



Special - Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, October 2, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The public hearing regarding **Out of Agency & Environmental Assessment - OA2019-0001/EA2019-0011: Fisher- Buddhist Temple**, that was publicly noticed for consideration by the City Council at this meeting has been continued to a date uncertain.

The item **Approve Impact Fee Freeze Agreement with Morgan Hill Retail Venture, L.P. for the Development of Retail Spaces in the Shopping Center Known as Cochrane Commons** that was continued from the September 18, 2019 City Council meeting to this meeting has been continued to a date uncertain.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 pm for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

STUDENTS - THE CLOSED SESSION THAT STARTS AT 6:00 PM IS NOT OPEN TO THE PUBLIC. THE REGULAR MEETINGS STARTS AT 7:00 PM

SPECIAL MEETING

6:00 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

RECONVENE

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

RECOGNITION

New City Website and recognition of the Website Team
Maureen Tobin and Website Team

Kiwanis Morgan Hill Youth Fund
Craig Kennedy, Morgan Hill Kiwanis President and John Horner, Board Chair

PROCLAMATIONS

Proclaiming the Month of October 2019 as Dysautonomia Awareness Month
Deborah Vick, M.Ed.

Proclaiming October 5, 2019 as Arbor Day
Anthony Eulo

Proclaiming the Week of October 6 - 12, 2019 as Fire Prevention Week
Dwight Good

October 2, 2019

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. CONTINUE PUBLIC HEARING REGARDING CITY'S SELECT DEVELOPMENT IMPACT FEES TO OCTOBER 23, 2019 REGULAR MEETING

Recommendation:

Continue the public hearing to the regular City Council meeting of October 23, 2019.

2. APPROVE THE SEPTEMBER 4, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

3. APPROVE THE SEPTEMBER 18, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

4. PROVIDE DIRECTION TO STAFF REGARDING REGULATION OF FLAVORED TOBACCO PRODUCTS

Recommendation:

1. Direct the City Attorney to prepare an ordinance regulating flavored tobacco products, including vape products; and
2. Direct City staff to engage in appropriate outreach efforts regarding the proposed regulations.

Estimated Time: 15 Minutes

PUBLIC HEARING

5. APPROVE DESIGN REVIEW PERMIT TO CONSTRUCT A MIXED-USE PROJECT IN CONJUNCTION WITH THE REALIGNMENT OF DEPOT STREET AT E. DUNNE AVENUE (HALE LUMBER SITE)

Recommendation:

1. Open and close the public hearing; and
2. Adopt resolution approving a Design Review Permit for the mixed-use development.

Estimated Time: 30 Minutes

OTHER BUSINESS

6. ADOPT ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

Recommendation:

1. Waive first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

Estimated Time: 10 Minutes

7. APPROVE EXTENSION OF GROUND LEASE WITH EDEN HOUSING FOR REHABILITATION OF DEPOT COMMONS AT 17145 DEPOT STREET

Recommendation:

Authorize the City Manager to negotiate, approve, and execute an assignment, modification, and extension of the ground lease for Depot Commons Apartment Complex, subject to the final review and approval of the City Attorney.

Estimated Time: 10 Minutes

8. PROVIDE PRELIMINARY FEEDBACK REGARDING POTENTIAL REDESIGN OF THE INTERSECTION AT THE NORTH-EAST CORNER OF MONTEREY ROAD AND COCHRANE ROAD

Recommendation:

1. Receive presentation on intersection alignment and safety improvements proposed for the northeast corner of Monterey Road and Cochrane Road in conjunction with development of the southwest corner of the Sutter Industrial Park; and
2. Provide direction regarding realignment plan timing or provide comments regarding project deferral.

Estimated Time: 10 Minutes

9. UPDATE REGARDING 2019 STATE HOUSING LEGISLATION/IMPACTS

Recommendation:

Receive information regarding 2019 State Housing Legislation and Impacts to Morgan Hill Housing Development Guidelines and Enforcement, Residential Development Control System, Development Processing and Work Program.

Estimated Time: 45 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

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 Community History
- Enhancing Diversity and Inclusiveness
- Advancing Regional Initiatives

2019-2020 Strategic Priorities

- Agricultural Preservation
- Cannabis Policy
- Community Engagement and Messaging
- Economic Development
- Financial Stewardship
- High Speed Rail
- Homelessness
- Housing
- Infrastructure
- Telecommunications
- Traffic/Transportation





CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

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

CONTINUE PUBLIC HEARING REGARDING CITY'S SELECT DEVELOPMENT IMPACT FEES TO OCTOBER 23, 2019 REGULAR MEETING

RECOMMENDATION(S)

Continue the public hearing to the regular City Council meeting of October 23, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture

2019 Strategic Priorities

Economic Development
Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
General Plan/Housing Element
Public Safety Master Plan
Sewer System Master Plan
Vision Zero
Water System Master Plan

REPORT NARRATIVE:

This item is continued from the City Council meeting on September 4, 2019. At the September 4, 2019 meeting, City Council requested a continuance of the public hearing to the October 2, 2019 meeting to give the law firm Hanson Bridgett LLP more time to review the materials relating to the City's proposed development impact fees provided in the City's initial response to the firm's Public Records Act request.

Since that time, the City has produced additional materials, including numerous e-mail messages, in response to the Public Records Act request. Representatives from the Hanson Bridgett firm requested additional time to review the records, so staff is asking Council to continue the hearing to a date certain of October 23, 2019.

CEQA (California Environmental Quality Act):
Project, Description of CEQA requirements.

These actions are exempt from CEQA under Section 15273 of Guidelines for CEQA, because they establish, modify, and approve rates and charges for the purposes of obtaining funds for capital projects.

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, September 4, 2019 6:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council was called at 6:00 p.m. for the purpose of conducting a closed session.

SPECIAL MEETING

6:00 p.m.

CALL TO ORDER

Mayor Constantine called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Absent	
Yvonne Martinez Beltran	Council Member	Late	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING AGENDA

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

CLOSED SESSION

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

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 6:01 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:01 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

RECONVENE

REGULAR MEETING

7:00 P.M.

The regular meeting convened at 7:02 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member McKay spoke regarding the tragic shooting on July 28th at the Gilroy Garlic Festival. This terrible and traumatic event has shown us how strong the community of Gilroy is and how strong the bond we have together is. There has been a huge outpouring of assistance with the Gilroy Community Foundation raising \$1.3 million in donations from around the world. He shared that there will be a benefit concert in Gilroy this Saturday from noon to 9:00 pm.

He shared that all of the City Council members, the Mayor, and the City Manager attended the Indian Flag Raising Ceremony and Independence Day Celebration. It was a great showing of support for our local Indian Community. It was another great way to celebrate the diversity we have in our city.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations.

She shared that the City of Morgan Hill is proud to announce the start of the Economic Development team's first Annual Choose Morgan Hill Speaker Series. To learn more, go to www.choosemorganhill.com. You can join us for in-depth conversations about the business sectors that drive the Morgan Hill economy. This kicks off tomorrow night at the Granada Theatre at 6:30 pm where we will be covering economic development.

She also announced that on Saturday, September 14th we will be holding the 2019 Get Fit Run and Family Fun Fest. You can choose a 5k, 10k, or 1 mile fun run. You can go to our website to register.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that there was no reportable action from the evening's earlier closed session.

OTHER REPORTS

None.

RECOGNITIONS

Rita Chavez Medina
For Advocacy and Support of Voter's Rights

PROCLAMATIONS

Proclaiming September 2019 as National Preparedness Month
Jennifer Ponce

Honoring Jacob's Heart Children's Cancer Support Services and Proclaiming September 2019 as
Childhood Cancer Awareness Month
Fatima Alabbad

PRESENTATIONS

HEALTHIER KIDS FOUNDATION - SUNNY OCHOA AND MARIA PASILLA

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

The public comment was opened at 7:22 p.m.

Jeff Bernstein was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Carr, McKay
ABSENT:	Spring, Martinez Beltran

CONSENT CALENDAR

MOTION:

Minutes Acceptance: Minutes of Sep 4, 2019 6:00 PM (CONSENT CALENDAR)

Approving consent calendar items 1 through 8 and 10 through 13.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
ABSENT:	Spring, Martinez Beltran

1. APPROVE CONSULTANT AGREEMENT WITH MAZE & ASSOCIATES FOR AUDIT SERVICES FOR THREE FISCAL YEARS

Recommendation:

Authorize the City Manager to execute and administer a consultant agreement with Maze & Associates for the not to exceed amount of \$111,853 for audit services for three fiscal years.

2. APPROVE UPDATES TO THE PUBLIC ART INVENTORY

Recommendation:

Approve updated Public Art Inventory.

3. APPROVE AGREEMENT WITH CIVIC FOUNDRY LLC FOR INFORMATION TECHNOLOGY SERVICES

Recommendation:

1. Approve agreement with Civic Foundry LLC for Information Technology management for a not to exceed amount of \$180,000; and
2. Authorize the City Manager to execute and administer the agreement.

4. APPROVE STORMWATER BEST MANAGEMENT PRACTICES (BMP) OPERATION AND MAINTENANCE AGREEMENT FOR THE SHOE PALACE PROJECT LOCATED AT 745 JARVIS DRIVE (PORTION OF ASSESSOR PARCEL NUMBERS 726-30-012 & 726-30-013)

Recommendation:

1. Approve a Stormwater Best Management Practices (BMP) Operation and Maintenance Agreement for the Shoe Palace Project located at 745 Jarvis Drive (Portion of APNs: 726-30-012 & 726-30-013); and
2. Authorize the City Manager to execute the Stormwater BMP Operation and Maintenance Agreement pending review and approval by the City Attorney.

5. ACCEPT SUBDIVISION PUBLIC IMPROVEMENTS - ALTIMIRA - TRACT NO. 10411

Recommendation:

1. Accept the Subdivision Public Improvements for Altimira – Tract No. 10411;
2. Authorize the City Engineer to sign a Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

6. AWARD MORGAN HILL LIBRARY ADDITION PROJECT TO SELDEN & SON

Recommendation:

Minutes Acceptance: Minutes of Sep 4, 2019 6:00 PM (CONSENT CALENDAR)

1. Approve the Morgan Hill Library Addition Project plans and specifications;
2. Award contract to Selden & Son for the Morgan Hill Library Addition Project in the amount of \$1,985,800;
3. Authorize expenditure of construction contingency funds not to exceed \$198,580; and
4. Authorize the City Manager to execute and administer the construction contract with Selden & Son pending review and approval by the City Attorney.

7. AWARD CENTENNIAL RECREATION CENTER POOL DECK RESURFACING PROJECT TO FLEXGROUND SURFACES, INC.

Recommendation:

1. Award contract to Flexground Surfaces, Inc. in the amount of \$56,224; and authorize the expenditure of contingency funds not to exceed \$20,000; and
2. Authorize the City Manager to execute and administer that certain construction contract with Flexground Surfaces, Inc.

8. ADOPT RESTATED INTERNAL REVENUE SERVICES (IRS) SECTION 125 FLEXIBLE BENEFITS PLAN DOCUMENT FOR THE CITY OF MORGAN HILL

Recommendation:

1. Adopt resolution approving the City of Morgan Hill's Section 125 flexible benefits plan; and
2. Authorize the City Manager, or designee, to serve as the Plan Administrator.

9. ITEM PULLED FOR DISCUSSION

10. ADOPT RESOLUTION APPROVING APPLICATION FOR PER CAPITA PROP 68 GRANT FUNDING

Recommendation:

Adopt resolution authorizing a grant agreement with the State of California.

11. RATIFY CITY POSITION ON PENDING LEGISLATION SB 266 PUBLIC EMPLOYEES' RETIREMENT SYSTEM: DISALLOWED COMPENSATION: BENEFIT ADJUSTMENTS

Recommendation:

1. Receive legislative correspondence in opposition of SB 266 Public Employees' Retirement System: disallowed compensation: benefit adjustments; and
2. Ratify City's position.

12. APPROVE THE JULY 17, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

13. APPROVE THE JULY 26, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

ITEM PULLED FOR DISCUSSION

9. ADOPT THE MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL EMPLOYEES RESOLUTION AND CORRESPONDING SALARY SCHEDULE EFFECTIVE DECEMBER 29, 2019

Recommendation:

Adopt the Management, Professional, and Confidential Employees Resolution and corresponding salary schedule effective December 29, 2019.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Carr, McKay
ABSENT:	Spring, Martinez Beltran

PUBLIC HEARING

14. ADOPT RESOLUTION UPDATING THE CITY'S SELECT DEVELOPMENT IMPACT FEES

Recommendation:

1. Open/close the public hearing;
2. Adopt Final Draft of Development Impact Fee Update Study prepared by Willdan Financial Services; and
3. Adopt resolution updating the City's select Development Impact Fees.

Finance Director Dat Nguyen, along with Carlos Villareal with Willdan Financial, provided the report.

The public hearing was opened at 7:47 p.m.

Kristina Lawson was called to speak.

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

The meeting was recessed at 8:01 p.m.

The meeting was reconvened at 8:10 p.m.

The public hearing was re-opened at 8:10 p.m.

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

MOTION:

Continuing the item to the October 2, 2019 City Council Meeting, requesting that the law firm of Hanson Bridgett submit a list of priority documents to the City by Friday, September 6, 2019.

RESULT:	CONTINUED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

15. INTRODUCE ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH APPLETREE INVESTMENT, LLC. FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED

AT 18755 OLD MONTEREY ROAD. (APN 764-24-061) (OLD MONTEREY-KELLY VO PROJECT)

Recommendation:

1. Open and close public hearing;
2. Waive first and second hearing of Development Agreement Ordinance; and
3. Introduce Development Agreement Ordinance.

Principal Planner Gina Paolini provided the report.

The public hearing was opened at 8:23 p.m.

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

MOTION:

Introducing the ordinance.

RESULT:	INTRODUCED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

16. APPEAL OF THE PLANNING COMMISSION DISTRIBUTION OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21. THE APPLICANT REQUESTED 246 RESIDENTIAL BUILDING ALLOTMENTS AND WAS DENIED RDCS BUILDING ALLOTMENTS BY THE PLANNING COMMISSION. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 728-30-001, IS LOCATED ON THE NORTH SIDE OF HALF ROAD BETWEEN CONDIT ROAD AND MISSION VIEW DRIVE. (FILE NO. AAE2019-0007 (RDCS2019-0006) HALF-DIVIDEND (FORMERLY BROOKFIELD))

Recommendation:

1. Grant a hearing de novo;
2. Open/close public hearing; and
3. Adopt resolution denying the appeal and reaffirming the distribution of the Residential Development Control System (RDCS) Building Allotments for Fiscal Year 2020-21.

Principal Planner Gina Paolini and Community Development Director Jennifer Carman provided the report.

The public hearing was opened at 8:33 p.m. The following people were called to speak:

Dick Oliver

Tim

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

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

OTHER BUSINESS

17. ACCEPT PRELIMINARY JUNE 2019 FINANCIAL AND INVESTMENT REPORT, CITY MANAGER SIGNATURE AUTHORITY REPORT, AND DIRECT THE CITY MANAGER TO TRANSFER THE FY2018-19 GENERAL FUND'S SURPLUS TO THE CITY'S PENSION AND OPEB TRUSTS

Recommendation:

1. Accept and file report; and
2. Direct the City Manager to transfer the FY2018-19 General Fund's surplus, pending completion of the year-end audit, to the City's Pension and OPEB Trusts.

Finance Director Dat Nguyen provided the report.

The public comment was opened at 9:30 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	DIRECTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, Martinez Beltran, Carr, McKay
ABSENT:	Spring

18. APPROVE RESPONSE TO GRAND JURY REPORT TITLED "INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY"

Recommendation:

Authorize the City Manager to file the Response to the Civil Grand Jury Report, "Inquiry into Governance of the Valley Transportation Authority", dated June 18, 2019 with the Presiding Judge of the Santa Clara County Superior Court.

Assistant City Manager Leslie Little provided the report.

The public comment was opened at 9:56 p.m.

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

MOTION:

Approving the recommended action.

RESULT: APPROVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor
SECONDER: John McKay, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

19. INTRODUCE ORDINANCE AMENDING CHAPTER 6.36- ANIMAL AND LAND USE, OF TITLE 6 - ANIMALS OF THE CITY OF MORGAN HILL MUNICIPAL CODE TO ALLOW HOBBYIST BEEKEEPING

Recommendation:

1. Waive first and second reading of Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping; and
2. Introduce Ordinance amending Chapter 6.36 "Animals and Land Use" to allow hobbyist beekeeping.

Program Administrator Anthony Eulo introduced Community Services Intern Tino Lee to provide the report.

The public comment was opened at 10:11 p.m.

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT: WAIVED [UNANIMOUS]
MOVER: Rich Constantine, Mayor
SECONDER: Larry Carr, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

MOTION:

Introducing the ordinance.

RESULT: INTRODUCED [UNANIMOUS]
MOVER: Rich Constantine, Mayor
SECONDER: Larry Carr, Council Member
AYES: Constantine, Martinez Beltran, Carr, McKay
ABSENT: Spring

20. PROVIDE DIRECTION REGARDING BUILDING ELECTRIFICATION INCENTIVES AND REQUIREMENTS INCLUDING REACH CODES

Recommendation:

Provide policy direction to staff on electrification initiatives.

Program Administrator Anthony Eulo, along with John Sutt from Silicon Valley Clean Energy, provided the presentation.

The public comment was opened at 10:41 p.m.

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

Council provided direction to staff.

RESULT: NO ACTION TAKEN

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:51 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

Minutes Acceptance: Minutes of Sep 4, 2019 6:00 PM (CONSENT CALENDAR)

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, September 18, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

AMENDED AGENDA

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

CALL TO ORDER

Mayor Pro Tem Spring called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Absent	
Rene Spring	Mayor Pro Tem	Present	
Yvonne Martinez Beltran	Council Member	Present	
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING OF THE AGENDA

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Martinez Beltran spoke regarding her work on the Silicon Valley Clean Energy Board (SVCE). She announced that on Friday, September 20th at the City Hall Campus, students will be staging a Climate Action walkout. She spoke regarding the REACH codes and shared that Morgan Hill is one of the first three cities in Santa Clara County to bring this to their City Councils. She shared that SVCE has created an awards program to recognize the developments that are reducing the carbon footprint by going all electric. Here in Morgan Hill, the City Ventures Depot Station project has been awarded the 2019 All Electric Development of the Year Award.

She shared that last month was the 99th anniversary of women's right to vote and spoke about the many events that took place in celebration and recognition of Women's Week.

She concluded by sharing the work she has been doing with the Sister Cities Committee and their recent work with the city of Ameca in Mexico to reconnect as a Sister City.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke regarding the evening's supplements and presentations. She recommended that item 5 be deferred to the October 2, 2019 City Council meeting. She shared that she attended the High Speed Rail Authority (HSR) Board meeting yesterday and spoke during public comment in regard to the comment letter that the City submitted to HSR about the preferred alignment. The comments made by the board showed the importance of Morgan Hill representatives being present. The board unanimously approved alignment 4 and asked HSR staff to research some of our concerns.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin reported that there have been a number of health concerns reported related to vaping and flavored tobacco. Additionally, Council Member Carr has asked that a report come back to Council in regard to vaping. In the meantime, the Governor has issued an executive order that resolves some of the issues but not everything that we have been asked to address. We will be coming back to Council with a report on October 2nd with some recommendations related to flavored tobacco and an update on executive orders that have come out and the new laws that will be going into effect on January 1st.

OTHER REPORTS

Council Member McKay echoed Council Member Martinez Beltran's comments regarding their wonderful visit to Ameca, Mexico. He also commented on the wonderful Women's Week events hosted by the Chamber of Commerce, community, and team.

RECOGNITIONS

Recognizing Alyssa Buzbee-Good, author of The Journey

PROCLAMATIONS

Proclaiming September 30, 2019 as Lewy Body Dementia Awareness Day in honor of Susan Berghoff

Proclaiming the week of September 17-23, 2019 as Constitution Week

Proclaiming the month of September 15, 2019 to October 15, 2019 as Hispanic Heritage Month

PRESENTATIONS

YAC PRESENTATION - ASSET # 21 - ACHIEVEMENT MOTIVATION

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

The public comment was opened at 7:42 p.m.

Joe Baranowski was called to speak.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2 through 4 and 6 through 8, continuing item 5 to the October 2, 2019 City Council Meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

1. ITEM PULLED FOR DISCUSSION

2. ACCEPT JULY 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

3. ACCEPT ANNUAL REPORTS OF ACTIVITIES BY NONPROFIT PARTNER ORGANIZATIONS

Recommendation:

Receive annual reports from City partner organizations.

4. APPROVE A UTILITY MUTUAL ASSISTANCE AGREEMENT

Recommendation:

1. Approve an agreement with California Water/Wastewater Agency Response Network (CalWARN) to provide mutual assistance during an emergency in accordance with the California Emergency Services Act and the California Disaster and Civil Defense Master Mutual Aid Agreement; and to provide reimbursement for equipment, supplies and personnel made available on an emergency basis; and
2. Authorize the City Manager to execute and administer the agreement.

5. APPROVE IMPACT FEE FREEZE AGREEMENT WITH MORGAN HILL RETAIL VENTURE, L.P. FOR THE DEVELOPMENT OF RETAIL SPACES IN THE SHOPPING CENTER KNOWN AS COCHRANE COMMONS

Recommendation:

1. Confirm that commercially zoned Assisted Living Facilities are not eligible for the Fee Freeze Program;
2. Approve an Impact Fee Freeze Agreement for the development of commercial retail/office buildings on 51 acres of Cochrane Commons; and
3. Authorize the City Manager to execute and administer the Impact Fee Freeze Agreement.

Item continued to the October 2, 2019 City Council meeting.

6. AWARD CENTENNIAL RECREATION CENTER EXPANSION PROJECT TO CRW INDUSTRIES, INC.

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to appropriate an additional \$805,000 from the Community Center Impact Fund (360), for the Centennial Recreation Expansion Project (CIP#138016);
2. Approve the Centennial Recreation Expansion Project plans and specifications;
3. Award contract to CRW Industries, Inc. for the Centennial Recreation Center Expansion Project in the amount of \$2,443,138;
4. Authorize the expenditures of construction contingency funds not to exceed \$244,314; and
5. Authorize the City Manager to execute and administer the construction contract with CRW Industries, Inc. pending review and approval by the City Attorney.

7. ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2018-0001: OLD MONTEREY- KELLY VO FOR A 6-LOT SINGLE-FAMILY RESIDENTIAL SUBDIVISION PROJECT PROPOSED ON A 1.13-ACRE PARCEL LOCATED ON THE SOUTHWEST CORNER OF OLD MONTEREY ROAD AND MUSTARD AVE LOCATED AT 18755 OLD MONTEREY ROAD (APN 764-24-061)

Recommendation:

Waive the reading, adopt Ordinance No. 2303, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

8. ADOPT ORDINANCE AMENDING CHAPTER 6.36 ("ANIMALS AND LAND USE") IN TITLE 6 ("ANIMALS") OF THE MORGAN HILL MUNICIPAL CODE TO ALLOW RESIDENTIAL BEEKEEPING UNDER CERTAIN CIRCUMSTANCES

Recommendation:

Waive the reading, adopt Ordinance No. 2304, 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.

ITEMS PULLED FOR DISCUSSION

1. ACCEPT DONATION FROM JTJ MORGAN HILL RE, LLC FOR A SPEAKER SERIES

Recommendation:

Accept \$10,000 in donations from JTJ Morgan Hill RE, LLC for the production and support of a Choose Morgan Hill Speaker Series, highlighting the four key industry sectors identified in Morgan Hill's Economic Blueprint.

Economic Development Manager John Lang presented the report.

MOTION:

Approving the recommended action.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

PUBLIC HEARING

9. ACCEPT THE 2019 PUBLIC HEALTH GOALS REPORT ON WATER QUALITY

Recommendation:

1. Take public comment and provide staff response; and
2. Accept and file the June 2019 Public Health Goals Report on Water Quality for the City of Morgan Hill.

Deputy Director for Utilities Dan Repp presented the report.

The public hearing was opened at 8:06 p.m.

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

MOTION:

Approving the recommended actions.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	John McKay, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

The meeting recessed at 8:04 p.m.

The meeting reconvened at 8:11 p.m.

OTHER BUSINESS

10. PROVIDE DIRECTION REGARDING CITY USE OF HERBICIDES

Recommendation:

1. Receive report on herbicide use in City parks, facilities, medians, and right of ways; and
2. Provide staff with direction on future use of herbicides by the City.

Public Services Director Chris Ghione and Maintenance Manager Dale Dapp presented the report.

The public comment was opened at 8:55 p.m. The following people were called to speak:

Gino Borgioli
Stu Nuttall

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

The City Council provided direction to staff regarding future use of herbicides.

RESULT: NO ACTION TAKEN

The meeting recessed at 9:17 p.m.
The meeting reconvened at 9:25 p.m.

11. PROVIDE DIRECTION REGARDING CITYWIDE TRAFFIC STUDIES AND RELATED PROJECT UPDATES

Recommendation:

1. Receive cut-through traffic study;
2. Receive final intersection analysis and update on improvements;
3. Receive update on traffic projects; and
4. Provide staff feedback on next steps for traffic congestion and pedestrian safety management.

Public Services Director Chris Ghione, Ali Chau with Hexagon Consultants, and City Engineer Scott Creer presented the report.

The public comment was opened at 10:20 p.m. The following people were called to speak:

Gino Borgioli
Stu Nuttall

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

The Council provided feedback and asked staff to schedule a workshop to continue the conversation.

RESULT: NO ACTION TAKEN

12. ACCEPT REPORT ON GEOGRAPHIC INFORMATION SYSTEMS (GIS) STRATEGIC PLAN

Recommendation:

Accept report on the Geographic Information Services (GIS) Strategic Plan.

GIS Manager Pam Van der Leeden presented the report.

The public comment was opened at 10:55 p.m.

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

RESULT: ACCEPT REPORT

13. APPOINT VOTING DELEGATES FOR THE 2019 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE AND APPROVE CITY SUPPORT OF THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE RESOLUTIONS

Recommendation:

1. Appoint voting delegate and up to two (2) alternate voting delegates to the League of California Cities' Annual Conference;
2. Direct the Clerk team to complete and forward the voting delegate form to the League of California Cities;
3. Confirm "support" position on two resolutions; and
4. Authorize the City's voting delegate(s) to vote on the two resolutions to be considered at the League of California Cities (LOCC) annual conference.

City Manager Christina Turner presented the report.

MOTION:

Appointing Mayor Rich Constantine as the primary voting delegate and Council Members Rene Spring and Larry Carr as the alternate voting delegates, directing the City Clerk team to complete and forward the voting delegate form to the LOCC, confirming support of the two resolutions, and authorizing the City's voting delegate(s) to vote on the two resolutions at the LOCC annual conference.

RESULT:	APPOINTED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	Larry Carr, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

MOTION:

Extending the meeting to 11:15 p.m.

RESULT:	EXTENDED [UNANIMOUS]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
ABSENT:	Constantine

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

CLOSED SESSION:

City Attorney Donald Larkin announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 10:59 p.m.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 10:59 p.m.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

RECONVENE

The meeting reconvened at 11:07 p.m.

CLOSED SESSION ANNOUNCEMENT

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

ADJOURNMENT

There being no further business, the meeting adjourned at 11:07 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

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

PROVIDE DIRECTION TO STAFF REGARDING REGULATION OF FLAVORED TOBACCO PRODUCTS

RECOMMENDATION(S)

1. Direct the City Attorney to prepare an ordinance regulating flavored tobacco products, including vape products; and
2. Direct City staff to engage in appropriate outreach efforts regarding the proposed regulations.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

Supporting Our Youth

Seniors

and Entire Community

Preserving and Cultivating Public Trust

POLICY CONSIDERATION:

Should the City regulate or prohibit flavored tobacco products, including vape products?

REPORT NARRATIVE:

The City Attorney is seeking direction from the City Council regarding the request by Council Member Carr for an ordinance regulating the sale of flavored tobacco in Morgan Hill.

The attached report by ChangeLab Solutions, a Bay Area health nonprofit (Attachment 1), outlines a policy basis for regulating flavored tobacco, including vape products. The report also includes a model ordinance, which outlines some policy options the Council should consider if a decision is made to move forward with regulations.

Background:

While regular tobacco use among teens in Santa Clara County is low, a recent survey found that just over 1/3 of high school students in the County reported having used a tobacco product, and that the overwhelming majority of those respondents used e-cigarettes. More than 13% of high school students identified as current tobacco users, and more than 82% of them reported using a flavored tobacco product. For the full results of the survey, see Attachment 2.

Due to the high rate of teen use, and recent lung illnesses due to vaping, the County and many other cities are looking into flavored tobacco regulations. In addition to local action, last week Governor Newsom signed an Executive Order that is intended to reduce teen vaping of tobacco and cannabis (Attachment 3). On the federal level, health and human services secretary Alex Azar has reportedly asked the Food and Drug Administration to develop a plan to ban flavored e-cigarettes (Attachment 4).

Options:

The model ordinance from ChangeLab Solutions includes several additional policy questions. If Council opts to move forward with regulations, we would seek direction on the following:

1. Should the ban be city-wide or just within certain buffer zones?
2. Should existing retailers be grandfathered in for a period of time?
3. Should the regulations include all flavored tobacco products, including menthol cigarettes (federal law already prohibits flavored cigarettes, but exempts menthol).

COMMUNITY ENGAGEMENT: Consult

If the Council directs the City Attorney to prepare an ordinance regulating flavored tobacco, staff will consult with local retailers to determine the best approach for implementing the new regulations.

ALTERNATIVE ACTIONS:

The City Council could decide not to adopt local restrictions on flavored tobacco sales.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Research and drafting of an ordinance regulating flavored tobacco will take several hours of City Attorney time. Stakeholder meetings will involve other staff and will take an unknown amount of additional time. These activities will be absorbed into our current workplan.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. Flavored Tobacco Products Report & Model Ordinance by ChangeLab Solutions
2. California Student Tobacco Survey Findings within Santa Clara County (web link)
3. Governor Executive Order September 2019
4. NY Times 9-11-2019



ChangeLab Solutions

Law & policy innovation for the common good.

Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products

Updated June 2017
(Originally published January 2014)

Developed by ChangeLab Solutions

This material was made possible by funds received from Grant Number 14-10214 with the California Department of Public Health, California Tobacco Control Program.

© 2017 California Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the California Department of Public Health.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Table of Contents

1. Introduction and Report.....	3
Background	3
Menthol Cigarettes.....	4
Other Flavored Tobacco Products	5
Considerations When Regulating Flavored Tobacco Products	7
Legal Issues.....	8
i. Federal Preemption	8
ii. First Amendment.....	9
Conclusion.....	10
2. Model Ordinance Provisions	13
3. Appendix A: Findings.	22

Introduction and Report

This Model California Ordinance Restricting the Sale of Menthol Cigarettes and Other Flavored Tobacco Products (Model Ordinance) is one potential policy intervention to reduce the consumption of tobacco products. It is based on ChangeLab Solutions' legal research and analysis, as well as the research and evidence base regarding consumption of tobacco products and the rising popularity of flavored tobacco products. The Model Ordinance should complement other policy and programmatic efforts to reduce tobacco use.

This version of the Model Ordinance (revised in June 2017) includes the following changes from the previous version: (1) It prohibits the sale of flavored cigarettes (including menthol cigarettes), and (2) it provides an optional provision to grandfather certain businesses, which exempts those businesses from complying with the flavored tobacco prohibition for a limited period of time.

The Introduction and Report section summarizes our nonpartisan analysis of the health, equity, and policy issues related to the use and sale of menthol cigarettes and other flavored tobacco products, and it outlines why it is important to restrict the sale of such products. It should be distributed broadly to the public and local groups to help people understand the relevant data and the purpose of developing a policy restricting the sale of menthol cigarettes and other flavored tobacco products.

This Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data. It allows readers to draw their own conclusions about the merits of this Model Ordinance.

The Model Ordinance offers a variety of options. In some instances, blanks (e.g., [____]) prompt you to customize the language to fit your community's needs. In other cases, the ordinance offers you a choice of options (e.g., [choice one / choice two]). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community's existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

Background

In 2009, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacture of flavored cigarettes. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth.¹ These products also pose significant barriers to achieving health equity. Thanks to tobacco companies’ marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.

This Model Ordinance restricts the sale of all flavored tobacco products, including the following:

- (1) Flavored cigarettes already prohibited by the Tobacco Control Act;
- (2) Menthol cigarettes;
- (3) Flavored other tobacco products (OTPs), such as cigars, little cigars, cigarillos, smokeless tobacco, shisha (hookah tobacco), electronic smoking devices (ESDs), and the solutions used in ESDs; and
- (4) Flavored components, parts, and accessories, such as flavored rolling papers, filters, and blunt wraps.

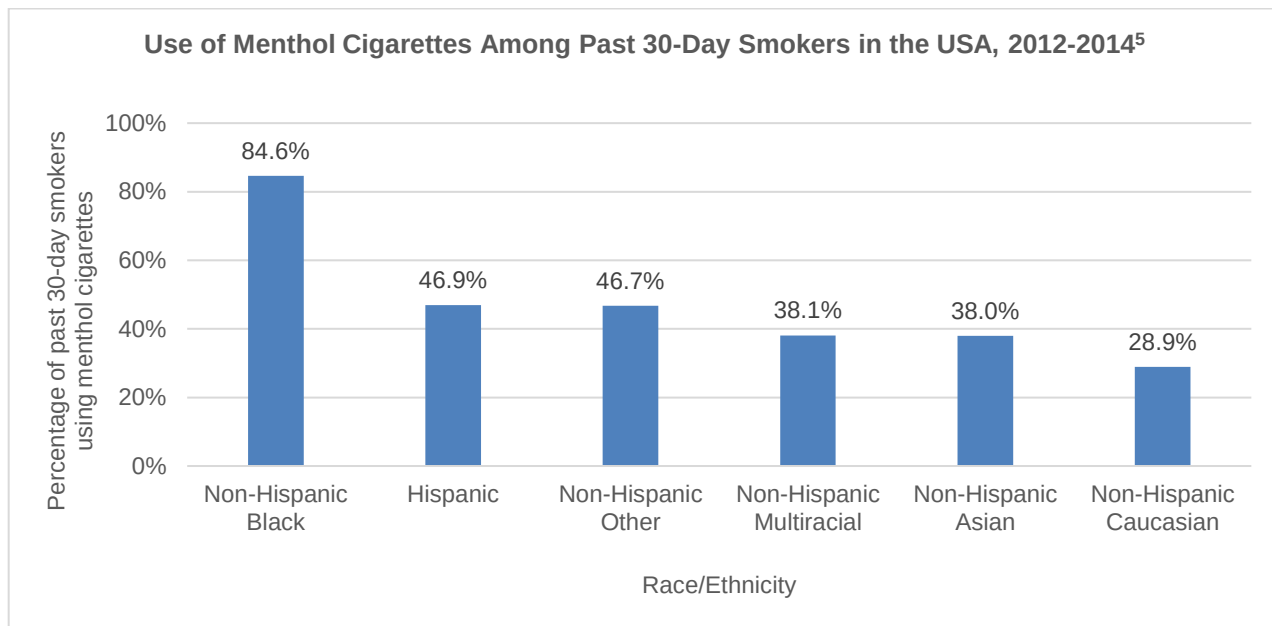
Menthol Cigarettes

For decades, tobacco companies have added menthol—a crisp, minty flavoring—to their products. By adding menthol to cigarettes, tobacco companies mask the natural harshness and taste of tobacco. The minty flavor makes tobacco products more mild, and therefore easier to use and more appealing to youth and new users.^{2,3}

Tobacco companies have manipulated the amount of menthol in cigarettes to encourage many people—particularly youth and populations targeted by the tobacco industry—to start and continue using tobacco.^{4,1} Smoking menthol cigarettes is associated with increased use of cigars and smokeless tobacco products,⁵ and it reduces the likelihood of successfully quitting smoking.^{3,6} Indeed, despite decreases in overall cigarette use in recent years, the proportion of cigarette smokers who use menthol cigarettes continues to rise.⁵ In 2014, more youth smokers used menthol cigarettes than non-mentholated cigarettes.⁵ Moreover, a 2017 study reported an increase in menthol cigarette use among youth cigarette smokers following the 2009 federal ban on flavored non-menthol cigarettes.⁷

Scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the US Food and Drug Administration (FDA) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire US population, and especially among youth, African Americans,³ and possibly Hispanic and Latino populations.⁶ Indeed, these groups bear the burden of menthol cigarette use: 84.6% of non-Hispanic Black smokers in the US reported smoking menthol cigarettes in the last month, in addition to 46.9% of Hispanic smokers, 38.1% of non-Hispanic multiracial smokers, 38% of non-Hispanic Asian smokers, and 46.7% of other smokers with non-Hispanic, non-Caucasian racial/ethnic backgrounds.⁵ Members of LGBTQ communities and young

adults with mental health conditions also struggle with disproportionately high rates of menthol cigarette use.^{8,9}



Tobacco companies have helped create and exacerbate these disparities. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to communities of color and youth.^{10,11} One analysis of cigarette advertising, promotions, and pack prices at stores near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of menthol cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.”¹² There was no such association found for non-mentholated cigarettes.¹² Similarly, a New York study found that promotions that reduce the price of menthol cigarettes are disproportionately targeted to youth.¹³

Other Flavored Tobacco Products

In addition to selling menthol cigarettes, tobacco companies have developed flavored OTPs that have the same youth-friendly characteristics as the banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.¹⁴ In fact, cigars follow only ESDs and cigarettes as the third most common form of tobacco used by youth.¹⁵ Smokeless tobacco products, including chewing tobacco, snuff, and snus, come in flavors such as mint, wintergreen, berry, cherry, and apple¹⁶ to mask the harsh taste of tobacco.^{14,17} Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.¹⁸ Nicotine solutions, also known as e-liquids and which are consumed via ESDs such as electronic

cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.¹⁹

Consumption of flavored tobacco products has grown in recent years. From 1995 to 2008, sales of little cigars increased by 316%,²⁰ and in 2014, “flavored cigars accounted for more than half of all cigar sales (53.3%).”²¹ A 2009-2010 survey found that 42.9% of adult cigar smokers used flavored cigars,² and a 2014 survey found that 66.4% of people who smoked little cigars or cigarillos used flavored products.²² In 2014, nearly two-thirds of US middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored ESD within the past 30 days.²³ Moreover, a 2013-2014 survey found higher rates of flavored cigar use among vulnerable populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”²⁴

Like menthol, flavorings such as chocolate or apple help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.² In fact, a 2013-2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”^{25,26} Policy interventions that target youth tobacco use are particularly critical because most individuals start using tobacco as minors or young adults.²⁷ In California, 64% of smokers start smoking by age 18, and 96% start smoking by age 26.²⁸ Compared with individuals who start smoking later in life, individuals who start smoking at a young age are at increased risk for severe addiction to nicotine.¹⁴

OTPs pose a threat to public health for several reasons. One major concern is that many users, especially young people, assume that OTPs do not pose significant health risks. Research shows that cigar smokers have misconceptions about the safety of cigars; for example, they often believe cigars are less harmful and less addictive than cigarettes.²⁰ Studies have found that young people believe smoking hookah is safer than smoking cigarettes, and incorrectly believe that hookah smoke is less toxic than cigarette smoke.^{29,30} Moreover, 58.8% of 12th-grade students report that they *don't* believe regular use of smokeless tobacco presents a great risk of harm.²⁷ The misperception among many young people that OTPs do not present significant health risks, coupled with the fact that many OTPs are flavored, may contribute to increased use of these products among young people.

