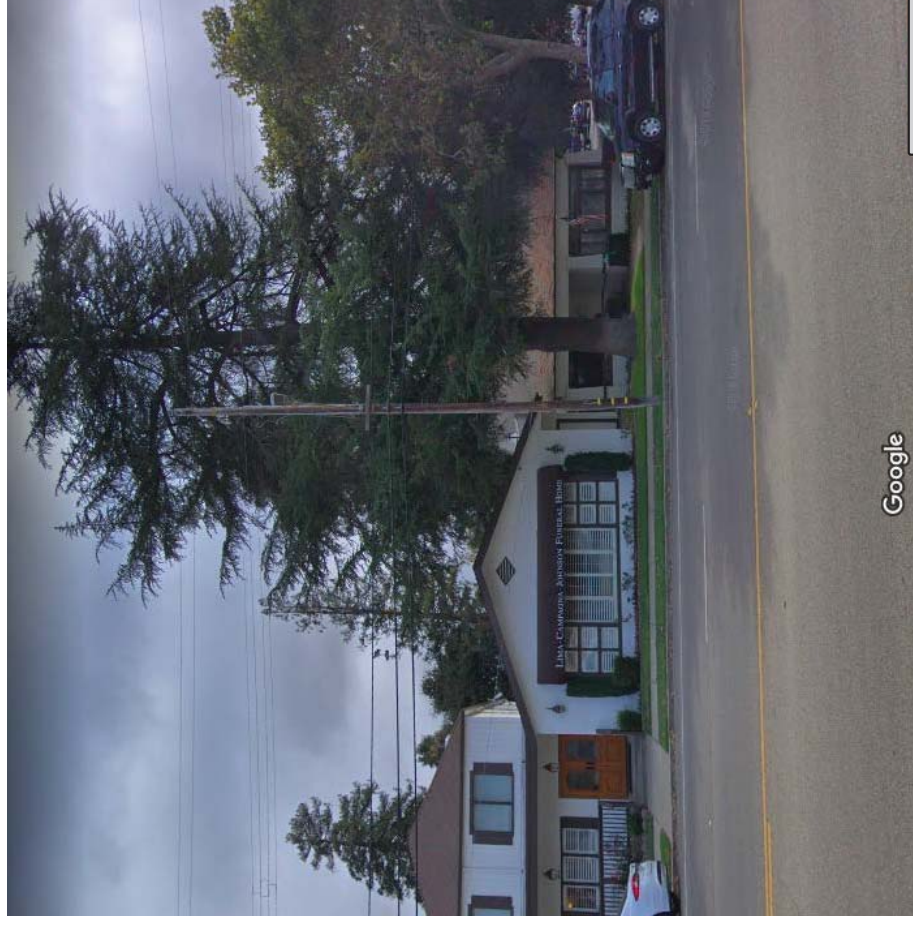
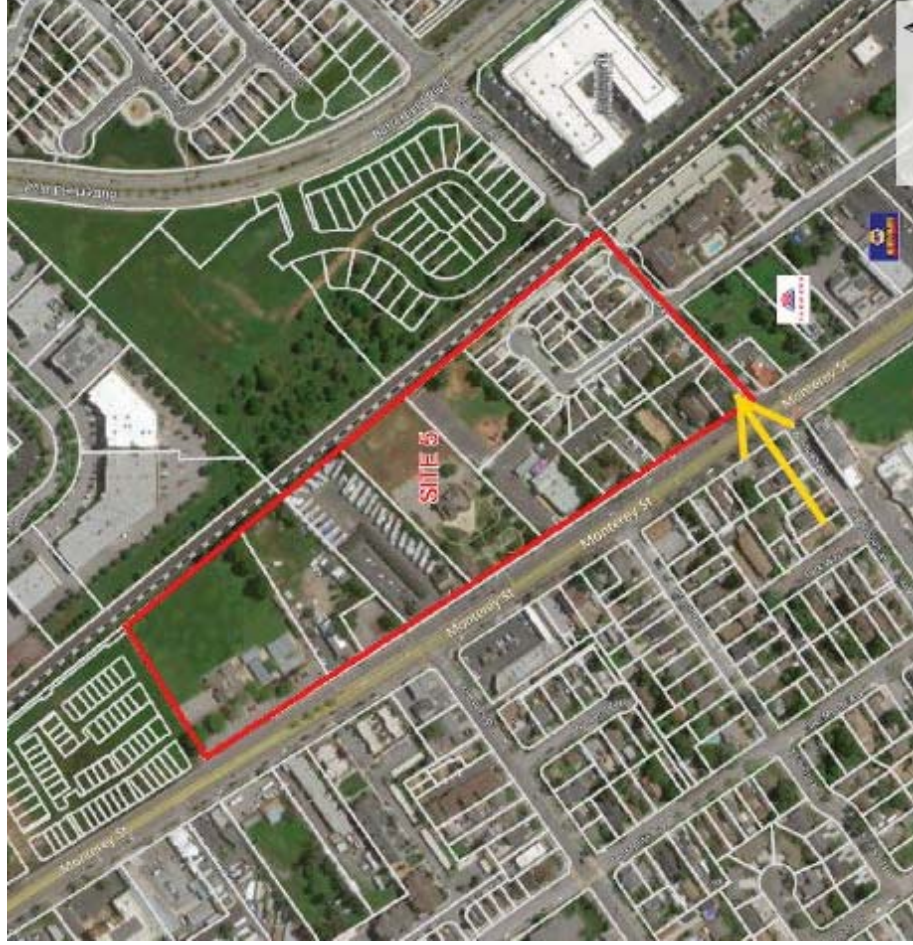
The entire east side of Block 5 has only two single-family residential units - other uses currently are multi-family or commercial. While it is difficult to change the zoning for a single family residential unit, we felt that commercial zoning was appropriate for the NEC of East Central and Monterey Rd., conditioned upon language being inserted into the Zoning Document that will allow the non-conforming use, additional leeway on structural repairs and modifications so that the zoning document does not cause financial issues (loans or refinancing) or undue distress due to its non-conforming status.

Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

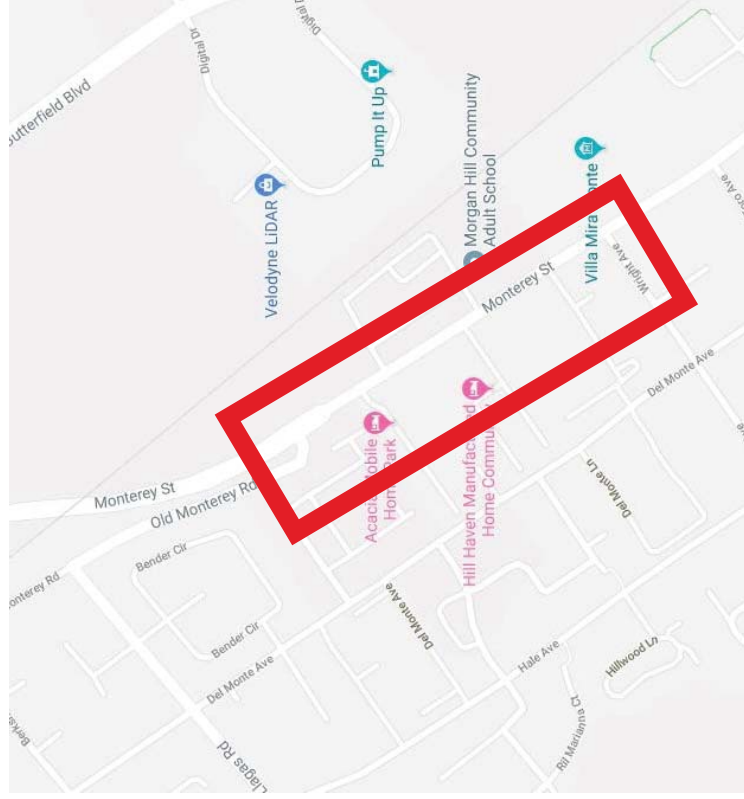
Block 5 –

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



Block 6 – Old Monterey Rd. to Wright Ave.

a



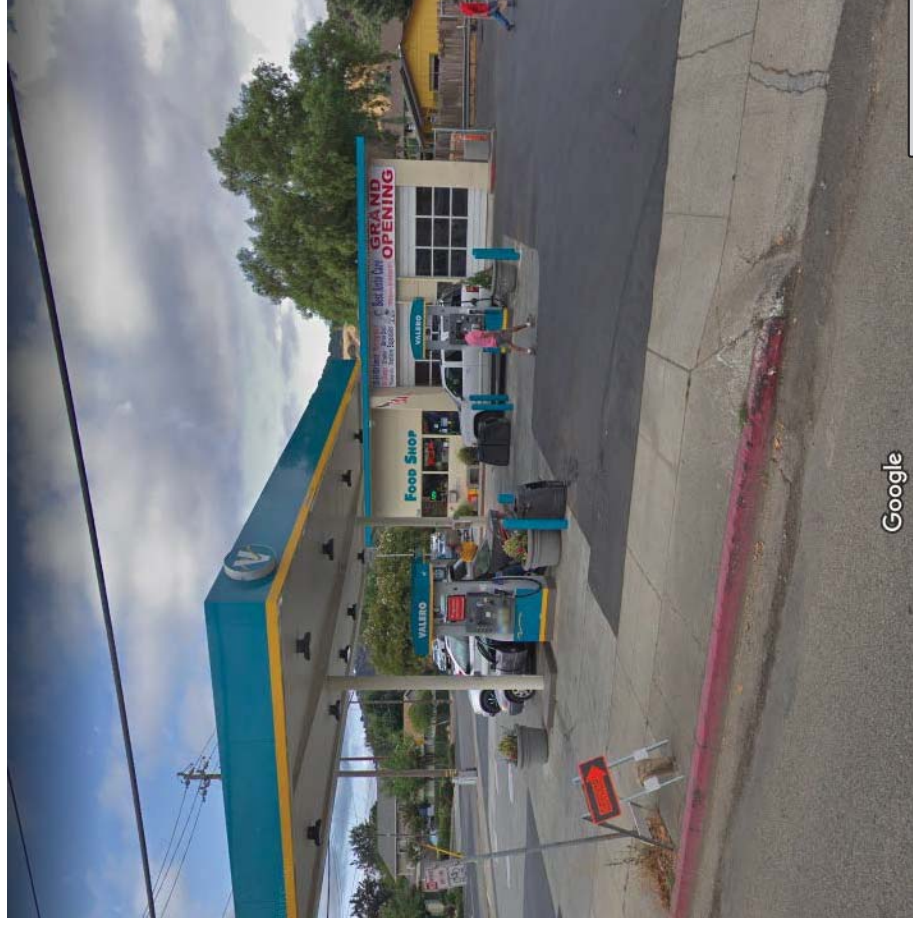
There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METROVATION

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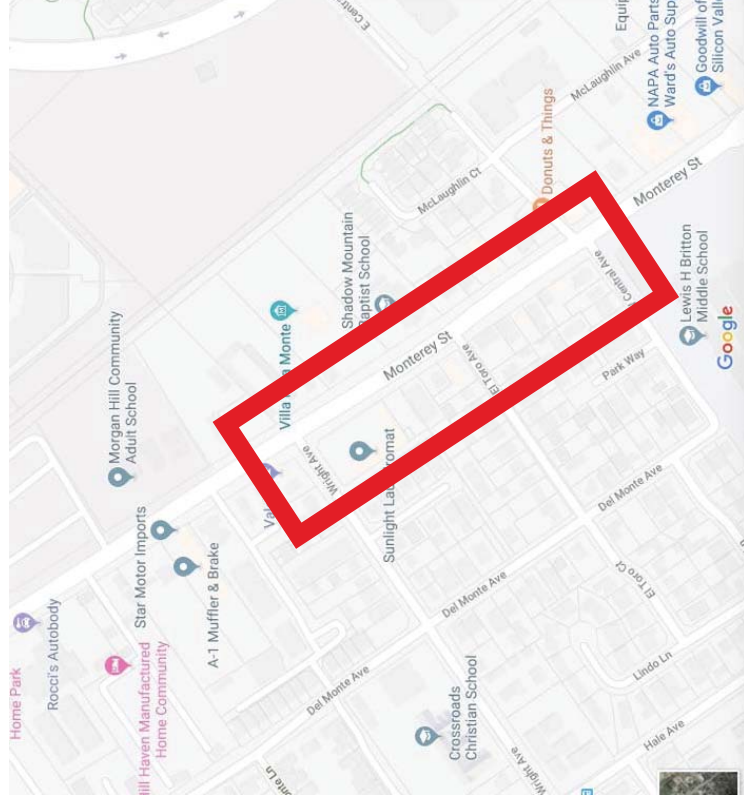
BROKERAGE & CONSULTING

Block 6 — Old Monterey Rd. to Wright Ave.



Block 7 – Wright Ave. to W. Central Ave.

a

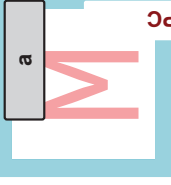
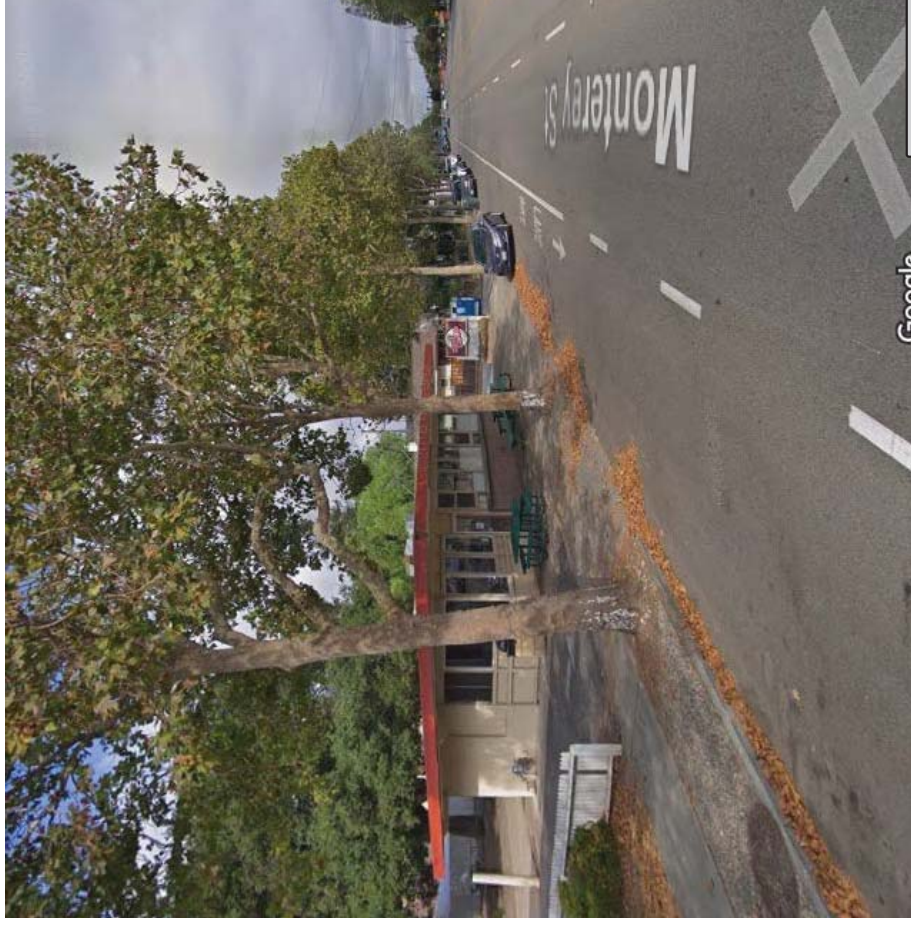
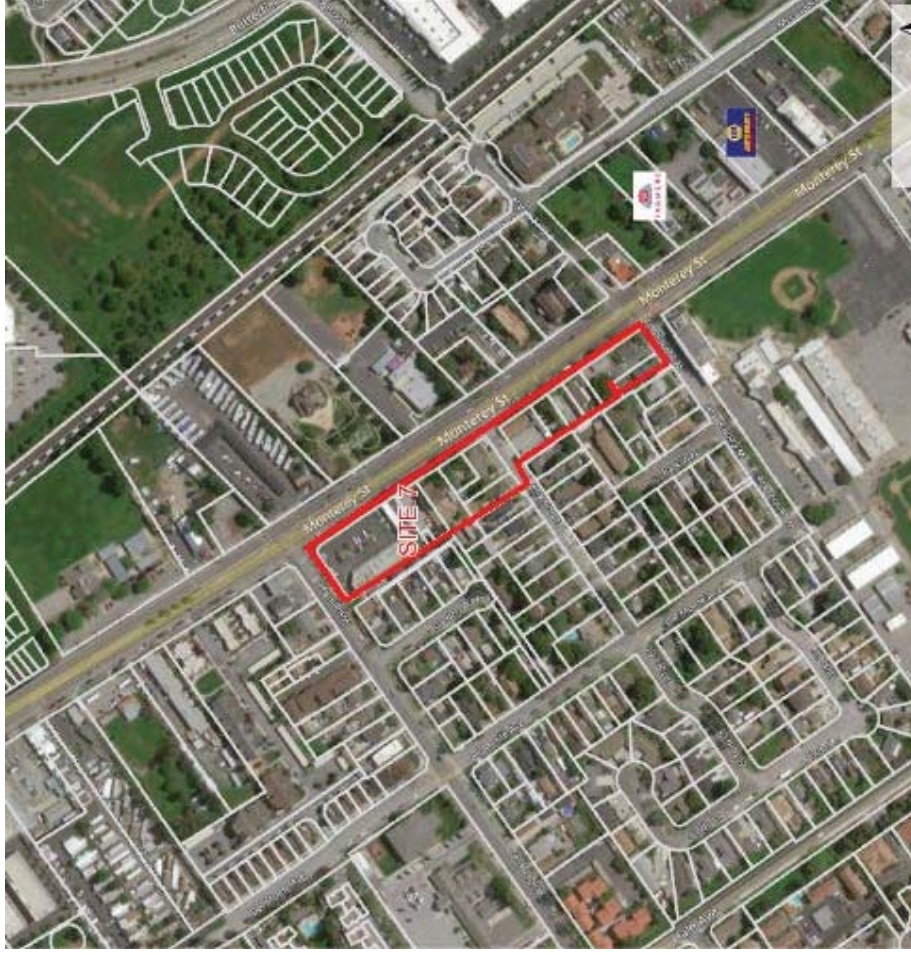


There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METROVATION

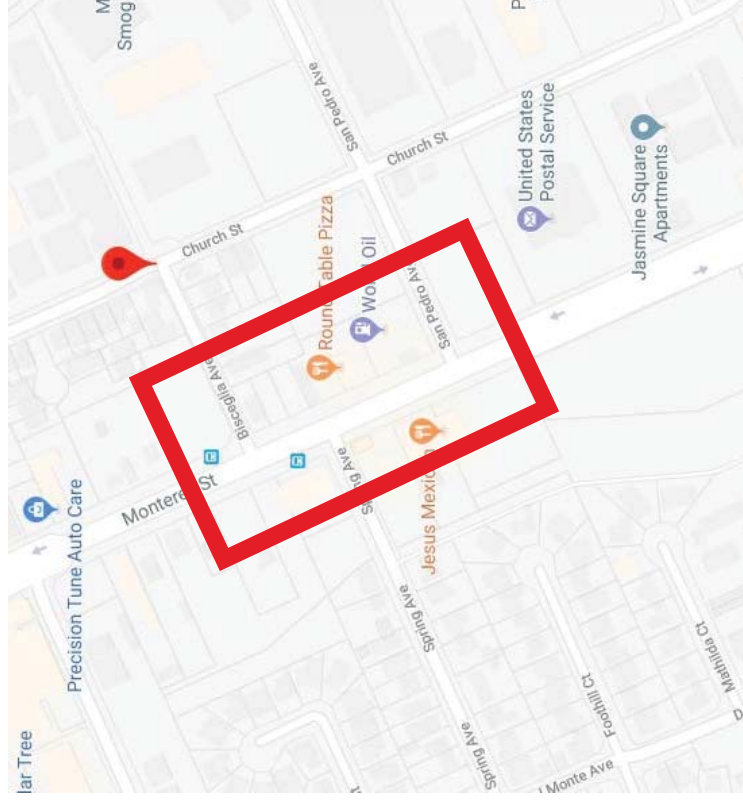
Packet Pg. 40
BROKERAGE & CONSULTING

Block 7 — Wright Ave. to W. Central Ave.



Block 8 – Bisceglia Ave. to San Pedro Ave.

a



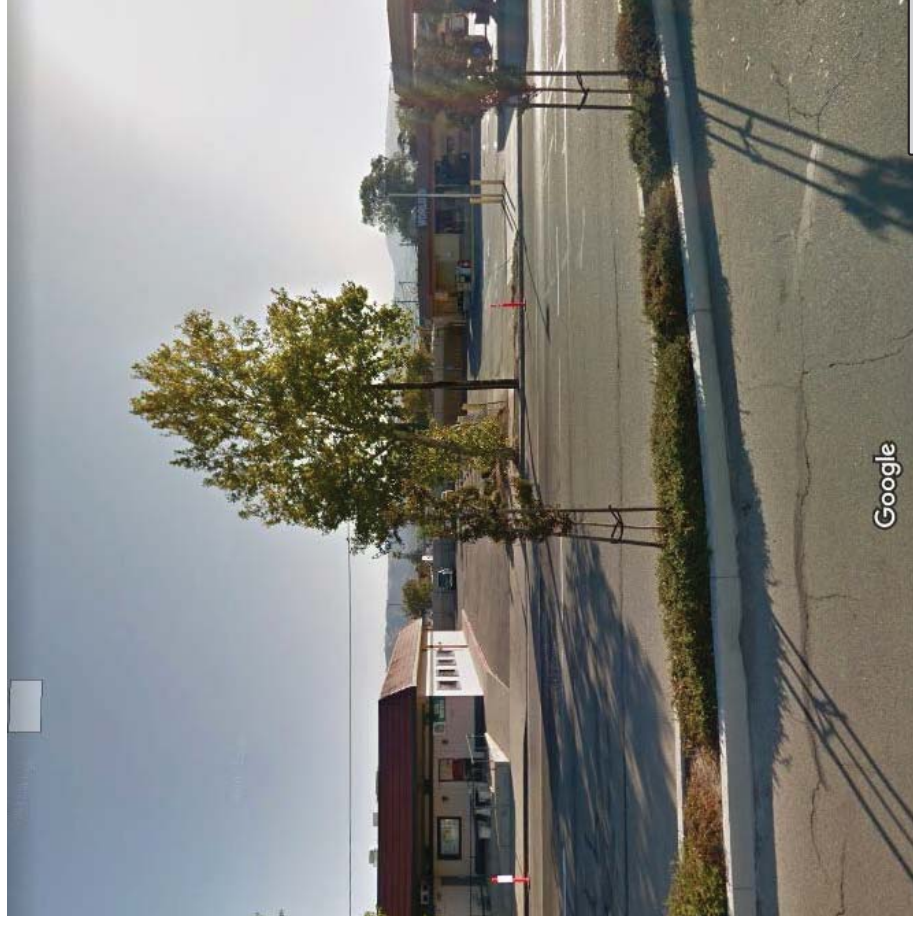
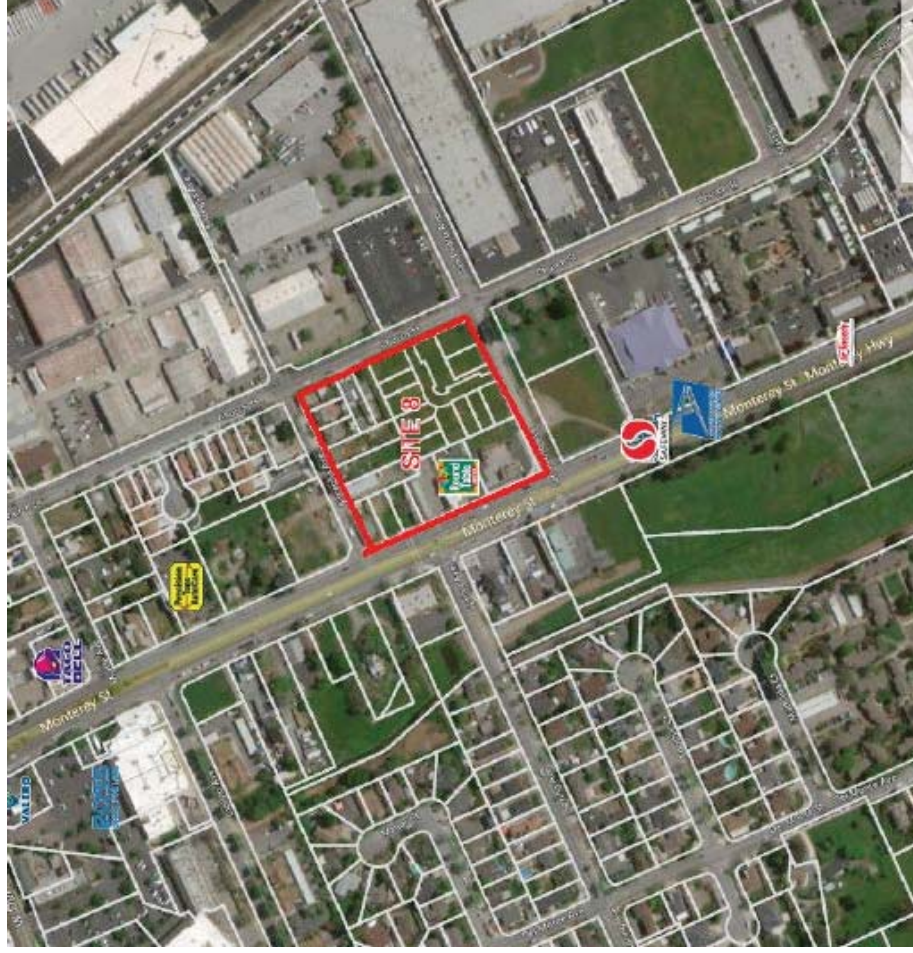
There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METROVATION

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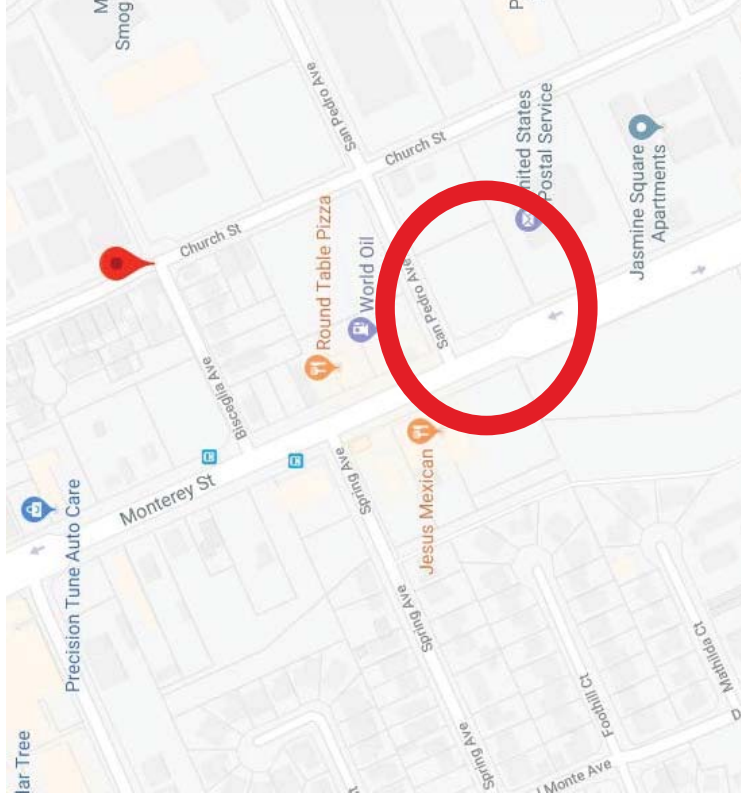
BROKERAGE & CONSULTING

Block 8 — Bisceglia Ave. to San Pedro Ave.