Despite these misconceptions, the FDA has stated that “[a]ll tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products.”³¹ Regular cigar smoking is associated with increased risk for lung, larynx, oral cavity, and esophagus cancers.³² Hookah use has been associated with lung cancer, respiratory illness, and periodontal disease.³³ Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence that users have an increased risk of developing oral cancers.¹⁴ The Surgeon General has reported that e-cigarettes “contain harmful ingredients that are dangerous to youth” and that e-cigarette aerosol “can contain

harmful and potentially harmful constituents.”³⁴ Moreover, multiple studies have confirmed that e-cigarette vapor contains toxic substances.^{35–37} To reduce the health impacts of menthol cigarette use and OTP use, communities can adopt policy interventions to regulate tobacco industry efforts that encourage youth, low-income populations, and communities of color to use mentholated and flavored products.

Considerations When Regulating Flavored Tobacco Products

A combination of strategies can protect youth from using tobacco and reduce industry-driven health inequities. Many communities are exploring programmatic and policy approaches to address the chronic health conditions associated with tobacco use. Some viable approaches are requiring local tobacco retailer licenses, limiting tobacco retailer density, setting minimum package sizes, and restricting the distribution of free or low-cost tobacco products. ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce tobacco use, particularly among young people and vulnerable populations.

Policies that regulate the sale of flavored tobacco products can raise tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and well-being. Tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth. However, despite youth access laws, young people continue to buy and use tobacco products. Indeed, overall youth tobacco use didn’t change significantly between 2011 and 2015, with a 2015 survey reporting that nearly one-third (31.4%) of high school students used cigarettes, cigars, smokeless tobacco, or ESDs in the 30 days preceding the survey.¹⁵ In particular, young people are using a variety of OTPs:

- In 2015, 10.3% of high school students reported using cigars, cigarillos, or little cigars.¹⁵
- Youth hookah use increased more than 75% from 2011 to 2015, and youth ESD use increased more than tenfold during the same period.³⁸
- The percentage of high school students using smokeless tobacco products increased from 6.4% in 2012³⁹ to 7.3% in 2015.¹⁵
- A significant percentage of youth cigarette smokers concurrently use OTPs, increasing their risk for addiction and other health problems.¹⁴
- In a 2013-2014 survey, more than two-thirds of youth who used a non-cigarette tobacco product within the past 30 days reported doing so “because they come in flavors I like.”²⁶

Due to industry practices, individuals from communities of color, particularly young adults of color, are also more likely to use OTPs, such as little cigars.⁴⁰ In addition, a study found that daily menthol cigarette users are significantly more likely than occasional, non-menthol smokers to use flavored little cigars and cigarillos.⁴¹ African Americans and other communities of color are burdened with

disproportionately high rates of menthol cigarette use; this data, coupled with the findings from the study mentioned above, suggest that these populations are also more likely to use flavored little cigars and cigarillos. Many of these disparities are likely the result of tobacco companies' efforts to make these products more available, more heavily advertised, and cheaper in African American communities.⁴² Accordingly, interventions such as a flavored tobacco restriction, may be necessary to regulate the marketing and sale of flavored tobacco products, including menthol cigarettes, to youth and in communities of color.

Tobacco industry representatives have asserted that laws restricting the sale of flavored tobacco products overreach because they strip adults of the ability to buy lawful flavored products that they may prefer to non-flavored products. Additionally, retailer associations have asserted that laws restricting flavored tobacco products will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by flavored tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation restricts the ability of adults to purchase these products or results in reduced tobacco sales for local retailers.

Congress grappled with this issue in enacting the Tobacco Control Act. They ultimately determined that the government couldn't meet the Act's goals of reducing the use of, dependence on, and social costs associated with tobacco products by allowing unrestrained access to all tobacco products. For that reason, Congress banned flavored cigarettes except menthol-flavored cigarettes (eg, fruit- and candy-flavored cigarettes), finding that a ban was appropriate given the strong youth appeal of these products.⁴³

Similarly, the US Court of Appeals for the Second Circuit found that New York City's flavored tobacco law advanced the Tobacco Control Act's goals of reducing the use of tobacco products and the harms resulting from such use.⁴⁴ Restricting the sale of flavored tobacco products is also consistent with the California legislature's decision in 2001 to ban the sale of *bidis*—hand-rolled filterless cigarettes that were sold in a variety of candy flavors. Although tobacco industry groups argued that the California bill overreached by prohibiting bidi sales to adults, state lawmakers decided to ban bidis based on the need to “reduce youth access to a particularly harmful and addictive form of tobacco.”⁴⁵

Legal Issues

Below we discuss some of the key legal issues associated with this Model Ordinance.

Federal Preemption

Preemption is a legal doctrine that provides that a higher level of government may limit, or even eliminate, the power of a lower level of government to regulate a certain issue. Under the US Constitution's “Supremacy Clause,” federal law governs over state or local law. So, if a state or local law conflicts with a federal law, the federal law trumps the lower-level law.

Tobacco industry groups and manufacturers have argued that the Tobacco Control Act, which prohibits the manufacture of flavored cigarettes (except menthol), preempts local regulation of flavored tobacco products. However, US cities have implemented ordinances restricting the sale of flavored tobacco products, including menthol cigarettes and/or flavored OTPs, and these ordinances have survived preemption challenges.

In 2009, New York City passed an ordinance restricting the sale of flavored OTPs. A smokeless tobacco manufacturer filed a lawsuit arguing that the Tobacco Control Act preempts localities from passing their own laws regulating flavored tobacco products. An appellate court upheld the ordinance, finding that federal law did not preempt New York City's ordinance because the ordinance regulated *the sale* of tobacco products, not the manufacture of those products.⁴⁴

In January 2012, Providence, RI, passed a similar law restricting the sale of flavored OTPs. Tobacco industry groups and manufacturers filed a lawsuit claiming that the Tobacco Control Act preempted the ordinance. A federal district court upheld the Providence law. The court found that the Tobacco Control Act does not preempt local laws related to the sale of tobacco products, such as Providence's ordinance restricting the sale of flavored OTPs. On September 30, 2013, the US Court of Appeals for the First Circuit affirmed the district court's decision.⁴⁶

In December 2013, Chicago passed a law prohibiting the sale of all flavored tobacco products, including menthol cigarettes, within 500 feet of any school. A trade group sued Chicago over the law, claiming that the Tobacco Control Act preempted the ordinance. On June 29, 2015, a US District Court in Illinois upheld the law, finding that the Tobacco Control Act does not preempt local laws that restrict the sale of menthol cigarettes and flavored OTPs.⁴⁷

Taken together, the decisions from Chicago, New York City, and Providence reaffirm the authority of state and local governments to enact laws regulating the sale of tobacco products and to adopt restrictions that are more stringent than federal law.

First Amendment

The First Amendment of the US Constitution protects the right to freedom of speech. Courts have determined that advertising and marketing are forms of expressive conduct—they communicate information about products to consumers. Thus, advertising, or commercial speech, is considered a type of speech under the First Amendment. For this reason, advertising has some degree of protection against government regulation; laws that attempt to restrict marketing, promotional content, or similar types of communication may not be permissible.

Under this Model Ordinance, a tobacco product is presumed to be flavored and cannot be sold if the text or images on its labeling or packaging indicate that the product imparts a flavor, taste, or aroma other

than that of tobacco. In Providence, tobacco industry groups argued that a similar provision in the city's ordinance was a marketing restriction that implicated the First Amendment. The Providence ordinance provides that a public statement made by a manufacturer that a tobacco product has a characterizing flavor constitutes presumptive evidence that the product is a flavored tobacco product. A federal court rejected the industry's First Amendment argument, finding that the use of a public statement made by a manufacturer to determine whether a product is flavored does not amount to a prohibition against speech.

The court noted that the sale of a flavored tobacco product in Providence is illegal, regardless of whether the product is specifically described as a flavored tobacco product. In other words, the court found that manufacturers are still free to describe their products as having a characterizing flavor, even though their flavored tobacco products cannot be sold in Providence. Thus, challenges to flavored tobacco regulations on First Amendment grounds have not been successful thus far.

Conclusion

Research has shown that cigarette and OTP use have serious health consequences. Young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes and OTPs. These products are considered “starter” products that help establish long-term tobacco use. Moreover, flavored tobacco products, particularly menthol cigarettes, pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, communities of color, low-income populations, and LGBTQ communities are significantly more likely to use menthol cigarettes and disproportionately bear the burden of tobacco-related harm. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

References

1. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.*; 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
2. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178.
3. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.*; 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
4. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health.* 2008;98(9):1685-1692. doi:10.2105/AJPH.2007.125542.
5. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014. *Tob Control.* October 2016. doi:10.1136/tobaccocontrol-2016-053329.
6. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations.*; 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf.
7. Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* January 2017. doi:10.1016/j.amepre.2016.11.019.
8. Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med.* 2015;48(1):93-97. doi:10.1016/j.amepre.2014.07.044.
9. Cohn AM, Johnson AL, Hair E, Rath JM, Villanti AC. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tob Induc Dis.* 2016;14(1):1. doi:10.1186/s12971-015-0066-3.
10. United States v. Philip Morris, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009).
11. Yerger VB, Przewoznik J, Malone RE. Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities. *J Health Care Poor Underserved.* 2007;18(4A):10-38. doi:10.1353/hpu.2007.0120.
12. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res.* 2012;14(1):116-121. doi:10.1093/ntr/ntr122.
13. Waddell EN, Sacks R, Farley SM, Johns M. Point-of-Sale Tobacco Marketing to Youth in New York State. *J Adolesc Heal.* 2016;59(3):365-367. doi:10.1016/j.jadohealth.2016.05.013.
14. U.S. Surgeon General. Preventing Tobacco Use Among Youth and Young Adults. A report from the Surgeon General. *US Dep Heal Hum Serv.* 2012;1395. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.ht...
15. Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance United States, 2015. *MMWR Surveill Summ.* 2016;65(6):1-174. doi:10.15585/mmwr.ss6506a1.
16. Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: Smokeless tobacco products vs. confectionery products. *Food Chem Toxicol.* 2010;48(2):755-763. doi:10.1016/j.fct.2009.12.015.
17. Nelson DE, Mowery P, Tomar S, Marcus S, Giovino G, Zhao L. Trends in smokeless tobacco use among adults and adolescents in the United States. *Am J Public Health.* 2006;96(5):897-905. doi:10.2105/AJPH.2004.061580.
18. Morris DS, Fiala SC, Pawlak R. Opportunities for policy interventions to reduce youth hookah smoking in the United States. *Prev Chronic Dis.* 2012;9(8):E165. doi:10.5888/pcd9.120082.
19. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control.* 2014;23(1):77-78. doi:10.1136/tobaccocontrol-2012-050604.
20. Cullen J, Mowery P, Delnevo C, et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18-25 years: A focus on race/ethnicity and brand. *Am J Public Health.* 2011;101(10):1955-1962. doi:10.2105/AJPH.2011.300209.
21. Viola AS, Giovenco DP, Miller Lo EJ, Delnevo CD. A cigar by any other name would taste as sweet. *Tob Control.* 2016;25(5):605-606. doi:10.1136/tobaccocontrol-2015-052518.
22. Nyman AL, Sterling KL, Weaver SR, Majeed BA, Eriksen MP. Little Cigars and Cigarillos: Users, Perceptions, and Reasons for Use. *Tob Regul Sci.* 2016;2(3):239-251. doi:10.18001/TRS.2.3.4.
23. Corey C, Ambrose B, Apelberg B, King B. Flavored Tobacco Product Use Among Middle and High School Students - United States, 2014. *Morb Mortal Wkly Rep.* 2015;64(38):1066-1070. www.cdc.gov/mmwr/preview/mmwrhtml/mm6438a2.htm.
24. Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavoured non-cigarette tobacco product use among US adults: 2013–2014. *Tob Control.* October 2016;tobaccocontrol-2016-053373. doi:10.1136/tobaccocontrol-2016-053373.
25. American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Stroke Association, American Lung Association, Campaign for Tobacco-Free Kids. *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars.*; 2017.

- www.tobaccofreekids.org/microsites/flavortrap/full_report.pdf.
26. Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*. 2015;314(17):1871. doi:10.1001/jama.2015.13802.
 27. U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. Atlanta, GA; 2000. www.cdc.gov/tobacco/data_statistics/sgr/2000/complete_report/pdfs/fullreport.pdf.
 28. Chapman R. *State Health Officer's Report on Tobacco Use and Promotion in California*. Sacramento; 2013. www.cdph.ca.gov/programs/tobacco/Documents/Resources/Publications/CA Health Officers Report on Tobacco_FINAL_revised 01 02 13.pdf.
 29. Wray RJ, Jupka K, Berman S, Zellin S, Vijaykumar S. Young adults' perceptions about established and emerging tobacco products: results from eight focus groups. *Nicotine Tob Res*. 2012;14(2):184-190. doi:10.1093/ntr/ntr168.
 30. Aljarrah K, Ababneh ZQ, Al-Delaimy WK. Perceptions of hookah smoking harmfulness: predictors and characteristics among current hookah users. *Tob Induc Dis*. 2009;5(1):16. doi:10.1186/1617-9625-5-16.
 31. U.S. Food and Drug Administration. *Flavored Tobacco Product Fact Sheet*.; 2011. www.fda.gov/syn/html/ucm183198.
 32. Shanks TG, Burns DM. "Chapter 4: Disease Consequences of Cigar Smoking" *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*.; 1998. http://cancercontrol.cancer.gov/brp/tcrb/monographs/9/m9_4.pdf.
 33. Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The effects of waterpipe tobacco smoking on health outcomes: A systematic review. *Int J Epidemiol*. 2010;39(3):834-857. doi:10.1093/ije/dyq002.
 34. U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA; 2016.
 35. Goniewicz ML, Knysak J, Gawron M, et al. Levels of selected carcinogens and toxicants in vapour from electronic cigarettes. *Tob Control*. 2014;23(2):133-139. doi:10.1136/tobaccocontrol-2012-050859.
 36. Cheng T. Chemical evaluation of electronic cigarettes. *Tob Control*. 2014;23(suppl 2):ii11-ii17. doi:10.1136/tobaccocontrol-2013-051482.
 37. Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P. Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. *PLoS One*. 2013;8(3):1-12. doi:10.1371/journal.pone.0057987.
 38. Singh T, Arrazola RA, Corey CG, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2015. *MMWR Morb Mortal Wkly Rep*. 2016;65(14):361-367. doi:10.15585/mmwr.mm6514a1.
 39. Arrazola R, Dube S, King B. Tobacco Product Use Among Middle and High School Students — United States , 2011 and 2012. *Mortal Morb Wkly*. 2013;62(45):893-897. www.cdc.gov/mmwr/preview/mmwrhtml/mm6245a2.htm.
 40. Sterling K, Berg CJ, Thomas AN, Glantz SA, Ahluwalia JS. Factors associated with small cigar use among college students. *Am J Health Behav*. 2013;37(3):325-333. doi:10.5993/AJHB.37.3.5.
 41. Sterling K, Fryer C, Pagano I, Jones D, Fagan P. Association between menthol-flavoured cigarette smoking and flavoured little cigar and cigarillo use among African-American, Hispanic, and white young and middle-aged adult smokers. *Tob Control*. October 2016;tobaccocontrol-2016-053203. doi:10.1136/tobaccocontrol-2016-053203.
 42. Cantrell J, Kreslake JM, Ganz O, et al. Marketing little cigars and cigarillos: Advertising, price, and associations with neighborhood demographics. *Am J Public Health*. 2013;103(10):1902-1909. doi:10.2105/AJPH.2013.301362.
 43. H.R. Rep. No. 111–58, pt. 1 (2009).
 44. U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428 (2d Cir. 2013).
 45. Assembly Committee on Governmental Organization, Committee Analysis, S.B. 322, 2001–2002 Sess. (Cal. 2001).
 46. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013).
 47. Indep. Gas & Serv. Stations Ass'ns, Inc. v. City of Chi., 112 F.Supp.3d 749 (N.D. Ill. 2015).

AN ORDINANCE OF THE [CITY / COUNTY] OF [____] RESTRICTING THE SALE OF MENTHOL CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AND AMENDING THE [____] MUNICIPAL CODE

The [City Council of the City / Board of Supervisors of the County] of [____] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. [See **Appendix A: Findings**]

COMMENT: A draft ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this legislation. The findings section is part of the ordinance and legislative record, and it contains information explaining the health and equity issues that the law would help address. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 22. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

SECTION II. [Article / Section] of the [____] Municipal Code is hereby amended to read as follows:

Sec. [____ (*1)]. DEFINITIONS. The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

COMMENT: Some terms defined in this Model Ordinance may already be defined in the jurisdiction’s municipal code. Include only the definitions that are necessary, and review all definitions for consistency. For example, the definition of Tobacco Product below covers a broad range of tobacco products (including electronic smoking devices), and may be more expansive than an existing definition in the municipal code. In restricting the sale of flavored tobacco products, jurisdictions with an existing definition of Tobacco Product need to decide whether to use this Model Ordinance’s definition or rely on their current definition. A jurisdiction is allowed to use different definitions of Tobacco Product in separate sections of its municipal code. However, to avoid confusion, the jurisdiction should make clear which sections of the municipal code are governed by a particular definition.

- (a) “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (b) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

COMMENT: This definition of Flavored Tobacco Product includes cigarettes. Federal law already prohibits the manufacture of flavored cigarettes, but it excludes menthol cigarettes from its prohibition. This Model Ordinance is more restrictive than federal law because it prohibits both the sale of menthol cigarettes and the sale of other flavored tobacco products. Below are some examples of the types of products prohibited by this Model Ordinance.

- Menthol cigarettes, roll-your-own tobacco, and components (eg, menthol flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- All other flavored cigarettes, roll-your-own tobacco, and components (eg, flavored rolling papers and filters intended for use with roll-your-own cigarettes)
- Flavored cigars and little cigars
- Flavored smokeless tobacco
- Flavored electronic smoking devices
- Flavored non-cigarette components, parts, and accessories (eg, flavored blunt wraps and flavored additives for e-liquids)

- (c) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (d) “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (e) “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.

- (f) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (g) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (h) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff;
 - (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

COMMENT: This definition of Tobacco Product is designed to cover a wide variety of products, including cigarettes, cigars, little cigars, smokeless tobacco, shisha (hookah tobacco), nicotine gel, nicotine lollipops, other nonconventional tobacco and nicotine products, electronic smoking devices, and the solutions and component parts that are used in these devices. The definition includes electronic smoking devices with or without nicotine. The definition also includes any component, part, or accessory normally used with a Tobacco Product (eg, rolling papers). There is an exception for FDA-approved products intended for medical use (eg, nicotine patches and other nicotine cessation products).

- (i) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Sec. [____ (*2)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

- (a) It shall be a violation of this [article / chapter] for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.

COMMENT: Some communities have created “buffer zones” by prohibiting the sale of flavored tobacco products within a specific distance of youth-populated areas, such as schools. For example, Berkeley, CA, and Chicago, IL prohibit the sale of flavored tobacco products, including menthol cigarettes, within 600 feet of any school and within 500 feet of any high school, respectively. Although these buffer zones are an important intervention, they're not comprehensive prohibitions on flavored tobacco product sales.

Communities can consider similar policies, but they should weigh the benefits and drawbacks of implementing a non-comprehensive flavored tobacco prohibition. A buffer zone approach may not provide the same public health benefits as a comprehensive, communitywide flavored tobacco restriction. Moreover, local jurisdictions that create buffer zones will likely face increased costs for implementation and potential enforcement challenges. For example, before a community can implement a buffer zone, it must conduct mapping surveys to determine the location of schools and tobacco retailers and measure the distances between them. Communities must routinely update the maps to reflect changes that affect where flavored tobacco products may be sold (eg, if a school opens, closes, or relocates). Developing and updating these maps may require significant resources.

Local jurisdictions must also educate tobacco retailers and the general public on how to determine whether a store is located within a buffer zone that prohibits the sale of flavored tobacco. This may include developing appropriate tools and resources for tobacco retailers to determine whether their store is within a buffer zone.

Despite these considerations, buffer zones remain a viable policy option for communities. If your community is interested in adopting a flavored tobacco product buffer zone, contact ChangeLab Solutions for assistance. This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco

Retailer or Manufacturer has:

- (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
- (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

-----OPTIONAL PROVISION-----

[(d) A Tobacco Retailer lawfully operating as of the date this ordinance is adopted is exempt from subsection (a) for a period of up to [6 months] from the effective date of this ordinance, provided that all of the following requirements are met:

- (1) Within [thirty (30) days] of the effective date of this ordinance, the Tobacco Retailer submits to the [City Manager / County Manager] written notice that it seeks temporary exemption from subsection (a) and documentation that demonstrates: (i) the Tobacco Retailer was lawfully operating as of the date this ordinance was adopted; (ii) [seventy percent (70%)] or more of gross sales receipts are derived from Tobacco Products, Tobacco Paraphernalia, or both, or [fifty percent (50%)] or more of completed sales transactions include Tobacco Products, Tobacco Paraphernalia, or both; and (iii) the amortization period afforded by the [6-month] period for the effectiveness of the ordinance adopting this section is insufficient to allow the Tobacco Retailer to sell, return to the distributor or wholesaler, or otherwise obtain the benefit of, property which has no lawful use by virtue of the ordinance adopting this section. The submission shall include all information and documentation the [City Manager / County Manager] may request to determine the Tobacco Retailer's qualifications for this exemption.
- (2) The [City Manager / County Manager] determines the Tobacco Retailer meets the qualifications set forth in [subsection (d)(1)].
- (3) The Tobacco Retailer submits all information and documentation requested by the [City Manager / County Manager] to determine continued qualification for this exemption. This exemption to subsection (a) shall not apply if the [City Manager / County Manager] determines that the Tobacco Retailer no longer meets the qualifications set forth in [subsection (d)(1)].]

- (4) The [City Manager / County Manager] shall offer the Tobacco Retailer an opportunity for an oral or paper hearing and render a written decision on the record of that hearing. That decision shall be final as to the [City / County] and subject to judicial review pursuant to Code of Civil Procedure section 1094.5.]

COMMENT: This Model Ordinance provides a 6-month delay between when a jurisdiction adopts the ordinance and when the flavored tobacco prohibition goes into effect (see “SECTION IV. Effective Date” on page 21). This delay provides all tobacco retailers with a 6-month period to sell their remaining inventory of flavored tobacco products. The delay also provides the local government with time to plan for implementation and enforcement.

The optional provision above (subsection (d)) temporarily grandfathers certain tobacco retailers, which exempts them from having to comply with the flavored tobacco prohibition in subsection (a) for an additional limited period of up to 6 months. Thus, a local jurisdiction that includes the optional subsection (d) above is granting certain tobacco retailers a period of 12 months in which to comply with the prohibition following the adoption of the ordinance (6 months is allowed for all tobacco retailers pursuant to SECTION IV on page 21, and an additional 6 months is allowed for certain tobacco retailers pursuant to subsection (d) above). The exemption in subsection (d) applies only to tobacco retailers that primarily sell tobacco products and/or tobacco paraphernalia, as specified above (we refer to these businesses informally as “significant tobacco retailers”). To qualify for the exemption in subsection (d), a retailer must meet the following requirements.

Requirements to Qualify for the Exemption:

- (1) The Tobacco Retailer submits a written notice indicating a request for temporary exemption and documentation that demonstrates the following:
 - (a) The Tobacco Retailer was lawfully operating on the date the ordinance was adopted;
 - (b) 70% or more of gross sales receipts are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both, or 50% or more of completed sales transactions are derived from the sale of Tobacco Products, Tobacco Paraphernalia, or both; and
 - (c) The amortization period (see explanation below) provided between the date of adoption and the effective date is insufficient to allow the Tobacco Retailer to sell or return its inventory of prohibited Flavored Tobacco Products.
- (2) The government determines the Tobacco Retailer meets these qualifications and grants it an additional 6 months to comply with the prohibition.

Importantly, this exemption lapses if at any time the government determines the tobacco retailer no longer meets these qualifications. The government’s decision is not subject to an internal appeal, but it can be reviewed in court under the administrative mandamus statute.

Jurisdictions seeking the maximum public health impact from this Model Ordinance should not insert this optional provision. Many public health laws take effect immediately and apply to all existing businesses without exception. The findings in this Model Ordinance (page 22) explain how a flavored tobacco prohibition protects public health, and in particular, how it protects youth

from the significant harms of tobacco use. Exempting businesses, even temporarily, can slow progress and undermine the benefits of this Model Ordinance.

Takings

Sometimes government staff ask whether applying a prohibition on flavored tobacco sales to existing businesses is a taking. A taking is a restriction on private property—which, in this case, is flavored tobacco products—that is so burdensome that a court determines that the government must pay just compensation for the property (because the government has effectively “taken” the property). Whether a law amounts to a taking is case-specific—it depends on the business—and the burden of proof falls on the business. In most settings, allowing the regulated business a reasonable time (typically a few months) to amortize the value of any investment in property—selling any remaining flavored tobacco products, for instance—that cannot be used after the prohibition takes effect prevents a taking.

An amortization period gives certain existing businesses a period of time to do business as usual before they must make changes to comply with a new law. Amortization periods are constitutional ways for local governments to balance the public interest and any financial impact on a private business. These periods are often short, measured in months, not years.

It is important to note that the financial impact is less severe for a business that sells many other products in addition to tobacco products (eg, convenience stores and grocery stores), and that inventory can be returned to the wholesaler or resold for retail sale outside the city or county adopting the prohibition. Moreover, the time between adoption of an ordinance and its effective date is sufficient to amortize minor investments in inventory and signage. For these reasons, the optional temporary grandfathering provision applies only to tobacco retailers that sell a significant amount of tobacco products and/or tobacco paraphernalia; these businesses may be most affected by a flavored tobacco prohibition. Nevertheless, a flavored tobacco prohibition does not require businesses to close, or even to stop selling all tobacco products. It is a reasonable restriction on a type of tobacco product that is particularly harmful, especially to youth. Examples of reasonable amortization periods in different contexts include the following.

- An amortization period of 1 to 4 years is sufficient for a billboard removal ordinance. *Metromedia, Inc. v. City of San Diego*, 28 Cal.3d 848, 882 (1980), reversed on other grounds, 453 U.S. 490 (1981).
- An amortization period of 32 months is sufficient to amortize a billboard. *People ex. rel. Department of Pub. Wks. v. Adco Advertisers*, 35 Cal.App.3d 507 (1979). (Note: Amortization is often litigated in the context of billboards.)
- An amortization period of 18 months is sufficient to terminate operation of an automobile wrecking yard. *People v. Gates*, 41 Cal. App. 3d 590 (1974).
- An amortization period of 20 months is sufficient to change or relocate an adult entertainment business. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004).
- An amortization period of 24 months is sufficient to terminate operation of a cement batching plant that invested \$98,000 (1950 dollars) in the business. *Livingston Rock & Gravel Co. v. Los Angeles County*, 43 Cal. 2d 121 (1954).

Notably, a federal district court upheld a San Francisco law prohibiting the sale of all tobacco

products in pharmacies and requiring that pharmacies comply by the effective date of the ordinance. In other words, the law didn't grant an amortization period. The court explained that the ordinance "merely regulates the sale of tobacco products; it does not force Plaintiff to engage in a certain type of business." The court further concluded that "although Plaintiff has alleged it has a vested property right in its [tobacco retailer] permits, it cannot overcome the fact that the enactment of the amended ordinance was a reasonable and permissible use of Defendants' police power." *Safeway Inc. v. City & Cty. of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).

-----END OPTIONAL PROVISION-----

Sec. [____ (*3)]. ENFORCEMENT.

- (a) The remedies provided by this [article / chapter] are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The subsections below offer a variety of enforcement options to the drafter and the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency has the discretion to choose which enforcement tools to use in each case. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

The enforcement options included in this Model Ordinance penalize Tobacco Retailers who sell or offer to sell Flavored Tobacco Products. In other words, this Model Ordinance does *not* penalize individuals for purchasing, attempting to purchase, possessing, or using Flavored Tobacco Products. Well-enforced laws targeting retailers are more effective and provide greater public health benefits than laws penalizing users. Moreover, laws penalizing purchasers and users raise significant equity concerns because their enforcement often disproportionately affects communities of color.

Some communities face challenges in enforcing their Flavored Tobacco Product ordinances. For example, enforcement officials may have trouble determining when a Tobacco Product qualifies as a Flavored Tobacco Product, particularly when the packaging and marketing materials do not explicitly identify a Characterizing Flavor (eg, Tobacco Products using "concept flavors" like "Arctic" and "Lightning"). Communities should consider potential challenges and develop guidelines for staff enforcement. If your community is concerned about enforcement, please contact ChangeLab Solutions for assistance.

- (b) Violations of this [article / chapter] are subject to a civil action brought by the [City Prosecutor / District Attorney] or the [City Attorney / County Counsel], punishable by a civil fine not less than [two hundred fifty dollars (\$250)] and not exceeding [one thousand dollars (\$1,000)] per violation.

COMMENT: This provision outlines the civil fines for violations of the ordinance. It requires the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. Government Code section 36901.

- (c) Violations of this [article / chapter] may, at the discretion of the [City Prosecutor / District Attorney], be prosecuted as infractions or misdemeanors when the interests of justice so require.

COMMENT: Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or 6 months in a county jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

SECTION III. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The [City Council / Board of Supervisors] of the [City / County] of [____] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

COMMENT: This is standard language. Often this “boilerplate” is found at the end of an ordinance, but its location is irrelevant.

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [6 months after date of enactment].

COMMENT: This section specifies the effective date of the ordinance, and it should be tailored to give the enforcing agency adequate time to educate tobacco retailers and the general public. The agency should also use this time to determine enforcement protocols for flavored tobacco products. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.

Appendix A: Findings.

The [City Council of the City / Board of Supervisors of the County] of [____] hereby finds and declares as follows:

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹ largely because these flavored products were marketed to youth and young adults,² and younger smokers were more likely than older smokers to have tried these products;³ and

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law,⁴ neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices; and

WHEREAS, flavored tobacco products are very common in California tobacco retailers as evidenced by the following:

- 97.4% of stores that sell cigarettes sell menthol cigarettes;⁵
- 94.5% of stores that sell little cigars sell them in flavored varieties;⁶
- 84.2% of stores that sell electronic smoking devices sell flavored varieties;⁷ and
- 83.8% of stores that sell chew or snus sell flavored varieties;⁸ and

WHEREAS, more than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes);⁹ and

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco¹⁰ and that these products help establish tobacco habits that can lead to long-term addiction;¹¹ and

WHEREAS, at least one study has found that the majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product;¹² and

WHEREAS, young people are much more likely than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes, cigars, cigarillos, and hookah tobacco;¹³ and

WHEREAS, 70% of middle school and high school students who currently use tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or other sweets;¹⁴ and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of US middle school and high school smokers report using flavored little cigars or flavored cigarettes;¹⁵ and

WHEREAS, much of the growing popularity of small cigars and smokeless tobacco is among young adults and appears to be linked to use of flavored products;¹⁶ and

WHEREAS, the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015;¹⁷

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸ and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;¹⁹ and

WHEREAS, between 2004 and 2014 use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);²⁰ and

WHEREAS, people ages 12 and older from communities of color are more likely to smoke mentholated cigarettes, as evidenced by the following percentages of people who smoke cigarettes reported smoking mentholated cigarettes in the last month:²¹

- 82.6% of Black or African American individuals;
- 53.2% of Native Hawaiians or Other Pacific Islanders;
- 36.9% of individuals with multiracial backgrounds;
- 32.3% of Hispanic or Latino individuals;
- 31.2% of Asian individuals;
- 24.8% of American Indians or Alaska Natives; and
- 23.8% of White or Caucasian individuals; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos, and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these

products easier to use and increasing their appeal among youth;²² and

WHEREAS, the tobacco industry has been manipulating the dose of menthol in cigarettes to ensure the uptake and continued use of tobacco, especially by young people and vulnerable populations for many years;²³ and

WHEREAS, smoking mentholated cigarettes reduces the likelihood of successfully quitting smoking;²⁴ and

WHEREAS, the tobacco industry has a well-documented history of developing and marketing mentholated brands to communities of color and youth;²⁵ and

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;²⁶ and

WHEREAS, a New York study found that price reduction promotions for menthol cigarettes are disproportionately targeted to youth markets;²⁷ and

WHEREAS, scientific reviews by the Tobacco Products Scientific Advisory Committee (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, and especially among youth, African Americans,²⁸ and possibly Hispanic and Latino individuals;²⁹

WHEREAS, scientific studies on the impact of a national ban on menthol in cigarettes found 36.5% of menthol cigarette users would try to quit smoking if menthol was banned³⁰ and between 300,000 and 600,000 lives would be saved by 2050;³¹ and

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco.³²

1. 21 U.S.C. § 387g(a)(1)(A).

2. Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: Tobacco marketing strategies. Tobacco industry documents reveal a deliberate strategy to add flavors known to appeal to younger people. *Health Aff.* 2005;24(6):1601-1610. doi:10.1377/hlthaff.24.6.1601. Lewis MJ, Wackowski O. Dealing with an innovative industry: A look at flavored cigarettes promoted by mainstream brands. *Am J Public Health.* 2006;96(2):244-251. doi:10.2105/AJPH.2004.061200. Connolly GN. Sweet and spicy flavours: new brands for minorities and youth. *Tob Control.* 2004;13(3):211-212. doi:10.1136/tc.2004.009191. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
3. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
4. 21 U.S.C. § 387g(a)(1)(A).
5. Schleicher N, Johnson T, Ahmad I, Henriksen L. Tobacco Marketing in California's Retail Environment Final report for the California Tobacco Advertising Survey (2011-2014) Submitted to the California Tobacco Control Program, California Department of Public Health. 2015. http://www.cdph.ca.gov/programs/tobacco/Documents/CDPH%20CTCP%20Refresh/Research%20and%20Evaluation/Reports/Tobacco%20Marketing%20in%20Californias%20Retail%20Environment_Notations_Final%202.9.16.pdf.
6. *Id.*
7. *Id.*
8. *Id.*
9. California Department of Public Health California Tobacco Control Program. *Healthy Stores for a Healthy Community: Alameda County.* 2014. [www.healthystoreshealthycommunity.com/documents/counties/Alameda County Data \(English\).pdf](http://www.healthystoreshealthycommunity.com/documents/counties/Alameda County Data (English).pdf).
10. Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi:10.1080/14622200600670389. Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi:10.1016/j.addbeh.2006.12.023. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
11. U.S. Food and Drug Administration. Flavored Tobacco Product Fact Sheet. 2011. www.fda.gov/syn/html/ucm183198. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
12. Oliver AJ, Jensen J a, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013;15(1):88-92. doi:10.1093/ntr/nts093.
13. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res.* 2013;15(2):608-614. doi:10.1093/ntr/nts178. Villanti AC, Richardson A, Vallone DM, Rath JM. Flavored tobacco product use among U.S. young adults. *Am J Prev Med.* 2013;44(4):388-391. doi:10.1016/j.amepre.2012.11.031. Substance Abuse and Mental Health Services Administration. *The NSDUH Report: Recent Trends in Menthol Cigarette Use.* Rockville, MD; 2011. www.samhsa.gov/data/sites/default/files/WEB_SR_088/WEB_SR_088/WEB_SR_088.htm.
14. Corey C, Ambrose B, Apelberg B, King B. Flavored Tobacco Product Use Among Middle and High School Students - United States, 2014. *Morb Mortal Wkly Rep.* 2015;64(38):1066-1070. www.cdc.gov/mmwr/preview/mmwrhtml/mm6438a2.htm.
15. King BA, Tynan MA, Dube SR, Arrazola R. Flavored-little-cigar and flavored-cigarette use among U.S. middle and high school students. *J Adolesc Heal.* 2014;54(1):40-46. doi:10.1016/j.jadohealth.2013.07.033.
16. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
17. Singh T, Arrazola RA, Corey CG, et al. Tobacco Use Among Middle and High School Students — United States, 2011–2015. *MMWR Morb Mortal Wkly Rep.* 2016;65(14):361-367. doi:10.15585/mmwr.mm6514a1.
18. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control.* 2014;23(1):77-78. doi:10.1136/tobaccocontrol-2012-050604. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. *Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General.* 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
19. Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing.

20. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino DB. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25:ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.
21. Substance Abuse and Mental Health Services Administration. *The NSDUH Report: Use of Menthol Cigarettes*. 2009. <https://perma.cc/4UG9-HUQ2>.
22. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: Findings from the 2009-2010 national adult tobacco survey. *Nicotine Tob Res*. 2013;15(2):608-614. doi:10.1093/ntr/nts178. Nelson DE, Mowery P, Tomar S, Marcus S, Giovino G, Zhao L. Trends in smokeless tobacco use among adults and adolescents in the United States. *Am J Public Health*. 2006;96(5):897-905. doi:10.2105/AJPH.2004.061580. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
23. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health*. 2008;98(9):1685-1692. doi:10.2105/AJPH.2007.125542. U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. Preventing Tobacco Use Among Youth and Young Adults A Report of the Surgeon General. 2012. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
24. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
25. United States v. Philip Morris, 449 F. Supp. 2d 1, 71 (D.D.C. 2006) aff'd, 566 F.3d 1095 (D.C. Cir. 2009). Yerger VB, Przewoznik J, Malone RE. Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities. *J Health Care Poor Underserved*. 2007;18(4A):10-38. doi:10.1353/hpu.2007.0120.
26. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res*. 2012;14(1):116-121. doi:10.1093/ntr/ntr122
27. Waddell EN, Sacks R, Farley SM, Johns M. Point-of-Sale Tobacco Marketing to Youth in New York State. *J Adolesc Heal*. 2016;59(3):365-367. doi:10.1016/j.jadohealth.2016.05.013.
28. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.
29. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf.
30. O'Connor RJ, Bansal-Travers M, Carter LP, Cummings KM. What would menthol smokers do if menthol in cigarettes were banned? Behavioral intentions and simulated demand. *Addiction*. 2012;107(7):1330-1338. doi:10.1111/j.1360-0443.2012.03822.x.
31. Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.
32. Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control*. February 2016;tobaccocontrol-2015-052418. doi:10.1136/tobaccocontrol-2015-052418.

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-18-19

WHEREAS vaping devices are the most commonly used tobacco product in California; and

WHEREAS more than 80 percent of high school students who consume tobacco use a vaping device; and

WHEREAS from 2016 to 2018, vaping among California high school students rose 27 percent; and

WHEREAS in 2018, 10.9 percent of California high school students reported using e-cigarettes and 14.7 percent reported using cannabis; and

WHEREAS 86.4 percent of California teenagers who consume tobacco products report using a flavored tobacco product; and

WHEREAS dramatic increases in youth vaping have been attributed to the appeal of flavored vapor and alternative nicotine products as well as advertising and promotional activities by companies targeted at youth; and

WHEREAS there are no manufacturing standards for non-cannabis vape products; and

WHEREAS there are over 15,500 e-liquid flavors for vaping devices, some of which create an inflammatory response, some of which are cytotoxic to lung cells, and some of which may play a role in addiction; and

WHEREAS since August 2019, a clinical syndrome has emerged of respiratory failure in previously healthy individuals who had recently vaped illegally-obtained and produced cannabis products, and the cause of this syndrome is not yet known; and

WHEREAS as of September 10, 2019, 63 cases of this syndrome have been reported in California, in patients aged 14-70; and

WHEREAS Californians suffering from this syndrome have experienced grievous harms to their health, including 28 patients requiring admission to an Intensive Care Unit, 19 patients requiring mechanical ventilation, and one death.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately.

IT IS HEREBY ORDERED that the California Department of Public Health (CDPH) shall develop recommendations to reduce the availability of vaping devices to persons under 21 years of age, which shall include, to the extent permissible by law, establishment of warning signs about the health risks of vaping at retailers where any vaping product is sold and in any vaping advertisements, and increased enforcement regarding illegal sales of vaping products and specifically e-liquid flavors, to youth. In addition, for nicotine-based products, the CDPH shall make recommendations regarding the establishment of standards for nicotine content and uniform packaging for purposes of including nicotine content in the calculation of the existing tax on

electronic cigarettes. The CDPH shall submit its recommendations to the Governor's Office by October 14, 2019.

IT IS FURTHER ORDERED that the CDPH immediately allocate a total of at least \$20 million in tobacco and cannabis program funds for a vaping awareness campaign, including digital and social media messaging focused on youth, young adults, and parents. This will build upon the award-winning and longest running anti-tobacco program in the nation.

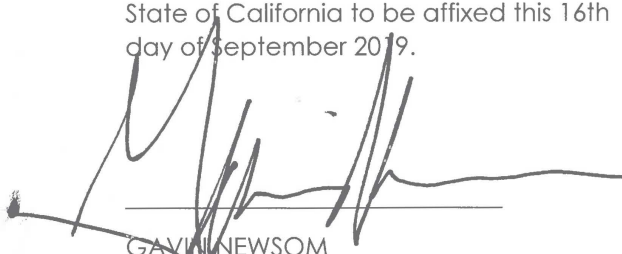
IT IS FURTHER ORDERED that the California Department of Tax and Fee Administration (CDTFA), develop recommendations to remove illegal or counterfeit vaping products from stores and to reduce youth vaping consumption through, (1) increased enforcement, and (2) including nicotine content in the calculation of the existing tax on electronic cigarettes. The CDTFA shall consider revenues currently derived from taxation of electronic cigarettes and the revenues that may be collected from a nicotine-based tax, the potential for evasion, and the feasibility of instituting a stamping requirement to maximize compliance. The CDTFA shall submit its recommendations to the Governor's Office by October 29, 2019.

IT IS FURTHER ORDERED that the CDTFA pursuant to its authority under Revenue and Taxation Code section 30454, require all distributors of tobacco products to report all distributions of such items within the State to the CDTFA as prescribed by the CDTFA.

IT IS FURTHER ORDERED that as soon hereafter as possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its departments, agencies, or other entities, its officers or employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 16th day of September 2019.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

The New York Times

Trump Administration Plans to Ban Flavored E-Cigarettes

As vaping-related illnesses spread, President Trump and top health officials met at the White House to discuss ways to keep the products away from teenagers.

By Sheila Kaplan

Published Sept. 11, 2019 Updated Sept. 19, 2019

WASHINGTON — The Trump administration said on Wednesday that it would ban the sale of most flavored e-cigarettes, at a time when hundreds of people have been sickened by mysterious lung illnesses and teenage vaping continues to rise.

Sitting in the Oval Office with the government's top health officials, President Trump acknowledged that there was a vaping problem and said: "We can't allow people to get sick. And we can't have our kids be so affected."

Alex M. Azar II, the health and human services secretary, said that the Food and Drug Administration would outline a plan within the coming weeks for removing flavored e-cigarettes and nicotine pods from the market, excluding tobacco flavors. The ban would include mint and menthol, popular varieties that manufacturers have argued should not be considered flavors.

The White House and the F.D.A. have faced mounting pressure from lawmakers, public health officials, parents and educators, who have grown alarmed by the popularity of vaping among teenagers but have felt powerless to keep e-cigarettes away from students and out of schools.

This summer's startling reports of vaping-related respiratory illnesses, which now near 500 cases in nearly three dozen states and have possible links to six deaths, have only amplified concerns and renewed calls for a total ban on the largely unregulated pipeline of e-cigarette and cannabis vaping products.

Just last week, Michigan became the first state to prohibit the sale of flavored e-cigarettes. Gov. Andrew M. Cuomo of New York also called for a ban, and Massachusetts and California are considering similar measures. San Francisco approved an e-cigarette ban earlier this year, which Juul Labs, the dominant seller in the United States, is lobbying to reverse through a ballot initiative this November.

[Is it time to quit vaping?]

Last year, the F.D.A. retreated from a threat to prohibit the sale of e-cigarettes as the increased rates of teenage use took public health experts by surprise. Public outrage stoked by accusations that Juul Labs was deliberately targeting youths led the company to voluntarily stop shipping most flavored pods, like mango and cucumber, to thousands of retail locations around the country.

Agency officials had hoped that making flavored products less accessible would reduce teenage use of the popular devices, but instead the latest figures show another increase in youth vaping, Mr. Azar said, after meeting with the president on Wednesday.

Five million minors, mostly in their high school years, reported that they had used e-cigarettes recently, he said. About one-quarter of the nation's high school students reported vaping within the last 30 days in this year's annual survey, up from 20 percent last year.

Speaking to reporters on the White House lawn, Mr. Azar said that removing flavor pods from stores just prompted youths to shift from fruit flavors to menthol and mint, which were still available, rather than to stop vaping altogether.

"What we've seen has been, and it may be connected, a huge spiking of children's utilization of mint and menthol e-cigarettes, which remain, by all manufacturers, available in retail stores," Mr. Azar said.

The issue appeared to hit home at the White House, where Melania Trump attended the meeting with Mr. Azar, Dr. Ned Sharpless, the acting F.D.A. commissioner and the president. "She's got a son," Mr. Trump said of their teenage child, Barron. "She feels very strongly about it," he said.

Juul has repeatedly denied that it aimed its products at minors, but its sleek devices have become more and more popular and are easy to conceal. And even though the company's array of flavors had disappeared from shelves, they were still available online, and a host of competitors sprouted up with lookalike versions and similar flavors to fill the vacuum. Juul had said that nearly 85 percent of its sales were from mint and other flavors, and that its decision to stop shipping them to stores had dented their sales.

On Monday, the F.D.A. took action against Juul, sending a warning letter accusing the company of violating federal regulations by promoting its vaping products as a healthier option than cigarettes.

As for the agency's decision to prohibit most flavors, Ted Kwong, a Juul spokesman, said the company would comply. "We strongly agree with the need for aggressive category-wide action on flavored products," he said.

Public health groups have long clamored for strict curbs on e-cigarettes and flavors, especially because they worried that the soaring use among youths was hooking a new generation on nicotine after decades of a decline in smoking rates.

Attachment: NY Times 9-11-2019 (2483 : Direction re: Flavored Tobacco)

Matthew L. Myers, president of the Campaign for Tobacco-Free Kids, called the administration's decision "historic."

"President Trump's announcement that the government will remove flavored e-cigarettes from the market is an extraordinary and necessary step," he said. "This is a public health crisis and we cannot afford more delays in confronting it."

Harold Wimmer, president and chief executive of the American Lung Association, said the group had long advocated removal of products that appealed to teenagers.

"Flavors have been shown to initiate kids to tobacco use and a lifetime of addiction and tobacco-related death and disease," Mr. Wimmer said. "We are anxious to review all of the details of the administration's plan."



What You Need to Know About Vaping-Related Lung Illness

Coughing, fatigue and shortness of breath are warning signs for anyone who has vaped within the last 90 days.

Sept. 7, 2019

Conservative organizations and the vaping industry had earlier joined forces to oppose other F.D.A. proposals, including one that sought to require retailers to curb access to vaping devices, pods and other paraphernalia to keep them away from minors. Since last fall, the agency has been working on a plan to require stores to sequester flavored e-cigarettes in areas off-limits to minors, but that had seemed to falter as impractical and one that would face significant legal hurdles. This new announcement supersedes that proposal.

Since Dr. Scott Gottlieb resigned as F.D.A. commissioner in April, the agency had seemed more sluggish in its efforts to control the epidemic of youth vaping. Although Dr. Sharpless had said he planned to continue the agency's work to reduce both cigarette and e-cigarette use, not much moved forward. Dr. Gottlieb's proposal to ban menthol in cigarettes, for example, has languished, as has his call for reducing nicotine in cigarettes to nonaddictive levels.

But as school began around the country and the spate of illnesses sparked fear nationwide, calls for the F.D.A. to take stronger action intensified.

Senator Dick Durbin, Democrat of Illinois and a longtime opponent of tobacco and e-cigarettes, went so far last week as to warn that he would seek Dr. Sharpless's resignation if the agency failed to rid the market of e-cigarette flavors.

Michael R. Bloomberg, the former mayor of New York, also decided to weigh in this week by announcing a \$160 million push to ban flavored e-cigarettes.

In a statement on Tuesday, the Vapor Technology Association, a trade group, said it opposed a flavor ban and essentially called the efforts misguided.

"More than two million Americans have died from cigarette smoking-related illnesses over the last five years," the organization said. "President Trump shouldn't follow the lead of San Francisco, Mike Bloomberg and the far left anti-business extremists."

But there is little conclusive research on the long-term safety of using Juul or other e-cigarettes. The company's flavor pods have a higher level of nicotine than cigarettes do, which is of concern because of the impact nicotine can have on the still-developing teenage brain.

Doctors have said that many patients suffering from acute lung illnesses appear to have vaped some THC or cannabis-related products, although others have reported using e-cigarettes as well. No one has singled out a particular company, device or product as the possible culprit.

Deaths have been reported in Illinois, Kansas, California, Indiana, Minnesota and Oregon. The patients' ages ranged from the 30s to middle-aged or older, and some had underlying lung or other chronic conditions, health officials said.

And while major e-cigarette companies like Juul and vaping groups have sought to distance themselves from the increasing public dismay at the reports of increasing vaping-related illnesses, some public health agencies are urging a halt to use of the devices and products.

The Centers for Disease Control and Prevention have urged people, especially nonsmokers and teenagers, not to vape at all. And the C.D.C. has even recommended that cigarette smokers trying to quit should consult a doctor rather than take up e-cigarettes.

One House oversight panel has asked Dr. Robert Redfield, the director of the C.D.C., to appear on Sept. 24 to testify about the outbreak of vaping-related lung illnesses. Another investigative subcommittee is planning a separate hearing on the matter the next day.

In New York, Governor Cuomo also directed state health officials to subpoena companies that market or sell so-called thickening agents, which are sometimes added to illicit vaping products. A state laboratory, which detected the agents in vaping products collected from New York's patients, found that they were nearly pure vitamin E acetate oil, which officials have said is a potential cause of some of the illnesses.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

PREPARED BY: Tiffany Brown, Associate Planner
APPROVED BY: City Manager

APPROVE DESIGN REVIEW PERMIT TO CONSTRUCT A MIXED-USE PROJECT IN CONJUNCTION WITH THE REALIGNMENT OF DEPOT STREET AT E. DUNNE AVENUE (HALE LUMBER SITE)

RECOMMENDATION(S)

1. Open and close the public hearing; and
2. Adopt resolution approving a Design Review Permit for the mixed-use development.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Housing
Traffic/Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan
Downtown Specific Plan
Economic Blueprint
General Plan/Housing Element
Station Area Master Plan
Vision Zero

REPORT NARRATIVE:

The Latala Group, LLC is requesting the approval of a Design Review Permit for a mixed-use project in conjunction with the realignment of Depot Street to Church Street and East Dunne Avenue. This is the final action on this project.

Design Review Permits are an administrative permit, except when the project site is within the Downtown Specific Plan area and considered a significant project. Then the design permit is referred to the Planning Commission with recommendation to City Council.

The project site is located on the east side of Depot Street between Fifth Street and East Dunne Avenue and includes the Community and Cultural Center (CCC) parking lot. The project site is divided into two different uses: 1) the Community and Cultural Center (CCC) parking lot, and 2) the Hale Lumber Yard.

The CCC lot contains 240 parking stalls that serve the CCC and Gavilan College. The Downtown Specific Plan and General Plan policies recommend the realignment of the south end of Depot Street to connect with the existing Church Street and East Dunne Avenue intersection. To be consistent with the guiding documents, The Latala Group, LLC is realigning Depot Street through the CCC parking lot in conjunction with the redevelopment of the Hale Lumber site. The realignment vacates .29-acres of Depot Street right-of-way, which will be incorporated into the mixed-use project.

Staff received feedback on the design of the realigned Depot Street at previous Community, Commission, and Council meetings and considered the following when designing the project:

- Alignment through CCC lot with least amount of impacts to the operations at the CCC and neighboring properties
- No net loss of parking in the CCC parking lot
- Consider design to include a sense of place

The proposed alignment divides the CCC parking lot into two lots, north and south, and is engineered as a curvilinear roadway to prevent speeding. The CCC parking lots will be restriped and reconfigured to achieve no net loss of parking. The realigned Depot Street will enhance pedestrian connectivity by providing detached sidewalks between 5th Street and East Dunne Avenue and provides a secondary pathway from Depot Street to East Dunne Avenue. To provide a sense of place for the new street and complying with Vision Zero, the project includes cobble-stone pavers on the realigned Depot Street section perpendicular to the CCC. The pavers provide a visual sense of arrival to the CCC and provide a physical change in texture, alerting drivers that they are entering a pedestrian active space. If the budget within the Disposition Development Agreement allows, the project will include decorative crosswalks at the East Dunne Avenue intersection and mid-block crosswalk that connects the north CCC parking lot to the south CCC parking lot. The Developer has agreed to incorporate a new decorative fence that will complement the crosswalk design and CCC in addition to screening the CCC rose garden from the realigned street. (Attachment 1 & 2)

The second portion of the project is the Hale Lumber site where Council previously discussed the importance of street facing units, resident access during events, and mitigations for the Oak trees on site.

The Hale Lumber yard proposal includes the development for 40 three-story attached townhome style units and one mixed-use building with office space below and nine condominiums on the second and third floor. All buildings face Depot Street and East Dunne Avenue. To tie in the history of the Hale Lumber site with the proposed development, the project introduces a modern style craftsman product that incorporates wood siding-clad with wood and metal accents that add textural components. In addition, the project will be named "The Lumber Yard." The Developer has also agreed to replace the Oak Trees on site at a 2:1 ratio with 48" box Oaks. The Oaks will be dispersed on the Hale Lumber Site and near the entrance of the CCC.

The project was reviewed and found consistent with the General Plan Policies, the Downtown Specific Plan Standards and Design Guidelines, the Municipal Code, the Disposition Development Agreement (DDA), the Residential Development Control System (RDCS) Development Agreement, and the project meets the Design Review Permit findings as outlined in the attached resolution (Attachment 3 & 4).

COMMUNITY ENGAGEMENT: Inform

Staff presented the Design Review permit request to the Downtown Association on September 19, 2019. In addition, the proposed project was publicly noticed (mailed to property owners within 300 feet of the Project and newspaper legal notice) of the minimum 10-day period and a sign has been posted at the property location pursuant to the Planning Division requirements.

ALTERNATIVE ACTIONS:

The Council could deny the resolution for the Design Review Permit and recommend changes to the design.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On April 18, 2018 the City Council reviewed and approved an Exclusive Right to Negotiate Agreement with the Latala Group, LLC that included the realignment of Depot street as part of the mixed-use development proposal for the Hale Lumber site.

At its October 3, 2018 meeting, the City Council approved a Disposition Development Agreement with the Developer memorializing the realignment of Depot Street, the parking lot enhancements for the CCC, the development of office space within the mixed-use project site, and the vacation of Depot Street.

The City Council adopted Ordinance No. 2282 N.S. on October 17, 2018, approving General Plan and Zoning Amendments for the Depot Street right-of-way as the first step towards realigning Depot Street.

In compliance with the DDA, the developer submitted preliminary and final Residential Development Control System applications and was awarded 49 building allotments at the January 22, 2019 Planning Commission meeting. The Council adopted Ordinance No. 2300 N.S. on April 17, 2019, approving a Development Agreement for the Project, and memorializing the Project public benefit commitments.

On September 10, 2019, (Attachment 6) the Planning Commission reviewed and unanimously approved the Tentative Map, and recommended unanimous approval of the Design Review Permit to City Council with the following comments:

- Ensure project is well lit
- Enforce project noise mitigations
- Consider the following for Depot Street
 - Stop signs at Depot Street and 5th Street intersection; or raised/table intersection. Preference for stop sign
 - Cobble stones vs raised crosswalk for midblock crossing
 - Consider in pavement flashing lights for midblock crossing if needed

FISCAL AND RESOURCE IMPACT:

The City's development review functions are cost recovery, with fees collected from applicants to cover cost of services. The applicable fees for the design review permit have been collected.

CEQA (California Environmental Quality Act):

Pursuant to Sections 15177(b) and 15179(b) of the CEQA Guidelines, the project is found to be consistent with the development assumptions in the Downtown Specific Plan and would not result in any new or more significant cumulative impacts than the previously approved project disclosed in the Downtown Specific Plan MEIR. An initial study confirming consistency is found in Attachment 5.

LINKS/ATTACHMENTS:

1. Perspective Views of Project
2. Site Plans (web link)
3. Design Review Permit Resolution, with Exhibit A
4. Exhibit B to Resolution - Findings for Ordinance Consistency
5. Initial Study and Supporting Documents (web link)
6. September 10, 2019 Planning Commission Packet (web link)
7. Letter from public



Attachment: Perspective Views of Project (2465 : Depot - Lataia)

THE LUMBERYARD
Morgan Hill, CA
July 24, 2019

The Lataia Group

14632 Stonebridge Court, Morgan Hill, CA 95037
408.515.9205

PERSPECTIVE VIEW 1
A1

SDG Architects, Inc.
3361 Walnut Blvd, Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com





Attachment: Perspective Views of Project (2465 : Depot - Latala)

THE LUMBERYARD
Morgan Hill, CA
July 24, 2019

The Latala Group

14632 Stonebridge Court, Morgan Hill, CA 95037
408.515.9205

PERSPECTIVE VIEW 2
A2

SDG Architects, Inc.
3361 Walnut Blvd, Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com



Packet Pg. 65



Attachment: Perspective Views of Project (2465 : Depot - Latala)

THE LUMBERYARD
Morgan Hill, CA
July 24, 2019

The Latala Group
14632 Stonebridge Court, Morgan Hill, CA 95037
408.515.9205

PERSPECTIVE VIEW 3
A3

SDG Architects, Inc.
3361 Walnut Blvd, Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com





Attachment: Perspective Views of Project (2465 : Depot - Latala)

THE LUMBERYARD
Morgan Hill, CA
July 24, 2019

The Latala Group
14632 Stonebridge Court, Morgan Hill, CA 95037
408.515.9205

PERSPECTIVE VIEW 4
A4

SDG Architects, Inc.
3361 Walnut Blvd, Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com





Attachment: Perspective Views of Project (2465 : Depot - Latala)

THE LUMBERYARD
Morgan Hill, CA
July 24, 2019

The Latala Group
14632 Stonebridge Court, Morgan Hill, CA 95037
408.515.9205

PERSPECTIVE VIEW 5
A5

SDG Architects, Inc.
3361 Walnut Blvd, Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com



RESOLUTION NO. XX-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DESIGN REVIEW PERMIT TO ALLOW FOR THE CONSTRUCTION OF A 49 UNIT MULTI-FAMILY MIXED USE PROJECT WITH 3,076 SQUARE-FOOT OFFICE SPACE IN CONJUNCTION WITH THE REALIGNMENT OF DEPOT STREET TO CHURCH STREET THROUGH THE COMMUNITY AND CULTURAL CENTER (CCC) PARKING LOT LOCATED AT 17020 DEPOT STREET AND 17060 MONTEREY ROAD (APN: 726-13-049, 052)

WHEREAS, the developer the Latala Group, LLC applied for a Design Review permit in compliance with Disposition Development Agreement No. DA2018-0005 and RDCS Development Agreement No. DA2018-0007 to construct 49 multi-family units, a 3,076 square foot office space, and the realignment of Depot Street to Church Street and East Dunne Avenue intersection (SR2019-0003: Depot – Latala); 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

WHEREAS, on September 10, 2019, the Planning Commission reviewed and considered the Initial Study prepared for the Project and determined that the proposed Project is consistent with the Downtown Specific Plan Master EIR pursuant to Sections 15177(b) and 15179(b) of CEQA Guidelines; and

WHEREAS, on September 10, 2019, the Planning Commission reviewed and recommended approval of the Design Review Permit to City Council; and

WHEREAS, on October 2, 2019, the City Council reviewed the Design Review Permit and considered the Initial Study prepared for the Project and determined that the proposed Project is consistent with the Downtown Specific Plan Master EIR pursuant to Sections 15177(b) and 15179(b) of CEQA Guidelines; and

WHEREAS, the Initial Study prepared for the project is incorporated, by this reference, into this Resolution as if fully set forth herein; and

WHEREAS, although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in a Master EIR (MEIR) for the Downtown Specific Plan, and (b) have been avoided or mitigated pursuant to that earlier MEIR, including revisions or mitigation measures that are imposed upon the Project, nothing further is required. Furthermore, pursuant to CEQA Guidelines Section 15179, no substantial changes have occurred with

respect to the circumstances under which the MEIR was certified, and there is no new available information, which was not known and could not have been known at the time that the MEIR was certified; and

WHEREAS, the proposed project is consistent with the development assumptions in the Downtown Specific Plan. The proposed project would not result in any new or more significant cumulative impacts than the previously approved project (disclosed in the Specific Plan MEIR). Mitigation measures adopted for the previously approved project were feasible and will be implemented by the proposed project; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 89.5 of the California Department of Fish and Game Code.

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

SECTION 1. The City Council hereby finds that the foregoing recitals are true and correct.

SECTION 2. The project is consistent with the Zoning Ordinance, General Plan and Downtown Specific Plan as demonstrated in **Exhibit B**.

SECTION 3. The Design Review has been found consistent with the criteria for Design Review permit approval contained in Section 18.108.040 of the Morgan Hill Municipal Code:

- a. The proposed project is consistent with the General Plan and any applicable specific plan, area plan, or other design policies and regulations adopted by the City Council.

The redevelopment of the Hale Lumber site in conjunction with realigning Depot Street is consistent with the General Plan Policies, Specific Plan transportation infrastructure, development standards, and design guidelines.

- b. The proposed project complies with all applicable provisions of the Zoning Code and Municipal Code.

The proposal is consistent with all provisions in the Zoning Code which is consistent with the Downtown Specific Plan requirements.

- c. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.

Chapter 5: Design Guidelines as part of the Downtown Specific Plan supersede the regulations within the Design Review Handbook. A consistency chart was prepared and found the project consistent with all design guidelines in that chapter.

- d. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

An Initial Study was prepared for the Project and found the Project to be consistent with the Downtown Specific Plan MEIR pursuant to Sections 15177(b) and 15179(b) of CEQA Guidelines.

- e. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

The redevelopment of the Hale Lumber site and realignment of Depot Street through the CCC parking lot is part of the vision for both the General Plan and Downtown Specific Plan. The project will not be detrimental to the public health as analyzed within the Initial Study. The project and circulation were designed to Vision Zero standards and therefore will not be detrimental to public safety or welfare. The project enhances public access by adding sidewalks and will comply with SWPPP and Building Code requirements, therefore will not be materially injurious to the properties or improvements in the vicinity.

- f. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.

Chapter 5: Design Guidelines as part of the Downtown Specific Plan supersede the regulations within the Design Review Handbook. The project is found to be consistent with all design guidelines in that chapter.

- g. For new residential development, the project complies with commitments made through the residential development control system (RDCS).

The project received approval of a RDCS Development Agreement (DA) on April 17, 2019. The project was reviewed and found to be in compliance with the development agreement public benefit commitments required prior to approval of a Design Review permit.

SECTION 4. The City Council approves the Design Review Permit for application SR2019-0003: Depot-Latala. The design shall be expressly conditioned in

conformance with conditions incorporated herein and as attached as **Exhibit "A"**. Minor deviations to the site review permit may be approved by the Community Development Director when consistent with the overall intent of the project.

SECTION 5. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your use for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, or fees collected (a) under development agreements, (b) pursuant to agreements with the Morgan Hill Redevelopment Agency or (c) as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provided. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

PASSED AND ADOPTED THIS 2nd DAY OF OCTOBER 2019, AT A REGULAR MEETING OF THE CITY COUNCIL BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

RICH CONSTANTINE, Mayor

Attachment: Design Review Permit Resolution, with Exhibit A [Revision 2] (2465 : Depot - Latala)

City of Morgan Hill
Resolution No.
Page 5 of 31

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

✧ CERTIFICATION ✧

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No._____, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 2nd day of October, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Design Review Permit Resolution, with Exhibit A [Revision 2] (2465 : Depot - Latala)

EXHIBIT "A"

STANDARD CONDITIONS

APPLICATION: SR2018-0003, Depot – Latala

THE FOLLOWING ARE STANDARD CONDITIONS OF APPROVAL THAT MUST BE MET PRIOR TO THE ISSUANCE OF BUILDING PERMITS AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS MAY BE SPECIFIED IN THE CONDITIONS. THE APPROVAL REQUIREMENTS INCLUDE THESE REQUIREMENTS AND ANY SPECIAL CONDITIONS THAT ARE APPLIED THROUGH THE DEVELOPMENT APPROVAL PROCESS. APPLICANTS ARE REQUIRED TO SIGN THE APPROVAL CERTIFICATE/RESOLUTION FORM INDICATING THEY UNDERSTAND AND AGREE TO IMPLEMENT THESE STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS APPLIED TO THEIR PERMIT APPROVAL.

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

TIME LIMITS

- A. The Design Review permit approval granted under this Resolution shall remain in effect for 24 months to October 2, 2021. Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. The extension of time may be reviewed and approved at the admin level. **(MHMC 18.108.040)**

OTHER CONDITIONS

- A. The CCC parking lot will be resurfaced and striped to include 240 parking stalls with a maximum of 30% of the stalls designed as compact. As part of the TIA, the property owner or designee shall install speed-reducing measures as simple as posting speed limit signs for the private drive aisle on the Hale Lumber Site.

- B. Prior to approval of building permits, all building windows, doors will demonstrate compliance with required STC ratings identified within the Noise and Vibrations Study prepared by Edward L. Pack Associates, Inc.
- C. Pursuant to the Edward L. Pack Associates report, all the living spaces that require mechanical ventilation will be demonstrated on the building permit plans prior to building permit approval. This will allow new homeowner the option to maintain window and doors closed due to noise levels as explained in the Noise and Vibrations Study prepared by Edward L. Pack Associates, Inc.
- D. All trees to be removed, relocated, or protected will comply with the landscape plan and Arborist Report by Kiely Arborist Services LLC dated July 22, 2019. Trees identified within the Arborist Report as “transplantable size” on the CCC portion of the project site will be analyzed prior to removal for the likelihood of survival if relocated. The CCC parking lot will also be re-assessed to insure there is enough space on the property to relocate any of the “transplantable size” trees.
- E. The crosswalk design at East Dunne, Church Street, and realigned Depot Street is subject to change based on the budget within the DDA. Alternate design may be reviewed and approved by the Community Development Director.
- F. The decorative fence screening the CCC rose garden will meet the artwork goals for the Hale Lumber project site. Artwork design to complement final design of crosswalks. Alternate design to the fencing may be reviewed and approved by the Community Development Director.
- G. Prior to building permit issuance, the property owner or designee shall work with the Planning Division on the diversity and location of potted planter boxes along the residential frontages of Depot Street.
- H. Prior to Off-Site Improvement Plans the applicant and contractor shall submit a construction logistics plan that addresses all impacts to the public road right-of-way, including but not limited to: pedestrian control, traffic control, detours, truck routes, material deliveries, contractor’s parking, on-site staging and storage areas, concrete pours, crane lifts, work hours, noise control, dust control, and storm water pollution prevention. It shall include notes as indicated on the approved Truck Route Map for construction traffic to and from the site.
- I. The Developer shall work with the Economic Development Department on ways to engage the community about the construction that is happening.

- J. CC & RS: The applicant shall provide a set of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation, for review and approval by the Community Development Department prior to final occupancy or recordation of the final map. All such CC&Rs shall include the following text:

1. Common Areas/Right of Ways:

- i. The Owners recognize that the use, modification and proper maintenance of the Common Area and public right-of-way(s)* are for the benefit of all citizens of the City of Morgan Hill (City) and that the City is an intended third party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.
 1. *Public right-of-way: Exclusive of streets dedicated to and accepted by the City of Morgan Hill
- ii. The City may, by mail or personal delivery, give written notice of the breach of any maintenance obligation to the Association with a demand that such breach be remedied. If such breach is not remedied within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right (but not the obligation) to bring a court action against the Association and Owners to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.
- iii. The Notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the Common Area or public right-of-way in question. Any and all costs incurred by the City in so maintaining the Common Area or public right-of-way shall be a lien against all the properties included with the Project and shall be the personal responsibility of the Owners and the Association.
- iv. The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City of Morgan Hill as may

be determined by review of the Project approvals by the City of Morgan Hill.

- v. This section may not be amended without the prior written consent of the Director of Community Development for the City. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.
 - vi. For the purposes of this section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for Santa Clara County and by any amendment thereto, but only to the extent that such maintenance obligation or duty of maintenance is increased by such amendment.
2. Tree and Landscape Preservation: The Owners of the Units and Association shall preserve and maintain all trees and landscape on the property originally required by the approved landscape plan and shall not remove or alter any such trees or landscape from the Property without the approval of the Director of Community Development of the City of Morgan Hill.
 3. Compliance with the City of Morgan Hill Conditions of Approval: It shall be the responsibility of each Owner and the Association to insure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project, which are hereby incorporated herein as if set forth in full.
- K. Avoid over-spray from automatic irrigation systems.
 - L. Provide at least 7 feet of vertical clearance between branches and sidewalks.
 - M. Maintain landscape areas.
 - N. Tandem parking spaces shall be used to accommodate passenger vehicles only and the homeowners will be aware of the requirement to use the garage space as parking and it will be a part of the homeowner association rules.
 - O. All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 ft. or greater to match the height of any proposed equipment.

- P. Lighting fixtures shall not project above the fascia or roofline of the building. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use.
- Q. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior.
- R. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building.
- S. Reciprocal ingress/egress easements and EVA easements: Prior to issuance of a certificate of occupancy, the property owner shall record an appropriate deed restriction and covenant running with the land subject to review and approval of the Community Development Director for a reciprocal ingress/egress easement along the common driveway.
- T. FINAL SITE DEVELOPMENT PLANS: Final site development plans shall be reviewed for conformance with Morgan Hill Municipal Code Section 18.108.040 and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:
 - i. Detail depicting all concrete curbs as full formed.
 - ii. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing.
 - iii. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities.
 - iv. Trash enclosures shall be constructed of a sturdy, opaque material, minimum 6 feet in height with solid view obstructing gates and shall be designed in harmony with the architecture of the building(s). Sizing and design shall conform to the Morgan Hill Architectural Review Handbook. In residential areas, restaurants or other food service commercial uses, trash enclosure areas shall require an overhead shade structure. Trash enclosures shall be required in all commercial and industrial projects and in residential projects containing four or more dwelling units.
 - v. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or

combination of concrete or masonry walls, berming, and landscaping.
(MHARH p.20, 45, 79) For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.

- vi. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.

U. DUST, NOISE, VIBRATION, AND MATERIALS MANAGEMENT PLAN: A management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project shall be on all site development and grading plans. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties.
(MHMC 18.76)

The plan must include the following “Basic Construction Mitigation Measures” per Bay Area Air Quality Management District’s guidelines:

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.

- viii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- V. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- W. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- X. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Y. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- Z. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- AA. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- BB. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.
- CC. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- DD. Minimizing the idling time of diesel powered construction equipment to two minutes.
- EE. The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOX reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative

fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.

FF. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).

GG. Requiring that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.

HH. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.

I. BEST MANAGEMENT PRACTICES

A. Cultural Resources

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. Discovery of Archaeological Resources. If prehistoric or historic-period cultural materials are unearthed during ground-disturbing activities, all work within 100 feet of the find shall halt until a qualified archaeologist and Native American representative can assess the significance of the find. If the find is determined to be potentially significant, the archaeologist, in consultation with the Native American representative, will develop a treatment plan that could include site avoidance, capping, or data recovery.
10. Discovery of Human Remains. In the event of the discovery of human remains during construction or demolition, there shall be no further excavation or disturbance of the site within a 50-foot radius of the location of such discovery, or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

B. Biological Resources

1. General construction activities and the removal of trees could impact nesting birds. To the extent practicable, vegetation removal shall be performed from September 1 through February 28 to avoid the general nesting period for birds. If tree removal cannot be performed during this period, preconstruction surveys for nesting birds shall be conducted by a qualified wildlife biologist no more than 14 days prior to the start of vegetation removal grading or other construction activities.
2. If vegetation removal or other construction or operational activities are not started within 14 days of the survey, another survey shall be required. The survey area shall include all of the construction site and staging areas as well as areas within 150 feet of the project site. In the event that an active nest is discovered in the areas to be cleared and or developed or in habitats within 150 feet of the proposed activities vegetation removal and construction shall be postponed for at least two weeks or until a wildlife biologist has determined that the young have fledged and the nest is vacated and there is no evidence of a second nesting attempt.

C. Noise & Vibration

1. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for homes throughout the site, so that windows could be kept closed at the occupant's discretion to control interior noise and achieve the interior Lmax and Ldn noise standards.
2. Provide sound rated windows and doors to maintain interior noise levels at acceptable levels. Preliminary calculations made based on the data contained in the conceptual design plans indicate that sound-rated windows and doors with a sound transmission class rating of STC 38 to 43 would be sufficient to control maximum instantaneous noise levels to 50 dBA Lmax in bedrooms, 55 dBA Lmax in other habitable rooms, and to also achieve the 45 dBA Ldn interior noise standard. Additional treatments may include, but are not limited to, sound rated wall construction, acoustical caulking, insulation, acoustical vents, etc. Large windows and doors should be oriented away from the railroad where possible. Bedrooms should be located away from the UPRR.
3. Confirm the final specifications for noise insulation treatments during final design of the project, based on the best available data regarding future usage assumptions for the UPRR. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. The following standard conditions shall be included in the project:
 - i. Construction activities shall be limited to the hours between 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays. No construction activities should occur on Sundays or federal holidays (Consistent with Section 8.28.040 of the Morgan Hill Municipal Code).
 - ii. Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - iii. Locate stationary noise generating equipment (e.g. rock crushers, compressors) as far as possible from adjacent residential receivers.
 - iv. Acoustically shield stationary equipment located near residential receivers with temporary noise barriers or recycled demolition materials.
 - v. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - vi. The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

- vii. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem.

D. Air Quality

1. Include basic measures to control dust and exhaust during construction. During any construction period ground disturbance, the applicant shall ensure that the project contractor implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. The contractor shall implement the following best management practices that are required of all projects:
 - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
 - v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
 - viii. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's

phone number shall also be visible to ensure compliance with applicable regulations.

- E. The project shall comply with the requirements of the Municipal Regional Permit (MRP) as well as other local, state, and federal requirements. Specifically, the project shall comply with provision C.3 of the MRP, which provides enhanced performance standards for the management of stormwater for new development.
- F. The project shall comply with all City of Morgan Hill ordinances, policies, and processes regarding the construction treatment of stormwater runoff. Specifically, a Stormwater Management Plan (SWMP) will be developed prior to issuance of building permits for project construction, to ensure compliance with City of Morgan Hill and MRP requirements. The SWMP will meet the criteria for stormwater protection outlined in the City's Environmental Compliance Program.
- G. Construction BMPs shall be implemented for reducing the volume of runoff and pollution in runoff to the maximum extent practicable during site excavation, grading, and construction. All measures shall be included in the project's SWMP and printed on all construction documents, contracts, and project plans. These would include:
 - i. Restrict grading to the dry season or meet City requirements for grading during the rainy season.
 - ii. Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
 - iii. Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff. Cover stockpiles with secure plastic sheeting or tarp.
 - iv. Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
 - v. Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
 - vi. Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.

- II. Defense and Indemnity. Applicant agrees to defend, indemnify, and hold harmless the City of Morgan Hill, its officers, agents, employees, officials and representatives (Indemnitees) from and against any and all claims, actions, or proceedings arising from any suit for damages or for equitable or injunctive relief which is filed against City to attack, set aside, void or annul its approval of this discretionary project or any related decision, or the adoption of any environmental documents which relates to said approval. The City shall promptly notify the Applicant of any such claim, action or proceeding and the City shall cooperate fully in the defense thereof. In the event that Applicant is required to defend Indemnitees in connection with the proceeding, Indemnitees shall retain the right to approve (a) the counsel to so defend Indemnitees; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld. This indemnification shall include, but is not limited to, (a) all pre-tender litigation costs incurred on behalf of the City, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals; (b) reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted; and (c) all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party arising out of or in connection with the approval of the application or related decision. City may, in its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of its obligations under this condition. The undersigned hereby represents that they are fully empowered by the Applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- JJ. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun.
- KK. Submit two (2) signed copies of this Resolution to the Planning Division prior to issuance of building permits.

PRETREATMENT

1. An industrial waste discharge permit is required from the Pretreatment Program prior to any industrial wastewater discharge (non-domestic) to the Sanitary Sewer System. The permit shall be maintained and renewed as required. Please email to Jennifer.Rojero@cityofgilroy.org for a pretreatment application.
2. Kitchens/Cooking facilities: All commercial cooking and food preparation facilities shall be provided with a grease trap or clarifier (clarifier with sample box), sized for the anticipated flows. No garbage disposals are allowed. Contact Pretreatment at 408 846-0438 for Grease Interceptor Policy Documents for sizing and type, etc. Submit plans and obtain permit from Pretreatment.

FIRE PREVENTION

1. Where required: Buildings or portions of buildings or facilities exceeding 30 feet (9144 mm) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.
2. Width: Fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925) in the immediate vicinity of any building or portion of building more than 30 feet (9144 mm) in height.
3. Proximity to building: At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572) and a maximum of 30 feet (9144mm) from the building, and shall be positioned parallel to one entire side of the building, as approved by the fire code official

RECOLOGY

- A. Recology is to have access to the gate for the EVA's.
- B. A "No Parking" sign shall be installed listing the hours and day of the week of trash service. The sign location shall be near the EVA entrance to the CCC south parking lot.

POLICE DEPARTMENT

- A. The Police Department shall review and approve a safety and security plan for the facility including a security camera plan prior to the issuance of a building permit or site development permit, whichever one is issued first.

ENGINEERING DIVISION

I. PROJECT SPECIFIC

A. General:

1. At Final Map stage, add a Public Service Easement over the new water line crossing the CCC South Parking Lot.
2. Obtain a Right of Entry Agreement/Permit for work within Union Pacific Transportation Company's property.
3. At improvement plan stage, provide a copy of the preliminary CC&R's or maintenance agreement showing entity/property owner responsible for maintaining the subsurface infiltration facilities located in the common areas.
4. At improvement plan stage, submit a final cost estimate of the realigned Depot Street.
5. In compliance with the DDA, the developer shall submit a summary vacation submittal and drawings to vacate a portion of Depot Street.
6. Prior to submitting improvements plans, the Developer and Project Engineer shall meet with Land Development Engineering Division to go over the project's RDCS commitments to be addressed.

B. Flood: Majority of the project site is in Flood Zone X and a small portion in Zone AE, with Elevations between 345' NAVD88 near Fifth Street and 347' NAVD88 near Fourth Street. Zone AE is within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Buildings 1 and 2 are within Flood Zone AE.

1. A Flood Analysis Memorandum prepared by Schaaf & Wheeler for this project, dated February 12, 2019, has been reviewed. The memorandum stated that the project's impact to West Little Llagas Creek's water surface elevation was less than 0.1 feet and the cumulative impact of the project and the upstream developments was less than one foot which are within the City's requirements.
 - a. The project is encouraged to file a Conditional or Final FEMA Letter of Map Revision (CLOMR/LOMR or CLOMR-F/LOMR-F) to the Federal Emergency Management Agency (FEMA) for Buildings 1 and 2 to change the flood zone designation for the two buildings and remove the flood insurance requirement for the future residential owners.
2. Elevate the lowest floors of Buildings 1 and 2 a minimum of one foot above the base flood elevation determined in the Schaaf & Wheeler Flood Analysis.
3. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate based on finished construction is required for each built structure prior to building final.
4. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.

C. Street Improvements:

1. At improvement plan stage, the project shall revise the plans to comply with the following:
 - a. Move the raised pedestrian crossing at Depot Street within an adequate distance southwesterly to address possible sight distance issues between pedestrians crossing and vehicles on Depot Street and from the parking lots. Update mid-block crossing detail on Sheet C-04.
 - b. Add decorative streetlights along the west side of Depot Street (Leg 1 - next to the North Parking Lot) with spacing of 50' on center. The existing streetlight will be removed, salvaged and delivered to the City's Corp Yard.
 - c. Show the new striping and other proposed improvements at the intersection of Dunne Avenue and realigned Depot Street.
 - d. New street trees to match the existing street trees along Depot Street or comply with the Master Street Tree Plan as determined by the City Engineer. The type of replacement trees in the CCC Parking Lot will be determined at improvement plan stage.
2. The City's CIP Pavement Resurfacing Project will slurry seal Depot Street from Main Avenue to Dunne Avenue in August 2019. Striping, pavement restoration and other improvements along Depot Street will be reviewed in detail at improvement plan stage.

II. GENERAL

- A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. **(MHMC 12.02.090 A; 17.32.010 A)**
- B. The applicant shall have a Final Map prepared by a registered engineer (licensed prior to 01/01/1982: registration number 33,965 or lower) or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be set as required by the City Engineer. **(MHMC 17.20.200 A; 17.20.290; 17.24.010)**
- C. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the City Engineer prior to submittal of Final Map. **(MHMC Sec 17.32.060 B; 17.32.070; 17.32.080 A)**
- D. Obtain an encroachment permit from the City of Morgan Hill and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A; 12.08.090)**
- E. Improvement plans are to show water lines, sanitary sewer, storm drain system, pavement widths, curve radius, and existing utilities.

- F. Enter into a Subdivision Improvement Agreement (SIA) with the City of Morgan Hill to cover required improvements. **(MHMC 12.02.150; 17.32.010 B; 17.32.160)**
- G. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.350 H)**
- H. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant to City Code Chapter 3.56 has established impact fees to finance the cost of improvements required by new development. City Code Chapter 3.56.050 provides for automatic annual (July 1st) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. The City maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours. **(MHMC 3.56.010; 3.56.030; 3.56.050)**

III. STREET IMPROVEMENTS

- A. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the City Engineer. All street improvements shall be constructed to the satisfaction of the City Engineer. The timing of the improvements will be determined by the City. **(MHMC 12.02.010; 12.02.090; 17.32.060 B; CMH General Plan; CMH Design Standards and Standard Details for Construction)**
- B. The project shall install and dedicate street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting in conformance with City of Morgan Hill requirements. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.100; 17.28.010; 17.32.060)**
- C. Dedication of approximately 400 square feet on Depot Street and approximately 2,300 square feet on East Dunne Avenue. **(MHMC 12.02.010; 12.02.50; 12.02.080; 12.02.90; 12.02.100; 17.28.010)**
- D. Underground existing utilities: all existing overhead utilities adjacent to any site boundary or along any street frontage of site shall be placed underground in accordance with City standards and affected utility company guidelines. **(MHMC 12.02.090 B; 17.32.020 E.1)**

IV. SANITARY SEWER SYSTEM

- A. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on the proposed public street(s) or private street(s)/drive aisle(s). The sanitary collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye-branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. **(MHMC 13.20.355; 17.32.020 C; CMH Sewer System Master Plan; CMH Design Standards and Standard Details for Construction)**
- B. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.060; 17.32.20 C)**

V. STORM DRAIN SYSTEM

- A. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the City Engineer. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.020 B; 17.32.090; CMH Design Standards and Standard Details for Construction)**
- B. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map/Site Review plans. All storm drain improvements shall be constructed to the satisfaction of the City Engineer. **(MHMC 17.32.020 A & B)**
- C. Collection system shall be designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. Items of construction shall include, but not be limited to installation of storm line extension on proposed public street(s), surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows. **(MHMC 17.32.020 B; 18.74.440; CMH Design Standards and Standard Details for Construction; CMH Storm Drainage System Master Plan)**
- D. Prior to final map approval or issuance of a grading permit the applicant shall complete the following to the satisfaction of the City Engineer.
 - 1. Storm drain calculations to determine detention/retention pond sizing and operations.
 - 2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.
 - 3. Water Pollution Control Drawings (WPCD) for Sediment and Erosion Control.

(CMH Design Standards and Standard Details for Construction)

- E. BMP Tree protection shall be part of the SWPPP inspections.
- F. As required by the State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ, construction activity resulting in a land disturbance of one (1) acre or more of soil, or whose projects are part of a larger common plan of development that in total disturbs more than one (1) acre, are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated with Construction Activity (General Permit). To be permitted with the SWRCB under the General Permit, owners must file a complete Notice of Intent (NOI) ONLINE at: <http://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> and develop a Storm Water Pollution Prevention Plan (SWPPP) Manual in accordance with the General Permit. The SWPPP Manual shall follow the CASQA SWPPP template/format at <https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx> and shall be approved by Land Development Engineering. A Waste Discharger Identification (WDID) number will be issued to the construction site after the SWRCB receives and verifies the submitted ONLINE NOI information. The WIDI number and approved SWPPP Manual shall be provided to Land Development Engineering Division and the Building Division prior to any approval of grading activities **(SWRCB NPDES General Permit CA000002)**.
- G. NPDES GENERAL PERMIT SITE SWPPP INSPECTIONS AND COMPLIANCE:
1. ALL project onsite and offsite construction activity shall have the site inspected by a **qualified third party SWPPP Inspector (QSD or QSP or RCE)**.
 2. SWPPP Inspections shall occur weekly during the rainy season (September 15th thru May 1st).
 3. SWPPP Inspections shall occur bi-weekly during the non-rainy season.
 4. 48 hours prior to and following a forecasted rain event, SWPPP Inspections shall occur in addition to those of items 2 or 3 above.
 5. Per each of the inspection conditions 2, 3, or 4, the NPDES SWPPP Inspector shall certify in writing to the Building Division and Land Development Engineering Division if the site is in compliance or non-compliance with the NPDES General Permit for Stormwater, site SWPPP Manual, and Water Pollution Control Drawings (per the CMH-SWPPP Inspection Check List to be provided by Land Development Engineering). QSD/QSP SWPPP Inspectors shall forward onsite and offsite information/certification to the Building (on-site private property issues) and Public Works (public right-of-way issues) inspectors respectively.

6. Prior to rain events, BMPs not in compliance will need to be corrected immediately.
7. Illicit discharges per the NPDES General Permit, non-compliance of tracking control, and inlet protection within the public right of way shall be address immediately.
8. Other non-compliance issues need to be addressed within a 24-hour period.
9. Non-compliance issues which have been corrected shall be verified by NPDES SWPPP Inspector by a follow-up inspection.

*BMPs maintenance/inspections shall include tree protection if applicable.

VI. WATER SYSTEM

- A. The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the City Engineer. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the City Engineer and dedicated to the City. **(MHMC 17.32.020 A & D; CMH Design Standards and Standard Details for Construction; CMH Water System Master Plan)**
- B. Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District (SCVWD) Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with the SCVWD and either be maintained or abandoned in accordance with SCVWD standards.
- C. Installation of water line extension on the proposed public streets and/or private streets. **(MHMC 17.32.020 A & D; CMH Water System Master Plan)**
- D. Provide separate water services and meters for each lot. These are to be installed by developer. **(MHMC 17.32.020 D)**

VII. OTHER CONDITIONS

- A. The owner shall dedicate all necessary utility easements. **(MHMC 12.02.080 D; 17.28.010 A)**
- B. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the City Engineer. Where City infrastructure is included, City will pay for the permit fees. **(MHMC 17.32.020 E.1)**
- C. The final map on all major subdivision (5 or more lots) shall be approved by the City Council prior to issuance of a grading permit. For minor subdivision (4 lots or less), the final map shall be signed by the City Engineer and the Planning

Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.390; 17.24.210)**

- D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the Homeowner's Association.
- E. Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. **(MHMC 17.08.090)**
- F. Prior to the approval of any Building Permit for grading activity, the developer shall schedule a preconstruction meeting with the Public Works Inspection Division with the following project team members:
 - 1. Civil Engineer of record.
 - 2. Geotechnical Engineer of record.
 - 3. Third Party QSD/QSP SWPPP Inspector.
 - 4. General Contractor.
 - 5. Sub-Contractors.

VIII. NPDES WATER QUALITY STORMWATER MANAGEMENT DEVELOPMENT STANDARDS

- A. State Water Resources Control Board Post Construction Requirements (PCRs): Project shall comply with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the **Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements** (developed from Resolution No. R-2013-0032 Attachment 1 and 2 at: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/stormwater/docs/lid/lid_hydromod_charette_index.shtml). A copy of the guidance manual can be obtained through the Land Development Engineering's internet site. Project shall provide Stormwater Control Plan Checklist and applicable calculations per the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. Project shall meet the applicable requirements of the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements:
 - 1. Performance Requirement 1: Site Design and Runoff Reduction
 - 2. Performance Requirement 2: Water Quality Treatment
 - 3. Performance Requirement 3: Runoff Retention
 - 4. Performance Requirement 4: Peak Management

- B. Peak Storm Water Runoff Discharge Rates** - Post-development peak storm water runoff discharge rates shall not exceed the estimated pre-development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion. Note: the project may be required to **retain** stormwater runoff as part of resolution R3-2013-0032 prior to releasing discharge rates at pre-development flows.
- C. Provide Storm Drain System Stenciling and Signage** - Storm drain stencils are highly visible source controls that are typically placed directly adjacent to storm drain inlets. The stencil contains a brief statement that prohibits the dumping of improper materials into the storm water conveyance system. Graphical icons, either illustrating anti-dumping symbols or images of receiving water fauna, are effective supplements to the anti-dumping message. All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as: "NO DUMPING – DRAINS TO CREEK") and/or graphical icons to discourage illegal dumping. Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area. Legibility of stencils and signs must be maintained.
- D. Properly Design Trash Enclosure Areas** - All trash enclosure areas must meet the following Structural or Treatment Control BMP requirements (individual single family residences are exempt from these requirements):
1. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents
 - a. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash.
 - b. Doors: Trash enclosure shall have door(s) which can be secured when closed.
 - c. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure.
 - d. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.
- E. Design Standards for Structural or Treatment Control BMPs** - The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow-based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

1. Volumetric Treatment Control BMP

- a. The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- b. The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook – Industrial/ Commercial, (2003); or
- c. The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for “treatment” that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

2. Flow Based Treatment Control BMP

- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
- b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

F. Stormwater Runoff Management Plan (SWRMP) required - The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of measures (post construction BMPs) proposed for managing stormwater runoff.

1. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
2. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
3. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
4. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater

Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

G. Stormwater BMP operation, maintenance, and replacement responsibility

1. All on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
2. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
3. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

H. Stormwater BMP operation and Maintenance Agreement (SWBOMA) required - Improper maintenance is one of the most common reasons why water quality controls will not function as designed or which may cause the system to fail entirely. It is important to consider who will be responsible for maintenance of a permanent BMP, and what equipment is required to perform the maintenance properly.

1. Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The city shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the storm water management treatment BMPs (City standard STORMWATER BMP OPERATION AND MAINTENANCE AGREEMENT to be provided by Land Development Engineering).
2. The stormwater BMP operation and maintenance agreement shall require that the BMPs not be modified and BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
3. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

I. Stormwater BMP inspection responsibility

1. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a **Registered Civil Engineer (RCE)**.
 2. Unless otherwise required by the chief engineer or designee, stormwater facility inspections shall be done at least twice per year (April 15th and September 15th) by the RCE. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - a. Site address;
 - b. Date and time of inspection;
 - c. Name of the person conducting the inspection;
 - d. List of stormwater facilities inspected;
 - e. Condition of each stormwater facility inspected;
 - f. Description of any needed maintenance or repairs; and
 - g. As applicable, the need for site re-inspection.
 3. Upon completion of each inspection, an inspection report shall be submitted to Land Development Engineering.
- J. **Records of maintenance and inspection activities** - On or before April 15th and September 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.
- K. **Annual Certification of SWRMP** – On or before September 30th of each year a Registered Civil Engineer (RCE) shall provide written certification that the developments stormwater quality design standards are properly maintained and functioning as required by the SWRMP.

IX. HABITAT CONSERVATION

- A. The approved project is covered under the Santa Clara Valley Habitat Plan (Habitat Plan) and subject to fees and conditions contained in the Habitat Plan.
- B. Prior to issuance of building permits or grading permits the project shall complete and submit a Habitat Plan Application Package. All fees must be paid prior to issuance building permits or grading permits.

City of Morgan Hill
Resolution No.
Page **31** of **31**

- C. Any additional conditions or mitigations required by the Habitat Plan shall be clearly stated on all plans that involve any ground disturbing activity (i.e. grading plans, improvement plans, paving plans, demolition plans or other plans for site clearing or temporary stockpile of dirt).
- X. **Mitigation Monitoring Reporting Program.** Applicant shall comply with and be responsible for implementing the mitigation measures and standard measures identified in the Initial Study for this project dated August 2019.

Attachment: Design Review Permit Resolution, with Exhibit A [Revision 2] (2465 : Depot - Latala)

FINDINGS FOR DOWNTOWN SPECIFIC PLAN, GENERAL PLAN AND ZONING ORDINANCE CONSISTENCY SR2019-0003

Downtown Specific Plan

The vision statement of the specific plan is: “Strengthening Downtown as the gathering place, a connecting force, the social and activity heart of Morgan Hill, is the overriding aspiration of this Plan - a place where residents from all segments of the community can live, work, meet, shop, dine and participate in public celebrations, and share in the richness of Morgan Hill’s community life. It will be a place like nowhere else - a place with its own scale, character and uses.” The plan encourages a wide diversity of retail and office uses including new homes and apartments to support the downtown businesses. The Plan also includes a Design Guideline Chapter 5 with a wide range of architecture and landscape requirements. The project has been analyzed for consistency with the Design Guidelines Chapter 5 and is consistent.

General Plan

The General Plan land use designation for the 2.29-acre redevelopment portion of the site is designated as Mixed Use with the remaining 2.9-acre (CCC parking lot) portion of the site designated as Public Facilities.

The Mixed Use designation applies to the majority of the parcels in and round the core of the Downtown area and in intended to encourage a mixture of retail uses and residences consistent with the Downtown Specific Plan. The project proposes 49 residential townhome style condominiums and lofts and includes 3,076 square feet of office space to be utilized for non-profits businesses.

The Public Facilities designation is applied to land used by public or quasi-public agencies and organizations. In this case it is the Community and Cultural Center parking lot that will allow for the realignment of Depot Street to connect to East Dunne Avenue and Church Street intersection to be consistent with the Transportation Element of the General Plan.

Policy CNF-14.1 Mixture of uses Downtown. Encourage a mixture of uses in the Downtown that will promote its identity as a cultural and activity center of the City.

The project introduces residential and office space near the existing cultural center. The mixture of proposed uses are complementary to the surrounding uses and will support one another.

Policy CNF-14.3 Downtown Specific Plan. Support the implementation of the Downtown Specific Plan.

The Downtown Specific Plan analyzed a variety of infrastructure services and

improvements needed to meet demands of current and future residents and businesses including transportation, water, sewer, storm drainage, solid waste, and energy systems. The plan stated development assumptions for 874 housing units and 182, 839square feet of office space by 2030. While Downtown has seen some recent investments in housing and retail, the existing housing development and office space are below projections.

Table 1.1
Downtown Specific Plan Growth Projections

Land Use	Existing Development 2009	Development by 2015	Current Development 2019	Development by 2030
	Projected	Projected	Current/Under Construction	Projected
Residential (dwelling units)	193	739	663	874
Office/Service (square feet)	122,248	152,405	123,778	182,839

This project supports the implementation of the Specific Plan by relocating a non-conforming industrial use outside the downtown core, and developing the site with conforming uses such as housing and office space.

Policy CNF-14.4 Downtown Retail Uses. Encourage a mix of retail uses in the Downtown, such as specialty retail, office, entertainment, and other retail uses, with offices located away from Monterey Road or on upper floors along Monterey Road.

Downtown office square footage has remained roughly the same since the adoption of the Downtown Specific Plan in 2009. The plan envisioned Monterey road as the main core area for retail with supporting retail, residential and office space pushed back to the cross streets of downtown and off Depot Street. This project is consistent with the General Plan Policy in bringing 3,076 square feet of office space to the downtown and locating the office space away from Monterey Road.

The Transportation Element

The Transportation Element within the 2035 General Plan offers mechanisms for making Morgan Hill a safe and efficient place to travel, whether by train, bus, car, bike or foot. The City's transportation system envisioned a coordinated combination of public transit, private vehicles, biking, and walking. A key focus during the General Plan horizon is construction of new roadways and segments that will fill in "missing links" and provide for increased connectivity of the roadway system. The City has the opportunity to realign Depot Street through the CCC parking lot with redevelopment of the adjacent property currently utilized as a lumber yard business (Hale Lumber). The project is consistent with the following policies:

Policy TR-3.3 Timing of Street Construction from Private Development. Require developers to provide for the construction of their portions of arterial and collector streets at the time of development.

It is ideal that the redevelopment project is incorporating the realignment of Depot Street as part of one overall project. This allows for one time construction near existing residents and the CCC, and provides the complete design for the vacated portion of Depot Street and addresses the interface of the redevelopment project site area with the CCC.

Policy TR-3.15 Depot Street Rerouting and Extension. In order to provide a continuous north-south travel route to, from, and within Downtown, re-route Depot Street south through the existing Community and Cultural Center parking lot to connect to Church Street, and explore the feasibility of extending Depot Street north to curve over and connect to McLaughlin through to Central Avenue.

The City Engineer found the proposed realignment to enhance circulation in Downtown by:

- Removing a conflict point through the elimination of an off-set intersection
- Eliminating an intersection within close proximity to the UPRR tracks (± 120 ft.)
- Providing a direct connection to a four-way signalized intersection
- Creating a bike and pedestrian friendly roadway
- Engineering a curvilinear roadway to prevent speeding
- Eliminating the existing cut-through traffic within the CCC parking lot

1. The proposed project complies with all applicable provisions of the Zoning Code and Municipal Code.

The proposal is consistent with all provisions in the Zoning Code which is consistent with the Downtown Specific Plan requirements.

2. The proposed project substantially complies with all applicable design standards and guidelines contained in the Design Review Handbook.

Chapter 5: Design Guidelines as part of the Downtown Specific Plan supersede the regulations within the Design Review Handbook. A consistency chart was prepared (Attachment 3.) and the project is found to be consistent with all design guidelines in that chapter.

3. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

An initial study was prepared and the project and found the project to be consistent with the Downtown Specific Plan MEIR pursuant to Sections 15177(b) and 15179(b) of CEQA Guidelines as further explained at the end of this report.

4. The proposed project development will not be detrimental to the public health, safety, or welfare or materially injurious to the properties or improvements in the vicinity.

The redevelopment of the Hale Lumber site and realignment of Depot Street through the CCC parking lot is part of the vision for both the General Plan and Downtown Specific Plan. The project will not be detrimental to the public health as analyzed within the Initial Study. The project and circulation was designed to Vision Zero standards and therefore will not be detrimental to public safety or welfare. The project enhances public access by adding sidewalks and will comply with SWIPP and Building Code requirements, therefore will not be materially injurious to the properties or improvements in the vicinity.

5. The proposed project complies with all Design Review criteria in subsection H. of Section 18.108.040 of the municipal code.

Chapter 5: Design Guidelines as part of the Downtown Specific Plan supersede the regulations within the Design Review Handbook. The project is found to be consistent with the standards outlined in Chapter 5 of the Downtown Specific Plan. A consistency chart was prepared (Attachment 3.) and the project is found to be consistent with all design guidelines in that chapter.

6. For new residential development, the project complies with commitments made through the residential development Control System (RDCS).

The project received approval of a RDCS Development Agreement on March 20, 2019. The project is found to be consistent with all commitments required prior to Design Review Approval of the DA. A consistency chart was prepared (Attachment 4.) and the project is found to be consistent with the commitments

Zoning Ordinance

The Project site has a Downtown Mixed Use (MU-D) zoning designation. The purpose of the Downtown Mixed Use (MU-D) zoning district is to preserve and enhance Downtown as the heart of Morgan Hill and the center of the community. New development supports a walkable Downtown district with active storefronts and a diversity of commercial, residential, and public uses. The intensity of residential uses enhances economic vitality, increases housing options for residents of all ages, and support a vibrant and diverse destination for residents and visitors. The MU-D zoning district implements the community's vision for Downtown Morgan Hill as described in the Downtown Specific Plan.

Larry Carr: Depot Street through downtown should be 'pedestrian first'

To be honest I was skeptical when I read Larry Carr's column regarding Depot Street and after digging a bit I am even more skeptical. Here are my thoughts as I read it:

It is a piece of preemptive propaganda in advance of expected criticisms/outrage. Some statements and my reactions:

'Depot Street Realignment, also known as the Hale Lumber/Latala project...This project would construct 49 residential units on the lumber yard site.' Who is Latala and can they handle this project? After visiting their web site I have some doubts. This is another project next to the rail tracks, what about HSR and its extensive right of way (it's dead, it's alive, we may have to tear these buildings down like the other new construction along the tracks which is something that was acknowledged by a former mayor).

'The street realignment will temporally disrupt the Community and Cultural Center parking lot' and 'inevitably inconvenience the operations of and the community events at the center for a few months.' How much and for how long? What do you mean by temporary? I've heard this one before.

'All these questions were rattling around in my head as I was considering my decision.' No comment needed.

'Today, many people cut through the community center parking lot, which is not only illegal but also unsafe.' Yes, but why do they do it? It's not to avoid a traffic signal but rather to have the safety of a traffic signal since the unregulated intersection at Hale and Dunne with its bad sight lines is unsafe. And who put the exit of the parking garage such that people will use Depot St? And didn't the General Plan call for a pedestrian bridge over Depot Street?

'The council could have chosen not to realign.....the developer could have gone ahead with a housing-only project on the property he controls.' Here's another thought, put a traffic signal at Depot and Dunne, timed with the existing signal at Church and Dunne

and remove the median so cars can make a left turn directly onto Dunne.

No interruption or lost space at the Community Center, this slows traffic better and safer than a set of curves, saves tons of money.

If the developer backs out then use the Hale Lumber space as a community asset, how about a replacement for the existing Community Garden which according to their web site: 'We'll Be Moving Soon! ...Our current location of the MHCG on Butterfield is owned by the City of Morgan Hill. They have plans to build a fire station on the site sometime in the future....In the meantime, a parcel of land owned by the City has been set aside as a future site for the MHCG. It is roughly three acres near Railroad Ave. and the new Butterfield overpass' in contrast to the Hale Lumber property which is approx. 2 acres, is in town where you'd want it, across from the existing Community Garden. A potential win/win.

'Finally, this project saves the city more than \$1 million.' It's about time after millions of RDA funds were given to developers when the city bought properties at exorbitant prices and then turned around and sold them to developers at a significant loss.

There's an Insert Box which says for details visit: <https://www.morgan-hill.ca.gov/Search?search-Phrase-Depot%20Strteet%20realignment> - Which just a MH city site search screen. A usable link is: <https://www.morgan-hill.ca.gov/1742/Hale-Lumber-Depot---Latala>

The site references an Addendum to the Downtown Specific Plan FMEIR and links for:

Hale Lumber Land Exchange which is 28 pages

Traffic Study which is 53 pages

For a better understanding please see:

Morgan Hill Times - Mixed-use project to 'realign' Depot Street



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

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

ADOPT ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

RECOMMENDATION(S)

1. Waive first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

The City imposes fees on new development intended to address the development's impact on Morgan Hill infrastructure. Park fees are included as an impact and in recent history a park impact fee has been collected. The City's Municipal Code includes provisions for park dedication or payment of fees in lieu through authority by the State's Quimby Act (included within the Subdivision Map Act). The Quimby Act only affects residential developments that include subdivisions.

City staff are now recommending that the Municipal Code be updated to bring the City's requirements for park dedication or fees in lieu up to date to allow for the use of Quimby Act fees going forward. As previously noted, only development that requires subdivision would be subject to the dedication or fee requirements. The City would continue to collect park impact fees for development where subdivision is not required as applicable (park impact fees would therefore primarily be collected on multi-family residential projects where subdivision does not occur). Attachment 2 provides greater detail on the updated requirements.

The City is recommending this update to the code for two significant reasons. With the impending loss of the City's Residential Development Control System due to recent housing legislation, the updated park dedication requirements will provide for developments to contribute fees similar to park impact fees and provide an option for a credit of up to 40% of fees for development of private park land. This will continue to support the development of public and private open space as has previously occurred within the City. Additionally, Quimby fees are less restrictive in their use and allow for "renovation" of existing park and recreation facilities, which impact fees cannot be used for. This consideration will support the City's fiscal sustainability as it relates to unfunded park renovation needs.

COMMUNITY ENGAGEMENT: Inform

On September 19, 2019, City staff held a public meeting to discuss the update to the Municipal Code with developers. Two members of the development community attended along with one member of the general public. Notice of the proposed ordinance and public meeting were sent to the development community.

ALTERNATIVE ACTIONS:

The City Council may choose to not move forward with the proposed ordinance and provide City staff with alternate direction.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

In relation to park dedication, the Municipal Code was last updated in 1995.

FISCAL AND RESOURCE IMPACT:

It is anticipated that the update to the municipal code and collection of Quimby fees will bring similar levels of revenue to the City as what was previously collected through park impact fees. These funds will have more flexibility in use and provide for renovation of existing park and recreation facilities. This flexibility will allow for the Council to make policy decisions that may ultimately result in potential savings to the General Fund, due to a reduced need to fund renovation projects. It may also result in a smaller amount of funds being available for the construction of new parks and recreation facilities, should the Council dedicate greater percentages of the funds for renovation.

CEQA (California Environmental Quality Act):

Not a Project.

This ordinance is not a project and does not require environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title, Section 15378(b)(4) (The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.)

LINKS/ATTACHMENTS:

1. Park Dedication Ordinance Redline
2. Parkland Dedication fees handout
3. Letter from Rocke Garcia

ORDINANCE NO. XXXX, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 17.28 (“LAND DEDICATIONS AND RESERVATIONS”) IN TITLE 17 (“SUBDIVISIONS”) OF THE MORGAN HILL MUNICIPAL CODE TO UPDATE PARK DEDICATION REQUIREMENTS

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

Section 1. Declaration of Purpose and Intent.

The purpose of this Ordinance is to amend Section 17.28 of the City of Morgan Hill Municipal Code to update park land dedication requirements.

Section 2. Section 17.28.030 (“Statutory authority”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.030 - Statutory authority.

This chapter is enacted pursuant to the authority granted by the Subdivision Map Act of the state. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this chapter agree in accordance with the park and bikeways, trails, parks and recreation master plan (recreation element) of the city, adopted by the city on March 2, 1983 July 20, 2017, and any amendments thereto.

Section 3. Section 17.28.050 (“Acreage required—Per number of persons”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.050 - Acreage required—Per number of persons.

It is found and determined that the public interest, convenience, health, welfare and safety require that ten-five acres of property for each one thousand persons residing within the city be devoted to local park and recreational purposes.

Section 4. Section 17.28.060 (“Acreage required—Formula”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.060 - Acreage required—Formula.

Where a park or recreational facility has been designated in the city's park and bikeways master plan, an element of the general plan of the city, and is to be located in whole or in part within the

proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall dedicate land for a local park sufficient in size and topography to serve the residents of the subdivision. The amount of land to be provided shall be determined pursuant to the following standards and formula:

Formula Based on Population Estimate

$$\frac{\text{Average number of persons/unit}}{\frac{1,000 \text{ Population}}{\text{Park Acreage Standard (from Section 17.28.060)}}} = \frac{\text{Minimum acreage dedication}}{\text{acres/du}}$$

Example for single-family dwelling unit (DU):

$$\frac{3.02}{\frac{1,000}{5}} = \frac{.0151}{\text{acres/du}}$$

The average number of persons per household by units in a structure shall be established by City Council resolution in accordance with the most recent available Federal Census.

Single-family (R-1 density):

Using: 3.36 per dwelling unit and 3 acres per 1,000 persons			
Then: <u>3.36 persons</u>	×	<u>3 acres</u>	= .010 acres/D.U.
D.U.		1,000 persons	

- Multifamily (R-2 density and above):

Using: <u>2.94 persons</u>	×	<u>3 acres</u>	= .0088 acres/D.U.
D.U.		1,000 persons	

Section 5. Section 17.28.070 (“Fees in lieu of land dedication—General formula”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.070 - Fees in lieu of land dedication—General formula.

If there is no park or recreational facility designated in the city's ~~park and bikeways~~bikeways, trails, parks and recreation master plan to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision the subdivider shall, in lieu of dedicating land, pay a fee equal to the value of the land prescribed for dedication in Section 17.28.060 hereof and in an amount determined in accordance with the provisions of Section 17.28.110 of this chapter, such fee to be used for a local park which will serve the residents of the area being subdivided.

Section 6. Section 17.28.090 (“Fees in lieu of land dedication—Use of money”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Formatted: Normal

17.28.090 - Fees in lieu of land dedication—Use of money.

The money collected under this chapter shall be used only for the purpose of ~~providing park or recreational facilities reasonably related to serving the subdivision by way of the purchase of necessary land or, if the park public works director deems that there is sufficient land available in the subdivision, for improving of such and for park and recreational purposes~~acquiring necessary land and developing new or rehabilitating existing neighborhood and community park or recreation facilities reasonably related to serving the subdivision.

Section 7. Section 17.28.130 (“Credit for private recreation or open space—Replacement of existing development”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.130 - Credit for private recreation or open space—Replacement of existing development.

A. No credit shall be given for private open space in a subdivision except as provided in this section. Where a substantial private park and recreational area is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit, not to exceed 40 percent, shall be given against the requirement of land dedication or payment of fees in lieu thereof if the ~~public works City Manager or designee~~director finds that all the following standards are met:

1. That yards, court areas, setbacks and other open areas required to be maintained by the zoning and building ordinances and regulations shall not be included in the computation of such private open space;
2. That the private ownership and maintenance of the open space is adequately provided for by the reported written agreement, conveyance or restrictions;
3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property and which cannot be defeated or eliminated without the consent of the city or its successor;
4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location;
5. That facilities proposed for the open space are in substantial accordance with the provisions of the recreational element of the general plan; and
6. That the open space for which credit is given is a minimum of two acres and provides a minimum of four of the local park basic elements listed below, or a combination of such and other recreational improvements that will meet the specific recreational park needs of the future residents of the area:

Criteria List	Acres
Children's play apparatus area	.50— .75
Landscape park-like and quiet areas	.50—1.00
Family picnic area	.25— .75
Game court area	.25— .50
Turf playfield	1.00—3.00
Swim pool (42' × 75' with adjacent deck and lawn areas)	.25— .50
Recreation center building	.15— .25

B. Where the proposed subdivision will replace existing previously occupied dwelling units, credits shall be given against the requirement of land dedication or payment of fees in lieu thereof if the City Manager or designee~~public works director~~ finds that existing previously occupied dwelling units will be removed. Credit shall be given on a unit-by-unit basis.

C. Before credit is given the City Manager or designee~~public works director~~ shall make written findings that the standards set out in subsections A and B of this section are met.

D. A developer receiving credit for private open space through this Chapter shall not be permitted to utilize the same private open space towards any other park, recreation and open space requirements or credits with the City.

Formatted: Normal, Indent: Left: 0", Hanging:
Tab stops: 0.31", Left

Section 8. Section 17.28.140 (“Determination of land or fee—Procedure”) of Chapter 17.28 (“Land Dedications and Reservations”) in Title 17 (“Subdivisions”) of the Morgan Hill Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

17.28.140 - Determination of land or fee—Procedure.

A. At the time of approval of the tentative subdivision map, the City Manager or designee~~public works director~~ shall determine, after a report, pursuant to Section 17.28.120 of this chapter, whether the land is to be dedicated or in lieu fees are to be paid by the subdivider or any combination of land and fees.

B. The recommendation by the City Manager or designee~~public works director~~ shall include the following:

1. The amount of land required; or
2. That a fee be charged in lieu of land; or
3. That land and a fee be required; and/or

4. That a stated amount of credit be given for private recreation facilities or unique natural and special features, etc.;
 5. The location of the park land to be dedicated or use of in lieu fees;
 6. The approximate time when development of the park or recreation facility shall commence.
- C. This action shall be reviewed by the planning commission for concurrence. If concurrence is not obtained, this matter will be forwarded to the city council for final determination. In making its determination, the council shall be guided by the same standards contained in this chapter where applicable.
- D. At the time of the filing of the final subdivision map, the subdivider shall dedicate the land and/or pay the fees as determined by the city.
- E. Open space covenants for private park or recreational facilities shall be submitted to the city prior to approval of the final subdivision map and shall be recorded concurrently with the final subdivision map.

Section 9. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are not a project and do not require environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title, Section 15378(b)(4) (The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.)

Section 10. Severability.

Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 11. Effective Date; Posting.

This Ordinance shall take effect on ____ ____, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the ____ day of ____, 20__, and adopted at a meeting held on the ____ day of ____, 20__, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. ____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of ____, 2019.

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



UNDERSTANDING PARKLAND DEDICATION, CREDITS and FEE IN LIEU REQUIREMENTS

WHAT IS THE PURPOSE OF CHAPTER 17.28?

Chapter 17.28 helps the City acquire and develop adequate public parkland to meet the additional demand generated by new residential subdivision and new non-subdivided residential projects.

WHEN DOES THE CITY REQUIRE PARKLAND DEDICATION OR PAYMENT OF FEES?

As a condition of approval of new condominiums or single-family subdivisions in Morgan Hill, the City requires that the impact on the Morgan Hill parks system be addressed either through dedication of additional parkland, or payment of fees in-lieu of dedication.