Block 9 – San Pedro Ave. to Barrett Ave. SE Corner San Pedro Ave. & Monterey Rd.

a

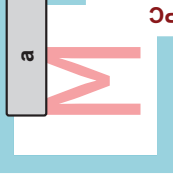
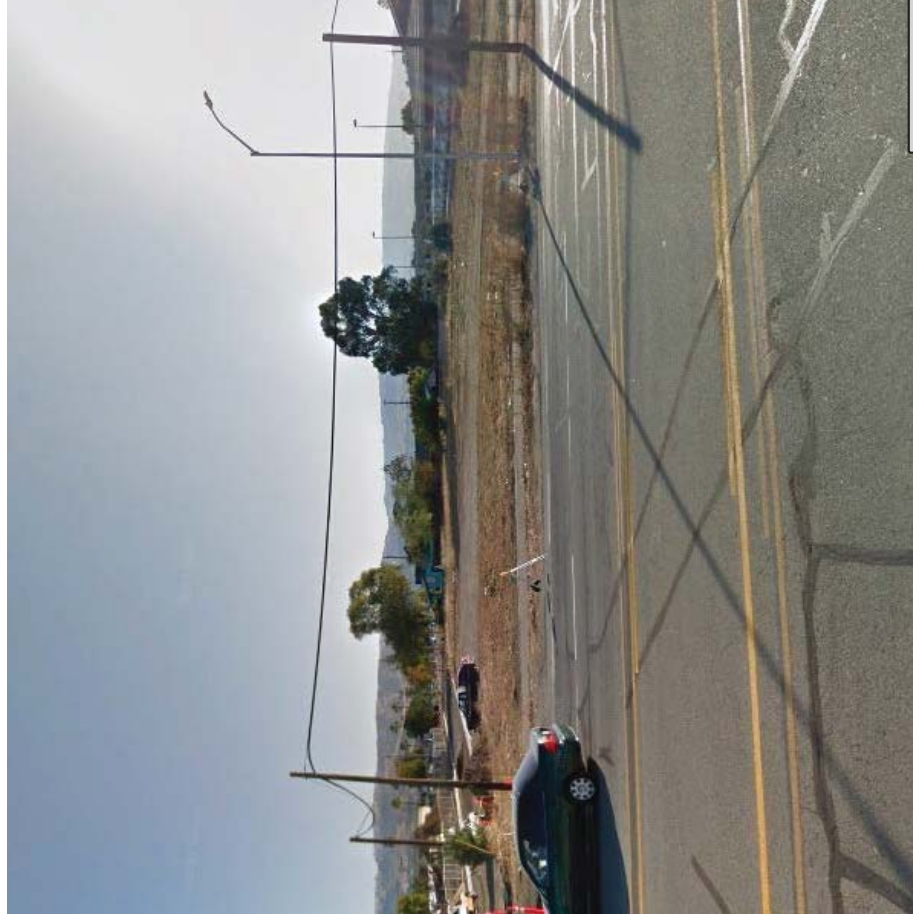


This area of south Morgan Hill already features a sustained commercial flavor and has the land available to accommodate additional commercial development. The vacant lot located on the SE corner of San Pedro Ave. and Monterey Rd. should be allowed to have commercial/retail development.

○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

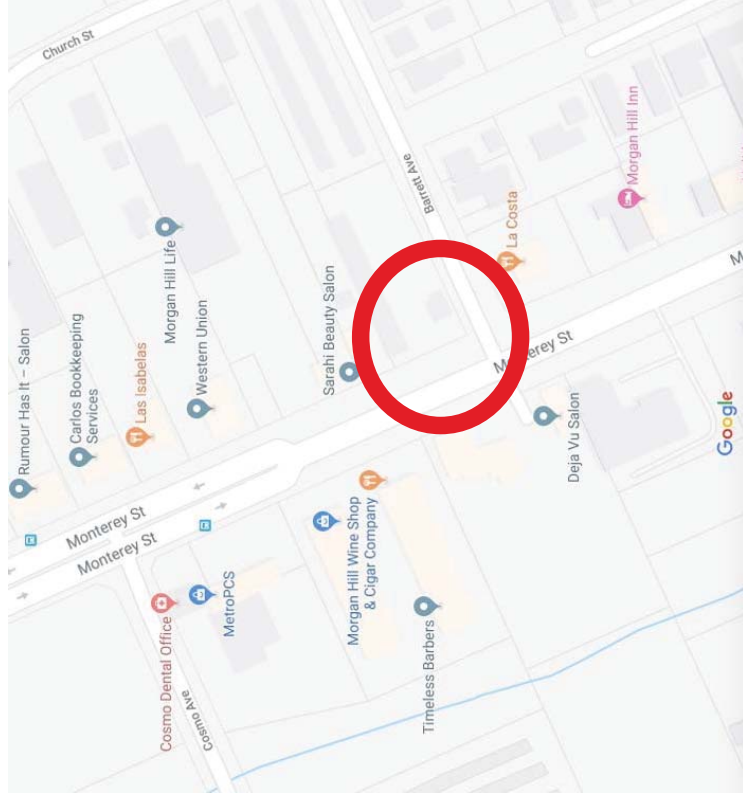
METROVATION

Block 9 — San Pedro Ave. to Barrett Ave. SE Corner San Pedro Ave. & Monterey Rd.



Block 9 – San Pedro Ave. to Barrett Ave. NE Corner Barrett Ave. & Monterey Rd.

a



The motel located at the NE corner of Barrett Ave. and Monterey Rd. appears to have significant deferred maintenance. While this property may provide affordable housing options for some citizens of Morgan Hill, it likely has areas not to code and detracts from the curb appeal of the block. Because it is under one ownership, along with the adjacent parcel to the north, it has increased opportunity for re-development. Therefore we suggest commercial for this parcel in any overlay zoning document.

○ Conclusion: Commercial is viable and likely, therefore should be zoned as such. We suggest commercial only at this corner.

METROVATION

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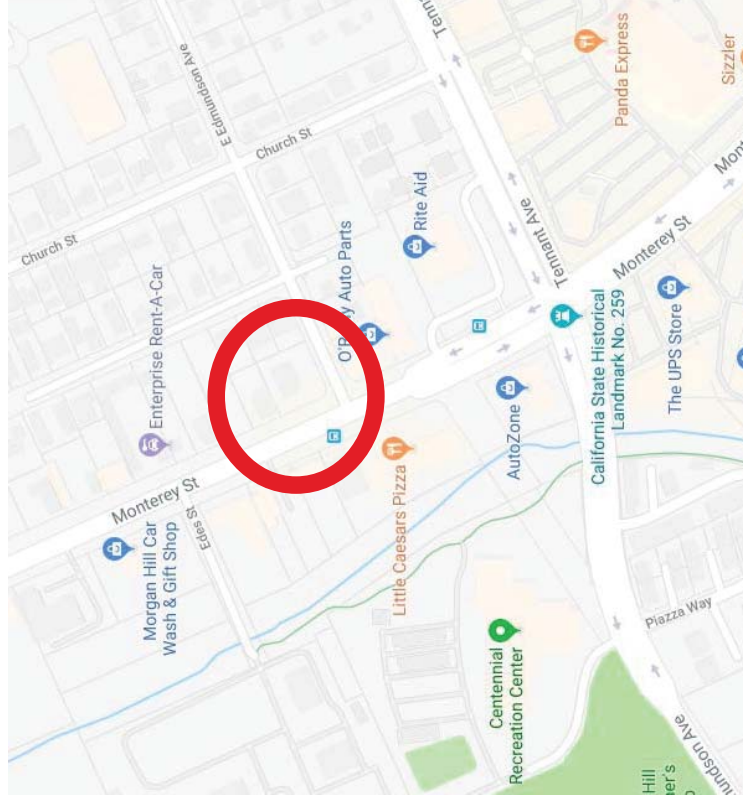
BROKERAGE & CONSULTING

Block 9 — San Pedro Ave. to Barrett Ave. NE Corner Barrett Ave. & Monterey Rd.



Block 10 – Barrett Ave. to E. Edmundson Ave. NE Corner E. Edmundson Ave. & Monterey Rd.

a



The NE corner of E. Edmundson Ave. and Monterey Rd. is an underutilized parcel currently occupied by an animal hospital. This area of Morgan Hill has a strong sense of commercial along Monterey Rd. The intersection is only a block away from the major intersection of Tennant and Monterey Rd. and has commercial uses adjacent on two sides and across the street. Intensifying the parcel is feasible and will make the best use of the property.

This does not necessarily mean changing the use. It is possible other veterinary hospital consortiums are looking to develop larger facilities that attract customers from a greater distance. A commercial use, as such, would be an upgrade from the current building and parcel condition. Therefore, we recommend requiring commercial on this parcel in the zoning document.

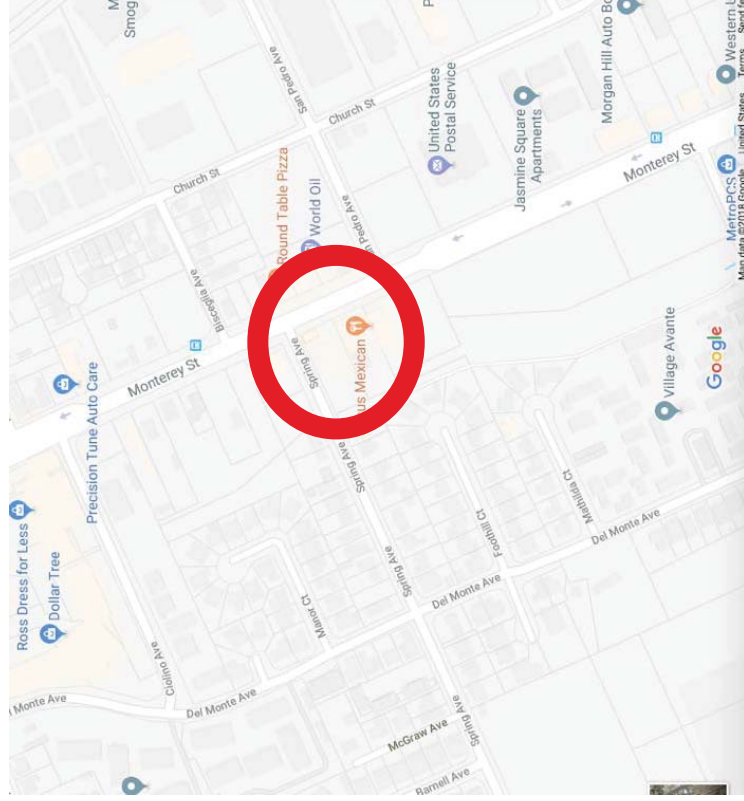
○ Conclusion: Commercial is viable at this corner. We suggest zoning commercial only for this parcel.

METROVATION

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.

a



The hard corner at Spring Ave. and Monterey Rd. (SWC) can be looked at as an entrance to a potential new development along Block 11. Using an entrance from Spring St, and developing a block-long drive aisle, passengers would be able to access a variety of possible developments with buildings up on Monterey Rd, often, with parking conveniently located in the rear. A north/south drive aisle will serve to alleviate traffic from Monterey Rd., while still providing easy access to any potential new development.

Therefore, we recommend requiring commercial on the SW corner of Spring and Monterey.

○ Conclusion: We suggest requiring commercial on the SW corner of Spring and Monterey.

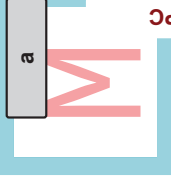
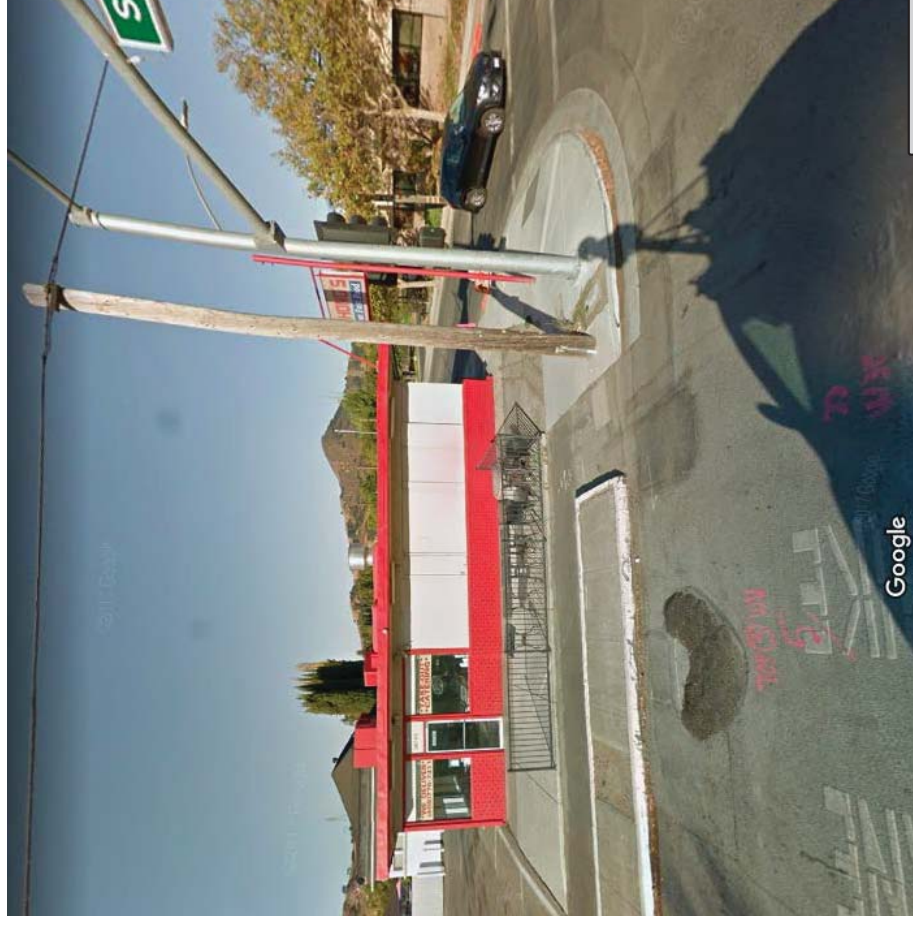
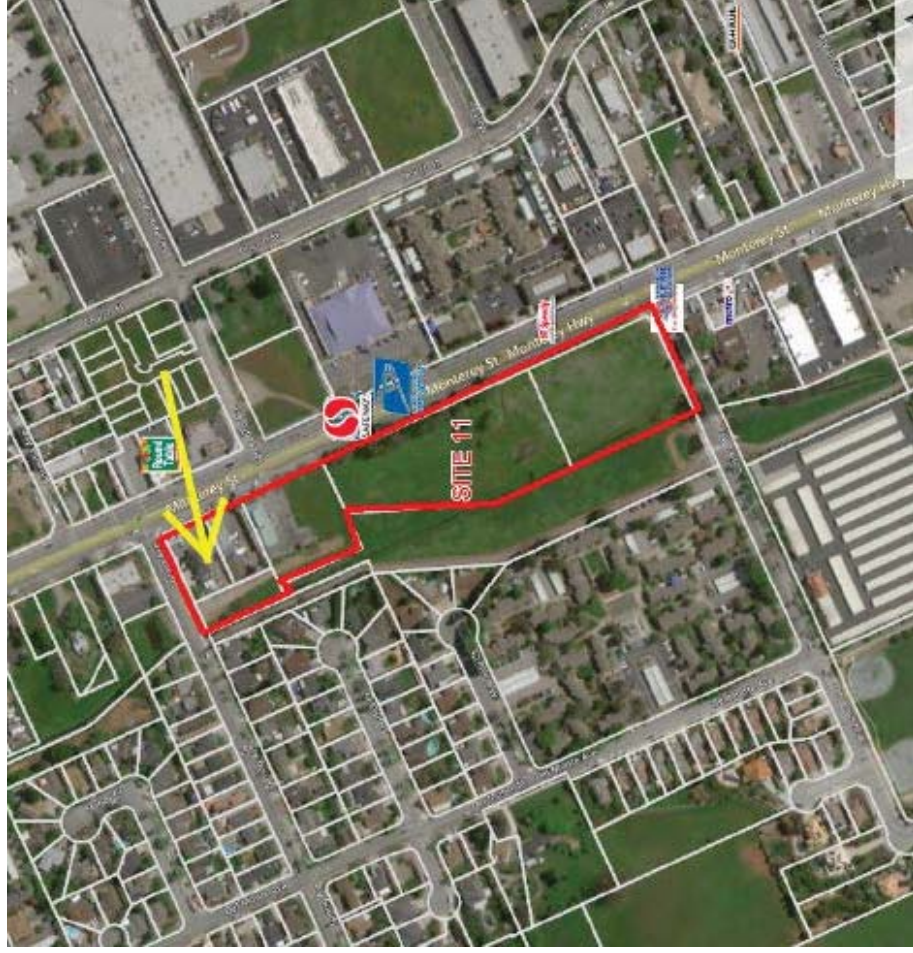
METROVATION

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BROKERAGE & CONSULTING

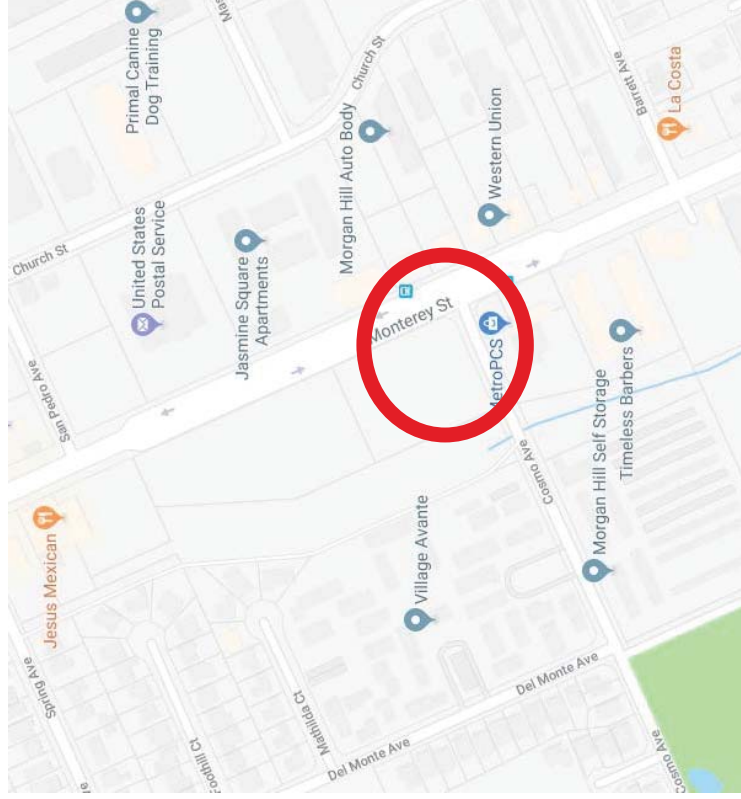
Block 11 —

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



Block 11 – South of Downtown – Spring Ave. to Cosmo Ave. NW Corner Cosmo Ave. & Monterey Rd.

a



Similar to our comments above, the entire Block 11 is ripe for new development with the corners focused on local-serving commercial uses. We strongly advocate for preserving the corners to accommodate this type of use.

Block 11 is mostly vacant and can accommodate new development. While the market will not support retail on the entire property, any new development will want to create density and keep the commercial feel to the area.

Therefore, we recommend requiring commercial on the NW corner of Cosmo Ave. and Monterey Rd.

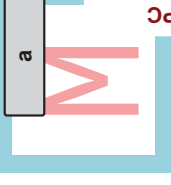
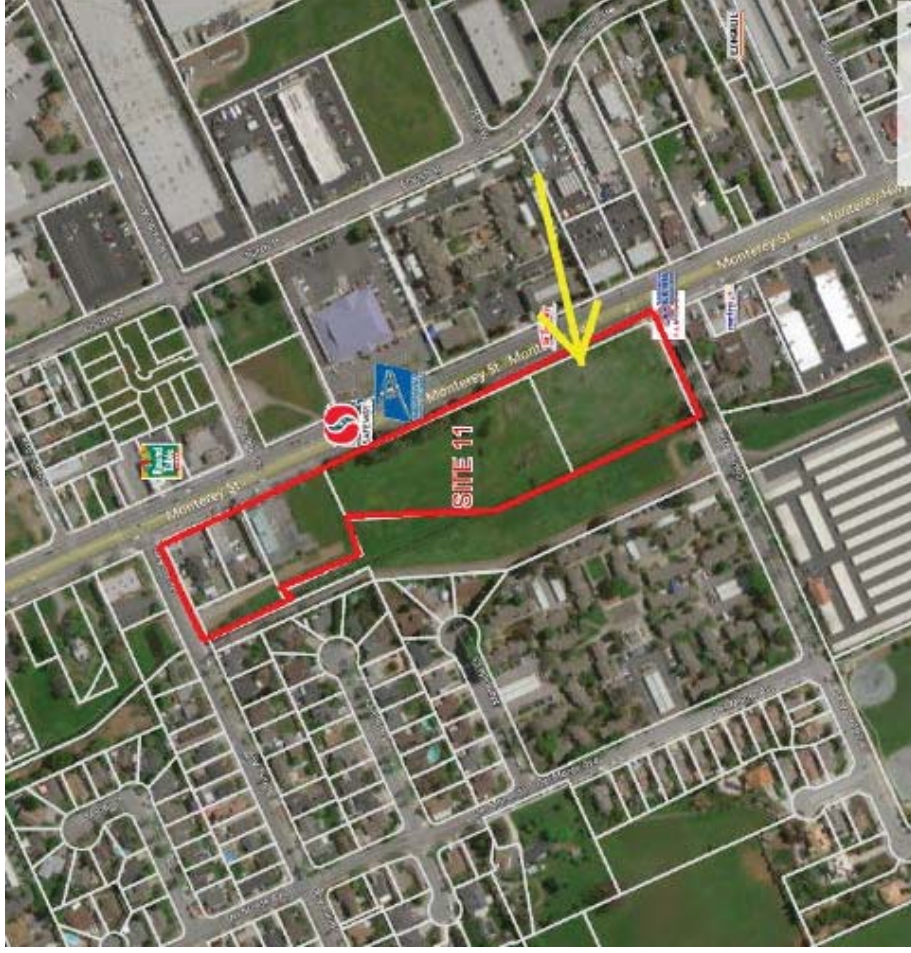


Conclusion: Commercial only zoning on the corner parcel is suggested.

METROVATION

Block 11 —

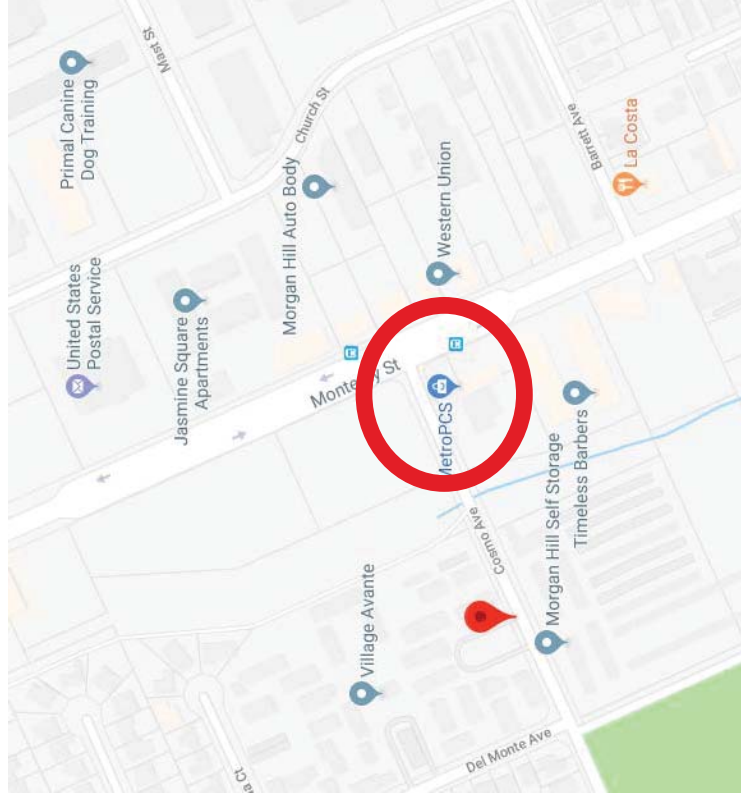
South of Downtown - Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.

a



Currently developed and leased to a variety of retail tenants, this corner will benefit from any development that occurs on the north side of Cosmo Ave.

We recommend requiring commercial on the SW corner Cosmo Ave. and Monterey Rd.

○ Conclusion: Commercial only zoning on the corner parcel is suggested.

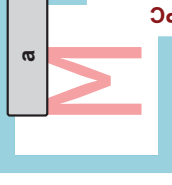
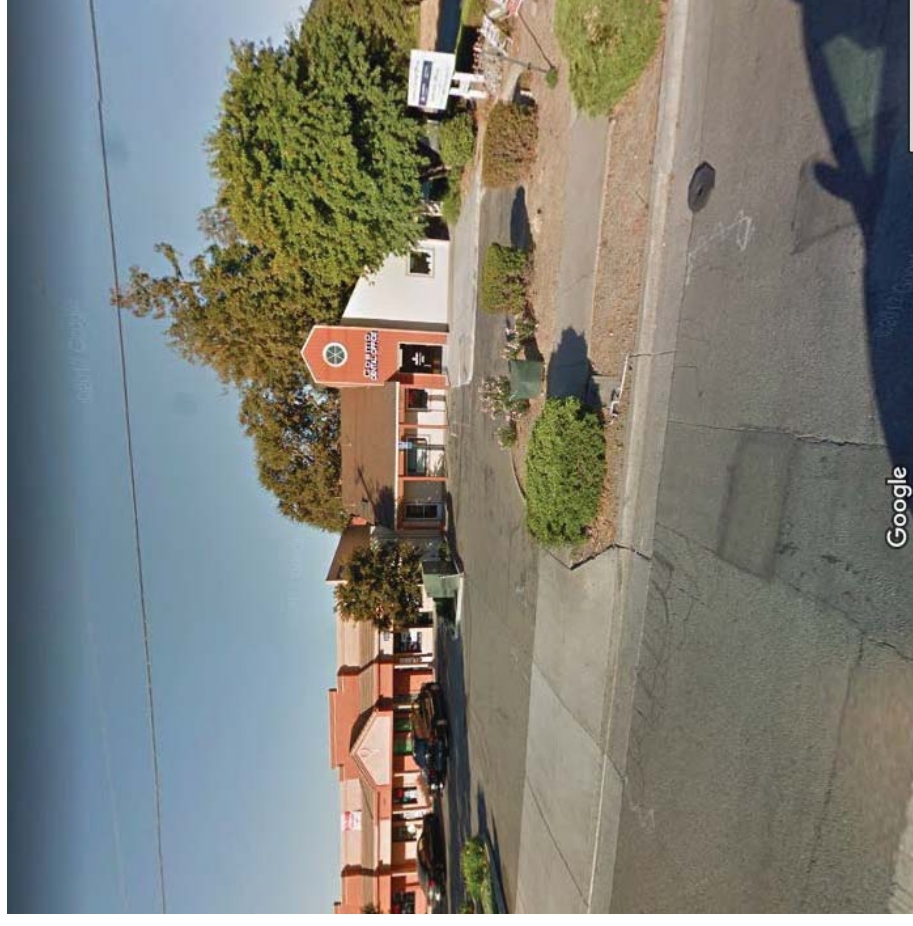
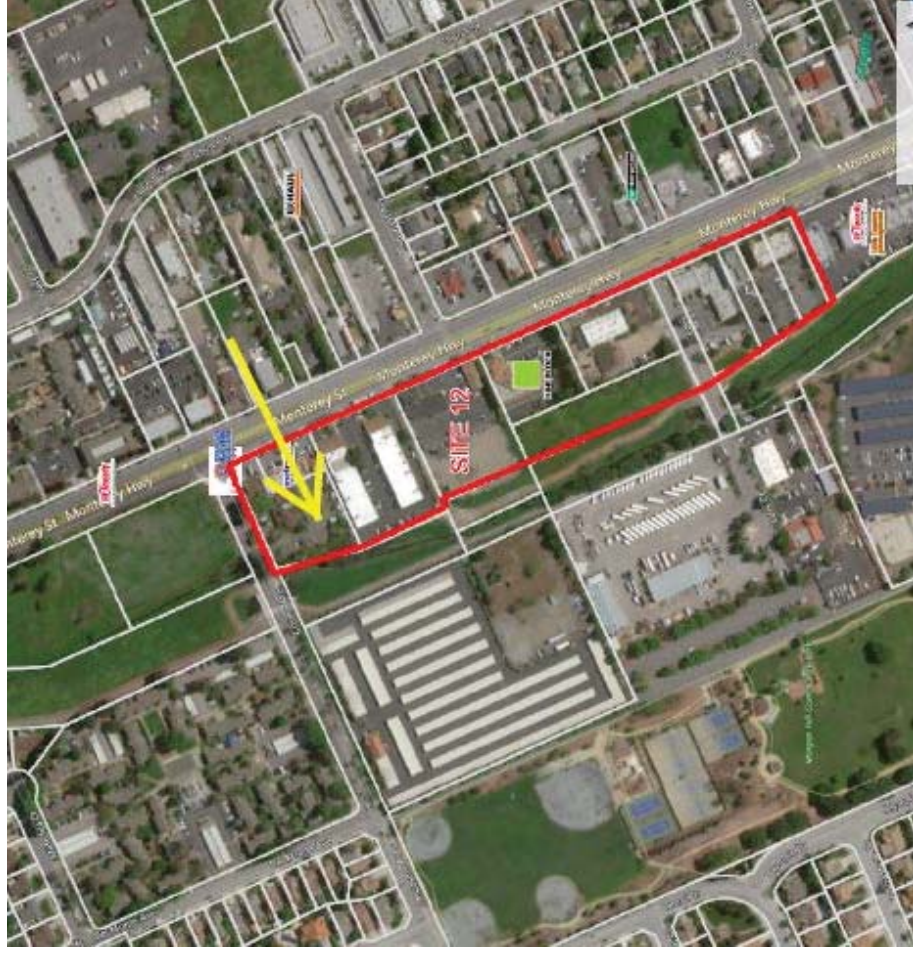
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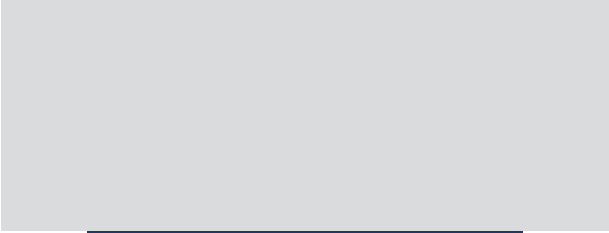
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BROKERAGE & CONSULTING

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.





Draft Frontage Standards



What are Frontage Standards?

Frontage Standards are specific requirements for building frontages, which enable a more desirable built environment



Porch



Shopfront



Front Yard

Frontage Types

a

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft



LWC

Frontage Type Application

a

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
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Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft



LWC

Frontage Type Examples

a

5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. Standards.

Size		
Depth, Recessed Entries ¹		5 ft. max.
Transparency, Ground Floor Projection ²		75% min.
Depth		4 ft. min.
Setback From Curb		3 ft. min.
Height		8 ft. min.
Miscellaneous		
May be used in conjunction with another allowed frontage type (e.g., terrace).		

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



Draft

4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right of way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

b. Standards.

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



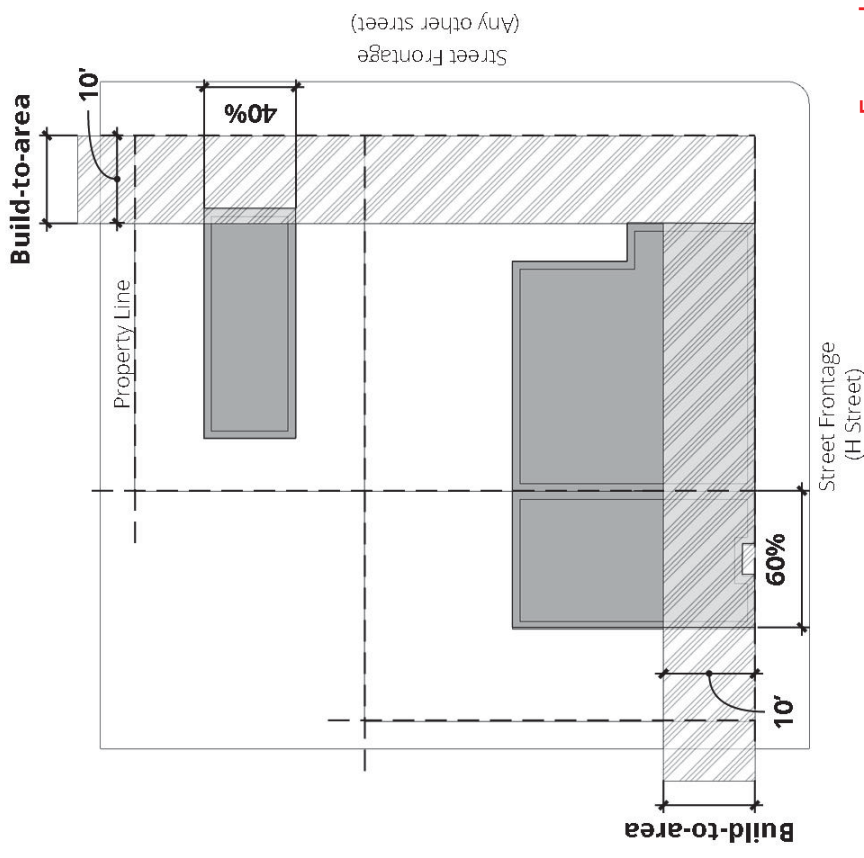
Draft

Supplemental Standards

a

Building Standards

- Maximum front setback
- 1st floor clear height for C Sub-Zone
- 1st floor building depth for C Sub-Zone
- Primary entrance oriented to the street
- Adaptive reuse



LWC

Example

City of Morgan Hill | Workshop

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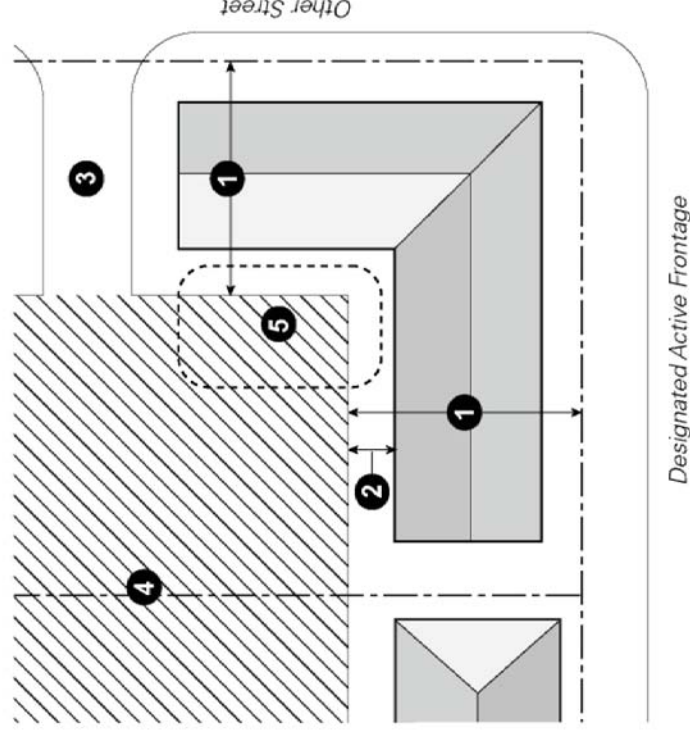
8

Supplemental Standards

a

Connectivity/Site Standards

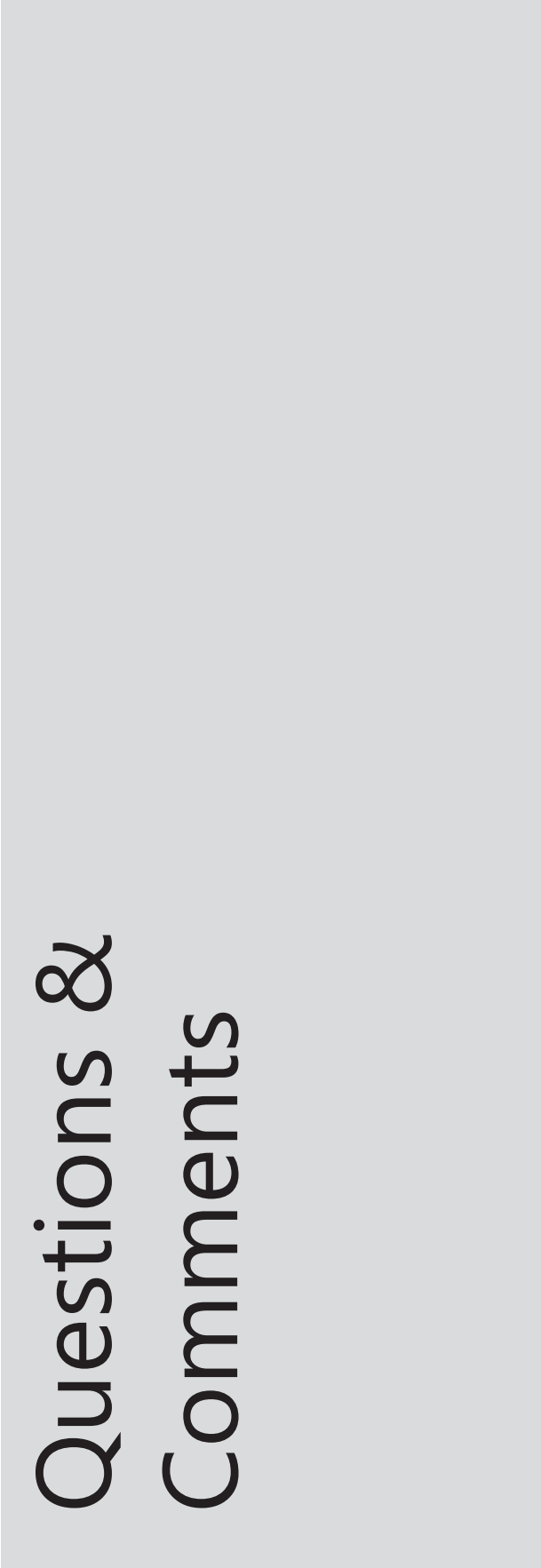
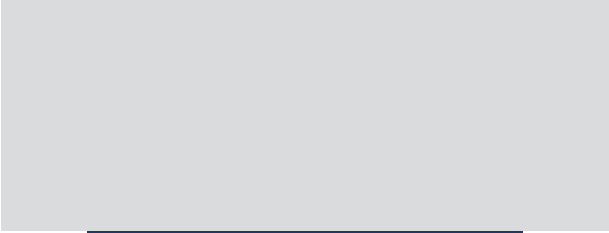
- Pedestrian and bicycle access/connection standards
- Maximum block length
- Parking behind buildings
- Open space/civic space requirement for large sites
- Street tree requirements



Example



LWC



Questions & Comments

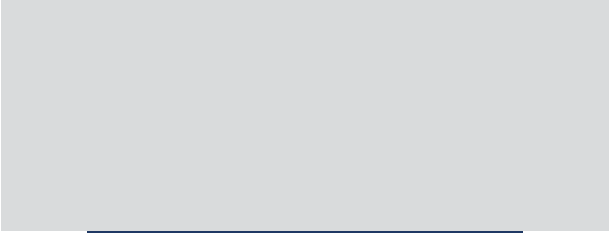




John Baty, Principal Planner

Phone: (408) 310-4635

Email: John.Baty@morganhill.ca.gov



Monterey Corridor Block-Level Master Plan Blocks

North: City Limits to Madrone Parkway

b

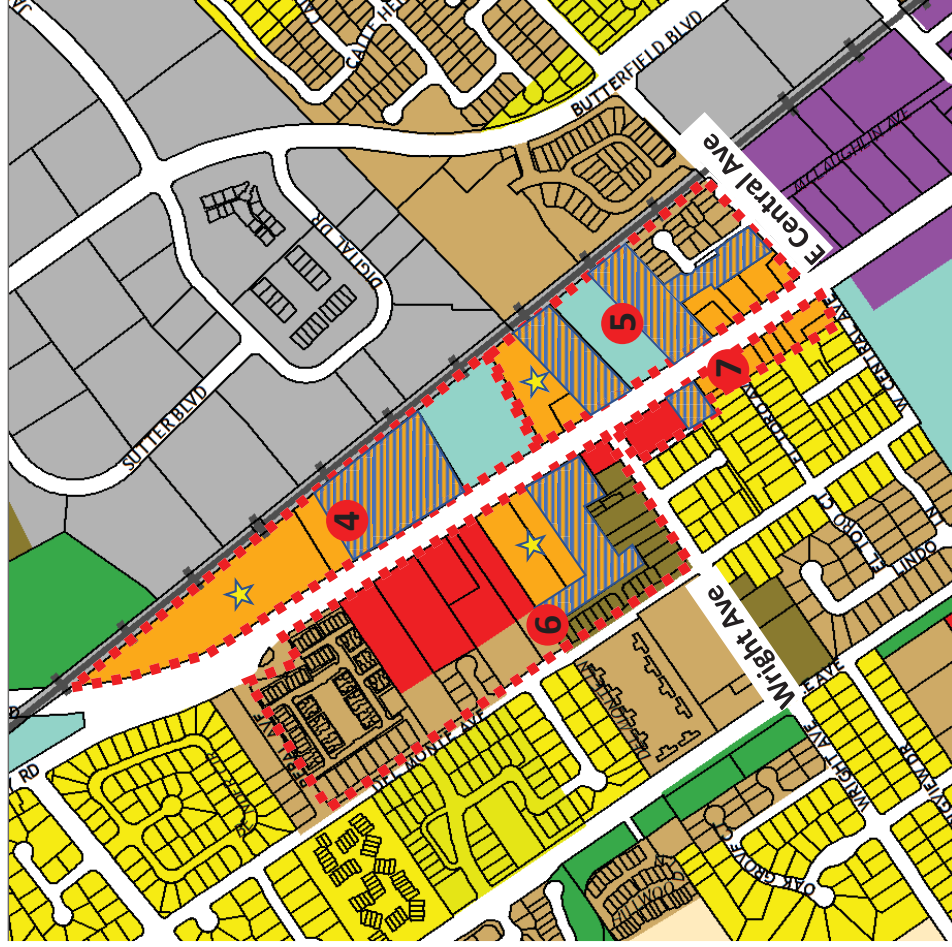


- Mixed Use Flex Site
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- Block
- Block Number
- Vacant/Underutilized Opportunity Site



North of Downtown: RR Overcrossing to Central Avenue

b

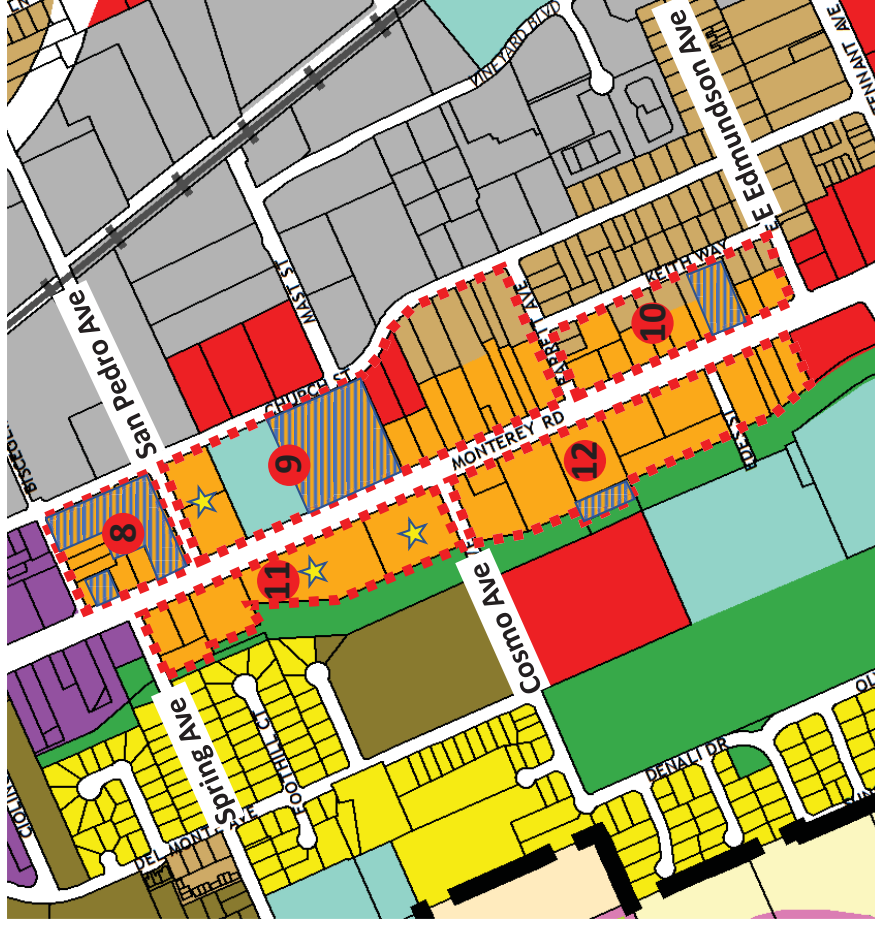


Mixed Use Flex Site # Block

Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop ★ Vacant/Underutilized Opportunity Site

South of Downtown: Bisceglia Avenue to Edmundson Avenue

b



18.30.010 – XX Overlay Zone (Name TBD)

- A. Purpose of the XX Overlay Zone.** The XX overlay zone is intended to provide a vibrant and walkable urban environment with buildings of high visual quality that frame the street. The XX overlay zone serves as the block-level master plan for residential and mixed use developments in the Monterey Corridor consistent with the General Plan and Section 18.22.030.
- B. Applicability.** All new buildings and development in the XX overlay zone must comply with the standards and requirements in this Section.
- C. Conflict with Other Zoning Code Standards.** Where the XX overlay zone standards conflict with other standards in the Zoning Code, the XX overlay zone standards shall control.
- D. Sub-Zones.**
1. **Purpose and Intent.** Sub-zones of the XX overlay zone include specific standards depending on the appropriate neighborhood and corridor contexts of the area. The general intent of the sub-zones is to reinforce built form as described in the General Plan and create a pedestrian-friendly environment. The specific purpose of each sub-zone is described below.
 - a. **Neighborhood Sub-Zone.** The purpose of the Neighborhood (N) sub-zone is to reinforce and enable medium intensity residential form within a mixed use environment.
 - b. **Corridor Sub-Zone.** The purpose of the Corridor (C) sub-zone is to provide a thriving mix of uses with a focus on ground-level, active building frontages facing the right-of-way.
- E. Permitted Land Uses.** Placeholder TBD [do not allow residential uses in areas where commercial should be required per commercial analysis].
- F. Frontage Types Allowed.** Buildings must be designed with a frontage type(s) allowed in the sub-zone by Table XX.

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

G. Frontage Type Standards.

1. Forecourt.

- a. **Description.** The main façade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space could be used as an entry court or shared garden space for residential buildings, or as an additional shopping or restaurant seating area within retail and service use areas.
- b. **Standards.**

Size	
Width, Forecourt	20 ft. min.
Depth, Forecourt	20 ft. min.
Ratio, Width-to-Height of Forecourt	2:1 max.
Transparency, Ground Floor	70% min.
Transparency, Upper Floors	30% min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	



Credit: Google Earth

2. Front Yard.

- a. **Description.** The main façade of the building has a large landscaped area between the building and the right-of-way providing a separation from the street. The front yard is visually continuous with adjacent yards and supports a landscape in conjunction with other private frontages.

- b. **Standards.**

Size	
Width, Front Yard	12 ft. min.
Depth, Front Yard	10 ft. min.
Height, Fences or Walls ¹	3 ft. max.
Miscellaneous	
Must be used in conjunction with another allowed frontage type (e.g., porch).	
Must be landscaped up to the property line.	

¹ Fences or walls must comply with Chapter 18.52 (Fences and Walls).



3. Porch: Engaged.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.
- b. **Standards.**

Size	
Width, Porch	50% min.; 80% max. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on two sides and have a roof.	



4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.
- b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



6. Stoop.

- a. **Description.** The main façade of the building is near the right-of-way and the elevated stoop engages the sidewalk. The stoop must be elevated above the sidewalk to ensure privacy within the building. The entrance is usually an exterior stair and landing.

b. **Standards.**

Size	
Width, Stoop	4 ft. min.; 8 ft. max.
Depth, Stoop	5 ft. min.; 8 ft. max.
Finish Level Above Sidewalk	2 ft. min.; 4 ft. max.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Stairs may be perpendicular or parallel to the building façade.	
Entry doors are encouraged to be covered or recessed.	
Gates are not allowed.	



7. Terrace.

- a. **Description.** The main façade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides a buffer for outdoor seating, private yards, or any other appropriate uses.

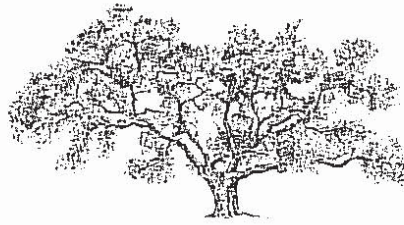
b. **Standards.**

Size	
Depth, Terrace	8 ft. min.
Length, Terrace	120 ft. max.
Finish Level Above Sidewalk	4 ft. max. ¹
Distance Between Stairs	25 ft. max.
Wall Setback From Right-of-Way	5 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	

¹ Finish level may be adjusted for base flood elevation considerations.



H. Supplemental Standards. Placeholder TBD [pedestrian and bicycle access/connectivity; maximum block length; maximum building setback; parking behind buildings; 1st floor clear height and building depth for C Sub-Zone; open space/civic spaces for large sites].



PACIFIC OAK PROPERTIES, INC.

October 16, 2018

Morgan Hill City Council

Dear Mayor and Council Members:

I have reviewed the Monterey Corridor Block Level Master Plan.

I found the analysis to be well done and I agree with the conclusions reached for the various parcels along Monterey Road.

I do not believe that the City should force or require much more additional retail along the Monterey corridor. It is more important to keep existing commercial/retail centers strong and vibrant.

Providing land use flexibility along the corridor is a good thing, and this approach should serve the City well as properties along the corridor are developed or re-developed.

Thank you for your consideration.

Sincerely,



John P. Kent
President

Attachment: Letter from John Kent (2034 : Monterey Corridor BLMP Joint CC/PC Workshop)



DEVELOPMENT PROCESS CONSULTANTS

October 24, 2018

Attn: Morgan Hill City Council/Planning Commission

Re: Monterey Corridor Block-Level Master Plan joint workshop

Dear Mayor and Council Members,

Unfortunately I am unable to attend tonight's workshop. I do have a concern regarding the recommendations presented by Metrovation Consultants.

The criteria relating to frontage type standards which include, but not limited to porches, steps and stoops refers to setbacks and elevations without addressing ADA requirements. Various lots may have difficulty meeting both zoning and ADA requirements.

Hopefully this will be discussed this evening to allow for such provisions.

Thank you,

Vince Burgos
Development Process Consultants

Sent via email:

Steve.tate@morganhill.ca.gov
rich.constantine@morganhill.ca.gov
larry.carr@morganhill.ca.gov
rene.spring@morganhill.ca.gov
caitlin.jachimowicz@morganhill.ca.gov

Planning_Commission@morganhill.a.gov



Development Process Consultants

220 Live Oak Drive
Danville, CA. 94506

PROPOSED FIREARMS ORDINANCE

October 24, 2018

Item 4



Presentation Outline



- Background
 - o Second Amendment
 - o Local Police Power
 - o Existing Firearms Regulations
- Proposed Ordinance
 - o Duty to Report Loss or Theft
 - o Safe Storage Requirements
 - o Large Capacity Magazines
- Next Steps

Second Amendment



A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Second Amendment



There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.

District of Columbia v. Heller (2008) 554 U.S. 570, 595

Second Amendment



- “Of course the right [to keep and bear arms] was not unlimited, just as the First Amendment's right of free speech was not . . . Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.” *District of Columbia v. Heller* (2008) 554 U.S. 570, 595
-
- “. . . [n]othing in [the Supreme Court's] recent opinions is intended to cast doubt on the constitutionality of longstanding prohibitions traditionally understood to be outside the scope of the Second Amendment.” *Fyok v. City of Sunnyvale*, (2015) 779 F. 3d 991, 996
- “. . . longstanding prohibitions on the possession of “dangerous and unusual weapons” have uniformly been recognized as falling outside the scope of the Second Amendment.” *Id.* at 997

Police Powers



A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

Cal. Const., art. XI, § 7

Existing “Weapons” Ordinance



- Adopted in 1970.
- Similar to restrictions in cities and states throughout the United States.
- 14 of 15 cities and towns in Santa Clara County have similar restrictions.
- Does not prohibit the use of children’s toys, nail guns, spit balls, paper airplanes, or other innocuous devices.

Existing “Weapons” Ordinance



9.04.010 A

“No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls **bullets, missiles of any kind** to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.”

Existing “Weapons” Ordinance



Missile = thing thrown or projected as a weapon.

Weapon = thing designed or used to cause bodily harm or damage.

Note: Some items that are otherwise not prohibited, could be if misused (e.g., older model nail guns with safety devices removed).

Proposed Deletion



Current section 9.04.020 is a repeat of outdated state requirements. We propose to delete these requirements in favor of revised state law.

However, we will bring back the proposed permitting ordinance on November 28.

Duty to Report Theft or Loss



- Assists law enforcement in detecting straw purchasers.
- Prevents prohibited persons from later claiming theft of owned firearms.
- Protects gun owners from false identification in crime investigation.
- Responsible gun owners will report with or without an ordinance.

Duty to Report Theft or Loss



- California requires reporting to local “law enforcement” within 5 days.
 - o Ordinance would clarify that reporting should be to Morgan Hill Police Department.
 - o Requires reporting within 48 hours.

Duty to Report Theft or Loss



- 48 Hours is the time for reporting by firearms dealers.
- Commonly used in other local ordinances.
 - o San Jose requirement is 24 hours.

Safe Storage Requirement



- Helps to prevent theft of firearms.
- Helps to restrict access to firearms by people who should not have access.
 - o Safe storage prevents youth and adult suicide.
 - o Identified by Project ChildSafe as No. 1 way to help prevent firearms accidents.

Safe Storage Requirement



- Current state law provides criminal penalties for unsafe storage, but only if:
 - o A firearm is kept loaded and unsecured; and
 - o The owner knows (or should know) that a child is “likely to gain access” without permission.

Safe Storage Requirement



- Sunnyvale requires firearms to be secured unless they are being carried or are within arms-reach.
- San Jose requires firearms to be secured when owner is not at home.

Safe Storage Requirement



- Our proposed ordinance requires firearms to be secured when unattended.
 - o A firearm is unattended when it is not being “watched or looked after.”

Safe Storage Requirement



Policy Question

Should there be an exception for antique and/or replica antique firearms?

Large Capacity Magazine Ban



- A “magazine” is a storage device for ammunition, that feeds cartridges into a firearm’s chamber. The cartridge typically contains an ignition device, a propellant, and a bullet.
- There is no standard definition for “large capacity” magazine, but California law defines magazines that hold more than 10 rounds of ammunition as large capacity.

Large Capacity Magazine Ban



A review of mass shootings between January 2009 and January 2013 by Mayors Against Illegal Guns found that incidents where assault weapons or large capacity ammunition magazines were used resulted in 135% more people shot and 57% more killed, compared to other mass shootings.

Large Capacity Magazine Ban



California law prohibits the manufacture, sale or importation of large capacity magazines, but does not restrict possession of magazines that were acquired prior to January 1, 2000.

Large Capacity Magazine Ban



- A Local ban on the possession of large capacity magazines has been upheld by the 9th Circuit Court of Appeals.
- A lower court blocked a statewide ban (Proposition 63).
 - o The lower court ruling was on preliminary injunction.
 - o The lower court distinguished Sunnyvale from remote counties.

Large Capacity Magazine Ban



Policy Question

Should subsection 9.04.050(C)(8) of the draft ordinance be changed to exempt all large capacity magazines that were included with a firearm that was purchased prior to January 1, 2000, if the person possesses the large capacity magazine solely for use with that firearm?

Next Steps/Additional Direction



Next Step

- Consider adoption of permit requirements for licensed firearms dealers and/or retailers.

Request for Direction

- Should the City explore options to provide firearms education?
- Should the City explore other specific actions suggested by members of the public?

Questions?



From: Michael Burchfield <mikeb@westhills.org>

Date: October 19, 2018 at 9:49:26 PM PDT

To: steve.tate@morganhill.ca.gov, rich.constantine@morganhill.ca.gov, larry.carr@morganhill.ca.gov,

Rene Spring <rene.spring@morganhill.ca.gov>, caitlin.jachimowicz@morganhill.ca.gov

Subject: Follow-up email Re: Gun Control Ordinance

Dear Mayor and Council Members,

Since sending you the email below, I had the privilege of speaking with Chief David Swing about the ordinance in question and learned from him that the paragraph from the ordinance that I quoted has been in affect for quite some time. Further, he explained how the primary amendments to the ordinance appear in section 9.04.020 and not in 9.04.010 and involve gun storage regulations and high capacity magazines. Having learned this, I apologize for sending you such a 'ridiculous' email - one which was clearly uninformed.

That said, I do think the original ordinance could be written better, and with more specificity in regards to exactly what instruments are in view and which are not. If the ordinance has served it's purpose well up until this point however, adding in more specificity is probably not necessary.

I greatly appreciate your efforts to keep Morgan Hill ne of the safest cities in Santa Clara. Thank you for your service to all of us

Regards,
Michael Burchfield

On Oct 19, 2018, at 12:23 AM, Michael Burchfield <mikeb@westhills.org> wrote:

Dear Mayor Tate and City Council Members Mr. Constantine, Mr. Carr, Mr. Spring, and Mrs. Jachimowicz,

I am emailing you to communicate my concern regarding the gun control measure scheduled for discussion and vote by you, the city council, on October 24, 2018. I urge you NOT to approve this measure as it is written. Having read the ordinance (on line at <https://www.morganhill.ca.gov/DocumentCenter/View/23695/Draft-Firearms-Ordinance>), it is clear that it is so general in scope that even toys will be illegal within the city limits, unless an application is submitted to the chief of police for approval of said instrument; and I seriously doubt that you desire to be down as the city council who passed such a ridiculous ordinance.

Why do I call this a ridiculous ordinance? By way of example, the first section of the ordinance reads:

The **SECTION 1:** Chapter 9.04 ("Weapons") of Title 9 ("Public Peace, Morals and Welfare") is hereby amended to read as follows:

"9.04.010 - Discharge—Permit required—Fee.

A. No person shall discharge in the city, outside of a licensed shooting range, **any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device** by means of **elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge**, without first having applied for and obtained a written permit therefore from the chief of police."

If I am interpreting this statement correctly, things such as nerf guns, nerf bow and arrows, slingshots or toy bow and arrows which shoot wooden arrows with rubber tips will be illegal to discharge within the Morgan Hill city limits without a permit from the police chief and a liability insurance policy. Put another way, if my grandson were to receive a TOY such as this mentioned above for his birthday, which utilizes compressed air or a strong under tension to propel a soft styrofoam or wooden projectile 'any distance', his doing so will constitute a violation of said ordinance, if done so without a permit.