WHAT PROJECTS ARE SUBJECT TO THIS REQUIREMENT?

Any residential development that requires a subdivision map under the City's Subdivision Ordinance (Title 17 of the Morgan Hill Municipal Code) shall dedicate developed parkland, pay a fee in-lieu thereof, or provide a combination of public parkland and the fee, at the discretion of the City. For projects of 50 parcels/units or fewer, the City may impose an in-lieu fee only. The requirement only applies to subdivision or parcel map applications submitted after January 1, 2020.

Some types of projects are exempt though other impact fees will apply:

- Residential projects that do not require a subdivision, such as new single-family homes or remodels
- Subdivision of two existing dwelling units, so long as the units remain on the site
- 100% affordable housing projects
- Market rate rental housing projects (park impact fees and other impact fees apply)
- Non-residential projects, including industrial/commercial subdivisions
- Condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building that is 5 years or older

WHEN IS LAND DEDICATION REQUIRED?

Any project resulting in more than 50 parcels or condominium units will be required to dedicate public parkland to the City. The amount of land to be provided shall be determined pursuant to the following standards and formula:

Formula Based on Population Estimate

$$\frac{\text{Average number of persons/unit}}{\frac{1,000 \text{ Population}}{\text{Park Acreage Standard (from Section 17.28.060)}}} = \text{Minimum acreage dedication}$$

Example for single-family dwelling unit (DU):

$$\frac{3.02}{\frac{1,000}{5}} = .0151 \text{ acres/DU}$$

The average number of persons per household by units in a structure shall be established by City Council resolution in accordance with the most recent available Federal Census.

WHEN CAN A FEE BE PAID IN-LIEU OF LAND DEDICATION?

Projects creating 50 or fewer parcels or condominium units are not required to dedicate land, but rather pay a fee in-lieu. The fee is equivalent to the land value of the portion of the local park required to serve the needs of the residents of the proposed subdivision as prescribed in Section 17.28.060 (described in the section above).

Projects of 50 parcels or more can pay a fee in-lieu in certain circumstances as illustrated in Section 17.28.070. There may be cases where a project of 50 parcels or more may be required to dedicate land and pay an in-lieu fee. These requirements are found in Section 17.28.100.

WHEN CAN A PROJECT OBTAIN PARK CREDITS?

No credit shall be given for private open space in a subdivision except as provided in Section 17.28.130. Where a substantial private park and recreational area is provided in a proposed subdivision and such space is to be privately owned and maintained by the future residents of the subdivision, partial credit, not to exceed 40 percent, shall be given against the requirement of land dedication or payment of fees in-lieu if certain standards are met.

WHERE CAN I FIND MORE DETAILED INFORMATION?

The City's subdivision requirements are in Title 17 of the Morgan Hill Municipal Code. Parkland dedication requirements may be found in Chapter 17.28. They are available online:

<https://www.morgan-hill.ca.gov/655/Municipal-Code>

September 16, 2019

Park Land Dedication

Bikeways, Trails, Park and Recreation Master Plan

Quimby Act

To the City of Morgan Hill:

We would ask the City to maintain its ratio of 3 acres of Park land and Trails for every 1000 residents. This is the ratio stipulated in the State's Quimby Act and has been the City of Morgan Hill's guideline for many years.

Changing the ratio to 5 acres per 1000 residents will significantly impact projects such as our New Horizons home development. This will create a loss of new homes.

We have been working cooperatively with Staff for over 3 years on our Master Planned Community. The plan, as presented, would double the size of Jackson Park, create a public walking trail system (per Bikeways, Trails, Park and Recreation Master Plan) within our project that will cross over the Tennant Channel to Hill Road, and also enhance the Tennant Channel with a public trail. Together with our private parks we will achieve a goal in excess of the 3 acres per 1000 but not even close to 5 acres.

Local parks are much needed in our community and we believe the commitment of 3 acres will more than be

sufficient in size and topography to serve our future homeowners.

Thank you.

A handwritten signature in blue ink that reads "Roche Garcia". The signature is written in a cursive style with a large, stylized 'R' and a long, sweeping underline.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

PREPARED BY: Rebecca Garcia, Housing Manager
APPROVED BY: City Manager

APPROVE EXTENSION OF GROUND LEASE WITH EDEN HOUSING FOR REHABILITATION OF DEPOT COMMONS AT 17145 DEPOT STREET

RECOMMENDATION(S)

Authorize the City Manager to negotiate, approve, and execute an assignment, modification, and extension of the ground lease for Depot Commons Apartment Complex, subject to the final review and approval of the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATION:

Should the City Council approve the assignment, modification, and extension of the ground lease for the rehabilitation of Eden Housing's Depot Commons affordable apartment community, which will result in an increased number of units to be determined very low-income units?

REPORT NARRATIVE:

Eden Housing, Inc., a California nonprofit public benefit corporation and sponsor of several affordable housing developments in the City of Morgan Hill, requests that the City approve the assignment, modification, and extension of its existing ground lease for a total of 65 years of affordability to support the substantial rehabilitation of the Depot Commons.

Depot Commons:

Depot Commons, located at 17135-17145 Depot Street, contains 12 shared housing units available to low-income residents and one staff apartment. Each resident has a bedroom and bathroom and shares a common living room and kitchen facility.

Depot Commons has an existing residual receipts loan from the State Department of Housing and Community Development (HCD), with a principal amount of \$600,000 and accrued interest of \$394,323. Depot Commons has two existing Santa Clara County loans with combined principal of \$324,672 and accrued interest of \$440,269. In order to apply for funding for rehabilitation, Eden Housing will be requesting that HCD and the County approve an assignment, modification, extension, assumption, and re-subordination of those loans. There are no City loans on this property; however, there is a 55-year ground lease which expires in 2049. The City receives \$ 1 as an annual lease payment. Eden Housing will require an extension of this ground lease by 36-37 years to qualify for financing.

In December 2018, at the request of Eden Housing, the Council approved the assignment, modification, extension, assumption, and re-subordination of existing City loans and ground leases for rehabilitation of the other Eden Housing apartments; Skeels, Villa Ciolino, and Willows, all of which are scheduled to be rehabilitated beginning November 2020. Depot Commons is Eden Housing's last request to facilitate the rehabilitation and cross collateralization of financing for all four properties that they acquired from South County Housing.

Eden Housing, Inc. controls the ownership of these four developments and intends to seek new Low-Income Housing Tax Credit financing and tax-exempt bonds to support their re-capitalization and rehabilitation.

Eden Housing proposes to use financing provided by a geographically based Low Income Tax Credit "boost" that expired at the end of 2018 if projects did not apply for tax-exempt bonds to the State of California prior to December 14, 2018. This action will "boost" the tax credit yield by 30%. On December 5, 2018 the City Council approved subordination of ground leases and existing loans on 3 properties, and registered support to cross collateralize these three properties with one additional site, Depot Commons, all proposed for renovation. Eden Housing was then able to apply for tax-exempt bonds to the State of California under special provisions that allow for the use of the bonds beginning December 2020.

As described in December 2018, Eden Housing will sell these developments to new tax credit limited partnerships controlled by Eden Housing in order to facilitate the tax credit investment, and the new tax credit limited partnerships will need to assume the modified and extended existing loans and ground leases on all four properties. Eden Housing is seeking the City's approval and consent to extend the ground lease at Depot Commons.

Morgan Hill's policy towards its multifamily housing partnerships is to provide stewardship to support investment and re-investment in quality, long term housing stock. Historically, the City has encouraged non-profit partners to raise rehabilitation dollars for renovation of older aging structures from the private market through a combination of sources, including tax credit funds. This request is consistent with City Council goals and housing policies.

With rehabilitation, Eden Housing proposes to increase the number of units on the site, within the existing footprint of buildings. Eden Housing's proposal to add units to Depot Commons is the result of a feasibility assessment of the project and a desire to reconfigure the design to replace the shared housing model with a traditional single room occupancy-type community, affording residents additional privacy and space. This modification will also assist leasing and turnover. As such, Eden Housing is working with the Housing and Planning Team to evaluate the potential of increasing the number of affordable units provided at the site.

Currently, the co-housing model at this site is an inefficient use of the space and does not create an ideal environment for its residents, which consists of primarily single-parent households. Additional units would be provided within the existing footprint by rearranging the existing spaces. This eliminates the co-housing model. There is a significant amount of turnover at this project with much of the turnover due to the common kitchen and common living rooms, lack of space, and general lack of privacy. While shared housing can work, there are usually some common factors that encourage people to choose to live together such as employment, or school; however, this is not the case in this community.

It is proposed that with renovation of the community space, stand-alone units with private kitchens and living areas would be developed within the existing footprint. Eden Housing has discussed a rehab scenario that includes the following:

- 22 units total (adding 9 additional)
- Replacing the childcare facility with housing and parking
- 15 studios, 4 one-bedroom, 3 two-bedroom

The project will provide the most units and create the greatest resources and services for tenants. By removing the childcare facility, Eden will also create and program traditional community space that would be both an everyday amenity for the tenants and a great location for ongoing services such as a computer room. Three additional parking spaces can likely be added with the addition of some tandem parking space as well as adding a space where the current childcare play area is. This would bring the total number of parking spaces to 11 and the parking ratio to 0.5 spaces/unit. This parking ratio is consistent with Density Bonus Law for all affordable housing projects. New 2019 State Density Bonus Law changes which will be in effect at the time of construction, permit affordable housing projects within $\frac{1}{4}$ mile of transit to be constructed with no parking. In addition, a Planned Development (PD) exists on this site. With 2019 legislative changes, Eden Housing would not be required to amend the PD, only to be consistent with the General Plan which is Downtown Mixed Use with a Commercial Business District (CBD) overlay. Therefore, the project would be permitted by right.

The project will require only minor alterations to the footprint of the three existing buildings. Most changes will occur by reconfiguring the interior spaces. This is an opportunity for the City to facilitate the badly needed renovation of all structures, obtain much needed very low-income units in an existing building, assist the City with its Very

Low-Income Regional Housing Needs Allocation (RHNA) Goals, and improve the function of the current housing site.

In order to meet current financing deadlines, Eden Housing will need to submit and complete Design Permit review, prepare new leases and loan re-subordination documents, and complete construction plans by March 2020. The current financing deadlines are based on an existing California Debt Limitation Allocation Committee (CDLAC) allocation, which requires a complete California Tax Credit Allocation Committee (CTCAC)/CDLAC application by March 2020.

Staff has discussed with Eden Housing the City's desire to work together to streamline opportunities to assist individuals and families that are serviced by South County programs and the Morgan Hill school district, experiencing homelessness, and overcrowded living accommodations. One example could be as new units are created, and possibly as turnover occurs, creating a bridge to permanent housing for families participating in the City's homeless safe parking program.

Adding or rehabilitating units will not displace any current income qualified residential tenants. Although there are currently no vacancies, the project experiences consistent turnover (about 8 vacancies over the last 10 months). The average household size is 2 as this project was created to house single parents and will continue to do so. Services provided include referrals and advocacy, depending on the tenant's needs.

The current footprint of the daycare center is approximately 700 square ft. The daycare center is independently operated, and not a daycare for project residents only. Although the initial concept for the project included an on-site daycare facility for the single parent residents, Eden Housing reports that none of the children that live on site attend the daycare. When this project was built, there was a subsidy from Catholic Charities that helped subsidize the services, including the childcare facility. This subsidy is what mandated that it serve the residents. The subsidy program expired 10 years ago, originally provided by State Housing and Community Development (HCD). Once the subsidy was eliminated, the requirement for the daycare facility to serve residents also terminated. The service was a requirement of childcare subsidy, not a condition of the housing development. The childcare facility does have some children that are "offered services through subsidized childcare programs" but those subsidies are unaffiliated with the property and are portable to other childcare facilities. Eden Housing would prefer to replace the daycare with traditional housing units and communal space for services. The childcare center is not eligible for tax credit financing, so renovation of this building is not possible without the conversion to housing.

COMMUNITY ENGAGEMENT:

This report is intended to inform the Morgan Hill community about the recommended approval of the assignment, modification, and extension of its existing ground lease for the Depot Commons.

ALTERNATIVE ACTIONS:

As an alternative to the staff recommendation, the City Council may decide not to approve the extension of the Depot Commons ground lease for an additional 65 years, in which case the current lease will expire in 2049 and Eden Housing will not renovate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 5, 2018, the City Council previously considered the terms of the loans and ground leases and approved the assignment, modification, extension, assumption, and re-subordination of existing city loans and ground leases for the rehabilitation of Eden Housing's Affordable Apartments; Skeels, Villa Ciolino, and Willows, and cross-collateralization with one additional project, Depot Commons.

FISCAL AND RESOURCE IMPACT:

The extension of the ground lease will extend the affordability agreement associated with the Depot Commons Apartments by approximately 35 years, making affordable housing available to the City's very low-income residents for the next 65 years.

CEQA (California Environmental Quality Act):

The lease agreement is Categorically Exempt pursuant to CEQA Section 15301 of the CEQA Guidelines as it involves the continuation of leasing existing facilities for Affordable Housing. Based on the alternative expansion to be considered, it may be possible for the expanded use to qualify for an exemption pursuant to CEQA Section 15192 (Thresholds Requirements for Exemption for Affordable Housing) and Section 15194 (Affordable Housing) because specific policies have been identified within the General Plan and Zoning Ordinance to mitigate the risk of flood. Although the project site is located within an identified flood plain, the project site has been developed and the substantial improvements would be subject to Chapter 15.80 (Flood Damage Prevention) of the Morgan Hill Municipal Code. Project level CEQA analysis would be required for any expansion of the use and the appropriate CEQA determination would be made at the time of project submittal.

LINKS/ATTACHMENTS:

1. depot_RDA_land-lease
2. depot_RDA_memorandum-of-lease

LAND LEASE
BY AND BETWEEN
THE REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL
AND
SOUTH COUNTY HOUSING CORPORATION

[DEPOT COMMONS]

5040JH.P50
02/14/94

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

TABLE OF CONTENTS

	Page
ARTICLE I: DEFINITIONS	1
1.1 Definitions	1
ARTICLE II: LEASE OF THE PROPERTY: RENTAL PROVISIONS; TAXES AND ASSESSMENTS	3
2.1 Lease of the Property	3
2.2 Term	4
2.3 Payment of Rent	4
2.4 Taxes and Assessments	4
ARTICLE III: DEVELOPMENT OF IMPROVEMENTS	5
3.1 Construction Pursuant to Plans	5
3.2 Change in Construction Plans	5
3.3 Commencement of Construction	6
3.4 Completion of Construction	6
3.5 Copy of Construction Contract	6
3.6 Equal Opportunity	6
3.7 Prevailing Wages	7
3.8 Construction Bonds	7
3.9 Subsequent Construction on the Property	7
3.10 Liens	7
3.11 Permits, Licenses and Easements	8
ARTICLE IV: MAINTENANCE; USE OF PREMISES	8
4.1 Title to Improvements and Liens Thereon	8
4.2 Use of Project and Assurances of the Lessee	9
4.3 Compliance with Law	10
4.4 Maintenance of the Project	10
4.5 Utilities	10
4.6 Hazardous Materials	10
ARTICLE V: ASSIGNMENT AND SUBLETTING	14
5.1 Definitions	14
5.2 Purpose of Restrictions on Transfer	14
5.3 Prohibited Transfers	15
5.4 Permitted Transfers	15
5.5 Procedure for Approval of Transfers After Completion	16

TABLE OF CONTENTS
(continued)

	<u>Page</u>
5.6 Effectuation of Certain Permitted Transfers; Sale of the Agency's Fee Interest	16
5.7 Right of First Refusal in Bankruptcy	17
5.8 Successors and Assigns	17
 ARTICLE VI: MORTGAGE APPROVED LOANS	 17
6.1 Approved Loan Obligations	17
6.2 Liens and Encumbrances Against the Lessee's	17
6.3 Cost of Approved Loans to be Paid by the Lessee	21
6.4 Proceeds of Approved Loans	21
6.5 Subordination	21
6.6 Notice and Right to Cure Defaults Under Approved Loans	 22
 ARTICLE VII: INSURANCE	 22
7.1 Required Insurance Coverage	22
7.2 Insurance Policies and Premiums	23
7.3 Proceeds of Insurance	24
7.4 Indemnification	24
 ARTICLE VIII: CONDEMNATION, DAMAGE OR DESTRUCTION OF THE PROJECT	 25
8.1 Condemnation	25
8.2 Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Project	 27
8.3 The Lessee, the Agency, Approved Lenders to be Made Parties in Legal Proceedings	 27
 ARTICLE IX: PARTICULAR COVENANTS	 28
9.1 Non-Discrimination	28
 ARTICLE X: ASSURANCES OF THE AGENCY	 29
10.1 Agency to Give Peaceful Possession	29
10.2 Agency to Obtain Necessary Governmental Approvals	 30
10.3 Release of the Agency	30

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE XI: DEFAULTS AND REMEDIES	30
11.1 Events of Default; Remedy of Default by the Lessee	30
11.2 Remedy of Material Breach by the Agency	32
11.3 Termination	32
ARTICLE XII: MISCELLANEOUS	32
12.1 Entire Agreement	32
12.2 Notices	33
12.3 Recording	33
12.4 Non-Waiver of Breach	33
12.5 Effective Date; Counterparts	34
12.6 Lease Binding on Successors	34
12.7 Relationship of Parties	34
12.8 Gender and Number	34
12.9 Titles	34
12.10 Severability	34
12.11 Applicable Law	35

LAND LEASE
[Depot Commons]

THIS LAND LEASE ("Lease"), is entered into and effective as of APRIL 21, 1994, by and between the Redevelopment Agency of the City of Morgan Hill, a public body corporate and politic ("Agency"), and South County Housing Corporation, a California nonprofit public benefit corporation ("Lessee").

RECITALS

A. The Agency owns certain real property situated in the City of Morgan Hill, County of Santa Clara, which is more particularly described in Attachment A attached hereto (the "Property").

B. The Agency has entered into a Disposition and Development Agreement dated November 1, 1992 (the "DDA") with the Lessee, pursuant to which this Lease is executed.

C. The Lessee, as consideration for the Lease, has agreed to develop a congregate housing project consisting of three (3) detached houses for twelve (12) households and a community facility which will be used by a licensed family day care operator to provide childcare services, preference for which will be given to the households within the Project (as such term is defined herein). In accordance with the terms of the DDA, the Lessee agrees to maintain the improvements as an affordable housing complex which will be made available during the term of this Lease to very low and moderate income persons.

D. The Agency desires to lease the Property to the Lessee for a period of fifty-five (55) years pursuant to the terms of this Lease.

NOW, THEREFORE, in consideration of the promises and the respective covenants and agreements contained in this Lease, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings in this Lease:

(a) "Affordability Restrictions" shall mean the Affordability Restrictions recorded against the Project by the Agency pursuant to Section 3.4 of the DDA.

(b) "Agency" shall mean the Redevelopment Agency of the City of Morgan Hill, and its successors and assigns.

(c) "Approved Lender" shall mean the maker of an Approved Loan.

(d) "Approved Lenders" shall mean each and all of the lenders providing the Approved Loans to the Lessee.

(e) "Approved Loans" shall mean any loan approved in writing by the Agency now or hereafter obtained by the Lessee in connection with the development of the Improvements.

(f) "Approved Loan Documents" shall mean all documents executed by the Lessee evidencing or securing the Approved Loans.

(g) "Certificate of Occupancy" shall mean the certificate issued by the City's building official certifying that the Dwelling Units have been constructed in compliance with the City's building code and regulations, and other codes and regulations within the City's jurisdiction and that the Dwelling Units are suitable for occupancy.

(h) "City" shall mean the City of Morgan Hill, a municipal corporation.

(i) "DDA" shall mean the Disposition and Development Agreement entered into by and between the Agency and the Lessee as of November 1, 1992.

(j) "Dwelling Units" shall mean the three (3) detached houses to be occupied by approximately twelve (12) households to be included in the Improvements.

(k) "Hazardous Materials" shall have the meaning set forth in Section 4.5.

(l) "HCD" shall mean the California Department of Housing and Community Development, a public agency of the State of California.

(m) "Improvements" shall mean the buildings and improvements (including the building fixtures) to be constructed by the Lessee on the Property together with ancillary landscaping and site improvements.

(n) "Lease" shall mean this Lease between the Lessee and the Agency and shall include any and all amendments made to this Lease.

(o) "Lease Term" shall mean the fifty-five (55) year period set forth in Section 2.2 below, during which this Lease shall be in effect unless earlier terminated in accordance with the provisions of this Lease.

(p) "Lease Year" shall mean a period of one calendar year beginning January 1 and ending December 31. The first lease year shall commence on the date of this Lease and end on the last day of the following December. The last lease year shall begin on January 1 of that year and end on the last day of this Lease.

(q) "Lessee" shall mean South County Housing Corporation, a California nonprofit public benefit corporation, and its permitted successors and permitted assigns.

(r) "Project" shall mean the Property and Improvements.

(s) "Property" shall mean the real property, more fully described in Exhibit A attached to this Lease and incorporated into this Lease by this reference.

(t) "Residents" shall mean the residents who are authorized by the Lessee to occupy the Dwelling Units.

All terms defined in the DDA and used in this Lease which are not specifically defined in this Lease shall have the meanings given by the DDA.

ARTICLE II: LEASE OF THE PROPERTY: RENTAL PROVISIONS; TAXES AND ASSESSMENTS

2.1 Lease of the Property and Improvements

The Agency, for and in consideration of the covenants and agreements to be kept and performed by the Lessee, leases the Property to the Lessee, and in consideration thereof, the Lessee does take, hire and lease the Property from the Agency pursuant to the terms of this Lease. The Lessee or its designee shall operate the Property and the Improvements in compliance with applicable laws.

2.2 Term

The term of this Lease shall commence on the date of this Lease as set forth above and shall continue from such date until the earlier of (i) the date of the fifty-fifth (55th) anniversary of the City's issuance of the Certificate of Occupancy, or (ii) the date of the fifty-fifth (55th) anniversary of the recordation of HCD's deed of trust recorded against the Project, unless earlier terminated in accordance with this Lease. Upon expiration of the term of the Lease, or earlier termination of the Lease, the entire Project shall revert to the Agency. The Lessee agrees to execute any documentation reasonably required by the Agency to evidence such reversion of the Project.

2.3 Payment of Rent

(a) The Lessee shall pay to the Agency, at 17555 Peak Avenue, Morgan Hill, California 95037, or such other place as the Agency may designate in writing, "Rent" in the total amount of Fifty-Five Dollars (\$55.00), to be paid in full upon commencement of the term of this Lease.

2.4 Taxes and Assessments

(a) Payment of Taxes and Assessments. The Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay the public officers charged with their collection, as the same become due and payable and before any fine, penalty, interest, or other charge may be added to them for nonpayment, all real estate taxes, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature, made, assessed, levied or imposed upon, or due and payable in connection with, or which become a lien upon, the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property or the Improvements pursuant to this Lease, as well as assessments for sidewalks, streets, sewers, water, or any other public improvements and any other improvements or benefits which shall, during the Lease Term, be made, assessed, levied, or imposed upon or become due and payable in connection with, or a lien upon the Property, the Improvements, or any part of the Property or Improvements, or upon the Lessee's leasehold interest in the Property pursuant to this Lease.

The Lessee covenants to furnish to the Agency, within thirty (30) days after the date upon which any such tax, assessment, or other charge is paid, official receipts of the proper taxing or other authority, or other adequate proof evidencing the full payment thereof.

(b) Payment of Fees. The Lessee covenants and agrees during the entire Lease Term, at its own cost and expense, to pay, as the same become due and payable and before any fine, penalty, interest or other charge may be added to them for nonpayment, license and permit fees, charges for public utilities of any kind, and any and all governmental charges relating to the use or occupancy of the Improvements.

The Lessee shall at all times indemnify and hold harmless the Agency from any and all fees and charges required to be paid by the Lessee under this paragraph (b). The Agency agrees promptly to send to the Lessee copies of any and all notices received by it in respect to any charges and fees for which the Lessee is liable pursuant to this paragraph (b).

(c) Lessee's Right to Contest. If the Lessee disputes any amount or validity of any liens, taxes, assessments, charges, penalties or claims, including liens or claims of materialmen, mechanics or laborers, upon the Property or the Improvements, the Lessee may contest and defend against the same at its cost, and in good faith diligently conduct any necessary proceedings in connection therewith to prevent and avoid the same; provided, however, that such contest shall be prosecuted to a final conclusion as speedily as possible. During any such contest, the Lessee shall (by the payment of such disputed taxes, assessments or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting thereby of the Agency's title, reversion or other interest in or to the Property.

ARTICLE III: DEVELOPMENT OF IMPROVEMENTS

3.1 Construction Pursuant to Plans

Unless modified by operation of Section 3.2, the Improvements shall be constructed in accordance with the Construction Plans (as defined in the DDA) approved by the Agency pursuant to the DDA and the terms and conditions of the City's land use permits and approvals and building permits.

3.2 Change in Construction Plans

If the Lessee desires to make any material change in the Construction Plans, the Lessee shall submit the proposed change to the Agency for its approval. Unless a proposed change is rejected by the Agency within fourteen (14) days of its receipt by the Agency, it shall be deemed approved, but only if the Construction Plans, as modified by such proposed change, will

conform to the requirements of the DDA, this Lease, and the Redevelopment Plan. If a proposed change is rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If required by any City ordinance, the Lessee shall also submit any proposed material change to the City for its approval.

3.3 Commencement of Construction

The Lessee shall commence construction of the Improvements within one hundred twenty (120) days after the date the Agency conveys the leasehold interest in the Property to the Lessee pursuant to the terms of this Lease, but in no event later than July 31, 1994, unless such date is extended by the Agency's Executive Director in the reasonable exercise of his or her discretion.

3.4 Completion of Construction

The Lessee shall prosecute diligently to completion the construction of the Improvements, and shall complete construction within twelve (12) months of commencement of construction of the Improvements.

3.5 Copy of Construction Contract

The Lessee shall enter into contracts for the construction of the Improvements with reputable contractors. Such contracts shall provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the approved Construction Plans and Financing Plan (as defined in the DDA). Copies of all contracts shall be tendered to the Agency, and shall have been approved in writing by the Agency, for the purpose of determining that the amount of the costs of work has been clearly fixed and determined, as herein provided, and that the covenants as to nondiscrimination (Section 3.7 and Section 9.1 hereof) have been met. Unless the Agency notifies the Lessee in writing within five (5) days of submission of such a contract that the contract has been disapproved, it shall be deemed approved.

3.6 Equal Opportunity

During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work. Moreover, the Lessee, by and through its construction contractor,

shall give preference, to the extent practicable, for employment to those individuals residing within the geographical area governed by the Redevelopment Plan, when dictated by relevant state law.

3.7 Prevailing Wages

To the extent required by Sections 1770 et seq. of the California Labor Code and regulations thereto, the Lessee shall pay, or cause to be paid, prevailing rates of wages for construction work done in connection with the Improvements.

3.8 Construction Bonds

Labor and material bonds and/or performance bonds and/or other construction guarantees shall be required, unless the Lessee is the construction general contractor. The Lessee shall name the Agency as a co-obligee on the bonds and deliver copies to the Agency prior to the commencement of construction.

3.9 Subsequent Construction on the Property

(a) Following completion of construction of the Improvements pursuant to the Construction Plans, any additional construction, alteration, remodeling, reconstruction, or repair work performed on the Improvements shall be of first class construction and architectural design and shall be diligently completed by the Lessee without cost to the Agency and in accordance with plans and specifications approved by the Agency pursuant to subsection (b) below.

(b) The plans and specifications for such additional work, if the cost of such additional work is projected to exceed ten thousand dollars (\$10,000), shall be submitted to the Agency for approval and Agency approval shall be obtained prior to the commencement of the work, except in the case of emergency repairs.

3.10 Liens

Subject to Section 2.4(c), the Lessee covenants and agrees promptly to pay all sums legally due and payable by the Lessee on account of any labor performed or materials supplied for the Improvements on which any lien is or can be legally asserted against the Lessee's leasehold interest in the Property. In the event any mechanics' or materialmen's lien is filed against the Improvements, subject to subsection 2.4(c), the Lessee at its expense shall promptly cause such lien to be removed by bonding

or otherwise, and the Lessee shall hold the Agency harmless from any and all such asserted claims or liens.

3.11 Permits, Licenses and Easements

The Agency agrees that, within ten (10) days after receipt of written request from the Lessee, it shall (at no expense to the Agency) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work the Lessee may do pursuant to this Lease, and shall also join in any grants of easements for public utilities useful or necessary to the proper construction of the Improvements or the operation of the Project.

ARTICLE IV: MAINTENANCE; USE OF PREMISES

4.1 Title to Improvements and Liens Thereon

The Agency hereby grants to the Lessee without warranty express or implied any right, title, or interest that the Agency may have in the Improvements now or hereafter located on the Property. Improvements on the Property during the Lease Term shall be and remain the property of the Lessee; provided, however, that the Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by the Agency. When the Lease Term expires or, subject to applicable cure rights of Approved Lenders, when the Lease is otherwise terminated under the terms of this Lease, title to the Improvements shall revert to and vest in the Agency without cost to the Agency. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Property without the necessity of a deed from the Agency to the Lessee after the Improvements have been constructed. The Improvements, when built, shall be and remain real property and shall be owned in fee by the Lessee for the term of this Lease. The Lessee agrees to execute, at the request of the Agency at the end of the Lease Term, a confirmatory quitclaim deed of the Improvements to the Agency to be recorded at the Agency's option and expense and any other documents that may be reasonably required by the Agency or the Agency's title company to provide the Agency title to the Property and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by the Agency.

The Lessee agrees that construction of the Improvements on the Property and any maintenance and repair work, alterations,

replacements and additions in connection therewith shall be of good quality and approved by the Approved Lenders, should approval of the Approved Lenders be required. The Lessee shall have no authority to create or place a lien or encumbrance of any kind upon the Agency's interest in the Property, unless approved by the Agency as provided in Sections 6.2 and 6.5. Subject to Section 2.4(c), the Lessee covenants and agrees promptly to pay all sums legally due and payable by the Lessee on account of any labor performed or materials supplied on the Property on which any lien is or can be legally asserted against the Lessee's interest in the Improvements or leasehold interest in the Property. In the event any mechanics' or materialmen's lien is filed against the Property, subject to section 2.4(c), the Lessee at its expense shall promptly cause such lien to be removed by bonding or otherwise, and the Lessee shall hold the Agency harmless from any and all such asserted claims or liens.

4.2 Use of Project and Assurances of the Lessee

The Lessee agrees:

(a) to use the Project to provide rental housing in accordance with the Affordability Restrictions and as a community facility which will be used by a licensed day care operator to provide childcare services, preference for which will be given to the households within the Project, and to maintain the character of the Project as required by any Approved Loan Documents, for so long as such agreements remain in effect;

(b) to operate the Project in accordance with the terms of the Affordability Restrictions, the provisions of which are incorporated herein by this reference;

(c) not to use the Project for any disorderly or unlawful purpose;

(d) to use its best efforts to prevent any Residents from committing or maintaining any nuisance or unlawful conduct on or about the Project;

(e) to use its best efforts to prevent any Residents from violating any of the covenants and conditions of this Lease with respect to the Project;

(f) to take reasonable action, if necessary, to abate any violation of this Lease by any Resident upon notice from the Agency;

(g) to obtain or cause the child care provider to obtain all required licenses and approvals required by law to operate the child care facility on the Property;

(h) subject to any applicable laws of the State of California and the rights of Residents, to permit the Agency and its agents to inspect the Project or any part thereof at any reasonable time during the Lease Term.

4.3 Compliance with Law

The Lessee shall at all times during the Lease Term use or cause the Project to be used for the purposes set forth in this Lease, consistent with all applicable zoning and environmental laws of any governmental authority having jurisdiction over the Project, and with all requirements of Approved Lenders. Subject to the next sentence, the Lessee agrees to comply with all applicable and lawful statutes, rules, orders, ordinances, requirements and regulations of the United States, the State of California, and of any other governmental authority having jurisdiction over the Project. The Lessee may, in good faith and on reasonable grounds, dispute the applicability of, or the validity of any charge, complaint or action taken pursuant to or under color of, any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as speedily as reasonably possible.

4.4 Maintenance of the Project

During the term of this Lease, the Lessee shall perform, or cause to be performed, all maintenance and repairs necessary to maintain the Project in good repair and tenantable condition.

4.5 Utilities

The Lessee shall be responsible for the cost of all utilities, including water, heat, gas, electricity, waste removal, sewers, and other utilities or services supplied to the Project and, subject to Section 2.4(c), the Lessee shall pay or cause same to be paid currently and as due.

4.6 Hazardous Materials

(a) Definitions. The following special definitions shall apply for the purposes of this Section 4.5:

(i) "Hazardous Materials" shall mean:

(A) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code at such time;

(B) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time;

(C) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1521 et seq.), Safe Drinking Water Act (42 U.S.C. Section 3000 (f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 1300 et seq.) at such time; and

(D) any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property.

(ii) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

(b) Certain Covenants and Agreements. The Lessee hereby covenants and agrees as follows:

(i) The Lessee shall not knowingly permit the Project or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Project; provided however that, for the purposes of this subsection (b)(i) only, the term "Hazardous Materials" shall not include the following (which shall hereinafter be referred to as the "Excluded Hazardous Materials"): construction materials in reasonable quantities for lawful use in the construction of the Improvements; reasonable quantities of

gardening materials, household products, office supply products or janitorial supply products of the type customarily used in the construction, maintenance, rehabilitation, or associated with buildings and grounds, or typically used in household activities or the childcare facility on the Project, so long as used in a lawful manner; certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 et seq., which substances are commonly used in reasonable quantities and in a lawful manner by a significant portion of the population living within the region of the Project, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(ii) The Lessee shall keep and maintain the Project and each portion thereof in compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

(iii) Upon receiving actual knowledge of the following, the Lessee shall immediately advise the Agency in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Lessee or the Project and Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Project; or (D) the Lessee's discovery of any Hazardous Materials, except the discovery of any Excluded Hazardous Materials, on any real property adjoining or in the vicinity of the Project. The Agency shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Lessee.

(iv) Without the Agency's prior written consent, which shall not be unreasonably withheld, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Project (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement

agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(c) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.4(a) below, the Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Agency) the Agency, its boardmembers, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgements, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of (1) the failure of the Lessee or any other person or entity to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project at any time after the date of this Lease; (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Project occurring after the date of this Lease; or (3) any activity carried on or undertaken on or off the Project, subsequent to the date of this Lease, and whether by the Lessee or any employees, agents, contractors or subcontractors of the Lessee, or any third persons at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Project. The foregoing indemnity shall further apply to any residual contamination on or under the Project, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The foregoing indemnity shall not apply to any Hazardous Materials existing on the Property prior to the date of this Lease.

4.7 Consultants

(a) If a contract is entered into with Catholic Charities of Santa Clara County for property management and social services (the "Property Management and Social Services Provider") pursuant to Section 2.9 of the DDA, the Lessee shall be bound by the terms of such contract.

(b) If a contract is entered into with Growth and Opportunity, Inc., a California nonprofit public benefit corporation (the "Childcare Consultant"), the Lessee shall be bound by the terms of such contract.

(c) Any contract entered into as provided in this Section 4.7 shall be submitted for review to HCD - Family Housing Demonstration Program.

ARTICLE V: ASSIGNMENT AND SUBLETTING

5.1 Definitions

(a) "Transfer" means

(1) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or of the leasehold estate in the Property or any part thereof or any interest therein or of the Improvements, or any contract or agreement to do any of the same; or

(2) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to ownership interest in the Lessee, or any contract or agreement to do any of the same; or

(3) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Lessee; or

(4) The subletting of part or all of the Property or the Improvements except subleases permitted by Section 5.4(d).

5.2 Purpose of Restrictions on Transfer

This Lease is granted to the Lessee solely for the purpose of developing and operating the Project and its subsequent use in accordance with the terms hereof, and not for speculation in landholding. The Lessee recognizes that the qualifications and identity of the Lessee are of particular concern to the community and the Agency, in view of:

(a) The importance of the redevelopment of the Project to the general welfare of the community;

(b) The fact that a Transfer as defined in Section 5.1 above is for practical purposes a transfer or disposition of the Lessee's leasehold interest in the Project; and

(c) The fact that the Project is not to be used for speculation, but only for its development and operation by the Lessee in accordance with this Lease and the DDA.

The Lessee further recognizes that it is because of such qualifications and identity that the Agency is entering into this Lease with the Lessee and that Transfers are permitted only as provided in this Lease.

5.3 Prohibited Transfers

Except as expressly permitted in this Lease, the Lessee represents and agrees that the Lessee has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law except pursuant to Sections 5.4, 5.5 and 5.6 below.

Any Transfer made in contravention of this Section 5.3 shall be void and shall be deemed to be a default under this Lease whether or not the Lessee knew of or participated in such Transfer.

5.4 Permitted Transfers

Notwithstanding the provisions of Section 5.3, the following Transfers shall be permitted and approved by the Agency:

(a) Any Transfer creating a lien against the Lessee's leasehold interest in the Project approved pursuant to the Financing Plan.

(b) Any Transfer directly resulting from the foreclosure of an Approved Loan mortgage or the granting of a deed in lieu of foreclosure of an Approved Loan mortgage or as otherwise permitted under Article VI below;

(c) Any Transfer to a non-profit public benefit corporation controlled by or directly affiliated with the Lessee, or a limited partnership in which the Lessee is the managing general partner;

(d) The subletting of the Dwelling Units to the Residents.

(e) The subletting of a portion of the Improvements for the Childcare Facility.

(f) Any Transfer approved in writing by the Agency pursuant to Section 5.5 below.