Frankly, I cannot understand WHY an ordinance as broad as this is even up for consideration. Isn't it true that it is ALREADY illegal to discharge firearms within the city limits? Aren't the setting off of explosive devices (called fireworks) already illegal within the city limits? Isn't it true that the use of air soft guns within the city limits is already illegal? Isn't it true that the discharge of paintball guns are illegal within the city limits unless used on designated fields of play?

If my assumptions regarding firearms, air soft guns and paintball guns are wrong, it seems this ordinance should specify that such instruments are what, specifically, are in view with in this ordinance. If my assumptions are correct, then why does Morgan Hill need this ordinance at all?

This seems like a 'feel good' ordinance which may gain certain members of the council favor in the eyes of some sub-group or other within the city, but which will do NO GOOD in protecting the citizenry of our good city any further than the ordinances already in place and enforced by the Morgan Hill Police Department. PLEASE, do NOT vote this ordinance into affect as written.

Thank you for your kind consideration; and thank you for your service to our community,

Michael Burchfield
825 Encino Drive
Morgan Hill, Ca, 95037

From: Laura Palmerin <lpalmerin@michellawyers.com>

Date: October 19, 2018 at 3:22:06 PM PDT

To: "rene.spring@morganhill.ca.gov" <rene.spring@morganhill.ca.gov>

Subject: Proposed Ordinance Banning Firearm Magazine Possession [MA-Interwoven.FID27444]

Dear Council Member Spring,

Attached please find a letter regarding the City of Morgan Hill's proposed ordinance banning possession of certain firearm magazines.

Please feel free to contact our office with any questions or concerns.

Best regards,

Laura Palmerin Legal Secretary/Paralegal
--

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TCHEUVRONT@MICHELLAWYERS.COM

October 19, 2018

VIA FAX & U.S. MAIL

Donald Larkin, City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592

Re: Proposed Ordinance Banning Possession of Certain Firearm Magazines

Dear Mr. Larkin:

On June 1, 2018 our office wrote to you on behalf of our clients California Rifle & Pistol Association, Incorporated ("CRPA") and their tens of thousands of members and supporters, many of whom live in the Morgan Hill area, to oppose the proposed ordinances that seeks to impose firearm related restrictions on residents of and visitors to the City of Morgan Hill ("City"). The City has held two public meetings regarding the proposed changes. Both supporters and opponents to the new regulations voiced their concerns at the meetings. We understand that the City now intends to place these ill-conceived ordinance changes on your October 24, 2018 agenda.¹

Our clients continue to oppose the proposed ordinance.

I. ANY ORDINANCE PROHIBITING POSSESSION OF SO-CALLED "LARGE CAPACITY MAGAZINES" IS PREEMPTED AND AMOUNTS TO AN UNCONSTITUTIONAL TAKING

As noted in the City Council May 16, 2018 report, there are legal challenges currently underway and pending in the courts regarding the legality of banning the possession of magazines that can hold over 10 rounds. One such case, *Duncan v. Becerra*,² challenges state's ban against the possession of such magazines that was scheduled to take effect on July 1, 2017.³ As stated by the court, "California's desire to criminalize simple possession of a firearm magazine able to hold more than 10 rounds is precisely the type of policy choice that the Constitution takes off the table." The Judge in

¹ The media reported that most of those in attendance at the community meetings were more interested in promoting education programs than they were in the City presenting more regulations against law-abiding gun owners. <https://www.morganhilltimes.com/2018/10/11/gun-control-ordinance-to-come-before-council/>

² *Duncan v. Becerra*, 265 F.Supp.3d 1106 (2017).

³ See Cal. Penal Code § 32310(c-d); See also *Duncan v. Becerra*, S.D. Cal. 2017, 2017 WL 2813727.

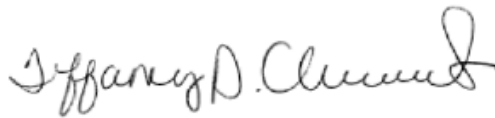
Duncan spoke of the “complexity” of the state law and how the state has continued to add layers to the laws.⁴ It is therefore wholly improper for the City to adopt such an ordinance while *Duncan* is pending.

Any such ordinance will also be preempted under state law because it will duplicate, contradict, and enter an area of law that is fully occupied by state law. In 2015, our office filed a lawsuit against the City of Los Angeles on this very issue, who at the time had in effect an identical ordinance now being considered by the City of Morgan Hill.⁵ In 2017, Los Angeles agreed to repeal their ordinance as a result of that lawsuit pursuant to a settlement agreement.⁶

Banning the possession of these magazines would also constitute a physical appropriation of property without just compensation, which is *per se* an unconstitutional taking.⁷ A regulation that goes so far as to depriving a property owner of economically beneficial use or otherwise “interfering with legitimate property interest” requires just compensation from the government.⁸

If our client is forced to seek a judicial declaration that the Ordinance, if adopted, is void and must be stricken from the Municipal Code, then our clients will be entitled to seek and recover their reasonable attorney’s fees and costs of the suit. (See Code Civ. Proc., § 1021.5, and see *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 220-221 [where writ relief confers a significant benefit on a large class of persons, an award of attorney’s fees is appropriate].) In light of the indisputable application of the preemption doctrine to the proposed Ordinance, however, hopefully the City can avoid the legal action faced by other similarly situated cities and the Council will vote no on the proposed Ordinance.

Sincerely,
Michel & Associates, P.C.



Tiffany D. Cheuvront

Cc: Steve Tate, Mayor
Rich Constantine, Mayor Pro Tem
Larry Carr, Council Member
Rene Spring, Council Member
Caitlin Robinett Jachimowicz, Council Member

⁴ *Id. Duncan v. Becerra*, Order Granting Preliminary Injunction (June 29, 2017).

⁵ See *Bosenko v. City of Los Angeles*, Case No. BS158682, 2015 WL 6467648 (Cal. Super.).

⁶ A copy of this settlement agreement can be viewed online at <http://michellawyers.com/wp-content/uploads/2017/07/Bosenko-Settlement-Agreement.pdf>.

⁷ See *Horne v. Dep’t of Agric.*, -- U.S.--, 135 S. Ct. 2419, 2427 (2015).

⁸ *Lingle v. Chevron*, 544 U.S. 528, 537-39 (2005).

From: Laura Palmerin <lpalmerin@michellawyers.com>

Date: October 22, 2018 at 11:28:44 AM PDT

To: "rene.spring@morganhill.ca.gov" <rene.spring@morganhill.ca.gov>

Subject: Proposed Ordinance re Firearm Theft Reporting & Locked Storage [MA-Interwoven.FID27444]

Dear Council Member Spring,

Attached please find a letter regarding the City of Morgan Hill's proposed ordinance regarding reporting the theft or loss of a firearm and mandatory locked storage.

Please feel free to contact our office with any questions or concerns.

Best regards,

Laura Palmerin Legal Secretary/Paralegal
--

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WRITER'S DIRECT CONTACT:
562-216-4450
TCHEUVRONT@MICHELLAWYERS.COM

October 22, 2018

VIA FAX & U.S. MAIL

Donald Larkin, City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592

**Re: Pre-Litigation Demand
Proposed Firearm Ordinance-Theft or Lost Firearm Reporting
and Mandatory Locked Storage of Firearms- OPPOSED**

Dear Mr. Larkin:

On June 1, 2018 our office wrote to you on behalf of our clients California Rifle & Pistol Association, Incorporated ("CRPA") and their tens of thousands of supporters, many of which live in the Morgan Hill area, to oppose the proposed ordinances that seek to impose firearm related restrictions on residents and visitors to the City of Morgan Hill ("City").

Since then, the City has held two meetings regarding the proposed changes. Both supporters and opponents to the new regulations voiced their concerns at the meetings but the media reported that most of those in attendance at the community meetings were more interested in promoting education and firearm safety training programs than they were in the City presenting more regulations against law-abiding gun owners. <https://www.morganhilltimes.com/2018/10/11/gun-control-ordinance-to-come-before-council/> Nonetheless, the City has placed consideration of these ill-conceived proposed ordinances on its October 24, 2018 agenda.

Our clients continue to oppose the proposed ordinances, and urge you to advise your client concerning the illegality of these ordinances -- which are preempted by existing state laws.

There is Already a State Law Requiring Theft or Loss of a Firearm to be Reported That Preempts Duplicative or Conflicting Local Ordinances

A local regulation will be struck down if it duplicates state law, conflicts with state law, or enters a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication.¹ An explicit contradiction between an ordinance and a state statute occurs “where the language of the ordinance directly contradicts the operative language and statute, e.g., by penalizing conduct which the state law expressly authorizes...” (See *Small Property Owners of S.F. Instit. v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 86 (*Small Property Owners*), quoting *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396-397.)

Proposition 63² created a state statute that subjects gun owners to penalties if a lost or stolen firearm is not reported to authorities within 5 days of the time he or she knew or reasonably should have known that the firearm was lost or stolen.³

The proposed ordinance mandating the reporting of the theft or loss of a firearm within 48 hours both duplicates and conflicts with the existing state law. The proposed ordinance conflicts with the existing state law and the 5-day reporting requirement. (See, e.g., *O’Connell v. City of Stockton* (2007) 41 Cal.App.4th 895, 1068.) Under the City’s proposed ordinance, after 48 hours the victim who has not yet reported the theft would still be in compliance with state law but would be in violation of the proposed ordinance. The proposed Ordinance contains the sort of localized penalization of conduct otherwise *authorized* under state law that the preemption doctrine forbids. (See *Small Property Owners, supra*, 22 Cal.App.5th at p. 86.) “The consequences of the preemption of a local measure is that the measure is unenforceable against anyone.” (*City and County of San Francisco v. Regents of University of Cal.* (2017) 11 Cal.App.5th 1107, 1118.)

Mandating Locked Storage of Firearms in One’s Home Raises Second and Fourth Amendment Concerns and is Preempted

Dictating the manner in which residents keep their firearms while in their own home and requiring that they keep handguns in a locked storage container or disabled with a trigger lock, runs afoul of the preemption doctrine because it contradicts state law and enters into an area that is fully occupied by state law.⁴

California state laws create liability for the criminal storage of a firearm for any gun owner who allows a minor or prohibited person to access and misuse a firearm.⁵ The statute contains a comprehensive set of exceptions.⁶ There are also several firearm storage requirements when one lives

¹ *Fisacal v. City of San Francisco* (2008) 158 Cal. App. 4th 895, 903-04.

² Cal. Penal Code § 25250.

³ *Id.*

⁴ *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 903-04 (2008).

⁵ Cal. Penal Code §§ 25100-25135, 25200-25225.

⁶ Cal. Penal Code §§ 25105(a)-(g), 25135(a)(1)-(6), 25205.

with another individual who is prohibited by state or federal law from owning firearms.⁷ California law also mandates that any firearm sold must include a firearm safety device.⁸ Additionally, whenever an individual purchases a long gun in California they must sign an affidavit stating ownership of a gun safe or lock box.⁹ Such safety devices must meet rigorous safety standards.

The state's firearm storage regulatory scheme is comprehensive. Local ordinances imposing further criminal restrictions on the storage of firearms are preempted.

Additionally, the City will generally not be able to enforce the proposed locked storage requirements because the Fourth Amendment prohibits an inspection unless probable cause is established.¹⁰

The ordinance also infringes on Second Amendment rights. The "inherent right of self-defense has been central to the Second Amendment right[.]" and "the need for self-defense, family, and property is most acute" in the home.¹¹ At issue in *Heller* was a District of Columbia ordinance substantially similar to the proposed ordinance. The Supreme Court held that "any ban on handgun possession in the home violates the Second Amendment, as does [a] prohibition against rendering any lawful firearm in the home operable for the purposes of immediate self-defense."¹² The proposed recommendation is completely at odds with the ruling in *Heller*.

The Ninth Circuit case of *Jackson v. City of San Francisco* is not dispositive of this issue and did not address preemption at all. In *Jackson*, the Ninth Circuit only heard an appeal from the denial of a motion for preliminary injunction, not a final decision on the merits of the case. A request for review by the Supreme Court was denied, but Justice Thomas wrote a scathing opinion noting that "The Court should have granted a writ of certiorari to review this questionable decision and to reiterate that courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."¹³ Because of the *Heller* decision and the fact that *Jackson* was never decided on the merits, it is likely that the newly comprised Supreme Court would find the proposed ordinance unconstitutional.

⁷ *Id.* at § 25135.

⁸ Cal. Penal Code § 23650(a).

⁹ See State of California, Bureau of Firearms Form 978 (Re. 01/2013), available at https://oag.ca.gov/all/files/agweb/pdf/firearms/forms/bof_978.pdf

¹⁰ U.S. Const. amend IV.

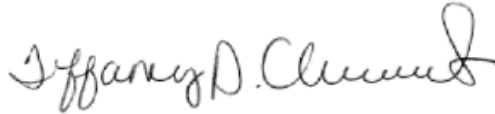
¹¹ *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

¹² *Id.* at 635.

¹³ See *Heller*, 554 U.S., at 634; *Id.* at 635 (explaining that the Second Amendment "elevates above all other interest the right of the law-abiding, responsible citizens to use arms in defense of hearth and home.").

We welcome any question you may have, and hope that a legal challenge to these ordinances will not be necessary.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in dark ink, appearing to read "Tiffany D. Cheuvront". The signature is fluid and cursive, with a large initial 'T' and 'C'.

Tiffany D. Cheuvront

cc: Hon. Steve Tate, Mayor
Hon. Rich Constantine, Mayor Pro Tem
Hon. Larry Carr, Council Member
Hon. Rene Spring, Council Member
Hon. Caitlin Robinett Jachimowicz, Council Member

From: "Jaime Tompkins" <jaime@tigglesworth.com>

Date: October 20, 2018 at 11:43:03 AM PDT

To: steve.tate@morganhill.ca.gov, rich.constantine@morganhill.ca.gov, larry.carr@morganhill.ca.gov, rene.spring@morganhill.ca.gov, caitlin.jachimowicz@morganhill.ca.gov

Subject: Re Firearms Ordinance

Good morning,

I wanted to write in support of the proposed Firearms Ordinance that is to be discussed in the upcoming meeting. I am glad that the CC is tackling this issue and appreciate the proposal.

I do think some clarification needs to be made as some Morgan Hill residents have taken to gas lighting and there are false narratives prominently presented on various social media platforms and discussions that this ordinance applies to nerf guns and such. Common sense gun reform is absolutely necessary and my school aged kids and I support the CC's willingness to start a conversation around this issue.

Thank you,
Jaime Tompkins

From: [Donald Larkin](#)
To: [CityCouncil](#)
Cc: [Christina Turner](#); [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: City Attorney Supplement for Item 4
Date: Wednesday, October 24, 2018 3:24:17 PM

Dear Mayor and Council Members,

In response to a concern raised today by a member of the public, I will be recommending a slight modification to section 9.04.040 should the Council choose to move forward with the ordinance tonight. The recommended addition is highlighted below:

No person shall leave a firearm (as defined in [Penal Code](#) Section 16520 or as amended) unattended in any residence owned or controlled by that person unless the firearm is stored in a locked container (as defined in [Penal Code](#) Section 16850 or as amended), or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

Donald A. Larkin
City Attorney
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Tel: (408) 778-3490
Email: donald.larkin@morganhill.ca.gov

This e-mail may contain confidential and/or attorney-client privileged material. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Consideration of an Item on your Agenda this evening
Date: Wednesday, October 24, 2018 4:57:46 PM

From: Michael Parker <sirmichaeldavidparker@gmail.com>
Date: October 24, 2018 at 2:02:10 PM PDT
To: steve.tate@morganhill.ca.gov, rich.constantine@morganhill.ca.gov,
larry.carr@morganhill.ca.gov, rene.spring@morganhill.ca.gov,
caitlin.jachimowicz@morganhill.ca.gov
Subject: Consideration of an Item on your Agenda this evening

In your Public Hearing section (item #4) you have: "Adopt an ordinance requiring safe storage of firearms, reporting theft or loss of firearms, and prohibiting possession of large capacity magazines"

I'd like you to consider the Supreme Court of the United States case: District of Columbia vs Heller. Part of your ordinance has been decided by Heller already in regards to your Chapter 9.04.

Also, the Ninth Circuit Court of Appeals currently has upheld a lower court decision to suspend enforcement of California's restriction on the possession of magazines that hold 10 rounds or less.

I would encourage the City Council to research issues on gun safety and regulation, along with any other Constitutional rights that the people you represent enjoy. Believe it or not, the National Rifle Association has a ton of educational material on this topic. It's main goal is education and safety. (ref. following webpage)
<https://www.nrafoundation.org/about-us/>

Sincerely, Michael Parker

Item # 04

AGENDA DATE: 10/24/18
SUPPLEMENT # 4

From: Dieskau Reed <dieskau3@gmail.com>

Date: October 24, 2018 at 9:47:24 PM PDT

To: steve.tate@morganhill.ca.gov, rich.constantine@morganhill.ca.gov,
caitlin.jachimowicz@morganhill.ca.gov, rene.spring@morganhill.ca.gov, larry.carr@morganhill.ca.gov

Subject: Morgan Hill City Council Proposed Firearm Ordinance

Good Evening,

I am Dieskau Reed, Morgan Hill resident for 6.5 years.

Thank you for allowing public comments on the proposed City Firearms Ordinance.

I stand before you tonight on behalf All the Legal Gun Owners & Enthusiasts within our community and country, in support of my legal & constitutional Gun ownership rights!

It is my understanding that part of the reasoning behind this revamped proposed ordinance is in response to the awful & devastating mass shootings that occurred in schools across America earlier this year.

While I am sympathetic to those terrible events, I do not feel that this ordinance addresses those issues specifically.

I'm not opposed to legal enforcement of existing laws on the books. I fully understand the need for safe & responsible ownership of firearms! I grew up in a home where my father was a career police officer for over 40 years in NYC. I was made to respect firearms and understand need for safety at all times. This was further ingrained in me during my time in the US Navy. Because of this background, I promote respect for firearms, responsible use, understanding of inherent dangers, and legal ownership in my own home now.

I am however opposed to the adoption of the proposed ordinance & further infringement upon citizen's constitutional firearms rights. Specifically it seems as you intend to duplicate laws already on the books, where the state has already spoken.

Some of the proposed ordinance actually lessen my legal firearm rights. In particular the reporting of a stolen/lost firearm. State laws provide for up to 5 days, the new law would limit compliance to 2 days.

Many firearms manufacturers typically sell their product with magazines that typically hold 15, 16, & 17 as standard magazines that ship with purchase.

Also, does the City have the legal authority or right to mandate that I purchase a \$1,000,000 liability insurance to protect my legal rights? I've looked into the additional insurance from our insurance company AAA. They Will Not authorize the City as an additional named insured.

Other points regarding the storage and constant lock down of my firearm put the lives of law abiding citizens in further harms way by limiting my access to my defense ready firearm in my own home. Given the amount of robberies, thefts, Break-Ins & even home invasions in our community, limiting my ability to readily defend my home, family & life is unacceptable. The intruders will not allow me the time to say

“Hold on, let me go to my safe, load my firearm, then remove the trigger lock before you rob me or do bodily harm or worse to me, my wife, my daughter, other family members or guests” ...just doesn't work like that!!

It is highly likely that should you choose to pass this ordinance, the City Of Morgan Hill will end up defending lawsuits similar to what has occurred in Los Angeles and other cities that have attempted similar ordinances which are now being litigated in the Ninth Circuit Court on the way to the US Supreme Court. Our City revenue has more productive ways to be spent than in needless court fees.

We would be better served to legally enforce existing laws, provide more education to the public & in particular the youth within our community regarding proper & safe use of firearms and the hold criminals accountable!

The enforcement of the proposed ordinance serves to further inconvenience & tread upon & limit our constitutional firearm rights of legal & law abiding responsible gun owners. It does nothing to educate, promote any further public safety or Reduce activity of Real Criminals!

If The Definition Of a Criminal Is Someone Who Breaks The Law.....
How Does Making More Laws, Make Us Safer With Less Criminals?
Particularly In Reference To Gun Violence & Street Crimes

I strongly urge you not to adopt this revised ordinance.

Thank you for your time!

Dieskau E Reed III



ZA2018-0005: City of Morgan Hill



October 24, 2018 Item #5

ZA2018-0005: City of Morgan Hill



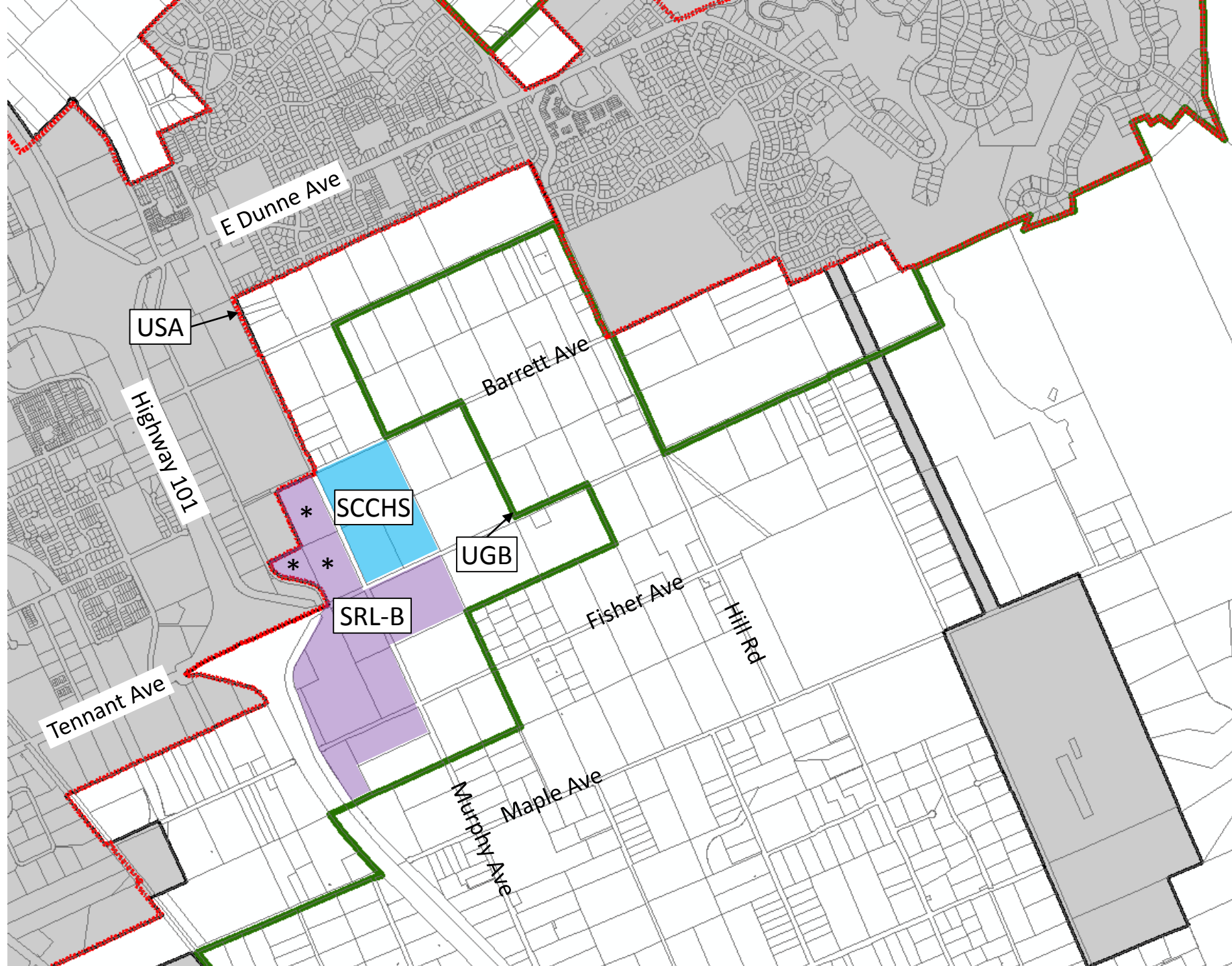
Recommendation

1. Open/Close Public Hearing
2. Waive first and second reading
3. Introduce Ordinance ZA2018-0005: City of Morgan Hill, an Amendment to Zoning Code Chapter 18.28 to Modify uses allowed in the SRL-B District

Background



- November 5, 2014 City Council established SRL General Plan Land Use designation
- August 5, 2015 City Council established SRL Zoning District and Pre-zoned parcels SRL-B
- September 5, 2018 City Council directed staff to return prior to November 7, 2018 with a new zoning that would not allow housing, hotels, or commercial uses.



E Dunne Ave

USA

Highway 101

Barrett Ave

SCCHS

UGB

SRL-B

Fisher Ave

Hill Rd

Tennant Ave

Murphy Ave
Maple Ave

SRL-B Proposed Modifications



Commercial Uses No Longer Allowable:

- Drive-through establishments
- Gas and service stations
- Hotels and motels
- Restaurants
- Retail that is sports-themed or sports/recreation serving
- Day spas, barbershops, and hair salons
- Health and fitness clubs and indoor recreation centers oriented to local residents
- Indoor swimming pools

General Plan and Zoning Code Consistency Findings



The proposed amendment is:

- a. Consistent with the General Plan
- b. Will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
- c. Internally consistent with other applicable provisions of the Zoning Code.

Planning Commission – October 9, 2018



Did not support Zoning Amendment

- Should wait for LAFCO decision on USA Amendment application
- Could support creation of new zoning district that does not allow hotels and certain other commercial uses applied only to three SRL-B pre-zoned parcels, but concerned about eliminating too many commercial uses – negative impact on economic development
- Could apply SRL-A to three parcels

Recommendation



1. Open/Close Public Hearing
2. Waive first and second reading
3. Introduce Ordinance ZA2018-0005: City of Morgan Hill, an Amendment to Zoning Code Chapter 18.28 to Modify uses allowed in the SRL-B District

Thank You



CITY OF MORGAN HILL

CLOSED SESSION

AGENDA DATE: 10/24/18

SUPPLEMENT # 1

From: [D. Muirhead](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: City Council Meeting October 24, 2018 Closed Session Item: City Manager Performance Evaluation
Date: Sunday, October 21, 2018 10:18:37 AM

Comments for the Public Record for:

Morgan Hill City Council
Meeting October 24, 2018
Closed Session Item: City Manager Performance Evaluation

Dear Morgan Hill City Council,
The following was submitted to the Morgan Hill Times
as an Opinion Letter.
Thank you for your consideration,
Doug Muirhead, Morgan Hill

City Manager Performance Evaluation

Our City Council will hold some number of Closed Sessions to do a performance evaluation of our City Manager. If the Mayor holds true to form, at a future Council meeting, he will pat the Council on the back for making an outstanding selection for City Manager (I also endorsed the selection) and then the Council will throw money at her so that she will stay in the job. (Is it not enough that we dug a new water well just a few yards from her home?)

Missing from the Mayor's comments will be any specifics on where Ms. Turner should focus her efforts to improve our City government. I am not one to say that the status quo is good enough, although some Council members might.

There have been some improvements in transparency, such as details of the evaluation of firms for service contract awards. And we might soon see reports on use of delegation of authority (where the City Manager approves contracts without Council review or public notice).

But it seems to me that the transparency door still starts from a closed position, to be opened a little only in some cases. I asked why certain actions of the City's outside pest control contractor did not appear in the annual report; the answer was that they were not required to be reported and so were not.

My second example is the boilerplate in staff reports that list which council priorities are addressed by the item. There is never an explicit link to items in the report for the priorities. Only once, during a recent discussion on annexation, were staff asked how their recommendations met those council priorities; I thought the staff responses were weak at best.

On the other hand, the Urban Forest Task Force and the public meetings to discuss the Gun Control Ordinance are signs that the City is making more of an effort to Inform and Engage with our residents. To that end, elected and appointed leadership, in trying to improve our City government, should inform us as to where efforts will be focused. Or they can just surprise us every few weeks, as they did at the last Council meeting, with an item on possible shrinking of our Urban Growth Boundary as a way

to protect agricultural lands.

From: [Chris Ghione](#)
To: [CityCouncil](#)
Cc: [Christina Turner](#); [Michelle Bigelow](#)
Subject: FW: City Council Meeting October 24, 2018 Closed Session Item: City Manager Performance Evaluation
Date: Wednesday, October 24, 2018 1:50:38 PM

Hello Councilmembers,
I would like to respond to two details noted in Mr. Muirhead's communication to the Council that I believe need clarification.

Mr. Muirhead infers the well located on Main Avenue may provide an additional direct benefit to the City Manager. This well site location was identified and drilled prior to Christina Turner becoming City Manager. The well location was identified based on water supply planning for the City's water system and provides no direct benefit to the City Manager.

The second clarification is in response to Mr. Muirhead's request for improvements to the City's IPM and annual report. Although we did respond and let him know the reporting was not required, in the same email City staff committed to updating our IPM and annual report to be more comprehensive and transparent in future years. That is still the intent of City staff. These are both planned for early 2019.

Thank you,
Chris

Chris Ghione
Public Services Director
[Engage With Us!](#)

City of Morgan Hill
Community Services, Engineering and Utilities
17575 Peak Avenue, Morgan Hill, California, USA 95037

P: 408.782.9154 | **C:** 408.427.6196
chris.ghione@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

[Sign up to receive news updates from the City of Morgan Hill!](#)

Print**Commission Application - Submission #13839**

Date Submitted: 6/6/2018**First Name**

Enrique

Last Name

Navarro-Donnellan

Address1

1030 La Vista Court

Address2**City**

Morgan Hill

State

CA

Zip

95037

Home Phone Number

408-776-0596

Cell Phone Number

669-252-6244

email address

enriquenav1994@gmail.com

Occupation

Student

Are you a registered voter?

yes ▼

Please list any properties you own in Morgan Hill**Do you have any relatives currently employed by the City of Morgan Hill?**

No ▼

If yes, please provide name

Visit the link below for information on the Planning Commission

[Planning Commission](#)

Visit the link below for information on the Parks and Recreation Commission

[Parks and Recreation Commission](#)

Visit the link below for information on the Library, Culture, and Arts Commission

[Library, Culture, and Arts Commission](#)

Please select the commission you are interested in serving on

Planning Commission ▼

Please select the commission that would be your second choice. If you do not have a second choice, please move on to the next question.

Parks and Recreation Commission ▼

Please upload a letter of interest or cover letter

Cover Letter - Morgan Hill Planning
Commission.pdf

Please upload a resume

Resume.pdf

Have you ever served on any other citizen advisory commission or committee? If yes, please list and briefly explain the purpose of each one.

DCAC (Deferred Compensation Advisory Committee) - A City of San Jose committee comprised of city department representatives that I sat on as the City Council liaison. On this committee, my job was to report on any developments on the city's retirement benefits and payout plans to my employing councilmember. DCAC would meet once a month to review the health of the municipal pension system and analyze impacts of any existing or pending ordinances on current and future benefits.

What skills and/or experience do you possess that would be important to your role as a commissioner?

As a recent graduate from a Masters of Public Policy program, I know how to conduct extensive and targeted research to vet claims made by others and to make informed statements and decisions for myself. I also have a habit of learning-by-questioning wherein I place a personal premium on observing all angles, costs, and benefits of options surrounding an issue to insure complete information is obtained. From experience, I have participated in citizen initiative reviews, wherein I gained experience in collaborative learning on various political topics with fellow panelists. It also provided me with experience questioning topic experts and bridging differences with panelists to construct professional, non-partisan statements.

What do you understand the role of the commission to be and why would you like to serve on this commission?

As with any planning commission, I understand the role of this commission to be one that offers wise counsel to our elected city council on matters pertaining to growth and development. My interest, as a millennial, in serving on the commission rests with my passion for policy development and implementation that happens at my local government level (municipal, county, and special district). I understand that local public policy impacts me and my fellow residents on a daily basis in ways not always apparent nor visible, and I'd like to contribute to making the work of local government more visible and tangibly felt. I envision a Morgan Hill planning commission that adapts to a technologically evolving world by adopting development strategies and updated infrastructure that is electronically advanced and integrated into AI and wireless systems.

What would you like to accomplish as a commissioner?

I would pursue an empty-land utilization strategy to make use of empty land pockets within Morgan Hill city limits. Some of these pockets have existed the entirety of my 8-year residence in Morgan Hill, and although we have made progress in the development of some pockets, there is still more to be done. As a future-minded millennial, I would also press for the roll-out of new, technologically-integrated infrastructure such as "smart poles" that not only provide energy-efficient LED lighting but also serve other functions such as strengthening mobile networks and even providing city-wide wifi. Generally, I envision a Morgan Hill that is whole, and complete with everything that is necessary to serve residents' needs and enhance quality of life in the Silicon Valley digital economy.

What are the greatest opportunities facing the community in regards to this commission?

The planning commission is excellently positioned to advocate for active pursuit and embrace of, rather than passive reception of, an inevitable future. With the Phone-App economy well underway, and the rise of Artificial Intelligence in IT systems and public/private transit, the planning commission has the ability to advise the city council to be among the first to adopt new general plans that incorporate technological integration into our streets and lighting network. We also have plenty of land pockets as of now undeveloped. This provides the commission with broad latitude to encourage zoning and rezoning land parcels to best meet regional housing and business growth needs.

If you are an incumbent seeking reappointment, please answer the following questions:**Are you next in line to serve as Chair or Vice-Chair?**

- ☐ Yes
☐ No

Are you currently serving on a committee

- ☐ Yes
☐ No

Are you assigned to a special project?

- ☐ Yes
☐ No

If you are assigned to a special project, please describe the project.**Please review the City Council Ethics Policy**

[City Council Ethics Policy](#)

Please type name to sign. By my signature, I agree to comply with all government regulations, should I be appointed to serve on a City of Morgan Hill Commission or Committee and confirm that I have read the attached Ethics Policy and that I do subscribe to this Policy; that I will apply it to the specific responsibilities s which I may be assigned; and that I will practice the core values set forth in this Policy in my public service for the City of Morgan Hill. Additionally, I commit to attend and participate in all Commission and Committee meetings to which I am appointed, unless excused by the Chair.

Enrique Navarro-Donnellan

Date

6/6/2018

2:30 PM

Enrique Navarro-Donnellan

1030 La Vista Court, Morgan Hill, CA, 95037 | Cell: (669) 252-6244 | enriquenav1994@gmail.com

October 30th, 2018

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

Dear Mayor & City Councilmembers,

My name is Enrique and I seek appointment to the Morgan Hill Parks & Recreation Commission to bring my young and creative mind to the table. I graduated with an MPP (Masters of Public Policy) from the Pepperdine University School of Public Policy where I was a high-performing student with a 3.8 GPA, member of the Pi Alpha Alpha honor society for students of public administration, contributor to the Pepperdine Policy Review, and Secretary for our chapter of ICMA (International City & County Managers Association).

In my previous experience, I worked in local government as a policy generalist for the City of San Jose in the city council offices. I am therefore familiar with what municipal governments can and cannot do, and have realistic expectations for the rate at which projects can proceed given the impact of state laws, regulations, and regulatory bodies (such as CEQA, the Bay Area Air Quality Management District, etc.). I therefore step forward with an appreciation for the role of municipal departments that implement your decisions and understand too the importance of the advisory input the parks commission offers into decisions you make that affect our residential, recreational, and environmental quality of life. This is a role I would fulfill with serious intent and a knowledgeable mind.

Key to the well-being and happiness of Morgan Hill are facilities and projects that serve residents of all ages. That means facilities that enable healthy living, such as outdoor gyms in city parks, and projects that tap into youthful energy and artistic expression, such as building-side wall murals. As a younger resident, I would offer my unique perspectives to you and the commission, even and especially if they differ from the prevailing priorities and visions. A healthy decision making process must be informed from all angles. To that end, I can contribute a skillset and viewpoint to the commission that would enrich the quality of advice offered to you on the city council.

Sincerely,



Enrique Navarro-Donnellan

Enrique Navarro-Donnellan
1030 La Vista Court, Morgan Hill, CA, 95037
(669) 252-6244
enriquenav1994@gmail.com
<https://www.linkedin.com/in/enrique-navarro-donnellan>

PROFESSIONAL SUMMARY

Motivated, young, growing professional with two years' experience in government service. Managerial experience with interns and proven written ability with policy proposals. Possess a comprehensive knowledge of municipal & state bureaucracy derived from interdepartmental work responsibilities, in addition to international relations analysis from my education. Career supported by a Bachelor of Arts w/Honors in Political Science paired with a minor in Public Administration, and Masters of Public Policy.

EDUCATION

Master of Public Policy, Pepperdine University School of Public Policy, Malibu, CA – 2018

Bachelor of Arts, Political Science (w/Public Admin Minor), San Jose State University, San Jose, CA – 2015

PROFESSIONAL EXPERIENCE

Pepperdine University School of Public Policy – Malibu, CA **Student Services Assistant**

August 2017 - March 2018

- Researching and compiling employment leads and opportunities for fellow students
- Managing the School of Public Policy LinkedIn pages for alumni and current student networks
- Promoting Pepperdine's SPP brand via writing & publishing articles for social media and the Dean's report
- Generic office duties: answering phones, electronic and paper document filing, inter-office communication

International Institute for Counterterrorism – Herzliya, Israel **Research Assistant**

June - August 2017

- Constructing an academic paper for peer-reviewed journal publication
- Conducting Red-Team terrorism exercises involving contemplation of modus operandi of terror cells against notable and vulnerable locations for presentation distribution to international conferences
- Proofreading/Reviewing/Critiquing published papers and articles on terrorism topics
- Generating/Updating Excel data sets
- Research of terrorist organization activity as needed

City of San Jose, 10th City Council District – San Jose, CA **Council Assistant**

January 2015 - August 2016

- Managing Councilmember's public appearances, event attendance, and talking points
- Management of \$35,000 annual SAP grant fund (constituent outreach)
- City Ceremonial event planning
- Policy Research – Medical Marijuana, Civil Liberties, Immigration, Sister City Program, Wage Issues
- Internship Recruitment/Management

TECHNICAL /PROFESSIONAL SKILLS

SPSS
ArcGIS
Tableau
Adobe InDesign

Sales Optima & Insightly
Basic Conversational Spanish/Russian
Microsoft Office (Excel, Word, PowerPoint)



Special - Regular Meeting Agenda
City Council

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

Wednesday, October 24, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

WORKSHOP

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

Recommendation:

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PROCLAMATION

Proclaiming November 2018 as Morgan Hill Community Philanthropy Month
Pamela Meador

PRESENTATION

Morgan Hill Downtown Association Board Presentation of Contribution Check
for the Downtown Twinkle Lights

PUBLIC COMMENT

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ADOPTION OF AGENDA

October 24, 2018

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1. **ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 732-013)**

Recommendation:

Waive the reading, adopt Ordinance No. 2286, 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.

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3. **ADOPT ORDINANCE 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"**

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PUBLIC HEARING

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Recommendation:

1. Open/close public hearing;
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Estimated Time: 75 Minutes

5. **ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE**

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1. Open/close public hearing;
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Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

RECONVENE

CLOSED SESSION ANNOUNCEMENT

ADJOURNMENT

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2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

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Infrastructure

Regional Initiatives

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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.



Special - Regular Meeting Agenda
City Council

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

Wednesday, October 24, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

WORKSHOP

**MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING
COMMISSION WORKSHOP**

Recommendation:

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PROCLAMATION

Proclaiming November 2018 as Morgan Hill Community Philanthropy Month
Pamela Meador

PRESENTATION

Morgan Hill Downtown Association Board Presentation of Contribution Check
for the Downtown Twinkle Lights

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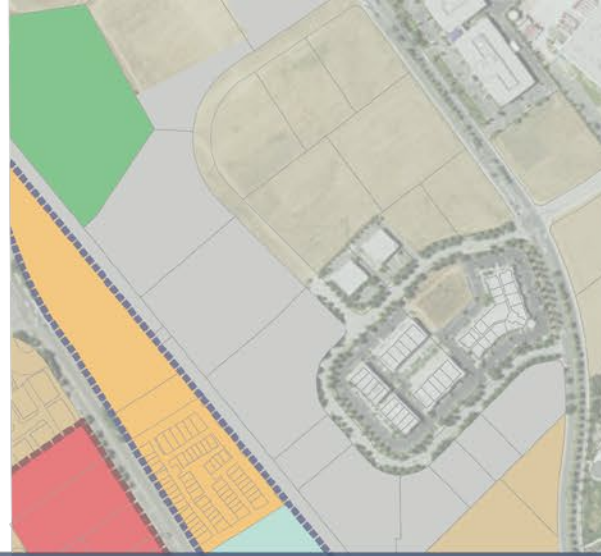
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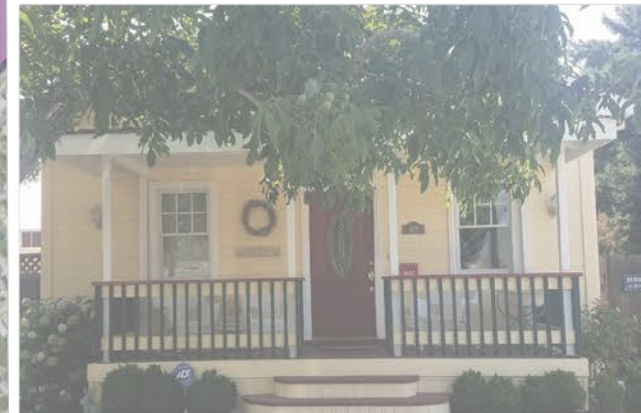
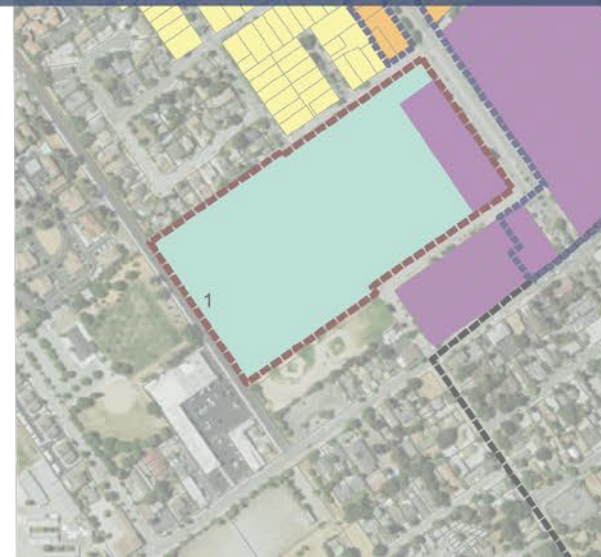
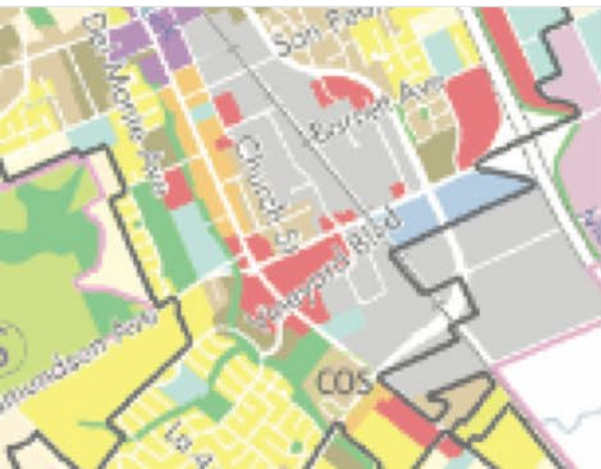
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CITY OF MORGAN HILL

Monterey Corridor Block Level Master Plan - Public Workshop

October 17, 2018



Agenda

Overview & Background

Commercial Analysis

Draft Frontage Standards

Questions & Comments

Overview & Background

Introductions

City of Morgan Hill

John Baty, Principal Planner

Lisa Wise Consulting, Inc.

Lisa Wise, AICP, President

Jen Daugherty, AICP, Senior
Associate

Spencer Johnson, CNU-A, Associate

Metrovation Brokerage and Consulting

Christine Firstenberg, Principal

Background

General Plan Update (2016)

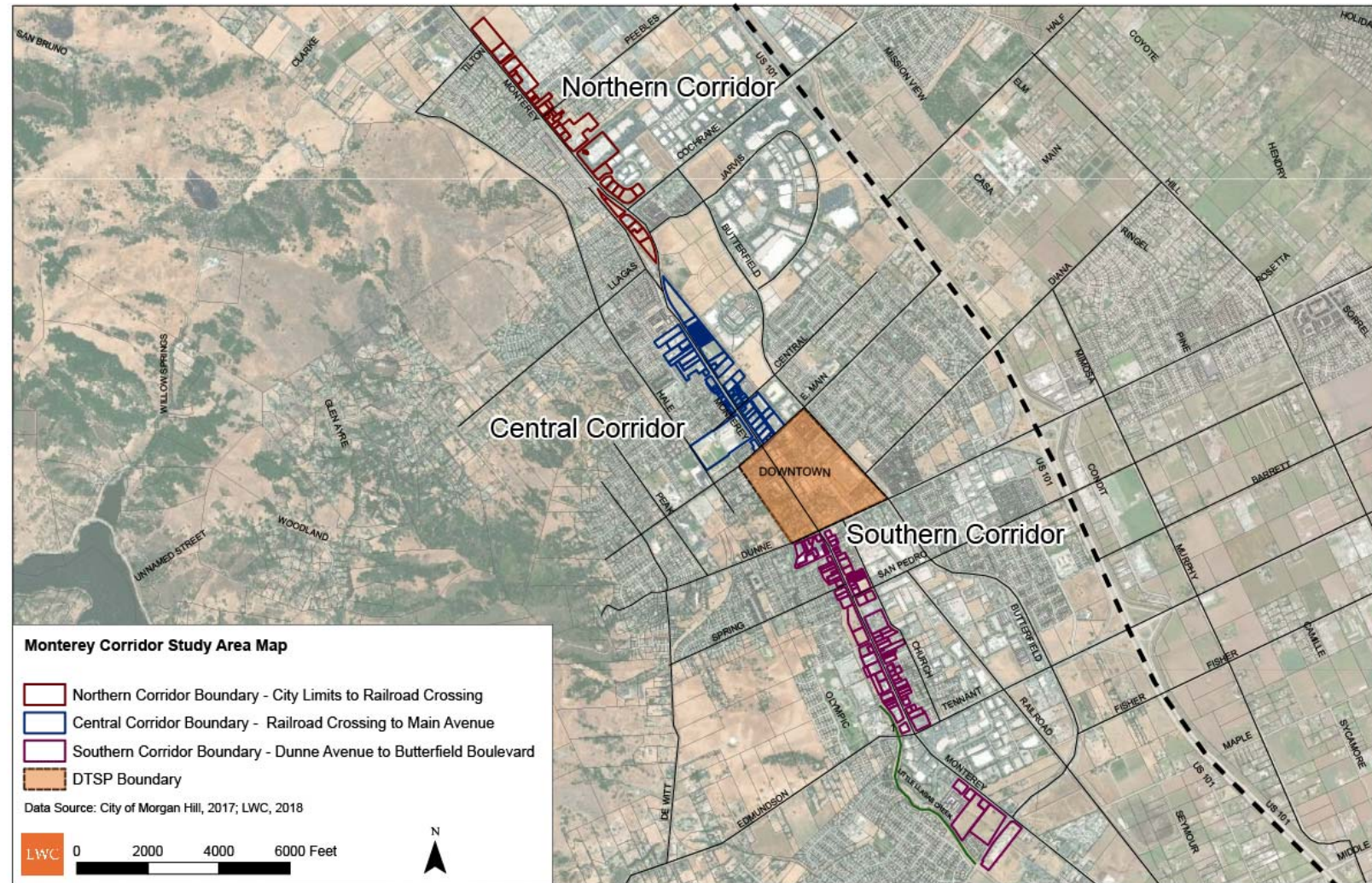
- Mixed Use Flex Land Use
- Monterey Corridor- Vibrant, walkable mixed-use

Zoning Code Update (2018)

- Mixed Use Flex (MU-F) Zone

Land Use and Market Analysis (2017-2018)

- Land Use Inventory
- Market Analysis
- Recommendations



Land Use and Market Analysis

Key Findings

- Retail
 - Current retail market stable, but...
- Office
 - Cool/stable office market
- Residential
 - Residential is most highly favored

Commercial Capacity

- 600,000 – 1.5 million sf of physical capacity
- 215,000 sf theoretical commercial market demand*
- * Based on a relatively stable future market



Land Use and Market Analysis

Conclusions

- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Building frontage standards
 - High-quality public space
- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use



Council Recommendation

BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code
- Supplemental standards
 - Well-designed buildings (frontage standards)
 - Connectivity
 - Preserve retail-viable parcels

SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Include a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Block Level Master Plan



Commercial Analysis



BROKERAGE & CONSULTING

Block Level Master Plan for Monterey Rd. Morgan Hill, CA

Christine Firstenberg

Lic # 00973135

Retail Real Estate Resources, Principal

Metrovation Brokerage

Lic # 01780115

925-381-8666

christine@cfirstenberg.com

Executive Summary

As we read newspaper articles describing our current era as the age of the “Retail Apocalypse”, many cities are struggling with how to plan for retail in the future. Will it look like it does now with anchor and shop tenants, will it look more like industrial space with delivery cars in front, or will it exist at all?

In California, most cities receive a percentage of their general funds from sales taxes that occur within their city limits. With recent national legislation, online sales will start to generate sales tax to the cities where the person who paid for the items lives. Exactly how those sales taxes will be allocated is not completely known, but we understand that retail sales leakage numbers will show change.

While brick and mortar store locations will continue to diminish in total square footage, we will continue to see new online retail ventures expand and will continue to need retail for its experiential contribution to our lives. It is the only real estate category that can create a “sense of place” and community for a City.

Retail is one of the three categories within the industry categorization of commercial real estate. While all types of commercial (retail, office and industrial) real estate uses can contribute to the overall economic engines of a community, retail is the only category that we think of when desiring a “sense of place” in our communities. Much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial footprint.

We have seen cities in California, and other states, that believe “if you build it, they will come” when it comes to retail spaces. We have all seen the many examples of residential buildings where retail spaces were required on the ground floor by city zoning, and in many cases those spaces never get leased.

Because long term vacant spaces (vacant for years) can cause blight in communities, we want to be careful about requiring retail where it is not necessarily appropriate.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

How to determine which parcels of land should require retail or any of the commercial categories, and which parcels of land should not, is a question the City of Morgan Hill staff has pondered. Morgan Hill's staff are light years ahead of many other cities in that they not only asked the question, they assigned the task to be determined.

Retail thrives when there is an intensity of activity – either car or pedestrian. But that hive of activity must exist prior to the retail space being activated otherwise the retail can fail. Building retail spaces in clearly residential and or quiet, non-active areas, and assuming the space will get leased is like wishing on a star. Many planners believe you should create retail spaces to activate the streets, but that thinking is backwards. Because it isn't the retail spaces that activate the streets, it is what is in the retail spaces themselves. It is the retailer/small businesses. The retail/ small businesses that make their living off the sales volumes done out of retail spaces are important to the activity in a neighborhood or district. But if there is no neighborhood or district activity before the retailer opens, often a retailer's sales fall flat.

That is the challenge in determining where to locate for a retailer and building a retail base in a city...*how do you create the activity before a retailer opens if we depend upon a retailer to create the activity?*

That is why we use retail criteria to help retailers review the data from which to make a location decision. It is strongly suggested that all retailers use basic retail criteria to determine if a space or an area will ultimately be sustainable. And from a City's perspective, retail criteria needs to be met for retail spaces to get leased.

RETAIL CRITERIA:

Retail businesses do better at intersections (corners) - not mid-block- because at intersections, there are two roads converging with double the traffic (whether pedestrian or car) of a mid block location.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

Retail typically requires **access**, an ability to have all turns, meaning you can get in and out of the property using left turns, not just right turns.

Retail needs to be seen by the customers, therefore **signage** is important, both storefront signage and any additional blade, or monument signs.

Retail needs to be **convenient**, so a customer can easily fit a visit to the retail store into their busy lives.

And finally, retail needs **parking**, yes parking, unless of course you have a tremendous pedestrian count like in downtown San Francisco.

This is the retail criteria used when we looked at intersections in Morgan Hill.

APPLICATION FOR MORGAN HILL:

As mentioned earlier, much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial (commercial) footprint also.

As we analyzed the corners and intersections along Monterey Rd. we used the more liberal “commercial” categorization, with which to consider the viability and sustainability of the corner. This category can include an office tenant like a building contractor, or a mortgage office, a realtor or travel agency, a CPA firm or lawyers office. Many typical office tenants like a more prominent corner location that provides signage.

Commercial categorization also includes industrial.

METR@VATION

BROKERAGE & CONSULTING

Executive Summary

Industrial tenancies, often more service oriented, are more common in today's world as many start up retailers and businesses need the additional size for delivery preparation to compete with the fast paced delivery requirements retail customers currently demand. More traditional industrial tenants include auto parts, medical facilities, dental clinics and veterinarian shops.

Therefore a suggestion of commercial only zoning would allow all of the sub-categories of commercial listed earlier.

While some of the zoning along the Monterey Rd. corridor allows for "Mixed Use-Flex" we strongly suggest the City consider this zoning allow a horizontal mixture of uses versus only a vertical mixture of uses on the parcel.

Vertical mixed use has become a challenge to build in the Bay Area over the last few years due to the massive increase in construction costs. While vertical mixed use is often considered a quick way to densify an area, it can often have unintended consequences many of which can result in a parcel not being developed for many, many years, -- missing an economic cycle it otherwise would have enjoyed.

Lastly, in the retail real estate industry, we never say never, as retail is fluid and does not depends on a business owners decision on where to locate, but on the sales produced at a location.

Customers are what create the final success of a location for a retail business. And, as the saying goes, *"The customer is always right"*.

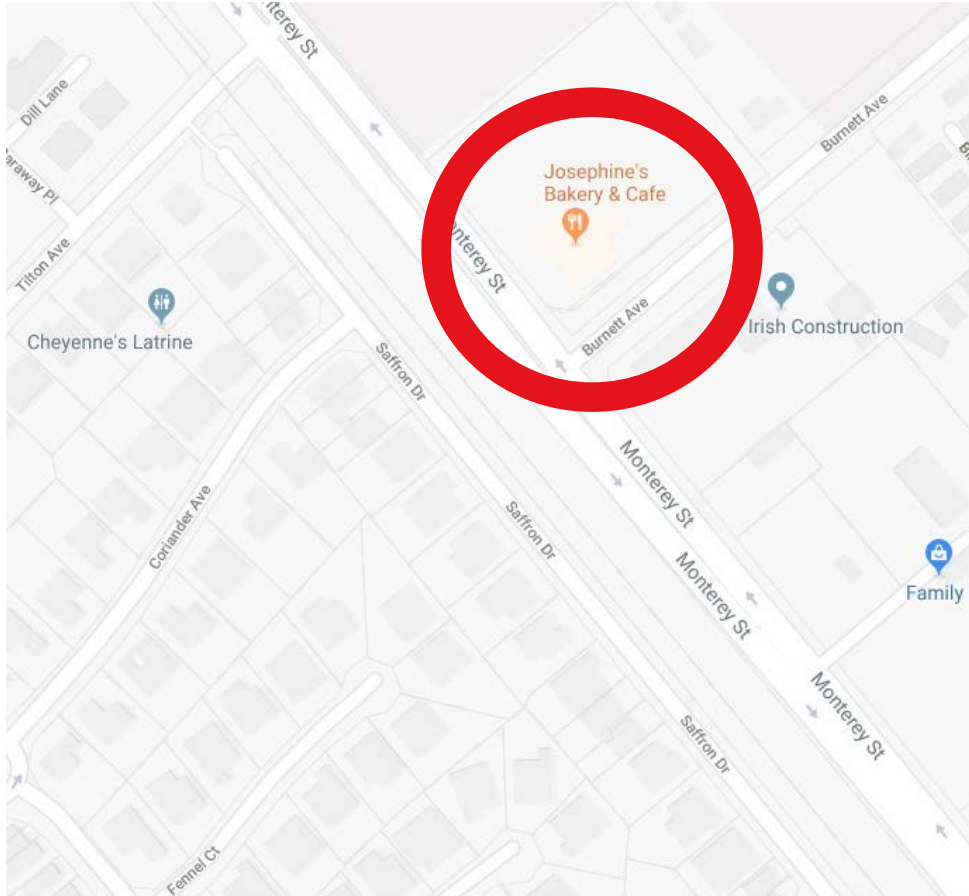
METR@VATION

BROKERAGE & CONSULTING

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.



Burnett Ave. has a strong east/west presence making it a logical candidate to create a commercial and retail presence at the intersection with Monterey Rd. However, due to the rail line running north/south along the western edge of Monterey Road, the residential community west of the rail line will be blocked and despite Burnett Ave.'s future extension across Monterey Rd. connecting it to Tilton, the synergy to that corner is lost. There is no reason to add development restrictions on a site that will never have a 360-degree potential. Therefore, we do not support a requirement for commercial zoning on this corner.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METROVATION

BROKERAGE & CONSULTING

Block 1 –

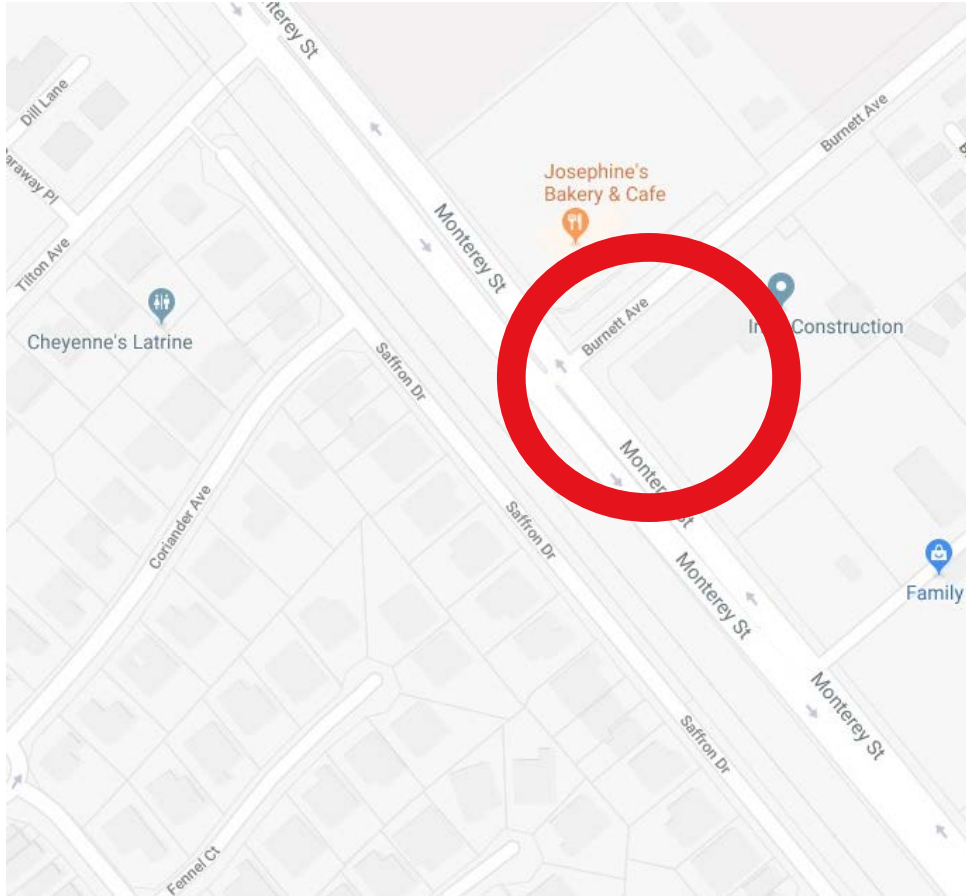
City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.