5.5 Procedure for Approval of Transfers After Completion

In the event the Lessee desires to effect a Transfer pursuant to Section 5.4(e), the Lessee shall first submit to the Agency information regarding such proposed Transfer including the proposed documents to effectuate the Transfer and information regarding the transferee's financial strength and the transferee's capacities and expertise with respect to operation and management of similar affordable housing developments. The Agency shall approve the Transfer by written notice to the Lessee if, based upon the information submitted by the Lessee and any other information available to the Agency, it appears that, following the Transfer, the Lessee will have sufficient financial strength and management and operation expertise in the ownership and operation of affordable housing developments to fully perform and comply with all terms of this Lease. Unless the proposed Transfer is disapproved by the Agency within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

5.6 Effectuation of Certain Permitted Transfers; Sale of the Agency's Fee Interest

(a) No Transfer of this Lease permitted pursuant to Section 5.4 (other than a Transfer pursuant to an Approved Loan mortgage under Sections 5.4(a) or 5.4(b) or the subleasing of Dwelling Units pursuant to Section 5.4(d) or the subleasing of the Childcare Facility pursuant to Section 5.4(e) shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing reasonably satisfactory to the Agency and in form recordable among the land records, shall expressly assume all of the obligations of the Lessee under the DDA and this Lease and agree to be subject to all conditions and restrictions to which the Lessee is subject arising during such person's or entity's ownership of the leasehold interest in the Project. Anything to the contrary notwithstanding, the holder of an Approved Loan mortgage or any owner of the estate created by this Lease whose interest shall have been acquired by, through or under an Approved Loan mortgage or shall have been derived immediately from any holder thereof shall not be required to give to the Agency such written assumption until such holder or other person is in possession of the Property or the Improvements, or entitled to possession thereof.

(b) Upon all of the terms of this Article V being satisfied for a permitted Transfer to be effective, the Lessee or the transferor party shall be released from all liability under this

Lease so transferred arising subsequent to the effective date of such Transfer.

5.7 Right of First Refusal in Bankruptcy

If, notwithstanding the provisions of this Article V, this Lease is assigned by the operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, the Agency shall have a right of first refusal to purchase this Lease in accordance with this Section 5.7. If any trustee or debtor in possession in such proceedings (collectively, "trustee") receives an offer to purchase this Lease, such trustee shall notify the Agency in writing of the terms of such offer. If the Agency, within thirty (30) days after receipt of such notice, agrees in writing with such trustee to purchase this Lease on the terms stated, the trustee shall sell and convey this Lease to the Agency on the terms stated in the notice. If the Agency does not so indicate its agreement within the 30-day period, such trustee shall thereafter have the right to assign this Lease to the party making the offer on the terms of such offer or other terms not substantially less favorable to such trustee. If such offeror does not purchase this Lease on such terms and conditions, the Agency shall have the same right of first refusal pursuant to this Section 5.7 to purchase this Lease in the event of any later offer by any person or entity for the purchase of this Lease.

5.8 Successors and Assigns

The terms, covenants and conditions contained in this Article V shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto.

ARTICLE VI: MORTGAGE APPROVED LOANS

6.1 Approved Loan Obligations

Nothing contained in this Lease shall relieve the Lessee of its obligations and responsibilities under any Approved Loans to operate the Project as set forth therein.

6.2 Liens and Encumbrances Against the Lessee's Interest in the Leasehold Estate

(a) The Lessee shall have the right to encumber the leasehold estate created by this Lease with the deeds of trust or

mortgages in the Financing Plan approved by the Agency pursuant to Section 2.4 of the DDA.

(b) Except as approved by the Agency in the Financing Plan, or as otherwise consented to in writing by the Agency, the Lessee shall not have the right, without the Agency's consent, to encumber the Agency's interest in the Project. If the Agency so consents, the Agency's liability shall be limited to the Agency's fee interest in the Project which is security for the loan and the Agency shall not be personally liable for repayment of such loan.

(c) For as long as there is any lien securing any Approved Loans:

(1) The Agency shall not agree to any mutual termination or accept any surrender of this Lease, nor shall the Agency consent to any amendment or modification of this Lease materially affecting the interest of an Approved Lender without prior written consent of such Approved Lender which has an outstanding Approved Loan.

(2) Notwithstanding any default by the Lessee under this Lease, the Agency shall have no right to terminate this Lease unless the Agency shall have given Approved Lenders which have an outstanding Approved Loan written notice of such default and such Approved Lenders shall have failed to remedy such default or acquire the Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified by, this Section.

(3) Any Approved Lender which has an outstanding Approved Loan shall have the right, but not the obligation, at any time to pay any or all of the rental due pursuant to the terms of this Lease, and do any other act or thing required of the Lessee by the terms of this Lease, to prevent termination of this Lease. Each Approved Lender shall have ninety (90) days after receipt of notice from the Agency describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by the Lessee instead of by Approved Lender(s).

(4) In addition to the cure period provided in paragraph (3) above, if the default is such that possession of the Project may be reasonably necessary to remedy the default, any Approved Lender which has an outstanding

Approved Loan shall have a reasonable time after the expiration of such ninety (90) day period within which to remedy such default, provided that (i) such Approved Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee under this Lease within such ninety (90) day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Approved Lender shall have acquired the Lessee's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

(5) Any default under this Lease which by its nature cannot be remedied by any Approved Lender shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from the Agency describing the default, or prior thereto, any Approved Lender shall have acquired the Lessee's leasehold estate or commenced foreclosure or other appropriate proceedings, (ii) Approved Lender shall diligently prosecute any such proceedings to completion, (iii) Approved Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee hereunder which does not require possession of the Property, and (iv) after gaining possession of the Property, the Approved Lender shall perform all other obligations of the Lessee hereunder capable of performance by Approved Lender when the obligations are due.

(6) If Approved Lenders are prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving the Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Approved Lender shall have fully cured any default in the payment of any monetary obligations of the Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Approved Lender shall not interfere with the Agency's efforts to seek compliance by the Lessee with any non-monetary obligation under this Lease.

(7) The Agency shall mail or deliver to any Approved Lender which has an outstanding Approved Loan a duplicate copy of all notices which the Agency may from time to time give to the Lessee pursuant to this Lease. No notice by the Agency to the Lessee hereunder shall be effective unless and until a copy of the notice shall have been mailed or

delivered to such Approved Lenders as set forth in this Section.

(8) In the event any Approved Lender becomes the Lessee under this Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under subsection (9) below, that Approved Lender shall be liable under this Lease or such new lease only for the period of time that Approved Lender remains lessee thereunder, and that Approved Lender's right to assign this Lease or such new lease shall be subject to the restrictions set forth in this Lease. Nothing in this Section shall be construed to obligate any Approved Lender to remedy any default of the Lessee, and any failure of any Approved Lender to complete any such cure after commencing the same shall not give rise to any liability of any Approved Lender to the Agency or the Lessee.

(9) In the event a Approved Lender, its designee or another purchaser in foreclosure proceedings becomes the legal owner of the leasehold estate, and upon written request by Approved Lender given within sixty (60) days after becoming the legal owner of the leasehold estate, the Agency shall enter into a new lease of the Project with Approved Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Lease Term with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by the Lessee prior to termination) as are contained in this Lease and with priority equal to this Lease; provided, however, that Approved Lender shall promptly cure any defaults by the Lessee susceptible to cure by Approved Lender.

(10) The Agency shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed leasehold mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such leasehold mortgagee reasonable means to protect or preserve the lien of the leasehold mortgage and the value of its security. The Agency agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Lease Term or rent under this Lease nor otherwise in any material respect adversely affect any rights of the Agency under this Lease;

(d) Any leasehold mortgage created pursuant to subsection (a) of this Section shall be subject to the provisions of this Lease and all rights of the Agency under this Lease.

6.3 Cost of Approved Loans to be Paid by the Lessee

The Lessee affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Approved Loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, and (iii) all taxes and charges payable in connection with the Approved Loans.

6.4 Proceeds of Approved Loans

It is expressly understood and agreed that all Approved Loans proceeds shall be paid to and become the property of the Lessee, and that the Agency shall have no right to receive any such Approved Loan proceeds.

6.5 Subordination

In addition to the Lessee's right to encumber its leasehold estate in the Property and in the Improvements, the Agency agrees to encumber its fee title in the Project with the deeds of trust from Approved Lenders, but only as may be required by the Approved Lenders. Upon written request by the Lessee, the Agency agrees to provide the subordination provided in this Section 6.5, subject to the conditions described in this Lease, including the following:

(a) The liability of the Agency under any documents executed in connection with any loan shall be limited by the express terms of the instrument of subordination. The limitations shall include: the limitation of the Agency's liability solely to the interest or interests subordinated, and the Agency's right not to execute any instrument which would obligate the Agency for the payment of the Approved Loan secured by a deed of trust to which the fee is subordinated, and the Approved Lender's express recognition that the Agency is not so obligated; and the Approved Lender's agreement to provide the Agency with notice of any default under the Approved Loan, and the right, without the obligation, within the same time provided to the Lessee, to cure any default or to purchase the Approved Lender's rights under the Approved Loan Documents and other debt and security interests for an amount equal to the sum of the unpaid principal balance, plus accrued interest and other amounts evidenced and secured thereby.

(b) The Lessee shall not be in Material Default under the terms of this Lease at the time of a request for subordination. "Material Default" shall mean any material breach by the Lessee under this Lease, including, without limitation, the failure to pay rent then due and payable, or, the filing of a bankruptcy petition by or against the Lessee. The Lessee shall not be in Material Default if the Lessee has commenced to cure the Material Default at the time in question and diligently pursues such cure to completion.

(c) Provided the conditions of this Section 6.5 are satisfied, the Agency shall, within ten (10) days after written request by the Lessee, execute, acknowledge and deliver an instrument of subordination, together with other documents as may be reasonably required by the Approved Lender from the Agency to effectuate the provisions of this Section 6.5, without any charge by the Agency to the Lessee therefor, subject to the terms and conditions contained in this Lease. The Agency will immediately pay over to the Lessee proceeds received by the Agency, if any, of any Approved Loan and the proceeds of any Approved Loan received by the Agency shall be considered a trust fund to be paid to the Lessee. If any proceeds are made payable to both the Agency and the Lessee, the Agency shall immediately sign any papers necessary to transfer the proceeds to the Lessee.

6.6 Notice and Right to Cure Defaults Under Approved Loans

Upon the recording of a Memorandum of Lease of this Lease, the Agency may record in the office of the Recorder of the County in which the land is situated a request for notice of any default under each Approved Loan. In the event of default by the Lessee under a Approved Loan, the Agency shall have the right, but not the obligation, to cure the default. Any payments made by the Agency to cure a default shall be treated as rent due from the Lessee which shall be paid within thirty (30) days of the date on which the payment was made by the Agency.

ARTICLE VII: INSURANCE

7.1 Required Insurance Coverage

(a) Fire and Extended Coverage Endorsement. The Lessee shall, during the Lease Term, keep the Project insured against loss or damage by a standard all risk policy in amounts such that the proceeds of such insurance shall not be less than the replacement value of the Project, or should insurance in such amount not be reasonably and commercially available, such lesser amount as may be acceptable to the Agency, the Lessee and

Approved Lenders. The amount of such insurance shall be adjusted by reappraisal of the Project by the insurer or its designee at least once every five (5) years during the Lease Term, if requested by the Agency. If an all risk policy insuring the full replacement value of the Project is not reasonably and commercially available, the Lessee shall use best efforts to obtain and maintain an extended coverage endorsement that ensures the full replacement value of the Project as soon as such coverage becomes commercially and reasonably available.

(b) Liability and Property Damage Insurance. During the Lease Term, the Lessee shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Project. The limits of such insurance shall be not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage. The limits of the insurance shall be adjusted once every five (5) years if and as reasonably required by the Agency.

(c) Workers' Compensation Insurance. The Lessee shall carry or cause to be carried workers' compensation insurance covering all persons employed in connection with the Project and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against the Agency or the Lessee.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction, the cost of which exceeds fifty thousand dollars (\$50,000), the Lessee shall require any contractor to provide builders' risk insurance for not less than one million dollars (\$1,000,000) combined single limit for bodily injury or property damage insuring the interests of the Agency, the Lessee and any contractors and subcontractors.

7.2 Insurance Policies and Premiums

(a) All liability policies required by this Lease or any Approved Loan Document shall name the Agency as an additional insured. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to the Agency.

(b) To the extent obtainable, any policy of insurance shall provide that any change or cancellation of said policy must be made in writing and sent to the Lessee and the Agency at their respective principal offices at least thirty (30) days before the effective date of change or cancellation.

7.3 Proceeds of Insurance

(a) For so long as any Approved Loan on the Project is outstanding: All fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Project damaged or destroyed if (i) the Lessee agrees in writing within ninety (90) days after payment of the proceeds of insurance that such repair or rebuilding is economically feasible, and (ii) each Approved Lender with an outstanding Approved Loan permits such repair or rebuilding, provided that the extent of the Lessee's obligation to restore the Project shall be limited to the amount of the insurance proceeds.

If the Project is not repaired or rebuilt, all such proceeds shall be applied in a manner consistent with the terms of the Approved Loans.

(b) In the event that no Approved Loan is outstanding, all insurance proceeds received under the policies set forth in this Article VII shall be paid to the Lessee, provided that the Lessee shall apply such proceeds, to the extent possible, for reconstruction or repair in a manner consistent with the provisions of Article VIII.

7.4 Indemnification

(a) The Lessee shall indemnify and hold harmless the Agency, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, in whole or in part, by any act or omission of the Lessee, its agents, contractors, servants, employees or invitees, arising from or relating to the Lessee's obligations under this Lease, the construction of the Improvements, or the operation of the Project.

(b) The Agency shall indemnify and hold harmless the Lessee, its officers, employees, agents, contractors, and directors from all claims, actions, demands, costs, expenses and attorneys' fees arising out of, attributable to or otherwise occasioned, by the sole act or omission of the Agency, its agents, contractors, servants, employees or invitees, arising from the Agency's obligations under this Lease.

ARTICLE VIII: CONDEMNATION, DAMAGE OR DESTRUCTION OF THE PROJECT

8.1 Condemnation

If the Project or any part thereof shall be taken or condemned, for any public or quasi-public purpose or use by any competent entity in appropriate proceedings, or by any right of eminent domain, awards and other payments on account of a taking of the Project (less costs, fees and expenses incurred by the Agency and the Lessee in connection with the collection thereof) shall be applied as follows:

(a) Net awards and payments received on account of a partial taking of the Project, other than a taking for a temporary use not exceeding one (1) year shall be allocated and paid in the following order of priority:

(1) If the Lessee reasonably believes restoration is economically feasible, and unless the Lessee is then in default and the opportunity to cure has expired under the Approved Loan Documents, first, to pay the cost of restoration of the Project, provided that the extent of the Lessee's obligations to restore the Project shall be limited to the amount of the net award and payment received on account of the taking. the Lessee shall furnish to the Agency evidence reasonably satisfactory to the Agency of the total cost of the restoration of the Project.

(2) Second, or first if (i) the Lessee does not reasonably believe that restoration is economically feasible, or (ii) the Lessee is in default and the opportunity to cure has expired under the Approved Loan Documents, to any Approved Lenders (in the order of their respective lien priority, if there is more than one Approved Lender) in an amount equal to the decrease (if any) in the value of the security for their respective Approved Loans as a result of the partial taking (calculated as set forth below in this subsection 8.1(a)(2)), less amounts payable to or recovered by the Approved Lender pursuant to such taking, but not to exceed the unpaid balance of their Approved Loans. For purposes of this subsection 8.1(a)(2), the amount of decrease in the value of the security for a Approved Loan shall be the amount, if any, necessary to reduce the outstanding principal of said Approved Loan such that the Approved Loan to Value Ratio (as defined below) of said Approved Loan immediately following the taking is equal to the Approved Loan to Value Ratio of said Approved Loan immediately preceding the taking. "Approved Loan to Value Ratio" shall mean that fraction the numerator of which is the sum of the principal amount of the Approved Loan plus the principal amounts of all Approved Loans higher in lien priority to the Approved Loan and

the denominator of which is the appraised value of the Project immediately following the taking or immediately preceding the taking, as applicable. The values of the Project immediately preceding the taking and immediately following the taking shall be determined by an MAI or SRI appraiser selected by the Lessee and who is reasonably satisfactory to the Agency.

(3) The balance, if any, shall be divided between the Agency and the Lessee in the manner specified in subparagraph (e) below.

(b) Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period during the Lease Term shall be paid to the Lessee; provided, however, that if such taking for temporary use has resulted in any damage to or destruction of the Project, such net awards and payments shall be first applied to pay the cost of restoration thereof if the Lessee determines that restoration is feasible. Net awards and payments received on account of a taking for temporary use not exceeding one (1) year and relating to a period beyond the Lease Term shall be paid to the Agency.

(c) Net awards and payments received on account of a taking of only the leasehold estate created by this Lease shall be paid in the following order of priority:

(1) First, to any Approved Lenders (in the order of their respective lien priority, if there is more than one Approved Lender) in an amount up to, but not to exceed, the unpaid balance of their respective Approved Loans secured by the Project; and

(2) The balance, if any, shall be divided between the Agency and the Lessee in the manner specified in subparagraph (e) below.

(d) Net awards and payments received on account of a total taking of the Project shall be allocated and paid in the following order of priority:

(1) First, to any Approved Lenders with then-outstanding Approved Loans secured by the Project (in the order of their respective lien priority, if there is more than one Approved Lender), an amount equal to the unpaid balance secured by their respective Approved Loans to the extent there are sufficient funds to make such payments;

(2) The balance, if any, shall be divided between the Agency and the Lessee in the manner specified in subparagraph (e) below.

(e) The Lessee shall receive reimbursement for any funds it has reasonably expended for repair and/or reconstruction of the Project (other than funds received from Approved Lenders). the Agency shall receive that portion of the balance equal to the balance multiplied by a fraction the numerator of which is the number of years elapsed from the date of the Lease to the date of the taking, and the denominator of which is fifty-five (55). the Lessee shall receive the balance after deduction of the Agency's portion.

(f) The Lessee shall receive any award granted for or allocated to trade fixtures, moving expenses or loss of business.

(g) If the Project is taken or condemned during the last five (5) years of the Lease Term under circumstances described in subparagraph (a) above, the Lessee may elect to terminate the Lease and proceeds of any payment or award shall be distributed in accordance with the provisions of subparagraphs (d) and (e) above.

8.2 Administration of Construction Fund in the Event of Condemnation, or Damage or Destruction of Project

In the event that the Approved Loans have been paid in full, and if the Project or any part of it is to be repaired or reconstructed, after damage or destruction of the Project or its condemnation, all proceeds collected under any and all policies of insurance referred to in Article VII above covering such damage or destruction, or all compensation received for such taking by the exercise of the power of eminent domain, shall be paid into a special trust fund to be created and held by the Lessee and to be designated as the Construction Fund, during such repairing or reconstructing. Any surplus of such insurance or condemnation proceeds remaining after the completion of all payments for such repairing or reconstructing shall be held or applied by the Lessee in a manner consistent with the applicable provision of Article VII or this Article.

8.3 The Lessee, the Agency, Approved Lenders to be Made Parties in Legal Proceedings

(a) In the event proceedings shall be instituted (i) for the exercise of the power of eminent domain, or (ii) as a result of any damage to or destruction of the Project, the Lessee, the Agency, and any Approved Lender with a then-outstanding Approved

Loan shall be made parties to those proceedings, and if not made parties by the petitioning party, shall be brought into the proceedings by appropriate proceedings of other parties so that adjudication may be made of the damages, if any, to be paid to the Lessee, the Agency and Approved Lenders as compensation for loss of their rights in the Project, or for damage to or destruction of the Project. Should the Agency or the Lessee receive notice of institution of any proceedings subject to Section 8.1, the party receiving such notice shall notify the other in accordance with Section 12.2 of this Lease, not later than thirty (30) days after receiving such notice.

(b) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration, or adjustment of any and all claims and demands for damages on account of damage to or destruction of the Project, or for damages on account of the taking or condemnation of the Project.

ARTICLE IX: PARTICULAR COVENANTS

9.1 Non-Discrimination

(a) The Lessee covenants by and for itself, its successors and assigns, that they shall not, discriminate against, or segregate, any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry or disability in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project nor shall the Lessee, or any person claiming under or through the Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project. The foregoing covenant shall run with the land.

(b) All leases or contracts made or entered into by the Lessee and its successors and assigns as to any portion of the Project shall contain therein the following language:

(1) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons

on account of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(2) In Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, disability, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

(c) The Agency, and, where applicable, Approved Lenders shall be entitled to invoke any remedies available at law or in equity to redress any breach of these subsections or to compel compliance therewith by the Lessee. The obligations of the Lessee and the Agency to comply with Sections 9.1(a) and (b) above shall inure to the benefit of each other and to the Approved Lenders. The Agency, and where applicable, the Approved Lenders, shall be entitled to invoke any remedies available at law or in equity to redress any breach of this Article IX or to compel compliance therewith by the Lessee or the Agency.

ARTICLE X: ASSURANCES OF THE AGENCY

10.1 Agency to Give Peaceful Possession

The Agency covenants that it owns in fee simple, and that it has good and marketable title to the Project and that the Project is free of all easements, covenants, conditions and restrictions except for those exceptions set forth in Exhibit B to this Lease. The Agency has the full right and authority to make this Lease.

The Agency covenants and warrants that the Lessee and its tenants shall have, hold and enjoy, during the Lease Term, peaceful, quiet and undisputed possession of the Project leased without hindrance or molestation by or from anyone so long as the Lessee is not in default under this Lease.

10.2 Agency to Obtain Necessary Governmental Approvals

The Agency covenants that all necessary approvals have been obtained from any and all governmental agencies in compliance with all laws, ordinances, and regulations requisite to leasing of the Project.

10.3 Release of the Agency

Subject to the rights of any Approved Lenders, the Agency may sell, assign, transfer or convey (but not encumber) all or any part of the Agency's interest in the Project or this Lease without obtaining the Lessee's consent, provided that the purchaser, assignee, or transferee expressly assumes all of the obligations of the Agency under this Lease by a written instrument in a form reasonably satisfactory to the Lessee and recordable in the Official Records of the County of Santa Clara. In the event the Agency intends to sell all or any part of the Project, the Agency shall notify the Lessee of such intention not later than ten (10) days before close of escrow. In the event of a sale, assignment, transfer or conveyance by the Agency of the Project or its rights under this Lease, the same shall operate to release the Agency from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of the Lessee, and in such event the Lessee shall look solely to the successor in interest of the Agency in and to the Project or this Lease. This Lease shall not be affected by any such sale, and the Lessee agrees to attorn to any such purchaser or assignee.

ARTICLE XI: DEFAULTS AND REMEDIES

11.1 Events of Default; Remedy of Default by the Lessee

(a) Any one or more of the following events shall constitute an "Event of Default":

- (1) Failure to pay rent, as required pursuant to Section 2.3 of this Lease, or any other payment required hereunder, and continuance of such failure for a period of ten (10) days after receipt by the Lessee of written notice specifying the nonpayment;

(2) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed, and (i) continuance of such failure for a period of ninety (90) days after receipt by the Lessee of written notice specifying the nature of such default, or (ii) if by reason of the nature of such default the same cannot be remedied within said ninety (90) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same; or

(3) The Lessee's abandonment of the Project for the period of time required for such abandonment to be legally recognized as such under California law; or

(4) A general assignment by the Lessee for the benefit of creditors; or

(5) The filing of a voluntary petition by the Lessee, or the filing of an involuntary petition by any of the Lessee's creditors seeking the rehabilitation, liquidation or reorganization of the Lessee under any law relating to bankruptcy, insolvency or other relief of debtors, provided that in the case of an involuntary petition the Lessee shall have ninety (90) days to cause such petition to be withdrawn or dismissed; or

(6) The appointment of a receiver or other custodian to take possession of substantially all of the Lessee's assets or of this leasehold which appointment is not withdrawn or dismissed within ninety (90) days; or

(7) The Lessee becomes insolvent or declares it is unwilling to pay its debts as they become due; or any court enters a decree or order directing the winding up or liquidation of the Lessee or of substantially all of its assets; or the Lessee takes any action toward the dissolution or winding up of its affairs or the cessation or suspension of its use of the Project; or

(8) Attachment, execution or other judicial seizure of substantially all of the Lessee's assets or this leasehold, which is not dismissed, bonded, or stayed within ninety (90) days.

(b) Whenever any default shall have occurred and be continuing and upon expiration of any applicable cure periods provided herein, and subject to the cure rights of Approved Lenders set forth in this Lease, the Agency may take whatever

action at law or in equity as may appear reasonably necessary to enforce performance or observance of any obligations, agreements, or covenants of the Lessee under this Lease, including without limitation, termination of this Lease. In the event of such default, the Agency's remedies shall be cumulative, and no remedy expressly provided for in this Section shall be deemed to exclude any other remedy allowed by law.

11.2 Remedy of Material Breach by the Agency

If the Agency defaults under the Lease, the Lessee shall give the Agency and the Approved Lenders written notice requiring that the default be remedied by the Agency. If the default is not cured within the time set forth by the Lessee (which shall be a reasonable time for curing the default and shall in any event be at least thirty (30) days), the Lessee and Approved Lenders may take any action as may be necessary to protect their respective interests. Such action, in the event that the Agency shall fail to perform any of its obligations under this Lease and such failure shall continue after the expiration of the cure period specified in this section, shall include the right of the Lessee and Approved Lenders to cure such default and receive any expenditure with interest thereon from the Agency within thirty (30) days after sending to the Agency a statement therefor.

11.3 Termination

In the event of a total taking or in the event of damage, destruction, or a partial taking, other than a temporary taking of the Project, which Lessee reasonably determines renders continued operation of the Project infeasible both as a whole and in substantial part, this Lease shall terminate (except if the Lessee is rebuilding the Project in accordance with the terms of this Lease), and in such event any proceeds shall be allocated pursuant to Section 7.3 or Article VIII, as appropriate. In the event of a partial taking that does not result in termination pursuant to this Section 11.3, this Lease shall remain in full force and effect as to the portion of the Project remaining.

ARTICLE XII: MISCELLANEOUS

12.1 Entire Agreement

The DDA, this Lease, and the attached Exhibits to both documents constitute the entire agreement between the parties with respect to the matters set forth herein. The DDA and this Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the

Agency and the Lessee relating to the lease of the Property by the Agency to the Lessee.

12.2 Notices

All notices hereunder shall be in writing signed by Authorized Officer(s) and shall be sufficient if sent by United States first class, certified mail, postage prepaid, or express delivery service with a receipt showing the date of delivery, addressed:

if to the Agency: Redevelopment Agency of the
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Attn: Housing Program Coordination

if to the Lessee: South County Housing Corporation
7455 Carmel Street
Gilroy, CA 95020
Attn: Executive Director

or any other address as either party may have furnished to the other in writing pursuant to the requirements of this Section 12.2 as a place for service of notice. Any notice so mailed shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

12.3 Recording

A memorandum of this Lease shall be recorded in the Official Records of Santa Clara County.

12.4 Non-Waiver of Breach

Neither the failure of the Agency or the Lessee to insist upon strict performance of any of the covenants and agreements of this Lease nor the failure by the Agency or the Lessee to exercise any rights or remedies granted to such parties under the terms of this Lease shall be deemed a waiver or relinquishment (i) of any covenant herein contained or of any of the rights or remedies of the Lessee or the Agency hereunder, (ii) of the right in the future of the Agency or the Lessee to insist upon and to enforce by any appropriate legal remedy a strict compliance with all of the covenants and conditions thereof, or (iii) the right of the Agency to recover possession of the Project.

12.5 Effective Date; Counterparts

This Lease shall become effective upon the commencement of the Lease Term set forth in Article II. This Lease may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

12.6 Lease Binding on Successors

This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, the Agency, the Lessee, and their respective permitted successors and permitted assigns.

12.7 Relationship of Parties

Nothing contained in this Lease shall be deemed or construed by the parties or by any third party to create the relationship of principal or agent or of partnership, joint venture or association or of buyer and seller between the Agency and the Lessee, it being expressly understood and agreed that neither the computation of any payments and other charges under the terms of this Lease nor any other provisions contained in this Lease, nor any act or acts of the parties, shall be deemed to create any relationship between the Agency and the Lessee other than the relationship of landlord and tenant.

12.8 Gender and Number

Words of any gender used in this Lease shall be held to include any other gender, and any words in the singular number shall be held to include the plural (and vice versa), when the sense requires.

12.9 Titles

The titles and article or paragraph headings are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

12.10 Severability

If any provision of this Lease or the application of any provision to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not

be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

12.11 Applicable Law

This Lease shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Lease effective as of the day and year first above written.

AGENCY:

REDEVELOPMENT AGENCY OF THE
CITY OF MORGAN HILL, a public
body corporate and politic

By: Mind C. Lipp
Its: Executive Director

LESSEE:

SOUTH COUNTY HOUSING
CORPORATION, a California
nonprofit public benefit
corporation

By: Marie D. Juncher
Its: Executive Director

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

ATTACHMENT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill, and is described as follows:

PARCEL ONE, as shown on that certain Parcel Map filed for record on October 7, 1993 in Book 650 of Maps, page 44, Santa Clara County Records.

727-11-040 PH/MH/TF A 727-11-2, 3, & 4

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

ATTACHMENT B

EXCEPTIONS TO TITLE

1. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75 et seq, of the Revenue and Taxation Code of the State of California.
2. An easement affecting that portion of property of said land and for the purposes stated herein and incidental purposes as shown on the filed Map.

For: Public Service Easement

Affects: the Northeasterly 10 feet and the Southeasterly 10 feet

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)



OLD REPUBLIC TITLE COMPANY

17485 MONTEREY ST., STE 101 • MORGAN HILL, CALIFORNIA • 95037 • (408) 779-2166

PRELIMINARY REPORT

UPDATE-A

Issued for the sole use of:

SOUTH COUNTY HOUSING
7877 WREN AVENUE #D
GILROY, California 95020

Attention: CYNTHIA BOKURA

Our Order No. 366068-1-LMM

Reference

When Replying Please Contact:
Linda Mara (408) 779-2166

Property Address:

In response to the above referenced application for a policy of title insurance, Old Republic Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Schedule I and Schedule I (continued) attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of April 1st, 19 94, at 7:30 A.M.

The form of policy of title insurance contemplated by this report is:

a CLTA Standard Coverage - 1990, Owner's Policy. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

a FEE.

Title to said estate or interest at the date hereof is vested in:

MORGAN HILL RE-DEVELOPMENT AGENCY

Page 1 of 3 Pages

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM
UPDATE-A

The land referred to in this Report is situated in the County of Santa Clara, City of Morgan Hill,
State of California, and is described as follows:

PARCEL ONE, as shown upon that certain Parcel Map filed for record on October 7,
1993 in Book 650 of Maps, page 44, Santa Clara County Records.

727-11-040

PH/MH/TF

A 727-11-2, 3 & 4

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM

UPDATE-A

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes, general and Special, for the fiscal year 1994 - 1995 a lien, but not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
3. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed Map.

For : Public service easement
Affects : the Northeasterly 10 feet and the Southeasterly 10 feet

----- Informational Notes -----

1. PREMISES NOT ASSESSED FOR THE FISCAL YEAR 1993-94.
2. The last recorded instrument(s) conveying record title to the premises is/are:

A deed executed by THE FORECLOSURE COMPANY, a corporation to MORGAN HILL RE-DEVELOPMENT AGENCY, recorded June 15th, 1989 in Book K987 of Official Records, Page 52

AFFECTS PARCEL ONE.

A deed executed by BEN W. GILMORE to THE MORGAN HILL REDEVELOPMENT AGENCY, A PUBLIC BODY, CORPORATE AND POLITIC, recorded August 5th, 1991 in Book L011 of Official Records, Page 2198

AFFECTS PARCEL TWO.

The last conveyance affecting said land recorded within the last two years, prior to the date of this Report are: NONE

3. County recorder will charge an additional \$ 10.00 "Monument User Fee" to record a Grant Deed using the legal description in this report.

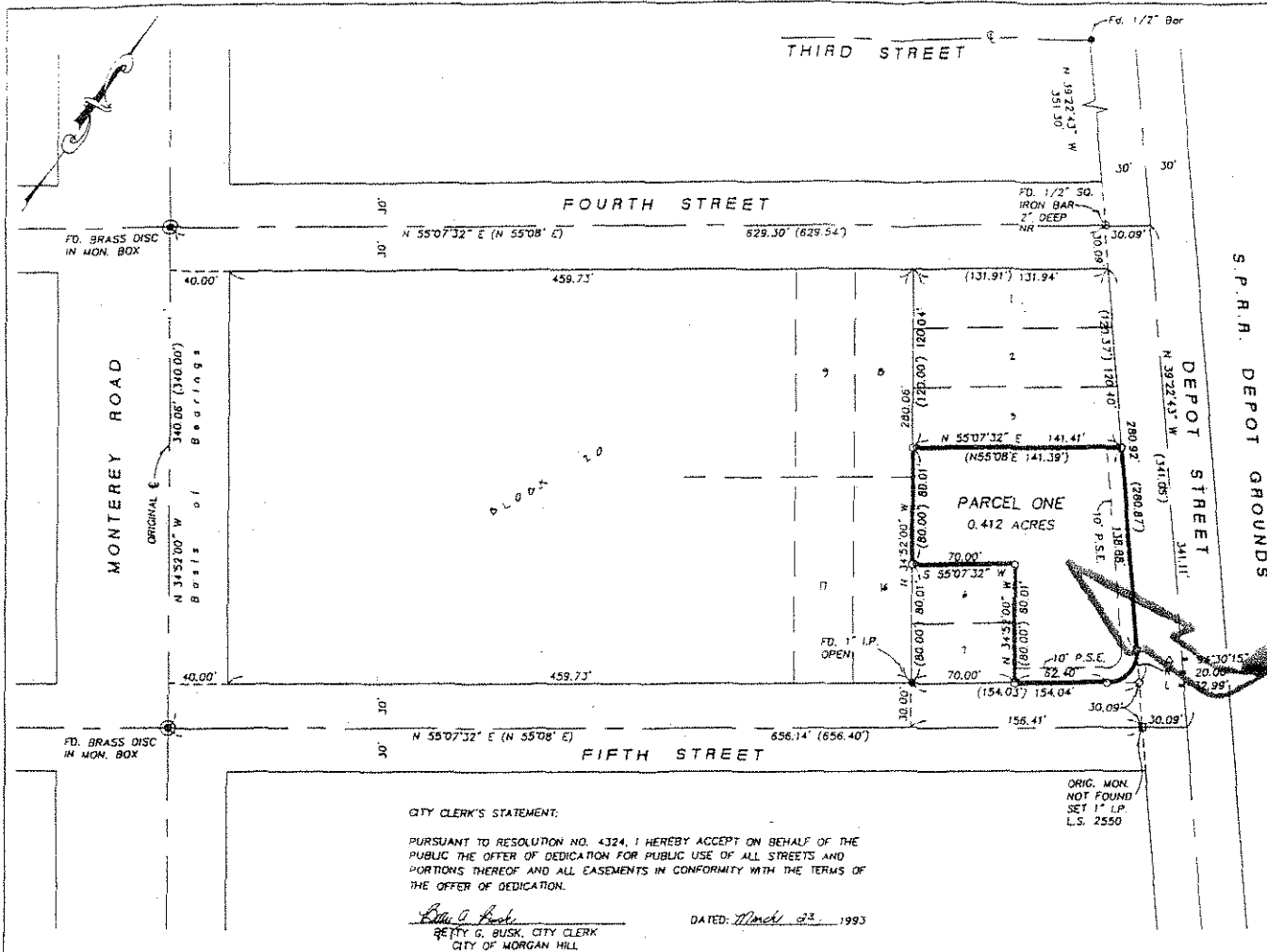
OLD REPUBLIC TITLE

ORDER NO. 404283-GF
UPDATE-A

OFFICE NOTE

ITEM NO. 6 MAY HAVE BEEN PAID BY TICOR TITLE IN THEIR FILE NO. 484614. IF PAID, PLEASE OBTAIN RECONVEYANCE/RELEASE OR LETTER OF INDEMNITY PRIOR TO CLOSING THIS TRANSACTION.

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)



OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE DISTINCTIVE BORDER SHOWN UPON THE HEREIN MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENTS ARE NECESSARY AS SET FORTH UNDER GOVERNMENT CODE, SECTION 56445 (a); THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DEDICATED AT FIFTH AND DEPOT STREET AS SHOWN UPON THIS MAP; SAID DEDICATIONS AND OFFERS OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON AND OVER SAID STREETS AND PORTIONS THEREOF.

WE ALSO HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING BUT NOT LIMITED TO POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON OR OVER THE LAND DESIGNATED AS "P.S.E." (PUBLIC SERVICE EASEMENT).

OWNERS: THE MORGAN HILL REDEVELOPMENT AGENCY
a public body, corporate and politic

BY: David C. Biggs
DAVID C. BIGGS EXECUTIVE DIRECTOR

ACKNOWLEDGMENT:

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ON MARCH 23, 1992, BEFORE ME, TERESA ORTA,
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY
APPEARED DAVID C. BIGGS

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME IN THEIR AUTHORIZED CAPACITIES, AND THAT BY THEIR SIGNATURES ON THE INSTRUMENT THE PERSONS, OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE SAME.

WITNESS MY HAND

SIGNATURE TERESA ORTA

MY COMMISSION EXPIRES SEPT. 11, 1995

PARCEL MAP

IN THE CITY OF MORGAN HILL
ALL OF LOTS 4 & 5 AND
PART OF LOTS 6 & 7 IN BLOCK 20
MORGAN HILL RANCH MAP NO. 2
BOOK 'G' OF MAPS, PAGE 19

SANTA CLARA COUNTY
OCTOBER 1992
HANNA & BRUNETTI - CIVIL ENGINEERS & SURVEYORS - GILROY, CALIF.
SHEET 1 OF 1
FIELD BOOK J35/14 JOB NO. 92074

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SOUTH COUNTY HOUSING IN OCT. 22, 1982. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, AND SUCH MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

CITY ENGINEER'S STATEMENT

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES.

DATED: April 1, 1993

CITY ENGINEER: Don W. Monk
DON W. MONK
OFF. 25672

RECORDER'S STATEMENT

FILED THIS 21st DAY OF October, 1992, AT 11:27 A.M. IN BOOK 1561 OF MAPS AT PAGE 44

AT THE REQUEST OF DAVID C. BIGGS

FILE NO. 1561427

BY: Brenda Davis
BRENDA DAVIS
COUNTY RECORDER

BASIS OF BEARINGS

THE BEARINGS SHOWN ON THIS MAP ARE BASED ON N 34°52' W ON THE CENTERLINE OF MONTEREY STREET AS FOUND MONUMENTED AND SHOWN HEREON, BOOK 'G' OF MAPS, PAGE 19

LEGEND

○ --- DENOTES 1" IRON PIPE SET; TAGGED L.S. 2550
● --- DENOTES FOUND MONUMENTS AS NOTED
() --- DENOTES RECORD DATA
NR --- DENOTES NOT RECORDED

**CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of enforcement thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidencing the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditor rights laws.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown in the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser value without knowledge.