Block 2 –

Burnett Ave. to Peebles Ave.
SE Corner Burnett Ave. & Monterey Rd.



Block 2's Northern Site is located at the terminus of Burnett Ave. at Monterey Rd. and is currently partially occupied by Irish Construction. The location of the rail line will prevent the possibility of generating any connectivity to uses or residential across the street. Block 2, site 1, will never achieve the kind of synergy that a commercial zoning requirement is looking to accomplish. Therefore, we do not recommend a requirement for commercial here. Instead, allow market forces to dictate the development of the site.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METR@VATION

BROKERAGE & CONSULTING

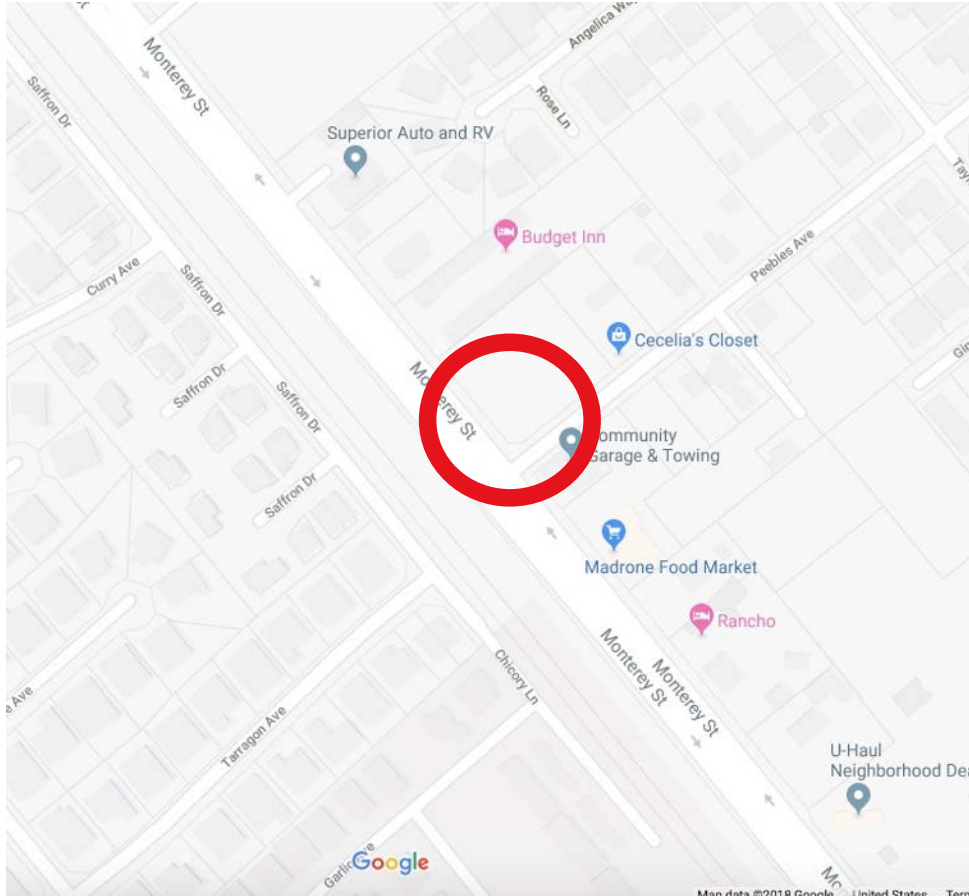
Block 2 –

Burnett Ave. to Peebles Ave.
SE Corner Burnett Ave. & Monterey Rd.



Block 2 –

Burnett Ave. to Peebles Ave.
NE Corner Peebles Ave. & Monterey Rd.



Block 2's Southern Site has similar challenges as the Northern Site although it has single-family homes located directly behind the parcel creating a possible opportunity. Nearly all of the residential traffic patterns use Peebles Ave. as a main thoroughfare. Morning commuters in this neighborhood will use Peebles to drive out to Monterey Rd, go south on Monterey Rd, to Cochrane to get to the freeway.

Often, a small, (3000 sf building) multi-tenant retail building, works well at this type of corner due to the commercially restricted access of the surrounding residential neighborhood.



Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

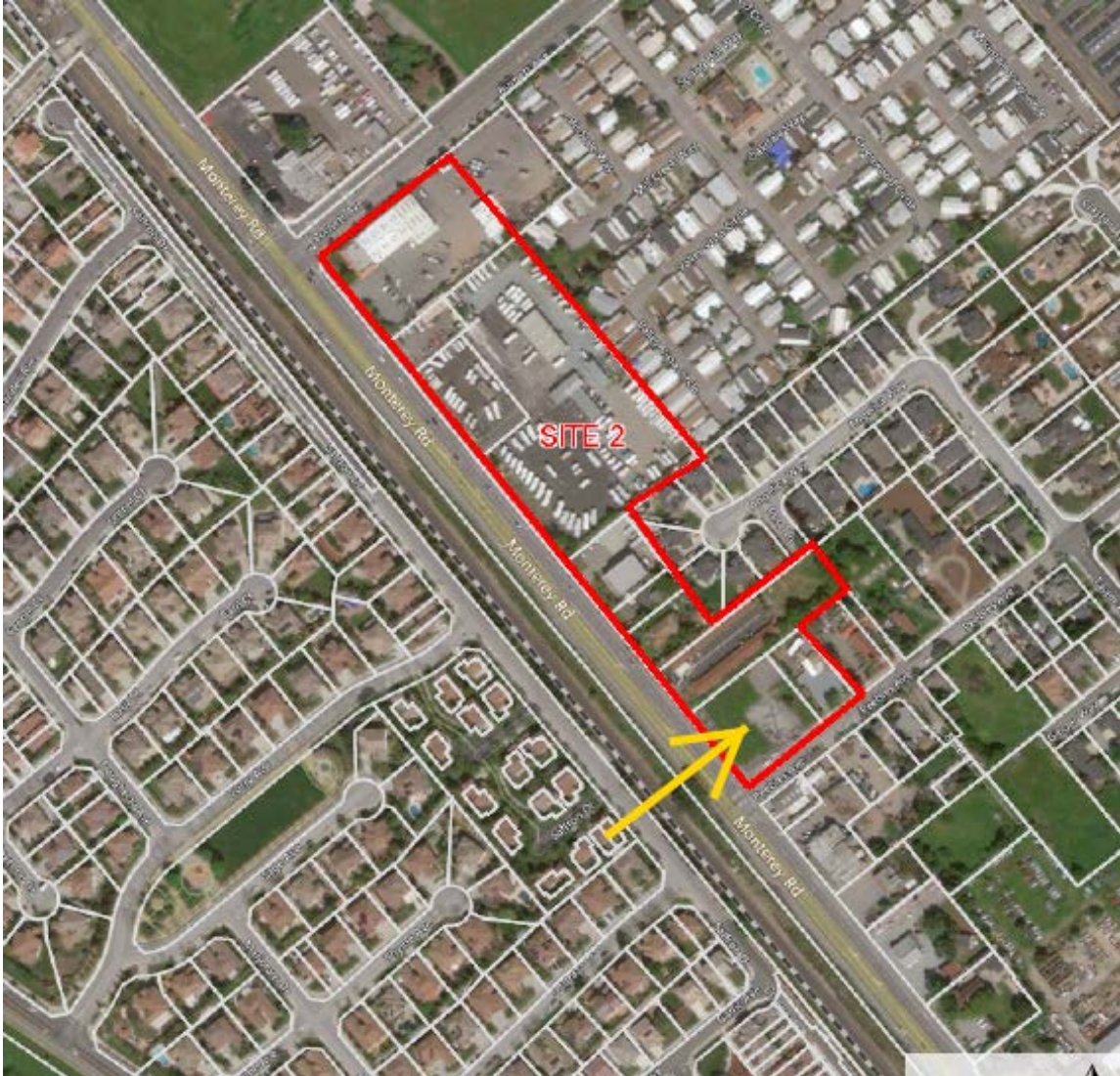
METR@VATION

BROKERAGE & CONSULTING

Block 2 –

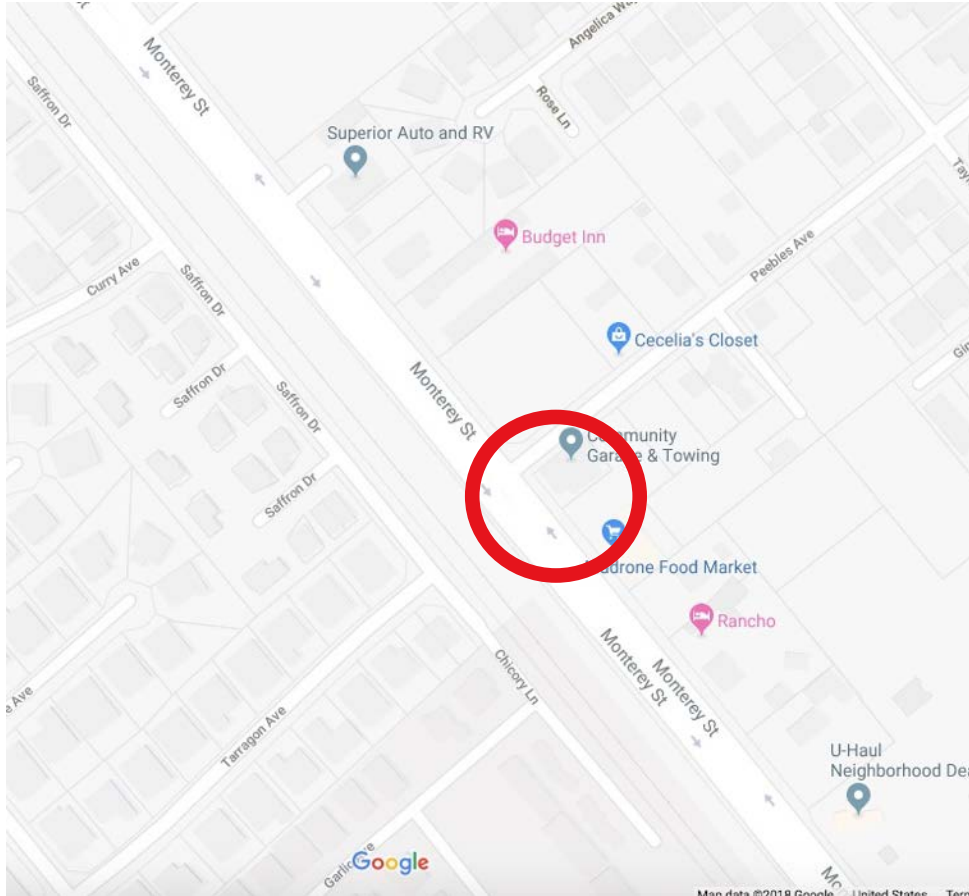
Burnett Ave. to Peebles Ave.

NE Corner Peebles Ave. & Monterey Rd.



Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



The SE corner is the “coming home” commercial corner. Thus, this site will not draw as high of interest as the NE site due to the proven consistency of a “*going to work*” commercial corner driving higher sales volumes than a “coming home” corner.

In addition, this parcel (the SE corner) is a relatively small parcel with only 7000 sq. ft. which would only allow a development of 1750 square feet of commercial space to be built (using retail parking codes). Even if this commercial square footage were at the bottom of a larger mixed-use project, the lack of retail immediately surrounding the site will make leasing a challenge. Therefore, we do not recommend requiring commercial on this site.



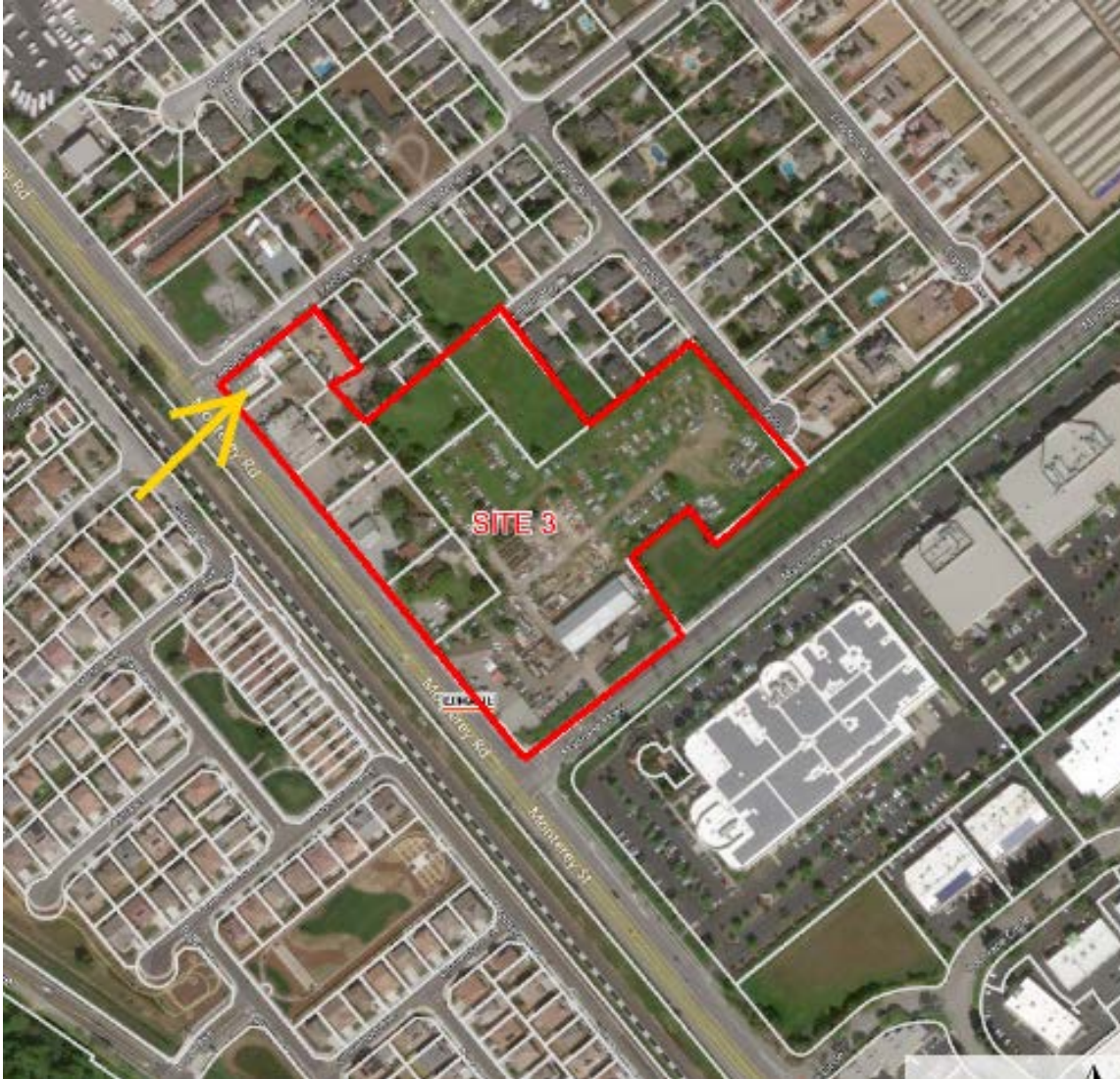
Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METR@VATION

BROKERAGE & CONSULTING

Block 3 –

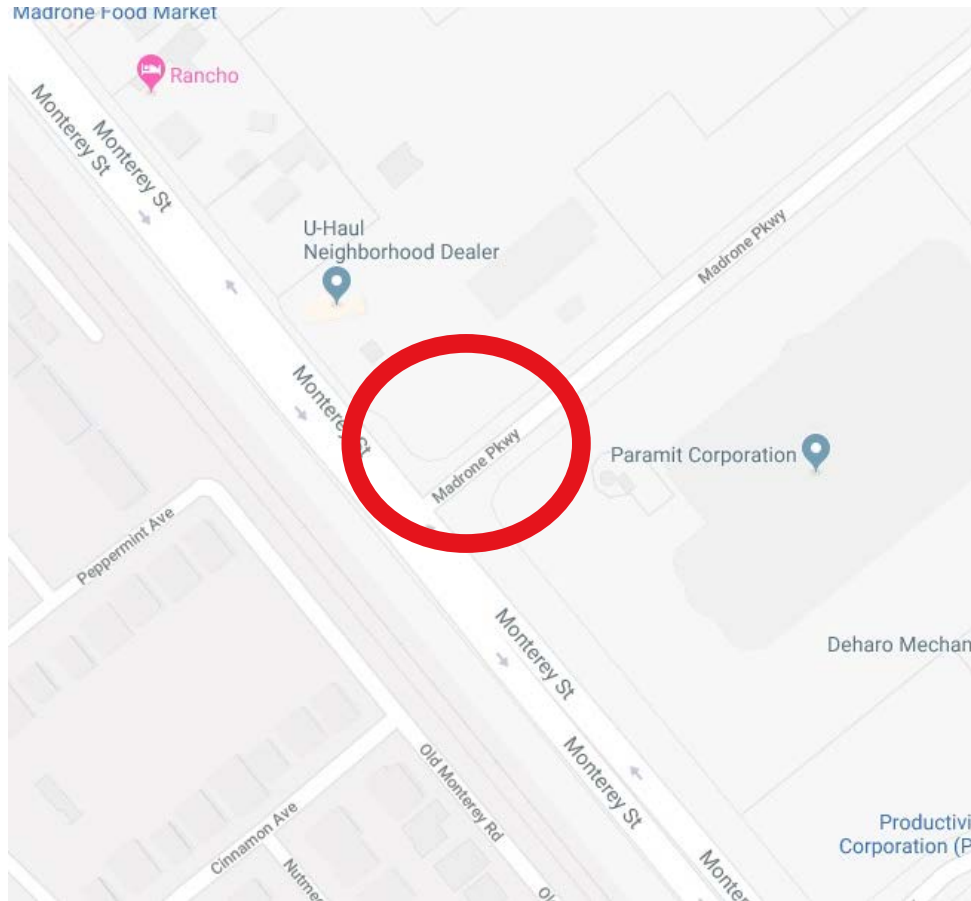
Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



Block 3 –

Peebles Ave. to Madrone Pkwy.

NE Corner Madrone Pkwy. & Monterey Rd.



The NE corner of Madrone Pkwy. and Monterey Rd. is across the street (Madrone) from a new industrial and office development. This industrial and office park project creates opportunity for the NE corner – the proximity of businesses and the size of the NE parcel (7.53 acres) allows for a substantial, and sustainable, development to occur here.

We suggest the City require commercial development on this corner. Also, to promote the most effective traffic flow, we also suggest that no median be built that would prevent a left turn from Madrone Pkwy. on to Monterey Road.



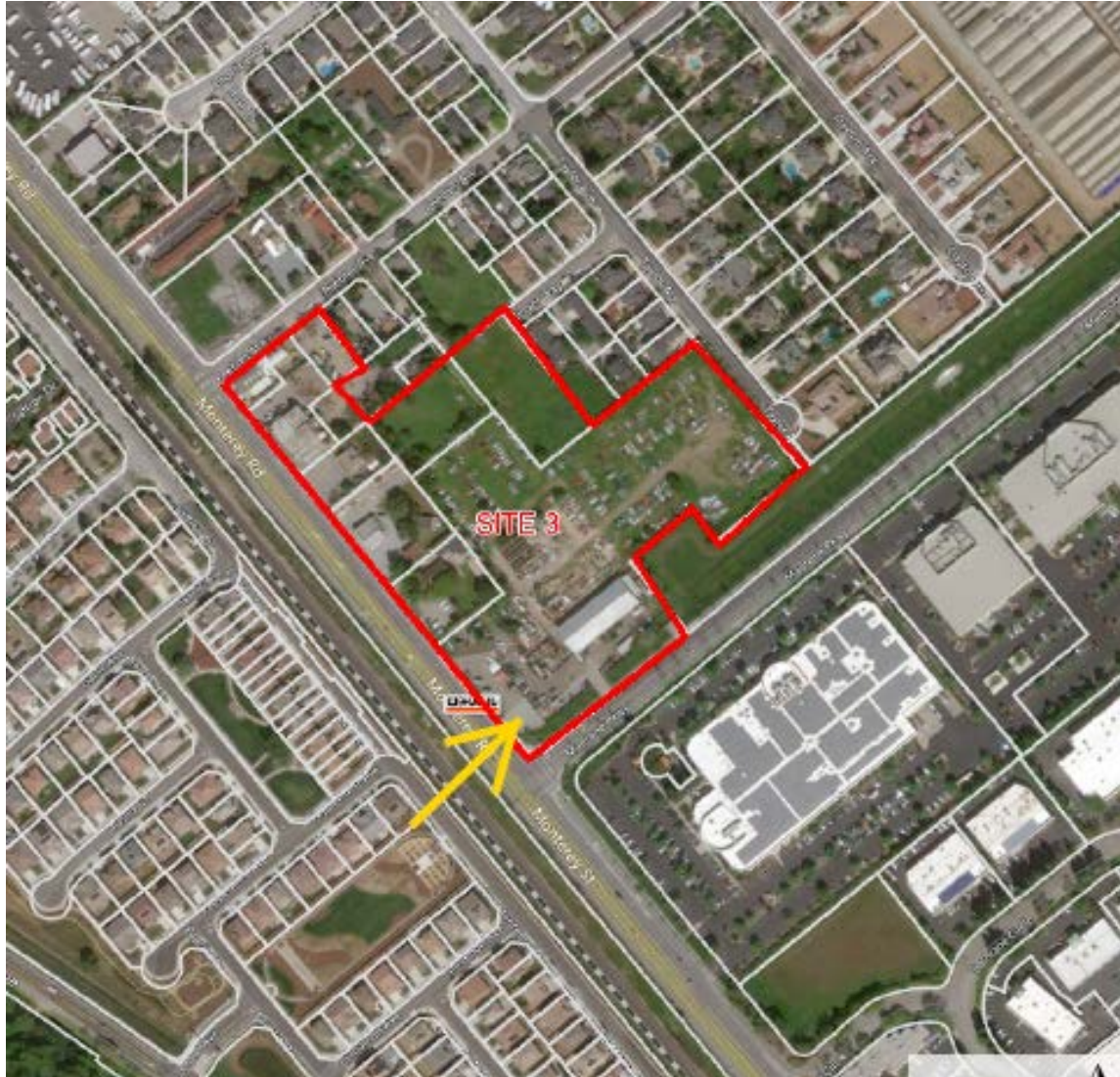
Conclusion: Commercial is sustainable and would benefit from proximity to the industrial park, therefore we suggest it be required.

METR@VATION

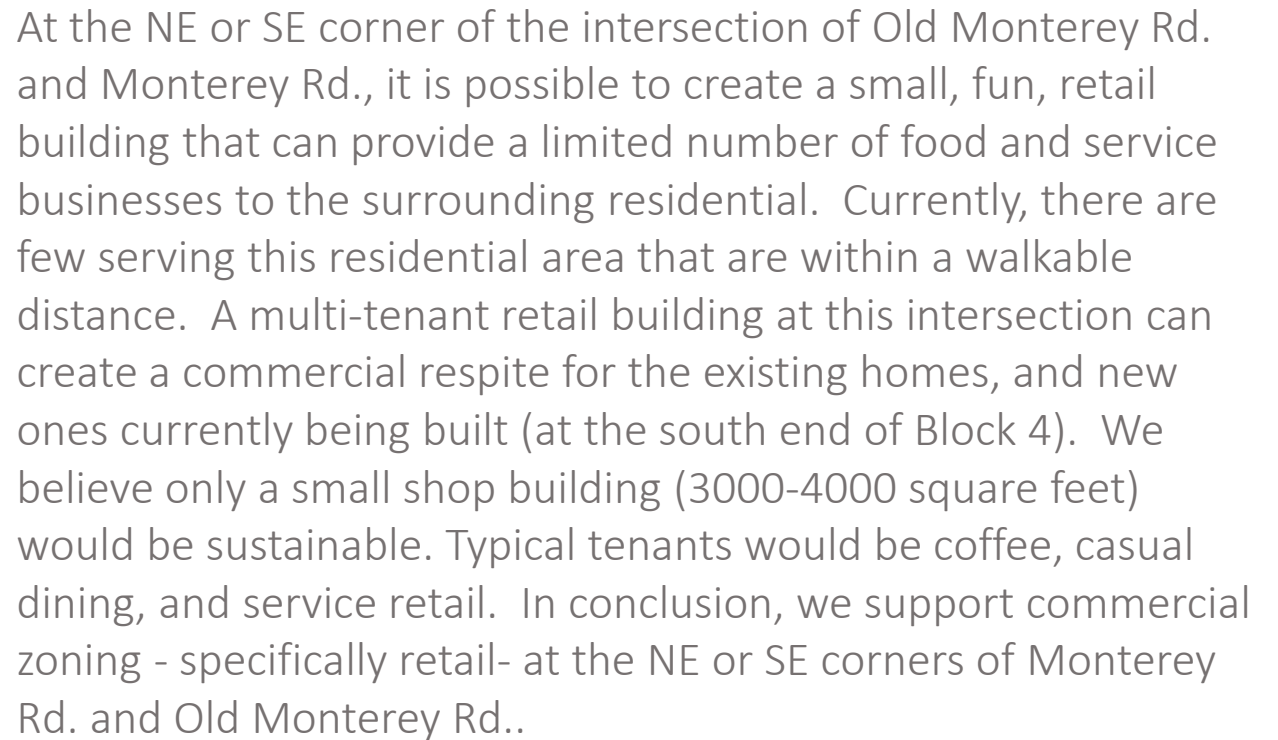
BROKERAGE & CONSULTING

Block 3 —

Peebles Ave. to Madrone Pkwy.
NE Corner Madrone Pkwy. & Monterey Rd.



Railroad Overcrossings to Morgan Hill Community Adult School NE & SE Corners Old Monterey Rd. (Extension) & Monterey Rd.



METR©VATION

BROKERAGE & CONSULTING

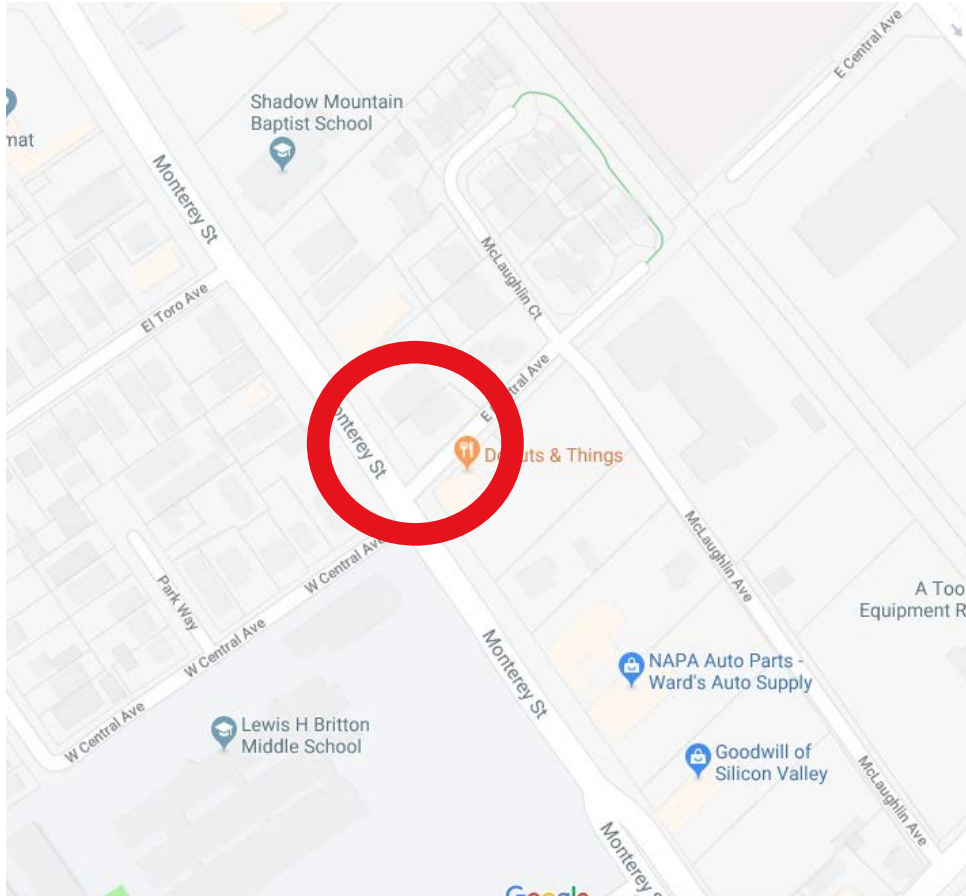
Block 4 —

Railroad Overcrossings to Morgan Hill Community Adult School
NE & SE Corner Old Monterey Rd. (Extension) & Monterey Rd.



Block 5 –

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



The entire east side of Block 5 has only two single-family residential units - other uses currently are multi-family or commercial. While it is difficult to change the zoning for a single family residential unit, we felt that commercial zoning was appropriate for the NEC of East Central and Monterey Rd., conditioned upon language being inserted into the Zoning Document that will allow the non-conforming use, additional leeway on structural repairs and modifications so that the zoning document does not cause financial issues (loans or refinance) or undue distress due to its non-conforming status.

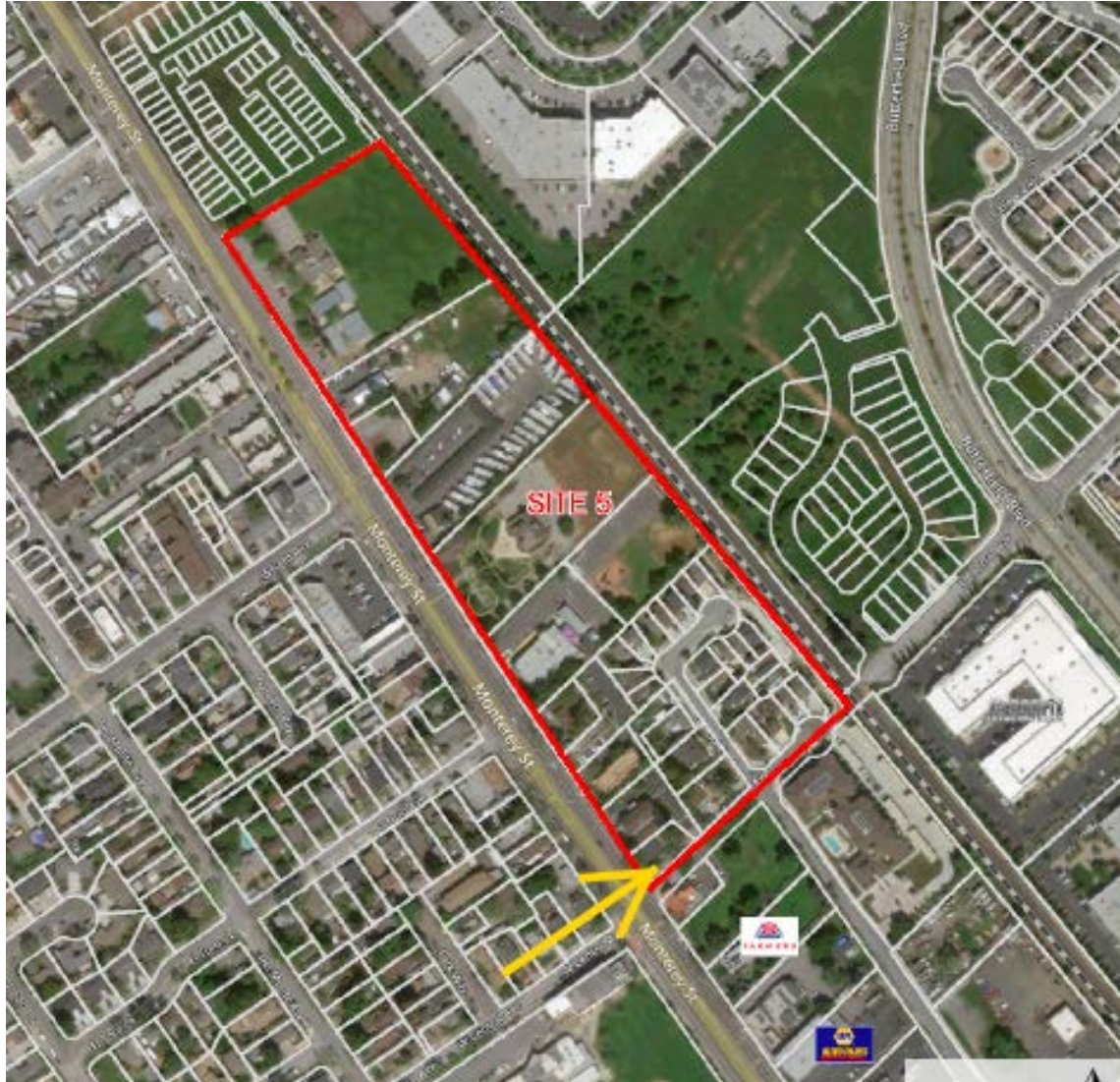
○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

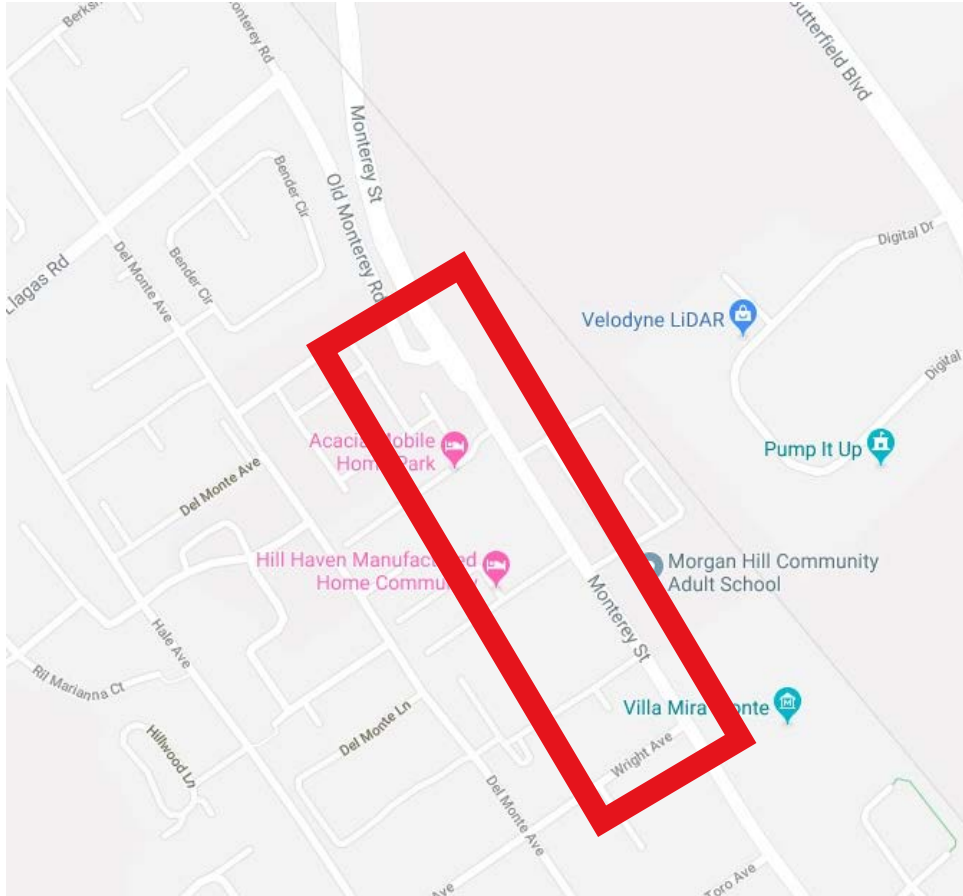
BROKERAGE & CONSULTING

Block 5 —

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



Block 6 – Old Monterey Rd. to Wright Ave.



There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

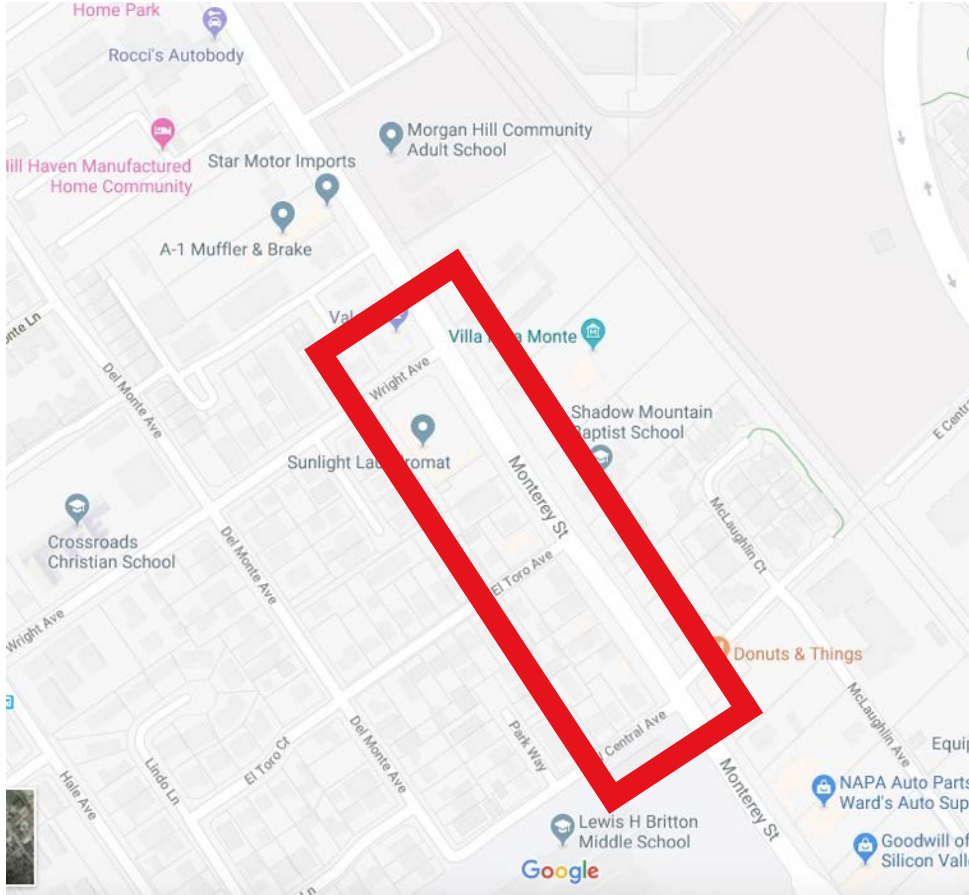
METR©VATION

BROKERAGE & CONSULTING

Block 6 – Old Monterey Rd. to Wright Ave.



Block 7 – Wright Ave. to W. Central Ave.

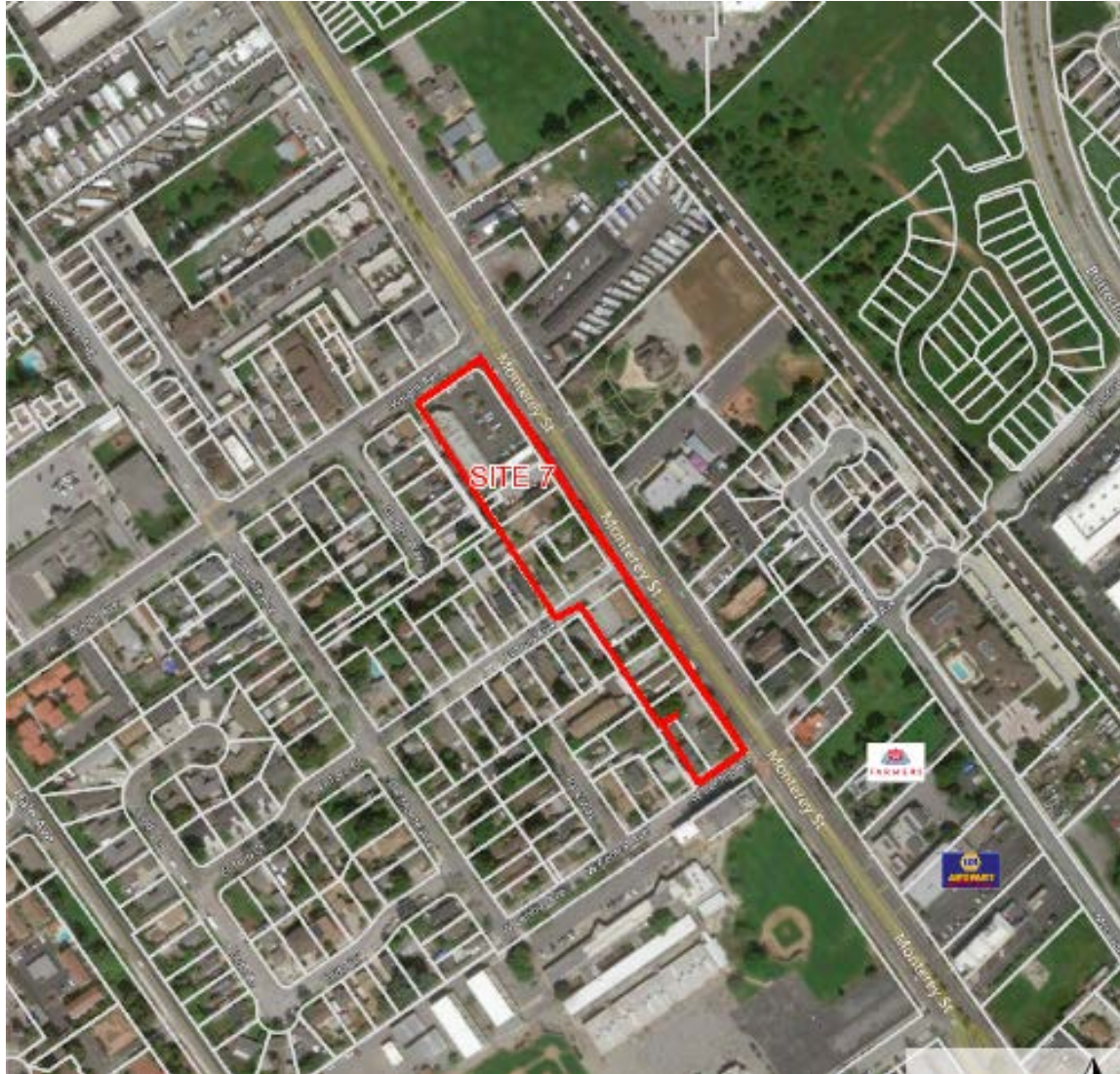


There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

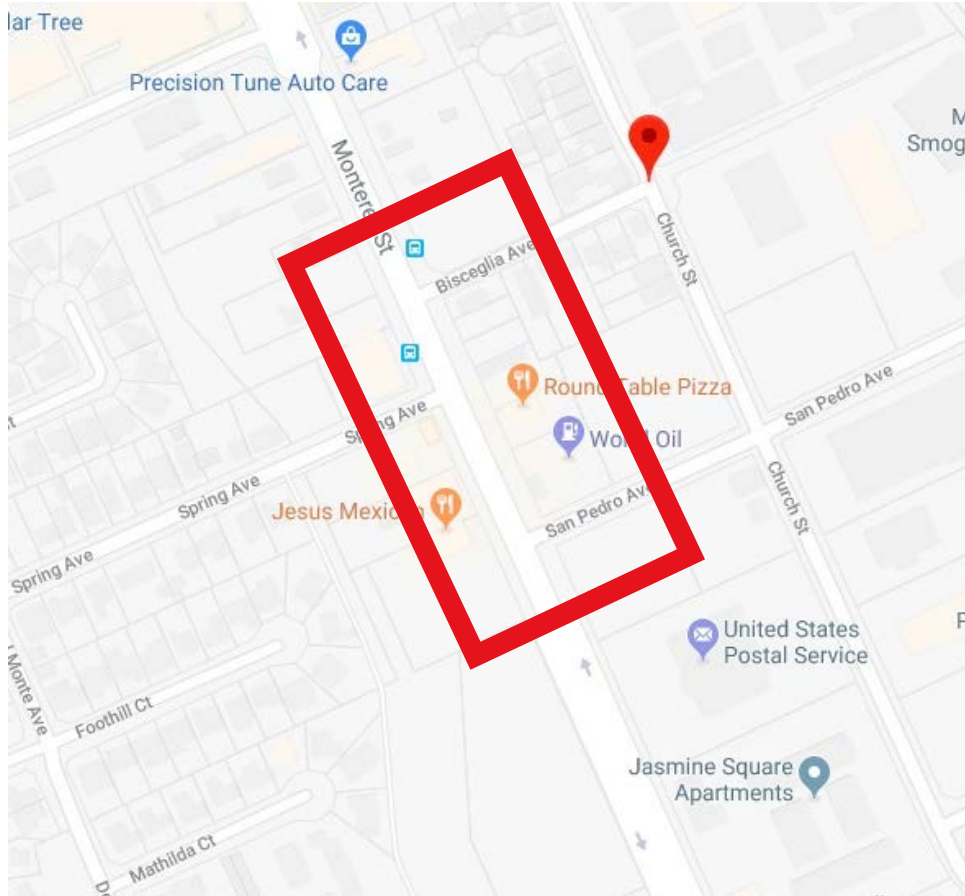
METR@VATION

BROKERAGE & CONSULTING

Block 7 – Wright Ave. to W. Central Ave.



Block 8 – Bisceglia Ave. to San Pedro Ave.

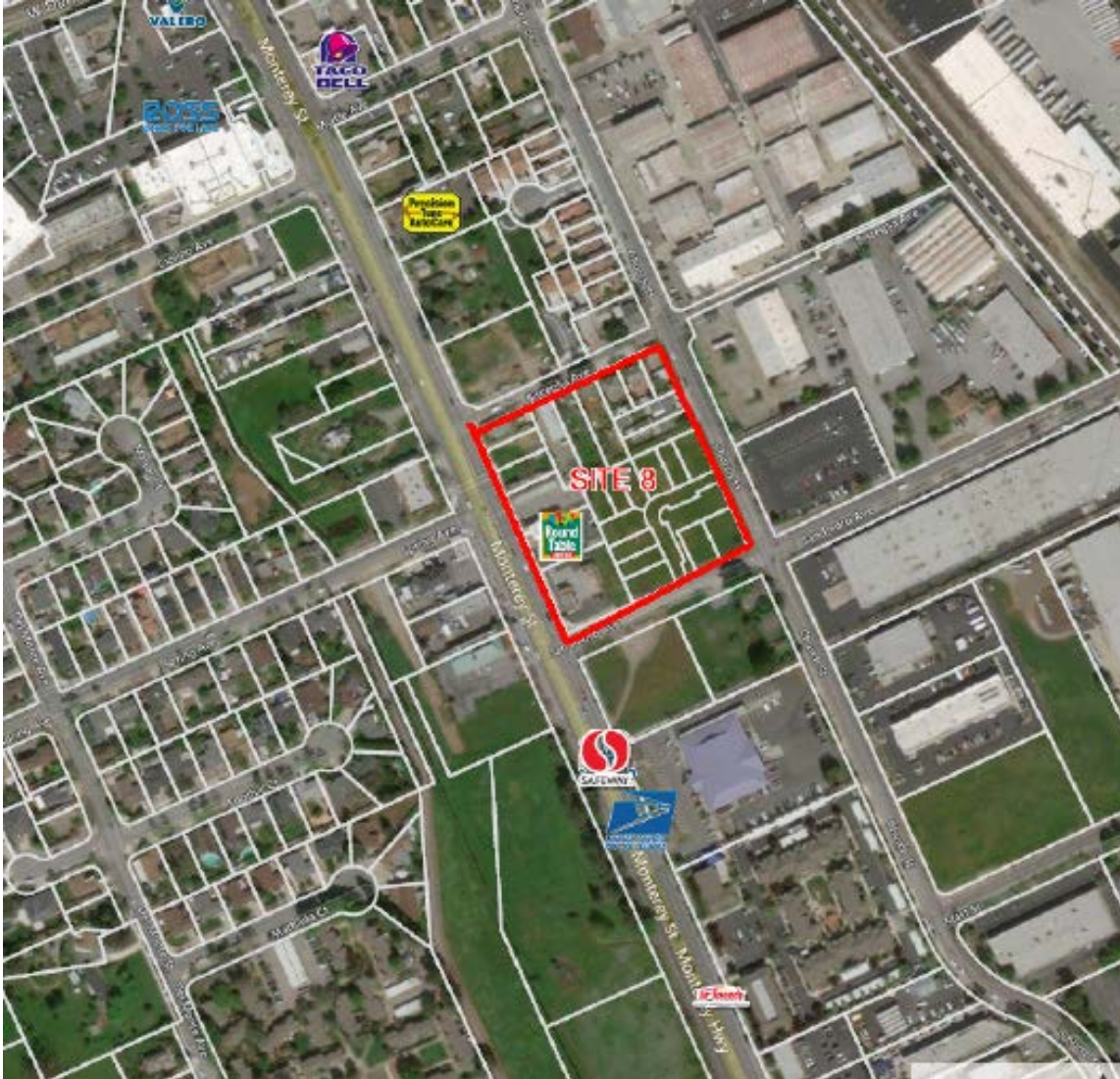


There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

METR@VATION

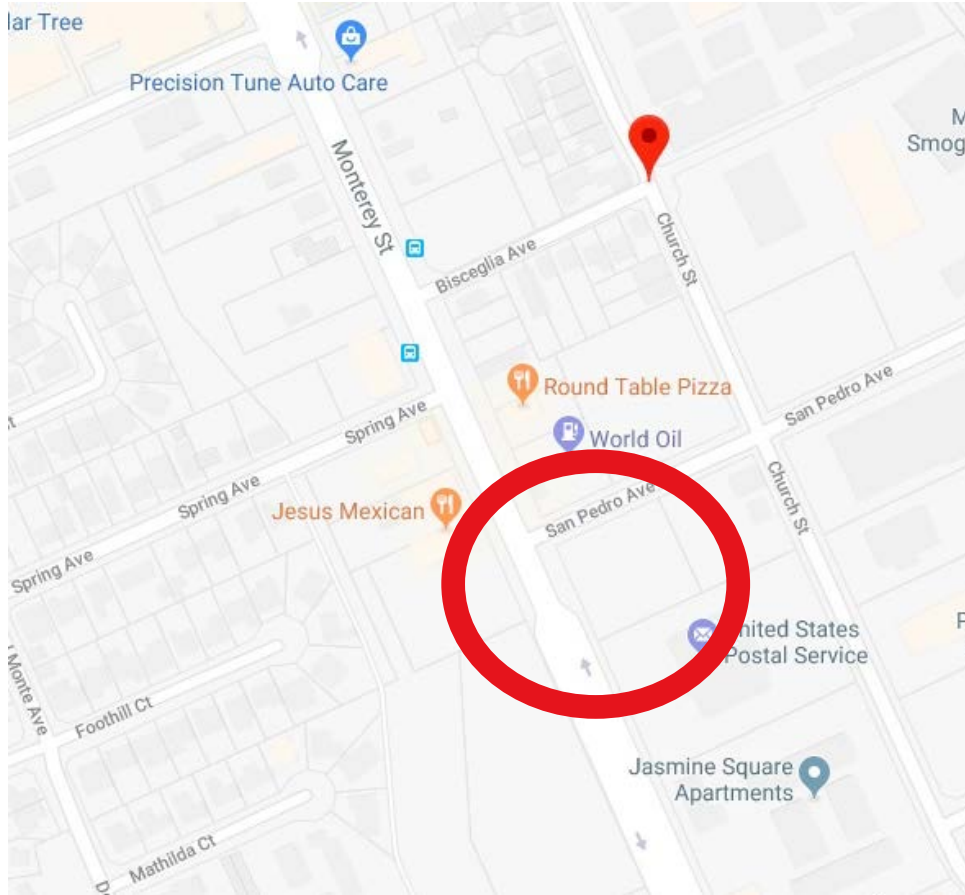
BROKERAGE & CONSULTING

Block 8 – Bisceglia Ave. to San Pedro Ave.



Block 9 –

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.



This area of south Morgan Hill already features a sustained commercial flavor and has the land available to accommodate additional commercial development. The vacant lot located on the SE corner of San Pedro Ave. and Monterey Rd. should be allowed to have commercial/retail development.

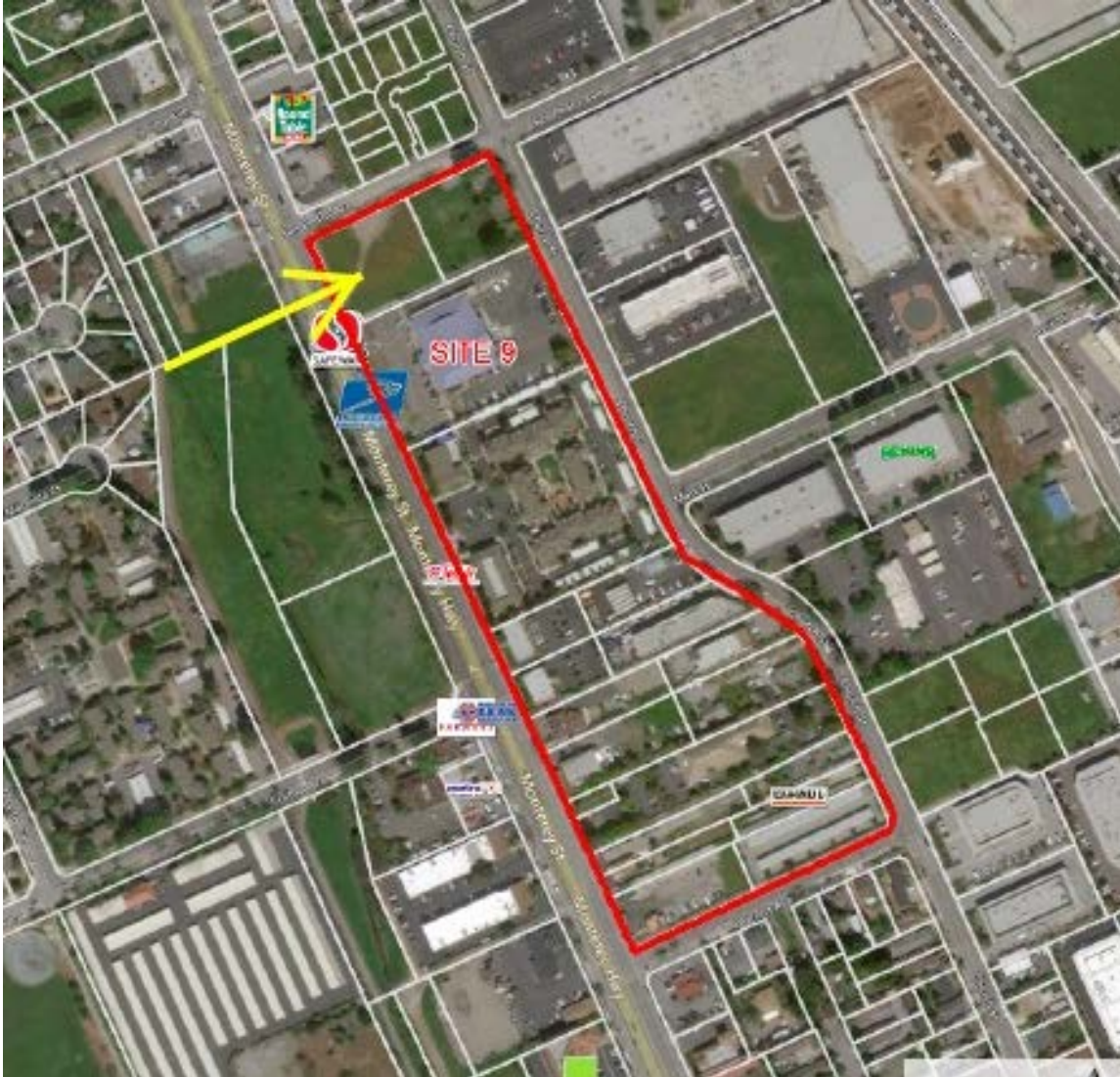
○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METR@VATION

BROKERAGE & CONSULTING

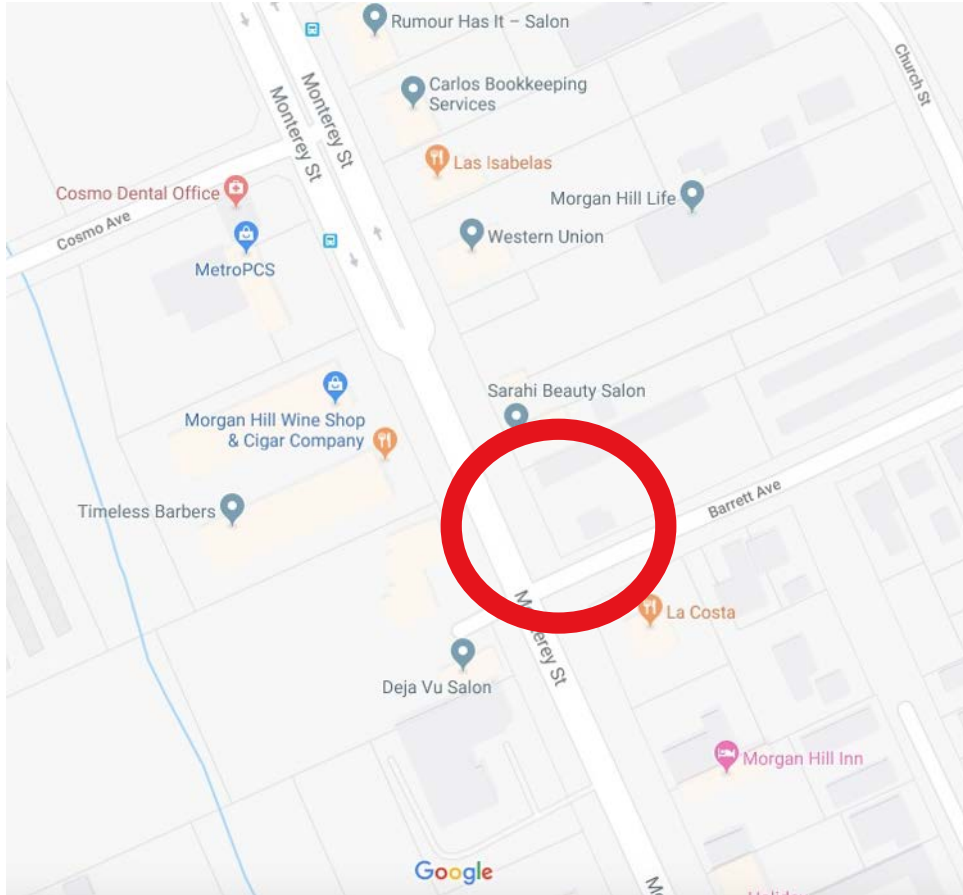
Block 9 —

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.