SCHEDULE 1 (Continued)

3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 (Rev. 1992)
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessment of street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent date of the indebtedness to comply with applicable "doing business laws" of the state in which the land is situated.
5. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT
FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of a violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.

(Continued on next page)

SCHEDULE 1 (Continued)

- (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business laws" of the state in which the land is situated.
 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
 6. Any statutory lien for services, labor or materials (or claim of priority of any statutory lien for services, labor or material over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
 7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer;
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY - 1987
EXCLUSIONS**

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - land use
 - improvements on the land
 - land division
 - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date.
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
3. Title Risks:
 - that are created, allowed, or agreed to by you
 - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records.
 - that result in no loss to you
 - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks.
4. Failure to pay value for your title.
5. Lack of a right:
 - to any land outside the area specifically described and referred to in Item 3 of Schedule A
 - or
 - in streets, alleys, or waterways that touch your land.

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Any facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by making inquiry of parties in possession of the land.
2. Any liens or easements not shown by the Public Records. However, this does not limit the affirmative coverage in Item 8 of Covered Title Risks.
3. Any facts about the land not shown by the Public Records which a correct survey would disclose. However, this does not limit affirmative coverage in Item 12 of Covered Title Risks.
4. (a) Any water rights or claims or title to water in or under the land; (b) unpatented mining claims; (c) reservations or exceptions in patents or in acts authorizing the issuance thereof.

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)



OLD REPUBLIC TITLE COMPANY

17485 MONTEREY ST., STE 101 • MORGAN HILL, CALIFORNIA • 95037 • (408) 779-2166

PRELIMINARY REPORT

UPDATE-A

Issued for the sole use of:

Our Order No. 366068-1-LMM

SOUTH COUNTY HOUSING
7877 WREN AVENUE #D
GILROY, California 95020

Reference

Attention: CYNTHIA BOKURA

When Replying Please Contact:
Linda Mara (408) 779-2166

Property Address:

In response to the above referenced application for a policy of title insurance, Old Republic Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Schedule I and Schedule I (continued) attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of April 1st, 19 94, at 7:30 A.M.

The form of policy of title insurance contemplated by this report is:

a CLTA Standard Coverage - 1990, Owner's Policy. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

a FEE.

Title to said estate or interest at the date hereof is vested in:

MORGAN HILL RE-DEVELOPMENT AGENCY

Page 1 of 3 Pages

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM
UPDATE-A

The land referred to in this Report is situated in the County of Santa Clara, City of Morgan Hill,
State of California, and is described as follows:

PARCEL ONE, as shown upon that certain Parcel Map filed for record on October 7,
1993 in Book 650 of Maps, page 44, Santa Clara County Records.

727-11-040

PH/MH/TF

A 727-11-2, 3 & 4

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM
UPDATE-A

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes, general and Special, for the fiscal year 1994 - 1995 a lien, but not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
3. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed Map.

For : Public service easement
Affects : the Northeasterly 10 feet and the Southeasterly 10 feet

----- Informational Notes -----

1. PREMISES NOT ASSESSED FOR THE FISCAL YEAR 1993-94.
2. The last recorded instrument(s) conveying record title to the premises is/are:

A deed executed by THE FORECLOSURE COMPANY, a corporation to MORGAN HILL RE-DEVELOPMENT AGENCY, recorded June 15th, 1989 in Book K987 of Official Records, Page 52

AFFECTS PARCEL ONE.

A deed executed by BEN W. GILMORE to THE MORGAN HILL REDEVELOPMENT AGENCY, A PUBLIC BODY, CORPORATE AND POLITIC, recorded August 5th, 1991 in Book L011 of Official Records, Page 2198

AFFECTS PARCEL TWO.

The last conveyance affecting said land recorded within the last two years, prior to the date of this Report are: NONE

3. County recorder will charge an additional \$ 10.00 "Monument User Fee" to record a Grant Deed using the legal description in this report.

OLD REPUBLIC TITLE

ORDER NO. 404283-GF
UPDATE-A

OFFICE NOTE

ITEM NO. 6 MAY HAVE BEEN PAID BY TICOR TITLE IN THEIR FILE NO. 484614. IF PAID, PLEASE OBTAIN RECONVEYANCE/RELEASE OR LETTER OF INDEMNITY PRIOR TO CLOSING THIS TRANSACTION.



**CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of enforcement thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidencing the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditor rights laws.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown in the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

**AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser without knowledge.

SCHEDULE 1 (Continued)

3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 (Rev. 1992)
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating the occupancy, use or enjoyment of land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessment street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent operation of the indebtedness to comply with applicable "doing business laws" of the state in which the land is situated.
5. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT
FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of a violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.

(Continued on next page)

SCHEDULE 1 (Continued)

- (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business laws" of the state in which the land is situated.
 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
 6. Any statutory lien for services, labor or materials (or claim of priority of any statutory lien for services, labor or material over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
 7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer;
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY - 1987
EXCLUSIONS**

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - land use
 - improvements on the land
 - land division
 - environmental protection
 This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date.
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
3. Title Risks:
 - that are created, allowed, or agreed to by you
 - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records.
 - that result in no loss to you
 - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks.
4. Failure to pay value for your title.
5. Lack of a right:
 - to any land outside the area specifically described and referred to in Item 3 of Schedule A
 - or
 - in streets, alleys, or waterways that touch your land.
 This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Any facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by making inquiry of parties in possession of the land.
2. Any liens or easements not shown by the Public Records. However, this does not limit the affirmative coverage in Item 8 of Covered Title Risks.
3. Any facts about the land not shown by the Public Records which a correct survey would disclose. However, this does not limit affirmative coverage in Item 12 of Covered Title Risks.
4. (a) Any water rights or claims or title to water in or under the land; (b) unpatented mining claims; (c) reservations or exceptions in patents or in acts authorizing the issuance thereof.

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)



OLD REPUBLIC TITLE COMPANY

17485 MONTEREY ST., STE 101 • MORGAN HILL, CALIFORNIA • 95037 • (408) 779-2166

PRELIMINARY REPORT

UPDATE-A

Issued for the sole use of:

SOUTH COUNTY HOUSING
7877 WREN AVENUE #D
GILROY, California 95020

Attention: CYNTHIA BOKURA

Our Order No. 366068-1-LMM

Reference

When Replying Please Contact:
Linda Mara (408) 779-2166

Property Address:

In response to the above referenced application for a policy of title insurance, Old Republic Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Schedule I and Schedule I (continued) attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of April 1st, 19 94, at 7:30 A.M.

The form of policy of title insurance contemplated by this report is:

a CLTA Standard Coverage - 1990, Owner's Policy. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

a FEE.

Title to said estate or interest at the date hereof is vested in:

MORGAN HILL RE-DEVELOPMENT AGENCY

Page 1 of 3 Pages

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM

UPDATE-A

The land referred to in this Report is situated in the County of Santa Clara, City of Morgan Hill,
State of California, and is described as follows:

PARCEL ONE, as shown upon that certain Parcel Map filed for record on October 7, 1993 in Book 650 of Maps, page 44, Santa Clara County Records.

727-11-040

PH/MH/TF

A 727-11-2, 3 & 4

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

OLD REPUBLIC TITLE

ORDER NO. 366068-1-LMM

UPDATE-A

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

1. Taxes, general and Special, for the fiscal year 1994 - 1995 a lien, but not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
3. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed Map.

For : Public service easement
Affects : the Northeasterly 10 feet and the Southeasterly 10 feet

----- Informational Notes -----

1. PREMISES NOT ASSESSED FOR THE FISCAL YEAR 1993-94.
2. The last recorded instrument(s) conveying record title to the premises is/are:

A deed executed by THE FORECLOSURE COMPANY, a corporation to MORGAN HILL RE-DEVELOPMENT AGENCY, recorded June 15th, 1989 in Book K987 of Official Records, Page 52

AFFECTS PARCEL ONE.

A deed executed by BEN W. GILMORE to THE MORGAN HILL REDEVELOPMENT AGENCY, A PUBLIC BODY, CORPORATE AND POLITIC, recorded August 5th, 1991 in Book L011 of Official Records, Page 2198

AFFECTS PARCEL TWO.

The last conveyance affecting said land recorded within the last two years, prior to the date of this Report are: NONE

3. County recorder will charge an additional \$ 10.00 "Monument User Fee" to record a Grant Deed using the legal description in this report.

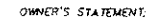
OLD REPUBLIC TITLE

ORDER NO. 404283-GF
UPDATE-A

OFFICE NOTE

ITEM NO. 6 MAY HAVE BEEN PAID BY TICOR TITLE IN THEIR FILE NO. 484614. IF PAID, PLEASE OBTAIN RECONVEYANCE/RELEASE OR LETTER OF INDEMNITY PRIOR TO CLOSING THIS TRANSACTION.

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)



WE HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL ALL STREETS AND PORTIONS OF STREETS NOT HERETOFORE EXISTING AND DEDICATED AT FIFTH AND DEPOT STREET AS SHOWN UPON THIS MAP: SAID DEDICATIONS AND OFFERS OF DEDICATION ARE FOR ANY AND ALL PUBLIC USES UNDER, UPON AND OVER SAID STREETS AND PORTIONS THEREOF.

WE ALSO HEREBY DEDICATE TO PUBLIC USE AND OFFER TO DEDICATE TO THE CITY OF MORGAN HILL EASEMENTS FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING BUT NOT LIMITED TO POLES, WIRES AND CONDUITS FOR ELECTRICAL, TELEPHONE, TELEVISION, GAS, STORM, SANITARY AND WATER SERVICES, AND ALL APPURTENANCES THERETO UNDER, UPON OR OVER THE LAND DESIGNATED AS "P.S.E." (PUBLIC SERVICE EASEMENT).

OWNERS: THE MORGAN HILL REDEVELOPMENT AGENCY
a public body, corporate and politic

BY: David C. Biggs
DAVID C. BIGGS EXECUTIVE DIRECTOR

ACKNOWLEDGMENTS:

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On MARCH 23 1992 BEFORE ME, TERESA ORTA,
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY
APPEARED DAVID C. BIGGS

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME IN THEIR AUTHORIZED CAPACITIES, AND THAT BY THEIR SIGNATURES ON THE INSTRUMENT THE PERSONS, OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE SAME.

WITNESS MY HAND

SIGNATURE Teresa Ortiz

MY COMMISSION EXPIRES SEPT. 11 .., 199 5

PARCEL MAP

IN THE CITY OF MORGAN HILL
ALL OF LOTS 4 & 5 AND
T OF LOTS 6 & 7 IN BLOCK 20
MORGAN HILL RANCH MAP NO. 2
BOOK 'G' OF MAPS, PAGE 19

SANTA CLARA COUNTY
OCTOBER 1992

CALIFORNIA
SCALE: 1" = 50'

HANNA & BRUNETTI - CIVIL ENGINEERS & SURVEYORS - GILROY, CALIF.

SHEET 1 OF 1

FIELD BOOK 335/14 JOB NO. 92074

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF SOUTH COUNTY HOUSING IN OGC 27 1922. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, AND SUCH MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

THIS MAP CONFORMS WITH THE REQUIREMENTS
OF THE SUBDIVISION MAP ACT AND LOCAL
ORDINANCES.

DATED: APRIL 1, 1993
CITY ENGINEER: Don W. Mon
DON W. MON

FILED THIS 7th DAY OF OCTOBER
1942 AT 11:02 M. IN ROOM

10-1-71: OF MAPS AT PAGE 44
AT THE REQUEST OF [unclear] [unclear]
FILE NO. [unclear] [unclear] [unclear]
COUNTY RECORDER

THE BEARINGS SHOWN ON THIS MAP ARE BASED
ON N 34°52' W ON THE CENTERLINE OF
MONTEREY STREET AS FOUND MONUMENTED AND

○ ---DENOTES 1" IRON PIPE SET; TAGGED U.S. 2550
 () ---DENOTES FOUND MONUMENTS AS NOTED
 NR ---DENOTES NO RECORD

[illegible]

SCHEDULE 1

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of enforcement thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser of value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidencing the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditor rights laws.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown in the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992
SCHEDULE OF EXCLUSIONS FROM COVERAGE

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser of value without knowledge.

SCHEDULE 1 (Continued)

3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 (Rev. 1992)
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessment of street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent operation of the indebtedness to comply with applicable "doing business laws" of the state in which the land is situated.
5. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992 WITH A.L.T.A. ENDORSEMENT
FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, or attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of a violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.

(Continued on next page)

SCHEDULE 1 (Continued)

- (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business laws" of the state in which the land is situated.
 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
 6. Any statutory lien for services, labor or materials (or claim of priority of any statutory lien for services, labor or material over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
 7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer;
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY - 1987
EXCLUSIONS**

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - land use
 - improvements on the land
 - land division
 - environmental protection
 This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date.
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
3. Title Risks:
 - that are created, allowed, or agreed to by you
 - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records.
 - that result in no loss to you
 - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks.
4. Failure to pay value for your title.
5. Lack of a right:
 - to any land outside the area specifically described and referred to in Item 3 of Schedule A
 - or
 - in streets, alleys, or waterways that touch your land.
 This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Any facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by making inquiries of parties in possession of the land.
2. Any liens or easements not shown by the Public Records. However, this does not limit the affirmative coverage in Item 8 of Covered Title Risks.
3. Any facts about the land not shown by the Public Records which a correct survey would disclose. However, this does not limit affirmative coverage in Item 12 of Covered Title Risks.
4. (a) Any water rights or claims or title to water in or under the land; (b) unpatented mining claims; (c) reservations or exceptions in patents or in acts authorizing the issuance thereof.

Attachment: depot_RDA_land-lease (2468 : Eden Housing Depot Commons Ground Lease)

1

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Redevelopment Agency of the City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Attn: Joyce Friedmann

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is entered into as of this 3rd day of November, 1994, by and between the Redevelopment Agency of the City of Morgan Hill, a body corporate and politic ("Lessor"), and South County Housing Corporation, a California nonprofit public benefit corporation ("Lessee"), with respect to that certain Land Lease ("Lease") dated April 21, 1994, between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. The Lease commenced on April 21, 1994 and shall continue from such date until the expiration of fifty-five (55) years thereafter.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

Executed this 3rd day of November, 1994, at Morgan Hill, California.

LESSOR:

REDEVELOPMENT AGENCY OF THE CITY OF
MORGAN HILL, a body corporate and
politic

By: David C. Bm
Its: Executive Director

LESSEE:

SOUTH COUNTY HOUSING CORPORATION, a
California nonprofit public benefit
corporation

By: Marie H. Zuncher
Its: Executive Director

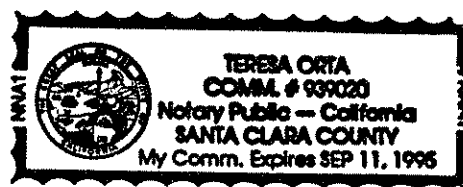
Attachment: depot_RDA_memorandum-of-lease (2468 : Eden Housing Depot Commons Ground Lease)

STATE OF CALIFORNIA)
) ss
 COUNTY OF SANTA CLARA)

On NOVEMBER 2, 1994, before me, the undersigned, a Notary Public, personally appeared DAVID C. BIGGS -----, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Teresa Orta



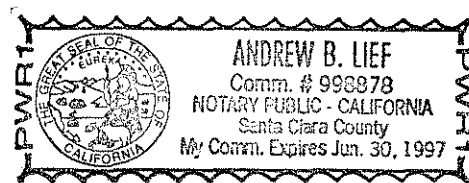
Attachment: depot_RDA_memorandum-of-lease (2468 : Eden Housing Depot Commons Ground Lease)

STATE OF CALIFORNIA)
) ss
 COUNTY OF SANTA CLARA)

On NOVEMBER 2, 1994, before me, the undersigned, a Notary Public, personally appeared MARIE W. JUNKER, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Andrew B. Lief



Attachment: depot_RDA_memorandum-of-lease (2468 : Eden Housing Depot Commons Ground Lease)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

PROVIDE PRELIMINARY FEEDBACK REGARDING POTENTIAL REDESIGN OF THE INTERSECTION AT THE NORTH-EAST CORNER OF MONTEREY ROAD AND COCHRANE ROAD

RECOMMENDATION(S)

1. Receive presentation on intersection alignment and safety improvements proposed for the northeast corner of Monterey Road and Cochrane Road in conjunction with development of the southwest corner of the Sutter Industrial Park; and
2. Provide direction regarding realignment plan timing or provide comments regarding project deferral.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The current configuration of the Monterey Road & Cochrane Road intersection allows westbound traffic on Cochrane Road to make a high-speed free right turn on to northbound Monterey Road. The configuration is a holdover from a time when Monterey Road and Cochrane Road were part of the State highway system that connected the southerly section of Highway 101 (which ended at Cochrane Road) and the northerly section of Highway 101 (which ended at Blossom Hill Road). With the completion of the final section of Highway 101 between Blossom Hill Road and Cochrane Road in 1984, the State relinquished jurisdiction of Cochrane Road and Monterey Road to the City. However, the State failed to convert this high speed free right turn configuration back to a conventional intersection return/corner prior to the relinquishment.

The City is currently processing a permit for the development of a parcel in the Sutter Industrial Park. The parcel is located immediately adjacent to the Monterey Road & Cochrane Road intersection. Concurrently with the construction of this site, the City can modify the intersection and eliminate the high speed free right turn that presently exists at this location. The proposed design would reconfigure the northeast corner of the intersection to a standard 40-foot radius similar to the rest of the signalization intersection in the City. The intersection would then operate with a conventional right turn, with vehicles coming to a full stop at a red light.

As a standard condition of development, the proposed development project will be required to install sidewalks and landscaping along the parcel(s) frontage on Monterey Road and Cochrane Road, which will present the City with an opportunity to share the cost of the intersection modifications. Rather than improve the existing condition at the time of development, the City will provide the design for the new improvements and proportionately share in the project, leveraging the work required of the private development.

The proposed intersection modifications will improve pedestrian safety by providing signalized crosswalks on all four legs of the intersection and will help to further the City's goal of providing a safe walking route to Sobrato High School along Monterey Road. It will also improvement the efficiency of the existing traffic signal by allowing it to operate in an 8-phase configuration rather than the current 6 phase configuration.

There are design and multiple implementation actions that will require City Council approval if the Council is interested in exploring the potential improvements. They will include summary vacation and re-dedication of roadway and establishment of new public service easements.

COMMUNITY ENGAGEMENT: Inform

This report is intended to inform the City Council and the community of the potential to condition the proposed development project on the reconfiguration of the Monterey Road & Cochrane Road intersection.

ALTERNATIVE ACTIONS:

If the City Council should wish to defer intersection realignment at time of development, the entire cost of the improvements in the future would be the 100% responsibility of the City of Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

N/A

FISCAL AND RESOURCE IMPACT:

There is no significant fiscal impact to receiving this report and providing direction. As a rule, the City seeks every opportunity to leverage development activities with needed transportation and public utilities modifications and enhancements. Through these partnerships, the City reduces the impact of these improvements on the General Fund.

If the Council elects to proceed with the proposed modifications, the City Engineer will prepare and provide the design specifications for the intersection.

CEQA (California Environmental Quality Act):

This action is intended to determine whether there is interest from Council and community in improving the intersection at Monterey Road and Cochrane Road. The

City will comply with the California Environmental Quality Act (CEQA) prior to taking any formal steps to initiate the potential street improvements.

LINKS/ATTACHMENTS:

1. Intersection Map



Attachment: Intersection Map (2472 : Redesign and Construction of NE Corner of Monterey Road and Cochrane Intersection)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 2, 2019

PREPARED BY: Leslie Little, Assistant City Manager for Community Development
APPROVED BY: City Manager

UPDATE REGARDING 2019 STATE HOUSING LEGISLATION/IMPACTS

RECOMMENDATION(S)

Receive information regarding 2019 State Housing Legislation and Impacts to Morgan Hill Housing Development Guidelines and Enforcement, Residential Development Control System, Development Processing and Work Program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Community Engagement and Messaging
Housing

REPORT NARRATIVE:

This item is intended to transmit a PowerPoint presentation which will discuss pending State legislative changes and the impacts the new legislation will have upon Morgan Hill. Each of the bills highlighted have been approved by the full Legislature and are on the Governor's desk for signature. The Governor has indicated he will sign Senate Bill (SB) 330 – Housing Crisis Act of 2019, and Assembly Bill (AB) 1482 – Tenant Protection Act of 2019. The 2019 State Housing Legislation will require numerous changes to Morgan Hill permitting and processing of all residential development projects, including accessory dwelling units. The effective date of any new rule change is January 1, 2020.

Much of the presentation is dedicated to SB 330 (Skinner) “The Housing Crisis Act of 2019” which significantly amends the California Housing Accountability Act. Other bills to be discussed include AB 1763 (Chiu) amending density bonus law, SB 13 (Wieckowski), AB 881 (Bloom), and AB 68 (Ting), related to Accessory Dwelling Units (ADU's), AB 1487 (Chiu) creating authority for a 9 county regional agency to raise funds for and provide tools for housing protection, preservation and production, and AB 1482 (Chiu et al) anti-rent gouging and “just cause” eviction law. The Governor has 30 days from the passage of legislation to sign or veto a bill. By October 13, the state should know the status of all legislation passed this session.

The presentation will also include a discussion regarding the upcoming Development Services work program for the balance of the calendar year.

A PowerPoint presentation is attached to this report.

COMMUNITY ENGAGEMENT:

This presentation is intended to inform the City Council and Community. Once legislation is signed, presentations will be made to the Realtors Association, Rotary, Kiwanis, AAUW, and potentially other groups.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

A legislative update presentation was also held at the Planning Commission on September 24, 2019.

FISCAL AND RESOURCE IMPACT:

There is no significant fiscal impact to receiving this report. Tracking legislation and updating the Council and the Community on such legislation is part of the City staff's annual workplan.

CEQA (California Environmental Quality Act):

Not a project, as this is an administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2019 Housing Legislation update



2019 Housing Legislation Update



Housing Crisis

- Housing growth not keeping up with population growth
- Current shortage of 2,000,000 units in CA increasing to 3,500,000 units by 2025
- Strategies suggest building on vacant urban land, intensifying housing around transit, adding density to multifamily development, increasing supply of affordable housing through various methods

Housing Accountability Act

The Housing Accountability Act, among other requirements, prohibits a local agency from **disapproving, or conditioning approval** in a manner that renders infeasible, a housing development project for **very low, low, or moderate-income households** or an emergency shelter

Sets policy for all cities having a “fair share” of housing development obligations

City RHNA Accomplishments

Current 5th Cycle (2015 - 2023) Summary with Pledged Affordable Units

Morgan Hill	RHNA	Units Permitted	Units Pledged	Remaining / (Surplus)	% Complete
VLI (very low income)	273	80	78	115	29%
LI (low income)	154	178	14	(38)	116%
Mod (Moderate Income)	185	385	320	(520)	208%
Above Mod (Above Moderate Income)	316	1,251	TBD	(935)	396%
TOTAL	928	1,894	412	(1,378)	204%

New Compliance Pending

- SB 166 No net loss zoning density – 180 days
- No net loss development unit accountability
- AB 1397 Site Inventory changes
- Replacement housing
- Housing Element – new minimum density for sites
- SB 828 Identification of 125% of RHNA need
- New RHNA rules & numbers: + 47% - + 300%

SB 330 – Housing Crisis Act of 2019

Suspended for 5 years:

1. Imposed growth caps
2. Limitations on annual permits or allocations
3. Referendum and initiative
4. Moratorium unless approved for all land use and reviewed by HCD

SB 330 - Limitations

Prohibits City from imposing any condition which would cause project to be developed at lower density unless:

1. Specific adverse impact upon public health and safety
2. No satisfactory way to mitigate adverse impact
 - Use of Density Bonus not valid basis to find a project inconsistent or not in compliance
 - Limits public meetings/hearings to 5 per project

SB 330 – Development

- Allows all housing (affordable & market rate) development to proceed even if zoning inconsistent with General Plan:
 - No Zoning Amendment requirement
 - Mixed-Use Flex – no Block Level Master Plan, or PD unless Developer requested

SB 330 – Fees Fixed

- At time prelim application deemed complete, plus:
 1. Annual COLA
 2. Costs necessary to mitigate under CEQA
- Term: 2 ½ years

SB 330 – Processing - 2025

- Requires objective criteria, no subjective judgements
- Within 30 days of submission of pre-application, agency determines whether complete (60 days > 150 units)
- If not complete, provide exhaustive list of required submittals per Gov. Code Section 65941.1(a)
- After that, agency not allowed subsequent request of any item NOT on list.

SB 330 – Project Review

Approve or Disapprove

1. 60-180 days from certification of EIR
2. 60 days of Negative Declaration
3. 60 days if 49% of units are affordable to very low and low, restricted for 30 years, and tax credit project
4. 60 days from exempt project determination
 - Residential project
 - Mixed use if 50% residential – “Neighborhood Commercial”

SB 330 - Tennant Protections for redevelopment of sites

- No net loss of units at lower income
- New project must increase density
- Relocation
- Long term notice (6 months)
- Right of first refusal
 - o Agricultural Land and Historic protected from conversion

SB 330 - Enforcement

- Applicant
- A person eligible to reside in dwelling or emergency shelter
- A housing organization
- Court ordered Judgement to compel within 60 days
- Award attorney fees to petitioner
- Fine up to \$10,000 per unit - from General Fund
- x5 if bad faith actions apply

SB 330 – Policies/Standards

Does not prohibit adoption of new policies/standards which:

- Allow greater density
- Facilitate development of housing
- Reduce costs of housing development
- Imposes/implements CEQA mitigation measures

AB 1482 – Rent/Tenant Protections

- Single family units exempt
- 15 years old and younger - exempt
- 2 units or more
- 10-year term
- 5% + CPI (inflation)
- No discrimination regarding source of income (section 8 vouchers)

AB 881/AB 68/SB 13 - ADU's

- City must update local ADU Ordinance
- No lot size/FAR requirement; 4 ft side/rear yard
- 2 ADU's per single family lot occupied with a home and multifamily
- Must permit up to 1,200 sq. ft (attached if 2,400 sq. ft)
- 16' height permitted

AB 881/AB 68/SB 13 - ADU's (continued)

- No replacement parking for converted garage or carport or new unit within ½ mile of transit
- No owner-occupancy requirement
- 60-day ministerial review on SF & MF sites
- Ministerial review of multiple ADU's inside multifamily structure
- No impact fees <750 sq. ft; 25% >750 sq. ft.
- HCD to audit in 1 year

AB 1763 - Density Bonus

- Defines affordable projects as 100% affordable with 20% affordable to lower income
- 100% affordable receives 80% density bonus; 4 incentives/concessions
- Within a ½ mile transit stop or transit corridor, unlimited density and 3 additional stories or 33 feet height increases

AB 1763 – Density Bonus & Parking

- Shall not impose any new more restrictive parking requirements
- New parking requirement near transit as follows:
- $\frac{1}{4}$ mile of rail/bus corridor - 0 per unit
- $\frac{1}{2}$ mile of rail/bus corridor - .5 per unit

AB 1487 – SF Bay Area: Housing Development Financing Agency

- Leadership: Executive Board MTC/ABAG
- Direct allocations to Big 3 cities and any city without 30% of total county housing allocation
- No sales tax
- Commercial linkage, business tax etc. - 50% to County of origin

Questions?



Item # 04

AGENDA DATE: 10/02/19
SUPPLEMENT # 1



Mayor Rich Constantine & Morgan Hill City Council
17575 Peak Ave
Morgan Hill, CA 95037

October 1, 2019

Dear City Council Members and Mayor Reynolds,

The Campaign for Tobacco-Free Kids is pleased to submit this letter in support of efforts in the City of Morgan Hill to reduce tobacco use, particularly among youth. The Campaign for Tobacco-Free Kids is the nation's largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, and help smokers quit. We commend Morgan Hill for being a national leader in its commitment to reducing the death and disease from tobacco use. It is encouraging to see cities and counties in California continue to take thoughtful, evidenced-based steps to reduce the number of kids who start using tobacco and help tobacco users quit. While California has made great strides in reducing tobacco use, tobacco use remains the number one preventable cause of premature death and disease in Morgan Hill and the nation, killing 480,000 Americans annually.

Prohibiting the sale of flavored tobacco products, including menthol cigarettes, in all tobacco retailers is a critical step that will help protect children living in Morgan Hill from the unrelenting efforts by the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products so they are more appealing and easy for beginners, who are almost always kids. These products are pervasive and are marketed and sold in a variety of kid-friendly flavors. With their colorful packaging and sweet flavors, flavored tobacco products are often hard to distinguish from the candy displays near which they are frequently placed in retail outlets. **Nationally**, eight out of ten of current youth tobacco users have used a flavored tobacco product in the past month.¹

Menthol is the Most Popular Tobacco Flavor Among Youth

Most insidious among the flavors preferred by youth, are mint and menthol. We applaud your decision not to exempt this particular flavor from your ordinance. Menthol delivers a pleasant minty taste and imparts a cooling and soothing sensation. These characteristics successfully mask the harshness of tobacco, making it easier for beginner smokers and kids to tolerate smoking. The FDA's Tobacco Product Scientific Advisory Committee (TPSAC) has reported that:

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.
- The availability of menthol cigarettes reduces smoking cessation, especially among African- Americans, and increases the overall prevalence of smoking among African Americans.
- Menthol cigarettes are marketed disproportionately to younger smokers and are disproportionately marketed per capita to African Americans.

After a thorough review of the evidence, TPSAC concluded that "Removal of menthol cigarettes from the marketplace would benefit public health in the United States."²

Flavored Tobacco Products Are Pervasive

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. While overall cigarette sales have been declining since the 2009 law, the proportion of smokers using *menthol* cigarettes (the only remaining flavored cigarette) has been increasing.³ Menthol cigarettes comprised 36 percent of the market in 2017.⁴

The Tobacco Control Act's prohibition on characterizing flavors did not apply to other tobacco products, and as a result, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products. In fact, the overall market for flavored tobacco products is actually growing. In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars. These products are available in a wide assortment of flavors – like gummy bear, cotton candy, peanut butter cup, cookies 'n cream and pop rocks for e-cigarettes and chocolate, watermelon, lemonade and cherry dynamite for cigars. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry's ice cream store. (See Appendix for examples).

As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.⁵ Flavors are not just a critical part of the product design, but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”⁶ The 2016 National Youth Tobacco Survey found that 78.2 percent of middle and high school students—20.5 million youth—had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9 percent in 2014.⁷

Sales of flavored cigars, meanwhile, have increased by nearly 50 percent since 2008, and flavored cigars made up more than half (52.1%) of the U.S. cigar market in 2015. The number of unique cigar flavor names more than doubled from 2008 to 2015, from 108 to 250.⁸ The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Black & Mild, Swisher Sweets, White Owl, Backwoods, and Dutch Masters – all come in flavor varieties.⁹ These products are often sold singly or can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth. Note that cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.¹⁰

Although tobacco companies claim to be responding to adult tobacco users’ demand for variety, it’s clear that flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. This growing market of flavored tobacco products is undermining progress in reducing youth tobacco use in Morgan Hill.

Flavored Tobacco Products Are Popular Among Youth

These sweet products have fueled the popularity of e-cigarettes and cigars among youth. A government study found that 81 percent of kids who have ever used tobacco products started with a flavored product. Across all tobacco products, the data is clear: flavored tobacco products are overwhelmingly used by youth as a starter product, and preference for flavors declines with age.

Recently released data from the 2019 National Youth Tobacco Survey shows that the youth e-cigarette epidemic continues to grow--27.5% of high school students are current e-cigarette users, a 135% increase from just two years ago.¹¹ Just like with cigarettes, menthol e-cigarette are popular among youth. 63.9% of high school e-cigarette users use menthol or mint flavored e-cigarettes, which are about as popular as fruit-flavored products.¹² Another national survey found that 97% of current youth e-cigarette users have used a flavored e-cigarette in the past month.¹³ Moreover, youth cite flavors as a major reason for their current use of non-cigarette tobacco products, with 70.3% say they use e-cigarettes “because they come in flavors I like.”¹⁴

The Surgeon General has concluded that, “The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”¹⁵ The manufacturer of JUUL, the most popular e-cigarette,

claims that each JUULpod contains as much nicotine as a pack of twenty cigarettes. Youth use of e-cigarettes also increases the risk for trying more dangerous combustible products. A 2018 report from the National Academies of Science, Engineering & Medicine found that “There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”¹⁶ Therefore, it is critical for any policy restricting sales of flavored tobacco products to include e-cigarettes.

As the only flavored cigarette left on the market, it’s also no surprise that menthol cigarettes are popular among youth. Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating smoking. More than half of youth smokers use menthol cigarettes, including seven out of ten African American youth smokers.¹⁷ The popularity of menthol flavored cigarettes is also evidenced by brand preference among youth. According to data from the National Survey on Drug Use and Health, one in five smokers ages 12-17 prefers Newport cigarettes, a heavily marketed menthol cigarette brand. Preference for Newport is even higher among African-American youth smokers (69.1 percent) because of targeted marketing by the tobacco industry.¹⁸ As noted previously, young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.¹⁹

Tobacco companies have a long history of targeting and marketing flavored tobacco products to African Americas and youth. Tobacco industry marketing, often targeted at minority communities, has been instrumental in increasing the use of menthol products and in the disproportionate use of menthol products by minority groups and youth. TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and African Americans.²⁰ Dating back to the 1950s, the tobacco industry has targeted these communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment. This targeting continues today: neighborhoods with predominantly African American residents have more tobacco retailers and Newport cigarettes are priced cheaper in those neighborhoods.²¹ As a result of this targeting, 85 percent of African American smokers smoke menthol cigarettes, compared to 29 percent of white smokers.²²

Use of menthol cigarettes leads to a disproportionate health burden for African Americans. The tobacco industry’s “investment” in the African American community has had a destructive impact. In 2013, the FDA released a report finding that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking.²³ Lung cancer is the second most common cancer in both African American men and women, but it kills more African Americans than any other type of cancer.²⁴ Decreased cessation success due to the popularity of menthol cigarettes among African Americans likely contributes to this mortality disparity.²⁵ TPSAC estimated that by 2020, 4,700 excess deaths in the African American community will be attributable to

menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol in cigarettes.

The scientific evidence leaves no doubt that menthol cigarettes and other flavored tobacco products increase the number of people, particularly kids, who try the product, become addicted and die a premature death as a result. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an important step toward protecting our children from the tobacco industry's aggressive efforts to hook children to a deadly, addictive product.

This issue is about common sense and protecting our kids and vulnerable populations. By prohibiting the sale of all flavored tobacco products in all tobacco retail outlets, Morgan Hill would join over forty cities and counties in California that are already taking action to *end* the sale of flavored tobacco products. **Thank you for considering a strong and comprehensive policy without exemptions. It will save lives.**

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Freitas". The signature is fluid and cursive, with a stylized "L" and "F".

Lindsey Freitas, MPA
Regional Advocacy Director
Campaign for Tobacco-Free Kids
lfreitas@tobaccofreekids.org

Appendix

A1: Examples of Flavored Tobacco Products



A2: Examples of Menthol Marketing



Source: TrinketsandTrash.org, CounterTobacco.Org

- ¹ Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.
- ² Tobacco Products Scientific Advisory Committee (TPSAC), *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011
<http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- ³ Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, 25(Suppl 2):ii14-ii20, 2016.
- ⁴ U.S. Federal Trade Commission (FTC), *Cigarette Report for 2017*, 2019, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2017-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_2017.pdf [data for top 5 manufacturers only].
- ⁵ Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.
- ⁶ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ⁷ Marynak, K., et al., "Exposure to Electronic Cigarette Advertising Among Middle and High School Students—United States, 2014-2016," *MMWR* 67(10): 294-299, March 16, 2018, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6710a3-H.pdf>.
- ⁸ Delnevo, CD, et al., "Changes in the mass-merchandise cigar market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.
- ⁹ SAMHSA's public online data analysis system (PDAS). National Survey on Drug Use and Health, 2015, https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CGR30BR2&column=CATAG2&weight=ANALWT_C&results_received=true.
- ¹⁰ National Cancer Institute (NCI), *Cigars: Health Effects and Trends. Smoking and Tobacco Control Monograph No. 9*, 1998, http://cancercontrol.cancer.gov/Brp/tcrb/monographs/9/m9_complete.pdf. Chang, CM, et al., "Systematic review of cigar smoking and all cause and smoking related mortality," *BMC Public Health*, 2015.
- ¹¹ FDA, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," September 11, 2019, https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non?utm_source=CTPEblast&utm_medium=email&utm_term=stratout&utm_content=pressrelease&utm_campaign=ctp-vaping.
- ¹² FDA, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," September 11, 2019, https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non?utm_source=CTPEblast&utm_medium=email&utm_term=stratout&utm_content=pressrelease&utm_campaign=ctp-vaping.
- ¹³ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM633281.pdf>.
- ¹⁴ FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM633281.pdf>.
- ¹⁵ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*.
- ¹⁶ National Academies of Sciences, Engineering, and Medicine (NASEM), *Public Health Consequences of E-Cigarettes*, 2018, <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.
- ¹⁷ Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016.
- ¹⁸ SAMHSA's public online data analysis system (PDAS), National Survey on Drug Use and Health, 2015. http://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CIG30BR2&column=CATAG3&control=NEWRACE2&weight=ANALWT_C&results_received=true and https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?column=CATAG3&results_received=true&row=CIG30BR2&weight=ANALWT_C.
- ¹⁹ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013, <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
- ²⁰ TPSAC, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011.
- ²¹ See e.g., Rodriguez, D, et al., "Predictors of tobacco outlet density nationwide: a geographic analysis," *Tobacco Control* 22(5):349-55, 2013. Lee, JG, et al., "Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study," *Journal of Epidemiology and Community Health* 71(5):487-492, 2017. Henriksen, L, et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research* 14(1):116-21, 2012. Moreland-Russell, S, et al., "Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies," *International Journal of Environmental Research and Public Health*, 10: 4571-4583, 2013.
- ²² Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016.
- ²³ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013.