Block 9 –

San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.



The motel located at the NE corner of Barrett Ave. and Monterey Rd. appears to have significant deferred maintenance. While this property may provide affordable housing options for some citizens of Morgan Hill, it likely has areas not to code and detracts from the curb appeal of the block. Because it is under one ownership, along with the adjacent parcel to the north, it has increased opportunity for re-development. Therefore we suggest commercial for this parcel in any overlay zoning document.

○ Conclusion: Commercial is viable and likely, therefore should be zoned as such. We suggest commercial only at this corner.

METR@VATION

BROKERAGE & CONSULTING

Block 9 —

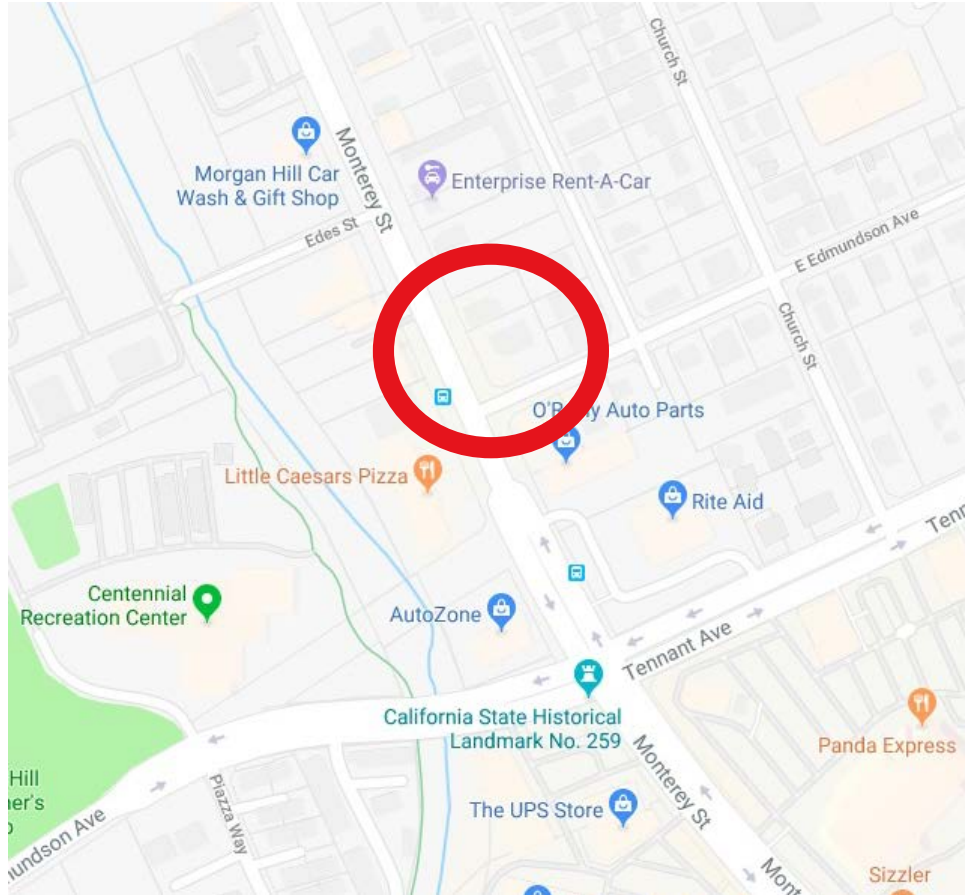
San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.



Block 10 –

Barrett Ave. to E. Edmundson Ave.

NE Corner E. Edmundson Ave. & Monterey Rd.



The NE corner of E. Edmundson Ave. and Monterey Rd. is an underutilized parcel currently occupied by an animal hospital. This area of Morgan Hill has a strong sense of commercial along Monterey Rd. The intersection is only a block away from the major intersection of Tennant and Monterey Rd. and has commercial uses adjacent on two sides and across the street. Intensifying the parcel is feasible and will make the best use of the property.

This does not necessarily mean changing the use. It is possible other veterinary hospital consortiums are looking to develop larger facilities that attract customers from a greater distance. A commercial use, as such, would be an upgrade from the current building and parcel condition. Therefore, we recommend requiring commercial on this parcel in the zoning document.



Conclusion: Commercial is viable at this corner. We suggest zoning commercial only for this parcel.

METROVATION

BROKERAGE & CONSULTING

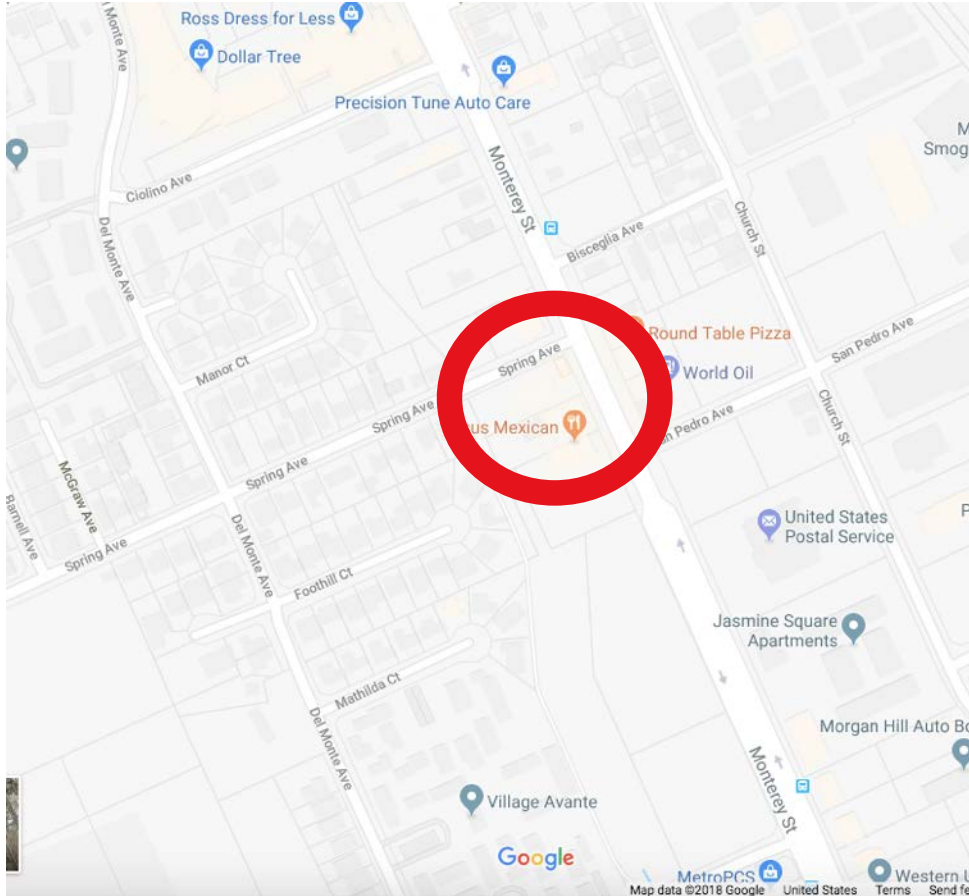
Block 10 –

Barrett Ave. to E. Edmundson Ave.
NE Corner E. Edmundson & Monterey Rd.



Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



The hard corner at Spring Ave. and Monterey Rd. (SWC) can be looked at as an entrance to a potential new development along Block 11. Using an entrance from Spring St, and developing a block-long drive aisle, passengers would be able to access a variety of possible developments with buildings up on Monterey Rd, often, with parking conveniently located in the rear. A north/south drive aisle will serve to alleviate traffic from Monterey Rd., while still providing easy access to any potential new development.

Therefore, we recommend requiring commercial on the SW corner of Spring and Monterey.



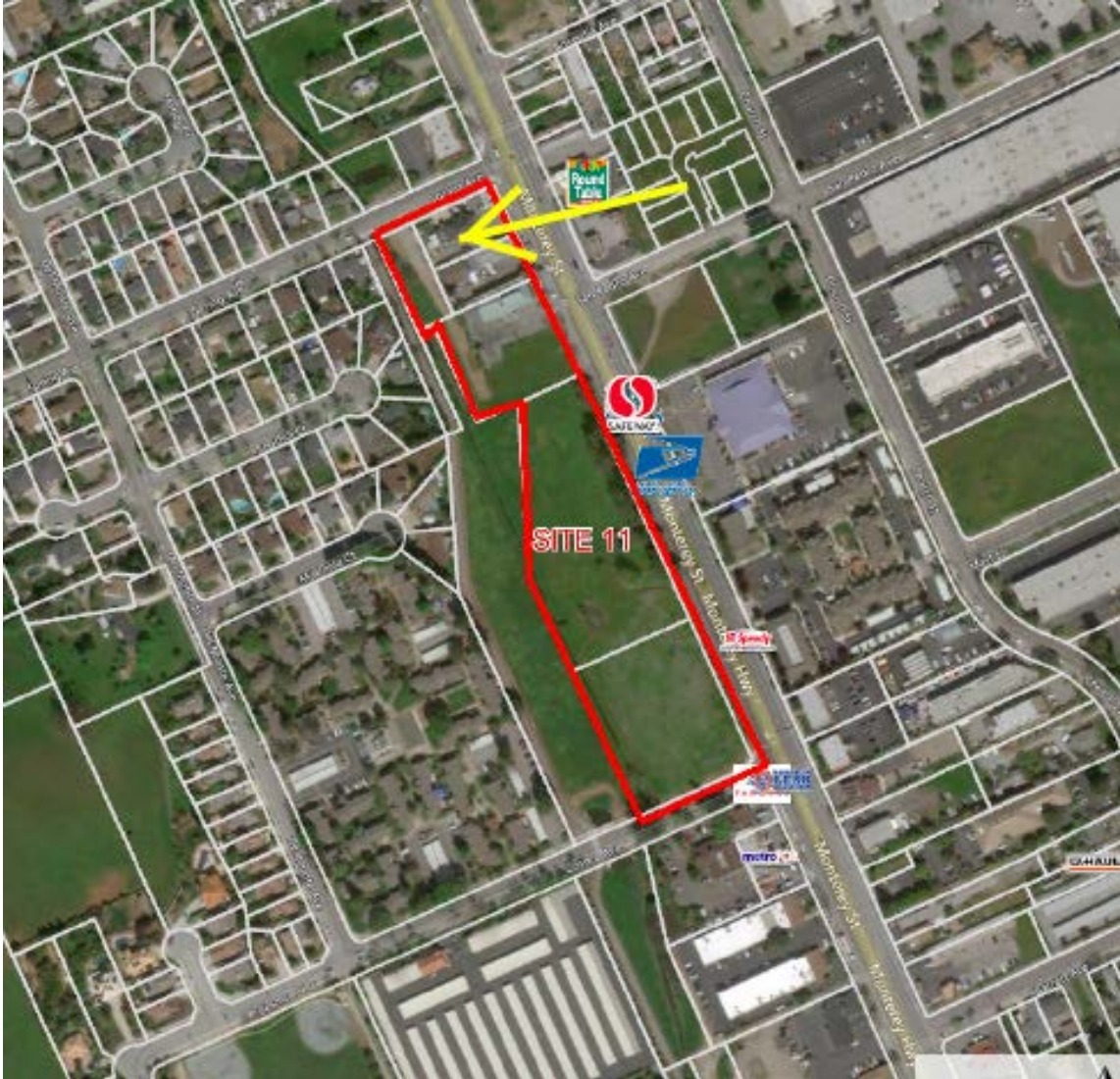
Conclusion: We suggest requiring commercial on the SW corner of Spring and Monterey.

METROVATION

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



Block 11 –

South of Downtown – Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Similar to our comments above, the entire Block 11 is ripe for new development with the corners focused on local-serving commercial uses. We strongly advocate for preserving the corners to accommodate this type of use.

Block 11 is mostly vacant and can accommodate new development. While the market will not support retail on the entire property, any new development will want to create density and keep the commercial feel to the area.

Therefore, we recommend requiring commercial on the NW corner of Cosmo Ave. and Monterey Rd.



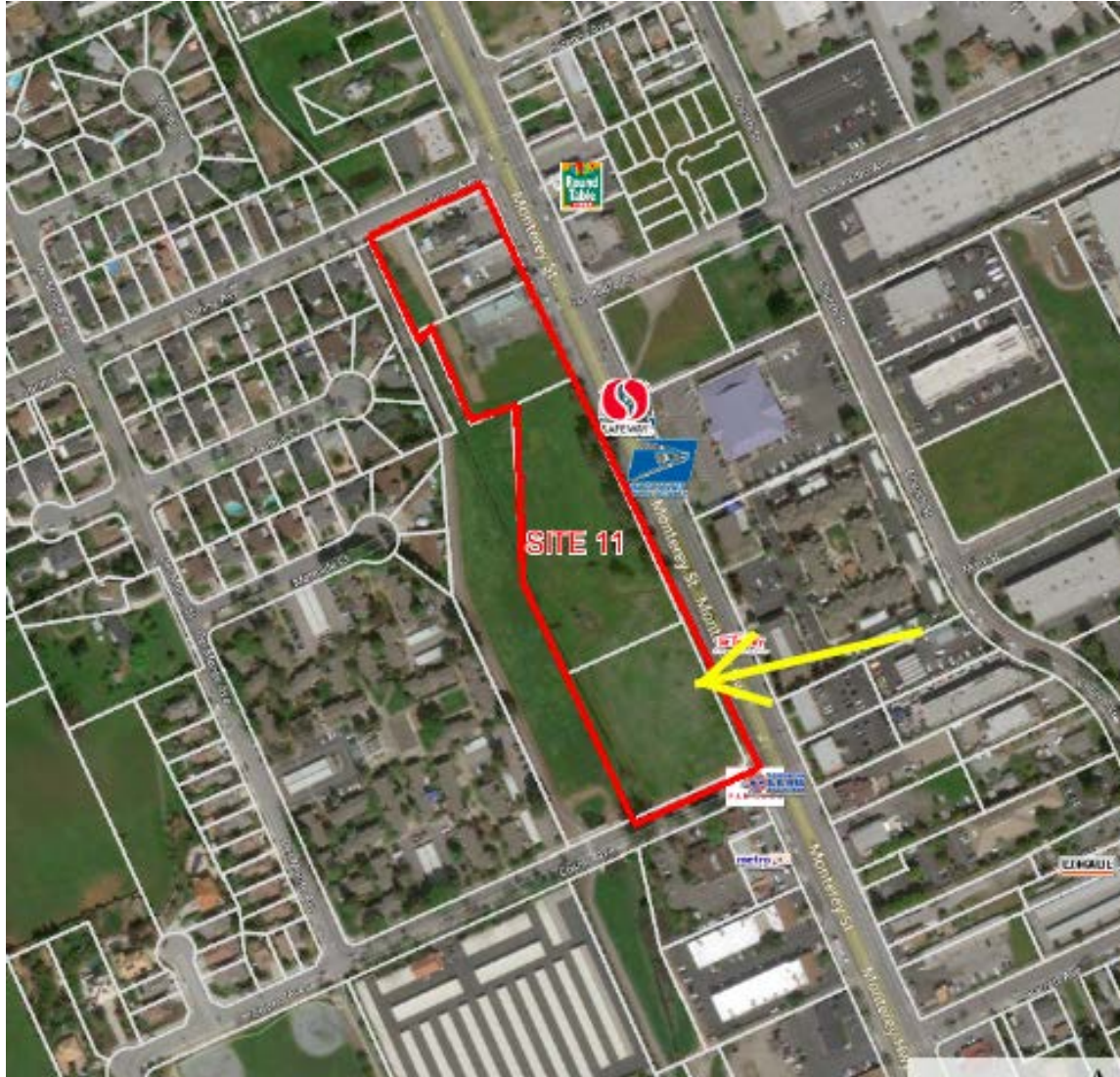
Conclusion: Commercial only zoning on the corner parcel is suggested.

METR@VATION

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Currently developed and leased to a variety of retail tenants, this corner will benefit from any development that occurs on the north side of Cosmo Ave.

We recommend requiring commercial on the SW corner Cosmo Ave. and Monterey Rd.



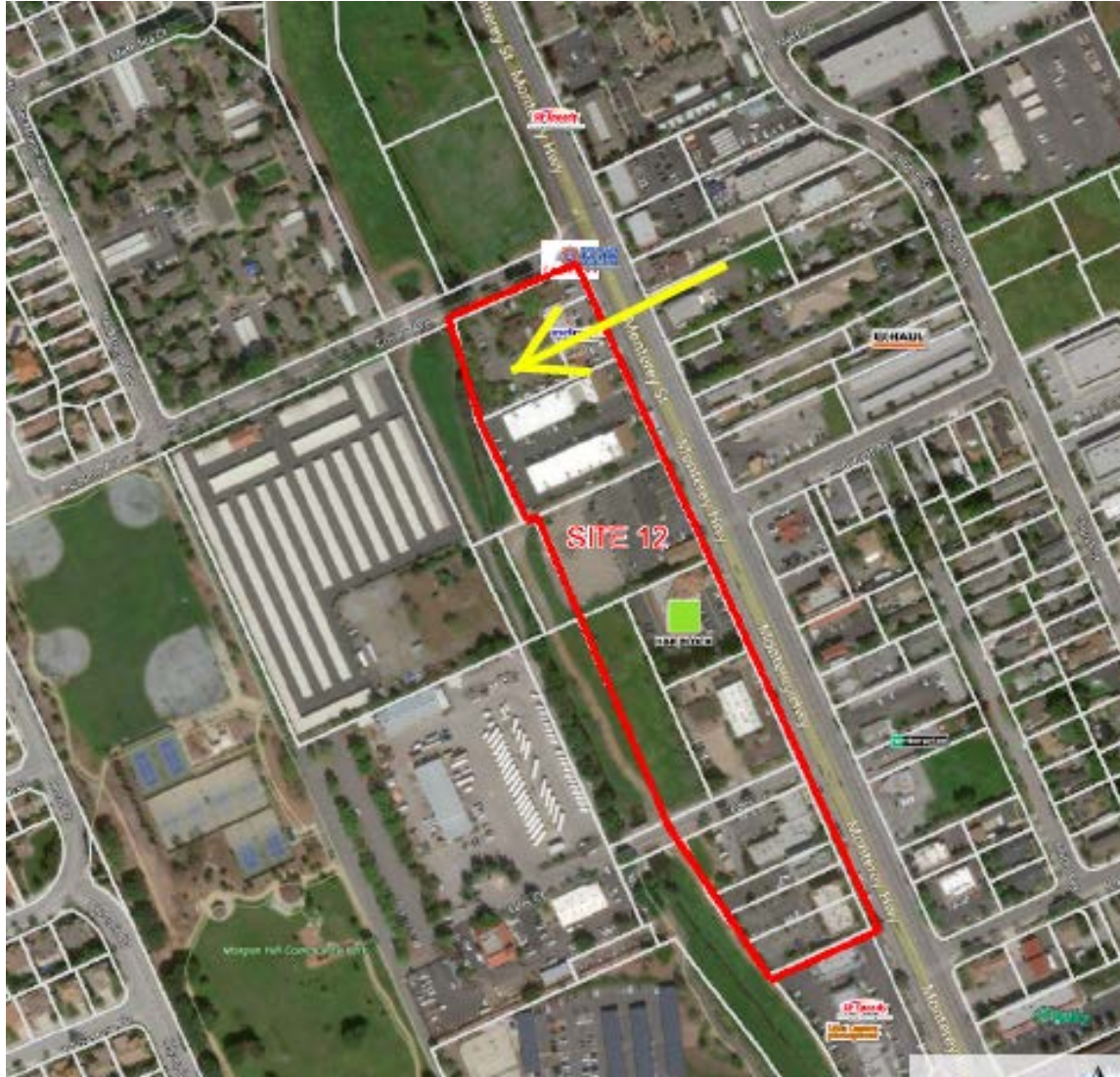
Conclusion: Commercial only zoning on the corner parcel is suggested.

METR@VATION

BROKERAGE & CONSULTING

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Draft Frontage Standards

What are Frontage Standards?

Frontage Standards are specific requirements for building frontages, which enable a more desirable built environment



Porch



Shopfront



Front Yard

Frontage Types

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Frontage Type Application

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

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Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Frontage Type Examples

5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. Standards.

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min.
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



Draft

4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

b. Standards.

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	

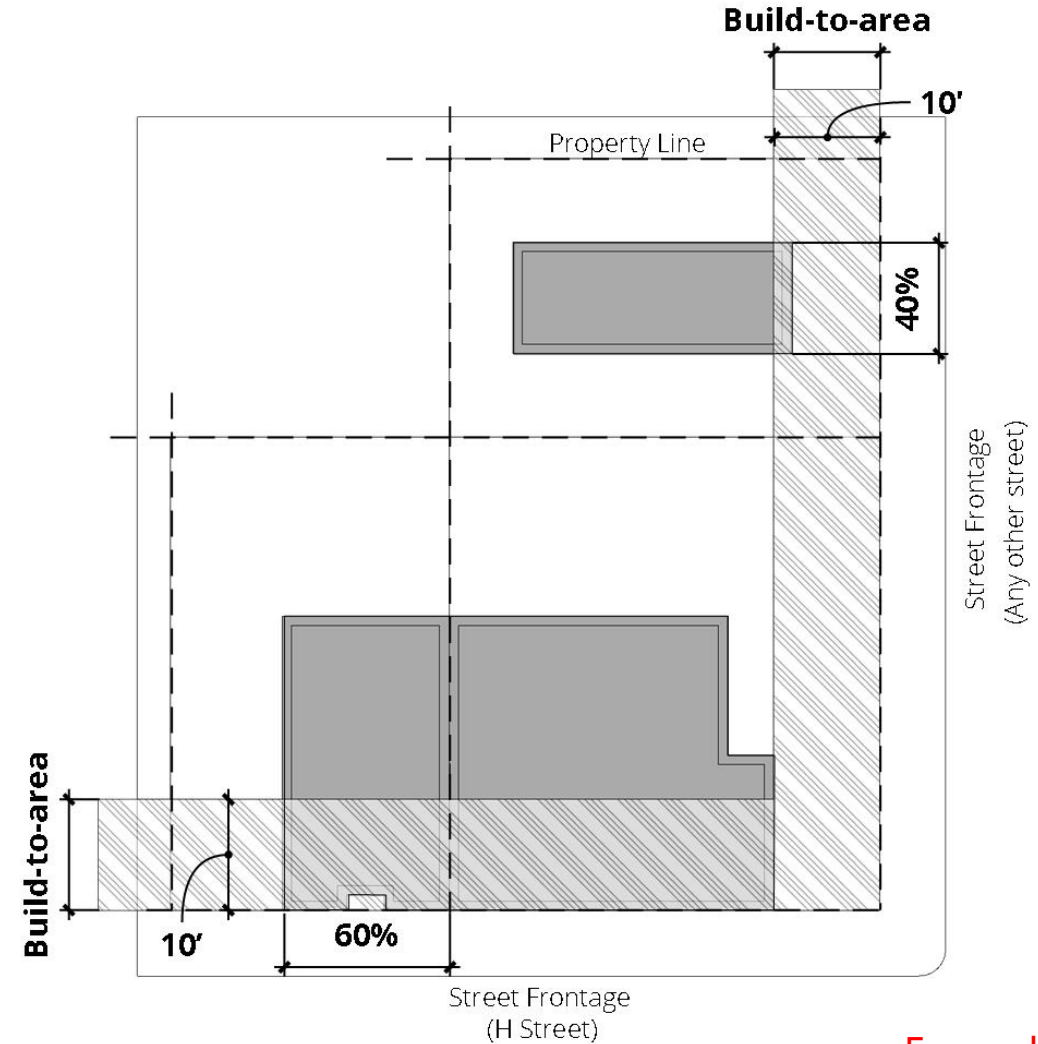


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Supplemental Standards

Building Standards

- Maximum front setback
- 1st floor clear height for C Sub-Zone
- 1st floor building depth for C Sub-Zone
- Primary entrance oriented to the street
- Adaptive reuse

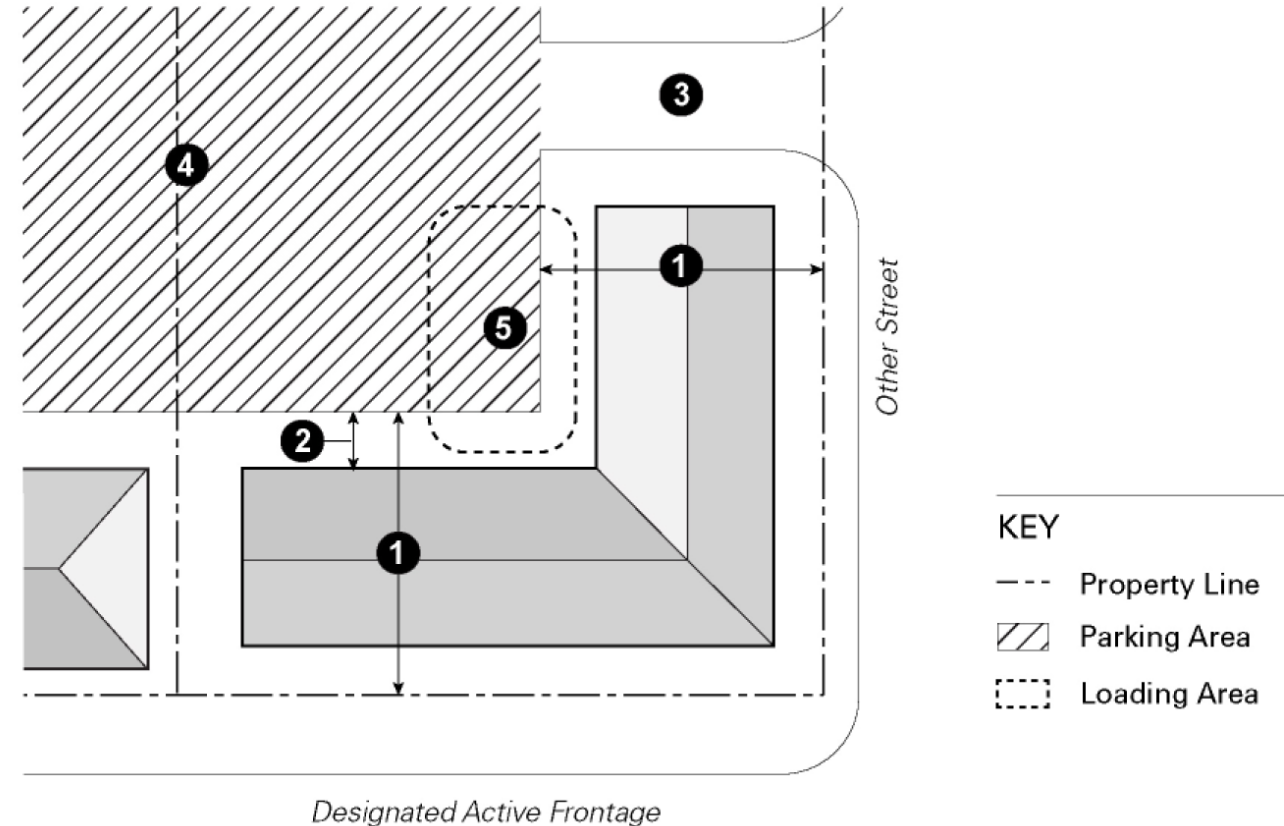


Example

Supplemental Standards

Connectivity/Site Standards

- Pedestrian and bicycle access/connection standards
- Maximum block length
- Parking behind buildings
- Open space/civic space requirement for large sites
- Street tree requirements



Example

Questions & Comments

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