²⁴ American Cancer Society, “Cancer Facts & Figures for African Americans, 2016-2018,” 2016, <http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>.

²⁵ Alexander, LA, et al., “Why we must continue to investigate menthol’s role in the African American smoking paradox,” *Nicotine & Tobacco Research* 18 (Suppl 1):S91-S101, 2016.

Item # 4
AGENDA DATE: 11/07/18
SUPPLEMENT # 2



October 1, 2019

The Honorable Rich Constantine
Morgan Hill City Council
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Constantine and Members of the Morgan Hill City Council:

The American Cancer Society Cancer Action Network's mission is to end suffering and death from cancer, and we are committed to advancing that mission in the City of Morgan Hill. To that end, we are deeply concerned about the availability of flavored tobacco products, which is contributing to a growing epidemic that is plaguing our communities here in Northern California and nationwide. We urge you to end the sale of all flavored tobacco products including e-cigarettes and menthol cigarettes citywide, with no exemptions, as part of a strong tobacco retailer license to protect the lives of our young people from predatory marketing of the tobacco industry.

Four out of five youth who have ever used a tobacco product started with a flavored tobacco product, and when asked why, say because they come in flavors they like. Shockingly similar local data shows that 82% of Morgan Hill teens who use tobacco are using flavored products. With more than 15,000 flavors of tobacco like sour worm and cotton candy, it's clear that our youth are being targeted for lifelong addiction. A recent study concluded that youth who use e-cigarettes are more than four times more likely to try cigarettes and nearly 3 times as likely to regularly smoke cigarettes than those youth who never tried e-cigarettes. Young people who smoke menthol cigarettes are disproportionately African American, Asian American, LGBT and from low-income communities already significantly impacted by tobacco-related disease. Prohibiting the sale of all flavored tobacco products including menthol cigarettes removes much of the allure of these products and is a key component of a comprehensive strategy to effectively help reduce tobacco initiation, and subsequent addiction.

We've learned from experience that exempting adult-only stores is problematic and weakens what could be a strong policy. This exemption leaves flavored tobacco products available in the community, is difficult to implement and enforce, and is perceived by other tobacco retailers as unfair. After a similar exemption for adult only stores passed in Oakland, the city saw the number adult-only tobacco stores jump from only a few to more than 45.

Morgan Hill has demonstrated a desire to keep tobacco products away from youth by implementing a tobacco retail license. We are now asking the city to expand those protections by joining our neighbors in the numerous communities throughout California who have adopted strong policies to end the sale of all flavored tobacco products. Action now can help prevent a new generation from ever starting this deadly addiction. We urge you to end the sale of *all* flavored tobacco products citywide, including menthol cigarettes, with no exemptions for adult-only stores, as part of your tobacco retailer licensing policy.

Sincerely,

Jen Grand-Lejano
Government Relations Director, Northern California
American Cancer Society Cancer Action Network



SR2019-0003

Agenda Item # 5



October 2, 2019

Project Location



Background

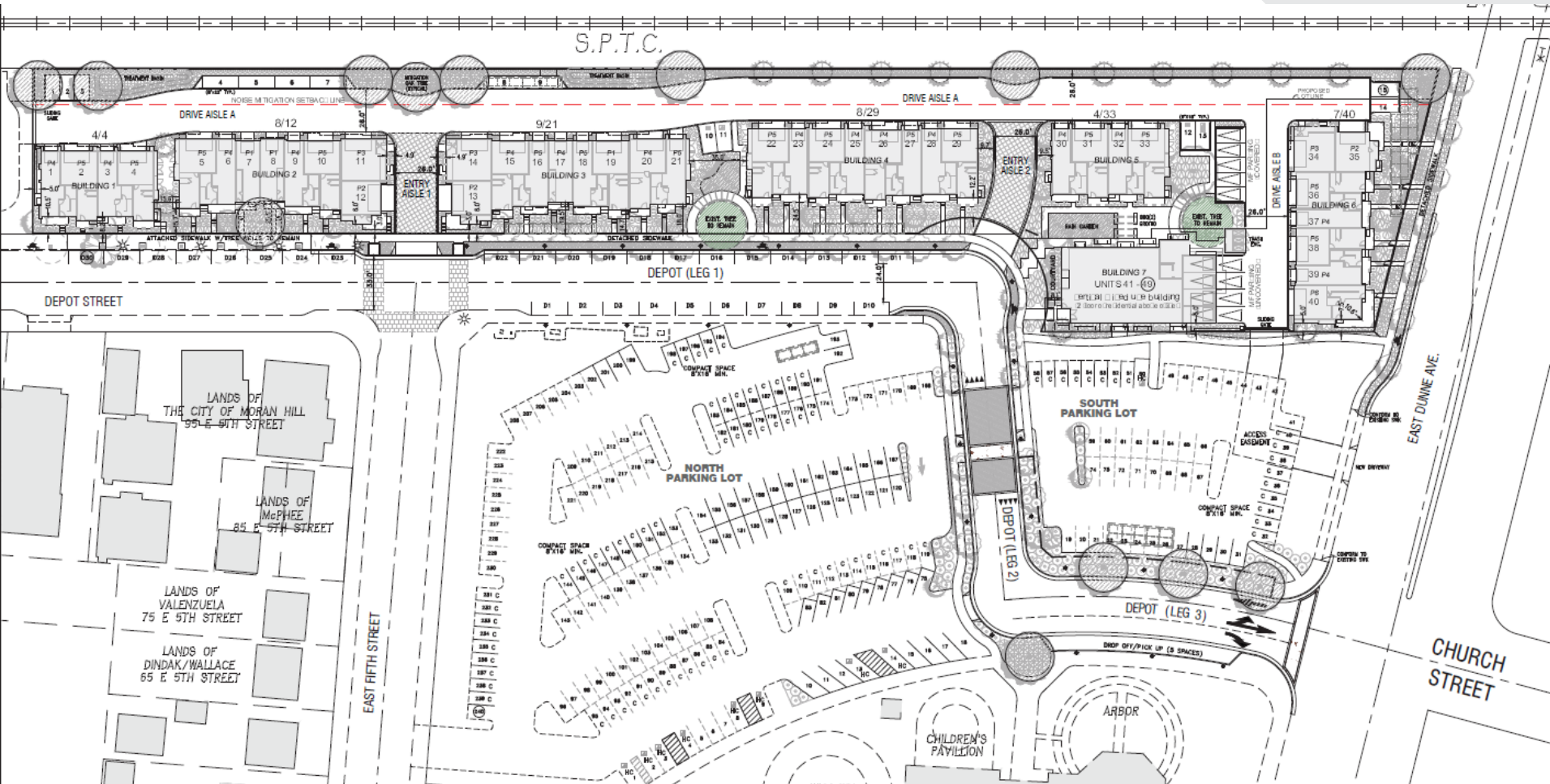


- Exclusive Right to Negotiate Agreement
- Disposition Development Agreement
 - Realignment & construction of Depot Street
 - Replacement of parking spaces at the CCC
 - Construct office space
 - Vacation of Depot Street remaining Depot Street, and incorporation into redevelopment site.
- RDCS Development Agreement
- Tentative Map

Next Steps

- Design Review Permit

Design Review Permit



Attached Townhome



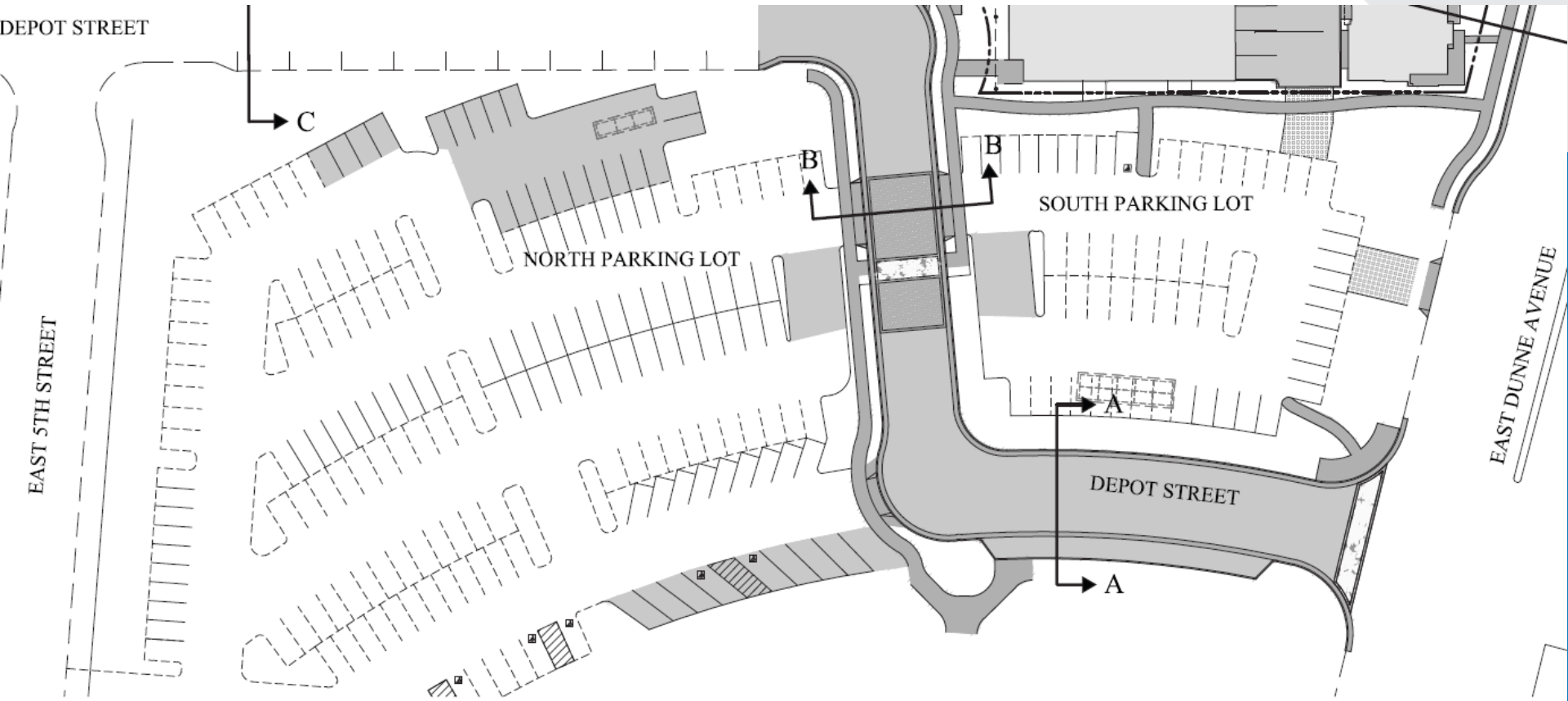
Office Space and Lofts



Depot Street Realignment



CCC Parking Lot



Placemaking



Planning Commission



Mixed Use Project

- Lighting
- Noise Mitigations

Depot Street Design Considerations

- Stop Sign at Depot Street and 5th Street intersection; or
- Raised table intersections
- Cobble stones vs raised crosswalk for midblock crossing
- In-pavement flashing lights for midblock crossing

Project Consistency



- General Plan
- Downtown Specific Plan / Zoning
- RDCS Development Agreement
- Economic Blueprint
- Vision Vero
- Bikeways, Trails, Parks, & Recreation

CEQA

- Consistent with DTSP EIR

Community Engagement



Public Notification

- Site signage,
- Newspaper notice, and
- Direct mail to property owners within 300 feet of the project site.

Recommendation



1. Open and Close Public Hearing
2. Adopt a Resolution approving the Design Review permit

Questions



CITY OF MORGAN HILL

Item # 05

AGENDA DATE: 10/02/19

SUPPLEMENT # 1

From: Ron R. <ronrzes@aol.com>
To: Christina.Turner <Christina.Turner@morganhill.ca.gov>
Cc: CityCouncil <CityCouncil@morganhill.ca.gov>; Planning_Commission <Planning_Commission@Morgan-hill.ca.gov>; Leslie.Little <Leslie.Little@morganhill.ca.gov>; Jennifer.Carman <Jennifer.Carman@morganhill.ca.gov>; Chris.Ghione <Chris.Ghione@morganhill.ca.gov>; Tiffany.Brown <Tiffany.Brown@morganhill.ca.gov>; Scott.Creer <Scott.Creer@morganhill.ca.gov>
Sent: Wed, Oct 2, 2019 5:59 pm
Subject: Re: Depot Street Realignment

Thanks Christina,

The 'Depot Street realignment is engineered by design to reduce speeds' as I'm sure it will in general and is much better than the 'S' curve that had been in an earlier design but it still looks unorthodox in that it combines sharp curves in an otherwise straight street and a pedestrian crosswalk connecting 2 parts of what is often a busy parking lot. My concern is one of safety and not of delays which is why I asked if there was 'an example elsewhere such as another city to determine its efficacy.' Does 5th Street truly match.

Speaking of delays there are times when there will be very heavy use of Depot Street and I didn't see this reflected in the traffic study. They seem to consider normal peak periods.

As far as the right turn lane onto Dunne is concerned, Figure 2, page 3 of the site plan in the study doesn't show a right turn lane at all. This is one of several inconsistencies in the project renderings. As we can see the rendering I included shows the turn lane but the length isn't apparent. It was mentioned that 'the new intersection will have a dedicated right hand turn lane that is approximately 170-feet back from the East Dunne intersection. This allows for sufficient vehicular stacking on the Depot Street leg of the intersection. This lane configuration can be found at multiple intersections in town including but not limited to Main at Monterey, Condit at Dunne, Madrone Parkway at Cochrane, and DePaul at Cochrane.' From my experience Main at Monterey is often jammed and at Condit at Dunne the turn lane doesn't totally block people going straight because people going straight often use the middle lane to dive bomb into the entrance of 101.

Back to the traffic study, I admit I'm not qualified to interpret it in detail, in fact I didn't even know what 'LOS' meant(I do now). I found this of interest 'LOS F for Downtown intersections and segments including at Main Avenue/Monterey Road, along Monterey Road between Main Avenue and Fifth Street, and along Depot Street at First Street through Fifth Street' where 'Analysis Methodologies and Level of Service Standards Traffic conditions at the study intersections were evaluated using level of service (LOS). Level of Service is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. The analysis methods are described below.'

And on a lighter note, what is that lady in the picture picking that guy's pocket or what?



Ron R.

-----Original Message-----

From: Christina Turner <Christina.Turner@morganhill.ca.gov>

To: ronrzes@aol.com <ronrzes@aol.com>

Cc: CityCouncil <CityCouncil@morganhill.ca.gov>; Planning_Commission <Planning_Commission@Morgan-hill.ca.gov>; Leslie Little <Leslie.Little@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Chris Ghione <Chris.Ghione@morganhill.ca.gov>; Tiffany Brown <Tiffany.Brown@morganhill.ca.gov>; Scott Creer <Scott.Creer@morganhill.ca.gov>

Sent: Wed, Oct 2, 2019 2:05 pm

Subject: RE: Depot Street Realignment

Hi Ron – Thank you for your email. Council Member Spring asked me to respond. At the September 10th Planning Commission meeting, during the discussion of the Depot-Latala item, it was explained that the Depot Street realignment is engineered by design to reduce speeds while realigning Depot Street to Church Street per the City's General Plan Transportation Element. The illustration is correct, the new intersection will have a dedicated right hand turn lane that is approximately 170-feet back from the East Dunne intersection. This allows for sufficient vehicular stacking on the Depot Street leg of the intersection. This lane configuration can be found at multiple intersections in town including but not limited to Main at Monterey, Condit at Dunne, Madrone Parkway at Cochrane, and DePaul at Cochrane.

The link below will take you to The Traffic Impact Analysis, prepared by Hexagon Transportation Consultants, Inc. that studied the potential impacts of connecting Depot Street to Church and East Dunne intersection. I hope you find this information helpful and it addresses the questions that you had.

<https://www.morgan-hill.ca.gov/DocumentCenter/View/35427/Traffic-Study-PDF>.

Regards,
Christina

CITY OF MORGAN HILL

Christina J. Turner, CPA
City Manager

17575 Peak Avenue, Morgan Hill, California, USA 95037

d 408.776.7382 | **c** 408.839.1705

e christina.turner@morganhill.ca.gov | www.morganhill.ca.gov

f [Facebook](#) | [Twitter](#)

Begin forwarded message:

From: "Ron R." <ronrzes@aol.com>

Date: October 2, 2019 at 10:57:30 AM PDT

To: Planning_Commission@morganhill.ca.gov

Cc: rene.spring@morganhill.ca.gov

Subject: Depot Street Realignment

At the meeting I attended it was stated that an existing example of a set of turns was 5th street. I couldn't find an equivalent on 5th, this was the best I found:



I was also looking for an example elsewhere such as another city to determine its efficacy. And this artist view shows a right turn lane, how long is it and might right turners block people going straight?



can you provide a copy of the traffic engineers report in which they accepted this design? and as a reminder, parking on Depot street is on the shoulder and totally jammed during Friday Night music, as is the garage (which by the way should have a 'Full' sign to prevent the jams at the top of folks trying to turn around after seeing there are no spaces).

Thank you,

Ron R.

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

9/12/2019

E 5th St - Google Maps

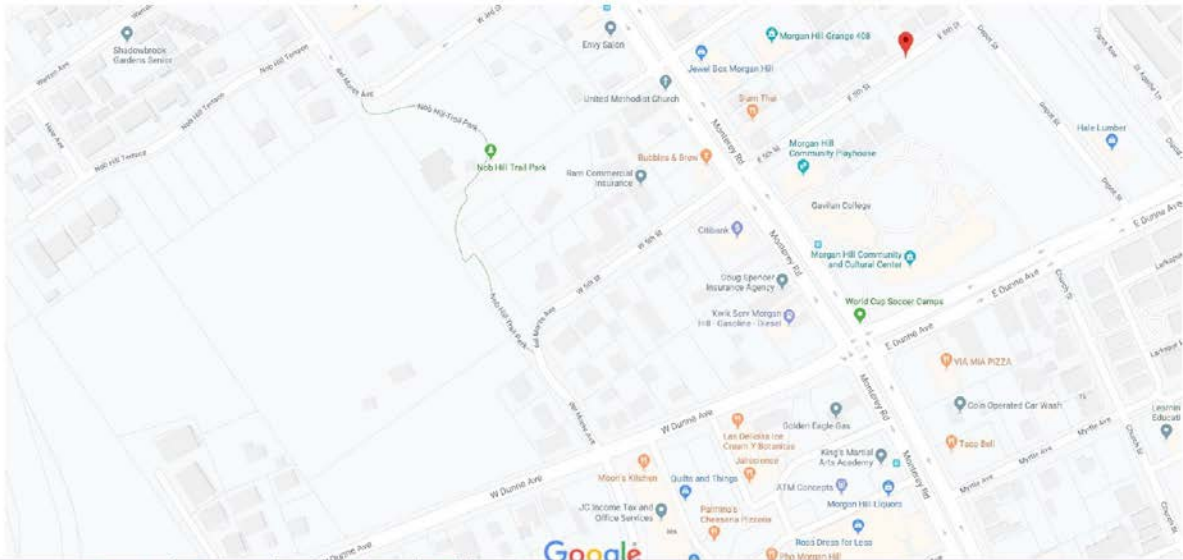
Google Maps E 5th St
5th Street



9/12/2019

E 5th St - Google Maps

Google Maps E 5th St
5th Street



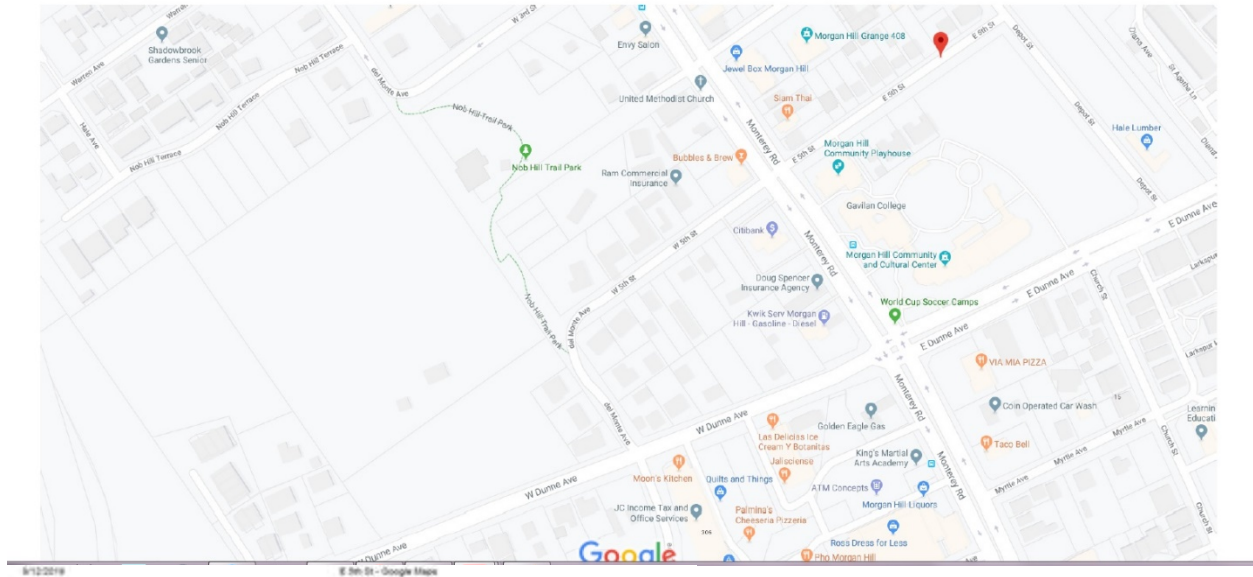
WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other

personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

9/12/2019

E 5th St - Google Maps

Google Maps E 5th St
5th Street



8/12/2019

E 5th St - Google Maps

Google Maps E 5th St
5th Street





Depot Commons Ground Lease

October 2, 2019

Item 7



Depot Commons



Authorize the City Manager to negotiate, approve, and execute an assignment, modification, and extension of the ground lease

- Ground lease extension needed in order to rehab this affordable community
- Financing restrictions require that this ground lease be at least 65 years
- Council has previously approved ground lease extensions and loan resubordination for 3 of Eden's other Morgan Hill Properties (Dec. 2018)

Depot Commons



- 17135-17145 Depot St
- Currently 13 units & a child-care facility (12 units of co-housing, 1 two-bedroom unit)
- Significant tenant turnover at this location
- Eden would like to rehab, reconfigure and re-syndicate this property in order to better meet the tenants' needs

Depot Commons



Eden will cross collateralize Depot Commons with The Willows Apartments (20 units) in a scattered site redevelopment to support financing

Rehab scope will include much needed interior & exterior upgrades

Timeline for current financing

- December 2018 – Eden submitted a placeholder Calif. Debt Limitation Allocation Comm. (CDLAC) application in order to preserve a geographically-based Low-Income Housing Tax Credit (LIHTC) ‘boost’
- March 2020 – Deadline to submit final Tax Credit Allocation Comm. ,TCAC/CDLAC application. **Ground Lease commitment and local approvals needed**
- December 2020 – Deadline to begin construction

Rehab Plan



Eden will cross collateralize Depot Commons with The Willows Apartments (20 units) in a scattered site redevelopment to support financing

Rehab scope will include much needed interior & exterior upgrades

Timeline for current financing

- December 2018 – Eden submitted a placeholder Calif. Debt Limitation Allocation Comm. (CDLAC) application in order to preserve a geographically-based Low-Income Housing Tax Credit (LIHTC) 'boost'
- March 2020 – Deadline to submit final Tax Credit Allocation Comm. ,TCAC/CDLAC application. **Ground Lease commitment and local approvals needed**
- December 2020 – Deadline to begin construction

Additional Units



- Eden has the opportunity to add additional VLI units with this rehab
- Up to 9 additional units
- Permitted by right per General Plan
- Within the same footprint & adding exterior staircases
- Parking ratio would remain above 0.5 spaces/unit

Next Steps

- CEQA Determination
- TEFRA Hearing March/April 2020



The Redwoods Apartments – Gilroy, CA

The Redwoods Apartments – Gilroy, CA



Before Rehab - 2017



After Rehab - 2018

Questions



CITY OF MORGAN HILL



2019 Housing Legislation Update Item 9



Housing Crisis



- Housing growth not keeping up with population growth
- Current shortage of 2,000,000 units in CA increasing to 3,500,000 units by 2025
- Strategies suggest building on vacant urban land, intensifying housing around transit, adding density to multifamily development, increasing supply of affordable housing through various methods

Housing Accountability Act



The Housing Accountability Act, among other requirements, prohibits a local agency from **disapproving, or conditioning approval** in a manner that renders infeasible, a housing development project for **very low, low, or moderate-income households** or an emergency shelter

Sets policy for all cities having a “fair share” of housing development obligations

City RHNA Accomplishments



Current 5th Cycle (2015 - 2023) Summary with Pledged Affordable Units

Morgan Hill	RHNA	Units Permitted	Units Pledged	Remaining / (Surplus)	% Complete
VLI (very low income)	273	80	78	115	29%
LI (low income)	154	178	14	(38)	116%
Mod (Moderate Income)	185	385	320	(520)	208%
Above Mod (Above Moderate Income)	316	1,251	TBD	(935)	396%
TOTAL	928	1,894	412	(1,378)	204%

New Compliance Pending



- SB 166 No net loss zoning density – 180 days
- No net loss development unit accountability
- AB 1397 Site Inventory changes
- Replacement housing
- Housing Element – new minimum density for sites
- SB 828 Identification of 125% of RHNA need
- New RHNA rules & numbers: + 47% - + 300%

SB 330 – Housing Crisis Act of 2019



Suspended for 5 years:

1. Imposed growth caps
2. Limitations on annual permits or allocations
3. Referendum and initiative
4. Moratorium unless approved for all land use and reviewed by HCD

SB 330 - Limitations



Prohibits City from imposing any condition which would cause project to be developed at lower density unless:

1. Specific adverse impact upon public health and safety
2. No satisfactory way to mitigate adverse impact
 - Use of Density Bonus not valid basis to find a project inconsistent or not in compliance
 - Limits public meetings/hearings to 5 per project

SB 330 – Development



- Allows all housing (affordable & market rate) development to proceed even if zoning inconsistent with General Plan:
 - No Zoning Amendment requirement
 - Mixed-Use Flex – no Block Level Master Plan, or PD unless Developer requested

SB 330 – Fees Fixed



- At time prelim application deemed complete, plus:
 1. Annual COLA
 2. Costs necessary to mitigate under CEQA
- Term: 2 ½ years

SB 330 – Processing - 2025



- Requires objective criteria, no subjective judgements
- Within 30 days of submission of pre-application, agency determines whether complete (60 days > 150 units)
- If not complete, provide exhaustive list of required submittals per Gov. Code Section 65941.1(a)
- After that, agency not allowed subsequent request of any item NOT on list.

SB 330 – Project Review



Approve or Disapprove

1. 60-180 days from certification of EIR
2. 60 days of Negative Declaration
3. 60 days if 49% of units are affordable to very low and low, restricted for 30 years, and tax credit project
4. 60 days from exempt project determination
 - Residential project
 - Mixed use if 50% residential – “Neighborhood Commercial”

SB 330 - Tenant Protections for redevelopment of sites

- No net loss of units at lower income
- New project must increase density
- Relocation
- Long term notice (6 months)
- Right of first refusal
 - o Agricultural Land and Historic protected from conversion

SB 330 - Enforcement



- Applicant
- A person eligible to reside in dwelling or emergency shelter
- A housing organization
- Court ordered Judgement to compel within 60 days
- Award attorney fees to petitioner
- Fine up to \$10,000 per unit - from General Fund
- x5 if bad faith actions apply

SB 330 – Policies/Standards

Does not prohibit adoption of new policies/standards which:

- Allow greater density
- Facilitate development of housing
- Reduce costs of housing development
- Imposes/implements CEQA mitigation measures

AB 1482 – Rent/Tenant Protections

- Single family units exempt
- 15 years old and younger - exempt
- 2 units or more
- 10-year term
- 5% + CPI (inflation)
- No discrimination regarding source of income (section 8 vouchers)

AB 881/AB 68/SB 13 - ADU's



- City must update local ADU Ordinance
- No lot size/FAR requirement; 4 ft side/rear yard
- 2 ADU's per single family lot occupied with a home and multifamily
- Must permit up to 1,200 sq. ft (attached if 2,400 sq. ft)
- 16' height permitted

AB 881/AB 68/SB 13 - ADU's (continued)



- No replacement parking for converted garage or carport or new unit within $\frac{1}{2}$ mile of transit
- No owner-occupancy requirement
- 60-day ministerial review on SF & MF sites
- Ministerial review of multiple ADU's inside multifamily structure
- No impact fees <750 sq. ft; 25% >750 sq. ft.
- HCD to audit in 1 year

AB 1763 - Density Bonus



- Defines affordable projects as 100% affordable with 20% affordable to lower income
- 100% affordable receives 80% density bonus; 4 incentives/concessions
- Within a ½ mile transit stop or transit corridor, unlimited density and 3 additional stories or 33 feet height increases

AB 1763 – Density Bonus & Parking



- Shall not impose any new more restrictive parking requirements
- New parking requirement near transit as follows:
- $\frac{1}{4}$ mile of rail/bus corridor - 0 per unit
- $\frac{1}{2}$ mile of rail/bus corridor - .5 per unit

AB 1487 – SF Bay Area: Housing Development Financing Agency



- Leadership: Executive Board MTC/ABAG
- Direct allocations to Big 3 cities and any city without 30% of total county housing allocation
- No sales tax
- Commercial linkage, business tax etc. - 50% to County of origin

Questions?





Special - Regular Meeting Agenda

City Council

Rich Constantine - Mayor
Rene Spring - Mayor Pro Tem
Yvonne Martinez Beltran - Council Member
Larry Carr - Council Member
John McKay - Council Member

Wednesday, October 2, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

PUBLIC NOTICE

The public hearing regarding **Out of Agency & Environmental Assessment - OA2019-0001/EA2019-0011: Fisher- Buddhist Temple**, that was publicly noticed for consideration by the City Council at this meeting has been continued to a date uncertain.

The item **Approve Impact Fee Freeze Agreement with Morgan Hill Retail Venture, L.P. for the Development of Retail Spaces in the Shopping Center Known as Cochrane Commons** that was continued from the September 18, 2019 City Council meeting to this meeting has been continued to a date uncertain.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 pm for the purpose of conducting a closed session.

6:00 p.m. Closed Session

7:00 p.m. Regular Meeting

STUDENTS - THE CLOSED SESSION THAT STARTS AT 6:00 PM IS NOT OPEN TO THE PUBLIC. THE REGULAR MEETINGS STARTS AT 7:00 PM

SPECIAL MEETING

6:00 p.m. Closed Session

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Pursuant to: Government Code Section 54956.9(d)(4)

Number of Cases: One (1)

RECONVENE

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

RECOGNITION

New City Website and recognition of the Website Team
Maureen Tobin and Website Team

Kiwanis Morgan Hill Youth Fund
Craig Kennedy, Morgan Hill Kiwanis President and John Horner, Board Chair

PROCLAMATIONS

Proclaiming the Month of October 2019 as Dysautonomia Awareness Month
Deborah Vick, M.Ed.

Proclaiming October 5, 2019 as Arbor Day
Anthony Eulo

Proclaiming the Week of October 6 - 12, 2019 as Fire Prevention Week
Dwight Good

October 2, 2019

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. CONTINUE PUBLIC HEARING REGARDING CITY'S SELECT DEVELOPMENT IMPACT FEES TO OCTOBER 23, 2019 REGULAR MEETING

Recommendation:

Continue the public hearing to the regular City Council meeting of October 23, 2019.

2. APPROVE THE SEPTEMBER 4, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

3. APPROVE THE SEPTEMBER 18, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

4. PROVIDE DIRECTION TO STAFF REGARDING REGULATION OF FLAVORED TOBACCO PRODUCTS

Recommendation:

1. Direct the City Attorney to prepare an ordinance regulating flavored tobacco products, including vape products; and
2. Direct City staff to engage in appropriate outreach efforts regarding the proposed regulations.

Estimated Time: 15 Minutes

PUBLIC HEARING

5. APPROVE DESIGN REVIEW PERMIT TO CONSTRUCT A MIXED-USE PROJECT IN CONJUNCTION WITH THE REALIGNMENT OF DEPOT STREET AT E. DUNNE AVENUE (HALE LUMBER SITE)

Recommendation:

1. Open and close the public hearing; and
2. Adopt resolution approving a Design Review Permit for the mixed-use development.

Estimated Time: 30 Minutes

OTHER BUSINESS

6. ADOPT ORDINANCE AMENDING CHAPTER 17.28 OF THE MORGAN HILL MUNICIPAL CODE REGARDING PARKLAND DEDICATION AND/OR IN LIEU FEES FOR NEW SUBDIVISIONS

Recommendation:

1. Waive first and second reading of the Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update the City's Park Dedication Ordinance; and
2. Introduce Ordinance amending Chapter 17.28 "Land Dedications and Reservations" to update park dedication requirements.

Estimated Time: 10 Minutes

7. APPROVE EXTENSION OF GROUND LEASE WITH EDEN HOUSING FOR REHABILITATION OF DEPOT COMMONS AT 17145 DEPOT STREET

Recommendation:

Authorize the City Manager to negotiate, approve, and execute an assignment, modification, and extension of the ground lease for Depot Commons Apartment Complex, subject to the final review and approval of the City Attorney.

Estimated Time: 10 Minutes

8. PROVIDE PRELIMINARY FEEDBACK REGARDING POTENTIAL REDESIGN OF THE INTERSECTION AT THE NORTH-EAST CORNER OF MONTEREY ROAD AND COCHRANE ROAD

Recommendation:

1. Receive presentation on intersection alignment and safety improvements proposed for the northeast corner of Monterey Road and Cochrane Road in conjunction with development of the southwest corner of the Sutter Industrial Park; and
2. Provide direction regarding realignment plan timing or provide comments regarding project deferral.

Estimated Time: 10 Minutes

9. UPDATE REGARDING 2019 STATE HOUSING LEGISLATION/IMPACTS

Recommendation:

Receive information regarding 2019 State Housing Legislation and Impacts to Morgan Hill Housing Development Guidelines and Enforcement, Residential Development Control System, Development Processing and Work Program.

Estimated Time: 45 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

To sustain a safe, inclusive, socially responsible, environmentally conscious, and economically sound community

Choose Morgan Hill

The City of Morgan Hill is the best community for people to live, work, visit, and operate their businesses.

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 Community History
- Enhancing Diversity and Inclusiveness
- Advancing Regional Initiatives

2019-2020 Strategic Priorities

- Agricultural Preservation
- Cannabis Policy
- Community Engagement and Messaging
- Economic Development
- Financial Stewardship
- High Speed Rail
- Homelessness
- Housing
- Infrastructure
- Telecommunications
- Traffic/Transportation



PUBLIC COMMENT

AGENDA DATE: 10/02/19

SUPPLEMENT # 1

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: Fwd: Slides for Tonight's CC meeting
Date: Wednesday, October 2, 2019 12:29:20 PM
Attachments: [City Council October 2 2019 .pdf](#)
[ATT00001.htm](#)

Pc supplement

Sent from my iPhone, please excuse typos and brevity.

Michelle

Begin forwarded message:

From: Joe Baranowski <joe.baranowski@gmail.com>
Date: October 2, 2019 at 12:13:31 PM PDT
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: Jenna Luna <jenna.luna@morganhill.ca.gov>
Subject: Slides for Tonight's CC meeting

Hi Michelle

I plan to speak during the public comment period at this evening's meeting and would like the attached slides to be available at the dais.

Thank you for you assistance,

Joe Baranowski

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

A presentation to the Morgan Hill City Council

October 2, 2019

Joe Baranowski

Shoe Palace Distribution Center

Why did this project get approved the way it did?

Do Morgan Hill citizens deserve answers?

Why will Trammell Crow project be any different?



Critical location but complete disregard for transparency



©19 Google, Imagery ©2019 AMBAG, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 500 ft



- CC Meeting (9/18/2019)
 - » Accept report on cut-through traffic and key intersection congestion
 - Feedback: 101 congestion is 'the' main issue. NO kidding!
 - Lots of angst, city can't do much about 101, so
- Approve 500,000 sq ft, 56 Truck Dock Distribution Center
 - » Explicit effort to keep IS/MND from public review (today)
 - » Accept sham Traffic Analysis , ignore DoT and expert feedback.
Docks: 4 --> 56 Daily Truck Trips: 5 -->8 ??????
 - » Design Review process: biased to approve no matter what (next meeting)
 - Application complete on June 6th ?
 - Use CEQA code and other troubling rationale to skip PC review?
 - Finding that project is consistent with Zoning Code. How?

The purpose of the California Environmental Quality Act (CEQA) is to:

- ~~Prevent or minimize significant, avoidable damage to the environment.~~
- Disclose potential environmental effects of a proposed discretionary project, through a variety of publicly accessible documents.
- ~~Encourage public participation in the environmental review and decision-making process.~~
- ~~Ensure transparency in governmental decision-making process.~~

Encourage public participation and transparency ?

- Applicant CEO 'not expecting extensive analysis', '6-month review surprising', viability of project questioned
 - »David J Powers takes innovative steps to chop 9 weeks off schedule and proposes ways to do even better!
 - Simplify traffic analysis (Docks: 4 --> 56 Daily Truck Trips: 5 -->8 Simple or Sham?)
 - Shorten internal review time
 - Selecting a 20-day public review for the MND, rather than the 30-days ?
 - Investigate possibility of preparing an Addendum (*which would avoid the need altogether for a public review period*)?
- Notify the public that environmental study (IS) for project is ready
 - »**16** Morgan Hill addresses sent notifications
 - »Place 1-day ad in Morgan Hill Times*
- Success! Three comment letters, none from MH residents who had no idea project was even started.
 - » Why is *any* consultant who has demonstrated a willingness to blatantly bypass CEQA public participation and transparency in decision-making purposes still being used?
 - » How in the world do you expect public to trust this LEAD consultant on TC Mega Distribution Center?

*Note: Posts made on social medial platforms incorrectly stated that the ad appeared in Hollister Freelance and not in Morgan Hill.
Correction has been posted on Facebook and will be issued on NextDoor as part of story update.

